§ 912.13 Compliance with nondiscrimination requirements.

The PHA shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with the nondiscrimination requirements of, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-5), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Fair Housing Act (42 U.S.C. 3601–3619), and the regulations implementing these statutes, and other civil rights statutes cited in the applicable program regulations. These statutes prohibit, among other things, discriminatory practices on the basis of race, color, national origin, sex, religion, age, disability and familial status in the provision of housing.

§ 912.14 Protection from liability for PHAs, State, local, and tribal government agencies and officials.

(a) *Protection from liability for PHAs.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against a PHA with respect to any error in its determination of eligibility for financial assistance based on citizenship or immigration status:

(1) If the PHA established eligibility based upon verification of eligible immigration status through the verification system described in § 912.8;

(2) Because the PHA was required to provide an opportunity for the applicant or family to submit evidence in accordance with § 912.6;

(3) Because the PHA was required to wait for completion of INS verification of immigration status in accordance with § 912.8;

(4) Because the PHA was required to wait for completion of the INS appeal process provided in accordance with § 912.9(e); or

(5) Because the PHA was required to provide an informal hearing in accordance with § 912.9(f) or 24 CFR part 966.

(b) *Protection from liability for State, local and tribal government agencies and officials.* State, local and tribal government agencies and officials shall not be liable for the design or implementation of the verification system described in § 912.8, and the informal hearings provided under § 912.9(f) and 24 CFR part 966, as long as the implementation by the State, local or tribal government agency or official is in accordance with prescribed HUD rules and requirements.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

93. The authority citation for part 960 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, and 3535(d).

94. In § 960.204, paragraphs (a) and (d)(4) would be revised to read as follows:

§ 960.204 PHA tenant selection policies.

(a) In addition to policies and regulations including preferences and priorities established by the PHA for eligibility and admission to its public housing projects pursuant to the Act, the ACC, and parts 912 and 913 of this chapter, each PHA shall adopt and implement policies and procedures embodying standards and criteria for tenant selection which take into consideration the needs of individual families for public housing and the statutory purpose in developing and operating socially and financially sound public housing projects that provide a decent home and a suitable living environment and foster economic and social diversity in the tenant body as a whole.

* * * * *

(d) * * *

(4) Provide for verification and documentation of information relevant to acceptance or rejection of an applicant, including documentation and verification of citizenship and eligible immigration status under 24 CFR part 912.

* * * * *

95. In § 960.206, paragraph (a) would be revised to read as follows:

§ 960.206 Verification procedures.

(a) *General.* Adequate procedures must be developed to obtain and verify information with respect to each applicant. (See parts 912 and 913 of this chapter, and 24 CFR parts 750 and 760.) Information relative to the acceptance or rejection of an applicant or the grant or denial of a Federal preference under § 960.211 must be documented and placed in the applicant's file.

* * * * *

96. Section 960.209 would be amended by adding two sentences at the end of paragraph (a), by adding one sentence at the end of paragraph (b), and by adding a new paragraph (c), to read as follows:

§ 960.209 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after [*insert the effective date of the final rule*], the PHA shall follow the requirements of 24 CFR part 912 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 912 concerning verification of the immigration status of any new family member.

(b) * * * At any interim reexamination after [*insert the effective of the final rule*] when there is a new family member, the PHA shall follow the requirements of 24 CFR part 912 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) *Termination.* For provisions requiring termination of participation for failure to establish citizenship or eligible immigration status, see 24 CFR part 912.9, and also 24 CFR 912.10 for provisions concerning assistance to certain mixed families (families whose members include those with citizenship and eligible immigration status and those without eligible immigration status) in lieu of termination of assistance.

Dated: August 3, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–20710 Filed 8–24–94; 8:45 am]

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federal register

Thursday
August 25, 1994

Part III

Environmental Protection Agency

40 CFR Parts 35, 49, 50 and 81
Indian Tribes: Air Quality Planning and Management; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 35, 49, 50, and 81

[OAR–FRL–5024–1]

RIN 2060–AE95

Indian Tribes: Air Quality Planning and Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Clean Air Act directs EPA to promulgate regulations specifying those provisions of the Act for which it is appropriate to treat Indian Tribes in the same manner as States. For those provisions specified, a Tribe may develop and implement one or more of its own air quality programs under the Act. This proposed rule sets forth the CAA provisions for which it is appropriate to treat Indian Tribes in the same manner as States, establishes the requirements that Indian Tribes must meet if they choose to seek such treatment, and provides for awards of Federal financial assistance to Tribes. EPA requests public comments on all aspects of today's proposal.

DATES: Comments on this proposed rule must be received on or before November 23, 1994.

ADDRESSES: Comments must be mailed (in duplicate, if possible) to the EPA Air Docket Office (6102), Attn: Air Docket No. A–93–3087, room M1500, 401 M St., SW., Washington, DC 20460. Copies of the comments and supporting documents, contained in Docket No. A–93–3087, are available for public inspection and review Monday through Friday from 8 a.m.—4 p.m., except legal holidays. Starting October 1, 1994, dockets will be available for inspection from 8 a.m.—5:30 p.m., except legal holidays. A reasonable charge may be assessed for photocopying of materials.

Comments and data may also be submitted electronically by any of three different mechanisms: by sending electronic mail (e-mail) to: Docket-OPPTS@epamail.epa.gov; by sending a "Subscribe" message to listserver@unixmail.rtpnc.epa.gov and once subcribed, send your comments to RIN–2060–AE95; or through the EPA Electronic Bulletin Board by dialing 202–488–3671, enter selection "DMAIL," user name "BB–USER" or 919–541–4642, enter selection "MAIL," user name "BB–USER." Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form should be identified by the docket number A–93–3087. Electronic comments on this proposed rule, but not the record, may be viewed or new comments filed online at any Federal Depository Library. Additional information on electronic submissions can be found in Part VII of this document.

FOR FURTHER INFORMATION CONTACT: Christina Parker, Office of Air and Radiation (6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 at (202) 260–6584.

SUPPLEMENTARY INFORMATION: This preamble is organized according to the following outline:

I. Background of the Proposed Rule

A. Development of the Proposed Rule

This notice describes proposed regulatory changes to implement section 301(d) of the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.* (the "Act" or "CAA"). Section 301(d) requires EPA to promulgate regulations that provide for Indian Tribes, if they so choose, to assume responsibility for the development and implementation of CAA programs on lands within the exterior boundaries of their reservations or other areas within their jurisdiction. This Tribal authority will apply to all CAA programs which the EPA Administrator determines to be appropriate in taking final action on this proposal. An Indian Tribe that takes responsibility for a CAA program under this rule would essentially be treated in the same way as a State would be treated for that program, with any exceptions noted in this rule and discussed below in this preamble.

1. Federal/EPA Indian Policy

In developing this proposed rule, EPA has acted on the principles expressed in existing Federal policy statements

regarding Indian Tribes. On January 24, 1983, the President issued a Federal Indian Policy stressing two related themes: (1) that the Federal government will pursue the principle of Indian "self-government" and (2) that it will work directly with Tribal governments on a "government-to-government" basis. Presidential support was reaffirmed in an April 1, 1993 statement.

On November 8, 1984, in response to the 1983 Federal statement, EPA adopted a policy statement and implementing guidance addressing the administration of EPA environmental programs on Indian reservations. EPA's policy is "to give special consideration to Tribal interests in making Agency policy, and to ensure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands." EPA committed to pursue certain principles to meet this objective, including the following:

> EPA recognizes Tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with Tribal Governments as the independent authority for reservation affairs, and not as political subdivisions of States or other governmental units.
>
> * * * * *
>
> In keeping with the principle of Indian self-government, the Agency will view Tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved the interests and/or participation of State Governments, EPA will look directly to Tribal Governments to play this lead role for matters affecting reservation environments.

See November 8, 1984 "EPA Policy for the Administration of Environmental Programs on Indian Reservations" at p. 2. EPA Administrator Carol M. Browner reaffirmed the 1984 policy in a Memorandum issued on March 14, 1994.

2. Consultation With Tribal Representatives

In addition, EPA has consulted with Tribal representatives in developing this proposed rule. EPA discussed preliminary issues associated with the proposed rule at the "First National Tribal Conference on Environmental Management" held in Cherokee, North Carolina in May 1992 and the "Second National Tribal Conference on Environmental Management" in Cherokee held in May 1994.

In the Fall of 1992, EPA met with Tribal representatives at three outreach meetings in Chicago, Denver and San Francisco. These meetings included a discussion of issues raised by this proposed rule as well as EPA's efforts to assist Tribes in obtaining training in air quality management. Overall, representatives of approximately 70 different Tribes attended. In September 1993, EPA discussed a draft of this proposed rule with representatives of approximately 40 Tribes at a seminar sponsored by EPA and the Office of Native American Programs at Northern Arizona University and a subsequent meeting with representatives of State and local governments sponsored by the State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials. EPA has also consulted with Tribal and State representatives periodically throughout the development of the proposed rule.

EPA received comments both during and following the Tribal and State outreach meetings. EPA has considered these comments in developing today's proposed rule. To the extent any such commenters have concerns that have not been adequately addressed by today's proposal, they should submit formal written comments to EPA in response to today's action. Any such comments must be received by the deadline indicated at the outset of today's notice and submitted to the EPA address specified above.

B. General Structure of the CAA

In order to fully understand this proposal, a basic understanding of the structure of the CAA and its division of responsibilities between EPA and the States is necessary. Such a description is set forth below. In addition, a brief description of some of the many programs contained in the CAA is set forth in Addendum A, as an introduction and guidance to Tribes wishing to develop their own CAA programs. Reading Addendum A in conjunction with today's proposed action will also facilitate the reader's understanding of the discussion that follows.

The CAA is implemented in two basic ways. The principal method is through a cooperative partnership between the States and EPA. While this partnership can take several shapes, generally EPA issues national standards or Federal requirements and the States assume primary responsibility for implementing these requirements. However, as a prerequisite to assuming implementation responsibility, States must submit their programs to EPA and must demonstrate that their programs meet minimum Federal CAA requirements. Among these requirements is the mandate that States demonstrate that they have adequate legal authority and resources to implement the programs.

If a State program is approved or if the authority to implement a Federal program is delegated to a State, EPA maintains an ongoing oversight role to ensure that the program is adequately enforced and implemented and to provide technical and policy assistance. An important aspect of EPA's oversight role is that EPA retains legal authority to bring an enforcement action against a source violating a CAA program implemented by the States. Thus, if a State fails to adequately enforce CAA requirements, EPA can step in and ensure that they are followed.

An example of this cooperative Federal/State arrangement is provided by Title V of the Act, 42 U.S.C. 7661–7661e, which contains requirements for an operating permit program. Generally, the program requires that certain sources of air pollution obtain permits which contain all of the requirements under the Act applicable to such sources. EPA has issued rules specifying the minimum requirements for State permit programs. 57 FR 32250 (July 21, 1992). States are required to develop programs consistent with minimum Federal requirements and to submit those programs to EPA for approval. In those instances when State programs are approved by EPA, the approved States will be primarily responsible for implementing these provisions of the CAA. EPA will maintain an active oversight role to provide necessary assistance and to ensure that the EPA-approved State programs continue to be implemented consistent with minimum Federal requirements.

In the second, less common form of CAA implementation, EPA is primarily responsible both for setting standards or interpreting the requirements of the Act and for implementing the Federal requirements that are established. Under this approach, the Act provides little formal role for States.[1] In general, this approach is reserved for programs requiring a high degree of uniformity in their implementation.

Title VI of the Act, which provides for the phase-out of certain substances that deplete stratospheric ozone, is one such program, since it affects products sold throughout interstate commerce. 42 U.S.C. 7671–7671q. Title VI is both a Federally established and Federally

[1] States nevertheless often actively participate in federal rulemakings and policy development even if the CAA does not call for primary implementation by the States. EPA similarly encourages Tribes to participate actively in EPA's rulemakings and policy development.

managed program. EPA is charged with issuing the rules to implement the phase-out. Through, for example, reporting requirements and enforcement, EPA also ensures that the restrictions in production and consumption of ozone-depleting substances that are called for by the Act are, in fact, met.

Section 301(d)(2) of the Act authorizes EPA to issue regulations specifying those provisions of the Act "for which it is appropriate to treat Indian tribes as States." 42 U.S.C. section 7601(d)(2). Thus, the CAA programs where States have a formal implementation role will be the programs that are directly affected by today's proposed action. Conversely, those programs that are established and implemented primarily by EPA will largely be unaffected by today's proposal.

C. Description of Section 301(d) of the CAA

Section 301(d)(1) of the CAA authorizes EPA to "treat Indian tribes as States" under the Act, so that Tribes may develop and implement CAA programs in the same manner as States within Tribal reservations or in other areas subject to Tribal jurisdiction.[2] For a Tribe to be eligible for such treatment it must be Federally recognized (see section 302(r)) and must meet the three criteria set forth in section 301(d)(2)(A)–(C). Briefly, these criteria consist of: (1) a showing of an adequate governing body; (2) that is capable of implementing the particular requirements of the CAA and applicable regulations for which the Tribe is seeking program approval; and (3) within the exterior boundaries of the reservation or other areas within the Tribe's jurisdiction. The precise criteria are set forth in today's proposed rule and are described in detail in Part III.A. below, together with EPA's proposal as to how this eligibility determination should be made.

At the same time, the Act recognizes that it may not be appropriate or feasible in all instances to treat Tribes and States identically. Accordingly, EPA is required under section 301(d)(2) of the Act to promulgate regulations "specifying those provisions of [the CAA] for which it is appropriate to treat Indian tribes as States." Tribes that satisfy the criteria discussed above are eligible to implement those provisions specified by EPA if the minimum Federal requirements set out in the provisions have been met. In general, EPA is proposing that Tribes be eligible to implement the same provisions as States, with some exceptions, as set forth in today's proposed rule and discussed in Part III.B. below.

In addition, section 301(d)(3) of the Act gives EPA the discretion to promulgate regulations establishing the elements of Tribal implementation plans ("TIPs") and procedures for approval or disapproval of those plans or portions thereof. See Addendum A, "Title I" discussion. These regulations would be implemented in conjunction with section 110(o) of the Act, which provides that any TIP that is submitted to EPA under section 301(d) shall be reviewed in accordance with the provisions for review of State implementation plans ("SIPs") set out in section 110, except as otherwise provided by this regulation. Once effective, the TIP would be applicable to all areas located within the exterior boundaries of the reservation. See section 110(o). In today's action, EPA is proposing TIP regulations and procedures, as well as procedures for the review of other Tribal air programs ("TAPs"). These procedures are discussed further in Part III.C. below.

Finally, section 301(d) of the Act makes provision for EPA to furnish grant and contract assistance to Tribes. See section 301(d)(1), (5) of the CAA. The grant provisions proposed today are described in Part IV of this preamble.

II. Jurisdictional Issues

A. Delegation or Grant of CAA Authority to Tribes

It is a settled point of law that Congress may, by statute, expressly delegate Federal authority to a Tribe. *United States* v. *Mazurie*, 419 U.S. 544, 554 (1975). *See also South Dakota* v. *Bourland*, 113 S. Ct. 2309, 2319–20 (1993); *Brendale* v. *Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408, 426–28 (1989) (White, J., for four Justice plurality). Such a delegation or grant of authority can provide a Federal statutory source of Tribal authority over designated areas, whether or not the Tribe's inherent authority would extend to all such areas. It is EPA's proposed interpretation of the CAA that the Act grants, to Tribes approved by EPA to administer CAA programs in the same manner as States, authority over all air resources within the exterior boundaries of a reservation for such programs. This grant of authority by Congress would enable such Tribes to address conduct on all lands, including non-Indian owned fee lands, within the exterior boundaries of a reservation. Thus, this proposed interpretation relates to the potential scope of regulatory jurisdiction that may be exercised by eligible Tribes under EPA-approved Tribal Clean Air Act programs (hereafter "approved" Tribes).[3]

The Agency recognizes that a Tribe will generally have inherent sovereign authority over air resources within the exterior boundaries of its reservation. As stated in *Mazurie*, the sovereign authority of Indian Tribes extends "over both their members and their territory." 419 U.S. at 557. Thus, Tribes generally have extensive authority to regulate activities on lands that are held by the United States in trust for the Tribe. See *Montana* v. *United States*, 450 U.S. 544, 557 (1981). Furthermore, a Tribe "may * * * retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the * * * health or welfare of the tribe." *Montana*, 450 U.S. at 566. However, a Tribe's inherent authority must be determined on a case-by-case basis, considering whether the conduct being regulated has a direct effect on the health or welfare of the Tribe substantial enough to support the Tribe's jurisdiction over non-Indians. See *Brendale*, 492 U.S. 408; *see also* 56 FR 64876 at 64877–64879 (Dec. 12, 1991).[4] Such a determination is not necessary with a direct grant of statutory authority.[5]

EPA's proposed position that the CAA constitutes a statutory grant of

[2] For convenience of expression, portions of this rule refer only to Tribal programs within reservations. However, these references should not be interpreted to limit Tribal programs solely to lands within reservation boundaries since the CAA acknowledges that tribes may possess authority over off-reservation lands." See Part II.A, below.

[3] As indicated in Part III.B.4, in some instances qualifying Tribes may have a role in CAA implementation without having to make an entire program submittal.

[4] In proposing to interpret the CAA as granting approved Tribes authority over all air resources within the exterior boundaries of a reservation, EPA recognizes that its approach under some of the other statutes it administers relies on a Tribe's inherent authority.

[5] Even without this proposed direct grant of authority, Indian Tribes would very likely have inherent authority over all activities within reservation boundaries that are subject to CAA regulation. The high mobility of air pollutants, resulting area-wide effects, and the seriousness of such impacts, would all tend to support Tribal inherent authority; as noted below, these factors also underscore the desirability of cohesive air quality management of all air pollution sources within reservation boundaries including those air pollution-related activities on fee lands within reservation boundaries. *See, e.g., Bourland*, 113 S. Ct. at 2320 (reaffirming the *Montana* "exceptions to 'the general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe'") (citation omitted) (1993); *see also, e.g.*, CAA section 101(a)(2), 42 U.S.C. section 7401(a)(2); H.R. Rep. No. 490, 101st Cong., 2d Sess. (1990); S. Rep. No. 228, 101st Cong., 1st Sess. (1989).

jurisdictional authority to Tribes is consistent with the language of the Act, which authorizes EPA to treat a Tribe as a State for the regulation of "air resources *within the exterior boundaries of the reservation* or other areas within the tribe's jurisdiction."[6] Section 301(d)(2)(B) (emphasis added). EPA believes that this statutory provision, viewed within the overall framework of the CAA, reflects a territorial view of Tribal jurisdiction and authorizes a Tribal role for all air resources within the exterior boundaries of Indian reservations without distinguishing among various categories of on-reservation land. EPA believes a territorial approach to air quality regulation best advances rational, sound air quality management. Air pollutants disperse over areas several and sometimes even hundreds of miles from their source of origin, as dictated by the physical and chemical properties of the pollutants at issue and the prevailing winds and other meteorological conditions. The high mobility of air pollutants, resulting areawide effects and the seriousness of such impacts, underscores the undesirability of fragmented air quality management within reservations.

Moreover, language contained in two other provisions of the CAA, which expressly recognizes Tribal authority over all areas within the exterior boundaries of the reservation provides particularly compelling evidence that Congress intended to adopt this territorial approach. One such provision is in the CAA program governing the amount of incremental air quality deterioration allowed in "clean air" areas. Section 164(c) of the CAA provides that "[l]ands within the exterior boundaries of reservations of federally recognized Indian Tribes may be redesignated [with regard to the prevention of significant deterioration of air quality] only by the appropriate Indian governing body."

In addition, section 110(o) of the CAA provides that upon approval by EPA, Tribal Implementation Plans (TIPs) "shall become applicable to all areas * * * located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation." Section 110(o) of the Act recognizes that approved Tribes will exercise authority over all areas within the exterior boundaries of a reservation for purposes of TIPs. TIPs, in turn, are the administrative tools for implementing the requirements under Title I of the CAA necessary to assure attainment and maintenance of the national ambient air quality standards (NAAQS), one of the central CAA programs. Significant regulatory entanglement and inefficiencies could result if Tribes have jurisdiction over such plans pursuant to section 110(o) of the Act, but are not found to have jurisdiction within reservation boundaries over non-TIP CAA programs. For example, a stationary source located on an area of a reservation over which the Tribe was found to lack inherent authority would be subject to the Tribal Implementation Plan provisions imposing NAAQS-related requirements, but might be determined to be subject to State regulation for some other CAA program. This entanglement could potentially subject a source to differing local regulatory authorities, possibly with conflicting goals and approaches, and potentially duplicative or inconsistent reporting, monitoring and other regulatory requirements. There is no evidence that Congress intended to create such complex jurisdictional entanglements. These entanglements are reasonably avoided by interpreting the CAA as granting to approved Tribes regulatory authority over all air resources within a reservation.

Further, a grant of authority to Tribes for NAAQS-related purposes alone would conflict with the implementation of the operating permit program called for by Title V of the Act. Title V explicitly prohibits partial State permit programs unless, at a minimum, such a program "*ensures compliance with* * * * [a]ll requirements of [Title] I * * * applicable to sources required to have a permit." Section 502(f) (emphasis added); see also section 502(b)(5)(A) (requires permitting authorities "to have adequate authority to * * * *assure compliance* by sources required to have a permit under this title with each applicable standard, regulation, or *requirement under this Act*") (emphasis added) and section 504(a) (each permit issued under Title V "shall include * * * conditions as are necessary to assure compliance with the applicable requirements of this [Act], including the requirements of the applicable implementation plan"). Since States could not unilaterally "ensure compliance with * * * [a]ll requirements of [Title] I" within Indian reservations because Tribes are granted authority over implementation plans under section 110(o), it appears that States could not, in fact, submit Title V permit programs for Indian reservations that would conform with section 502(f) or other provisions of Title V.

A basic rule of statutory construction is to avoid interpreting a statute in a manner that would nullify or render meaningless a statutory provision.[7] Because section 110(o) confers on approved Tribes the authority to administer Title I programs on Indian reservations, the provision of Title V requiring that a permit program must at a minimum ensure compliance with the applicable requirements of Title I cannot be met by States seeking authority to implement a Title V program within the boundaries of a reservation. These provisions can reasonably be harmonized by construing the Act as generally granting approved Tribes CAA regulatory authority over all air resources within the exterior boundaries of their reservations. Thus, this statutory structure further supports EPA's proposed interpretation of the CAA as granting approved Tribes authority within reservation boundaries.

Accordingly, in light of the statutory language and the overall statutory scheme[8], EPA proposes to exercise the rulemaking authority entrusted to it by Congress to conclude that the CAA grants approved Tribes authority over all air resources within the exterior boundaries of a reservation. See generally *Chevron U.S.A., Inc.* v. *NRDC*, 467 U.S. 837, 842–45 (1984).[9]

[6] As indicated above, EPA interprets the second clause of this provision as meaning that Tribes may also assert jurisdiction over air resources that are not within the boundaries of their reservations. However, EPA has not interpreted this clause as a direct grant of jurisdictional authority to Tribes with respect to such off-reservation air resources. Rather, where a Tribe submits a program asserting jurisdiction over air resources outside the boundaries of a reservation, EPA will require a demonstration of the factual and legal basis for the Tribe's inherent authority over such resources, consistent with relevent principles of Federal Indian law.

[7] *See U.S.* v. *Nordic Village, Inc.*, 112 S.Ct. 1011, 1015 (1992) (rejecting an interpretation that "violates the settled rule that a statute must, if possible, be construed in a fashion that every word has some operative effect") (citation omitted); *Boise Cascade Corp.* v. *U.S. EPA*, 942 F.2d 1427, 1432 (9th Cir. 1992) ("[u]nder accepted canons of statutory interpretation, we must interpret statutes as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous") (citations omitted).

[8] This proposed interpretation of the CAA as generally delegating jurisdictional authority to approved Tribes is also supported by the legislative history, which provides some additional evidence of Congressional attention to this issue: "the Act constitutes an express delegation of power to Indian tribes to administer and enforce the Clean Air Act in Indian lands" (citation to *Brendale* omitted). S. Rep. No. 228, 101st Cong., 1st Sess. 79 (1989).

[9] Further, it is a well-established principle of statutory construction that statutes should be construed liberally in favor of Indians, with ambiguous provisions interpreted in ways that benefit tribes. See *County of Yakima* v.

Continued

Based on recent Supreme Court case law, EPA has construed the term "reservation" to incorporate trust land that has been validly set apart for use by a Tribe, even though that land has not been formally designated as a "reservation." *See* 56 FR at 64,881 (Dec. 12, 1991); see also *Oklahoma Tax Commission* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma*, 111 S.Ct. 905, 910 (1991). EPA will be guided by relevant case law in interpreting the scope of "reservation" under the CAA.

Section 301(d)(2)(B) of the CAA also provides that a Tribe may be treated in the same manner as a State for functions regarding air resources "within the exterior boundaries of the reservation or *other areas within the tribe's jurisdiction*" (emphasis added). The emphasized language envisions potential Tribal jurisdiction under the CAA over areas that lie outside the exterior boundaries of a reservation, upon a fact-based showing of a Tribe's inherent authority over sources located on such lands. Thus, this provision authorizes an eligible Tribe to develop and implement Tribal air quality programs on off-reservation lands that are determined to be within the Tribe's inherent jurisdiction. Accordingly, for purposes of this rule, EPA proposes to conclude that an eligible Tribe may be able to implement its air quality programs on off-reservation lands up to the limits of "Indian country," as defined in 18 U.S.C. section 1151, provided the Tribe can adequately demonstrate authority to regulate air quality on the off-reservation lands in question under general principles of Indian law.

In sum, EPA is proposing to interpret the CAA as granting approved Tribes regulatory authority over all air resources within the exterior boundaries of their reservations. Thus, no independent fact-based showing of inherent Tribal jurisdiction will be required for air resources located within such reservation boundaries. EPA recognizes that "other" off-reservation areas may fall within Tribal jurisdiction. EPA is proposing to interpret the CAA as providing no blanket grant of Federal authority for such areas. Thus, for off-reservation areas, a Tribe must demonstrate that it has inherent authority over sources it seeks to regulate under general principles of Indian law.

B. Federal Authority and Protection of Tribal Air Resources

The CAA authorizes EPA to protect air quality throughout Indian country. EPA intends to use this authority to remedy and prevent gaps in CAA protection for Tribal air resources. EPA's authority to provide this CAA protection is based in part on the general purpose of the Act, which is national in scope. As stated in section 101(b)(1) of the Act, Congress intended to "protect and enhance the quality of the *Nation's* air resources so as to promote the *public* health and welfare and the productive capacity of its *population*" (emphasis added). It seems clear that Congress intended for the CAA to be a "general statute applying to all persons to include Indians and their property interests." *Phillips Petroleum Co.* v. *United States E.P.A.*, 803 F.2d 545, 556 (10th Cir. 1986) (holding that the Safe Drinking Water Act applied to Indian Tribes and lands by virtue of being a nationally applicable statute; see generally *id.* at 553–58).

Section 301(a) of the Act delegates to EPA broad authority to issue such regulations as are necessary to carry out the functions of the Act. Further, several provisions of the Act call for Federal issuance of a program where, for example, a State fails to adopt a program, adopts an inadequate program or fails to adequately implement a required program. *E.g.*, sections 110(c) and 502 (d), (e), (i) of the Act. It follows that Congress intended that EPA would similarly have broad legal authority in instances when Tribes choose not to develop a program, fail to adopt an adequate program or fail to adequately implement an air program authorized under section 301(d). In addition, section 301(d)(4) of the CAA empowers the Administrator to directly administer CAA requirements so as to achieve the appropriate purpose, where Tribal implementation of CAA requirements is inappropriate or administratively infeasible. These provisions evince Congressional intent to authorize EPA to directly implement CAA programs where Tribes fail to submit approvable programs or lack authority to do so.

In fact, EPA is currently providing Federal support for CAA protection within reservations. For example, EPA administers the permit program governing review of proposed new and modified major stationary sources of air pollution ("new source review" or "NSR") on Reservations and other areas in Indian country (hereafter "Tribal lands"). There are several reasons for this emphasis in the exercise of EPA's authority.

Many Tribal lands have air quality that presently meets the national ambient air quality standards ("NAAQS"), and the central concern is to prevent the relatively clean air from significantly deteriorating. Thus, EPA has ensured that major sources seeking to locate on Tribal lands obtain the Prevention of Significant Deterioration ("PSD") permit required under the CAA's NSR program. In broad overview, this program imposes limitations on the ambient air quality impact of new or modified major stationary sources and requires the application of best available control technology on such sources. See section 165 of the Act. Similarly, in those circumstances where the air quality on Tribal lands currently is worse than the NAAQS, EPA's administration of the nonattainment NSR program prevents the air quality from further deteriorating by ensuring that a proposed major source implements the most stringent control technology (the "lowest achievable emission rate" as defined in section 171(3)) and offsets its emissions by obtaining emissions reductions from nearby sources. Section 173 of the Act.

