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560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA-HQ-OAR-2025-1212; FRL-9632-03-OAR]

RIN 2060-AV67

Minor New Source Review Program Air Permitting Public Participation Requirements for State Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to revise the public participation regulatory requirements for sources subject to Clean Air Act (CAA) New Source Review (NSR) programs approved into State Implementation Plans (SIPs). Specifically, the EPA is proposing to recognize in regulation that State and local air quality regulatory authorities ("air agencies") determine, pursuant to the CAA, whether, when, and to what extent public participation in minor NSR programs is necessary to assure the National Ambient Air Quality Standards (NAAQS) are achieved. If finalized, the changes effected by this rulemaking would provide State and local air agencies with greater discretion to identify the requisite level of public participation that is appropriate in their minor NSR programs, which regulate individual authorizations to construct minor stationary sources and minor modifications to existing stationary sources.

DATES: *Comments*. Comments must be received on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Public hearing: If anyone contacts us requesting a public hearing on or before July 12, 2026, the EPA will hold a virtual public hearing on **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. *See*

SUPPLEMENTARY INFORMATION for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OAR-2025-1212**,** by any of the following methods:

- *Federal e-Rulemaking Portal*: *https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments. You can also find a plain language summary of the proposed rule on the Federal eRulemaking Portal.
- *E-mail*: *a-and-r-docket@epa.gov*. Include Docket ID No. EPA-HQ-OAR-2025-1212 in the subject line of the message.
- *Fax*: (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2025-1212.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2025-1212, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460.
- Hand Delivery or Courier (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. 20004. The Docket Center's hours of operations are 8:30 a.m.-4:30 p.m., Monday-Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. EPA-HQ-OAR-2025-1212 for this proposed rulemaking. Comments received may be posted without change to *https://www.regulations.gov*, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. For further information on EPA Docket Center services and the current status, please visit the EPA Docket Center online at *https://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: For information about this proposed rule, contact Richard Bowen, U.S. EPA, Office of State Air Partnerships, Permitting & Program Support Division, C504-03, Research Triangle Park, NC 27711; telephone number: (919) 541-4436; email address: *bowen.richard@epa.gov*.

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing. To request a virtual public hearing, contact the public hearing team at (844) 901-0246 or by email at *OSAPpublichearing@epa.gov*. If requested, the hearing will be held via virtual platform on **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The hearing will convene at 10 a.m. Eastern Time (ET) and will conclude at 4 p.m. ET; additional hearing hours may be added at the discretion of the EPA. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details on the virtual public hearing at *https://www.epa.gov/nsr/nsr-regulatory-actions*.

If a public hearing is requested, the EPA will begin pre-registering speakers for the hearing no later than one business day after a request has been received. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/nsr/nsr-regulatory-actions* or contact the public hearing team at (844) 901-0246 or by email at *OSAPpublichearing@epa.gov*. The last day to pre-register to speak at the hearing will be July 19, 2026. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers at: *https://www.epa.gov/nsr/nsr-regulatory-actions*.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have approximately four minutes to provide oral testimony. The EPA recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

During the hearing, the EPA may ask clarifying questions but will not respond to comments made during oral testimonies. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/nsr/nsr-regulatory-actions*. While the EPA expects the hearing to be conducted as set forth earlier, please monitor our website to determine if there are any updates. The EPA reserves the right to delay the date of the public hearing for any reason including scheduling conflicts. If this occurs, the comment period will be extended by the delayed number of days. The EPA does not intend to publish a document in the *Federal Register* announcing updates. All updates and announcements will be communicated on the webpage listed above.

If you require the services of a translator or special accommodations, please pre-register for the hearing with the public hearing team and describe your needs by July 14, 2026. The EPA may not be able to arrange accommodations without advanced notice.

Docket. The EPA established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2025-1212. All documents in the docket are listed in *https://www.regulations.gov*. Although listed, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only as PDF versions that can only be accessed on the EPA computers in the docket office reading room. Certain databases and physical items cannot be downloaded from the docket but may be requested by

contacting the docket office at (202) 566-1744. With the exception of such material, publicly available docket materials are available electronically in *https://www.regulations.gov*.

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2025-1212. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be CBI or other information the disclosure of which is restricted by statute. Do not submit electronically to *https://www.regulations.gov* any information that you consider to be CBI or other information the disclosure of which is restricted by statute. This type of information should be submitted as discussed below.

The EPA may publish any comment received to the Agency's public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

The *https://www.regulations.gov* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic

comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the Agency may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets*.

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov*. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.*, Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the CBI Office at the email address *osapcbi@epa.gov* and, as described above, should include clear CBI markings and note the docket ID. If assistance

is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *osapcbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OSAP Document Control Officer (C404-02), U.S. Environmental Protection Agency, 4930 Old Page Rd. C404-02 Durham, NC 27703, Attention Docket ID No. EPA-HQ-OAR-2025-1212. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Preamble acronyms and abbreviations. Throughout this preamble the use of "we," "us," or "our" is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA	Clean Air Act
CBI	Confidential Business Information
CFR	Code of Federal Regulations
EPA	Environmental Protection Agency
ET	Eastern Time
FESOP	Federally Enforceable State Operating Permit
FIP	Federal Implementation Plan
FR	*Federal Register*
FTP	File Transfer Protocol
GP	General Permit
NAAQS	National Ambient Air Quality Standard or Standards
NNSR	Nonattainment New Source Review
NSR	New Source Review
OMB	Office of Management and Budget
OSAP	Office of State Air Partnerships, U.S. EPA
PAL	Plantwide Applicability Limit
PBR	Permit-by-Rule
PSD	Prevention of Significant Deterioration
PTE	Potential to Emit
RFP	Reasonable Further Progress
SER	Significant Emission Rate
SIP	State Implementation Plan
TIP	Tribal Implementation Plan
U.S.C.	United States Code

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I. Background

A. New Source Review Program and State Implementation Plans

CAA sections 110(a)(1) and 110(a)(2) direct each State to develop and submit to the EPA a plan that provides for the implementation, maintenance, and enforcement of the NAAQS. This plan is called a SIP. The programs in each SIP are developed by the State air agency and any local air agencies within the State. State and local air agencies

have discretion regarding the provisions they adopt and include as part of a SIP's air quality regulatory programs, so long as those programs and their provisions meet the applicable statutory and regulatory requirements. SIP submissions can include a wide variety of provisions, such as: emissions limitations for specific sources of air pollution and associated monitoring, recordkeeping, and reporting requirements; more broadly applicable State or local rules (or State laws) regarding emissions controls for sources of air pollution or categories of sources; other local or State commitments to undertake certain activities; and non-regulatory supporting information.[1] SIPs reflect the principle of cooperative federalism by providing that air agencies may design the air quality programs for their respective jurisdictions in accordance with the requirements of CAA section 110(a) and corresponding regulations. The EPA then reviews such submissions and shall approve, disapprove, or partially approve and partially disapprove the submission based on the Agency's determination of whether all applicable statutory requirements have been met per CAA section 110(k)(3).[2] The existing EPA-approved SIP provisions for each State are found in 40 CFR part 52.

CAA section 110(a)(2) includes a list of specific requirements for all SIP submissions, as applicable, including the requirement that States include a stationary source preconstruction permitting program in their SIPs as described in CAA section 110(a)(2)(C).[3] This program is known as the NSR program. The goals of this preconstruction review process include seeking to ensure that Federal air quality standards are met, maximizing opportunities for economic development consistent with the preservation of clean air, and ensuring that any decision to increase air pollution is made after full public consideration of the consequences of such a decision. The Supreme

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[1] U.S. Environmental Protection Agency. (Last updated Jan. 20, 2023). Basic Information About Air Quality SIPs, *https://www.epa.gov/air-quality-implementation-plans/basic-information-about-air-quality-sips*.
[2] 42 U.S.C. 7410(k)(3).
[3] *See* 42 U.S.C. 7410(a)(2)(C).

