

proposed, we will codify the error correction by amending 40 CFR 52.1470(b), 52.1470(c)(11), and 52.1483 accordingly.<sup>5</sup>

#### V. Proposed Actions, Public Comment and Final Actions

Under section 110(k)(3) of the CAA, EPA is proposing approval of a request by the State of Nevada for rescission of NAC 445.667 (“Excess emissions: Scheduled maintenance; testing; malfunctions”) from the applicable SIP because of the connection between NAC 445.667 and NAQR article 2.5.4, which we approved in error and for which we are proposing disapproval.

EPA is also proposing, under section 110(k)(6) of the CAA, to correct errors made by the Agency in approving NAQR article 2.5.4 in 1972 and again in 1978 as part of the applicable SIP by disapproving the previously approved versions of the rule and thereby deleting NAQR article 2.5.4 from the applicable SIP. We are proposing this correction because the subject rule provides an exemption from enforcement at the State’s discretion for certain excess emissions and is thereby inconsistent with the fundamental purpose of the SIP, which is to provide for implementation, maintenance, and enforcement of the NAAQS, inconsistent with Congressional intent for continuous emission limits, and inconsistent with the regulatory structure of the Clean Air Act which provides for independent enforcement authority by EPA and citizens.

We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final rule that will rescind NAC 445.667, and that will delete NAQR article 2.5.4, from the applicable Nevada SIP, and to codify the latter action by amending 40 CFR 52.1470(b), 52.1470(c)(11), and 52.1483 accordingly.

<sup>5</sup> We note that our proposed action herein of disapproving a previously approved excess emissions rule is consistent with actions we have taken on similar excess emissions provisions in other portions of the Nevada SIP and in other SIPs. For example, in 1981, we disapproved section 12, an excess emissions rule adopted by Clark County (that we had previously approved as part of the Clark County portion of the Nevada SIP) on similar grounds as described herein. See 46 FR 43141 (August 27, 1981) and 69 FR 54006 (September 7, 2004). In 1978, we disapproved similar excess emissions rules adopted by 22 different air pollution control districts in the State of California and, in some instances, reversed previous approvals of prior versions of those rules. See 43 FR 33915 (August 2, 1978).

#### VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely proposes to delete previously approved state rules that, viewed collectively, fail to meet Federal requirements and imposes no additional requirements. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to rescind or delete pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to delete previously approved state rules that, viewed collectively, fail to implement a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of

the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: December 8, 2006.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

[FR Doc. E6–21500 Filed 12–15–06; 8:45 am]

**BILLING CODE 6560–50–P**

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[EPA–R05–OAR–2004–WI–0002; FRL–8258–1]

#### Federal Implementation Plan Under the Clean Air Act for Certain Trust Lands of the Forest County Potawatomi Community Reservation if Designated as a PSD Class I Area; State of Wisconsin

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

**ACTION:** Proposed rule.

**SUMMARY:** On June 29, 1995, and July 10, 1997, EPA proposed to approve a request by the Forest County Potawatomi Community (FCP Community) to redesignate certain trust lands within its reservation as Class I with respect to the Clean Air Act (CAA) Prevention of Significant Deterioration (PSD) construction permit program. In these proposals, EPA did not explicitly state the mechanism it would use if it granted the redesignation request nor did the Agency include a draft of its codification. In this action, EPA is proposing that it will promulgate a Federal Implementation Plan (FIP) if it approves FCP Community’s request and

this action proposes potential codification language. This FIP will be implemented by EPA unless or until it is replaced by a Tribal Implementation Plan (TIP).

**DATES: Comments.** Comments must be received on or before January 17, 2007.

**Public Hearing.** The EPA intends to hold two public hearings on this proposed action, one on the Forest County Potawatomi Reservation and one in the nearby community. The dates, times, and location of these public hearings will be announced shortly in a separate **Federal Register** notice.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2004-WI-0002 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epamail.epa.gov.*
- *Fax:* 202-566-1741.
- *Mail:* Attention Docket ID No. EPA-R05-OAR-2004-WI-0002, U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Mail Code 6102T, Washington, DC 20460. Please include a total of 2 copies.

• *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room 3334, Washington, DC 20004, Attention Docket ID No. EPA-R05-OAR-2004-WI-0002. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2004-WI-0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and

made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, Northwest, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** For technical information, contact Constantine Blathras, Air and Radiation Division, U.S. EPA, Region 5 (AR-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3507, telephone number: (312) 886-6071, facsimile number: (312) 886-5824, electronic mail address: *blathras.constantine@epa.gov*.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. Does This Action Apply to Me?*

This action if finally promulgated will apply to applicants to the Prevention of Significant Deterioration (PSD) construction permit program on Class I trust lands of the Forest County Potawatomi Community (FCP Community).

###### *B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit information that you consider to be CBI electronically through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information

that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Also, send an additional copy clearly marked as above not only to the Air docket but to: Roberto Morales, c/o OAQPS Document Control Officer, (C339-03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Attention Docket ID No. EPA-R05-OAR-2004-WI-0002.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

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

###### *C. Where Can I Get a Copy of This Document and Other Related Information?*

In addition to being available electronically in *www.regulations.gov*, electronic copies of the docket are also available at the following repositories: Crandon Public Library, Attention: Tina Inger, Director, 110 West Polk Street, Crandon, Wisconsin 54520; Rhinelander District Library, Attention: Kris Adams Wendt, Director, 106 North Stevens Street Rhinelander, Wisconsin 54501; and the Forest County Potawatomi

Natural Resource Department,  
Attention: Daniele Dusold, Wensaut  
Lane, Crandon, Wisconsin 54520.