Owners and operators that construct air pollution sources on Tribal lands without first obtaining the proper permit from EPA expose themselves to Federal enforcement action and citizen suits. For example, section 165 of the Act, 42 U.S.C. 7475, prohibits the construction of a major emitting facility that does not have a PSD permit. Section 173, 42 U.S.C. 7503, contains a similar requirement for new and modified major stationary sources in nonattainment areas. Sections 113 and 167, 42 U.S.C. 7413 & 7467, authorize EPA to take enforcement action (including, in certain instances, criminal action) against an owner or operator that is in violation of the requirement to obtain a preconstruction permit that meets the requirements of the Act. Furthermore, section 304 of the Act, 42 U.S.C. 7604, authorizes any person to bring a "citizen suit" in U.S. district court against an owner or operator who constructs any new or modified major stationary source without a PSD permit or nonattainment NSR permit that meets the Act's requirements.

EPA also currently provides technical and financial support to Tribes that have initiated the process of developing Tribal air programs. For example, some EPA Regional Offices are currently providing such assistance to Tribes that have air quality that is worse than the NAAQS. The objective is to assist the

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Confederated Tribes and Bands of the Yakima Indian Nation, 112 S.Ct. 683, 693 (1992). In addition, statutes should be interpreted so as to comport with tribal sovereignty and the federal policy of encouraging tribal independence. See *Ramah Navajo School Board, Inc.* v. *Bureau of Revenue of New Mexico*, 458 U.S. 832, 846 (1982).

Tribes in developing a strategy for controlling emissions from existing sources that will bring the area back into attainment with the NAAQS. Because EPA has not finalized today's rule authorizing Tribes to submit Federal CAA programs to EPA for approval, some EPA Regions are now working with Tribes to develop programs that will be promulgated and administered by EPA until this rule is finalized and a Tribal program is approved.[10] Where air quality problems have already been identified, it is EPA's policy to proceed expeditiously, in conjunction with Tribes, to address such problems.

In addition, as described in Part I.B, there are some programs that are solely Federal programs (e.g. Phase I of the Acid Rain Program and Title VI of the Act, which provides for the phase-out of certain substances that deplete stratospheric ozone). Such programs apply to sources located on Tribal lands in the same manner as sources on lands subject to State jurisdiction.

EPA views these efforts as an important and substantial first step in providing CAA protection of reservation air resources.

EPA also intends to develop an implementation strategy for achieving Federal CAA protection of air resources within Indian reservations. The strategy will be designed to prioritize EPA resources in support of this rule. It is EPA's policy to assist Tribes in developing comprehensive and effective air quality management programs to insure that Tribal air quality management programs will be implemented to the extent necessary on Indian reservations. EPA will do this by, among other things, providing technical advice and assistance to Indian Tribes on air quality issues. EPA intends to consult with Tribes to identify their particular needs for air program development assistance and to provide on-going assistance as necessary.

However, as it required many years to develop State and Federal programs to cover lands subject to State jurisdiction, so it will require time to develop Tribal and Federal programs to cover reservations and other lands subject to Tribal jurisdiction. As a first step in this process, EPA intends to draft a Plan for Reservation Air Program Implementation that will provide a strategy for developing reservation programs in accordance with this policy. The Plan will identify priority needs and include a strategy to address them by providing technical and grant assistance for the development of air quality management programs. EPA will seek appropriate input from Tribal governments in developing the Plan.

C. Objective of Tribal Primacy and Self-Determination

Ultimately, of course, EPA would prefer to work with Tribes to have the Tribes develop and administer their own air quality management programs under the CAA, just as EPA works with States. This is the principal objective of the Federal financial assistance described in Part IV below.

While some Tribes may entirely develop their own CAA programs, other Tribes may consider forming Tribal consortia. Smaller Tribes in particular may wish to form consortia or create inter-Tribal agencies as ways to develop the necessary expertise to administer CAA programs in a cost-effective way. One of the advantages of forming a consortium of Tribes is that a Tribe may rely on the expertise and resources of the consortium in demonstrating that the Tribe is reasonably expected to be capable of carrying out the functions to be exercised, as described below.

Today's action also does not require Tribes to develop CAA programs wholly from scratch. For example, a Tribe may adopt or incorporate standards from an adjacent or similarly situated State, with appropriate revisions that would adapt the State standards to reservation conditions and Tribal policies. The use of such adaptations would enable Tribes to build on State experience and expertise, and might represent quicker and less costly ways to establish Tribal programs than developing Tribal programs independently. This technique of utilizing small-scaled adaptations of State programs would allow Tribes to build experience and expertise that could later be used to revise existing programs, if appropriate.

Tribes could also choose to negotiate a cooperative agreement with an adjoining State to jointly plan and administer CAA programs that are appropriately tailored to individual reservation conditions and Tribal policies. Such an agreement would be subject to the review and approval of the Administrator or her delegatee, if it is to be made part of an approvable Tribal air program under the CAA.

Aside from any formal arrangements between Tribes and States, EPA notes that the objective of this rule, and EPA's responsibility in overseeing the administration of the CAA, is to provide air quality protection. Therefore, EPA encourages all affected sovereigns to work cooperatively in informal capacities to protect the public health and welfare from the serious health and welfare effects associated with air pollution.

III. Tribal CAA Programs

The discussion which follows addresses streamlined procedures that EPA is proposing to satisfy the eligibility requirements set out in section 301(d)(2) of the Act. These are proposed requirements that Tribes must meet in order to obtain approval to implement CAA programs. The discussion also identifies those provisions of the Act for which EPA is proposing to treat Indian Tribes in the same manner as States and those provisions for which EPA believes such treatment is infeasible or otherwise inappropriate.

One of EPA's central concerns is to encourage Tribes to develop and administer Clean Air Act programs on Tribal lands in the same way that States currently do on State lands. This concern is grounded in the objective of Tribal self-government as enunciated in both the Federal and the EPA Indian Policies. In order to facilitate this process, EPA is proposing to eliminate duplicative review and unnecessary delay during EPA's processing of Tribal program submittals. The eligibility determination process proposed in today's action is consistent with an EPA policy pronouncement that followed from EPA's review of the Tribal programs it administers under other environmental statutes. Further, EPA is proposing to accept "reasonably severable" Tribal air program submittals that meet the applicable requirements of the CAA. This will allow Tribes to identify and then immediately target their most important air quality issues without the corresponding burden of developing entire CAA programs. Further, it allows Tribes to develop incremental expertise that will facilitate development and expansion of further programs over time.

A. New Process for Determining Eligibility for CAA Programs

To be eligible to be treated in the same manner as a State for CAA programs, including financial assistance, an applicant must meet the definition of "tribe" in section 302(r) of the Act (*i.e.* it must be Federally recognized) and must satisfy the three criteria set forth in section 301(d)(2)(A)–(C) of the Act. These criteria are set out in today's proposed rule and concern the Tribe's governing body, its jurisdiction, and its capability to carry out the necessary functions under the Act.

[10] Such an interim EPA-administered program would be displaced upon EPA's approval of a Tribal program addressing the same CAA requirements.

In general these same criteria are set forth under the Clean Water Act and the Safe Drinking Water Act. EPA has previously issued regulations implementing the criteria under those Acts. These regulations have come to be known as the "treatment as a state" ("TAS") process.[11] Approval under this process was required every time a Tribe sought to obtain an EPA grant or implement an EPA program on its reservation.

Because the "TAS" process proved to be quite burdensome to Tribes, EPA formed a working group to focus on ways of improving and simplifying the process. After considering the workgroup's recommendations, EPA announced a policy that is intended to streamline and simplify the process. Memorandum from F. Henry Habicht, the Deputy Administrator of EPA, to the Agency, dated November 10, 1992. EPA is proposing to implement this new policy in this rulemaking, and is calling the resulting new process the "eligibility" process. See also 56 FR 1380 (March 23, 1994) (proposing similar revision to Tribal approval process in Clean Water Act and Safe Drinking Water Act regulations).

Under the new eligibility process proposed in today's action, a Tribe does not need to go through a separate eligibility review every time it seeks approval for grant funding or to implement a specific program. Instead, a Tribe's eligibility may be determined at the same time that it seeks approval for a particular program. By making the eligibility determination a part of the program approval process, much of the delay and duplication inherent in the old sequential TAS process should be reduced, if not eliminated. In addition, EPA is proposing to simplify some of the demonstrations of eligibility that will be required under the Clean Air Act, as discussed below. Finally, after promulgation of this rule, EPA intends to facilitate development of Tribal applications by providing Tribes with a narrative checklist of the eligibility requirements described below.

1. Federally Recognized Tribe

A Tribe is defined in section 302(r) of the Act as follows:

> [A]ny Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

The requirement of Federal recognition is common to all statutes authorizing EPA to treat Tribes in a manner similar to that in which it treats States. Any Tribe that has been approved for "TAS" under any of the existing Water Act regulations or any other EPA program is Federally recognized. Moreover, once a Tribe has been found to be Federally recognized in the course of approval under any EPA-administered statute, or any provision of the CAA, it need only so state in the future. To facilitate review of Tribal applications, EPA therefore requests that Tribal applications inform EPA whether the Tribe has been approved for "TAS" under the old process or deemed eligible to receive funding or authorization for any EPA-administered environmental program under the revised process governing treatment of Tribes in the same manner as States.

Any other Tribe need only state that it appears on the list of Federally recognized Tribes that the Secretary of the Interior periodically publishes in the **Federal Register**. See 58 FR 54364 (Oct. 21, 1993). If the Tribe notifies EPA that it has been recognized but is not included on this list because the list has not been updated, EPA will verify the fact of recognition with the Department of the Interior ("DOI").

2. Substantial Governmental Duties and Powers

A Tribe also must show that it "has a governing body carrying out substantial governmental duties and powers." This requirement is also found in the Federal Water Pollution Control Act ("Clean Water Act") and the Public Health Service Act ("Safe Drinking Water Act"). See 33 U.S.C. 1377(e) & 42 U.S.C. section 300j–11(b). Accordingly, as discussed above, a Tribe that has had a submittal approved by EPA under either of these provisions has already established that it meets the governmental requirement and need not make this showing again. Similarly, a Tribe that has made this showing in the course of obtaining approval for a Clean Air Act program need not do so again. In either case, a Tribe may simply state that it has already been approved.

A Tribe that has not yet made its initial showing of "substantial governmental duties and powers" can do so by demonstrating that it has a governing body that is presently carrying out substantial governmental functions. A Tribe will be able to make the required demonstration if it is currently performing governmental functions to promote the public health, safety, and welfare of its population within a defined area. Many Indian Tribal governments perform these functions. Examples of such functions include, but are not limited to, levying taxes, acquiring land by exercising the power of eminent domain, and police power. Such examples should be included in a narrative statement supporting the certification, which describes: (1) The form of the Tribal government, (2) the types of essential governmental functions currently performed, such as those listed above; and (3) the legal authorities for performing these functions (e.g. Tribal constitutions or codes). It should be relatively easy for Tribes to meet this requirement without submitting copies of specific documents unless requested to do so by EPA.

3. Jurisdiction Requirement

As discussed in section II.A above, EPA is proposing to interpret the CAA as granting or delegating certain Federal authority to approved Tribes over all air resources within the exterior boundaries of their reservations. Generally, therefore, the significant issue that remains in determining the extent of Tribal jurisdiction is the precise boundary of the reservation in question. Accordingly, a Tribal jurisdictional showing must identify, with clarity and precision, the exterior boundaries of the reservation. Consistent with the simplified review process, EPA is not proposing to specify particular supporting materials that the Tribe must provide. However, a Tribal submission will need to contain information adequate to demonstrate to EPA the location and limits of the reservation, which will usually include a map and a legal description of the area. EPA will determine the meaning of the term "reservation" as indicated previously.

Note that there may be less frequent instances when more complex legal and factual demonstrations must be made to establish jurisdiction. As indicated above, section 301(d)(2)(B) of the Act addresses jurisdiction over "air resources within the exterior boundaries of the reservation *or other areas within the tribe's jurisdiction*" (emphasis added). While EPA is proposing to construe the Act as delegating to Tribes authority over all air resources within the exterior boundaries of their reservations, the Agency will require a Tribe to demonstrate its inherent authority over any areas outside of the

[11] EPA recognizes that Tribes are sovereign nations with a unique legal status and a relationship to the Federal government that is significantly different from that of States. EPA believes that Congress did not intend to alter this when it authorized treatment of Tribes "as States" under the CAA. Rather, Congress intends to ensure that, to the extent appropriate and feasible, Tribes may assume a role in implementing the CAA on Tribal lands that is comparable to the role States have in implementing the CAA on State lands.

exterior boundaries of the reservation before EPA will approve a Tribal program covering such areas. Where a Tribe seeks to develop and administer an air program on off-reservation lands, the Tribal submittal must be accompanied by appropriate legal and factual information which supports its inherent authority to regulate emission sources located on such lands.

Under the TAS process which EPA has implemented in the past, EPA would not determine that a Tribe had the requisite jurisdiction without first notifying appropriate "governmental entities," such as States, other Tribes and Federal land management agencies, of the Tribe's jurisdictional assertions. Those entities were then given an opportunity to comment on the Tribe's jurisdictional statement, and whenever a comment raised a "competing or conflicting claim," EPA could not approve the Tribal application without first consulting with DOI. Consistent with the revised eligibility policy, EPA is proposing to implement a more streamlined approach under the CAA.

The first time a Tribe submits an application to EPA under the CAA, EPA will, upon receipt of the application, notify all appropriate "governmental entities"[12] regarding the Tribe's assertion of jurisdiction. The precise content of EPA's notification of other governmental entities will depend on the geographic extent of the Tribe's jurisdictional assertion. Specifically, if a Tribe seeks only to implement a CAA program within the exterior boundaries of its reservation, EPA's notification of other governments will only specify the geographic boundaries of the reservation, as set forth in the Tribe's application. However, where a Tribe seeks to administer a CAA program on lands outside the exterior boundaries of a reservation, EPA will notify the appropriate governmental entities of the substance of and bases for the Tribe's assertion of inherent jurisdiction with respect to such off-reservation lands.

The appropriate governmental entities will have fifteen days following their receipt of EPA's notification to provide formal comments to EPA regarding any dispute they might have with the Tribe concerning the boundary of the reservation. Where a Tribe has asserted jurisdiction over off-reservation lands, and has included a more detailed jurisdictional statement in its application, appropriate governmental entities may request a one-time fifteen day extension to the general fifteen day comment period. In all cases, comments from appropriate governmental entities must be offered in a timely manner, and must be limited to the Tribe's jurisdictional assertion. Where no timely comments are presented, EPA will conclude that there is no objection to the Tribal applicant's identified reservation boundaries (or, if relevant, its assertion of jurisdiction outside the reservation). Further, to raise a competing or conflicting claim, a commenter must clearly explain the substance, basis, and extent of its objections. Finally, where EPA receives timely notification of a dispute, it may obtain such additional information and documentation as it believes appropriate and may, at its option, consult with DOI.

Where EPA identifies a dispute and cannot confidently resolve it promptly, it will retain the option of limiting approval of a Tribal program to those areas that a Tribe has clearly shown are part of the reservation (or are otherwise within the Tribe's jurisdiction). This will allow EPA to approve the portion of a Tribal application that covers all undisputed areas, while withholding action on the portion of the application that addresses areas where a jurisdictional issue has not been satisfactorily resolved. However, this approach will be subject to any applicable statutory restrictions. *See, e.g.*, section 110(k) of the Act (calls upon EPA to complete action on a SIP submittal within certain specified timeframes).

Once EPA has made a determination under the CAA or other EPA-administered environmental programs concerning the boundaries of a reservation, it will rely on that determination in evaluating all future applications from that Tribe under the CAA unless the application presents different legal issues. For example, once the Agency has arrived at a position concerning a reservation boundary dispute, it will not alter that position in the absence of significant new factual or legal information. Thus, as with the recognition and governmental requirements, there will generally be no need to provide EPA with additional demonstrations of jurisdiction, unless the Tribe is making a more expansive jurisdictional assertion in a subsequent submittal.

EPA believes that this new process for resolving questions of jurisdiction constitutes a significant improvement over the old TAS jurisdiction process. It will provide States with an opportunity to notify EPA of boundary disputes and enable EPA to obtain relevant information as needed while minimizing delays in the process and focusing its inquiry on what is likely to be the principal relevant issue, namely, the geographic boundaries of the reservation.

4. Capability Requirement

Section 301(d)(2)(C) of the CAA provides that in determining Tribal eligibility the Administrator also must determine that the Tribe "is reasonably expected to be capable * * * of carrying out the functions to be exercised in a manner consistent with the terms and purposes of [the CAA] and all applicable regulations." A program-by-program inquiry into the question of capability is necessary since a Tribe may have capability to carry out certain activities but not others. Therefore, EPA may request that to establish capability a Tribe submit a narrative statement or other documents showing it is capable of administering the program for which it is seeking approval. The specific capabilities which must be described are set forth in today's proposed rule.

In evaluating a Tribe's demonstration of capability, EPA may consider the following factors:

(1) The Tribe's previous management experience;

(2) Existing environmental or public health programs administered by the Tribe;

(3) The mechanism(s) in place for carrying out the executive, legislative, and judicial functions of the Tribal government;

(4) The relationship between regulated entities and the administrative agency of the Tribal government that will be the regulator; and

(5) The technical and administrative capabilities of the staff to administer and manage the program.

EPA recognizes that certain Tribes may not have substantial experience administering environmental programs. A lack of experience will not preclude a Tribe from demonstrating the required capability. Otherwise Tribes would be placed in the dilemma of being denied the opportunity to develop the requisite capability because they lack such capability. For this reason, today's proposed rule requires Tribes either to show that they have the necessary management and technical skills or to submit a plan detailing steps for acquiring those skills.

However, this flexibility does not change the requirement that to obtain approval for a particular program under the CAA the Tribe must submit a fully effective program that meets all the applicable statutory and regulatory requirements associated with the

[12] For purposes of the CAA rule, EPA is proposing to adopt the same definition of "governmental entities" as the Agency did in its December 1991 Water Quality Standards regulation. See 56 FR 64876 at 64884 (Dec. 12, 1991).

program in question. Because a Tribe may not want to go through the expense of developing such a program without first being assured of meeting the eligibility requirements, today's proposed rule provide that a Tribe may, at its option, ask for a preliminary finding on any or all of these requirements.

EPA's evaluation of capability will also consider the relationship between the existing or proposed Tribal agency that will implement the program in question and any potential regulated Tribal entities. It is not uncommon for a Tribe to be both the regulator and regulated entity, and such a situation could result in a conflict of interest since the Tribe would then be regulating itself. Independence of the regulator and regulated entity best assures effective and fair administration of a program.

A Tribe will generally not be required to divest itself of ownership of any regulated entities to address this problem. Instead, for example, the Tribe could create an independent organization to regulate Tribal entities subject to CAA regulatory requirements.[13] Similar arrangements could be established using existing Tribal organizations.

This discussion is intended to alert Tribes at an early date about a potential bar to regulatory program assumption that must be resolved. For example, section 110 of the CAA sets out some of the basic requirements that SIPs must meet to assure attainment and maintenance of the NAAQS. Section 110(a)(2)(E)(ii) of the Act directs that SIPs must provide requirements that the State comply with the requirements applicable to State boards under section 128. Section 128, in turn, provides that each SIP shall contain requirements that:

> (1) Any board or body which approves permits or enforcement orders under [the CAA] shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under [the CAA], and
>
> (2) Any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

EPA does not intend to limit Tribal flexibility in creating structures which will ensure adequate separation of the regulator and regulated entity. Instead, EPA will evaluate whether the Tribal submittal will ensure adequate separation of the regulator and regulated entity on a case-by-case basis in the context of the statutory and regulatory requirements applicable to the CAA program for which a Tribe is seeking approval.

5. Tribal consortia

Each member of a Tribal consortium must meet the eligibility qualifications described above. However, members of a consortium may rely on the expertise and resources of the consortium in demonstrating that the Tribe meets the capability requirement described above.

For example, some members of a consortium may have more technical expertise and environmental management experience than other members. A Tribe with less resources and expertise may rely on the combined resources of the consortium in demonstrating that the Tribe is "reasonably expected" to be capable of carrying out the functions to be exercised. However, a Tribe relying on a consortium in this manner must provide reasonable assurances that the Tribe has responsibility for carrying out necessary functions in the event the consortium fails to.

B. Provisions for Which Tribal Implementation is Appropriate

1. Tribal Implementation is Generally Appropriate

Part III.A discussed the eligibility requirements that a Tribe must meet in order to be treated as a State under the Clean Air Act. There is a separate question of whether it is appropriate to treat eligible Tribes in the same manner as States for all provisions under the Act, or whether only certain provisions lend themselves to such an approach. The Act provides that the Administrator shall promulgate regulations:

> specifying those provisions of [the CAA] for which it is appropriate to treat Indian tribes as States.

Section 301(d)(2). The Act further provides,

> [i]n any case in which the Administrator determines that the treatment of Indian tribes as identical to States is inappropriate or administratively infeasible, the Administrator may provide, by regulation, other means by which the Administrator will directly administer such provisions so as to achieve the appropriate purpose.

Section 301(d)(4). Thus, read together, the Act delegates to the Administrator broad discretion in determining those provisions of the Clean Air Act for which Tribes should be treated in the same manner as States and those provisions for which such treatment would be inappropriate or infeasible.

It is EPA's basic position, proposed here, that treatment of Tribes in the same manner as States is appropriate for all programs under the Act with the exception of only a few provisions (those for which EPA has determined that it is infeasible or otherwise inappropriate to treat States and Tribes in the same manner). EPA proposes to be inclusive in identifying the provisions of the Act for which it is appropriate to treat Tribes in the same manner as States so as to maximize the opportunities for Tribal participation in CAA programs.

In light of this basic approach, today's proposed rule provides that Tribes will generally be treated in the same manner as States for all the provisions of the Clean Air Act, and specifies the limited exceptions to this approach. EPA is proposing to treat Tribes in the same manner as States for all of the remaining provisions of the statute not identified as exceptions in the discussion below. Today's action also addresses alternative means to achieve the intended purpose of the Act, where EPA believes such provisions are necessary in light of a proposed exception. Section 301(d)(4).

A common concern raised by both Tribes and States during the development of this proposed rule was the potential for sources located on State or Tribal lands to adversely impact air quality on downwind State or Tribal lands. EPA is proposing in this rule that the CAA protections against interstate pollutant transport apply with equal force to States and Tribes.

Thus, for example, EPA is proposing that the prohibitions and authority contained in sections 110(a)(2)(D) and 126 of the CAA apply to Tribes in the same manner as States. Section 110(a)(2)(D), among other things, requires States to include provisions in their SIPs that prohibit emissions activity within the State from significantly contributing to nonattainment, interfering with maintenance of the NAAQS, or interfering with measures under the PSD or visibility protection programs in another State. Section 126 authorizes any State to petition EPA to enforce these prohibitions against a State containing an allegedly offending source or group of sources.

2. Exceptions to Tribal Implementation

EPA notes at the outset that recurring provisions for which EPA is proposing not to treat Tribes in the same manner as States involve certain Clean Air Act submittal deadlines. The Act contains

[13] While States also are both the regulator and regulated entity, state government organization is typically one in which the State agency operating the regulated entity is not the same State agency that has primary regulatory authority. Thus, this separation of functions helps avoid potential conflicts of interest.

many deadlines that mandate the submittal of a State plan, program or other requirement by certain dates. However, Tribes are not similarly compelled to develop and seek approval of air programs. Section 301(d)(2) provides for EPA to promulgate regulations specifying "those provisions of this [Act] for which it is appropriate to treat Indian tribes as States" but does not require Indian Tribes to develop CAA programs.

Further, the State program submittal deadlines in the statute are based upon a relatively long history of Clean Air Act planning and implementation by States.[14] States have assumed an active role in Clean Air Act implementation since the 1970 Amendments to the Act. By comparison, in substantial part, Tribal authority for Clean Air Act programs was expressly addressed in the Act for the first time in the 1990 Amendments. Tribes, therefore, are at best in the early stages of developing air program expertise and planning efforts. Accordingly, EPA believes it would be both infeasible and inappropriate to subject Tribes to the State program submittal and related deadlines in the statute as explained in more detail below.

A related set of provisions are the sanctions and other Federal oversight mechanisms in the Act which are triggered when States fail to meet the air program submittal deadlines called for in the Act or when EPA disapproves a program submittal. In several instances, the Act mandates the imposition of sanctions, such as Federal transportation funding restrictions and two-to-one new source review offsets, by a specific deadline if a State fails to timely submit a required program or submits a program that is not fully approvable. *E.g.*, CAA sections 179 and 502(d)(2)(B). Similarly, the Act often imposes specific deadlines upon EPA for issuing a Federal program within a certain period after a State fails to submit a program or after EPA disapproves an inadequate State program. *E.g.*, CAA sections 110(c)(1) and 502(d)(3). For the reasons stated above, EPA is proposing not to treat Tribes in the same manner as States for certain provisions contained in these sections.

However, EPA is proposing to treat Tribes in the same manner as States for those provisions that mandate the imposition of Federal sanctions for failure to adequately implement or enforce an approved Clean Air Act program. *E.g.*, CAA sections 179(a)(4) and 502(i)(2). This includes EPA's authority to withhold all or part of air pollution control grants awarded under section 105. EPA is proposing to treat Tribes in the same fashion as States for the purposes of mandatory sanctions for nonimplementation of an approved Tribal program because once a Tribe has sufficient legal authority and capability to have a program approved, it should be treated as a similarly situated State. Thus, EPA expects a Tribe to follow through on its implementation of an approved program in the same manner as a State. This will provide an incentive for Tribes to maintain the primary role in implementing a previously approved air program and to administer effective programs. In addition, EPA will also treat Tribes in the same fashion as States with respect to EPA's discretionary authority to impose sanctions. *E.g.*, sections 110(m), 502(d)(2), and 502(i)(1).

The approach EPA is proposing today regarding Clean Air Act deadlines and Federal sanctions is consistent with the approach outlined under Parts II.B. and II.C. of this notice. EPA's principal goal is to have Tribes develop and administer their own CAA programs. As indicated, EPA intends to issue guidance subsequent to this rule that sets out in some detail the Federal efforts and timetables for providing broader air quality protection for reservation air resources in those instances when Tribes choose not to develop their own programs. EPA intends to provide direct Federal Clean Air Act protection on reservations if, after some reasonable time, its efforts to assist Tribes in developing Tribal programs under the Act do not in fact lead to Tribal program adoption and approval.

a. *National Ambient Air Quality Standards applicable implementation plan submittal deadlines and related sanctions.* Consistent with the general discussion above, EPA is not proposing to treat Tribes in the same manner as States for the general implementation plan submittal deadlines specified in section 110(a)(1) of the Act. Further, Tribes will not be subject to the plan submittal deadlines for nonattainment areas set out in sections 172(a)(2), 182, 187, 189, and 191. EPA also is not proposing to treat Tribes in the same manner as States for the deadlines set out in section 124, associated with the review and revision of implementation plans related to major fuel burning sources.

However, EPA is proposing to treat Tribes in the same manner as States with respect to the statutory requirements that will apply in evaluating a Tribal program once a Tribe has decided to make a submittal. Further, as indicated previously, EPA intends to issue guidance specifying timeframes by which it will provide Federal protection for Tribes that have air quality worse than the NAAQS but are unable to develop their own CAA programs. The timing of Federal protection will be informed by the applicable Clean Air Act NAAQS attainment deadlines.

Also consistent with the general discussion above, EPA is not proposing to treat Tribes in the same manner as States for the imposition of certain mandatory sanctions by EPA under section 179 because a Tribe has failed to submit a Tribal Implementation Plan (TIP) or other requirement, has made an incomplete submittal, or has made a submittal that is in part or in whole not approvable. See CAA section 179(a)(1)–(3); see also discussion under Part III.C.1. of this preamble, concerning EPA's "modular" approach to Tribal Air Programs (TAPs). However, EPA is proposing to treat Tribes in the same manner as States for those provisions of section 179 mandating the imposition of sanctions when EPA determines that a requirement of an approved plan is not being implemented. See CAA section 179(a)(4). In addition, EPA is proposing to treat Tribes in the same manner as States with respect to EPA's discretionary authority to impose sanctions. See CAA section 110(m).