Court has recognized that, in enacting the NSR program, "Congress sought to accommodate the conflict between the economic interest in permitting capital improvements to continue and the environmental interest in improving air quality."[4] In other words, NSR intends to "balance environmental concerns with economic and administrative concerns, at least to a point."[5] Specifically, CAA section 110(a)(2)(C) requires each SIP to provide for "regulation of the modification and construction of any stationary source . . . as necessary to assure that [the NAAQS] are achieved, including a permit program as required in parts C and D [of CAA title I]."[6] Parts C and D of CAA title I require SIPs to also include permit programs with additional requirements regulating the modification and construction of "major" stationary sources; as such, parts C and D of CAA title I are often referred to as the "major NSR program." The major NSR program encompasses two core types of preconstruction permit[7] requirements for major stationary sources. CAA title I, part C establishes the Prevention of Significant Deterioration (PSD) program, which applies to new major stationary sources[8] and major modifications[9] of existing major stationary sources for pollutants for which an area is designated as attainment or unclassifiable for the relevant NAAQS (*i.e.*, pollutants for which there are established NAAQS) and for other pollutants regulated under the CAA.[10] CAA title I, part D establishes the major nonattainment NSR (NNSR) program, which

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[4] *Chevron U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 851 (1984).
[5] *New York v. EPA*, 413 F.3d 3, 23 (D.C. Cir. 2005) (*per curiam*).
[6] *See* 42 U.S.C. 7410(a)(2)(C), 7470; 67 FR 80186, 80187/2–3 (Dec. 31, 2002).
[7] An air quality preconstruction permit is a form of preconstruction "authorization," which is the term used in this proposal to refer to all regulatory mechanisms used to authorize proposed preconstruction decisions with qualifying air quality impacts. This preamble uses the term "authorization" in particular to refer to regulatory mechanisms used in the context of air agencies' minor NSR programs because, unlike the CAA's requirements for major NSR "permit programs" established by parts C and D of CAA title I, the CAA's requirements in CAA section 110(a)(2)(C) do not specifically require minor NSR programs to use permits as the mechanism for authorizing the construction or modification of minor stationary sources.
[8] The term "major stationary source" is defined in the context of State PSD programs at 40 CFR 51.166(b)(1)(i) and in the context of the Federal PSD program at 40 CFR 52.21(b)(1)(i).
[9] The term "major modification" is defined in the context of State PSD programs at 40 CFR 51.166(b)(2)(i) and in the context of the Federal PSD program at 40 CFR 52.21(b)(2)(i).
[10] 42 U.S.C. 7470-79.

applies to new major stationary sources and major modifications[11] of existing major stationary sources for those NAAQS for which an area is designated as nonattainment.[12] The EPA has two sets of regulations implementing the PSD program. One set, found at 40 CFR 51.166, contains the requirements that State and local air agencies' PSD programs must satisfy to be approved by the EPA as part of a SIP. The other set of regulations, found at 40 CFR 52.21, contains the requirements for the EPA's Federal PSD program, which applies in areas that are not subject to a SIP-approved[13] PSD program. 40 CFR 51.165 contains the EPA's regulatory requirements that State and local air agencies' NNSR programs must satisfy to be approved by the Agency as part of a SIP.

While parts C and D of CAA title I address the major NSR program for major sources, CAA section 110(a)(2)(C) applies to "the modification or construction of any stationary source" and thus also encompasses the construction of new minor, or non-major, stationary sources and minor modifications to existing stationary sources. Thus, SIPs must also include programs to regulate construction of new minor sources and minor modifications, along with the major source programs, as necessary to assure the NAAQS are achieved. The EPA commonly refers to the minor source program as the "minor NSR" program. As currently written, the Federal requirements for approval of State and local minor NSR programs into a SIP are outlined in 40 CFR 51.160-51.164. These requirements currently apply to both major NSR programs and minor NSR programs but are supplemented by the more detailed regulatory requirements described in the previous paragraph for major NSR programs. Federal requirements for minor NSR programs are less prescriptive than those for major sources and, as a result, there is a

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[11] The terms "major stationary source" and "major modification" are defined with respect to the NNSR program at 40 CFR 51.165(a)(1)(iv) and at 40 CFR 51.165(a)(1)(v), respectively.
[12] 42 U.S.C. 7501-15.
[13] A State or local air quality regulatory program or provision becomes "SIP-approved" once the EPA approves a SIP submission containing that program or provision, at which point the program or provision becomes a part of the EPA-approved SIP for that State.

larger variation of requirements across State and local minor NSR programs in EPA-approved SIPs than across State and local major NSR programs in EPA-approved SIPs. For example, while major NSR programs apply to "major sources" and "major modifications" as defined within 40 CFR 51.165 and 51.166, the general NSR program regulations at 40 CFR 51.160-51.164 do not define what constitutes a "minor source" or a "minor modification."

Because CAA section 110(a)(2)(C) requires that State and local minor NSR programs regulate minor sources and minor modifications "as necessary to assure that [the NAAQS] are achieved," the statute provides State and local air agencies with discretion to establish their own applicability criteria for their minor NSR programs as needed to assure achievement of the NAAQS in their jurisdictions. While parts C and D of CAA title I require that SIPs include "permit programs" for regulating major sources and major modifications, CAA section 110(a)(2)(C) does not prescribe the use of permits or any other specific mechanism for authorizing the construction minor sources and minor modifications. Air agencies are free to use permits in their minor NSR programs and frequently do so, but air agencies can also include other preconstruction authorization mechanisms in their minor NSR programs, such as general permits (GPs) and permits-by-rule (PBRs); this proposed rule further describes these mechanisms later in this section.

This proposed rule relates specifically to the EPA's minimum requirements for approving State and local minor NSR programs to become part of a SIP; these programs apply to proposed new "minor" stationary sources and "minor" modifications to existing stationary sources ("minor NSR preconstruction activities"), and to proposed decisions to authorize their construction ("minor NSR authorizations"). New stationary sources are considered "minor" if they do not have the potential to emit air pollutants in amounts equal to or exceeding the "major source" statutory thresholds within parts C and D of

CAA title I.[14] Modifications at existing major stationary sources are considered "minor" if they do not increase emissions by amounts equal to or exceeding the significant emissions rates (SERs) in NSR regulations.[15] Modifications at existing minor stationary sources are considered "minor" if they do not increase emissions by amounts equal to or exceeding the "major source" statutory thresholds within parts C and D of CAA title I.[16]

Minor NSR programs also apply to "synthetic minor" sources and modifications, which are new facilities and/or modifications to existing sources that would ordinarily increase emissions of regulated pollutants by amounts equal to or exceeding the applicable "major source" thresholds, but which voluntarily accept one or more enforceable limitation(s) that keep their emissions below the "major source" thresholds. In doing so, new sources and modifications that would otherwise constitute "major" sources and modifications become "synthetic minor" sources and modifications by constraining their emissions to levels that make them minor sources and minor modifications. In contrast, "true minor" sources and modifications do not require enforceable limitations to keep their emissions below major source thresholds as their emissions are below the "major NSR" thresholds without the application of an enforceable limitation. Both "synthetic minor" and "true minor" sources and modifications are subject to minor NSR program requirements.

In addition, minor NSR programs frequently allow for GPs and PBRs, which may describe preconstruction authorization mechanisms that apply standardized eligibility

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[14] 42 U.S.C. 7479(1), 7491(g)(7), 7511(b)(4), 7511a(b)(1)(A)(ii)(I), 7511a(c), 7511a(d), 7511a(e), 7511a(f), 7511c(b)(2), 7512a(c)(1), 7513a(b)(3), and 7513a(e). Stationary sources that do not meet the definitional characteristics in these sections are considered "non-major" or "minor" stationary sources.
[15] 40 CFR 51.165(a)(1)(v), 51.165(f)(2)(viii), 51.166(b)(2), and 51.166(w)(2)(viii). Modifications at existing major stationary sources that do not meet the definitional characteristics in these sections are considered "non-major" or "minor" modifications to existing major stationary sources.
[16] 42 U.S.C. 7479(1), 7491(g)(7), 7511(b)(4), 7511a(b)(1)(A)(ii)(I), 7511a(c), 7511a(d), 7511a(e), 7511a(f), 7511c(b)(2), 7512a(c)(1), 7513a(b)(3), and 7513a(e). Modifications at existing minor stationary sources that do not meet the definitional characteristics in these sections are considered "non-major" or "minor" modifications at existing minor stationary sources. *See also* 40 CFR 51.165(a)(1)(iv)(A)(*3*) and 51.166(b)(1)(i)(C).

criteria and pollution control requirements to categories of similar new and modified sources of air pollution. The term GP generally describes a preconstruction permit issued by a reviewing authority that applies to a number of similar emissions units or sources. It establishes a category of covered sources or modifications by creating a permit document that specifies the category, eligibility criteria for sources or modifications to qualify for coverage, and the set of standardized requirements applicable to all similar sources or modifications to be covered.[17] Similarly, the term PBR can be used to describe a preconstruction permit issued by a reviewing authority that may be applied to a number of similar emissions units or sources within a designated category. It establishes this category through a formal rulemaking or similar process, which results in codification of the proposed category, its eligibility requirements, and the standardized requirements for covered sources and modifications into the applicable code of regulations or the SIP.[18] Although each reviewing authority has its own procedures for new and modified sources to confirm coverage under a GP or PBR in its program, the process of confirming coverage typically requires the new or modified source to communicate with the reviewing authority to demonstrate that it qualifies for coverage under the GP or PBR. Because the reviewing authority has already predetermined the eligibility requirements for coverage under each GP or PBR, the reviewing authority's process for confirming GP or PBR coverage is typically streamlined compared to, and different in kind from, the process for authorizing construction of new sources and modifications that fall outside the category established by a GP or PBR and, therefore, require a specific authorization.