#### *D. How Can I Find Information About a Possible Public Hearing?*

The EPA intends to hold two public hearings on this action, one on the Forest County Potawatomi Reservation and one off-reservation. The dates, times, and location of these public hearings will be announced shortly in a separate **Federal Register** notice. Persons interested in attending the public hearing should contact Mr. J. Elmer Bortzer, Air and Radiation Division, U.S. EPA, Region 5 (AR-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3507, telephone number: (312) 886-1430, facsimile number: (312) 886-5824, e-mail address: [bortzer.jay@epa.gov](mailto:bortzer.jay@epa.gov) to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed changes.

#### *E. Overview of the Rule*

The information presented in this preamble is organized as follows:

##### I. General Information

- A. Does This Action Apply to Me?
- B. What Should I Consider as I Prepare My Comments for EPA?
- C. Where Can I Get a Copy of This Document and Other Related Information?
- D. How Can I Find Information About a Possible Hearing?
- E. Overview of Rule

##### II. Purpose

##### III. Background

- A. The FCP Community Request for Redesignation to Class I. Brief Summary of Past Comments
- B. The CAA's PSD Program in Indian Country

##### IV. Tribal Implementation Plans and Federal Implementation Plans

##### V. The Federal Implementation Plan for the FCP Community's Class I Area

- A. Current Codification of the PSD Program in Wisconsin and the FCP Community Lands
- B. Proposed Codification for an FCP Community Class I Redesignation

##### VI. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

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

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

J. National Technology Transfer Advancement Act

VII. Statutory Authority

## II. Purpose

In this action, EPA is proposing to codify the Class I resignations in a Federal Implementation Plan (FIP) if the Agency approves the FCP Community's redesignation request; this notice also proposes potential codification language. The EPA solicits comments on today's proposal as to whether a FIP is the appropriate mechanism with which to codify the FCP Community's redesignation of their lands to Class I, if approved, the proposed codification, and any related procedural issues. Although EPA strongly encourages commenters to focus on these issues, comments on other aspects of the redesignation request will also be accepted. Interested parties should submit comments as detailed in the **ADDRESSES** section of this proposed rule.

## III. Background

### *A. The FCP Community Request for Redesignation to Class I*

On February 14, 1995, the FCP Community submitted a formal request to EPA to redesignate certain trust lands within their reservation to Class I under the CAA PSD construction permit program. On June 29, 1995 (60 FR 33779), and July 10, 1997 (62 FR 37007), EPA proposed to approve the request. In addition, in 1997 EPA also held public hearings on the redesignation request.

Both Wisconsin and Michigan objected to the proposed redesignation and requested dispute resolution under Section 164(e) of the CAA. To resolve the dispute with the State of Wisconsin, the FCP Community and Wisconsin entered into a Memorandum of Agreement (FCP Community-Wisconsin MOA) for implementation of the proposed Class I area in Wisconsin. For those provisions of the agreement, and any other aspects of the dispute resolution that will need to be made federally enforceable, EPA will codify them as appropriate should it determine to grant the redesignation request. For example, the agreement's limitation of certain increment analyses to a ten mile radius may need to be codified in federally enforceable regulations.

Specifically, the agreement between the FCP Community and Wisconsin subjects all major sources in Wisconsin

located within a ten (10) mile radius of any redesignated Tribal land to performing an increment analysis and to meeting consumption requirements applicable to a class I area. Major sources located outside of ten (10) miles are subject to increment analysis and consumption requirements applicable to any redesignated Tribal land as if it were a class II area. Also under the agreement, all major sources within sixty-two (62) miles are subject to an analysis of their impact on air quality related values (AQRVs) of the redesignated Tribal lands to determine if they will have an adverse impact on these AQRVs.

The Agency believes that the Tribe and Wisconsin may enter into such an agreement. When the dispute resolution process in section 164(e) is invoked by an affected state or tribe, EPA is called upon to participate in that process and to recommend a resolution, if requested by the parties, or to finally resolve the dispute, if the parties are unable to reach agreement. However, where the parties successfully reach agreement through the dispute resolution process, EPA is inclined to read section 164(e) of the CAA to provide that EPA has no further role to play in the dispute resolution process. The EPA is not required to review or approve the terms of the agreement, and the Agency is inclined to respect agreements that obviate the need for the Administrator to make a decision resolving the matter. If the parties to the dispute reach an agreement through the 164(e) process without EPA resolution, EPA proposes not to interfere with the agreement and to rest its final decision to approve or deny the redesignation on the criteria in 164(b)(2) of the CAA.

In commenting on the proposed codification, commenters may wish to comment on the potential need to codify certain provisions of the agreement or aspects of the dispute resolution as well. The FCP Community-Wisconsin MOA, together with related materials, is available in the docket for this proposal. The FCP Community and the State of Michigan have not been able to resolve their differences. The EPA anticipates acting on the FCP Community request and remaining aspects of the dispute resolution process with the States after the close of the public comment period on today's proposal.

### Brief Summary of Past Comments

During the initial comment period and public hearings, EPA received several comments on the proposed redesignation. The Agency will respond to all significant comments in the final rule resolving the redesignation request,

but includes a brief discussion and response to two of those comments.