EPA is not proposing to treat Tribes in the same manner as States for the provisions of section 110(c)(1) that direct EPA to issue a Federal Implementation Plan (FIP) within two years after EPA finds that a State has failed to submit a required plan or has submitted an incomplete plan or within two years after EPA has disapproved a plan in whole or in part. This exception would apply only for that provision of section 110(c)(1) that sets a specified date by which EPA must issue a FIP. Treating Tribes in a similar manner as States under that provision would be inappropriate since Tribes are not in the first instance, like States, required to make submittals by a date certain, and in light of the very recent initiation of Tribal air quality planning efforts. EPA is proposing to treat Tribes in the same manner as States for all other provisions of section 110(c)(1). Thus, EPA would continue to be subject to the basic requirement to issue a FIP for affected areas within some reasonable time. EPA would give substantial weight to Tribal

[14] Note also that many of the submittal deadlines run from the enactment of the 1990 Amendments to the Clean Air Act on November 15, 1990. Therefore, Tribes submitting programs in response to the final rule authorizing the treatment of Tribes as States for those provisions would already be substantially behind in meeting the deadlines.

air quality needs in determining what is reasonable in particular instances. Further, as discussed in Part II.B., EPA intends to spell out in subsequent guidance the specific programs that EPA will implement to provide CAA protection within reservations and on other lands subject to Tribal jurisdiction.

However, EPA is proposing to treat Tribes in the same manner as it treats States for the State Implementation Plan/Tribal Implementation Plan (SIP/TIP) call provisions under sections 110(a)(2)(H)(ii) and (k)(5) of the Act. These provisions authorize EPA to require a State to revise a plan that is inadequate to assure attainment and maintenance of the relevant NAAQS or is otherwise inadequate to ensure compliance with applicable Clean Air Act requirements. Thus, once a Tribal Implementation Plan has been approved in whole or in part as meeting an applicable CAA requirement, Tribes will be similarly subject to these SIP/TIP call provisions.

b. *Visibility implementation plan submittal deadlines.* EPA is not proposing to treat Tribes in the same manner as States for the provisions of section 169A or implementing regulations requiring the submittal of visibility implementation plans by specific deadlines. Under today's proposal, Tribes would be treated in the same manner as States for all other purposes under section 169A and its implementing regulations.

c. *Interstate air pollution and visibility transport. Commission plan submittal deadlines.* EPA is not proposing to treat Tribes in the same manner as States for those interstate commission CAA provisions requiring the submittal of an applicable implementation plan by a specific date. See CAA sections 169B(e)(2), 184 (b)(1) & (c)(5). However, EPA is proposing to treat Tribes in the same manner as States for all other interstate commission-related provisions under sections 169B, 176A and 184 of the CAA.

Therefore, for example, Tribes meeting eligibility requirements for these provisions of the CAA would be treated in the same manner as States in identifying what areas should be included in "interstate" air pollution and visibility transport regions and in establishing commission membership. For eligible Tribes participating as members of such Commissions, the Administrator would establish those submittal deadlines that are determined to be practicable or, as with other non-participating Tribes in an affected transport region, provide for Federal implementation of necessary measures.

d. *Criminal enforcement.* In general, EPA is proposing that the enforcement provisions of sections 113 and 114 of the Act apply to Tribes in the same way that they apply to States. This would include the ability of a Tribe to establish its own administrative enforcement program, so that the Tribe could enforce administrative as well as civil penalties. In both cases, EPA would have the authority to take necessary enforcement action if the Tribe did not take such action or did not enforce adequately (e.g. did not impose a sufficient penalty); however, it would be most prudent for Tribes to attempt enforcement in the first instance. It should also be noted that EPA has a general policy of consulting with Tribal leaders and managers prior to taking an enforcement action against Tribal owned or managed facilities. November 8, 1984 "EPA Indian Policy Implementation Guidance" at p. 6.

Section 113(c) of the CAA provides for the imposition of criminal penalties. However, in certain circumstances Indian Tribes have limited criminal enforcement authority. Federal law prohibits Indian Tribes from holding criminal trials of or imposing criminal penalties on non-Indians, in the absence of a treaty or other agreement to the contrary. *Oliphant* v. *Suquamish Indian Tribe*, 435 U.S. 191 (1978). In addition, the Federal Indian Civil Rights Act prohibits any Indian Tribe from imposing for conviction of any one offense any criminal fine greater than $500. 25 U.S.C. section 1302(7). To provide for the possible imposition of criminal penalties with respect to facilities located on Tribal lands, each Tribe seeking approval of a CAA program that requires such authority must enter into a formal Memorandum of Agreement with EPA, through which it would agree to provide for the timely and appropriate referral of criminal enforcement matters to the EPA Regional Administrator.

e. *Title V operating permit program submittal deadlines, implementation deadlines and other requirements.* For the reasons stated in the introduction to this section of the preamble, EPA is not proposing to treat Tribes in the same manner as States for the operating permit program submittal deadline set out in section 502(d)(1). Similarly, EPA is not proposing to treat Tribes in the same manner as States under the provisions of section 502(d)(2)(B) that mandate the imposition of sanctions under section 179 when a State fails to timely submit a required permit program or EPA disapproves a permit program. EPA also is not proposing to treat Tribes as States for the provisions of section 502(d)(3) that direct EPA to promulgate and administer a Federal permit program if, within two years after the required submittal date, EPA has not approved a State permit program. Similar to the companion provision in Title I described above (i.e., section 110(c)(1)), EPA is proposing to exclude only those limited provisions of section 502(d)(3) that direct EPA action by a date certain (EPA would continue to be subject to the basic requirement to implement a Federal permit program within a reasonable period; EPA would give substantial weight to Tribal air quality needs in determining what is reasonable in particular instances). These provisions are inappropriate because Tribes are not in the first instance directed by the statute to submit their own programs and in light of the fact that the Tribal CAA program development efforts are at a very preliminary stage.

However, Tribes will be subject to the sanctions provisions of section 502(i)(1)–(4) in the same manner as States. Section 502(i) provides for the discretionary and mandatory imposition of section 179 sanctions when EPA determines that a permitting authority is not adequately administering and enforcing an operating permit program, or a portion thereof. Thus, once a Tribe submits an operating permit program and EPA approves that program, Tribes will be subject to the sanction provisions of section 502(i)(1)–(4) in the same way that States are. In addition, Tribes will be treated in the same manner as States with respect to EPA's discretionary authority to impose sanctions under section 502(d)(2)(A).

EPA is also not proposing to treat Tribes in the same manner as States for the interim approval provisions in section 502(g) of the Act. Those provisions authorize EPA to temporarily grant approval to a program that in substantial part meets the requirements of the Act, but that is not fully approvable. An interim approval under these provisions expires on a date established by EPA but not later than two years after the approval. Section 502(g) provides that the Title V sanctions provisions and obligations of the Administrator to promulgate a Federal operating permit program are suspended during this interim period.

The interim approval provisions allow EPA to grant States submitting a substantially satisfactory permit program up to two additional years to submit a fully approvable program without risk of sanctions and Federal implementation. These provisions are an adjunct of the statutory deadline requiring the submittal of State Title V

operating permit programs by November 15, 1993. If States were not in the first instance required to submit operating permit programs by that date certain, the relief of additional time to submit an approvable program without the risk of Federal penalties would be unnecessary. As stated previously, EPA is not proposing to treat Tribes in the same manner as States for Title V program submittal deadlines. Accordingly, EPA is also not proposing to treat Tribes in the same manner as States for this related interim approval authority.

Consistent with the general modular approach proposed with respect to Tribal programs (discussed below), EPA intends to allow Tribes some additional flexibility in implementing Title V programs. For example, EPA may allow Tribes to extend the period for permitting affected Title V sources over as long as five years from program approval. Accordingly, EPA is not proposing to treat Tribes in the same manner as States for those provisions of section 503(c) of the Act that direct permitting authorities to establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of a permit program (or a partial or interim program). Section 503(c) provides that the phased schedule shall assure that at least one-third of such permit applications will be acted on by the permitting authority over a period of not to exceed three years after the effective date. EPA is not proposing to subject Tribes to these provisions. While it is possible that EPA may require some Tribes to permit affected sources within three years, EPA nevertheless wants to retain the discretion to allow Tribes up to five years to permit affected Title V sources after the date of program approval.

Further discussion of Title V requirements is set out below under the portion of this notice titled "Revisions to CAA Implementing Regulations."

f. *Small business assistance program submittal deadline and compliance advisory panel requirement.* EPA is not proposing to treat Tribes in the same manner as States for the provisions of section 507(a) specifying a deadline for the submittal of plans for establishing a small business stationary source technical and environmental compliance assistance program. EPA also is not proposing to treat Tribes in the same manner as States under section 507(e) which directs States to establish a Compliance Advisory Panel. Both of these provisions are inconsistent with section 301(d), which authorizes but does not require Tribes to develop and submit Clean Air Act programs to EPA for approval. However, if a Tribe elects to establish a Compliance Advisory Panel under section 507(e), the membership specified in section 507(e)(2) shall be selected by the Tribal leader, legislative bodies and Tribal agencies that correspond with those identified for States.

Generally, the preceding discussion identifies those provisions of the CAA for which EPA is not proposing to treat Tribes in the same manner as States. EPA is proposing that Tribes be treated in the same manner as States for all other provisions of the statute.

3. Stringency of Tribal Regulations

Under the Clean Air Act, States generally retain legal authority to impose requirements that are more stringent that Federal standards. Section 116 of the Act, 42 U.S.C. 7416, expressly reserves States' authority to impose air pollution control requirements that are more stringent than those specified under the Act. This State discretion is retained except where the Act explicitly preempts or precludes the establishment of stricter State standards.

In certain instances under the Act uniformity is necessary to avoid an undue burden on the interstate sale of goods. In such instances, Congress has expressly prevented States from imposing stricter State standards and, therefore, the Federal requirements under the Act represent both the nationwide floor and ceiling. For example, section 209 of the Act, 42 U.S.C. section 7543, limits States' authority to adopt and enforce emission standards for new motor vehicles.

EPA is proposing to treat Tribes in the same manner as States for the purposes of both section 116 of the Act and for all of the CAA preemption provisions, including provisions such as section 177 that authorize exclusions from preemption provisions. This will clarify EPA's position that Tribes like States generally have authority to exceed minimum Federal requirements. It will also clarify the fact that Tribes, like States, are preempted from imposing stricter standards where Congress has so specified. This will advance the overarching purpose of the preemption provisions to avoid undue barriers on the trade of goods in commerce.

4. Provisions for Which no Separate Tribal Program Required.

Under some provisions of the CAA, Tribes would have a specific role by virtue of having met the minimum eligibility requirements discussed in Part III.A, irrespective of whether a specific program is approved.

For example, under section 107(d)(3), the Administrator would notify an eligible Tribe of information indicating that an area within the Tribe's jurisdiction should be redesignated, and the Tribe would have an opportunity to provide input on that redesignation in the same fashion as a State. Under section 107(d)(3) a Tribe could also submit a revised designation of any area within its jurisdiction on its own motion. Similarly, under section 112(r)(7)(B)(iii), risk management plans would be submitted to Tribal Emergency Response Commissions.

Under sections 169B, 176A and 184 Tribes meeting eligibility requirements for such provisions shall be treated in the same manner as States in identifying what areas should be included in interstate air pollution and visibility transport regions and in establishing commission membership.[15]

Also, treating Tribes in the same manner as States for purposes of section 505(a)(2) would require permitting authorities under Title V to notify an eligible Tribe that is contiguous to a State in which an emission originates and whose air quality may be affected by that emission, or that is within 50 miles of the emission source, of any Title V permit applications that are forwarded to EPA.[16] Permitting authorities would also be required to provide such Tribes an opportunity to submit written recommendations and to notify such Tribes in writing of any recommendations not accepted and the reasons why. See 40 CFR 70.8(b)(2). Thus, special procedural provisions would apply to Tribes treated in the same manner as States for the purpose of Title V notification. This Title V notification and permitting authority obligation to explain any recommendations not accepted would apply regardless of whether an eligible Tribe has an approved Title V program.

As elaborated below, EPA expects that most recognized Tribes will be able to readily meet the eligibility requirements for such provisions as Title V permit application notification. To promote intergovernmental coordination, EPA encourages States and local governments to take steps now to provide Title V notification to Tribes, instead of waiting for a formal eligibility

[15] EPA always retains any general discretionary authority to make Federal Indian Reservations part of a transport Region and to include representatives of Indian Tribes as interstate transport Commission members.

[16] The geographic scope of Tribal lands for Title V notification purposes would include any lands over which an eligible Tribe has been determined to have jurisdiction, including any off-reservation lands.

determination by EPA. EPA also encourages Tribes to exercise the notification rights that extend to any citizen under the Title V program in the interim period preceding a Tribal eligibility determination, if necessary to ensure notification. The regulations implementing the Title V operating permit program generally require that permitting authorities must provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit. See 40 CFR 70.7(h). These procedures include providing notice of draft permit proceedings to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list. See 40 CFR 70.7(h)(1). Thus, a Tribe not determined eligible to be treated in the same manner as a State for notification could nevertheless ensure that it receives notification of draft permits by submitting a written request for such notification to appropriate permitting authorities.

EPA intends to revise existing CAA regulations to reflect this Tribal authority as part of its on-going regulatory development efforts. EPA also requests public comment identifying any other provisions of the CAA which similarly do not require a Tribal program submittal in order for a Tribe to have a role in CAA implementation.

In all instances, including those provisions of the Act for which no separate Tribal program submittal is required, it is a statutory requirement that a Tribe meet the section 301(d)(2) eligibility requirements, discussed in Part III.A above, before it may be treated in the same manner as a State. However, as a practical matter, this should not be burdensome. Often the provisions not requiring accompanying program submittals are intended to promote intergovernmental coordination and involve receipt or transmittal of information or active participation on a multigovernmental entity. Therefore, a minimal demonstration would be necessary to establish Tribal capability to carry out these functions consistent with the terms and purposes of statutory and regulatory requirements. Further, under today's proposed streamlined procedures for determining eligibility, EPA has generally simplified the demonstration that must be made for eligibility approval. Taken together with the minimum capability needed to carry out these particular requirements, most Federally recognized Tribes are expected to be able to readily demonstrate eligibility to be treated in the same manner as States for CAA provisions not requiring a program submittal.

C. Procedures for Review of Tribal Air Programs

In general, Tribes will be required to comply with the same statutory and regulatory requirements as States for the CAA programs that are submitted to EPA for approval. The main difference is that section 301(d) does not require Tribes to develop CAA programs. Thus, a Tribe may decide to implement only those programs, or even portions of programs, that are most relevant to the air quality situation on its reservation or other lands subject to its jurisdiction. This "modular approach" to Tribal CAA program development is discussed further in Part III.C.1 below.

In addition, section 301(d)(3) of the Act provides that:

> [t]he Administrator may promulgate regulations which establish the elements of tribal implementation plans and procedures for approval of tribal implementation plans and portions thereof.

Section 301(d)(4) provides that:

> [i]n any case in which the Administrator determines that the treatment of Indian tribes as identical to States is inappropriate or administratively infeasible, the Administrator may provide, by regulation, other means by which the Administrator will directly administer such provisions so as to achieve the appropriate purpose.

Further, as discussed previously, section 301(d)(2) delegates to the Administrator broad discretion in determining those provisions of the Act for which it is appropriate to treat Tribes as States.

EPA interprets these provisions to mean that, both in the case of TIPs and in the case of other Tribal air programs ("TAPs"), where EPA finds that it is not appropriate for the same requirements to apply to Tribes as to States, EPA may modify those requirements by rulemaking. Accordingly, in this rulemaking EPA is proposing to make some changes to the State requirements for Tribal CAA programs. In addition, EPA is proposing to allow a Tribe to demonstrate to EPA that a specific CAA requirement may be inappropriate for that Tribe in light of the circumstances presented in a particular case. These issues are discussed further in Parts III.C.2 and C.3 below.

1. Modular Approach to Tribal Air Programs

Because Tribal governments have limited resources, and because Federal funding to support Tribal efforts is also limited, Tribes may decide to implement only certain of the CAA provisions for which EPA has determined it is appropriate to treat Tribes in the same manner as States. In order to provide flexibility and incentive for Tribal governments to assume responsibility for CAA programs, Tribes may submit reasonably severable elements of programs to EPA for approval instead of entire complex programs. However, in order to be approved, any such submittal must meet all applicable minimum Federal requirements.

As one of the first steps in identifying Tribal priorities, EPA encourages Tribes to thoroughly assess their current air quality through emission inventories. Tribes should develop an accurate, comprehensive and current inventory of emissions from all sources of air pollution within the reservation and should project potential future emissions based on likely growth. This will help Tribes estimate the nature and location of air quality problems and, in turn, help prioritize Tribal CAA program development.[17] Note that EPA has issued detailed guidance on how to conduct emission inventories.[18]

The results of Tribal emissions inventory assessments and projections regarding future growth will help Tribes to determine whether relatively few or many activities will need to be implemented immediately. Some minor problems may be addressed through public education and basic strategies to control the sources of pollution. Other problems may require some combination of monitoring, modelling and the development of Tribal plans and regulations. If future growth in emissions is projected, Tribes should also consider developing programs for the Prevention of Significant Deterioration of Air Quality ("PSD"). See Addendum A, "Title I" discussion (overview of the PSD program) and Part III.D.

Where the emissions inventory reveals a potential air quality problem, air quality monitoring can help further characterize the potential problem. EPA has issued regulations and guidance on air quality monitoring. EPA's air quality

[17] As discussed in Part II.B. above, EPA intends to provide Tribal air quality protection when Tribes do not develop such programs. EPA's efforts will take place in a prioritized, phased-in fashion due to limitations on Federal resources.

[18] See Volumes I–V of the *Procedures for Emission Inventory Preparation—Volume I: Emission Inventory Fundamentals*, EPA–450/4–81–026a, Sept. 1981; *Volume II: Point Sources*, EPA–450/4–81–026b, Sept. 1981; *Volume III: Area Sources*, EPA–450/4–81–026c, Sept. 1981; *Volume IV: Mobile Sources*, EPA–450/4–81–026d, 1992; *Volume V: Bibliography*, EPA–450/4–81–026e, Sept. 1981. The Clearinghouse for Inventories and Emission Factors, (919) 541–5285, has information on obtaining copies of these and other emission inventory guidance documents.

monitoring regulations are set out at 40 CFR part 58. Among other things, Appendices A through G to 40 CFR part 58 describe air quality network design, criteria for citing air quality monitors and quality assurance criteria.

In prioritizing Tribal efforts, Tribes should also evaluate the expertise and resource requirements needed to implement desired programs. As stated above, Tribes will be given the flexibility of implementing programs in a modular fashion. Thus, Tribes can develop reasonably severable CAA programs to address particular air quality problems and submit them to EPA for approval.

For example, a Tribe having a PM–10 air quality problem may develop a partial PM–10 nonattainment implementation plan that addresses pollution from existing sources but does not, for example, contain a program governing the review of new sources that propose to locate in the area. EPA would not decline to approve the submittal until the Tribe developed a nonattainment new source review program for PM–10 or developed a plan for addressing an ozone pollution problem.

Similarly, a Tribe having relatively good air quality and anticipating likely new source growth in the area may choose to focus resources on developing a PSD program. The CAA's PSD permit program provides for preconstruction review of the air quality impacts associated with proposed new or modified major stationary sources in areas meeting air quality standards. The permitting process is to ensure that the proposed source employs state-of-the-art control technology, does not cause or contribute to an exceedance of air quality standards, and does not adversely impact National Parks and Wilderness areas.

A Tribe may develop and submit to EPA for approval a PSD permit program alone. A Tribe expecting certain categories of new source growth may develop and submit to EPA for approval a PSD permit program addressing those sources or source categories.[19] Under the rule proposed today, if the implementation plan elements or other partial CAA program submitted by the Tribe is reasonably severable and meets the applicable minimum requirements under Federal law, EPA will approve the submittal.

[19] As described elsewhere in this notice, EPA will issue PSD permits for any sources not covered by an approved PSD program.

2. Procedures for Reviewing and Approving Tribal Implementation Plans ("TIPs")

The CAA contains provisions which specifically govern EPA's review and processing of the State implementation plans (SIPs) developed under Title I of the Act to provide for attainment and maintenance of the national ambient air quality standards (NAAQS). See Addendum A, "Title I" discussion. These provisions are set forth in section 110(k) of the Act. The CAA authorizes EPA to amend, by regulation, the procedures governing the review and processing of analogous Tribal implementation plans (TIPs). See sections 110(o) and 301(d)(3).

In broad terms, section 110(k)(1) provides the criteria EPA is to apply in determining whether a submittal is complete and therefore warrants further review and action. See also 57 FR 13,498, 13,565 (April 16, 1992). The EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V. EPA is required to make completeness determinations within 60 days of receiving a SIP submittal. However, a submittal is deemed complete by operation of law if a completeness determination has not been made by EPA within 6 months of EPA's receipt of the submittal. Section 110(k)(1) & 57 FR at 13,565.

Section 110(k)(3)–(4) address EPA's review of submittals that have been deemed complete. For example, section 110(k)(3) provides that EPA shall fully approve submittals that meet all of the applicable requirements of the Act, and partially approve and disapprove submittals that meet only a portion of the applicable requirements. Section 110(k)(4) further authorizes EPA to conditionally approve commitments by a State to adopt specific enforceable measures by a date certain that is no later than one year after the approval. The conditional approval is automatically converted to a disapproval if the State fails to fulfill the commitment. Section 110(k)(2) directs EPA to act on a submittal within 12 months of determining it to be complete. The Act calls for the imposition of sanctions and the issuance of a Federal implementation plan when a State fails to submit a required plan or such plan is disapproved. See sections 110(c)(1), 110(m) and 179 of the Act. Guidance on EPA's implementation of these and related provisions is set out in a July 9, 1992 memorandum from John Calcagni, "Processing of State Implementation Plan (SIP) Submittals."

As indicated previously, the Act does not require Tribes to submit TIPs. For that reason and other reasons specified above, EPA is not proposing to treat Tribes in the same manner as States for the implementation plan submittal deadlines specified in the Act. See Part III.B above. Further, EPA is proposing to accept any reasonably severable portion of an applicable Tribal implementation plan.

EPA is proposing to apply the completeness criteria to TIPs in the manner described below. If a Tribe submits a reasonably severable portion of a TIP that meets applicable completeness criteria, EPA will continue to process the submittal. If the submittal is incomplete EPA will return it to the Tribe, identifying the deficiencies. EPA will exercise one of two options with respect to a complete TIP submittal. EPA will fully approve any portion of a TIP if it is reasonably severable and meets the applicable Federal requirements. For any portion that is not approvable, EPA will disapprove the submittal and work closely with the Tribe to correct the identified deficiencies. However, as noted earlier in Part III.B, EPA's disapproval of a TIP will not have the mandatory sanctions consequences that apply to States under section 179 of the Act or the consequences under section 110(c)(1) of requiring a FIP within two years of the disapproval.

As with SIPs, TIPs should be submitted to the EPA Regional Office for the region in which the Tribe is located. Addendum B to this notice contains a list and the addresses of EPA's Regional Offices and a map indicating the regions that they encompass. Any Tribes that have not yet been determined to be eligible by EPA for CAA program purposes must submit the materials described in Part III.A above, in conjunction with any TIP submittal.

3. Procedures for Reviewing Other Tribal Air Programs ("TAPs")

EPA will review all other Tribal air program submittals in light of the applicable statutory and regulatory requirements as well as EPA policy, including the modular concept described above. EPA is proposing in today's rule to treat Tribes in the same manner as States for all of the provisions of the CAA, with the limited exceptions identified in Part III.B & C above. However, EPA recognizes that in proposing this rule and obtaining comments, EPA may not have anticipated and identified all of those requirements applicable to States that would be infeasible or inappropriate to apply to Tribes. Therefore, EPA is

proposing to add a regulatory provision that will generally allow Tribes to demonstrate to EPA, in conjunction with the submittal of a TAP, that treatment of a Tribe in the same manner as a State for a particular provision is inappropriate or administratively infeasible. EPA will review the Tribal demonstration and take appropriate action.

TAPs should be submitted to the Regional Office for the region in which the Tribe is located. See Addendum B. EPA will internally review TAPs in the same manner as it reviews State submittals for the specific CAA programs presented, consulting with and obtaining the concurrence of the appropriate EPA offices. A determination that a TAP is not approvable or that a Tribe has not met the general eligibility requirements described in Part III.A above does not preclude the Tribe from making subsequent submittals at a future date. If EPA determines that a Tribal submittal is deficient or incomplete, EPA will work closely with the Tribe to identify and correct the deficiencies.

D. Revisions to CAA Implementing Regulations

The regulations implementing the CAA span many pages of the Code of Federal Regulations. In today's action, EPA is proposing to add new 40 CFR part 49, which will address the Tribal CAA authority described in this notice. To implement this authority EPA is also proposing to add a general requirement in part 49 that eligible Tribes will be treated in the same manner as States under all of EPA's existing, currently effective regulations implementing the Clean Air Act, except those regulations implementing provisions of the CAA for which EPA has concluded that it would be inappropriate to treat Tribes as States. Such exceptions are described in detail in Part III.B of this notice.

EPA will undertake a major effort, in conjunction with forthcoming rulemaking initiatives and its periodic review and revision of existing regulations, to make conforming changes to all CAA implementing regulations. As examples, today's proposed rule contains conforming modifications to 40 CFR Parts 50 and 81. The discussion below also explains in detail how the existing regulations implementing new source review permitting requirements and Title V permit program requirements would be affected by the action proposed today. The general regulatory provision applying existing, currently effective regulations to Tribes, as described in the previous paragraph, will address the application of existing regulations during the interim period in which conforming changes are made to CAA regulations.

Further, in Part IV below, EPA outlines potential ways in which EPA's administration of Federal financial assistance for Tribes may differ from States. Thus, EPA is proposing to make corresponding changes to regulations implementing Federal financial assistance requirements.

1. 40 CFR Part 35—State [Tribal] and Local Assistance

EPA is proposing to make changes to its regulations at 40 CFR Parts 35 related to Federal financial assistance. The proposed changes are described in detail in Part IV of today's preamble.

2. 40 CFR Part 49—Tribal Clean Air Act Authority

The general Tribal authority provisions proposed in today's action will be codified at 40 CFR part 49. This includes the following: EPA's proposed interpretation of relevant jurisdictional issues, discussed in Part II; the proposed simplified eligibility criteria, discussed in Part III.A; the proposed finding that Tribes should generally be treated in the same manner as States under the CAA, the specific exceptions to this general finding, and the proposed provision authorizing Tribes to identify and request additional exceptions on an ad hoc basis, discussed in Part III.B, and; the general procedures for reviewing Tribal air programs, discussed in Part III.C.

3. 40 CFR Part 50—National Primary and Secondary Ambient Air Quality Standards

EPA is proposing conforming changes to 40 CFR part 50. These modifications clarify that references to the term "State" in 40 CFR Part 50 include, as appropriate, "Indian Tribe" and "Indian country." The revisions proposed clarify, for example, that under 40 CFR 50.2(c), the promulgation of NAAQS shall not be considered in any manner to allow significant deterioration of existing air quality in any portion of Indian country (as defined in 18 U.S.C. 1151). They also clarify that in the same way that section 50.2(d) provides that States retain discretion to establish ambient air quality standards more stringent than the NAAQS, the establishment of NAAQS in no way prohibits Indian Tribes from establishing ambient air quality standards that are more stringent than the NAAQS.

4. 40 CFR Part 51—Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

The regulations in Part 51 contain the basic requirements for state implementation plans (SIP). However, EPA has not systematically updated 40 CFR Part 51 since the passage of the 1990 Amendments to the Clean Air Act. In many instances these regulatory requirements are inconsistent with the revised law and are therefore inoperative as a matter of law. See CAA section 193 ("regulation * * * in effect before the date of enactment of the Clean Air Act Amendments of 1990 shall remain in effect according to its terms, except to the extent * * * inconsistent with any provision of this Act.")

To facilitate SIP development under the amended law, EPA has issued guidance documents. These documents reflected EPA's preliminary interpretations of the relevant Act requirements at that time. See, *e.g.*, "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992; 57 FR 18070, April 28, 1992); "New Source Review (NSR) Program Supplemental Transitional Guidance on Applicability of New Part D NSR Permit Requirements" (Issued by Office of Air Quality Planning and Standards Director on September 3, 1992); NO_x Supplement to the General Preamble (57 FR 55620, November 25, 1992).

EPA intends to update both the existing and new source regulatory requirements in Part 51 to make clear which regulatory provisions were rendered nugatory by the 1990 Amendments and which continue to have legal force.