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[17] *See* 80 FR 25068 (May 1, 2015).

[18] GPs and PBRs are not limited to CAA title I programs; CAA section 504(d) provides that air agencies may also issue CAA title V general permits covering numerous similar sources, after notice and opportunity for public hearing. 42 U.S.C. 7661c(d); *see* 40 CFR 70.6(d).

Upon EPA approval of a SIP submission that satisfies minimum requirements for an NSR program, the State or local air agency[19] becomes the reviewing authority for proposed major NSR permits and minor NSR authorizations for sources within its boundaries and issues federally enforceable preconstruction authorizations under State law. Currently, State and local air agencies issue the vast majority of major NSR permits and minor NSR authorizations each year. If a State or local air agency's SIP does not have an EPA-approved PSD or minor NSR program, the EPA promulgates a Federal Implementation Plan (FIP) to satisfy the unfulfilled NSR requirements for the area.[20] In that scenario, either the EPA issues the associated NSR authorizations, or an air agency issues the associated NSR authorizations under the FIP on behalf of the Agency by way of a delegation agreement. For the majority of sources located in Indian country,[21] the EPA is the permitting authority for both major NSR and minor NSR. Tribes may elect to submit a Tribal Implementation Plan (TIP) or participate in a delegation agreement with the EPA to implement major NSR or minor NSR preconstruction authorization decisions on Tribal lands.

The applicability of the preconstruction PSD and NNSR permitting program and/or minor NSR program to a stationary source is a pollutant-specific determination. Thus, a stationary source or modification may be subject to the PSD program for certain pollutants, NNSR for some pollutants, minor NSR for others, and/or not require an NSR authorization below certain thresholds for others.

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[19] This preamble uses the terms "air agency," "reviewing authority," and "permitting authority" interchangeably to refer to the regulatory authority responsible for reviewing and approving/disapproving proposed activities that could potentially impact air quality within a specific airshed. In most cases, this regulatory authority is a State or local air quality regulatory agency.

[20] The EPA does not issue FIPs if a State or local air agency does not have an EPA-approved NNSR program in the associated SIP; in such cases, the Agency instead directs the State or local air agency to apply the regulatory requirements in 40 CFR part 51, appendix S.

[21] *See* definition of "Indian country" within 18 U.S.C. 1151. *See also* 42 U.S.C. 7601(d)(1)(A), which authorizes the EPA Administrator to treat Indian Tribes as States under the CAA subject to the provisions of 42 U.S.C. 7601(d)(2).

B. Regulatory Requirements for New Source Review Programs

The provisions codified in 40 CFR 51.160-51.164 contain requirements that air agencies' NSR programs must satisfy to be approved by the EPA as part of a SIP; these SIP approval requirements also apply to air agencies' minor NSR programs. The regulations at 40 CFR 51.160 establish requirements for legally enforceable procedures for major and minor NSR, and the requirements at 40 CFR 51.160(a), (b), and (e) relate most closely to the statutory requirement that NSR programs "provide for . . . regulation of the modification and construction of any stationary source . . . as necessary to assure that [the NAAQS] are achieved."[22] First, 40 CFR 51.160(a) requires SIPs to "set forth legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of a facility, building, structure or installation, or combination of these" would interfere with attainment or maintenance of the NAAQS in the State where the source is located or in a neighboring State, or would violate applicable portions of the SIP's control strategy. Second, 40 CFR 51.160(b) requires the procedures established under 40 CFR 51.160(a) to allow the air agency to prevent construction or modification that would interfere with attainment or maintenance of the NAAQS or violate applicable portions of the SIP's control strategy. Finally, 40 CFR 51.160(e) requires SIPs to "identify [the] types and sizes of facilities, buildings, structures, or installations which will be subject to review" and "discuss the basis for determining which facilities will be subject to review." Together, these requirements establish minimum elements for air agencies' NSR programs that define the regulatory scope of the programs, *i.e.,* which new sources and modifications will be regulated and how they will be regulated to assure achievement and maintenance of the NAAQS. The requirements under 40 CFR 51.160 provide air agencies a degree of flexibility in

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[22] 42 U.S.C. 7410(a)(2)(C).

establishing State and local NSR programs that include these legally enforceable procedures and can be approved by the EPA as part of a SIP. This flexibility is limited for air agencies' major source NSR programs by the additional regulations at 40 CFR 51.165-51.166.

C. Existing Public Participation Requirements for New Source Review Programs

The CAA requires an opportunity for members of the public to participate both in the SIP development, review, and approval processes,[23] and in some of the programs that are incorporated into SIPs, including major source NSR preconstruction permitting programs.[24] The EPA's NSR preconstruction permitting regulations provide additional specificity regarding the methods of meeting the public notice obligations for NSR programs. The regulations establish minimum requirements for an opportunity to submit comments as part of the preconstruction review process for proposed new sources and modifications.[25] These regulatory requirements are found at 40 CFR 51.161 and currently do not distinguish between major NSR and minor NSR in terms of applicability. In other words, notwithstanding the statutory distinctions between major NSR (for which the statute requires certain public participation) and minor NSR (for which the statute does not require public participation), the existing regulations currently do not reflect such distinctions and treat both contexts the same.

40 CFR 51.161(a) establishes the basic requirement that State and local air agencies must provide an "opportunity for public comment on information submitted by owners and operators" on the new construction or modification of any stationary source. Specifically, it provides that the public must have access to and opportunity to comment on "the [air] agency's analysis of the effect of construction or modification on ambient air

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[23] *See*, *e.g.*, 42 U.S.C. 7410(a)(1) and 7410(a)(2).
[24] 42 U.S.C. 7470(5) and 7475(a)(2).
[25] *See* 40 CFR 51.161.

quality, including the [air] agency's proposed approval or disapproval [of the proposed new source or modification]."

40 CFR 51.161(b) provides that an "opportunity for public comment" consists of three required elements: (1) "Availability for public inspection[26] in at least one location in the area affected of the information submitted by the owner or operator and of the State or local [air] agency's analysis of the effect on air quality," (2) "A 30-day period for submittal of public comment," and (3) "A notice by prominent advertisement in the area affected of the location of the source information and analysis specified in paragraph (b)(1) of this section."

Regarding the third required element of an "opportunity for public comment," *i.e.*, public notice, such notices typically contain basic information about the draft permit or other preconstruction authorization, such as the permit number, the name and physical address of the facility, and the name and contact information of a person from whom interested persons may obtain additional information on the draft authorization. Depending on the air agency's public notice practices, a public notice may include more detailed information on the draft preconstruction authorization, such as the draft permit and technical support document. The public notice also informs interested parties about how to request and/or attend a public hearing and how to access additional information relevant to the draft preconstruction authorization.

Because some State and local air agencies had already established NSR programs before June 18, 1973, when the EPA promulgated[27] the requirements now found at 40 CFR 51.161, some pre-existing State and local minor NSR programs had rules providing

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[26] In a final rule published on Oct. 18, 2016 (81 FR 71613), the EPA revised the 40 CFR 51.161(b)(1) public-inspection requirement to add language explaining that "[t]his requirement may be met by making these materials available at a physical location or on a public Web site identified by the State or local agency."

[27] *See* 38 FR 15834, 15836 (June 18, 1973) (locating these requirements at 40 CFR 51.18); 51 FR 40656, 40669 (Nov. 7, 1986) (moving language from 40 CFR 51.18 to its current location in the Code of Federal Regulations).

an "opportunity for public comment" that conflicted with the requirement for a "30-day period for submittal of public comment."[28] Acknowledging this fact, the EPA provided an exception at 40 CFR 51.161(c) allowing States to "submit for [EPA] approval a comment period which is consistent with such existing requirements" as part of a SIP submission.

Finally, 40 CFR 51.161(d) requires air agencies to submit a copy of the notice required by 40 CFR 51.161(b) to the appropriate EPA Regional office, any other State and local air agencies with jurisdiction in the area where the proposed new or modified source would be located, and any other agency in the area with responsibility for implementing the applicable requirements of 40 CFR 51.160-51.166.