First, several commenters argued that the request for redesignation should be denied either because the FCP Community identified certain air quality related values ("AQRVs") after submitting their initial request or that the lands proposed for redesignation were not of sufficient size or quality to possess AQRVs. However, neither Section 164(b) of the CAA nor EPA's implementing regulations governing redesignation require a State or Tribe requesting a redesignation to demonstrate or establish that the affected lands have AQRVs, and Congress did not make AQRVs a prerequisite for redesignation of non-federal Class I areas. It is therefore unnecessary for EPA to determine what AQRVs the lands at issue might possess in order for the Agency to act on, including granting, the redesignation request. See 61 FR 56450, 56458–56459 (Nov. 1, 1996) (redesignation of Yavapai-Apache lands).

A second area of significant comment alleged that the areas proposed for redesignation were either too small or too dispersed to allow for effective air quality management as discussed in sections 162 and 164 of the CAA. Section 162 of the Act designates certain areas as mandatory Class I areas. The Act also provides for non-federal Class I areas, and Section 164(c) specifically states that "Lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated," but does not speak to what size lands might be appropriate for a redesignation to Class I. In disputes resolving area redesignation, section 164(e) requires EPA to consider (the extent to which the lands involved are of sufficient size to allow effective air quality management." In its decision to grant the Class I redesignation request for the Yavapai-Apache reservation, (which is similar to the FCP reservation in that it consists of a number of relatively small, discrete parcels of land), EPA examined whether it would be difficult to perform a PSD air quality modeling analysis that assessed the impacts of a proposed source in such a situation. The EPA concluded that based on existing modeling tools it would be relatively simple and practicable for a proposed source to project its impact on the Class I area parcels and evaluate the analysis. See 61 Fed. Reg. at 56457–56458.

Consideration of the size of the redesignated lands, therefore, can be evaluated based upon the Agency's experience in the Yavapai-Apache redesignation. We solicit comment on

the two issues presented above and EPA's response to them.

#### *B. The CAA's PSD Program in Indian Country*

The CAA gives EPA broad authority to protect air resources throughout the nation, including the resources on Indian reservations and other areas of Indian country. Part C of the CAA lays out the PSD construction permit program. It is based on the concept that new sources and modifications of existing sources in relatively pollution free lands, *i.e.*, lands attaining the National Ambient Air Quality Standards (NAAQS), should not be allowed to increase emissions such that ambient pollutant levels rise to the level of the NAAQS. Instead, these sources' emissions are limited such that ambient levels cannot exceed the pollutant specific increments in the CAA or EPA regulations. The CAA provides three levels of increments for each pollutant, Class I which is the most stringent, Class II, which is what most of the United States was initially designated by the CAA, and Class III, which is the least stringent. Section 164 affords states and tribes the right to request that EPA redesignate lands under their control. Historically only tribes have made such requests, and in all these cases, the tribes requested redesignation from Class II to Class I. The FCP Community, likewise, requested that EPA redesignate certain of their lands from Class II to Class I. Under the CAA, generally EPA must approve this request if all procedural requirements are met.

One of the tribes that requested redesignation from Class II to Class I before FCP Community was the Yavapai Apache Tribe, and on October 2, 1996 EPA approved the request. The State of Arizona, within which the Yavapai Apache lands were located, had raised objections to the redesignation and requested to enter into Section 164(e) dispute negotiations with the Yavapai Apache. The EPA held a meeting with the parties, but ultimately no agreement was reached. The EPA was forced to resolve the dispute, and did so by granting the redesignation request and codifying the redesignation in a FIP. 61 FR 56461 (November 1, 1996) and 61 FR 56450 (November 1, 1996). The State of Arizona continued to dispute the approval of the reservation to Class I and filed a suit before the United States Court of Appeals for the Ninth Circuit. See, *Administrator, State of Arizona v. EPA*, 151 F.3d 1205 (9th Cir. 1998). The Ninth Circuit's decision stated, among other things, that EPA should have codified the Class I area in a TIP rather than a FIP, and remanded the

redesignation back to the EPA regional office so that EPA could follow the appropriate procedures for promulgating the Class I area as a TIP.

On February 12, 1998, however, EPA promulgated a final rule under section 301 of the CAA entitled "Indian Tribes: Air Quality Planning and Management." 63 FR 7254 (Feb. 12, 1998). This rule, generally referred to as the "Tribal Authority Rule" or "TAR," discusses those provisions of the CAA for which it is appropriate to treat Indian tribes in the same manner as states and establishes the requirements that Indian tribes must meet if they choose to seek such treatment. The EPA also concluded that certain provisions of the CAA should not be applied to tribes in exactly the same manner in which they were applied to states. One of those provisions was CAA 110(c)(1), which provides the Administrator with the authority to promulgate a FIP within 2 years of finding that a State plan is insufficient. 63 FR at 7265. EPA reasoned that tribes, unlike states, "in general are in the early stages of developing air planning and implementation expertise" because the specific authority for tribes to establish air programs was first expressly addressed in 1990. *Id.* at 7264–7265. Because tribes were only recent participants in the process, EPA determined it would be inappropriate to hold them to the same deadlines and Federal oversight as the states. *Id.* at 7265.