Interim implementation of applicable Title I requirements for Tribal lands should be guided by EPA's preliminary interpretations of the revised Title I requirements and the interpretive statements in this notice.

5. 40 CFR Part 52—Approval and Promulgation of Implementation Plans

Federal PSD Permitting. EPA has issued rules that provide for Federal implementation of the PSD permit program (preconstruction permit requirements applicable to major stationary sources or major modifications[20] in areas that currently

[20] Note that a proposed source in certain listed source categories is "major" for PSD purposes if it has the potential to emit 100 tons per year of any pollutant regulated under the Act. Other sources are "major" for PSD if their emissions may exceed 250 tons per year. The regulatory definitions of "major

meet the NAAQS). 40 CFR 52.21. In the same manner as States, Federal implementation of a PSD program on Tribal lands applies in any case where the Tribe does not have an approved PSD program.

EPA is undertaking a comprehensive regulatory effort to revise its PSD rules (and its nonattainment NSR program, see below) consistent with some of the changes made to the substantive PSD program under the revised Act (and as a part of a broader reform initiative). Since these revised rules have not yet been promulgated, EPA has issued detailed guidance addressing transitional and interim implementation issues associated with the changes made by the 1990 Amendments. See 57 FR 18070 at 18074–77 (April 28, 1992) (Appendix D—"New Source Review (NSR) Program Transitional Guidance," March 11, 1991). At least until any further guidance is provided in EPA's NSR rulemaking, EPA's review and issuance of PSD permits for applicable sources proposing to locate on Tribal lands will be in accordance with the previously-issued PSD transitional permitting guidance, today's guidance, and 40 CFR 52.21, to the extent that the existing provisions of 40 CFR 52.21 are consistent with the amended Act.[21] See section 193 of the Act.

Federal NSR Permitting. 40 CFR 52.24(c) provides that 40 CFR part 51, Appendix S ("Offset Ruling") governs the issuance of NSR permits (required for the construction and operation of new and modified major stationary sources in nonattainment areas) where approved State rules are not in place. The Offset Ruling sets out EPA's interpretation regarding the conditions that are designed to ensure that sources and source modifications subject to the NSR requirements will be controlled to the greatest degree possible and that more than equivalent offsetting emission reductions will be obtained from existing sources, thus ensuring progress toward achievement of the NAAQS.

The 1990 Amendments to the CAA added new provisions to the Act addressing the substantive NSR permitting requirements. See, *e.g.*, sections 173, 182 and 189(b)(3) of the Act, 42 U.S.C. 7503, 7511a and 7513a(b)(3). As with the new changes to the PSD program, EPA has issued guidance addressing the implementation of the revised nonattainment NSR requirements in the period before EPA's comprehensive regulations are adopted. See 57 FR 13498 (April 16, 1992); 57 FR 18070, 18075–77 (April 28, 1992) (Appendix D—"New Source Review (NSR) Program Transitional Guidance," March 11, 1991); "New Source Review (NSR) Program Supplemental Transitional Guidance on Applicability of New Part D NSR Permit Requirements" (Sept. 3, 1992). In the interim period before EPA issues further guidance through its Federal nonattainment NSR rulemaking to implement the amended Act, EPA intends to conduct nonattainment NSR permitting on Tribal lands consistent with the Offset Ruling and the transitional EPA guidance addressing the revisions to the Act.

6. 40 CFR Part 70—State [and Tribal] Operating Permit Programs

This discussion explains how the regulations at 40 CFR Part 70 implementing the Title V operating permit program would be affected by today's proposed action. EPA is currently developing Federal rules to be codified in 40 CFR Part 71 that will authorize direct Federal implementation of Title V permit program requirements for States and Tribes that lack adequate program coverage.

Program Submittal Deadlines and Processing. Program submittal deadlines are set out at 40 CFR 70.4(a). Tribes will not be compelled to develop and submit Title V permit programs to EPA for approval. 40 CFR 70.4(e) addresses the processing of Title V program submittals. Any Tribal submittal that is incomplete or disapproved will be returned to the Tribe following such determination. To the extent possible, EPA will work with the Tribe to remedy deficiencies in the Tribal program. However, the timeframes governing EPA's processing of Tribal submittals will be the same as those applicable to State submittals.

Program Coverage. The regulations call for States to issue permits that assure compliance with "each applicable requirement * * * by all part 70 sources". 40 CFR 70.4(b)(3)(i); see also 40 CFR 70.6(a)(1) ("[e]ach permit issued under this part shall include * * * [e]mission limitations and standards * * * that assure compliance with all applicable requirements at the time of permit issuance"). Approvable Tribal programs must address all affected Part 70 sources within a Tribe's jurisdiction.

Deadlines for Permit Applications and Processing of Applications. 40 CFR 70.5(a) requires the owner or operator of Part 70 sources to submit applications within 12 months of becoming subject to the program. 40 CFR 70.7(a)(2) requires the permitting authority to act on an application within 18 months of receipt. To ensure that permits are expeditiously submitted and reviewed, these deadlines will apply with equal force to Tribal programs, to the extent that Tribes elect to develop and implement such programs.

40 CFR 70.4(b)(11) requires States to have a transition plan for acting on applications received within the first 12 months after approval, such that the State will act on one-third of the applications in each of the first three years of its program. This requirement overrides the 18-month requirement for acting on applications during the first 3 years. As discussed in Part III.B.2.e above, the 3-year implementation requirement in section 503(c) is among the provisions of the CAA for which EPA is not proposing to treat Tribes in the same manner as States. For Tribal programs, this initial program phase-in will be based on a schedule developed by the Regional Office in conjunction with each Tribe. This case-by-case approach will ensure that any transition adequately accounts for the scope of Tribal program coverage, the universe of Part 70 sources and the extent of Tribal expertise and resources. However, EPA is also proposing to provide that in no case shall such a transitional schedule exceed 5 years from the date of EPA's approval of the Tribal program.

Enforcement. Required enforcement authority is set out in 40 CFR 70.11. As stated above, Federal law prohibits Indian Tribes from holding criminal trials of or imposing criminal penalties on non-Indians, in the absence of a treaty or other agreement to the contrary. *Oliphant*, at 435 U.S. 191. In addition, Federal law prohibits Indian Tribes from imposing for conviction of any one offense a criminal fine greater than $500. 25 U.S.C. section 1302(7). Tribes requesting Title V program approval will be required to enter into formal Memorandum of Agreement with EPA, through which it would agree to provide for the timely referral of criminal enforcement matters to the appropriate EPA Regional Administrator.

Operational Flexibility. The three operational flexibility provisions at 40 CFR 70.4(b)(12) will be optional for Tribes as will 40 CFR 70.6(a)(8), (10)

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stationary source" and "major modification" for the PSD program are set out at 40 CFR 52.21(b) (1), (2).

[21] The 1977 Amendments to the CAA authorized Indian tribes to redesignate the classification of lands within the exterior boundaries of a reservation for PSD planning purposes. Section 164(a), 42 U.S.C. 7474(c); *Nance v. EPA*, 645 F.2d 701 (9th Cir. 1981), *cert. den'd*, 451 U.S. 1081 (1981). Area classifications for PSD determine the maximum increment of degradation that is permissible in a clean air area. Tribal authority to redesignate areas for this purpose is set forth in 40 CFR 52.21. Tribes continue to have this authority under the Act as amended in 1990.

(emissions trading in the permit) and 40 CFR 70.6(a)(9) which requires States to include alternative operating scenarios, if requested, in their permits.

Permit Issuance, Revisions Procedures. Generally, for the procedures governing permit issuance and revision, EPA will treat Tribes in the same manner as it treats States. While Tribes will have some flexibility regarding the form and manner of public notice requirements under 40 CFR 70.7(h), the minimum period for public notice will be 30 days for Tribes as with States.

Tribes, like States, must have authority to reopen permits for cause, as required by 40 CFR 70.7(f).

Application content requirements. These requirements are set out in 40 CFR 70.5. These requirements will apply with equal force to sources within Tribal jurisdiction, since EPA believes that the information specified in this provision constitutes the minimum information that is essential to the issuance of an effective permit.

Permit content requirements. These are found in 40 CFR 70.6(a), (c). The permit content requirements will generally apply to Tribes in the same manner in which they apply to States. These remaining requirements are necessary to an effective permit. These requirements include 40 CFR 70.6(a)(3), which requires the State and, under today's proposal, the Tribal permitting authority to insert monitoring requirements into the permit where the underlying monitoring requirement is deficient.

Judicial Review. 40 CFR 70.4(b)(3)(x)-(xii) requires States to provide an opportunity for judicial review of a final permit action and for the State's failure to take such final action. Tribes will have to meet the same requirements.

EPA Veto and Citizen Petition Process. 40 CFR 70.8 requires States to provide EPA with a 45-day review period and opportunity for veto. The provision further specifies that no permit may issue prior to the expiration of that period or at all over an EPA veto. It also provides citizens the right to petition EPA to veto a State-issued permit. These provisions will apply with equal force to Tribal programs.

40 CFR 70.8(b) also requires that State programs provide that the permitting authority notify any affected States of each draft permit. This requirement to provide notice will apply with equal force to Tribal programs. Further, any State or Tribal permitting authority will provide notice to any affected Tribe in the same manner as the regulations require notification to affected States. See Part III.B.4 above.

General Revisions. References to States and State officials will include Tribes and corresponding Tribal officials.

7. 40 CFR Part 81—Designation of Areas for Air Quality Planning Purposes.

EPA is proposing conforming regulatory changes to part 81, in light of today's proposal to treat Indian Tribes in the same manner in which it treats States under the air quality designation provisions set out at section 107 of the Act.

Pursuant to section 107(d)(3) of the CAA EPA would notify eligible Indian Tribes that EPA has information indicating that an air quality designation for an Indian Reservation should be revised. Then, as with the Governor of an affected State, the relevant Tribal leader would have 120 days to reply to EPA. In addition, eligible Indian Tribes would on their own initiative have authority to submit a redesignation request to EPA for approval in the same way that States and the relevant Governors are authorized to under section 107(d)(3)(D) of the Act.

EPA is proposing to add explicit definitions of Indian Reservation, Indian Tribe and State to 40 CFR Part 81. EPA is also proposing revisions to subpart C of Part 81 to reflect the authority that eligible Indian Tribes may have to initiate revisions to designations.

Future air quality designations for eligible Tribes will be codified under an entry for the affected Indian Tribe in subpart C, Part 81 that is the same as State air quality designations under Part 81.

IV. Federal Financial Assistance

A. Sources of Funding Assistance

Financial assistance for Indian Tribes under the Clean Air Act is available via two principal authorities: grants for the support of air pollution planning and control programs under section 105 (42 U.S.C. 7405); and grants for investigations, demonstrations and studies into the causes, effects, extent, prevention and control of air pollution under section 103 (42 U.S.C. 7403).

In addition to these potential sources of funds under the Clean Air Act, EPA can provide Tribes funding assistance for air quality work under the Agency's Indian Environmental General Assistance Grants Program (40 CFR part 35, subpart Q). These grants provide funds to Tribes for planning, developing and establishing the capacity to implement environmental programs on Indian lands, regardless of the program's environmental media.

Each of these assistance and fee programs carries various statutory and/or administrative requirements which are discussed and explained in this portion of the preamble. Proposed regulatory revisions are set out at the end of this notice.

B. Tribal Eligibility for Air Grant Assistance

In today's action, EPA is proposing to modify certain regulatory and administrative limitations on the manner in which Indian Tribes qualify for and obtain financial assistance under the Act. EPA also seeks comment from interested parties on options in meeting the non-Federal matching requirements for grants obtained under section 105 authority. The financial assistance options are described below.

1. Section 103 Air Assessment Grants

Tribes may apply for grant assistance to assess reservation air quality conditions under authority of section 103(b)(3) of the Act. Section 103(b)(3) allows EPA to fund investigations, research, surveys, and studies concerning any specific problem of air pollution in cooperation with any air pollution control agency. Tribes may undertake specific projects to assess Tribal air quality conditions at any time. Typically, Tribes will undertake such projects as an initial step, prior to initiating development and adoption of Tribal regulations to control air resources. Section 103(b)(3) grant funds are not available for developing Tribal capacity.

Funds provided under section 103 are available to Tribes at up to a 95% Federal share. Thus each recipient must contribute at least five percent of the total allowable project costs. The Agency believes that the five percent cost sharing requirement should be retained.

EPA rules limit award of section 103 grants to a maximum of five years for any one project period. 40 CFR 40.125-1. This should allow a reasonable amount of time for Tribal recipients of assistance to assess the nature of their air quality and determine the extent of any air quality problems. However, the Agency will carefully consider requests for deviations under 40 CFR 31.6 for extensions of grant project periods. Further, section 103 is available for multiple project periods. Finally, Tribes that have received previous section 103 grants will remain eligible for future grants to fund appropriate projects at any time. The determination of each Tribal applicant's continued eligibility and the appropriate authority of award will be the responsibility of the

appropriate Regional Administrator. As this suggests, Tribes not establishing eligibility to be treated in the same manner as States under section 301(d) will remain eligible, as they are currently, for assistance under section 103(b)(3).

2. Section 105 Air Program Grants

The Agency encourages eligible Tribes to apply for continuing environmental assistance under authority of section 105 and 301(d) of the Act, particularly after a comprehensive assessment of reservation air quality conditions. Section 105 allows EPA to make grants for implementing programs for the prevention and control of air pollution or implementation of air quality standards.

Currently, in order to be eligible to receive a grant under section 105, a recipient must meet the definition of an air pollution control agency specified in section 302(b) of the Act. This definition includes "[a]n agency of an Indian tribe." See section 302(b)(5). Thus, section 302(b)(5) authorizes 105 grants to Tribes that have not established their eligibility to be treated in the same manner as States.

The Act expressly provides that until the promulgation of these regulations, EPA may continue to provide section 105 grants to eligible Tribes on this basis. See section 301(d)(5). EPA believes that section 301(d)(5) was intended to ensure that Tribes would be able to receive financial assistance while this regulation was being developed. The Agency does not believe that this provision, which on its face is designed to ensure Tribal access to funds, must be read to require that EPA cease awarding section 105 grants to Tribes not meeting the eligibility requirements after this regulation is issued.

Consistent with this legal interpretation, this regulation provides two avenues for Tribes to obtain section 105 assistance. A Tribe that does not establish eligibility for treatment in the same manner as a state under section 301 but that is "an agency of an Indian tribe," and therefore meets the definition of an "air pollution control agency" under section 302(b)(5), can obtain 105 funds, subject to the same limitations that apply to other 105 grant recipients. These limitations include the statutory requirement that the grant recipient contribute matching funds for 40% of the allowable project costs.

Alternatively, Tribes that establish their eligibility to be treated in the same manner as States under section 301(d) may, like States, receive section 105 financial assistance. However, assistance to Tribes pursuant to 301(d) can be provided without being subject to every limitation that applies to such grants when made to States. Section 301(d)(4) expressly provides that, in cases where it is not appropriate to treat Tribes as identical to States, EPA "may provide, by regulation, other means by which the [Agency] will directly administer such provisions so as to achieve the appropriate purpose." EPA believes that requiring the 40% match as a prerequisite for assistance under section 105 could impose an undue financial burden on Tribes; the Agency further believes it can best administer section 105 to achieve the purpose of maximizing tribal access to this assistance by providing relief from the cost share requirement. However, based on statutory language, this special relief will, as noted above, only be available for Tribes that have established their eligibility to be treated in the same manner as states and therefore are eligible for financial assistance pursuant to section 301(d).

This proposal seeks comments on the appropriate level of Tribal cost share for a section 105 grant match, from a minimum of 5% to a maximum of 40%. This proposal also seeks comments on the establishment of a phase-in period for Tribes to meet whatever match is ultimately required for section 105 grants.

A 40% match of air grant funds under section 105 is currently required from States. However, when these air grants were originally awarded some 25 years ago, a 25% State match was required. Given the lack of Tribal financial resources, there is concern that even this lower level of Tribal match may not be appropriate in many instances. In addition, the Agency believes it may be appropriate to allow a Tribe establishing eligibility to be treated in the same manner as a state to begin receiving 105 assistance with a lower match, which would gradually be phased upward until it reaches some appropriate level.

During the development of the regulation, EPA discussed the option of developing a sliding scale, with differing levels of match based on tribal demonstrations of ability to pay. This option is not being proposed in this regulation, due to the Agency's concern that requiring some tribes to pay a higher match than others could create barriers to participation by those tribes, and that all tribes experience resource constraints.

The Agency also recognizes that its approach should be consistent with President Clinton's April 29 Presidential Memorandum on "Government-to-Government Relations with Native American Tribal Governments." 59 FR 22,951 (May 4, 1994). That Memorandum directs agencies to "take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the * * * governmental rights of the tribes." The Agency believes minimizing the burdens to participation by all tribes may be the approach most consistent with this directive.

Although the Agency is not proposing a sliding scale, it requests comments on whether such an approach might be feasible and the criteria that could be used to determine the matching requirement for each grant recipient. The Agency solicits comments on: An appropriate initial match level equal to or exceeding five percent; the length appropriate for a phase-in period (if any) of the match; the rate at which the match would be phased upward; and an appropriate level for a permanent match requirement.

The Clean Air Act also establishes one purpose for which Tribes may not be treated in the same manner as states. Under section 301(d)(1)(A) Tribes may not be treated in the same manner as States for purposes of section 105(b)(2) which ensures that each State applying for assistance have made available to it for application (but not necessarily for award) a minimum of one half of one percent of the total section 105 amount annually appropriated under the Act.

3. Tribal Agencies and Consortia

Section 103 and 105 assistance is currently available to an individual Tribe because it constitutes an air pollution control agency under section 302(b)(5). The Agency also believes it may be appropriate to provide assistance to groups of tribes, typically tribes with air resources that are either contiguous or similar in their characteristics, when those tribes join into consortia for the purpose of applying for and managing the air quality financial assistance described above. A consortium is a partnership between two or more Indian tribal governments authorized by their governing bodies. Tribes can join into consortia in circumstances they find appropriate. The "economies of scale" made possible through Tribal consortia arrangements may allow for the assumption of air resource management responsibilities that may not otherwise be possible with small, single-Tribe environmental agencies.

Consortia will have discretion in demonstrating how they will meet the matching funds requirement. Therefore,

when a consortium reaches the point that it must provide matching funds to obtain grant funds, the consortium may combine its resources to meet the requirement in any manner it deems appropriate.

C. Use of EPA General Assistance Grants

EPA has recently issued regulations governing the use of Indian Environmental General Assistance Grants as required under 42 U.S.C. 4368b. Indian Environmental General Assistance Program Act of 1992; 42 U.S.C. 4368b, (58 FR 63876, December 2, 1993) codified at 40 CFR part 35, subpart Q. The regulations establish requirements for applying for and utilizing general assistance funds. The Indian Environmental General Assistance Grants may be used by Tribes to fund program development activities in various environmental media, including air, and are thus considered to be an important means of establishing overall Tribal environmental program capability. Moreover, the award of these grants in no way precludes a Tribe from applying for, and being awarded, air grant assistance under section 103 or section 105 of the Act.

D. Additional Administrative Requirements

Each Tribal application for assistance must still meet the Agency's general administrative requirements for grants which are set forth in more detail in 40 CFR Parts 31, 32 and 34 and which are not modified by this regulation. Additional requirements specific to section 105 air grants are detailed in 40 CFR 35 and, for section 103, in 40 CFR Part 40.

V. Miscellaneous

A. Executive Order (EO) 12866

Section 3(f) of EO 12866 defines "significant regulatory action" to mean any regulatory action that is likely to result in a rule that may:

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

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

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

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

This proposed rule was determined not to be a significant regulatory action. A draft of this proposed rule was nevertheless reviewed by the Office of Management and Budget (OMB) prior to publication because of anticipated public interest in this action including potential interest by Indian Tribes and State/local governments.

EPA has placed the following information related to OMB's review of this proposed rule in the public docket referenced at the beginning of this notice:

(1) Materials provided to OMB in conjunction with OMB's review of this proposed rule; and

(2) Materials that identify substantive changes made between the submittal of a draft proposed rule to OMB and this notice, and that identify those changes that were made at the suggestion or recommendation of OMB.

B. Regulatory Flexibility Act (RFA)

Under the RFA, 5 U.S.C. sections 601–612, EPA must prepare, for rules subject to notice-and-comment rulemaking, initial and final Regulatory Flexibility Analyses describing the impact on small entities. The RFA defines small entities as follows:

—Small businesses. Any business which is independently owned and operated and is not dominant in its field as defined by Small Business Administration regulations under section 3 of the Small Business Act.

—Small governmental jurisdictions. Governments of cities, counties, towns, townships, villages, school districts or special districts, with a population of less than fifty thousand.

—Small organizations. Any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

However, the requirement of preparing such analyses is inapplicable if the Administrator certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

The proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Many Indian Tribes may meet the definition of small governmental jurisdiction provided above. However, the proposed rule does not place any mandates on Indian Tribes. Rather, it authorizes Indian Tribes to demonstrate their eligibility to be treated in the same manner as States under the Clean Air Act, to submit CAA programs for specified provisions and to request Federal financial assistance as described elsewhere in this preamble. Further, the proposed rule calls for the minimum information necessary to effectively evaluate Tribal applications for eligibility, CAA program approval and Federal financial assistance. Thus, EPA has attempted to minimize the burden for any Tribe that chooses to participate in the programs provided in this proposed rule.

The proposed regulation will not have a significant impact on a substantial number of small businesses. Any additional economic impact on the public resulting from implementation of this proposed regulation is expected to be negligible, since Tribal regulation of these activities is limited to areas within Tribal jurisdiction and, in any event, EPA has regulated or may regulate these activities in the absence of Tribal CAA programs.

The proposed regulation will not have a significant impact on a substantial number of small organizations for the same reasons that the proposed regulation will not have a significant impact on a substantial number of small businesses.

Accordingly, I certify that this proposed regulation, if promulgated, will not have a significant economic impact on a number of small entities.

C. Executive Order (EO) 12875

EO 12875 is intended to reduce the imposition of unfunded mandates upon State, local and Tribal governments. To that end, it calls for Federal agencies to refrain, to the extent feasible and permitted by law, from promulgating any regulation that is not required by statute and that creates a mandate upon a State, local, or Tribal government, unless funds for complying with the mandate are provided by the Federal government or the Agency first consults with affected State, local and Tribal governments.

The issuance of this proposed rule is required by statute. Section 301(d) of the CAA directs the Administrator to promulgate regulations specifying those provisions of the Act for which it is appropriate to treat Indian Tribes as States. Moreover, this proposed rule would not place mandates on Indian Tribes. Rather, as discussed in section V.B above, this rule authorizes or enables Tribes to demonstrate their eligibility to be treated in the same manner as States under the Clean Air Act and to submit CAA programs for the provisions specified by the Administrator. Further, the proposed

rule also explains how Tribes seeking to develop and submit CAA programs to EPA for approval may qualify for Federal financial assistance.

D. Paperwork Reduction Act

OMB has approved the information collection requirements pertaining to grants applications contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* and has assigned OMB control number 2030–0020.

This collection of information pertaining to the grants application process has an estimated reporting burden averaging 29 hours per response and an estimated annual recordkeeping burden averaging 3 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The information collection requirements in this proposed rule pertaining to an Indian Tribe's application for eligibility to be treated in the same manner as a State or "treatment as a State" have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1676.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (Mail Code 2136); Washington, DC 20460 or by calling (202) 260–2740.

This collection of information for Treatment in the Same Manner as States (TISMAS) to carry out the Clean Air Amendments has an estimated reporting burden of 20 annual responses, averaging 40 hours per response and an estimated annual recordkeeping burden averaging 800 hours. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will be accompanied with responses to OMB or public comments on the information collection requirements contained in this proposal.

VI. Request for Public Comments

EPA requests public comments on all aspects of today's proposal, including the following: EPA's proposed interpretation of the Clean Air Act as delegating to Tribes jurisdiction over all air resources within the exterior boundaries of the reservation; EPA's proposed interpretation of the term "reservation"; EPA's proposed interpretation that in enacting the CAA, Congress found that the activities regulated under the Act constitute a class of activities that, if left unregulated, could have serious and substantial adverse effects on public health and welfare, and accordingly, that these activities would generally be within the inherent civil regulatory authority of Tribes; EPA's position regarding Federally-administered Clean Air Act programs to provide protection for Tribal air resources; EPA's proposed implementation of its policy for streamlining eligibility determinations; the CAA provisions for which EPA is proposing to treat Indian Tribes as States, and the proposed exceptions that EPA has identified in this rule; EPA's general approach to encourage Tribal participation by allowing Tribes to submit reasonably severable portions of CAA programs; EPA's proposed procedures for reviewing Tribal air programs, including Tribal implementation plans developed under Title I of the CAA; EPA's proposed revisions to its implementing regulations, and; EPA's proposed administration of Federal financial assistance to Tribes.

VII. Electronic Filing of Comments

A public docket has been established for this proposed rule under docket number "A–93–3087" (including comments and data submitted electronically as described below). The public docket is located in M1500, 401 M Street, Washington, DC 20460. The information contained in this public docket, including printed, paper versions of electronic comments is available for inspection from 8 a.m. to 4 p.m., Monday thru Friday, excluding legal holidays. Starting October 1, 1994, the docket will be open 8 a.m. to 5:30 p.m., excluding legal holidays.

As part of an interagency "streamlining" initiative, EPA is experimenting with submission of public comments on selected rulemaking actions electronically through the Internet in addition to accepting comments in traditional written form. This proposed rule is one of the rulemaking actions selected by EPA for this experiment. From the experiment, EPA will learn how electronic commenting works, and any problems that arise can be addressed before EPA adopts electronic commenting more broadly in its rulemaking activities. Electronic commenting through posting to the EPA Bulletin Board or through the Internet using the ListServe function raise some novel issues that are discussed below in this Section.

To submit electronic comments, persons can either "subscribe" to the Internet ListServe application or "post" comments to the EPA Bulletin Board. To "Subscribe" to the Internet ListServe application for this proposed rule, send an e-mail message to: listserver@unixmail.rtpnc.epa.gov that says " Subscribe RIN–2060–AE95 <first name> <last name>." Once you are subscribed to the ListServe, comments should be sent to: RIN–2060–AE95@unixmail.rtpnc.epa.gov.

For online viewing of submissions and posting of comments, the public access EPA Bulletin Board is also available by dialing 202–488–3671, enter selection "DMAIL," user name "BB____USER" or 919–541–4642, enter selection "MAIL," user name "BB____USER." When dialing the EPA Bulletin Board type <Return> at the opening message. When the "Notes^]" prompt appears, type "open RIN–2060–AE95" to access the posted messages for this document. To get a listing of all files, type "dir/all" at the prompt line. Electronic comments can also be sent directly to EPA at: Docket-OPPTS@epamail.epa.gov.

To obtain further information on the electronic comment process, or on submitting comments on this proposed rule electronically through the EPA Bulletin Board or the Internet ListServe, please contact John A. Richards (Telephone: 202–260–2253; FAX: 202–260–3884; Internet: richards.john@epamail.epa.gov).

Persons who comment on this proposed rule, and those who view comments electronically, should be aware that this experimental electronic commenting is administered on a completely public system. Therefore, any personal information included in comments and the electronic mail addresses of those who make comments electronically are automatically available to anyone else who views the comments.

Commenters and others outside EPA may chose to comment on the comments submitted by others using the RIN–2060–AE95 ListServe or the EPA Bulletin Board. If they do so, those comments as well will become part of EPA's record and included in the public

docket for this rulemaking. Persons outside EPA wishing to discuss comments with commenters or otherwise communicate with commenters but not have those discussions or communications sent to EPA and included in the EPA rulemaking record and public docket should conduct those discussions and communications outside the RIN–2060–AE95 ListServe or the EPA Bulletin Board.

EPA will transfer all comments received electronically in the RIN–2060–AE95 ListServe or the EPA Bulletin Board, in accordance with the instructions for electronic submission, into printed, paper form as they are received and will place the paper copies in the official rulemaking docket which will also include all comments submitted directly in writing. All the electronic comments will be available to everyone who obtains access to the RIN–2060–AE95 ListServe or the EPA Bulletin Board; however, the official rulemaking docket is the paper docket maintained at the address in **ADDRESSES** at the beginning of this document. (Comments submitted only in written form will not be transferred into electronic form and thus may be accessed only by reviewing them in the EPA Docket as described above.)