II. Proposed Rule Revisions

A. Summary of the Major Provisions of this Proposal

The EPA is proposing to revise the Federal public participation requirements under 40 CFR 51.161 for State and local minor NSR programs to be approved by the Agency as part of a SIP. If finalized, this proposal would remove minor NSR public participation as a minimum requirement for SIP submissions, thereby leaving decisions regarding public participation requirements in State and local minor NSR programs to the discretion of the air agencies. These decisions would include whether, when, and for how long to provide opportunities for public participation on preconstruction review of proposed new minor sources and modifications. The EPA does not believe that minor source public participation is generally "necessary to assure that [the NAAQS] are achieved" in the context of developing a program for the "regulation of" minor source construction and modification. The approach proposed in this action would enable air agencies to retain or establish public participation requirements for review of regulated

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[28] *See* 40 CFR 51.161(b)(2).

minor source construction and minor modifications when they believe public participation is desirable, consistent with the CAA and Federal regulations. In reviewing SIP submissions, the EPA would not expect, whether informally on a case-by-case basis or formally as a minimum requirement set out in regulation, that States include minor NSR public participation for the SIP to be approved as containing sufficient regulatory provisions "as necessary to assure that [the NAAQS] are achieved." Rather, States may include such elements at their discretion and tailor them to particular circumstances so long as these elements are consistent with the CAA and applicable Federal regulations. Considering this, the EPA is proposing to revise the Agency's Federal minimum regulatory requirements for State and local minor NSR programs to reflect the statutory discretion afforded to air agencies to change their minor NSR programs' public participation requirements through the SIP submission and approval process, including reducing or eliminating those requirements.

CAA section 110(a)(2)(C) requires SIPs to include NSR programs to provide for "regulation of the modification and construction of any stationary source . . . as necessary to assure that national ambient air quality standards are achieved." The approach proposed in this rulemaking more closely adheres to this statutory language as it applies to minor NSR. While all SIPs must regulate minor sources and minor modifications within the areas covered by the SIP as necessary to assure that the NAAQS are achieved, air agencies have discretion to include and adjust a broad variety of substantive regulatory tools in their minor NSR programs to fulfill this requirement. Although the EPA believes that procedures for minor NSR public participation typically will not be "necessary," as compared to substantive regulatory requirements, State and local air agencies may determine that public participation requirements are among these features or otherwise desirable. The EPA also observes that the utility of public participation in the context of minor NSR programs varies depending on a number of factors, and CAA

section 110(a)(2)(C) gives air agencies the discretion to consider relevant factors and decide whether and when public participation is most effectively deployed as part of their minor NSR programs' regulation of new minor sources and minor modifications to assure achievement of the NAAQS. Additionally, in light of the proposed changes described in this action, the transitional regulatory provision at 40 CFR 51.161(c) is no longer necessary or appropriate, and the EPA proposes to delete it. If this rule is finalized as proposed, this transitional provision would be rendered obsolete as public participation would be discretionary for minor NSR programs.

The EPA solicits comment on how a final version of this rule may affect how State and local air agencies analyze, publish, and act upon applications to construct new minor sources and minor modifications under State and local minor NSR programs approved by the Agency as part of their SIPs (question #1 in section V. of this preamble), including how a final version would impact State and local air agencies' administrative burdens and their estimates of the anticipated burden reduction, should air agencies choose to revise their minor NSR public participation requirements to the maximum extent described in this proposed rule (question #1 in section V. of this preamble). The EPA also solicits comment on regulatory alternatives to the action presented in this proposed rule (question #2 in section V. of this preamble).

The EPA has long exercised the Agency's authority under the CAA to establish regulations governing the development and submission of SIPs pursuant to CAA section 110, and has the authority to reconsider and revise these regulations so long as it acknowledges the change in position, offers a reasonable explanation for the change, and considers legitimate reliance interests, where relevant.[29] As discussed below, the EPA

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[29] *See FDA v. Wages & White Lion Invs*., L.L.C., 604 U.S. 542, 568–70 (2025); *FCC v. Fox Television Stations, Inc*., 556 U.S. 502 (2009); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29 (1983).

understands that this action would, if finalized, change minimum requirements applicable by regulation to minor NSR programs and differ from prior representations that minor NSR public participation is required to satisfy the standard in CAA section 110(a)(2)(C). Because this action would not, if finalized, require States to amend their existing SIPs with respect to minor NSR public participation or otherwise, the EPA does not believe that this change impacts legitimate reliance interests on the part of States, regulated parties, or the general public. The EPA further notes that any amendments to SIPs pursued as a result of this action would, if finalized, involve mandatory opportunities for public participation both at the State and local level and during the Agency review process and that any amendments to SIPs would be subject to EPA review on a holistic basis and, ultimately, judicial review in the appropriate venue. Nevertheless, the EPA solicits comment on any reliance interests that may be impacted by this action that should be considered and how such reliance interests should be addressed (question #3 in section V. of this preamble).

B. Requirements Not Affected by this Proposal and Further Discussion

If this rule is finalized as proposed, State and local air agencies would be allowed to, but would not be required to, revise their existing SIP-approved minor NSR program public participation requirements through the SIP submission and approval process (SIP process). The SIP process, and its procedural steps for developing and sending SIP submissions for EPA review and approval, are discussed further in section IV. of this preamble. If an air agency chooses to revise its existing SIP-approved minor NSR public participation requirements in response to a final version of this proposed rule, such actions must be consistent with Federal and State law. If an air agency chooses not to revise its minor NSR program's existing public participation requirements in response to a final version of this proposed rule, those existing minor NSR public participation

requirements would remain in the SIP and continue to apply to minor sources and minor modifications regulated by the air agency within its jurisdiction.

Notably, the EPA is not proposing to revise the public participation requirements that apply to the development and submittal of SIP submissions to the Agency; these requirements are found in 40 CFR part 51, appendix V. Thus, the EPA is not proposing to revise the public participation requirements applicable to the initial development, revision, and approval of State and local minor NSR program elements in SIPs through the SIP process. In all events, the EPA would review whether a SIP submission seeking to revise or establish minor NSR public participation elements satisfies, as a whole and in light of regulatory requirements included in the submission, the statutory requirement to provide for regulation of minor source construction and modification "as necessary to assure" that the NAAQS are achieved.

The EPA is not proposing to revise the minimum Federal public participation requirements that apply to the permitting of new major sources or major modifications to existing sources under air agencies' major NSR programs, *i.e.*, State and local programs that implement the Federal PSD and NNSR programs.[30] The EPA is not proposing to revise the public participation requirements for plantwide applicability limits (PALs) applied to existing major stationary sources.[31] However, if this proposed rule is finalized, each air agency's minor NSR program public participation requirements would continue

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[30] *See* general public participation requirements for major NSR programs at 40 CFR 51.165(i) and 51.166(q).

[31] As discussed in the preamble to the PAL regulations, "[t]he reviewing authority must establish a PAL in a federally enforceable permit (for example, a "minor" NSR construction permit, a major NSR permit, or a SIP-approved operating permit program)." 67 FR 80186, 80208 (Dec. 31, 2002). In addition, the PAL preamble explains "[w]here the PAL is established in a major NSR permit, major NSR public participation procedures apply." *Id.* PALs can be established for both existing major sources and existing minor sources, using either a federally enforceable major NSR permit or a federally enforceable minor NSR permit. The public participation requirements for PALs at existing major sources are reflected in 40 CFR 51.165(f)(5), 40 CFR 51.166(w)(5), 40 CFR 52.21(aa)(5), and appendix S to part 51, section IV.K.5; these regulatory sections require that "PALs *for existing major stationary sources* shall be established, renewed, or increased through a procedure that is consistent with §§ 51.160 and 51.161 of this chapter. This includes the requirement that the reviewing authority *provide the public with notice of the proposed approval of a PAL permit* and *at least a 30-day period for submittal of public comment*. . . ." (emphases added).

to apply to the issuance of PALs at existing minor stationary sources and PALs establishing minor modifications at existing stationary sources, and any revisions to a State or local minor NSR program's public participation requirements that are approved by the EPA into the SIP would also apply to the issuance of such PALs.

Similarly, this proposed rule does not address and would not affect Federal public participation requirements for air agencies' operating permit programs that implement the statutory requirements of CAA title V,[32] the regulatory requirements of 40 CFR 70.7(h), or federally enforceable State operating permit (FESOP) programs.

Finally, this proposed rule does not address the existing public participation requirements associated with preconstruction authorizations issued in Indian country as PSD permits, NNSR permits, or minor NSR authorizations. These requirements are contained in 40 CFR part 52 and in 40 CFR part 49.[33] Because the existing Tribal minor NSR public participation regulations at 40 CFR 49.157 currently require public participation on all draft permits for minor sources and minor modifications locating within Indian country, the EPA solicits comment on whether to pursue a separate rulemaking to amend the Tribal minor NSR public participation requirements and, if so, how the Agency should propose to amend the minor NSR public participation requirements in Indian country (*see* section III.B. of this preamble).