The EPA noted, though, that it was "not relieved of its general obligation under the CAA to ensure the protection of air quality throughout the nation, including throughout Indian country." *Id.* The EPA concluded that the Agency could "act to protect the air quality pursuant to its 'gap-filling' authority under the CAA as a whole" and that "section 301(d)(4) provides EPA with discretionary authority, in cases where it has determined that treatment of tribes as identical to states is 'inappropriate or administratively infeasible,' to provide for direct administration through other regulatory means." *Id.* Under that authority, EPA adopted 40 CFR 49.11, which set the standard for adoption of FIP provisions for Indian Country: "[The Administrator] [s]hall promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of section 304(a) (*sic* 301(a)) and 301(d)(4), if a tribe does not submit a tribal implementation plan meeting the completeness criteria of 40 CFR part 51, Appendix V, or does not receive

EPA approval of a submitted tribal implementation plan." 40 CFR 49.11(a). The intent of this provision was to recognize that tribes may not initially have the capability to implement their own delegated CAA programs and that the TAR does not relieve EPA of its general obligation under the CAA to protect air quality throughout the nation, including in Indian country. See 63 FR 7265.

Therefore, the TAR established two possible routes for the codification of a Class I redesignation on Tribal lands: (1) A TIP, if one has been developed by the Tribe and approved by EPA; and (2) A FIP, if a TIP did not exist and a FIP was necessary to protect air quality.

#### IV. Tribal Implementation Plans and Federal Implementation Plans

Consistent with the approach detailed in the TAR, U.S. EPA Region 5 sent a letter to the FCP Community requesting that the Tribe specify what mechanism they wished to use to codify the proposed redesignation to Class I. On August 4, 1999, Harold Frank, Chairman, Forest County Potawatomi Community, sent a letter to Francis X. Lyons, Regional Administrator of EPA Region 5, requesting that EPA promulgate the redesignation of the proposed Class I area parcels in a FIP. The FCP asked EPA to promulgate the Class I area redesignation into a FIP, as opposed to utilizing a TIP, because the FCP Community was continuing to build its capacity and infrastructure to run a Tribal Air Program and was not yet ready to submit its own TIP. On August 23, 1999, EPA sent a letter to the FCP Community agreeing to their request for the Class I redesignation being promulgated in a FIP, should EPA's rulemaking result in the approval of the FCP Community's request.

Until such time as the FCP Community develops a TIP and has it approved, EPA retains the authority to promulgate the redesignation approval in a FIP. Because the FCP Community's request and EPA's original proposal predated the TAR, neither clearly specified the manner in which the redesignation would be codified. The EPA has, therefore, published this supplemental proposal to seek comment on the codification of the FCP Community redesignation, if approved, in a FIP.

#### V. The Federal Implementation Plan for the FCP Community's Class I Area

##### A. Current Codification of the PSD Program in Wisconsin and the FCP Community Lands

On August 7, 1980, EPA promulgated the Federal PSD Program regulations

which are codified at 40 CFR 52.21, and which applied to those states that had not submitted a PSD program meeting the requirements of 40 CFR 51.166. 45 FR 52741 (August 7, 1980), as amended at 46 FR 9585 (January 29, 1981). Wisconsin was one such state, and as a result, Wisconsin initially implemented the Federal PSD program under a delegation of authority from EPA. Wisconsin subsequently submitted a PSD rule and program which EPA approved for all sources in Wisconsin except for sources located on tribal lands and other sources that require permits issued by the EPA. See 64 FR 28748 (May 27, 1999). The current EPA regulation addressing the PSD program in Wisconsin reads as follows:

40 CFR 52.2581. Significant deterioration of air quality.

(a)-(c) [Reserved]

(d) The requirements of sections 160 through 165 of the Act are met, except for sources seeking permits to locate in Indian country within the State of Wisconsin; and sources with permits issued by EPA prior to the effective date of the state's rules.

(e) Regulations for the prevention of the significant deterioration of air quality. The provisions of § 52.21(b) through (w) are hereby incorporated and made a part of the applicable State plan for the State of Wisconsin for sources wishing to locate in Indian country; and sources constructed under permits issued by EPA.

##### B. Proposed Codification for an FCP Community Class I Redesignation

Under the authority of section 307(d) of the Act, EPA is proposing to revise its regulation as reflected below if EPA approves the FCP Community request to designate some of its reservation as Class I. In today's action, EPA is proposing that it will promulgate the resignation in a FIP if EPA approves the FCP Community's request for redesignation of certain lands within the exterior boundaries of the Tribe's reservation. This FIP will be implemented by EPA unless or until it is replaced by a Tribal Implementation Plan (TIP). The proposed codification language follows Section VII below.

#### VI. Statutory and Executive Order Reviews

##### A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

The FCP Community prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in "EPA

memorandum dated October 25, 2004". A copy of the analysis is available in the docket for this action and is briefly summarized here.

As part of its application package for Class I redesignation, the FCP Community has analyzed the potential economic impact of redesignation on the affected region (Forest County and those counties bordering Forest County). This analysis directly supports a finding that the impact of the proposed redesignation would not result in an adverse annual impact to the economy of \$100 million or more.

As discussed in greater detail in the memorandum, the FCP Community analysis identifies those economic sectors with the largest employment in the area. These are industry, manufacturing and trade, which together account for 46% of the jobs in the affected area. To evaluate the effect of Class I redesignation on economic expansion and future industrial plant development in the affected area, the FCP Community prepared an independent air dispersion modeling analysis to determine the air quality impacts on the Class I area from various new projects. These included a 250-ton-per-day paper mill, three different types of power plants, and a mining project.

The modeling and screening results analyzed indicate that the proposed Class I redesignation should not have major effects on economic expansion and industrial development in the region. The redesignation could restrict the siting of large paper mills and large coal-fired powered plants to at least 10 km from the reservation, and would limit the development of multiple projects that would have an unacceptable cumulative effect on the Class I increments, but none of these known proposed developments in the region would be adversely affected.

##### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* We are not promulgating any new paperwork requirements (*e.g.*, monitoring, reporting, recordkeeping) as part of this proposed action. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR parts 51 and 52) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060-0003, EPA ICR

number 1230.17.<sup>1</sup> A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Avenue, NW, Washington, DC 20460 or by calling (202) 566-1672.

This analysis included an examination of the additional regulatory burden, per regulated unit, on those sources constructing or modifying near a Class I area, and which may be required to perform a Federal Class I area analysis to determine the effect of the proposed source on AQRV inside the Class I area, and on the consumption of increment, where the baseline has been triggered. It is important to note that not all sources located near Class I areas would have to perform such monitoring; these requirements apply only when emissions from the source have the potential to impact the Class I area.

The EPA's analysis for OMB included the additional burden placed upon the regulated community as well as on State and Federal agencies. The redesignation of FCP Community lands from Class II to Class I is wholly consistent with the analysis put forth in EPA's ICR and OMB's approval and no new paperwork requirements are being promulgated with this action.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB

<sup>1</sup> The regulations covered under this ICR govern the State and Federal programs for preconstruction review and permitting of major new and modified sources pursuant to Part C "Prevention of Significant Deterioration" (PSD) and Part D "Program Requirements for Nonattainment Areas" of the CAA. The types of information collection activities addressed in this ICR are those necessary for the preparation and submittal of construction permit applications and the issuance of final permits.

control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

*C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. This action does not require a regulatory flexibility analysis because it will not have a significant economic impact on a substantial number of small entities.

The EPA believes that the reclassification of the proposed area to Class I will impose virtually no additional requirements on small entities, regardless of whether they are minor sources or major sources. For small entities that are also minor sources, since at the present time the baseline concentrations for this area have not been triggered and none of the Class I increments have yet been consumed, minor emission sources are unaffected by PSD requirements. Should the Class I increments be completely consumed in the future, it is possible that some pollution control requirements would fall to minor sources. However, any such future pollution control requirements imposed on off-reservation sources would be under the jurisdiction of the states, not EPA. Therefore, EPA is not in a present or future position to directly regulate small entities and therefore is not required to conduct an RFA analysis.

For small entities that are major sources, the impact is not expected to be substantial. As demonstrated in section VI.A. above, the requirements for demonstrating compliance with the NAAQS and PSD increments for major

facilities in and surrounding Class I areas are similar to the requirements for major facilities in and surrounding Class II areas. Therefore, this action will not have a significant impact on a substantial number of small entities.

While EPA is not required to conduct an RFA analysis, as a matter of good public policy, the Agency has reviewed information on the impact of the redesignation provided by the FCP Community in its Technical Support Document (TSD) submitted pursuant to the tribe's request for Class I redesignation. In this document, the Tribe reviewed the potential impact of the Class I redesignation on various types of sources, concluding that impacts of the redesignation to Class I would impact only certain major stationary sources, and would impose no additional requirements on minor sources.<sup>2</sup>

For example, air dispersion modeling and EPA-approved screening performed for the Tribe's TSD demonstrates that a 140 MW natural gas fired combustion turbine power plant could be constructed and operated directly adjacent to the reservation without violating any of the Class I increments. Power plants of this type produce relatively high levels of nitrogen oxides (NO<sub>x</sub>), which are their major emissions, yet despite its direct proximity to a Class I area, such a facility would impact only a small fraction (~4%) of the allowable Class I increment for NO<sub>x</sub>. Considering that the FCP Community analysis shows that a major gas-fired power generating facility could be operated immediately next to the reservation without significant impacts, and that only very large industrial projects located within approximately 10 km of the reservation would be affected by the redesignation, it appears very unlikely that any small businesses located within 100 kilometers would produce emissions in large enough quantities to trigger the Class I restrictions.

Nevertheless, it is possible that a small business located close enough to the reservation may be a major source of criteria air pollutants. Even in that

<sup>2</sup> The EPA has prepared an ICR analysis for the NSR program generally, finding that "Approximately 2,200 'small business' major sources were estimated to exist; however, only 50 small business facilities employing 500 persons or fewer were projected to be subject to NSR annually. Based on the methodology incorporated in that rulemaking Regulatory Impact Analysis, the Agency concluded that the current part 51 and 52 NSR regulations do not constitute a disproportionate burden on small entities." U.S. EPA, "Information Collection Request for 40 CFR Part 51 and 52 Prevention of Significant Deterioration and Nonattainment New Source Review, October 12, 2004, at 13."

event, the PSD requirements for Class I areas would be very unlikely to impose a significant financial burden on such a small business. If it is an existing business at the time the redesignation goes into effect, it would not be subject to the PSD permitting requirements, which apply only to new stationary sources or major modifications to existing sources.

Even if the small business in question was new to the Class I area, hence subject to PSD permitting, the redesignation would still not impose additional significant financial or regulatory burdens on the small entity. As a major source of criteria air pollutants, the small business would be subject to PSD permitting regulations whether the reservation had been redesignated to Class I or had remained a Class II area, as it is now. Major stationary sources proposing to locate in any PSD area, regardless of whether it is Class II or Class I, must still conduct the same type of analyses to measure the impact of their emissions on the allowable increments and use the best available control technology to reduce their emissions and minimize adverse effects.