Because the electronic comment process is still experimental, EPA cannot guarantee that all electronic comments will be accurately converted to printed, paper form. If EPA becomes aware, in transferring an electronic comment to printed, paper form, of a problem or error that results in an obviously garbled comment, EPA will attempt to contact the comment submitter and advise the submitter to resubmit the comment either in electronic or written form. Some commenters may choose to submit identical comments in both electronic and written form to ensure accuracy. In that case, EPA requests that commenters clearly note in both the electronic and written submissions that the comments are duplicated in the other medium. This will assist EPA in processing and filing the comments in the rulemaking docket.

As with ordinary written comments, EPA will not attempt to verify the identities of electronic commenters nor to review the accuracy of electronic comments. EPA will take such commenters and comments at face value. Electronic and written comments will be placed in the rulemaking docket without any editing or change by EPA except to the extent changes occur in the process of converting electronic comments to printed, paper form.

EPA will address significant electronic comments either in a notice in the **Federal Register** or in a response to comments document placed in the rulemaking docket for this proposed rule. EPA will not respond to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or conversion to printed, paper form as discussed above. Any communications from EPA employees to electronic commenters, other than those described in this paragraph, either through Internet or otherwise are not official responses from EPA.

List of Subjects

40 CFR Part 35

Environmental protection, Grant programs—environmental protection, Grant programs—Indians, Indians, Reporting and recordkeeping requirements.

40 CFR Part 49

Air pollution control, Environmental protection, Air pollution control—Tribal authority, Air pollution control—Tribal eligibility criteria, Indian tribes.

40 CFR Part 50

Air pollution control, Carbon monoxide, Environmental protection, Lead, Nitrogen dioxide, Ozone, Particulate matter, and Sulfur oxides.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: August 18, 1994.

Carol M. Browner,

Administrator.

Addendum A to Preamble—General Description of Clean Air Act Programs

The Clean Air Act is codified in the United States Code (U.S.C.) at 42 U.S.C. 7401–7671q. There are six different Titles that comprise the Act as codified.[1] The following discussion contains a broad overview of each Title with the objective of providing a general road map to the Clean Air Act. The discussion is not, and is not intended to be, a comprehensive and detailed discussion of Clean Air Act requirements.

To help illustrate the potential effect of today's proposal, the discussion at times refers to Tribes as if the authority proposed today was in effect. However, this authority will not be in place until EPA takes final action on today's proposed rule. The process preceding final action includes the consideration of public comments on today's proposal that may alter the final rule.

Title I—National Ambient Air Quality Standards and Stationary Source Requirements.

EPA has established national ambient air quality standards (NAAQS) for certain air pollutants for the protection of the public health ("primary" standards) and welfare ("secondary" standards). CAA section 109, 42 U.S.C. 7409. EPA establishes these standards after a thorough review of the latest scientific studies and literature indicating the kind and extent of identifiable effects on public health or welfare which may be expected from the presence of such pollutants in the ambient air in varying quantities. CAA section 108, 42 U.S.C. 7408. EPA has established health and welfare NAAQS for six different pollutants: ozone, carbon monoxide, particulate matter, sulfur dioxide, nitrogen dioxide, and lead. These standards are codified in 40 CFR Part 50.

Areas nationwide are "designated" based on whether they meet the NAAQS. Areas that do not meet the NAAQS are designated "nonattainment." CAA section 107, 42 U.S.C. 7407. States containing such areas are required to develop State implementation plans (SIPs) which must bring the areas into attainment as expeditiously as practicable. If EPA finalizes today's rule as proposed, Tribes may submit such implementation plans ("TIPs"). Title I contains general requirements that SIPs and, as appropriate, TIPs must meet (CAA section 110(a)(2), 42 U.S.C. 7410(a)(2)) as well as planning provisions (*e.g.*, inventorying of emissions) and control requirements applicable to existing stationary sources in nonattainment areas. CAA sections 171–192, 42 U.S.C. 7501–7514a.

EPA has issued detailed guidance that sets out its preliminary views on the implementation of the air quality planning requirements applicable to areas that are not in attainment with the NAAQS. This guidance is titled the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (or "General Preamble"). See 57 FR 13,498 (April 16, 1992) and 57 FR 18,070 (April 28, 1992). The General Preamble has been supplemented with further guidance on Title I requirements. See 57 FR 31,477 (July 16, 1992) (announcing the availability of draft guidance for

[1] The Clean Air Act is Chapter 85, Title 42 of the U.S. Code. The Titles of the Act are actually subchapters of the Code. To avoid confusion, these subchapters will be referred to herein as Titles of the Act.

lead nonattainment areas and serious PM–10 nonattainment areas); 57 FR 55,621 (Nov. 25, 1992) (guidance on NO_x RACT requirements in ozone nonattainment areas). EPA will likely issue further supplements to the General Preamble.

Title I also contains control requirements applicable to new (or modified) major stationary sources. "Major" sources are those emitting more than a certain amount of pollutant per year. Sources subject to the New Source Review ("NSR") or Prevention of Significant Deterioration ("PSD") requirements may not initiate construction, as it is defined under the law, without obtaining an NSR or PSD permit from the State or Tribe (or from EPA, if the State or Tribe has not been authorized by EPA to administer the program).

The nonattainment NSR permit program applies only in nonattainment areas. The Act directs EPA to require States and authorizes EPA to permit Tribes to develop NSR permit programs as part of their SIPs or TIPs. The NSR permit program requires strict control technology and emissions reductions from nearby sources to "offset" emissions released for proposed new (or modified) major stationary sources in nonattainment areas. *E.g.*, CAA section 173, 42 U.S.C. 7503.

The PSD program applies to certain new or modified major stationary sources in areas that currently have air quality meeting the NAAQS. To prevent the air quality in these areas from significantly deteriorating, the Clean Air Act requires States in such clean air areas to develop permit programs that impose control requirements on new or modified major stationary sources. The permit program must also require an assessment of the air quality impacts of proposed sources to ensure that new sources will not cause or contribute to an exceedance of the NAAQS or certain allowed "increments" of air quality degradation. CAA sections 160–169, 42 U.S.C. 7470–7479. Since all areas of the country meet at least one of the NAAQS, all States are required to have a PSD program for areas within their jurisdiction. EPA administers PSD programs for States that have failed to submit approvable programs. In today's action, EPA is proposing to authorize Tribes to submit PSD programs for EPA approval.

There is also a minor source permit program, under CAA section 110(a)(2)(C), 42 U.S.C. 7410(a)(2)(C), and 40 CFR 51.160–164 which requires SIPs to include a program regulating the modification and construction of any stationary source, regardless of size or attainment status, as necessary to assure that the NAAQS are achieved. In today's action, EPA is proposing to authorize Tribes to include minor source permit programs as part of their TIPs in the same manner as States.

Finally, EPA also issues new source performance standards ("NSPS") that affected new or modified stationary sources must meet in both attainment and nonattainment areas. States are required to submit, and EPA is proposing that Tribes be authorized to submit, plans similar to SIPs or TIPs that provide for the implementation and enforcement of certain requirements for certain pollutants regulated by NSPS. CAA sections 111(d), 129, 42 U.S.C. 7411(d), 7429.

Conformity. Section 176 of the Act, 42 U.S.C. 7506, prohibits Federal agencies from supporting or providing financial assistance for activities that do not conform to an approved SIP or TIP. The restriction extends to State, Tribal and local transportation plans or projects that are approved or funded by a Federal agency.

Visibility. Title I also requires States in which certain mandatory "class I" Federal areas (certain national parks, wildernesses and international parks as specified in section 162(a), 42 U.S.C. 7472(a)) are located, or States whose emissions may affect such areas, to include provisions in their SIPs to remedy and prevent visibility impairment in those areas. CAA sections 169A & 169B, 42 U.S.C. 7491 & 7492. In today's action, EPA is proposing to authorize Tribes to submit visibility TIPs.

Interstate Pollution Provisions. Section 126 of the Act, 42 U.S.C. 7426, authorizes States to petition the Administrator to find that a major source or group of stationary sources in one State emits air pollutants that contribute significantly to nonattainment, interfere with maintenance of the NAAQS, or interfere with measures under the PSD or visibility protection programs in another State. See also section 110(a)(2)(D) of the Act. EPA is proposing that these provisions apply to Tribes in the same fashion that they apply to States so that a Tribe or State may take such action to remedy pollution from an upwind Tribe or State.

In addition, sections 169B, 176A and 184, 42 U.S.C. 7492, 7506a & 7511c, were added to the Act in the 1990 Amendments and contain provisions for cooperatively addressing interstate pollution problems. These provisions authorize (and, in some instances, direct) the establishment of interstate transport commissions to address regionwide visibility impairment, ozone pollution and other NAAQS pollution issues. The Governors of the affected States (or their designees) represent the State members of the commissions. Generally, the commissions develop and transmit recommendations to EPA on the specific issues the commissions are charged with addressing. Thus, the commissions provide a vehicle for facilitating interstate cooperation and input in addressing air pollution problems that require a regional solution due to pollutant transport across political boundaries. In today's action, EPA is proposing to extend this authority to Tribes. Among other things, Tribes would be authorized to petition the Administrator for establishment of commissions and Tribal leaders included in commission membership in the same fashion as State leaders.

Hazardous Air Pollutants. The provisions governing the emissions of hazardous air pollutants are also contained in Title I. EPA is directed to issue control technology standards ("maximum achievable control technology" or "MACT") covering 189 hazardous air pollutants. CAA section 112, 42 U.S.C. 7412. Section 112 also contains provisions to prevent and minimize the consequences of accidental releases of, among other things, extremely hazardous substances. States or, as proposed today, Tribes may develop and submit to EPA for approval, programs implementing both the hazardous air pollutant emission standards and accidental release requirements.

Enforcement and Information Collection. The Clean Air Act general Federal enforcement provisions are contained in Title I. Section 113 of the CAA, 42 U.S.C. 7413, authorizes the imposition of both civil and criminal penalties for violation of Clean Air Act requirements. It also contains provisions authorizing EPA to pay cash awards to persons furnishing information leading to a criminal conviction or certain civil penalties.

Section 114 of the Act, 42 U.S.C. 7414, contains provisions granting EPA broad authority to require, among other things, recordkeeping, monitoring and right of entry and inspection. It also contains provisions authorizing EPA to delegate this authority to States and, as proposed in today's rule, Tribes.

Federal Facilities. Section 118 of the CAA, 42 U.S.C. 7418, provides that Federal facilities must comply with all Federal, State and local air pollution requirements to the same extent as nongovernmental agencies unless expressly exempted by the President. EPA is proposing to extend this

authority to Tribal air pollution requirements.

Financial Assistance. The provisions governing the issuance of Federal financial assistance to air pollution control agencies are set out in Title I. CAA sections 103 & 105, 42 U.S.C. 7403 & 7405. The phrase "air pollution control agency" for this purpose is, in turn, defined in CAA section 302(b), 42 U.S.C. 7602(b), and expressly includes "[a]n agency of an Indian tribe." An "Indian tribe" is defined in CAA section 302(r). See discussion below under Title III/Definitions. Issues associated with the award of Federal financial assistance to Tribes are addressed in more detail in the **SUPPLEMENTARY INFORMATION** section of this notice.

Title II—Mobile Sources

This Title contains the provisions of the Clean Air Act addressing mobile sources (e.g., automobiles, trucks, off-road vehicles). It contains provisions addressing motor vehicle emission standards as well as standards for aircraft and non-road vehicles and engines. *See, e.g.*, CAA sections 202, 213 & 231, 42 U.S.C. 7521, 7547 & 7571. It also provides for the regulation of motor vehicle and other fuels, including registration requirements, requirements for new fuels and fuel additives as well as provisions for reformulated gasoline and low sulfur diesel fuel. CAA section 211, 42 U.S.C. 7545.

Significant provisions of this Title preempt in whole or in part the issuance of State standards. For example, section 209 of the CAA, 42 U.S.C. 7543, precludes any State or political subdivision from controlling emissions from new motor vehicles. EPA may waive this prohibition for California, and other States may adopt California standards. CAA sections 209(b) & 177, 42 U.S.C. 7543 & 7507. Similarly, except in limited circumstances, States are precluded from enforcing controls on motor vehicle fuels that are different from those required by EPA. CAA section 211(c)(4), 42 U.S.C. 7545(c)(4). Therefore, the motor vehicle and fuel requirements in Title II generally are issued and administered by EPA unless the statute contemplates and a State qualifies for special treatment or waiver of the preemption provisions.

However, some Title II provisions are administered by the States through the SIP system established under Title I. For example, States containing certain carbon monoxide and ozone nonattainment areas are required to develop and submit to EPA for approval a SIP revision establishing a clean-fuel vehicle program for motor vehicle fleets. CAA section 246, 42 U.S.C. 7586. States containing certain carbon monoxide nonattainment areas are required to develop and submit to EPA for approval a SIP revision establishing an oxygenated gasoline program. CAA section 211(m), 42 U.S.C. 7545(m). In today's action, EPA is proposing to extend this State-implemented authority to Tribes.

Title III—Citizen Suits

Section 304 of the Act, 42 U.S.C. 7604, authorizes any person who provides the minimum required advance notice to bring a civil action against: any person, including any governmental entity or agency, who is in violation of an emission limit; the Administrator of EPA where he or she fails to carry out a non-discretionary duty under the Clean Air Act or has unreasonably delayed agency action; any person who proposes to construct or constructs any new or modified major stationary source without a NSR or PSD permit that meets the requirements of the Act (described previously); and any person who is alleged to be in violation of such permit. The term "person" "includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof." Section 302(e), 42 U.S.C. 7602(e). The Federal district courts are granted jurisdiction over such legal action. In today's action, EPA is proposing that Tribes be subject to these provisions in the same manner that States are.

Judicial Review of Final Agency Action. Section 307(b), 42 U.S.C. 7607(b), contains the provisions governing judicial review of final agency action issuing or approving regulations. Section 307(b) specifies in which U.S. Court of Appeals an action is to be brought and by what date a petition for review must be filed with the appropriate Court of Appeals.

Definitions. Section 302, 42 U.S.C. 7602, contains definitions for many of the terms used in the Clean Air Act. The term "Indian tribe" is among the terms defined in this section and is defined as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." CAA section 302(r). Not all of the CAA definitions are set out in section 302. Terms often are defined in the specific Titles in which they appear.

Outer Continental Shelf. Section 328, 42 U.S.C. 7627, provides for regulation of sources located on the Outer Continental Shelf (OCS) offshore all the States except Texas, Louisiana, Mississippi and Alabama. These sources must comply with EPA's rule on OCS requirements, which generally set forth requirements that are the same as the applicable requirements in the corresponding onshore area that pertain to the attainment and maintenance of ambient air quality standards and to PSD. If States develop and submit to EPA an adequate program, EPA can delegate implementation and enforcement of these provisions to States. EPA is proposing to extend such authority to Tribes in today's action.

Title IV—Acid Deposition.

This program calls for phased nationwide emission reductions in sulfur dioxide (SO_2) of approximately 10 million tons from 1980 levels from fossil fuel-fired electric utility units. These reductions are achieved through the purchase and sale of a fixed number of SO_2 "allowances." Each allowance entitles the holder to emit one ton of SO_2. Through this emissions trading program, owners of "affected" units that can reduce emissions efficiently can sell excess allowances to owners of units where it is more costly to obtain the required reductions, thereby achieving emissions reductions in a cost-effective manner.

The acid rain program also calls for reductions in nitrogen oxides of approximately 2 million tons from 1980 levels from coal-fired electric utility units. These reductions are obtained by requiring affected sources to comply with certain emission limitations. In many situations, compliance may be demonstrated by averaging the emissions among different utility units.

The Title IV program is a Federal program during Phase I, from 1995—1999. However, during Phase II, which begins in the year 2000, States will issue the acid precipitation portion of the operating permits addressed below under Title V. 42 U.S.C. 7651–7651o. In today's rule, EPA is proposing to extend this Phase II permitting authority to Tribes.

Title V—Operating Permits Program.

Title V of the Act requires States to develop and submit to EPA an operating permit program.[2] Title V calls for the permitting of certain sources by certain deadlines. Operating permits are to contain all of the Clean Air Act requirements applicable to such

[2] Note that this operating permit program is not the same as the NSR and PSD permit programs described previously that, by contrast, require construction permits.

sources. The program is intended to promote regulatory certainty and enforceability. Title V also provides for the collection of fees by the permitting agency that reflect the reasonable costs of the permit program. 42 U.S.C. 7661–7661e. EPA has issued rules specifying the minimum requirements for State permit programs. 57 FR 32,250 (July 21, 1992). EPA is proposing to extend Title V operating permit program authority to Tribes in today's rule.

Small Business Assistance Program. Title V also contains provisions requiring States to adopt a small business stationary source technical and environmental compliance assistance program, which is to be incorporated into the SIP described under Title I. 42 U.S.C. 7661f. EPA is proposing to authorize Tribes to submit such assistance programs.

Title VI—Phaseout of Ozone-Depleting Chemicals.

This Title provides for the phase-out of the production of certain substances that deplete stratospheric ozone as well as providing other restrictions on the use of such substances. It is a Federally established and federally managed program. 42 U.S.C. 7671–7671q. Among other things, it implements the Montreal Protocol, a multinational agreement addressing damage to stratospheric ozone.

Addendum B—List of EPA Regional Offices

Region 1
Environmental Protection Agency, John F. Kennedy Federal Building, One Congress Street, Boston, MA 02203, (617) 565–3420
Air, Pesticides and Toxics Management Division, (617) 565–3800
Region 2
Environmental Protection Agency, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, NY 10278, (212) 264–2657
Air and Waste Management Division, (212) 264–2301
Region 3
Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–9800
Air, Radiation and Toxics Division, (215) 597–9390
Region 4
Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, GA 30365, (404) 347–4727
Air, Pesticides and Toxics Management Division, (404) 347–3043
Region 5
Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 353–2000
Air and Radiation Division, (312) 393–1661
Region 6
Environmental Protection Agency, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue 12th Floor Suite 1200, Dallas, TX 75202–2733, (214) 655–6444
Air Pesticides and Toxics Division, (214) 655–7200
Region 7
Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7000
Air and Toxics Division, (913) 551–7020
Region 8
Environmental Protection Agency, 999 18th Street Suite 500, Denver, CO 80202–2405, (303) 293–1603
Air and Toxics Division (303) 293–0946
Region 9
Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1305
Air and Toxics Division, (415) 744–1219
Region 10
Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–4973
Air and Toxics Division, (206) 553–1152

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

PART 35—STATE AND LOCAL ASSISTANCE

1. The authority cite for part 35, subpart A, continues to read as follows:

Authority: Secs. 105 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7405 and 7601(a)); Secs. 106, 205(g), 205(j), 208, 319, 501(a), and 518 of the Clean Water Act, as amended (33 U.S.C. 1256, 1285(g), 1285(j), 1288, 1361(a) and 1377); secs. 1443, 1450, and 1451 of the Safe Drinking Water Act (42 U.S.C. 300j-2, 300j-9 and 300j-11); secs. 2002(a) and 3011 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6912(a), 6931, 6947, and 6949); and secs. 4, 23, and 25(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136(b), 136(u) and 136w(a)).

2. Section 35.105 is amended by revising the definitions for "Eligible Indian Tribe", "Federal Indian reservation", and the first definition for "Indian Tribe", and by removing the second definition for "Indian Tribe" to read as follows:

§ 35.105 Definitions.

* * * * *

Eligible Indian Tribe means:

(1) For purposes of the Clean Water Act, any federally recognized Indian Tribe that meets the requirements set forth at 40 CFR 130.6(d); and

(2) For purposes of the Clean Air Act, any federally recognized Indian Tribe that meets the requirements set forth at § 35.220.

Federal Indian reservation means for purposes of Clean Water Act or the Clean Air Act, all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Indian Tribe means:

(1) Within the context of the Public Water System Supervision and Underground Water Source Protection grants, any Indian Tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over a defined area.

(2) For purposes of the Clean Water Act, any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

(3) For purposes of the Clean Air Act, any Indian Tribe, band, nation, or other organized group or community, including any Alaskan Native Village, which is recognized by the Secretary of the Interior and which exercises governmental authority over a Federal Indian reservation or other defined area.

* * * * *

3. Section 35.205 is amended by adding a sentence to the end of paragraphs (a) and (b) to read as follows:

§ 35.205 Maximum Federal share.

(a) * * * For Indian tribes establishing eligibility pursuant to § 35.220, the Regional Administrator may provide financial assistance to in an amount up to _____ (amount to be determined) of the approved costs of planning, developing, establishing, or improving an air pollution control, and up to _____ (amount to be determined) of the approved costs of maintaining that program."

(b) * * * The Regional Administrator may provide agencies of one or more tribes that have established eligibility pursuant to § 35.220 which have substantial responsibility for carrying out an applicable implementation plan under section 110 of the Clean Air Act up to _____ (amount to be determined) of the approved costs of planning, developing, establishing, or approving

an air pollution control program and up to _____ (amount to be determined) of the approved costs of maintaining that program.

4. Section 35.210 is amended by adding a paragraph (c) to read as follows:

§ 35.210 Maintenance of effort.

* * * * *

(c) The requirements of paragraphs (a) and (b) of this section shall not apply to Indian tribes that have established eligibility pursuant to § 35.220.

5. Section 35.215 is revised to read as follows:

§ 35.215 Limitations.

(a) The Regional Administrator will not award section 105 funds to an interstate, intertribal or intermunicipal agency which does not provide assurance that it can develop a comprehensive plan for the air quality control region which includes representation of appropriate State, interstate, local, and international interests.

(b) The Regional Administrator will not award section 105 funds to a local, interstate, or intermunicipal agency without consulting with the appropriate official designated by the Governor or Governors of the State or States affected or the appropriate official of any affected Indian tribe or tribes.

(c) The Regional Administrator will not disapprove an application for or terminate or annul an award of section 105 funds without prior notice and opportunity for a public hearing in the affected State or area within Tribal jurisdiction or in one of the affected States or areas within Tribal jurisdiction if several are affected.

6. Section 35.220 is added just before the center heading "Water Pollution Control (Section 106)" to read as follows:

§ 35.220 Eligible Indian Tribes.

The Administrator may make Clean Air Act section 105 grants to eligible Indian tribes without requiring the same cost share that would be required if such grants were made to states. Instead grants to eligible tribes will include a cost share of _____ (amount to be determined).

(a) An Indian tribe is eligible to receive such assistance if it has demonstrated eligibility to be treated in the same manner as a State under 40 CFR 49.6.

(b) A tribe that has not made a demonstration under 40 CFR 49.6 is eligible for financial assistance under 42 U.S.C. 7405 and 7602(b)(1) if:

(1) The Indian tribe has a governing body carrying out substantial duties and powers.

(2) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the boundaries of an Indian reservation or other areas within the tribe's jurisdiction.

(3) The Indian tribe is reasonably expected to be capable, in the judgment of the Regional Administrator, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Air Act and applicable regulations.

(c) The Administrator shall process a tribal application for financial assistance under this section in a timely manner.

7. Part 49 is added to read as follows:

PART 49—TRIBAL CLEAN AIR ACT AUTHORITY

Sec.

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

§ 49.1 Program overview.

(a) The regulations in this part identify those provisions of the Clean Air Act (Act) for which Indian Tribes are treated in the same manner as States. In general, these regulations authorize eligible Tribes to have the same rights as States under the Clean Air Act and authorize EPA approval of Tribal air quality programs meeting the applicable minimum requirements of the Act.

(b) Nothing in this part shall prevent an Indian Tribe from establishing additional or more stringent air quality protection requirements not inconsistent with the Act.

§ 49.2 Definitions.

Clean Air Act or *Act* means those statutory provisions in the United States Code at 42 U.S.C. 7401, *et seq.*

Federal Indian Reservation, Indian Reservation or *Reservation* means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Indian Tribe or *Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indian Tribe Consortium or *Tribal Consortium* means a group of two or more Indian Tribes.

State means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

§ 49.3 General Tribal Clean Air Act authority.

Tribes meeting the eligibility criteria of § 49.6 shall be treated in the same manner as States with respect to all provisions of the Clean Air Act and implementing regulations, except for those provisions identified in § 49.4 and the regulations that implement those provisions.

§ 49.4 Clean Air Act provisions inapplicable to Tribes.

The following provisions of the Clean Air Act and any implementing regulations are not applicable to Tribes:

(a) Specific plan submittal and implementation deadlines for NAAQS-related requirements, including but not limited to such deadlines in sections 110(a)(1), 172(a)(2), 182, 187, 189, 191 of the Act.

(b) The specific deadlines associated with the review and revision of implementation plans related to major fuel burning sources in section 124 of the Act.

(c) The mandatory imposition of sanctions under section 179 of the Act because of a failure to submit an implementation plan or required plan element by a specific deadline, or the submittal of an incomplete or disapproved plan or element.

(d) The "within 2 years" clause in section 110(c)(1) of the Act. The inapplicability of this specific clause does not in any way curtail the general authority delegated to the Administrator under section 110(c)(1) to issue a Federal implementation plan upon the failure of a Tribe to make a required submission, upon a finding that the plan or plan revision submitted by a Tribe is incomplete or in response to EPA's disapproval of a Tribal implementation plan in whole or in part.

(e) Specific visibility implementation plan submittal deadlines established under section 169A of the Act.

(f) Specific implementation plan submittal deadlines related to interstate commissions under sections 169B(e)(2), 184(b)(1) & (c)(5) of the Act. For eligible Tribes participating as members of such Commissions, the Administrator shall establish those submittal deadlines that are determined to be practicable or, as with other non-participating Tribes in an affected transport region, provide for Federal implementation of necessary measures.

(g) Any provisions of the Act requiring as a condition of program approval the demonstration of criminal enforcement authority or any provisions of the Act providing for the delegation of such criminal enforcement authority. Tribes seeking approval of a Clean Air Act program requiring such demonstration may receive program approval if they meet the requirements for enforcement authority established under § 49.8.

(h) The specific deadline for the submittal of operating permit programs in section 502(d)(1) of the Act.

(i) The mandatory imposition of sanctions under section 502(d)(2)(B) because of failure to submit an operating permit program or EPA disapproval of an operating permit program submittal in whole or part.

(j) The "2 years after the date required for submission of such a program under paragraph (1)" clause in section 502(d)(3) of the Act. The inapplicability of this specific clause does not in any way curtail the general authority delegated to the Administrator under section 502(d)(3) to promulgate, administer and enforce a Federal operating permit program for a Tribe not having a program that has been approved in whole.

(k) Section 502(g), which authorizes a limited interim approval of an operating permit program that substantially meets the requirements of Title V, but is not fully approvable.

(l) The provisions of section 503(c) that direct permitting authorities to establish a phased schedule assuring that at least one-third of the permit applications submitted within the first full year after the effective date of an operating permit program (or a partial or interim program) will be acted on by the permitting authority over a period of not to exceed three years after the effective date.

(m) The provisions of section 507(a) that specify a deadline for the submittal of plans for establishing a small business stationary source technical and environmental compliance assistance program.

(n) The provisions of section 507(e) that direct the establishment of a Compliance Advisory Panel.

§ 49.5 Tribal requests for inapplicability of additional Clean Air Act provisions.

Any Tribe may request that the Administrator specify additional provisions of the Clean Air Act for which it would be inappropriate to treat Tribes in the same manner as States. Such request should clearly identify the provisions at issue and should be accompanied with an explanation why it is inappropriate to treat Tribes in the same manner as States with respect to such provisions.

§ 49.6 Tribal eligibility requirements.

Sections 301(d)(2) and 302(r), 42 U.S.C. 7601(d)(2) and 7602(r), authorize the Administrator to treat an Indian Tribe in the same manner as a State for the Clean Air Act provisions identified in § 49.3 if the Indian Tribe meets the following criteria:

(a) The applicant is an Indian Tribe recognized by the Secretary of the Interior,

(b) The Indian Tribe has a governing body carrying out substantial governmental duties and functions,

(c) The functions to be exercised by the Indian Tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the Tribe's jurisdiction, and

(d) The Indian Tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Air Act and all applicable regulations.

§ 49.7 Request by an Indian Tribe for eligibility determination and Clean Air Act program approval.

(a) An Indian Tribe may apply to the EPA Regional Administrator for a determination that it meets the eligibility requirements of § 49.6 for Clean Air Act program authorization. The application shall concisely describe how the Indian Tribe will meet each of the requirements of § 49.6 and should include the following information:

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

(2) A descriptive statement demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area. This statement should:

(i) Describe the form of the Tribal government;

(ii) Describe the types of government functions currently performed by the Tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(iii) Identify the source of the Tribal government's authority to carry out the governmental functions currently being performed.