C. Rationale for this Proposal

1. Applicable Legal Framework, Clean Air Act section 110(a)(2)(C), and New Source Review Preconstruction Air Permit Programs

CAA section 110(a)(2)(C) provides the only statutory requirement for minor NSR, which is that SIPs must include a program "to provide for . . . *regulation* of the

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[32] *See* 42 U.S.C. 7661a(b)(6).

[33] *See* 40 CFR 49.157 (Federal requirements for public participation on minor NSR and synthetic minor NSR permits issued in Indian country) and 49.171 (Federal requirements for public participation on NNSR permits issued in Indian country).

modification and construction of any stationary source within the areas covered by the plan *as necessary to assure* that [the NAAQS] are achieved."[34] This language provides that each SIP must contain sufficient elements as a whole to assure achievement of the NAAQS and does not, with respect to minor NSR, specify what air agencies must include for the SIP to be approvable. Given the lack of other statutory requirements for minor NSR, the EPA has historically interpreted the statute to offer State and local air agencies a broad degree of discretion in developing programs to regulate the construction of new minor stationary sources and minor modifications to existing stationary sources.[35]

However, the EPA's general regulatory requirements for preconstruction review programs at 40 CFR 51.160-51.164 have not kept pace with statutory amendments made after the initial promulgation of these regulations. The EPA-promulgated NSR program did not distinguish between "major" and "minor" NSR until after the 1977 CAA amendments, which added detailed requirements in parts C and D of CAA title I for "major" new and modified sources. The language in the NSR regulations at 40 CFR 51.160-51.161 remains substantively unchanged since its original promulgation in 1973. These regulations do not distinguish between "major" new sources and modifications and "minor" new sources and modifications.[36] These regulatory requirements were initially adopted in response to a court order requiring the EPA to review SIPs that were previously approved to ensure that they would assure achievement and maintenance of the NAAQS.[37] At the time these regulatory requirements were adopted, the primary concern of the court and the EPA was the most heavily polluting major sources, which

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[34] 42 U.S.C. 7410(a)(2)(C) (emphases added).
[35] *See, e.g.*, 71 FR 48696, 48700 (Aug. 21, 2006); *Luminant Generation Co., LLC v. EPA*, 675 F.3d 917, 923 (5th Cir. 2012) ("In stark contrast [to major NSR], the CAA prescribes only the barest of requirements for 'minor' NSR, which governs the construction or modification of stationary sources that do not meet the emissions thresholds for major NSR.").
[36] The language in these provisions was originally located at 40 CFR 51.18. *See* 38 FR 15834, 15836 (June 18, 1973). In a 1986 regulation, the EPA moved these provisions into their present location in the Code of Federal Regulations. *See* 51 FR 40656, 40669 (Nov. 7, 1986).
[37] *See* 38 FR 6279 (Mar. 8, 1973); *NRDC, Inc. v. EPA*, 475 F.2d 968, 970–72 (D.C. Cir. 1973).

were the focus of the major NSR program requirements established by Congress in 1977. The establishment of major NSR in the 1977 CAA amendments fundamentally changed how NSR programs operate, enacting more specific requirements for major sources with greater environmental impacts, while leaving State and local air agencies with discretion to regulate all other sources, *i.e.,* minor sources, as necessary to assure achievement and maintenance of the NAAQS. The regulations at 40 CFR 51.160-51.161 are in part a historical remnant from before the existence of the detailed statutory program to regulate major sources and modifications. When the EPA added regulations to implement the more stringent requirements for construction of major sources and major modifications of these sources, the regulations at 40 CFR 51.160-51.161 were largely superseded for major sources and modifications, but they remained the only regulations governing minor sources and modifications. It is thus appropriate to assess whether these regulations and their requirements as applicable to minor sources and modifications are appropriate in light of the CAA's language providing States with discretion to regulate such sources and modifications as necessary to achieve the NAAQS. This proposed rule seeks to address the historical inconsistency in a manner supporting the historical CAA effect of allowing State and local air agencies to manage their respective airsheds in the "minor" NSR context while meeting the statutory obligation of CAA section 110(a)(2)(C).

Applying the Supreme Court's framework under *Loper Bright v. Raimondo*,[38] the best reading of CAA section 110(a)(2)(C) is that it delegates discretionary authority to the EPA with regard to determining whether a State or local air agency's program for regulating stationary source construction and modification that is not subject to the major source requirements in parts C and D of title I of the CAA is sufficient to assure maintenance and attainment of the NAAQS. Because of its lack of specificity and use of

[38] 603 U.S. 369 (2024).

the term "as necessary," which leaves flexibility, CAA section 110(a)(2)(C) is best read to limit the EPA's authority to impose specific regulatory requirements in determining what is "necessary" for a minor NSR program to satisfy statutory requirements such that it is approvable under CAA section 110(k)(3). Therefore, consistent with the statute, the EPA provides State and local air agencies significant discretion in developing SIP-approvable programs to regulate minor NSR preconstruction activities.[39] Extending this discretion to the degree of public participation that State and local air agencies determine to be effective to achieve the objective of such programs is consistent with this reading. There is no explicit requirement for public participation in preconstruction review of minor sources in CAA section 110(a)(2)(C). Thus, the best reading of this provision of the CAA is that it does not require a Federal minimum standard for public participation in minor NSR programs. Consistent with statutory requirements, the EPA therefore leaves it to State and local air agencies to determine whether and to what extent public participation should be required in their respective minor NSR programs.

This reading is further supported by the remaining language of CAA section 110(a)(2)(C) and the surrounding provisions of CAA section 110(a)(2). In setting out what must be included in a SIP, CAA section 110(a)(2) begins by specifying that each plan "shall be adopted by the State after reasonable notice and a public hearing"[40] and concludes by requiring that plans must "provide for consultation and participation by local political subdivisions affected by the plan."[41] Congress understood that all SIP elements would be subject to procedural requirements for public participation when being developed by the State and did not provide, except where expressly stated, that additional procedural requirements for public participation are a part of any of the substantive

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[39] *See, e.g.*, 71 FR 48696, 48700 (Aug. 21, 2006); *Luminant Generation Co. v. EPA*, 675 F.3d 917, 922; *see also La. Env'tl Action Network v. EPA*, 955 F.3d 1088, 1097–98 (D.C. Cir. 2020).
[40] 42 U.S.C. 7410(a)(2).
[41] 42 U.S.C. 7410(a)(2)(M) (emphasis added).

elements that follow. The subsections of CAA section 110(a)(2) go on to set out substantive content that must be included in the SIP, as applicable, including enforceable emission limitations and other control measures, means, or techniques (CAA section 110(a)(2)(A)), monitoring capabilities (CAA section 110(a)(2)(B)), prohibitions on emissions that interfere with compliance by other States (CAA section 110(a)(2)(D)), and necessary assurances that the air agency has adequate resources and authority to implement the plan and can do so without violating State or Federal law (CAA section 110(a)(2)(E)). The language of CAA section 110(a)(2)(C) sets out additional substantive requirements in this context, providing that States must include programs for enforcing the emission limitations and other measures provided in CAA section (a)(2)(A) and regulation of the modification and construction of any stationary source as necessary to assure the NAAQS are achieved.

As a matter of statutory structure, the lack of specificity in CAA section 110(a)(2)(C) contrasts with the detail provided in the CAA provisions that establish NSR permitting requirements for major sources and major modifications. The more specific regulatory requirements for major NSR in parts C and D of CAA title I show that Congress considered the construction of new major sources and major modifications to be of greater concern and therefore warranting more specific regulation compared to "non-major" or "minor" modification and construction. This choice by Congress to prescribe specific requirements for major NSR limits the discretion available to State and local air agencies to determine how to regulate the construction of new major sources and major modifications to existing sources. Conversely, the absence of similar language in CAA section 110(a)(2)(C) with respect to minor NSR, as well as the omission of public participation from the local political subdivision consultation and participation requirement for plans in CAA section 110(a)(2)(M), suggests that air agency discretion is

not so limited with respect to minor NSR and that public participation is not a necessary element of minor NSR SIP programs.[42]

Further, as part of these detailed statutory requirements for major NSR programs, the CAA establishes specific public participation requirements for major NSR, specifically for PSD programs. CAA section 165(a)(2) states that permits proposed under PSD programs for new major sources and major modifications may only be issued after an "opportunity for interested persons including representatives of the Administrator to appear and submit written or oral presentations on the air quality impact of such source, alternatives thereto, control technology requirements, and other appropriate considerations."[43]

The language and surrounding context of CAA section 110(a)(2)(C) further suggest that procedural elements such as public participation requirements are typically not forms of "regulation of the modification and construction of any stationary source . . . as necessary to assure that [the NAAQS] are achieved." The plain meaning of the term "regulation" involves "to direct by rule or restriction."[44] As applied to "the modification and construction of any stationary source," the term is most naturally read as referring to substantive restrictions, such as permitting requirements and limitations. Such restrictions may include procedural aspects as a practical matter, but the key element is the restriction itself rather than the ancillary processes involved in carrying out the restriction. For this

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[42] *See, e.g.*, *City & Cnty. of San Francisco v. EPA*, 604 U.S. 334, 344 (2025) ("'[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'") (quoting *Russello* v. *United States*, 464 U.S. 16, 23 (1983) (internal quotation marks omitted)).