Should the area remain Class II, the major source would still be required to perform a modeling analysis to ensure that the Class II increments are protected in order to obtain a permit. Since a modeling analysis is required in any case, the cost of adding additional receptor points, if needed, to the modeling analysis to gather the necessary data to ensure that the Class I increments will also be protected should be relatively small. Likewise, since every major stationary source proposing to locate in a PSD area, whether it has been designated as Class I or Class II, must employ "best available control technology" to reduce emissions, proximity to a Class I area generally would not affect the level of control required to meet BACT. In short, regardless of whether they are in a Class II or a Class I area, major sources are required to obtain an air quality permit, conduct modeling analyses, and use the best available technology to control emissions under the PSD program. Thus, as a general rule, redesignation should not inflict additional control costs on a source.

Under certain circumstances a major source may be required to achieve further decreases in emissions to reduce its impact on the air quality related values of a Class I area. Such a requirement would necessitate further regulatory action by either the FCP Community or EPA, however, and the impacts of the specific requirements can

be appropriately assessed at that time. Additionally, it would be very unusual for a small business to also be a major source and a substantial number of small entities should certainly not be so affected.

Several other Indian tribes have redesignated tribal lands to Class I in other parts of the country, and their experience can provide us with some insight into the impact redesignation typically has on small entities in the vicinity. These include the Northern Cheyenne Tribe, Montana; Flathead Indian Reservation, Montana; Fort Peck Indian Reservation, Montana and the Spokane Indian Reservation, Washington, which were redesignated as Class I areas between 1977 and 1990. Thus far, there has been very little economic impact on small businesses, nearby towns, local governments or other small entities following Class I redesignation in those areas. The EPA has no reason to believe that same pattern of minimal economic impact to small businesses will not be repeated in Forest County and the surrounding counties.

Small entities that are minor sources of air pollution will not be affected at all by this action at this time. The PSD permit program does not cover minor sources and, as previously discussed, EPA does not directly regulate minor entities. The reclassification of the proposed area to Class I therefore imposes virtually no additional requirements on small entities since the baseline concentration level for Forest County has not yet been triggered and none of the PSD increments in the area have yet been consumed. The baseline concentration is the conceptual reference point or "starting" point for determining air quality deterioration in an area subject to the PSD program. Thus, the baseline concentration is essentially the ambient air quality existing at the time the first complete PSD application is made for a major new source affecting a PSD baseline area. Since no PSD permit application triggering a baseline date has been submitted in the Forest County area, there has not been any consumption of the PSD increments in the area. Should major and minor sources of pollution consume all of the available increment in an area at some point in the future, it is possible that some pollution control requirements would then fall to minor sources, but since roughly 75% of the land in Forest County is National Forest, and there is presently very little industrial development in the area, there is likely to be little consumption of the Class I increments for some time to come.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities that are not major sources because this action affects only major stationary sources, as defined by 40 CFR 52.21.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives, and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100

million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The redesignation would not impose significant additional financial or regulatory burdens on a new or modified source subject to the PSD permitting requirements. As a major source of criteria air pollutants, a new or modified source would be subject to PSD regulations whether the reservation had been redesignated to Class I or had remained a Class II area, as it is now. New major stationary sources proposing to locate in any PSD area, regardless of whether it is Class II or Class I, must still conduct the same type of analyses to measure the impact of their emissions on the allowable increments and use the best available control technology to reduce their emissions and minimize adverse effects. No additional permits would be required as a result of a redesignation of FCP Community reservation lands. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because, as already stated in other sections of this regulatory package, the redesignation from a Class II to a Class I area would not impose additional significant financial or regulatory burdens on sources.

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

Executive Order 13132, entitled "Federalism," 64 FR 43255 (August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed

regulation. We also may not issue a regulation that has federalism implications and that preempts State law, unless we consult with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule merely implements an authority currently available to Indian tribes to redesignate their reservation lands under the PSD program of the CAA, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local officials in developing this rule. A summary of the concerns raised during that consultation and EPA's response to those concerns will be provided when EPA issues its final rulemaking.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" 65 FR 67249 (November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

The EPA has concluded that this proposed rule establishing federal standards will have tribal implications. Thus, consistent with section 3 of the Executive Order, in the process of developing this proposal, EPA consulted with FCP tribal officials to permit them to have meaningful and timely input into its development. EPA consulted with representatives of the FCP Community prior to their submission of the redesignation request. During this consultation, EPA explained the function of the CAA's redesignation provision, differences between Class I and Class II designations, and alternatives to the proposed Class I redesignation. The FCP Community chose to submit a request for redesignation to Class I on February 14, 1995. Since the FCP Community submitted its request for redesignation, EPA has kept the FCP Community informed of its process for completing the rulemaking through written

correspondence, conference calls, and face to face meetings when appropriate. Records of these communications are found in the docket for this proposed action. Most recently, EPA officials held consultations with the FCP Community between May and July 2006 to discuss this proposed action and to answer the Community's questions.

Finally, because the proposed action will neither impose substantial direct compliance costs on tribal governments nor preempt Tribal law, section 5 of Executive Order 13175 is not applicable. Class I redesignation will enable the FCP Community to further their goal of exercising control over reservation resources to better protect the members of their community. Overall, EPA expects that the impact of the redesignation to Class I will be positive.

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

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks," 62 FR 19885 (April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because EPA published a Notice of Proposed Rulemaking before April 21, 1998. Nonetheless, as a matter of EPA Policy, the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

Redesignation of the identified parcels of the FCP reservation to Class I status will reduce the allowable increase of various types of pollutants. The reduction of these pollutants can only be expected to better protect the health of tribal members, members of the surrounding communities, and especially children and asthmatics.