(3) A descriptive statement of the Indian Tribe's authority to regulate air quality. For applications covering areas within the exterior boundaries of the applicant's Reservation the statement must identify with clarity and precision the exterior boundaries of the reservation including, for example, a map and a legal description of the area. For Tribal applications covering areas outside the boundaries of the applicant's Reservation the statement should include:

(i) A map or legal description of the area over which the application asserts authority.

(ii) A statement by the applicant's legal counsel (or equivalent official) which describes the basis for the Tribe's assertion of authority (including the nature or subject matter of the asserted regulatory authority) which may include a copy of documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of authority.

(4) A narrative statement describing the capability of the applicant to effectively administer any Clean Air Act program for which the Tribe is seeking approval. The narrative statement must demonstrate the applicant's capability consistent with the applicable provisions of the Clean Air Act and implementing regulations and, if requested, may include:

(i) A description of the Indian Tribe's previous management experience which may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101, *et seq.*), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a);

(ii) A list of existing environmental or public health programs administered by the Tribal governing body and a copy of related Tribal laws, policies, and regulations;

(iii) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government;

(iv) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary responsibility for administering a Clean Air Act program (including a description of the relationship between the existing or proposed agency and its regulated entities);

(v) A description of the technical and administrative capabilities of the staff to administer and manage an effective air quality program or a plan which proposes how the Tribe will acquire administrative and technical expertise. The plan should address how the Tribe will obtain the funds to acquire the administrative and technical expertise.

(5) A Tribe that is a member of a Tribal consortium may rely on the expertise and resources of the consortium in demonstrating under paragraph (a)(4) of this section that the Tribe is reasonably expected to be capable of carrying out the functions to be exercised consistent with § 49.6(a)(4). A Tribe relying on a consortium in this manner must provide reasonable assurances that the Tribe has responsibility for carrying out necessary functions in the event the consortium fails to.

(6) Where applicable Clean Air Act or implementing regulatory requirements mandate criminal enforcement authority, an application submitted by an Indian Tribe may be approved if it meets the requirements of § 49.8.

(7) Additional information required by the EPA Regional Administrator which, in the judgment of the EPA Regional Administrator, is necessary to support an application.

(8) Where the applicant has previously received authorization for a Clean Air Act program or for any other EPA-administered program, the applicant need only identify the prior authorization and provide the required information which has not been submitted in the previous application.

(b) A Tribe may simultaneously submit a request for an eligibility determination and a request for approval of a Clean Air Act program.

(c) A request for Clean Air Act program approval must meet any applicable Clean Air Act statutory and regulatory requirements and may contain any reasonable portion of a Clean Air Act program to the extent not inconsistent with applicable statutory and regulatory requirements.

§ 49.8 Provisions for Tribal criminal enforcement authority.

To the extent that an Indian Tribe is precluded from asserting criminal enforcement authority, the Federal government will exercise primary criminal enforcement responsibility. The Tribe, with the EPA Region, shall develop a procedure by which the Tribal agency will refer potential criminal violations to the EPA Regional Administrator, as agreed to by the parties, in an appropriate and timely manner. This procedure shall encompass all circumstances in which the Tribe is incapable of exercising applicable enforcement requirements as provided in § 49.7(a)(6). This agreement shall be incorporated into a Memorandum of Agreement with the EPA Region.

§ 49.9 EPA review of Tribal Clean Air Act applications.

(a) The EPA Regional Administrator shall process a request of an Indian Tribe submitted under § 49.7 in a timely manner. The EPA Regional Administrator shall promptly notify the Indian Tribe of receipt of the application.

(b) Within 30 days of receipt of an Indian Tribe's initial, complete application, the EPA Regional Administrator shall notify all appropriate governmental entities.

(1) For Tribal applications addressing air resources within the exterior boundaries of the Reservation, EPA's notification of other governmental entities shall specify the geographic boundaries of the Reservation.

(2) For Tribal applications addressing off-reservation areas, EPA's notification of other governmental entities shall include the substance and bases of the Tribe's assertions that it meets the requirements of § 49.6(a)(3).

(c) The governmental entities shall have 15 days to provide written comments to EPA's Regional Administrator regarding any dispute concerning the boundary of the Reservation. Where a Tribe has asserted jurisdiction over off-reservation lands, appropriate governmental entities may request a single 15-day extension to the general 15-day comment period.

(d) In all cases, comments must be timely, limited to the scope of the Tribe's jurisdictional assertion, and clearly explain the substance, bases and extent of any objections. If a Tribe's assertion is subject to a conflicting claim, the EPA Regional Administrator may request additional information and may consult with the Department of the Interior.

(e) The EPA Regional Administrator shall decide the scope of the Tribe's jurisdiction. If a conflicting claim cannot be promptly resolved, the EPA Regional Administrator may approve that portion of an application addressing all undisputed areas.

(f) A determination by the EPA Regional Administrator concerning the boundaries of a Reservation or Tribal jurisdiction over other off-reservation areas shall apply to all future Clean Air Act applications from that Tribe or Tribal consortia and no further notice of governmental entities as provided in paragraph (b) of this section shall be provided, unless the application presents different jurisdictional issues or significant new factual or legal information relevant to jurisdiction is presented to the EPA Regional Administrator.

(g) If the EPA Regional Administrator determines that a Tribe meets the requirements of § 49.6, the Indian Tribe is eligible to be treated in the same manner as a State for those Clean Air Act provisions identified in § 49.3. The eligibility will extend to all areas within the exterior boundaries of the Tribe's reservation, as determined by the EPA Regional Administrator, and any other areas the EPA Regional Administrator has determined to be within the Tribe's jurisdiction.

(h) A Tribal application containing a Clean Air Act program submittal will be reviewed by EPA in the same procedural and substantive manner as EPA would review a similar State submittal.

(i) The EPA Regional Administrator shall return an incomplete or disapproved application for eligibility or program approval to the Tribe with a summary of the deficiencies.

§ 49.10 EPA review of State Clean Air Act programs.

A State Clean Air Act program submittal shall not be disapproved because of failure to address air resources within the exterior boundaries of an Indian Reservation or other areas within the jurisdiction of an Indian Tribe.

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

8. The authority citation for part 50 is revised to read as follows:

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

9. Section 50.1 is amended by adding paragraph (i) to read as follows:

§ 50.1 Definitions.

* * * * *

(i) *Indian country* is as defined in 18 U.S.C. 1151.

10. Section 50.2 is amended by revising paragraphs (c) and (d) to read as follows:

§ 50.2 Scope.

* * * * *

(c) The promulgation of national primary and secondary ambient air quality standards shall not be considered in any manner to allow significant deterioration of existing air quality in any portion of any State or Indian country.

(d) The proposal, promulgation, or revision of national primary and secondary ambient air quality standards shall not prohibit any State or Indian Tribe from establishing ambient air quality standards for that State or Indian Tribe or any portion thereof which are more stringent than the national standards.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

11. The authority citation for part 81 is revised to read as follows:

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

12. Section 81.1 is amended by revising paragraph (a) and adding new paragraphs (c), (d) and (e) as follows:

§ 81.1 Definitions.

* * * * *

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

* * * * *

(c) *Federal Indian Reservation, Indian Reservation or* Reservation means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

(d) *Indian Tribe* or *Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(e) *State* means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

Subpart C—Section 107 Attainment Status Designations

13. The authority citation for subpart C, part 81 is revised to read as follows:

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

§ 81.300 [Amended]

14. Section 81.300(a) is amended by revising the words "Both the State and EPA can initiate changes to these designations, but any State" to read "A State, an Indian Tribe determined eligible for such functions under 40 CFR part 49, and EPA can initiate changes to these designations, but any State or Tribal redesignation must be submitted to EPA for concurrence."

[FR Doc. 94–20811 Filed 8–24–94; 8:45 am]

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Thursday
August 25, 1994

Part IV

Department of Education

34 CFR Part 647
Ronald E. McNair Postbaccalaureate Achievement Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 647

RIN 1840–AB65

Ronald E. McNair Postbaccalaureate Achievement Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary establishes regulations to govern the Ronald E. McNair Postbaccalaureate Achievement Program (McNair). The regulations are needed to implement statutory changes made to the McNair program by the Higher Education Amendments of 1992 and the Higher Education Technical Amendments Act of 1993. These regulations also codify those policies and practices that have been used in the requirements governing the program for the past four years. Previously, the McNair program has been administered using only the program statute and the Education Department General Administrative Regulations (EDGAR).

EFFECTIVE DATE: These regulations take effect on or before October 11, 1994 or later if the Congress takes certain adjournments, except that compliance is not required with the information collection requirements in § 647.21, 647.22, and 647.32 until the information collection requirements contained in these sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Eileen S. Bland, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 5065, Washington, D.C. 20202–5249. Telephone: (202) 708–4804. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purposes and allowable activities of the McNair program support the National Education Goals. Specifically, the program funds projects designed to increase the number of United States undergraduate and graduate students, especially minorities, who complete advanced degrees in numerous disciplines, including the fields of mathematics and science, and the proportion of graduates equipped with the capacity for advanced critical analysis and problem solving.

On December 2, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for the McNair program in the **Federal Register** (58 FR 63870). In this notice the Secretary solicited public comment on the proposed regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 17 persons submitted comments on the proposed regulations. The following is an analysis of the comments and the changes in the regulations since publication of the NPRM. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes made to the language published in the NPRM—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

Who is Eligible for a Grant? (Section 647.2)

Comment: The Secretary received one comment regarding eligible applicants under this program. The commenter encouraged the Secretary to include "disciplinary groups" such as professional associations and public or private agencies or organizations or combinations of these groups as eligible applicants under the McNair program. The commenter indicated that these groups are included as eligible under section 402A of the Higher Education Act of 1965 as amended (HEA) and that the Department is being overly restrictive in this limitation.

Discussion: The Secretary believes § 647.2 of these regulations accurately reflects section 402E of the HEA which authorizes the McNair program. While section 402A of the HEA denotes the full complement of eligible applicants for all Federal TRIO Programs, institutions of higher education and combinations of those institutions are generally the only entities that can provide McNair program services. Further, section 402E(d) of the HEA provides for specific award considerations for institutions of higher education. However, applicants are encouraged to solicit and encourage the participation and coordination of professional associations, both private and public, to further enhance the quality of the services to be provided to the eligible participants.

Changes: None.

Who Is Eligible To Participate in a McNair Grant? (Section 647.3)

Comments: Many commenters suggested that the Secretary change § 647.3 by deleting the eligibility requirement that students must have completed their sophomore year of study to participate in the McNair program. The commenters felt that this requirement was overly restrictive and placed an additional eligibility requirement that went beyond legislative intent. Further, the commenters felt that early intervention, even at the freshman level, may provide the program participants with necessary information and motivation necessary to make future educational choices and decisions.

Discussion: The Secretary has determined that the requirement that students must have completed their sophomore year of study before they are eligible to participate in the McNair program is overly restrictive and has deleted the requirement. However, because of the small size of the McNair program (less than 70 grants nationwide and under 2,000 participants currently), the Secretary encourages grantees to focus project services on students in their junior and senior years of undergraduate study. Thus, the Secretary prefers to see the emphasis of the McNair program placed on students who have completed the general college-wide requirements and are ready to select their major fields of study. Nevertheless, the Secretary will not absolutely preclude freshmen and sophomores from participation in the McNair program. Grantees are advised that recipients of summer research internships must have completed their sophomore year. It should be noted that a companion program, Student Support Services, emphasizes the provision of academic support services to freshmen and sophomore students, including mentoring and counseling, to encourage enrollment in postbaccalaureate programs of study.

Changes: The requirement that students must have completed their sophomore year of study to be eligible to participate in the McNair program has been deleted except with regard to summer research internships.

Comments: Several commenters questioned whether the proposed regulations would allow students enrolled at the master's level of studies to participate in the McNair program.

Discussion: The proposed regulations do not preclude the participation of students enrolled in master's level studies. However, given the types of activities and services normally

provided by the McNair program, the Secretary anticipates that students at the master's level of study probably have received effective preparation for doctoral studies.

Changes: None.

How Long Is a Project Period? (Section 647.5)

Comment: The Secretary received one comment regarding whether the four-to-five year grant award cycles would be made retroactive to include the grantees currently funded under the McNair program.

Discussion: Grant awards made in FY 1995 will be for either four or five years, depending upon the peer review score received by applicants in the competition. The grant award cycle for currently funded grantees under the McNair program will not be modified.

Changes: None.

What Definitions Apply? (Section 647.7)

Comment: One commenter suggested that the definition for *first-generation college student* might be clarified by utilizing the language agreed upon in the Talent Search Program for the similar definition of *potential first-generation college student* (§ 643.7).

Discussion: The Secretary agrees with the commenter.

Changes: The definition of *first-generation college student* has been revised to reflect the definition of that term in the Talent Search Program regulations.

Comments: None.

Discussion: The Secretary has reviewed the regulations since the publication of the NPRM and has determined that providing information on what groups are underrepresented in graduate education is beneficial to all prospective applicants. However, there is no need to define both *Individuals from groups underrepresented in graduate education,* and *Groups underrepresented in graduate education.*

Changes: The definition of "Individuals from groups underrepresented in graduate education" has been deleted and replaced with the definition of "Groups underrepresented in graduate education."

Further, an additional definition has been added to this section for "target population." Applicants are asked to provide information on their proposed "target population" under the "Need" criterion, which was revised in response to comments that the criterion not be restricted to an applicant's student population.

Comments: Several commenters questioned the definition of *summer internship.* Exception was taken to the phrase, "* * * that normally will occur between the junior and senior year * * *" because it appears restrictive and one commenter suggested that the term "experienced practitioner" be defined.

Discussion: The Secretary disagrees that the definition of this term could be interpreted as requiring that a summer internship take place only between a student's junior and senior years but decided to delete the phrase nevertheless.

Changes: The definition of "summer internship" has been revised, and the Secretary has replaced the term "experienced practitioners" with "experienced faculty researchers."

How Does the Secretary Decide which New Grants to Make? (Section 647.20)

Comments: Two commenters observed that the eight point maximum prior experience score conflicts with the language included in the Higher Education Technical Amendments of 1993.

Discussion: The Secretary has raised the maximum prior experience score to 15 points as required by a statutory change made by the Higher Education Technical Amendments Act of 1993.

Changes: The maximum score for all the criteria in § 647.22 is 15 points. Further, the Secretary has modified the maximum score for each criterion in that section to reflect the new total score.

Comments: One commenter objected to the provision that additional points, equal to 10 percent of the applicant's score, be awarded to applications from Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands and the Northern Mariana Islands. The commenter objected because the commenter believes it gives those applicants an unfair advantage.

Discussion: The requirement that priority be given to proposals submitted by the territories was deleted from the Higher Education Act by the Higher Education Technical Amendments Act of 1993.

Changes: The provision has been deleted from § 647.20(a) of the regulations.

Comments: Several commenters objected to § 647.20(c) of the proposed regulations, which describes how the Secretary awards grants when two or more applications receive identical scores and all of these applications cannot be funded. The commenters suggested that the use of a subjective selection factor such as geographical distribution was not impartial and could possibly be construed as setting a new precedent for other TRIO funding.

Discussion: The Secretary believes that a tie-breaker that takes into account underserved geographic areas is appropriate. The Secretary further believes this provision reflects congressional concern regarding equitable distribution of services to geographic areas and eligible populations that have been underserved by the program.

Changes: None.

What Selection Criteria Does the Secretary Use? (Section 647.21)

Comments: Several commenters questioned why the "Need" criterion is based on the eligibility of students at the applicant institution when the program legislation does not restrict an applicant's service area to its own student population.

Discussion: The Secretary agrees that the "Need" criterion as published could inadvertently restrict the applicant's service area.

Changes: Section 647.21(b) has been revised and reformatted to appear as § 647.21(a).

Comments: One commenter suggested that § 647.21(c)(2) would be strengthened by adding an objectives section, which would require the inclusion of information on specific process and outcome objectives relative to the purposes of the McNair program, their relevance in addressing the needs of the target group, and their clarity and attainability given the project budget and other resources.

Discussion: The Secretary has reviewed the proposed regulations and determined that the inclusion of process and outcome objectives would provide relevant information about the quality of the proposed project. Further, to avoid duplication or overlap of information requested, additional changes within the selection criteria have been made to delete the criterion, "*Meeting the purpose of the McNair program,*" to include a new criterion, "*Objectives,*" and to revise the criterion, "*Plan of Operation.*" Also included is a redistribution of the points that may be earned under each criterion.

Changes: Section 647.21 (b) and (c) has been modified to include a new criterion, "*Objectives,*" a revision of the "*Plan of Operation*" criterion, and a modification of the point distribution.

Comments: Several commenters suggested that § 647.21(c)(2) appeared to be overly restrictive by requesting information on time commitments for all employees of the project rather than

just those designated as "key" personnel.

Discussion: As a result of the overall modification of the program selection criteria, the Secretary has concentrated all personnel concerns in § 647.21(d) of the revised selection criteria.

Changes: Section 647.21 has been modified.

Comments: One commenter suggested that the "*Plan of Operation*" criterion failed to include language that mirrored section 402A(c)(6), which encourages coordination among TRIO programs and other programs for disadvantaged students regardless of their funding source.

Discussion: The Secretary is aware of the legislative language to coordinate programs for disadvantaged students and agrees that it should be addressed in the regulations. Therefore, the selection criteria, specifically § 647.21(c)(8), have been modified to include a request for pertinent information regarding any planned coordination activities.

Changes: Section 647.21(c)(2) has been redesignated as § 647.21(c)(8) and modified to include language requesting details of planned coordination activities by the applicant.

Comments: Several commenters objected to the inclusion of fee waivers or tuition waivers as requirements for funding consideration and point assignment included in § 647.21(e)(3).

Discussion: The Secretary has reviewed the pertinent section under § 647.21(e)(3) and has determined that the phrase in question is appropriate. The waiving of fees is not required as a condition of funding. Rather, the examples listed are but a few suggestions of the many kinds of support that could be construed as positive in nature and an indicator of institutional commitment.

Changes: None.

Comments: Several commenters questioned the requirement contained in the proposed plan of operation (§ 647.21(c)(4)(i)), which states that participants selected for the program be enrolled in programs of study in which a doctorate degree is the terminal degree. It was the consensus of the commenters that this language infers that students in some pre-professional programs (such as law or medical technology) might be ineligible for program participation.

Discussion: The Secretary has reviewed the criterion and the language in question has been deleted due to the overall modification of the plan of operation. However, it should be noted that the intent of section 402A describes the purpose of the McNair program as one that motivates and prepares students for doctoral programs. Thus, this may preclude some fields of study that terminate at the master's level and some preprofessional programs.

Changes: The plan of operation has been modified and the language in question has been deleted.

Comments: One commenter questioned the failure of the selection criteria to include the award considerations contained in section 402E(d)(3) of the HEA that called for consideration of students enrolled in projects authorized under this "section."

Discussion: The reference in section 402E(d)(3) to this "section" refers to section 402E of the HEA, which is the section authorizing the McNair Program. Therefore, since the only Federal TRIO Program that serves students already enrolled in institutions of higher education is the Student Support Services program, the Secretary has interpreted that section as applying to the Student Support Services program and has revised § 647.21(c)(3) accordingly.

Changes: Section 647.21(c)(3) has been revised and redesignated as § 647.21(c)(1).

How Does the Secretary Evaluate Prior Experience? (Section 647.22)

Comments: One commenter suggested that the consideration of information relevant to the previous five years of funding prior to the fiscal year under funding consideration provided an insufficient time frame to determine the relative success of projects in encouraging students to enter doctoral study. The commenter suggested that seven to ten years was a more accurate indicator of success in this area.

Discussion: The Secretary agrees that seven to ten years may provide a more comprehensive picture of the success of a project's endeavors to assure that students enter or complete a program of study leading to a doctoral degree. However, for the purposes of prior experience, the most recent years' experience of the project is considered adequate, and thus the rationale for the five-year cap, since that is the maximum grant award period allowed under current legislation. To ensure the consistent application of this policy, § 647.22(a) has been revised to clearly state that the period to be considered is the performance period under an expiring McNair grant.

Changes: Section 647.22(a) has been modified.

What are Allowable Costs? (Section 647.30)

Comments: Several commenters objected to the provision that restricted the $2,400 stipend to the "summer" research internships. They felt that this provision was overly restrictive and did not allow the applicants flexibility in designing programs that most appropriately meet the unique needs of the students to be served.

Discussion: The Secretary has reconsidered the provision that ties the payment of the $2,400 stipend to summer research internships. The Secretary will allow the payment of stipends for research internships that take place other than in the summer.

Changes: Section 647.30(b) has been modified. Also, language has been added to § 647.30(c) to clarify that tuition, room and board, and transportation costs are allowable only for summer internships involving research.

What are Unallowable Costs? (Section 647.31)

Comments: Several commenters suggested that allowable costs should include student fees for test preparation workshops, colloquia or other courses that directly increase the likelihood of a student entering a doctoral program.

Discussion: The Secretary disagrees with the commenters because this payment would constitute a form of direct student aid that is not allowed under this program except as provided for in § 647.30. The provision of the workshops, colloquia or courses under the project for all interested participants is, however, allowable.

Changes: None.

What Other Requirements Must A Grantee Meet? (Section 647.32)

Comments: One commenter suggested that the phrase "as a result of the services" be deleted from § 647.32(b)(4) since the causal connection between services and outcomes is often difficult to make.

Discussion: The Secretary agrees that the phrase in the proposed regulations may cause an undue hardship on grantees to demonstrate that such a relationship exists.

Changes: A change has been made in paragraph § 647.32(b)(4) to eliminate the phrase "as a result of the services."

Paperwork Reduction Act of 1980

Sections 647.21, 647.22, and 647.32 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of

Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Institutions of higher education and combinations of those institutions are eligible to apply for grants to carry out McNair Program projects. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to average 20 hours per response for 68 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 647

Colleges and universities, Disadvantaged students, Discretionary grants, Educational programs, Graduate education, Reporting and recordkeeping requirement.

Dated: August 17, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Number 84.217 Ronald E. McNair Postbaccalaureate Achievement Program.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 647 to read as follows:

PART 647—RONALD E. MCNAIR POSTBACCALAUREATE ACHIEVEMENT PROGRAM

Subpart A—General

Sec.

Subpart B—Assurances

Subpart C—How Does the Secretary Make a Grant?

Subpart D—What Conditions Must Be Met by a Grantee?

Authority: 20 U.S.C. 1070a-11 and 1070a-15, unless otherwise noted.

Subpart A—General

§ 647.1 What is the Ronald E. McNair Postbaccalaureate Achievement Program?

The Ronald E. McNair Postbaccalaureate Achievement Program—referred to in these regulations as the McNair program—awards grants to institutions of higher education for projects designed to provide disadvantaged college students with effective preparation for doctoral study.

(Authority: 20 U.S.C. 1070a-15)

§ 647.2 Who is eligible for a grant?

Institutions of higher education and combinations of those institutions are eligible for grants to carry out McNair projects.

(Authority: 20 U.S.C. 1070a-11, 1070a-15, 1088, and 1141(a) and 1144a)

§ 647.3 Who is eligible to participate in a McNair project?

A student is eligible to participate in a McNair project if the student meets all the following requirements:

(a) (1) Is a citizen or national of the United States; or

(2) Is a permanent resident of the United States; or

(3) Is in the United States for other than a temporary purpose and provides evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident; or

(4) Is a permanent resident of Guam, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands; or

(5) Is a resident of one of the Freely Associated States.

(b) Is currently enrolled in a degree program at an institution of higher education that participates in the student financial assistance programs authorized under Title IV of the HEA.

(c) Is—

(1) A low-income individual who is a first-generation college student;

(2) A member of a group that is underrepresented in graduate education; or

(3) A member of a group that is not listed in § 647.7 if the group is underrepresented in certain academic disciplines as documented by standard statistical references or other national survey data submitted to and accepted by the Secretary on a case-by-case basis.

(d) Has not enrolled in doctoral level study at an institution of higher education.

(Authority: 20 U.S.C. 1070a-15)

§ 647.4 What activities and services may a project provide?

A McNair project may provide the following services and activities:

(a) Opportunities for research or other scholarly activities at the grantee institution or at graduate centers that are designed to provide participants with effective preparation for doctoral study.

(b) Summer internships.

(c) Seminars and other educational activities designed to prepare participants for doctoral study.

(d) Tutoring.

(e) Academic counseling.

(f) Assistance to participants in securing admission to and financial assistance for enrollment in graduate programs.

(g) Mentoring programs involving faculty members or students at institutions of higher education, or any combination of faculty members and students.

(h) Exposure to cultural events and academic programs not usually available to project participants.

(Authority: 20 U.S.C. 1070a–15)

§ 647.5 How long is a project period?

(a) Except as provided in paragraph (b) of this section, a project period under the McNair program is four years.

(b) The Secretary approves a project period of five years for applications that score in the highest ten percent of all applications approved for new grants under the criteria in § 647.21.

(Authority: 20 U.S.C. 1070a–11)

§ 647.6 What regulations apply?

The following regulations apply to the McNair program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 ((Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this Part 647.

(Authority: 20 U.S.C. 1070a–11 and 1070a–15)

§ 647.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Budget
Budget Period
EDGAR
Equipment
Facilities
Fiscal Year
Grant
Grantee
Project
Project Period
Public
Secretary
Supplies

(b) *Other definitions.* The following definitions also apply to this part:

First-generation college student means—

(1) A student neither of whose natural or adoptive parents received a baccalaureate degree; or

(2) A student who, prior to the age of 18, regularly resided with and received support from only one parent, and whose supporting parent did not receive a baccalaureate degree.

(3) An individual who, prior to the age of 18, did not regularly reside with or receive support from a natural or an adoptive parent.

Graduate center means an educational institution as defined in sections 481, 1201(a), and 1204 of the HEA; and that—

(1) Provides instruction in one or more programs leading to a doctoral degree;

(2) Maintains specialized library collections;

(3) Employs scholars engaged in research that relates to the subject areas of the center; and

(4) Provides outreach and consultative services on a national, regional or local basis.

Graduate education means studies beyond the bachelor's degree leading to a postbaccalaureate degree.

HEA means the Higher Education Act of 1965, as amended.

Groups underrepresented in graduate education. The following ethnic and racial groups are currently underrepresented in graduate education: Black (non-Hispanic), Hispanic, and American Indian/Alaskan Native.

Institution of higher education means an educational institution as defined in sections 481, 1201(a) and 1204 of the HEA.

Low-income individual means an individual whose family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census of the U.S. Department of Commerce.

Summer internship means an educational experience in which participants, under the guidance and direction of experienced faculty researchers, are provided an opportunity to engage in research or other scholarly activities.

Target population means the universe from which McNair participants will be selected. The universe may be expressed in terms of geography, type of institution, academic discipline, type of disadvantage, type of underrepresentation, or any other qualifying descriptor that would enable an applicant to more precisely identify the kinds of eligible project participants they wish to serve.

(Authority: 20 U.S.C. 1070a–11, 1070a–15, and 1141)

Subpart B—Assurances

§ 647.10 What assurances must an applicant submit?

An applicant must submit as part of its application, assurances that—

(a) Each participant enrolled in the project will be enrolled in a degree program at an institution of higher education that participates in one or more of the student financial assistance programs authorized under Title IV of the HEA;

(b) Each participant given a summer research internship will have completed his or her sophomore year of study; and

(c)(1) At least two thirds of the students to be served will be low-income individuals who are first-generation college students; and

(2) The remaining students to be served will be members of groups underrepresented in graduate education.

(Authority: 20 U.S.C. 1070a–15)

Subpart C—How Does the Secretary Make a Grant?

§ 647.20 How does the Secretary decide which new grants to make?

(a) The Secretary evaluates an application for a new grant as follows:

(1)(i) The Secretary evaluates an application on the basis of the selection criteria in § 647.21.

(ii) The maximum score for all the criteria in § 647.21 is 100 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(2)(i) For an application from an applicant who has carried out a McNair project in the fiscal year immediately preceding the fiscal year for which the applicant is applying, the Secretary evaluates the applicant's prior experience on the basis of the criteria in § 647.22.

(ii) The maximum score for all the criteria in § 647.22 is fifteen (15) points. The maximum score for each criterion is indicated in parentheses with the criterion.

(iii) If an applicant described in paragraph (a)(2)(i) of this section applies for more than one new grant in the same fiscal year, the Secretary applies the criteria in § 647.22 to a project that seeks to continue support for an existing McNair project on that campus.

(b) The Secretary makes new grants in rank order on the basis of the total scores received by applications under paragraphs (a)(1) through (a)(3) of this section.

(c)(1) If the total scores of two or more applications are the same and there are insufficient funds for these applications after the approval of higher-ranked applications, the Secretary uses the remaining funds to achieve an equitable geographic distribution of all new projects.

(2) In making an equitable geographic distribution of new projects, the Secretary considers only the locations of new projects.