[43] 42 U.S.C. 7475(a)(2). Although the statutory requirements at CAA title I, part C expressly include a public participation provision and the statutory requirements at CAA title I, part D do not, the EPA has provided by regulation for a uniform approach based on the parallel structure and purpose of the two major source NSR programs (*i.e.*, PSD and NNSR). The EPA is not reopening or revisiting this issue in this rulemaking, which construes the statutory text in CAA section 110(a)(2)(C) and not the statutory text in parts C and D of CAA title I.

[44] Black's Law Dictionary 1451 (4th ed. 1968); *see, e.g.*, *Kennecott Utah Copper Corp. v. U.S. Dept. of the Interior*, 88 F.3d 1191, 1207 (D.C. Cir. 1996) (interpreting "'regulation' to mean a statement that has general applicability and that has the legal effect of binding the agency or other parties" (quotation marks and citation omitted)).

reason, reading procedural elements like minor NSR public participation into the term "regulation" would be in tension with the breadth of the term "necessary" and the significant discretion afforded to States in crafting minor NSR programs. That conclusion is reinforced by the specific and separate treatment of public participation as to SIP development in CAA section 110(a)(2) and of local political subdivision consultation and participation in CAA section 110(a)(2)(M). While the statute does not prevent State or local air agencies from exercising discretion to adopt public participation requirements for minor NSR, it does not appear to allow the EPA to require minor NSR public participation by regulation or to insist on minor NSR public participation as a condition of approving an otherwise valid SIP submission.

Based on this reading of the CAA, the EPA proposes to revise the Agency's regulations at 40 CFR 51.161 to remove the requirement for public notice and comment as a minimum feature of State and local minor source NSR programs. If this action is finalized as proposed, the EPA would not expect, whether implicitly in the course of reviewing SIP submissions or explicitly as a minimum requirement enumerated in regulation, that SIPs contain minor NSR public participation. Rather, State and local air agencies would retain the discretion to determine whether, and the extent to which, it is appropriate and reasonable to include public participation elements in their minor NSR programs. As noted above, the EPA is not proposing any changes to the application of 40 CFR 51.161 public participation requirements to the "major" NNSR or PSD preconstruction programs, and any State seeking to amend its SIP would be required to follow the existing regulations for development and submission to the Agency for approval. Should air agencies decide to revise the public participation requirements in their existing minor source NSR programs in light of any final action the EPA takes on this proposed action, such revisions must be consistent with Federal and State law.

2. Minor New Source Review Public Participation Early Outreach Workgroup Outcome

The EPA conducted a series of outreach sessions from 2022 to 2023 on minor NSR public participation and considered the resulting information to determine how to address the regulatory framework for this proposed action. During these sessions, many State and local air agencies indicated that their minor NSR programs did not require a 30-day opportunity for public comment on all types of minor NSR preconstruction activities regulated under their minor NSR programs.[45] Air agencies' NSR programs varied in how widely their minor NSR public participation requirements applied, ranging from requiring an opportunity for public comment for all proposed minor NSR preconstruction activities, to requiring public notice and comment opportunity only for specific types and sizes of new minor sources and modifications (*e.g.*, only to minor sources and modifications that are "synthetic minor" or have other specific characteristics, only to minor sources and modifications locating near sensitive receptors or with confirmed public interest, etc.), to not requiring any public notice or comment opportunity for any minor NSR preconstruction activities.[46] In some cases, air agencies' minor NSR programs also provided an opportunity for public comment of less than 30 days.[47]

Many air agencies were surprised to hear the EPA express the view that the existing regulations at 40 CFR 51.161 require minor NSR programs to provide a 30-day opportunity for public comment on all proposed new minor sources and minor modifications regulated under such programs.[48] Some air agencies questioned whether their air permit programs' limited budgets, time, and personnel could actually fulfill the existing requirement at 40 CFR 51.161(b)(2) to provide a 30-day "opportunity for public comment" on all regulated minor NSR preconstruction activities due to the high volume

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[45] *See* "EPA Summary Observations from 2022-2023 Minor NSR Stakeholder Input from State and Local Air Agencies" in Docket ID No. EPA-HQ-OAR-2025-1212.
[46] *Id*.
[47] *Id.*
[48] *Id*.

of minor NSR applications.[49] Recent research also suggests that many State governments presently face budget shortfalls,[50] which in turn further restrict the resources available to State and local air agencies. Air agencies further asserted that providing public participation on all minor source preconstruction activities would be an ineffective use of their limited resources compared to reviewing proposed preconstruction activities with greater air quality impacts and of greater public interest.[51] To support these arguments, some air agencies noted that many of the proposed minor source preconstruction activities they reviewed were so small in terms of their air quality impacts and public interest that in cases in which the air agency did provide an opportunity for public comment, they received very few comments, most of which were either insubstantial or non-actionable.[52] These air agencies further argued that subjecting all such activities to public participation requirements risked overwhelming the public with inconsequential information about minimal-impact minor sources and modifications, which could discourage public participation in the overall NSR decision-making process instead of promoting it.[53] For these reasons, most air agencies concluded that their minor source public participation practices were already well-tailored to the unique characteristics of their respective jurisdictions and stakeholder bases, allowing them to focus their limited resources on the preconstruction activities that piqued genuine public interest and posed the most consequential air quality impacts, such as authorizing the construction and

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[49] *Id*.
[50] *See*, *e.g.*, Goodman, J. (2025). Lawmakers Face Budget Crunches, Tough Decisions to Close Expected Shortfalls. *Pew Charitable Trusts: https://www.pew.org/en/research-and-analysis/articles/2025/01/13/lawmakers-face-budget-crunches-tough-decisions-to-close-expected-shortfalls*; Farmer, L. (2025). States Tread Carefully With Budgets as Gaps and Revenue Uncertainty Loom, *Pew Charitable Trusts*: *https://www.pew.org/en/research-and-analysis/articles/2025/07/10/states-tread-carefully-with-budgets-as-gaps-and-revenue-uncertainty-loom*.
[51] *See* "EPA Summary Observations from 2022-2023 Minor NSR Stakeholder Input from State and Local Air Agencies" in Docket ID No. EPA-HQ-OAR-2025-1212.
[52] *Id*.
[53] *Id*.

modification of major sources or issuing operating permits under their CAA title V programs.[54]

III. Considerations for Minor New Source Review Public Participation Practices in Specific Contexts

In the sections that follow, the EPA further discusses factors for consideration related to minor NSR programs' public participation requirements in the contexts of the CAA title V and Tribal minor NSR programs.

A. Minor New Source Review Public Participation and Clean Air Act Title V Oversight

State and local air agencies considering the discretion afforded by this proposed rule should be aware of the potential consequences of decisions to issue minor NSR authorizations without notice and the opportunity for public comment. One potential consequence involves additional oversight through the title V operating permit program.

A key function of the operating permit program established by title V of the CAA is to consolidate "applicable requirements" established under other CAA programs into a single permit document.[55] Title V permits generally do not impose new pollution control requirements on sources or provide a vehicle to modify applicable requirements established under other CAA programs. The EPA's title V-focused regulatory definition of "applicable requirements" includes, among other requirements, requirements of a SIP and requirements of NSR preconstruction permits.[56]

In many cases, the title V process includes an opportunity for public comment, the EPA's authority to review and, if necessary, object to title V permits that do not assure compliance with the SIP, and the ability for any person to petition the Agency to issue such an objection.[57] Since 2017, the EPA has issued numerous title V petition responses

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[54] *Id*.
[55] *See* 42 U.S.C. 7661c(a); 40 CFR 70.6(a)(1), 71.6(a)(1).
[56] *See* 40 CFR 70.2, 71.2. *See also Eng v. EPA*, No. 25-138, U.S. App. 2026 LEXIS 10142, at *12 (9th Cir. Apr. 8, 2026).
[57] *See* 42 U.S.C. 7661d(b); 40 CFR 70.8(c), (d).

on this topic. In January 2024, the EPA issued a proposed rulemaking[58] explaining the situations in which requirements under the NSR preconstruction permitting program would be reviewed using the Agency's title V oversight authorities. In summary, the EPA's position is that NSR preconstruction authorization decisions that have been subject to public notice and the opportunity for comment and judicial review conclusively establish the applicable requirements of the SIP for construction and modification of individual stationary sources, thereby foreclosing further substantive review of those source-specific NSR permit requirements during the title V permitting process.[59] By contrast, in situations in which an NSR permit or other NSR authorization was not issued following public notice and the opportunity for comment and judicial review, the title V permitting process may be used to evaluate the substance of such underlying NSR authorization decisions to ensure that the title V permit assures compliance with applicable requirements of the SIP for construction and modification of stationary sources of air pollution.[60]

These underlying principles remain unchanged and unaffected by this proposed rule, and the EPA is not soliciting comment on these principles, which are addressed in a separate rulemaking, Docket ID EPA-HQ-OAR-2023-0401. However, the EPA is including this information to articulate the potential consequences, in the context of title V, of decisions to issue minor NSR authorizations without public participation.