The adverse health effects of exposure to high levels of criteria air pollutants such as sulfur dioxide and fine particulate matter are well known and

well documented.<sup>3</sup> Sulfur dioxide, for example, is known to irritate the respiratory system. As explained in the FCP Community's TSD, exposure to high concentrations for even short periods can cause bronchial constriction and exposure to lower concentrations of sulfur dioxide for longer periods and suppresses the respiratory system's natural defenses to particles and bacteria.<sup>4</sup> Children and asthmatics are especially vulnerable to the adverse health effects of sulfur dioxide.<sup>5</sup> If the Class I redesignation is codified in a FIP, the allowable increase of sulfur dioxide after redesignation of the reservation to Class I status (on an annual arithmetic mean basis) will be one-tenth of the current Class II allowable increase, thus providing greater health protection to children from such air pollutants.

Likewise, the allowable increase in particulate matter after Class I redesignation (on an annual basis) will be approximately one-fourth of the current Class II increase. Particulate matter consists of airborne particles and aerosols ranging in size from less than 1 micrometer to more than 100 micrometers. Aside from natural sources, industrial activity can release great quantities of particulates (dust, soot, ash and other solid and liquid particles). Combustion products emitted during power generation, heating, motor vehicle use and various industrial processes are also classified as particulate matter. The vast majority (~99%) of such inhalable particulate matter is trapped in the upper respiratory tract, but the remainder enters the windpipe and the lungs, clinging to the protective mucosa. The smallest particles are deposited in the alveoli and capillaries of the lung, where they impair the exchange of oxygen and causes shortness of breath. Children, the elderly, and people with pulmonary problems and respiratory conditions (e.g., emphysema, bronchitis, asthma, or heart problems) are the most susceptible to these debilitating effects.<sup>6</sup> Adverse health effects from particulate matter are often cumulative and progressive, worsening as particulates

gradually collect in the lungs following repeated, long-term exposure.<sup>7</sup>

Fine particulate matter is the worst offender in that regard. Scientific studies have shown that particulate matter, especially fine particles (those particles with an aerodynamic diameter of less than 2.5 micrometers and commonly known as PM<sub>2.5</sub>), are retained deep within the lungs.<sup>8</sup> Short term exposure to such fine particulate matter can cause lung irritation and may impair immune responses. Some of the material from the particles can dissolve in the lungs, causing cell damage, and the particles themselves may consist of compounds that are toxic or which form acids when combined with moisture in the lungs. Long-term lower level exposures can cause cancer and other respiratory illnesses. Reducing the allowable increase in particulate matter by roughly 75% should thus provide greater health protection from such afflictions to children on the reservation and in the surrounding communities.

In short, the environmental health or safety risks addressed by this action do not present a disproportionate risk to children. In fact, they are expected to have a positive rather than a negative impact on children's health and the environment.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

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

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA believes that the redesignation of FCP Community lands

in a FIP from Class II to Class I area should not raise any environmental justice issues since it will reduce the allowable increase of various types of pollutants. Consequently, this redesignation should result in health benefits to tribal members and members of the surrounding communities. Therefore, we believe that these regulations would not have a disproportionate adverse effect on the health or safety of minority or low income populations.

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

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

#### **VII. Statutory Authority**

The statutory authority for this proposed action is provided by sections 110, 301 and 164 of the CAA as amended (42 U.S.C. 7410, 7601, and 7474) and 40 CFR Part 52.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides.

Dated: December 11, 2006.

**Stephen L. Johnson,**  
Administrator.

For the reasons cited in this action, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

#### **PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

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

<sup>3</sup> What are the Six Common Air Pollutants? (March 23, 2004) (available at <http://www.epa.gov/air/urbanair/6poll.html>)

<sup>4</sup> SO<sub>2</sub>—How Sulfur Dioxide Affects the Way We Live & Breathe. U.S. EPA Office of Air Quality Planning & Standards (November 2000) (available at <http://www.epa.gov/air/urbanair/so2/index.html>)

<sup>5</sup> Health and Environmental Impacts of SO<sub>2</sub> (September 30, 2003) (available at <http://www.epa.gov/air/urbanair/so2/hlth1.html>)

<sup>6</sup> Health and Environmental Impacts of PM (30 September 2003) (available at <http://www.epa.gov/air/urbanair/pm/hlth1.html>)

<sup>7</sup> PM—Chief Causes for Concern (30 September 2003) (available at <http://www.epa.gov/air/urbanair/pm/chf.html>)

<sup>8</sup> Information on Particulate Matter (FINE) PM. Condensed from Health and Environmental Effects of Particulate Matter; U.S. EPA Office of Air Quality Planning and Standards (July 1997). (available on <http://www.air.dnr.state.ga.us/information/pm25.html>)

2. Section 52.2581 is amended by revising paragraph (e) and by adding paragraph (f) to read as follows:

**§ 52.2581 Significant deterioration of air quality.**

\* \* \* \* \*

(e) Regulations for the prevention of the significant deterioration of air quality. The provisions of § 52.21(b) through (w) are hereby incorporated and made a part of the applicable State plan for the State of Wisconsin for sources wishing to locate in Indian country; and sources constructed under permits issued by EPA, except as specified in paragraph (f) of this section.