(d) The Secretary may decline to make a grant to an applicant that carried out a Federal TRIO Program project that involved the fraudulent use of funds.

(Authority: 20 U.S.C. 1070a–11 and 1070a–15)

§ 647.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application for a new grant:

(a) *Need* (16 Points). The Secretary reviews each application to determine the extent to which the applicant can clearly and definitively demonstrate the need for a McNair project to serve the target population. In particular, the Secretary looks for information that clearly defines the target population; describes the academic, financial and other problems that prevent potentially eligible project participants in the target population from completing baccalaureate programs and continuing to postbaccalaureate programs; and demonstrates that the project's target population is underrepresented in graduate education, doctorate degrees conferred and careers where a doctorate is a prerequisite.

(b) *Objectives* (9 points). The Secretary evaluates the quality of the applicant's proposed project objectives on the basis of the extent to which they—

(1) Include both process and outcome objectives relating to the purpose of the McNair program stated in § 647.1;

(2) Address the needs of the target population; and

(3) Are measurable, ambitious, and attainable over the life of the project.

(c) *Plan of Operation* (44 points). The Secretary reviews each application to determine the quality of the applicant's plans of operation, including—

(1) (4 points) The plan for identifying, recruiting and selecting participants to be served by the project, including students enrolled in the Student Support Services program;

(2) (4 points) The plan for assessing individual participant needs and for monitoring the academic growth of participants during the period in which the student is a McNair participant;

(3) (5 points) The plan for providing high quality research and scholarly activities in which participants will be involved;

(4) (5 points) The plan for involving faculty members in the design of research activities in which students will be involved;

(5) (5 points) The plan for providing internships, seminars, and other educational activities designed to prepare undergraduate students for doctoral study;

(6) (5 points) The plan for providing individual or group services designed to enhance a student's successful entry into postbaccalaureate education;

(7) (3 points) The plan to inform the institutional community of the goals and objectives of the project;

(8) (8 points) The plan to ensure proper and efficient administration of the project, including, but not limited to matters such as financial management, student records management, personnel management, the organizational structure, and the plan for coordinating the McNair project with other programs for disadvantaged students; and

(9) (5 points) The follow-up plan that will be used to track the academic and career accomplishments of participants after they are no longer participating in the McNair project.

(d) *Quality of key personnel* (9 points). The Secretary evaluates the quality of key personnel the applicant plans to use on the project on the basis of the following:

(1)(i) The job qualifications of the project director.

(ii) The job qualifications of each of the project's other key personnel.

(iii) The quality of the project's plan for employing highly qualified persons, including the procedures to be used to employ members of groups underrepresented in higher education, including Blacks, Hispanics, American Indians, Alaska Natives, Asian Americans and Pacific Islanders (including Native Hawaiians).

(2) In evaluating the qualifications of a person, the Secretary considers his or her experience and training in fields related to the objectives of the project.

(e) *Adequacy of the resources and budget* (15 points). The Secretary evaluates the extent to which—

(1) The applicant's proposed allocation of resources in the budget is clearly related to the objectives of the project;

(2) Project costs and resources, including facilities, equipment, and supplies, are reasonable in relation to the objectives and scope of the project; and

(3) The applicant's proposed commitment of institutional resources to the McNair participants, as for example, the commitment of time from institutional research faculty and the waiver of tuition and fees for McNair participants engaged in summer research projects.

(f) *Evaluation plan* (7 points). The Secretary evaluates the quality of the evaluation plan for the project on the basis of the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project's objectives;

(2) Provide for the applicant to determine, in specific and measurable ways, the success of the project in—

(i) Making progress toward achieving its objectives (a formative evaluation); and

(ii) Achieving its objectives at the end of the project period (a summative evaluation); and

(3) Provide for a description of other project outcomes, including the use of quantifiable measures, if appropriate.

(Authority: 20 U.S.C. 1070a–15)

§ 647.22 How does the Secretary evaluate prior experience?

(a) The Secretary reviews information relating to an applicant's performance as a grantee under its expiring McNair project. In addition to the application under review, this information may be derived from performance reports, audit reports, site visit reports, and project evaluation reports received by the Secretary during the project period about to be completed.

(b) The Secretary evaluates the applicant's performance as a grantee on the basis of the following criteria:

(1) (3 points) Whether the applicant consistently served the number and types of participants the project was funded to serve.

(2) (4 points) Whether the applicant was successful in providing the participants with research and scholarly activities and whether those activities had an impact on project participants.

(3) (8 points) The extent to which the applicant met or exceeded its funded objectives with regard to project participants as demonstrated by the number of participants who—

(i) Attained a baccalaureate degree;

(ii) Enrolled in a postbaccalaureate program; and

(iii) Attained a doctoral level degree.

(Authority: 20 U.S.C. 1070a–11 and 1070a–15)

§ 647.23 How does the Secretary set the amount of a grant?

(a) The Secretary sets the amount of a grant on the basis of—

(1) 34 CFR 75.232 and 75.233 for new grants; and

(2) 34 CFR 75.253 for the second and subsequent years of a project period.

(b) If the circumstances described in section 402A(b)(3) of the HEA exist, the Secretary uses the available funds to set the amount of the grant beginning in fiscal year 1995 at the lesser of—

(1) $190,000; or

(2) The amount requested by the applicant.

(Authority: 20 U.S.C. 1070a–11)

Subpart D—What Conditions Must Be Met by a Grantee?

§ 647.30 What are allowable costs?

Allowable project costs, not specifically covered by 34 CFR Part 74, may include the following costs reasonably related to carrying out a McNair project:

(a) Activities of an academic or scholarly nature, such as trips to institutions of higher education offering doctoral programs, and special lectures, symposia, and professional conferences, which have as their purpose the encouragement and preparation of project participants for doctoral studies.

(b) Stipends of up to $2,400 per year for students engaged in research internships, provided that the student has completed the sophomore year of study at an eligible institution before the internship begins.

(c) Necessary tuition, room and board, and transportation for students engaged in research internships during the summer.

(d) Purchase of computer hardware, computer software, or other equipment for student development, project administration, and recordkeeping, if the applicant demonstrates to the Secretary's satisfaction that the equipment is required to meet the objectives of the project more economically or efficiently.

§ 647.31 What are unallowable costs?

Costs that may not be charged against a grant under this program include the following:

(a) Payment of tuition, stipends, test preparation and fees or any other form of student financial support to staff or participants not expressly allowed under § 647.30.

(b) Construction, renovation, and remodeling of any facilities.

(Authority: 20 U.S.C. 1070a–5)

§ 647.32 What other requirements must a grantee meet?

(a) *Eligibility of participants.* (1) A grantee shall determine the eligibility of each student before the student is selected to participate. A grantee does not have to redetermine a student's eligibility once the student has been determined eligible in accordance with the provisions of § 647.3; and

(2) A grantee shall determine the status of a low-income individual on the basis of the documentation described in section 402A(e) of the HEA.

(b) *Recordkeeping.* For each student, a grantee shall maintain a record of—

(1) The basis for the grantee's determination that the student is eligible to participate in the project under § 647.3;

(2) The individual needs assessment;

(3) The services provided to the participant; and

(4) The specific educational progress made by the student during and after participation in the project.

(c) *Other reporting requirements.* A grantee shall submit to the Secretary reports and other information as requested in order to demonstrate program effectiveness.

(d) *Project director.* A grantee shall designate a project director who has—

(1) Authority to conduct the project effectively; and

(2) Appropriate professional qualifications, experience and administrative skills to effectively fulfill the objectives of the project.

(Authority: 20 U.S.C. 1070a–15)

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Thursday
August 25, 1994

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Suspension of Certain Aircraft Operations From the Transponder With Automatic Pressure Altitude Reporting Capability Requirement; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26242, Notice No. 94–28]

RIN 2120–AF30

Suspension of Certain Aircraft Operations From the Transponder With Automatic Pressure Altitude Reporting Capability Requirement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to reinstate as SFAR 62–1 and modify expired Special Federal Aviation Regulation (SFAR) No. 62, which suspended certain provisions of the regulations that require the installation and use of automatic altitude reporting (Mode C) transponders. On December 5, 1990, the FAA published SFAR No. 62, which suspended the Mode C transponder requirement for certain operations to and from specific outlying airports located within 30 miles of a terminal control area (Class B airspace area) primary airport (the Mode C Veil). The operations and routings specified in SFAR No. 62 included operations within a 2 nautical mile radius of the designated airports and along a direct route between those airports and the outer boundary of the Mode C veil. No airports were excluded from the Mode C transponder requirement if those airports were primarily served by aircraft required to install and operate Traffic Alert and Collision Avoidance Systems (TCAS). SFAR No. 62 was issued with an expiration date of December 30, 1993, to allow sufficient time to upgrade ATC radar systems at the Class B airspace areas listed in the SFAR. Scheduled radar system upgrades have not been completed and operationally assessed in all of the Class B airspace areas. This notice proposes to reinstate the previous exclusions at those Class B airspace areas that have not attained improved radar coverage, amend the list of exempted airports affected by the movement of the Denver Class B airspace and Mode C veil associated with the closing of the Stapleton International Airport and opening of the Denver International Airport, Denver CO, and reinstate and amend the previous exclusions in the 4 Class B airspace areas that have attained improved radar coverage.

DATES: Comments must be received on or before October 11, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Airspace Docket No. 26242, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Crum, Air Traffic Rules Branch (ATP–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

The original SFAR No. 62 was effective on December 5, 1990, and provided access for aircraft without operating Mode C transponders to specified outlying airports located within 30 miles of a Class B airspace area primary airport. The FAA invites comments from users regarding the effectiveness of this SFAR, and the number of aircraft operators who have benefitted from this SFAR.

Interested parties should submit such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26242." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will also be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published Amendment 91–78 to part 91 of the Federal Aviation Regulations (35 FR 7782), which provided for the establishment of Terminal Control Areas (TCA's). On June 21, 1988, the FAA published the Mode C final rule (53 FR 23356). The Mode C rule requires, in part, that aircraft operating within 30 miles of a Class B airspace area (formerly known as TCA) primary airport (the Mode C veil) to be equipped with an operable Mode C transponder.

On December 17, 1991, the FAA published the airspace reclassification final rule (56 FR 65638). Specifically applicable to this NPRM is the reclassification of TCA airspace into Class B airspace, effective September 16, 1993. Nevertheless, the FAA did not modify any of the Mode C veils under the airspace reclassification final rule.

Background

As a result of regulatory proceedings initiated under Notice 88–2 (53 FR 4306, February 12, 1988), no person may operate an aircraft in the Mode C veil unless that aircraft is equipped with an operable Mode C transponder. However, aircraft otherwise authorized or directed by ATC; aircraft not originally certificated with an engine-driven electrical system or not subsequently certified with such a system installed; balloons; and gliders are excluded from the Mode C requirement in the veil.

In response to over 65,000 comments received to Notice 88–2, the FAA stated

that it would consider a means of providing access to outlying airports within the Mode C veil for those aircraft not equipped with an operable Mode C transponder; and that access would be allowed only to the extent that operations without an operable Mode C transponder would be consistent with maintaining adequate safety.

SFAR No. 62 was proposed (55 FR 21722; May 25, 1990) to permit the operation of aircraft to and from designated airports within the Mode C veil without an operable Mode C transponder. When SFAR No. 62 was adopted (55 FR 50302; December 5, 1990), the FAA designated 306 airports, within 24 Mode C veils, at which the Mode C requirement would be suspended. SFAR No. 62 allowed for the operation of aircraft not equipped with an operable Mode C transponder in the airspace at or below the altitude specified for the airport and within 2-nautical miles of the center of the airport or along the most direct and expeditious routing (or on a routing directed by ATC) between that airport and the outer boundary of the Mode C veil, consistent with established traffic patterns, noise abatement procedures, and safety.

Prior to the adoption of SFAR No. 62, any requests to deviate from the Mode C transponder requirements were handled by ATC facilities on a case-by-case basis. If approved, the ATC authorization specified all restrictions or conditions necessary to ensure that the operation could be conducted safely, without any impact on other operations. Although there were circumstances that were applicable to many operators (such as operations to and from a specified outlying airport or operations conducted in areas of no radar coverage), ATC authorizations had to be requested and granted on an individual basis. This aspect of the ATC authorization process proved to be inefficient and time consuming for both operators and ATC staff.

The promulgation of SFAR No. 62 proved to be beneficial for the affected aircraft and ATC, in that it provided access to outlying airports with a minimum of ATC involvement without degrading the safety benefits of the Mode C rule. The 3-year duration of SFAR No. 62 was expected to allow for the completion or ATC radar system upgrades at each Class B airspace area primary airport. An operational evaluation was to be completed to determine the extent of the improved radar coverage within each Mode C veil achieved as a result of the radar system upgrades. It was anticipated that if extensions to the suspension of the Mode C transponder requirement for operations at certain airports were required, each extension would be addressed on a site-by-site basis. During the period that SFAR No. 62 was in effect, no known violations or derogations of safety were known to have occurred and no complaints were received by the FAA. Consequently, the FAA still believes, as stated in the original promulgation of SFAR No. 62, that the operation of an aircraft not equipped with a Mode C transponder within the Mode C veil can be accommodated safely, provided the operations are conducted outside ATC radar coverage, and are consistent with the restrictions delineated in the expired SFAR No. 62.

The Proposal

In support of the FAA's General Aviation Action Plan, which in part promotes increased access to airspace and eliminating unneeded equipment requirements for General Aviation (GA) aircraft, this notice proposes to reinstate and amend the former SFAR No. 62. This proposal will permit the operation of aircraft, without an operable Mode C transponder, in the airspace at or below the specified altitude and within a 2-nautical mile radius, or, if directed by ATC, within a 5-nautical mile radius, of an airport listed in section 2 of the SFAR; and in the airspace at or below the specified altitude along the most direct and expeditious routing, or on routing directed by ATC, between an airport listed in section 2 of this SFAR and the outer boundary of the Mode C veil overlying that airport, consistent with established traffic patterns, noise abatement procedures and safety.

This proposed SFAR and the amended altitude designations for each airport would not supersede the provisions of § 91.119, minimum safe altitudes. Routings to and from each airport are intentionally unspecified to permit the pilot to avoid operating near obstructions.

As of the date of this notice, only 10 of the 24 Mode C veils have commissioned the new radar systems. This notice proposes to reinstate, without change, the exclusions previously afforded to airports associated with the 14 Mode C veils that have not commissioned the new radar systems.

The FAA has conducted operational evaluations of the 10 sites that have commissioned the new radar systems to determine the extent of attained radar coverage improvement. Of the 10 sites evaluated, 6 experienced no increase in radar coverage at the altitudes and routing previously approved under SFAR No. 62. The FAA proposes to reinstate the exclusions formerly provided for by SFAR No. 62 at these 6 sites without change. Four sites have experienced improvement in radar coverage, and this notice proposes the following changes to the altitudes at which operations by aircraft not equipped with an operable Mode C transponder can be accommodated at those sites:

Airports within a 30-nautical-mile radius of the Charlotte/Douglas International Airport.

Airport name	Former (AGL)	Proposed (AGL)
Arant Airport, Wingate, NC	2,500	2,000
Bradley Outernational Airport, China Grove, NC	2,500	1,500
Chester Municipal Airport, Chester, SC	2,500	1,600
China Grove Airport, China Grove, NC	2,500	1,500
Goodnight's Airport, Kannapolis, NC	2,500	1,500
Knapp Airport, Marshville, NC	2,500	2,000
Lake Norman Airport, Mooresville, NC	2,500	2,000
Lancaster County Airport, Lancaster, SC	2,500	1,600
Little Mountain Airport, Denver, NC	2,500	2,000
Long Island Airport, Long Island, NC	2,500	2,000
Miller Airport, Mooresville, NC	2,500	1,500
U S Heliport, Wingate, NC	2,500	1,600
Unity Aerodrome Airport, Lancaster, SC	2,500	1,900
Wilhelm Airport, Kannapolis, NC	2,500	1,900

Airports within a 30-nautical-mile radius of the Houston Intercontinental Airport and the William P. Hobby Airport.

Airport name	Former (AGL)	Proposed (AGL)
Ainsworth Airport, Cleveland, TX	1,200	1,000
Ausinia Ranch Airport, Texas City, TX	1,200	1,000
Bailes Airport, Angleton, TX	1,200	1,000
Biggin Hill Airport, Hockley, TX	1,200	1,000
Cleveland Municipal Airport, Cleveland, TX	1,200	1,000
Covey Trails Airport, Fulshear, TX	1,200	1,000
Creasy Airport, Santa Fe, TX	1,200	1,000

Airport name	Former (AGL)	Proposed (AGL)
Custom Aire Service Airport, Angleton, TX	1,200	1,000
Fay Ranch Airport, Cedar Lane, TX	1,200	1,000
Flying C Ranch Airport, Needville, TX	1,200	1,000
Freeman Property Airport, Katy, TX	1,200	1,000
Garrett Ranch Airport, Danbury, TX	1,200	1,000
Gum Island Airport, Dayton, TX	1,200	1,000
H & S Airfield Airport, Damon, TX	1,200	1,000
Harbican Airpark Airport, Katy, TX	1,200	1,000
Harold Freeman Farm Airport, Katy, TX	1,200	1,000
HHI Hitchcock Heliport, Hitchcock, TX	1,200	1,000
Hoffpauir Airport, Katy, TX	1,200	1,000
Horn-Katy Hawk International Airport, Katy, TX	1,200	1,000
Johnnie Volk Field Airport, Hitchcock, TX	1,200	1,000
King Air Airport, Katy, TX	1,200	1,000
Lake Bay Gall Airport, Cleveland, TX	1,200	1,000
Lake Bonanza Airport, Montgomery, TX	1,200	1,000
Lane Airpark Airport, Rosenberg, TX	1,200	1,000
Meyer Field Airport, Rosharon, TX	1,200	1,000
Prairie Aire Field Airport, Damon, TX	1,200	1,000
R W J Airpark Airport, Baytown, TX	1,200	1,000
Westheimer Air Park Airport, Houston, TX	1,200	1,000

Airports within a 30-nautical-mile radius of the Memphis International Airport.

Airport name	Former (AGL)	Proposed (AGL)
Bernard Manor Airport, Earle, AR	2,500	2,000
Holly Springs-Marshall County Airport, Holly Springs, MS	2,500	2,000
McNeely Airport, Earle, AR	2,500	2,000
Price Field Airport, Joiner, AR	2,500	2,000
Tucker Field Airport, Hughes, AR	2,500	2,000
Tunica Airport, Tunica, MS	2,500	2,000
Tunica Municipal Airport, Tunica, MS	2,500	2,000

Airports within a 30-nautical-mile radius of the Lambert/St. Louis International Airport.

Airport name	Former (AGL)	Proposed (AGL)
Blackhawk Airport, Old Monroe, MO	1,000	1,000
Lebert Flying L Airport, Lebanon, IL	1,000	1,000
Shafer Metro East Airport, St. Jacob, IL	1,000	*0
Sloan's Airport, Elsberry, MO	1,000	1,000
Wentzville Airport, Wentzville, MO	1,000	*0
Woodliff Airpark Airport, Foristell, MO	1,000	1,000

*(The FAA proposes to remove the Shafer Metro East Airport (3K6) and the Wentzville Airport (M050) from the Lambert/St. Louis International Airport listing).

Additionally, the FAA proposes to further amend SFAR No. 62 by deleting the list of airports exempted from the provisions of the Mode C veil requirements for the Stapleton International Airport Class B airspace area Mode C veil and adding the following list of airports exempted from the provisions of the Mode C veil requirements for the Denver International Airport Class B airspace area Mode C veil:

Airports within a 30-nautical-mile radius of the Denver International Airport.

Airport name	Arpt ID	Alt. (AGL)
Air Dusters Inc., Airport, Roggen, CO	49CO	1,200
Bijou Basin Airport, Byers, CO	CD17	1,200
Boulder Municipal Airport, Boulder, CO	1V5	1,200
Bowen Farms No. 1 Airport, Littleton, CO CO98	1,200	
Bowen Farms No. 2 Airport, Strasburg, CO	3CO5	1,200
Carrera Airpark Airport, Mead, CO	93CO	1,200
Cartwheel Airport, Mead, CO	0CO8	1,200
Chaparral Airport, Byers, CO	CO18	1,200
Colorado Antique Field Airport, Niwot, CO	8CO7	1,200
Comanche Livestock Airport, Strasburg, CO	59CO	1,200
Dead Stick Ranch Airport, Kiowa, CO	18CO	1,200
Frederick-Firestone Air Strip Airport, Frederick, CO	CO58	1,200
Frontier Airstrip Airport, Mead, CO	84CO	1,200
Horseshoe Landings Airport, Franktown, CO	CO60	1,200
Hoy Airstrip Airport, Bennett, CO	76CO	1,200
J & S Airport, Bennett, CO	CD14	1,200
Kostroski Airport, Franktown, CO	43CO	1,200
Kugel-Strong Airport, Platteville, CO	27V	1,200
Land Airport, Keenesburg, CO	CO82	1,200
Lemons Private Strip Airport, Boulder, CO	CO10	1,200
Lindys Airpark Airport, Hudson, CO	7CO3	1,200
Parkland Airport, Erie, CO	7CO0	1,200
Pine View Airport, Elizabeth, CO	02V	1,200
Platte Valley Airport, Hudson, CO	18V	1,200
Rancho De Aereo Airport, Mead, CO	05CO	1,200
Reid Ranches Airport, Roggen, CO	7CO6	1,200
Singleton Ranch Airport, Byers, CO	68CO	1,200
Sky Haven Airport, Byers, CO	CO17	1,200
Spickard Farm Airport, Byers, CO	5CO4	1,200
Tri-County Airport, Erie, CO	48V	1,200
Westberg-Rosting Farms Airport, Roggen, CO	74CO	1,200
Yoder Airstrip Airport, Bennett, CO	CD09	1,200

Upon expiration of the proposed SFAR, [Insert date 3 years after date of publication of the final rule], the Mode C transponder requirement would become effective for aircraft operations to and from the designated airports. However, during the effective period of the SFAR, the FAA will continue to conduct field evaluations, as the remaining Class B airspace areas receive and commission the new radar systems, to reassess the radar coverage within the associated Mode C veil. Additionally, the FAA will explore the feasibility of making permanent exclusions based on safety, operational impact, and radar coverage. The public will be invited to provide comment on any such proposals through further notice published in the **Federal Register**.

Paperwork Reduction Act

This proposed rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with the U.S. obligations under the Convention on International Civil Aviation (ICAO), it is the FAA policy to comply with ICAO Standards and Recommended Practices (SARP) to the maximum extent practicable. For this notice, the FAA has determined that this proposal, if adopted, would not present any difference.

Regulatory Evaluation Summary

The FAA has determined that this proposed rule is not a "significant regulatory action," as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this proposed rule are summarized below.

Overview

When SFAR No. 62 was adopted (December 1990), the FAA designated 306 airports located within the 24 Class B airspace Mode C veils at which the Mode C requirement would be temporarily suspended. SFAR No. 62 allowed aircraft operations into and out of these designated airports without an operable Mode C transponder if these operations were conducted at and below the altitude specified, within 2-nautical miles from the airport's center, and along a direct route (or as directed by ATC) between that airport and the outer boundary of the Mode C veil. In this evaluation, the term "Designated Airports" refers to those outlying airports located within the 24 Class B airspace areas Mode C veils where local airport operations were beyond or below ATC radar coverage and, as such, were temporarily suspended from Mode C requirements by the forerunner of this SFAR.

Benefits

This proposed rule is expected to generate potential benefits in the form of: (1) Increased convenience to pilots operating aircraft not equipped with operable Mode C transponders, and (2) enhanced operational efficiency to FAA air traffic control.

Prior to SFAR No. 62, aircraft not equipped with operable Mode C transponders could operate at an airport within a Mode C veil only after receiving ATC authorization. This requirement was valid at all airports within the Mode C veil, even those airports that were located beyond existing ATC radar coverage. Because ATC authorization can only be granted on a case-by-case basis, the process of obtaining ATC authorization can be inefficient and time consuming for pilots, as well as the FAA. The benefit of this proposed rule would be temporary relief from the burden of obtaining individual ATC authorizations for those aircraft operations at airports located beyond existing radar coverage.

For FAA air traffic control, this proposed rule would provide benefits in the form of enhanced operational efficiency. Such enhanced efficiency would be the temporary relief of ATC from assigning authorizations, particularly during busy periods. This proposed rule would allow TAC to allocate temporarily its personnel and equipment resources to more productive functions.

Although the benefits of this proposed rule have not been quantified, they are expected to be large for both aircraft operators and the FAA.

Costs

This proposed rule is not expected to impose costs on the FAA or society. In addition, this proposed rule would not impose significant costs on the aviation community (namely, fixed based operators).

This proposed rule would not impose additional equipment or personnel costs to the FAA. The acquisition of new radar tracking systems is a routine cost of upgrading FAA equipment. No additional FAA personnel would be required, because the temporary suspension of the Mode C transponder requirement is expected to enhance air traffic control (ATC) operational efficiency by eliminating the need for ATC authorizations at the designated airports. This proposed rule would reduce the demand on ATC equipment and personnel resources.

This proposed rule is not expected to impose societal costs, in the form of reduced aviation safety. When the FAA initially published SFAR No. 62, which temporarily suspended the Mode C requirements at the Designated Airports, it did so on the basis that there was no ATC radar coverage at those Designated Airports. The regulatory evaluation prepared for that final rule concluded that there would not be any adverse impact on aviation safety, because the full intent of the Mode C rule had not been realized. Furthermore, such safety would not be realized until ATC radar coverage was extended to those designated airports, through the installation of the new ASR–9 radar.

Since the implementation of SFAR No. 62, ASR–9 radar has been commissioned at 10 of the 24 Class B airspace areas. Under this proposed rule, aviation safety would not be affected adversely for two reasons. First, operations at those designated airports located within the Mode C veils of the 14 Class B airspace areas not utilizing the ASR–9 radar would be temporarily excluded from the Mode C requirements. Second, operations at those designated airports, located within the Mode C veils of the 10 Class B airspace areas now equipped with ASR–9 radar, would be subject to the requirements of the Mode C rule when conducted within that associated airspace covered by the extended ASR–9 radar coverage. Operations conducted at those same airports, but below the areas of ASR–9 radar coverage, would be exempt from the Mode C rule. The areas not covered by the ASR–9 radar would be defined by a specified ceiling altitude and extend down to the surface. For example, prior to the installation of ASR–9 radar, radar coverage excluded the airspace above Airport A, from a ceiling of 2000 feet AGL down to the ground. As the result of the installation of ASR–9 radar, the airspace above Airport A, which is not excluded from the enhanced ATC coverage, is from a ceiling of 1000 feet AGL down to the ground. Under this proposed rule, operations below 1000 feet AGL would be temporarily excluded from the Mode C requirements, since operations below the altitude of 1000 feet AGL are beyond ATC radar coverage. Thus, the FAA contends that access to certain outlying airports by aircraft without Mode C transponders can be accommodated without diminishing Mode C safety benefits, provided the operation is conducted outside radar coverage. When aircraft operations are confined exclusively to areas of no radar coverage, many of the safety benefits of the Mode C rule cannot be realized. Further enhancement of the radar tracking system is expected to increase radar coverage, thus extending the Mode C benefits to more areas outside of the current radar coverage.

For the aviation community, the FAA anticipates that this proposed rule would impose no significant costs on fixed base operators (FBO's). FBO's represent the most likely group to incur potential costs. When the FAA evaluated the potential cost impact of SFAR No. 62 on FBO's, it did so on the increased likelihood that some general aviation (GA) aircraft operators (without Mode C transponders) would relocate to airports outside of the Mode C veil from airports inside of the Mode C veil. If this relocation activity had materialized, FBO's inside of the Mode C veil would have incurred lost revenues from decreases in demand for mechanical repairs and related activities from some

GA aircraft operators. After SFAR No. 62 was issued as a notice, the FAA did not receive any comments from FBO's with regard to cost impacts. Therefore, with no cost impact comments received on SFAR No. 62, this evaluation concludes that the proposed rule would not have any significant cost impact on any FBO's.

Conclusion

This proposed rule is not expected to impose costs on either the FAA or society. In addition, this proposed rule would not impose any significant costs on the aviation community (FBO's). The FAA estimates that this proposed rule would generate benefits in the form of increased convenience to some GA aircraft operators and increased operational efficiency to FAA air traffic control. Thus, the FAA contends that this proposed rule is cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." The types of small entities that could be potentially affected by the implementation of the proposed rule are air taxi operators and FBOs.