This proposed rule offers State and local air agencies the discretion to determine the appropriate degree of public participation for their minor NSR programs. However, the EPA observes that changes to air agencies' minor NSR public participation requirements could affect the extent to which such air agencies' minor NSR authorization

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[58] 89 FR 1150 (Jan. 9, 2024).
[59] 89 FR 1150, 1163–64, 1174–83 (Jan. 9, 2024) (discussing the rationale for this position and identifying title V petition responses addressing this issue).
[60] 89 FR 1150, 1169–71 (Jan. 9, 2024).

decisions are open to further review in the title V permitting process. For example, if an air agency revises its existing minor NSR public participation requirements such that it can authorize new minor sources and/or minor modifications without public notice and the opportunity for comment, and such sources are subject to the title V permitting program, the EPA may not have grounds to decline to review the substance of the associated minor NSR authorization decisions during the title V permitting process. In such situations, the reduction in public participation requirements for the air agency's minor NSR program may result in an increase in the number of minor NSR authorizations subject to CAA title V challenges and petitions.

B. Public Participation in State and Local Minor New Source Review Programs and Public Participation in the Tribal Minor New Source Review Program

The national Tribal minor NSR preconstruction program for Indian country was established in 2011 in 40 CFR part 49.[61] In addition to establishing general regulations for the Tribal minor NSR program in 40 CFR part 49, the 2011 rule created provisions at 40 CFR 49.156 that addressed the development and implementation of a GP for use in Indian country under a national FIP. Some Tribes have accepted partial or full delegation of NSR preconstruction permitting, including Tribal minor NSR provisions as codified under 40 CFR part 49, while others have developed EPA-approved TIPs for full or portions of an NSR preconstruction permitting program.[62] Tribal PSD permits, Tribal NNSR permits, Tribal synthetic minor source permits, Tribal true minor source permits, and Tribal permits for minor modifications at existing minor and major sources are all subject to public participation requirements.[63]

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[61] 76 FR 38748 (July 1, 2011).
[62] *See, e.g.*, 72 FR 69618 (Dec. 10, 2007); 76 FR 17028 (Mar. 28, 2011); 79 FR 69763 (Nov. 24, 2014); 80 FR 18120 (Apr. 3, 2015); 86 FR 11674 (Feb. 26, 2021); 86 FR 12260 (Apr. 3, 2021).
[63] *See* 40 CFR 49.157.

Specific source categories for GPs and PBRs were established by rulemaking on May 1, 2015, and October 14, 2016.[64] Much like how State and local air agencies often provide public participation when proposing specific categories of similar sources or emissions units for new proposed GPs and PBRs,[65] the EPA's rulemakings proposing initial issuance of these categories of GPs and PBRs for use in Indian country were subject to public participation via notice and comment (similar to the public participation requirements for creating categories of title V operating GPs).[66] The EPA's regulations for GPs and PBRs also mirror the practices of many air agencies with respect to defining categories of sources and/or emissions units that are "similar in nature."[67] Also, similar to many air agencies' public participation requirements for GPs and PBRs,[68] the EPA's public participation requirements for Tribal minor NSR GPs and PBRs do not require that a draft final authorization document be developed and subject to public participation; however, the Agency's Tribal minor NSR regulations do require that a copy of each Request for Coverage (for GPs)[69] or Notification of Coverage (for PBRs) be sent to the

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[64] *See* 80 FR 25068 (May 1, 2015) and 81 FR 70944 (Oct. 14, 2016).
[65] *See* "EPA Summary Observations from 2022-2023 Minor NSR Stakeholder Input from State and Local Air Agencies" in Docket ID No. EPA-HQ-OAR-2025-1212.
[66] *See* EPA Guidance from Stein, Kathie A. (Jan. 25, 1995), "Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and 112 Rules and General Permits." U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, page 4, *https://www.epa.gov/sites/default/files/2015-07/documents/potoem.pdf*. Similar to Tribal GP programs and Tribal PBR programs, the Oil and Gas Form Registrations (Part 1 and Part 2 Form Registrations) as part of the Tribal National FIP were developed through a national rulemaking process subject to public participation with the individual source-specific registration forms not subject to public participation. *See* 81 FR 35944 (June 3, 2016); 85 FR 15729 (Mar. 19, 2020).
[67] The EPA's Tribal minor NSR regulations explain at 40 CFR 49.156(b)(1) that "[a] general permit may be issued for a category of emissions units or sources that are similar in nature, have substantially similar emissions and would be subject to the same or substantially similar requirements governing operations, emissions, monitoring, reporting and recordkeeping. 'Similar in nature' refers to size, processes and operating conditions." Similarly, the EPA's Tribal minor NSR regulations for PBRs at 40 CFR 49.156(f)(1) note that "[a] permit by rule may be written to address a single emissions unit, a group of the same type of emissions units or an entire minor source."
[68] *See* "EPA Summary Observations from 2022-2023 Minor NSR Stakeholder Input from State and Local Air Agencies" in Docket ID No. EPA-HQ-OAR-2025-1212.
[69] For a particular source that submits a GP Request for Coverage to the appropriate reviewing authority, the information that must be made publicly available includes the reviewing authority's analysis of whether the emissions unit or source to be covered by the GP falls within the category of emissions units or sources to which the GP applies, including whether the emissions unit or source to be covered meets any criteria to be eligible for coverage under the GP. *See* 40 CFR 49.157(a)(5).

reviewing authority prior to commencing construction,[70] and to the Tribe in the area where the source is locating.[71] In addition, owners and operators of sources that receive an approved Request for Coverage must post the approval letter at the site where the source is locating,[72] and reviewing authorities must post final Notifications of Coverage on the reviewing authority's website.[73]

The EPA solicits comment on whether to pursue a separate rulemaking that would propose to revise the Agency's public participation requirements for authorizing new minor sources and minor modifications locating in Indian country in light of the reading of CAA section 110(a)(2)(C) in this proposed rule, and, if so, how the Agency should propose to amend the minor NSR public participation requirements in Indian country (question #4 in section V. of this preamble). For example, if pursued, a separate future rulemaking could address public participation requirements in the EPA's FIP for minor sources in areas with partial or full delegation for minor NSR, as well as discretion regarding public participation requirements in TIPs submitted for EPA approval by federally recognized Tribes. Similarly, a separate future rulemaking could consider issues of public participation regarding authorization of minor source preconstruction activities, including site-specific true minor sources, GPs, PBRs, synthetic minor sources, synthetic minor sources established by GPs, and minor modifications at major sources. The EPA is not soliciting comment on, or proposing any changes to, public participation requirements for major PSD and NNSR permits on Tribal lands in this action.

IV. State Implementation Plan Submittal Guidelines for the Proposed New Source Review Public Participation Provisions

A. State Implementation Plan Submittal Process

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[70] *See* 40 CFR 49.156(e)(1) and 40 CFR 49.156(f)(1).
[71] *See* 40 CFR 49.156(e)(2) and 40 CFR 49.156(f)(2).
[72] *See* 40 CFR 49.156(e)(6).
[73] *See* 40 CFR 49.156(f)(6)(v).

If this action is finalized as proposed, the EPA does not intend to require State and local air agencies to take any action to revise their minor NSR programs' public participation requirements as they already exist within SIPs approved by the Agency. Rather, each air agency would have the discretion to do so if they determine a revision is reasonable given the existing public participation provisions already approved into the SIP for their minor NSR program. If finalized as proposed, State and local air agencies may also elect to keep the existing level of public participation in their SIP-approved minor NSR programs without change.

Should a State or local air agency elect to revise the existing minor NSR public participation requirements within its EPA-approved SIP, it would do so through the SIP process. To revise existing EPA-approved SIP provisions using the SIP process, the air agency would first need to develop a SIP submission containing the proposed revisions, after providing both reasonable notice and public hearings on a draft version of the SIP submission.[74] The Governor's designee for the associated State would then need to submit the revised provisions in a SIP submission to the EPA for review. This SIP submission should also include any supporting information necessary to explain how the revised provisions are consistent with Federal and State law, as applicable. If the EPA fully approves the SIP submission, the proposed changes would be approved into the SIP and the revised minor NSR public participation requirements would become EPA-approved SIP provisions for the associated State or local minor NSR program.