(f) Forest County Potawatomi Community reservation lands 80 acres and over in size and located in Forest County are designated as a Class I area for the purposes of prevention of significant deterioration of air quality. The individual parcels listed below all consist of a description from the Fourth Principal Meridian, with a baseline that is the Illinois-Wisconsin border:

- (1) Section 14 of Township 36 north (T36N), range 13 east (R13E).
- (2) Section 26 of T36N R13E.
- (3) The west half (W<sup>1/2</sup>) of the east half (E<sup>1/2</sup>) of Section 27 of T36N R13E.
- (4) E<sup>1/2</sup> of SW<sup>1/4</sup> of Section 27 of T36N R13E.
- (5) N<sup>1/2</sup> of N<sup>1/2</sup> of Section 34 of T36N R13E.
- (6) S<sup>1/2</sup> of NW<sup>1/4</sup> of Section 35 of T36N R13E.
- (7) Section 36 of T36N R13E.
- (8) Section 2 of T36N R13E.
- (9) W<sup>1/2</sup> of Section 2 of T34N R15E.
- (10) Section 10 of T34N R15E.
- (11) S<sup>1/2</sup> of NW<sup>1/4</sup> of Section 16 of T34N R15E.
- (12) N<sup>1/2</sup> of SE<sup>1/4</sup> of Section 20 of T34N R15E.
- (13) NW<sup>1/4</sup> of Section 28 of T34N R15E.
- (14) W<sup>1/2</sup> of NE<sup>1/4</sup> of Section 28 of T34N R15E.
- (15) W<sup>1/2</sup> of SW<sup>1/4</sup> of Section 28 of T34N R15E.
- (16) W<sup>1/2</sup> of NE<sup>1/4</sup> of Section 30 of T34N R15E.
- (17) SW<sup>1/4</sup> of Section 2 of T34N R16E.
- (18) W<sup>1/2</sup> of NE<sup>1/4</sup> of Section 12 of T34N R16E.
- (19) SE<sup>1/4</sup> of Section 12 of T34N R16E.
- (20) E<sup>1/2</sup> of SW<sup>1/4</sup> of Section 12 of T34N R16E.
- (21) N<sup>1/2</sup> of Section 14 of T34N R16E.
- (22) SE<sup>1/4</sup> of Section 14 of T34N R16E.
- (23) E<sup>1/2</sup> of Section 16 of T34N R16E.
- (24) NE<sup>1/4</sup> of Section 20 of T34N R16E.
- (25) NE<sup>1/4</sup> of Section 24 of T34N R16E.
- (26) N<sup>1/2</sup> of Section 22 of T35N R16E.
- (27) SE<sup>1/4</sup> of Section 22 of T35N R16E.
- (28) N<sup>1/2</sup> of SW<sup>1/4</sup> of Section 24 of T35N R15E.

- (29) NW<sup>1/4</sup> of Section 26 of T35N R15E.
- (30) E<sup>1/2</sup> of Section 28 of T35N R15E.
- (31) E<sup>1/2</sup> of NW<sup>1/4</sup> of Section 28 of T35N R15E.
- (32) SW<sup>1/4</sup> of Section 32 of T35N R15E.
- (33) E<sup>1/2</sup> of NW<sup>1/4</sup> of Section 32 of T35N R15E.
- (34) W<sup>1/2</sup> of NE<sup>1/4</sup> of Section 32 of T35N R15E.
- (35) NW<sup>1/4</sup> of Section 34 of T35N R15E.
- (36) N<sup>1/2</sup> of SW<sup>1/4</sup> of Section 34 of T35N R15E.
- (37) W<sup>1/2</sup> of NE<sup>1/4</sup> of Section 34 of T35N R15E.
- (38) E<sup>1/2</sup> of Section 36 of T35N R15E.
- (39) SW<sup>1/4</sup> of Section 36 of T35N R15E.
- (40) S<sup>1/2</sup> of NW<sup>1/4</sup> of Section 36 of T35N R15E.
- (41) S<sup>1/2</sup> of Section 24 of T35N R16E.
- (42) N<sup>1/2</sup> of Section 26 of T35N R16E.
- (43) SW<sup>1/4</sup> of Section 26 of T35N R16E.
- (44) W<sup>1/2</sup> of SE<sup>1/4</sup> of Section 26 of T35N R16E.
- (45) E<sup>1/2</sup> of SW<sup>1/4</sup> of Section 30 of T35N R16E.
- (46) W<sup>1/2</sup> of SE<sup>1/4</sup> of Section 30 of T35N R16E.
- (47) N<sup>1/2</sup> of Section 34 of T35N R16E.

[FR Doc. E6-21523 Filed 12-15-06; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 721**

[EPA-HQ-OPPT-2006-0795; FRL-8102-3]

RIN 2070-AJ31

**2,3,5,6-Tetrachloro-2,5-Cyclohexadiene-1,4-Dione; Proposed Significant New Use of a Chemical Substance; Reopening of Comment Period**

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

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** EPA is reopening the public comment period for a proposed significant new use rule (SNUR) published in the **Federal Register** of May 12, 1993 (58 FR 27980) for the chemical chloranil (2,3,5,6-tetrachloro-2,5-cyclohexadiene-1,4-dione). EPA is planning to complete this rulemaking by issuing a final rule. Given the long period of time which has passed since EPA issued the proposed rule, EPA is reopening the comment period. This will provide an opportunity for

commenters to update their comments and for additional commenters to contribute to the docket before EPA develops a final rule.

**DATES:** Comments must be received on or before January 17, 2007.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2006-0795, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA-HQ-OPPT-2006-0795. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to docket ID number EPA-HQ-OPPT-2006-0795. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.