In terms of air taxi operators, no cost impacts are anticipated by this proposed rule. This assessment is based on the FAA's estimation that these operators are already equipped with Mode C transponders. They are, in all likelihood, based at airports within the Mode C veil which fall within the radar coverage of ATC.

In terms of FBO's, the FAA estimates that this proposed rule would not impose significant costs. This assessment is based on the belief that FBO's would not experience revenue losses from GA aircraft to airports outside of the Mode C veil or undesignated airports within the Mode C veil to designated airports specified in this proposed rule. Although the proposed rule provides access to a Mode C veil, the FAA believes that this proposed rule does not provide GA aircraft operators with much of an incentive to relocate. This assessment is further supported by the belief that the vast majority of those GA aircraft operators required to install Mode C transponders acquired them by December 30, 1990 (Phase II of the Mode C rule for Airport Radar Service Areas). Therefore, the FAA contends that a regulatory flexibility analysis is not required because this proposed rule would not have a significant economic impact on substantial number of small entities.

International Trade Impact Assessment

This proposed rule would not have an effect on the sale of foreign aviation products or services in the United States, nor would not have an effect on the sale of U.S. products or services in foreign countries. This proposed rule would neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign) that would result in a competitive disadvantage to either. The proposed rule may impose insignificant costs on FBO's in the United States. However, FBO's in the U.S. do not compete directly with FBO's in foreign countries. Therefore, no competitive trade disadvantage is expected to impact FBO's.

Federalism Determination

This proposed rule would 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. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Initial Regulatory Flexibility Determination and the International Trade Impact Assessment, the FAA has determined that this proposed regulation is not a "significant regulatory action" under Executive Order 12866. In addition the FAA certifies that this proposed regulation, if adopted, would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplication, Analysis, and Review of Regulations. An initial Regulatory Flexibility Determination and International Trade Impact Assessment, has been placed in the docket. A copy may be obtained by contacting the person identified under FOR FURTHER INFORMATION CONTACT.

List of Subjects in 14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Federal Aviation Administration, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 91 of the Federal Aviation Regulation (14 CFR part 91) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Special Federal Aviation Regulation (SFAR) No. 62, which expired on December 30, 1993, is reinstated as SFAR 62–1 and amended to read as follows:

Special Federal Aviation Regulation No. 62–1—Suspension of Certain Aircraft Operations From the Transponder With Automatic Pressure Altitude Reporting Capability Requirement

Section 1. For purposes of this SFAR:

(a) The airspace within 30 nautical miles of a Class B airspace area primary airport, from the surface upward to 10,000 feet MSL, excluding the airspace designated as a Class B airspace area is referred to as the Mode C veil.

(b) Effective until [Insert date three years after date of publication of the final rule], the transponder with automatic altitude reporting capability requirements of § 91.215(b)(2) do not apply to the operation of an aircraft:

(1) In the airspace at or below the specified altitude and within a 2-nautical mile radius, or, if directed by ATC, within a 5-nautical mile radius, of an airport listed in Section 2 of this SFAR; and

(2) In the airspace at or below the specified altitude along the most direct and expeditious routing, or on a routing directed by ATC, between an airport listed in Section 2 of this SFAR and the outer boundary of the Mode C veil airspace overlying that airport, consistent with established traffic patterns, noise abatement procedures, and safety.

Section 2. Effective until [Insert date three years after date of publication of the final rule], airports at which the provisions of § 91.215(b)(2) do not apply.

(1) Airports within a 30-nautical mile radius of The William B. Hartsfield Atlanta International Airport.

Airport name	Arpt ID	Alt. (AGL)
Air Acres Airport, Woodstock, GA	5GA4	1,500
B&L Strip Airport, Hollonville, GA	GA29	1,500
Camfield Airport, McDonough, GA	GA36	1,500
Cobb County-McCollum Field Airport, Marietta, GA	RYY	1,500
Covington Municipal Airport, Covington, GA	9A1	1,500
Diamond R Ranch Airport, Villa Rica, GA	3GA5	1,500
Dresden Airport, Newnan, GA	GA79	1,500
Eagles Landing Airport, Williamson, GA	5GA3	1,500
Fagundes Field Airport, Haralson, GA	6GA1	1,500
Gable Branch Airport, Haralson, GA	5GA0	1,500
Georgia Lite Flite Ultralight Airport, Acworth, GA	31GA	1,500
Griffin-Spalding County Airport, Griffin, GA	6A2	1,500
Howard Private Airport, Jackson, GA	GA02	1,500
Newnan Coweta County Airport, Newnan, GA	CCO	1,500
Peach State Airport, Williamson, GA	3GA7	1,500
Poole Farm Airport, Oxford, GA	2GA1	1,500
Powers Airport, Hollonville, GA	GA31	1,500
S & S Landing Strip Airport, Griffin, GA	8GA6	1,500
Shade Tree Airport, Hollonville, GA	GA73	1,500

(2) Airports within a 30-nautical mile radius of the General Edward Lawrence Logan International Airport.

Airport name	Arpt ID	Alt. (AGL)
Berlin Landing Area Airport, Berlin, MA	MA19	2,500
Hopedale Industrial Park Airport, Hopedale, MA	1B6	2,500
Larson's SPB, Tyngsboro, MA	MA74	2,500
Moore AAF, Ayer/Fort Devens, MA	AYE	2,500
New England Gliderport, Salem, NH	NH29	2,500
Plum Island Airport, Newburyport, MA	2B2	2,500
Plymouth Municipal Airport, Plymouth, MA	PYM	2,500
Taunton Municipal Airport, Taunton, MA	TAN	2,500
Unknown Field Airport, Southborough, MA	1MA5	2,500

(3) Airports within a 30-nautical mile radius of the Charlotte/Douglas International Airport.

Airport name	Arpt ID	Alt. (AGL)
Arant Airport, Wingate, NC	1NC6	2,000
Bradley Outernational Airport, China Grove, NC	NC29	1,500
Chester Municipal Airport, Chester, SC	9A6	1,600
China Grove Airport, China Grove, NC	76A	1,500
Goodnight's Airport, Kannapolis, NC	2NC8	1,500
Knapp Airport, Marshville, NC	3NC4	2,000
Lake Norman Airport, Mooresville, NC	14A	2,000
Lancaster County Airport, Lancaster, SC	LKR	1,600
Little Mountain Airport, Denver, NC	66A	2,000
Long Island Airport, Long Island, NC	NC26	2,000
Miller Airport, Mooresville, NC	8A2	1,500
U S Heliport, Wingate, NC	NC56	1,600
Unity Aerodrome Airport, Lancaster, SC	SC76	1,900
Wilhelm Airport, Kannapolis, NC	6NC2	1,900

(4) Airports within a 30-nautical mile radius of the Chicago-O'Hare International Airport.

Airport name	Arpt ID	Alt. (AGL)
Aurora Municipal Airport, Chicago/Aurora, IL	ARR	1,200
Donald Alfred Gade Airport, Antioch, IL	IL11	1,200
Dr. Joseph W. Esser Airport, Hampshire, IL	7IL6	1,200
Flying M. Farm Airport, Aurora, IL	IL20	1,200
Fox Lake SPB, Fox Lake, IL	IS03	1,200
Graham SPB, Crystal Lake, IL	IS79	1,200
Herbert C. Mass Airport, Zion, IL	IL02	1,200
Landings Condominium Airport, Romeoville, IL	C49	1,200
Lewis University Airport, Romeoville, IL	LOT	1,200
McHenry Farms Airport, McHenry, IL	44IL	1,200
Olson Airport, Plato Center, IL	LL53	1,200
Redeker Airport, Milford, IL	IL85	1,200
Reid RLA Airport, Gilberts, IL	6IL6	1,200
Shamrock Beef Cattle Farm Airport, McHenry, IL	49LL	1,200
Sky Soaring Airport, Union, IL	55LL	1,200
Waukegan Regional Airport, Waukegan, IL	UGN	1,200
Wormley Airport, Oswego, IL	85LL	1,200

(5) Airports within a 30-nautical mile radius of the Cleveland-Hopkins International Airport.

Airport name	Arpt ID	Alt. (AGL)
Akron Fulton International Airport, Akron, OH	AKR	1,300
Bucks Airport, Newbury, OH	400H	1,300
Derecsky Airport, Auburn Center, OH	6OI0	1,300
Hannum Airport, Streetsboro, OH	69OH	1,300
Kent State University Airport, Kent, OH	1G3	1,300
Lost Nation Airport, Willoughby, OH	LNN	1,300
Mills Airport, Mantua, OH	OH06	1,300
Portage County Airport, Ravenna, OH	29G	1,300
Stoney's Airport, Ravenna, OH	OI32	1,300
Wadsworth Municipal Airport, Wadsworth, OH	3G3	1,300

(6) Airports within a 30-nautical mile radius of the Dallas/Fort Worth International Airport.

Airport name	Arpt ID	Alt. (AGL)
Beggs Ranch/Aledo Airport, Aledo, TX	TX15	1,800
Belcher Airport, Sanger, TX	TA25	1,800
Bird Dog Field Airport, Krum, TX	TA48	1,800
Boe-Wrinkle Airport, Azle, TX	28TS	1,800
Flying V Airport, Sanger, TX	71XS	1,800
Graham Ranch Airport, Celina, TX	TX44	1,800
Haire Airport, Bolivar, TX	TX33	1,800
Hartlee Field Airport, Denton, TX	1F3	1,800
Hawkin's Ranch Strip Airport, Rhome, TX	TA02	1,800
Horseshoe Lake Airport, Sanger, TX	TE24	1,800

Airport name	Arpt ID	Alt. (AGL)
Ironhead Airport, Sanger, TX	T58	1,800
Kezer Air Ranch Airport, Springtown, TX	61F	1,800
Lane Field Airport, Sanger, TX	58F	1,800
Log Cabin Airport, Aledo, TX	TX16	1,800
Lone Star Airpark Airport, Denton, TX	T32	1,800
Rhome Meadows Airport, Rhome, TX	TS72	1,800
Richards Airport, Krum, TX	TA47	1,800
Tallows Field Airport, Celina, TX	79TS	1,800
Triple S Airport, Aledo, TX	42XS	1,800
Warshun Ranch Airport, Denton, TX	4TA1	1,800
Windy Hill Airport, Denton, TX	46XS	1,800
Aero Country Airport, McKinney, TX	TX05	1,400
Bailey Airport, Midlothian, TX	7TX8	1,400
Branson Farm Airport, Burleson, TX	TX42	1,400
Carroll Air Park Airport, De Soto, TX	F66	1,400
Carroll Lake-View Airport, Venus, TX	70TS	1,400
Eagle's Nest Estates Airport, Ovilla, TX	2T36	1,400
Flying B Ranch Airport, Ovilla, TX	TS71	1,400
Lancaster Airport, Lancaster, TX	LNC	1,400
Lewis Farm Airport, Lucas, TX	6TX1	1,400
Markum Ranch Airport, Fort Worth, TX	TX79	1,400
McKinney Municipal Airport, McKinney, TX	TKI	1,400
O'Brien Airpark Airport, Waxahachie, TX	F25	1,400
Phil L. Hudson Municipal Airport, Mesquite, TX	HQZ	1,400
Plover Heliport, Crowley, TX	82Q	1,400
Venus Airport, Venus, TX	75TS	1,400

(7) Airports within a 30-nautical mile radius of the Denver International Airport.

Airport name	Arpt ID	Alt. (AGL)
Air Dusters Inc., Airport, Roggen, CO	49CO	1,200
Bijou Basin Airport, Byers, CO	CD17	1,200
Boulder Municipal Airport, Boulder, CO	1V5	1,200
Bowen Farms No. 1 Airport, Littleton, CO	CO98	1,200
Bowen Farms No. 2 Airport, Strasburg, CO	3CO5	1,200
Carrera Airpark Airport, Mead, CO	93CO	1,200
Cartwheel Airport, Mead, CO	0CO8	1,200
Chaparral Airport, Byers, CO	CO18	1,200
Colorado Antique Field Airport, Niwot, CO	8CO7	1,200
Comanche Livestock Airport, Strasburg, CO	59CO	1,200
Dead Stick Ranch Airport, Kiowa, CO	18CO	1,200
Frederick-Firestone Air Strip Airport, Frederick, CO	CO58	1,200
Frontier Airstrip Airport, Mead, CO	84CO	1,200
Horseshoe Landings Airport, Franktown, CO	CO60	1,200
Hoy Airstrip Airport, Bennett, CO	76CO	1,200
J & S Airport, Bennett, CO	CD14	1,200
Kostroski Airport, Franktown, CO	43CO	1,200
Kugel-Strong Airport, Platteville, CO	27V	1,200
Land Airport, Keenesburg, CO	CO82	1,200
Lemons Private Strip Airport, Boulder, CO	CO10	1,200
Lindys Airpark Airport, Hudson, CO	7CO3	1,200
Parkland Airport, Erie, CO	7CO0	1,200
Pine View Airport, Elizabeth, CO	02V	1,200
Platte Valley Airport, Hudson, CO	18V	1,200
Rancho De Aereo Airport, Mead, CO	05CO	1,200
Reid Ranches Airport, Roggen, CO	7CO6	1,200
Singleton Ranch Airport, Byers, CO	68CO	1,200
Sky Haven Airport, Byers, CO	CO17	1,200
Spickard Farm Airport, Byers, CO	5CO4	1,200
Tri-County Airport, Erie, CO	48V	1,200
Westberg-Rosling Farms Airport, Roggen, CO	74CO	1,200
Yoder Airstrip Airport, Bennett, CO	CD09	1,200

(8) Airports within a 30-nautical mile radius of the Detroit Metropolitan Wayne County Airport.

Airport name	Arpt ID	Alt. (AGL)
Al Meyers Airport, Tecumseh, MI	3TE	1,400
Brighton Airport, Brighton, MI	45G	1,400
Cackleberry Airport, Dexter, MI	2MI9	1,400
Erie Aerodome Airport, Erie, MI	05MI	1,400
Ham-A-Lot Field Airport, Petersburg, MI	MI48	1,400
Merillat Airport, Tecumseh, MI	34G	1,400
Rossettie Airport, Manchester, MI	75G	1,400
Tecumseh Products Airport, Tecumseh, MI	0D2	1,400

(9) Airports within a 30-nautical mile radius of the Honolulu International Airport.

Airport Name	Arpt ID	Alt. (AGL)
Dillingham Airfield Airport, Moluleia, HI	HDH	2,500

(10) Airports within a 30-nautical mile radius of the Houston Intercontinental Airport and the William P. Hobby Airport.

Airport name	Arpt ID	Alt. (AGL)
Ainsworth Airport, Cleveland, TX	0T6	1,000
Ausinia Ranch Airport, Texas City, TX	TS50	1,000
Bailes Airport, Angleton, TX	7R9	1,000
Biggin Hill Airport, Hockley, TX	TX49	1,000
Cleveland Municipal Airport, Cleveland, TX	6R3	1,000
Covey Trails Airport, Fulshear, TX	80XS	1,000
Creasy Airport, Santa Fe, TX	5TA5	1,000
Custom Aire Service Airport, Angleton, TX	81D	1,000
Fay Ranch Airport, Cedar Lane, TX	0T2	1,000
Flying C Ranch Airport, Needville, TX	XS25	1,000
Freeman Property Airport, Katy, TX	61T	1,000
Garrett Ranch Airport, Danbury, TX	77XS	1,000
Gum Island Airport, Dayton, TX	3T6	1,000
H & S Airfield, Damon, TX	XS21	1,000
Harbican Airpark Airport, Katy, TX	9XS9	1,000
Harold Freeman Farm Airport, Katy, TX	8XS1	1,000
HHI Hitchcock Heliport, Hitchcock, TX	6TA5	1,000
Hoffpauir Airport, Katy, TX	59T	1,000

Airport name	Arpt ID	Alt. (AGL)
Horn-Katy Hawk International Airport, Katy, TX	57T	1,000
Johnnie Volk Field Airport, Hitchcock, TX	37R	1,000
King Air Airport, Katy, TX	55T	1,000
Lake Bay Gall Airport, Cleveland, TX	0T5	1,000
Lake Bonanza Airport, Montgomery, TX	33TA	1,000
Lane Airpark Airport, Rosenberg, TX	T54	1,000
Meyer Field Airport, Rosharon, TX	TA33	1,000
Prairie Aire Field Airport, Damon, TX	4TA0	1,000
R W J Airpark Airport, Baytown, TX	54TX	1,000
Westheimer Air Park Airport, Houston, TX	5TA4	1,000

(11) Airports within a 30-nautical mile radius of the Kansas City International Airport.

Airport name	Arpt ID	Alt. (AGL)
Amelia Earhart Airport, Atchison, KS	K59	1,000
Booze Island Airport, St. Joseph, MO	64MO	1,000
Cedar Air Park Airport, Olathe, KS	51K	1,000
D'Field Airport, McLouth, KS	KS90	1,000
Dorei Airport, McLouth, KS	K69	1,000
East Kansas City Airport, Grain Valley, MO	3GV	1,000
Excelsior Springs Memorial Airport, Excelsior Springs, MO	3EX	1,000
Flying T Airport, Oskaloosa, KS	7KS0	1,000
Hermon Farm Airport, Gardner, KS	KS59	1,000
Hillside Airport, Stilwell, KS	63K	1,000
Independence Memorial Airport, Independence, MO	3IP	1,000
Johnson County Executive Airport, Olathe, KS	OJC	1,000
Johnson County Industrial Airport, Olathe, KS	IXD	1,000
Kimray Airport, Plattsburg, MO	7MO7	1,000
Lawrence Municipal Airport, Lawrence, KS	LWC	1,000
Martins Airport, Lawson, MO	21MO	1,000
Mayes Homestead Airport, Polo, MO	37MO	1,000
McComas-Lee's Summit Municipal Airport, Lee's Summit, MO	K84	1,000
Mission Road Airport, Stilwell, KS	64K	1,000
Northwood Airport, Holt, MO	2MO2	1,000
Plattsburg Airpark Airport, Plattsburg, MO	MO28	1,000
Richards-Gebaur Airport, Kansas City, MO	GVW	1,000
Rosecrans Memorial Airport, St. Joseph, MO	STJ	1,000
Runway Ranch Airport, Kansas City, MO	2MO9	1,000
Sheller's Airport, Tonganoxie, KS	11KS	1,000
Shomin Airport, Oskaloosa, KS	0KS1	1,000
Stonehenge Airport, Williamstown, KS	71KS	1,000
Threshing Bee Airport, McLouth, KS	41K	1,000

(12) Airports within a 30-nautical mile radius of the McCarran International Airport.

Airport name	Arpt ID	Alt. (AGL)
Sky Ranch Estates Airport, Sandy Valley, NV	3L2	2,500

(13) Airports within a 30-nautical mile radius of the Memphis International Airport.

Airport name	Arpt ID	Alt. (AGL)
Bernard Manor Airport, Earle, AR	65M	2,000
Holly Springs-Marshall County Airport, Holly Springs, MS	M41	2,000
McNeely Airport, Earle, AR	M63	2,000
Price Field Airport, Joiner, AR	80M	2,000
Tucker Field Airport, Hughes, AR	78M	2,000
Tunica Airport, Tunica, MS	30M	2,000
Tunica Municipal Airport, Tunica, MS	M97	2,000

(14) Airports within a 30-nautical mile radius of the Minneapolis-St. Paul International World-Chamberlain Airport.

Airport name	Arpt ID	Alt. (AGL)
Belle Plaine Airport, Belle Plaine, MN	7Y7	1,200
Carleton Airport, Stanton, MN	SYN	1,200
Empire Farm Strip Airport, Bongards, MN	MN15	1,200
Flying M Ranch Airport, Roberts, WI	78WI	1,200
Johnson Airport, Rockford, MN	MY86	1,200
River Falls Airport, River Falls, WI	Y53	1,200
Rusmar Farms Airport, Roberts, WI	WS41	1,200
Waldref SPB, Forest Lake, MN	9Y6	1,200
Ziermann Airport, Mayer, MN	MN71	1,200

(15) Airports within a 30-nautical mile radius of the New Orleans International/ Moisant Field Airport.

Airport name	Arpt ID	Alt. (AGL)
Bollinger SPB, Larose, LA	L38	1,500
Clovelly Airport, Cut Off, LA	LA09	1,500

(16) Airports within a 30-nautical mile radius of the John F. Kennedy International Airport, the La Guardia Airport, and the Newark International Airport.

Airport name	Arpt ID	Alt. (AGL)
Allaire Airport, Belmar/ Farmingdale, NJ	BLM	2,000
Cuddihy Landing Strip Airport, Freehold, NJ	NJ60	2,000
Ekdahl Airport, Freehold, NJ	NJ59	2,000
Fla-Net Airport, Netcong, NJ	0NJ5	2,000
Forrestal Airport, Princeton, NJ	N21	2,000
Greenwood Lake Airport, West Milford, NJ	4N1	2,000
Greenwood Lake SPB, West Milford, NJ	6NJ7	2,000
Lance Airport, Whitehouse Station, NJ	6NJ8	2,000
Mar Bar L Farms, Englishtown, NJ	NJ46	2,000
Peekskill SPB, Peekskill, NY	7N2	2,000
Peters Airport, Somerville, NJ	4NJ8	2,000
Princeton Airport, Princeton/ Rocky Hill, NJ	39N	2,000
Solberg-Hunterdon Airport, Readington, NJ	N51	2,000

(17) Airports within a 30-nautical mile radius of the Orlando International Airport.

Airport name	Arpt ID	Alt. (AGL)
Arthur Dunn Air Park Airport, Titusville, FL	X21	1,400
Space Center Executive Airport, Titusville, FL	TIX	1,400

(18) Airports within a 30-nautical mile radius of the Philadelphia International Airport.

Airport name	Arpt ID	Alt. (AGL)
Ginns Airport, West Grove, PA	78N	1,000
Hammonton Municipal Airport, Hammonton, NJ	N81	1,000
Li Calzi Airport, Bridgeton, NJ	N50	1,000
New London Airport, New London, PA	N01	1,000
Wide Sky Airpark Airport, Bridgeton, NJ	N39	1,000

(19) Airports within a 30-nautical mile radius of the Phoenix Sky Harbor International Airport.

Airport Name	Arpt. ID	Alt. (AGL)
Ak Chin Community Airfield Airport, Maricopa, AZ	E31	2,500
Boulais Ranch Airport, Maricopa, AZ	9E7	2,500
Estrella Sailport, Maricopa, AZ	E68	2,500
Hidden Valley Ranch Airport, Maricopa, AZ	AZ17	2,500
Millar Airport, Maricopa, AZ	2AZ4	2,500
Pleasant Valley Airport, New River, AZ	AZ05	2,500
Serene Field Airport, Maricopa, AZ	AZ31	2,500
Sky Ranch Carefree Airport, Carefree, AZ	E18	2,500
Sycamore Creek Airport, Fountain Hills, AZ	0AS0	2,500
Unversity of Arizona, Maricopa Agricultural Center Airport, Maricopa, AZ	3AZ2	2,500

(20) Airports within a 30-nautical-mile radius of the Lambert/St. Louis International Airport.

Airport Name	Arpt. ID	Alt. (AGL)
Blackwall Airport, Old Monroe, MO	6MO0	1,000
Lebert Flying L Airport, Lebanon, IL	3H5	1,000
Sloan's Airport, Elsberry, MO	0MO8	1,000
Woodlift Airpark Airport, Foristell, MO	98MO	1,000

(21) Airports within a 30-nautical-mile radius of the Salt Lake City International Airport.

Airport Name	Arpt. ID	Alt. (AGL)
Bolinder Field-Tooele Valley Airport, Tooele, UT	TVY	2,500
Cedar Valley Airport, Cedar Fort, UT	UT10	2,500
Morgan County Airport, Morgan, UT	42U	2,500
Tooele Municipal Airport, Tooele, UT	U26	2,500

(22) Airports within a 30-nautical mile radius of the Seattle-Tacoma International Airport.

Airport name	Arpt ID	Alt. (AGL)
Firstair Field Airport, Monroe, WA	WA38	1,500
Gower Field Airport, Olympia, WA	6WA2	1,500
Harvey Field Airport, Snohomish, WA	S43	1,500

(23) Airports within a 30-nautical mile radius of the Tampa International Airport.

Airport name	Arpt ID	Alt. (AGL)
Hernando County Airport, Brooksville, FL	BKV	1,500
Lakeland Municipal Airport, Lakeland, FL	LAL	1,500
Zephyrhills Municipal Airport, Zephyrhills, FL	ZPH	1,500

(24) Airports within a 30-nautical mile radius of the Washington National Airport, Andrews Air Force Base Airport, Baltimore-Washington International Airport, and Dulles International Airport.

Airport name	Arpt ID	Alt. (AGL)
Albrecht Airstrip Airport, Long Green, MD	MD48	2,000
Armacost Farms Airport, Hampstead, MD	MD38	2,000
Barnes Airport, Lisbon, MD	MD47	2,000
Bay Bridge Airport, Stevensville, MD	W29	2,000
Carroll County Airport, Westminster, MD	W54	2,000
Castle Marina Airport, Chester, MD	OW6	2,000
Clearview Airpark Airport, Westminster, MD	2W2	2,000
Davis Airport, Laytonsville, MD	W50	2,000
Fallston Airport, Fallston, MD	W42	2,000
Faux-Burhans Airport, Frederick, MD	3MDO	2,000
Forest Hill Airport, Forest Hill, MD	MD31	2,000
Fort Detrick Helipad Heliport, Fort Detrick (Frederick), MD	MD32	2,000
Frederick Municipal Airport, Frederick, MD	FDK	2,000
Fremont Airport, Kemptown, MD	MD41	2,000
Good Neighbor Farm Airport, Unionville, MD	MD74	2,000
Happy Landings Farm Airport, Unionville, MD	MD73	2,000
Harris Airport, Still Pond, MD	MD69	2,000
Hybarc Farm Airport, Chestertown, MD	MD19	2,000
Kennersley Airport, Church Hill, MD	MD23	2,000
Kentmorr Airpark Airport, Stevensville, MD	3W3	2,000
Montgomery County Airpark Airport, Gaithersburg, MD	GAI	2,000
Phillips AAF, Aberden, MD	APG	2,000
Pond View Private Airport, Chestertown, MD	OMD4	2,000
Reservoir Airport, Finksburg, , MD	1W8	2,000
Scheeler Field Airport, Chestertown, MD	OW7	2,000
Stolcrest STOL, Urbana, MD	MD75	2,000
Tinsley Airstrip Airport, Butler, MD	MD17	2,000
Walters Airport, Mount Airy, MD	OMD6	2,000
Waredaca Farm Airport, Brookeville, MD	MD16	2,000
Weide AAF, Edgewood Arsenal, MD	EDG	2,000
Woodbine Gliderport, Woodbine, MD	MD78	2,000
Wright Field Airport, Chestertown, MD	MD11	2,000
Aviacres Airport, Warrenton, VA	3VA2	1,500
Birch Hollow Airport, Hillsboro, VA	W60	1,500
Flying Circus Aerodrome Airport, Warrenton, VA	3VA3	1,500
Fox Acres Airport, Warrenton, VA	15VA	1,500
Hartwood Airport, Somerville, VA	8W8	1,500
Horse Feathers Airport, Midland, VA	53VA	1,500
Krens Farm Airport, Hillsboro, VA	14VA	1,500
Scott Airpark Airport, Lovettsville, VA	VA61	1,500

Airport name	Arpt ID	Alt. (AGL)
The Grass Patch Airport, Lovettsville, VA	VA62	1,500
Walnut Hill Airport, Calverton, VA	58VA	1,500
Warrenton Air Park Airport, Warrenton, VA	9WO	1,500
Warrenton-Fauquier Airport, Warrenton, VA	W66	1,500
Whitman Strip Airport, Manassas, VA	OV5	1,500
Buds Ferry Airport, Indian Head, MD	MD39	1,000
Burgess Fieid Airport, Riverside, MD	3W1	1,000
Chimney View Airport, Fredericksburg, VA	5VA5	1,000
Holly Springs Farm Airport, Nanjemoy, MD	MD55	1,000
Lanseair Farms Airport, La Plata, MD	MD97	1,000
Nyce Airport, Mount Victoria, MD	MD84	1,000
Parks Airpark Airport, Nanjemoy, MD	MD54	1,000
Pilots Cove Airport, Tompkinsville, MD	MDO6	1,000
Quantico MCAF, Quantico, VA	NYG	1,000
Stewart Airport, St. Michaels, MD	MD64	1,000
US Naval Weapons Center, Dahlgren Lab Airport, Dahlgren, VA	NDY	1,000

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Harold W. Becker,

Manager, Airspace Rules and Aeronautical Iniformation Division, Air Traffic Rules & Procedures Service.

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