B. Applicable Statutory and Regulatory Requirements for Approval of State Implementation Plan Submissions

As noted previously in this preamble, the provisions included for consideration in a SIP submission must be consistent with applicable Federal and State law. The EPA

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[74] *See* 42 U.S.C. 7410(l).

would not expect, whether implicitly when reviewing SIP submissions or expressly as a matter of minimum requirements stated in regulations, that States include minor NSR public participation as a "necessary" form of regulation to assure achievement of the NAAQS. Rather, with respect to applicable CAA provisions, any SIP submission proposing to revise existing SIP-approved public participation elements for a State or local minor NSR program would need to demonstrate that the proposed revisions meet the requirements of CAA section 110(a)(2)(C) and 40 CFR 51.160 to be approved by the EPA. In addition, CAA section 110(l) precludes approval of any revision to an existing SIP that "would interfere with any applicable requirement concerning attainment and reasonable further progress" (RFP) toward attainment of the NAAQS, "or any other applicable requirement" of the CAA.[75] The following paragraphs further explain how each of these requirements would apply to SIP submissions developed in response to a final version of this proposed rule.

In its totality, a minor NSR program must assure that the NAAQS are achieved in accordance with CAA section 110(a)(2)(C) before it can be approved as part of a SIP. As noted in section II.C.1. of this preamble, CAA section 110(a)(2)(C) requires that SIPs include State and local minor NSR programs to regulate modification and construction "as necessary" to assure that the NAAQS are achieved in the areas covered by a SIP, and this direction delegates discretion to State and local air agencies to determine whether and to what extent public participation should be required as part of their minor NSR programs to serve this purpose. The intent of this proposed rule, and any corresponding final action, is to allow air agencies to propose changes as appropriate to their minor NSR programs' public participation requirements in accordance with this discretion using the SIP process. State and local minor NSR programs that are revised through a SIP

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[75] *See id*.

submission must still allow the SIP as a whole to assure that the NAAQS are achieved and maintained, which should not allow greater air pollution compared to any minor NSR program regulatory requirements that existed prior to revision of the SIP.

With regard to CAA section 110(l), a SIP submission proposing to alter existing SIP-approved public participation requirements for a State or local minor NSR program should include an explanation of the relationship, if any, between those requirements and the minor NSR program's ability to assure achievement and maintenance of the NAAQS. In general, SIP provisions such as public participation requirements may be viewed as administrative or procedural, such that SIP submissions proposing changes to these requirements are not expected to affect emissions and are, therefore, not expected to be inconsistent with the requirements of CAA section 110(l). For SIP submissions of this nature, so long as they meet the minimum requirements of the CAA and any applicable EPA regulations, a satisfactory CAA section 110(l) explanation might only require a written analysis to explain that the proposed SIP revisions: (a) are administrative or procedural in nature; (b) will not affect emissions; and (c) will not interfere with requirements of the CAA related to such administrative or procedural provisions.

To the extent an air agency would take the position that their program's public participation requirements are not administrative or procedural, the air agency would need to determine the nature of an appropriate CAA section 110(l) analysis for its SIP submission. Factors that may be relevant to such an analysis may include, but are not limited to, the characteristics of minor sources and minor modifications that would be affected by the change to the public participation requirements (*e.g.*, pollutants emitted, resulting emissions increases, and emissions control technologies or practices used by sources and modifications) and the characteristics of the air agency's airshed (*e.g.*, overall emissions profile, meteorology and topography, industrial density and composition, volume of applications, and level of public interest in those applications).

The EPA solicits comment on which factors, if any, the Agency should describe for air agencies to consider in such CAA section 110(l) analyses (question #5 in section V. of this preamble).

With respect to demonstrating that a SIP submission satisfies the requirements of 40 CFR 51.160, the EPA anticipates that the demonstrations and analyses to address these Federal requirements would be similar to those presented with respect to CAA sections 110(a)(2)(C) and 110(l). In particular, 40 CFR 51.160(a)(2) and 51.160(b)(2) derive from CAA section 110(a)(2)(C) but include similar language to that found in CAA section 110(l). If the SIP submission adequately explains how the State or local minor NSR program's revised public participation requirements would not interfere with attainment and RFP toward attainment of the NAAQS or any other applicable CAA requirement, the SIP submission should also be able to explain how the revised minor NSR program requirements would regulate new minor sources and minor modifications as necessary to assure achievement and maintenance of the NAAQS, which is only possible if the legally enforceable procedures in the revised minor NSR program allow the air agency to identify and prevent minor source construction and modification that would interfere with the attainment and maintenance of the NAAQS.

Federal requirements in 40 CFR part 51, appendix V stipulate that the provisions contained within a SIP submission must be subject to public notice, public hearings, and an opportunity for the submission and consideration of public comments at the State level before the EPA can act on the SIP submission. In addition, because the EPA proposes action on SIP submissions through the notice-and-comment rulemaking process, the public participation process required for such rulemakings allows the public to comment on the SIP submission during the Agency's review of the submission.

V. List of Topics for Public Comment

The EPA solicits comments on all aspects of this proposed action. A summary of questions for which the EPA invites specific comment is listed below. The EPA requests that commenters number their responses with the question number when responding to each question.

Question #1: How would a final version of this rule affect how State and local air agencies analyze, publish, and act upon applications requesting permission to construct new minor sources and minor modifications under State and local minor NSR programs approved by the EPA as part of their SIPs, including potential reductions in administrative burdens (costs or hours) associated with this type of permitting?

Question #2: What regulatory alternatives, if any, should the EPA consider instead of the action presented in this proposed rule?

Question #3: Are there any relevant reliance interests that might be impacted by this proposed action? If so, how should such reliance interests be addressed?

Question #4: In light of the reading of CAA section 110(a)(2)(C) that is presented in this proposed rule, should the EPA pursue a separate rulemaking that would propose to make regulatory changes to the Federal public participation requirements for authorizing new minor sources and minor modifications locating within Indian country? If so, how should the EPA propose to amend the minor NSR public participation requirements in Indian country?

Question #5: What factors, if any, should the EPA describe in situations in which an air agency does not find that a revision to its minor NSR program's public participation requirements is administrative or procedural in nature, for purposes of evaluating whether the SIP submission is consistent with CAA section 110(l)?

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders*.

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to Executive Order 12866 review are documented in the docket.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is expected to be an Executive Order 14192 deregulatory action. This proposed rule is expected to provide burden reduction by reducing the minimum Federal requirements for public participation that State and local air agencies' minor NSR programs must meet in order for the EPA to approve such programs into SIPs. The regulatory changes effected by a final version of this rulemaking would allow air agencies the discretion and flexibility to determine the level of public participation that is appropriate for each type or size of minor NSR preconstruction activity regulated under their minor NSR programs, consistent with Federal and State law as applicable.

C. Paperwork Reduction Act (PRA)

This proposed action, if finalized, would not impose any new information collection burden under the PRA. OMB has previously approved information collection activities for State and local NSR programs and has assigned OMB control number 2060-0003. The regulatory amendments proposed in this action would not directly change any of the information collection activities previously approved by OMB.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Instead, the revisions proposed in this action, if finalized, would better recognize the full scope of discretion afforded to State and local air agencies in determining whether and when the provision of public participation is appropriate for

decisions regarding the authorization of new minor sources of air pollution and minor modifications to existing sources. Because the EPA has interpreted the existing Federal NSR public participation regulations as requiring air agencies' minor NSR programs to provide public participation on all decisions involving whether to authorize proposed new minor sources and minor modifications, the discretion provided to air agencies under a final version of this rule may result in fewer proposed minor sources and minor modifications undergoing the time and expense of complying with public participation requirements, which would likely reduce regulatory burdens on small entities proposing new minor sources and minor modifications.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any State, local, or Tribal governments or the private sector. This action would make the provision of public participation discretionary for authorization of proposed new minor sources and minor modifications to existing sources regulated under air agencies' minor NSR programs.

F. Executive Order 13132: Federalism

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

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175. This action would make the provision of public participation discretionary for authorization of proposed new minor sources and minor modifications to existing sources

regulated under air agencies' minor NSR programs. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the Agency has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, the EPA's Policy on Children's Health also does not apply to this action.

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

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. If finalized, the proposed rule would provide State and local air agencies with the discretion to decide when provision of public participation is appropriate for decisions whether to authorize new minor sources of air pollution and minor modifications to existing stationary sources. The EPA does not expect that these proposed changes would affect energy suppliers, distributors, or users.

J. National Technology Transfer Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

List of Subjects in 40 CFR Part 51

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

Lee Zeldin,
Administrator.

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