C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if EPA publishes with the final rule an explanation why that alternative was not adopted.

The decision announced in this notice is not a regulation or rule within the meaning of the UMRA. In any event, EPA's resolution of the intergovernmental dispute announced in this notice and the final rulemaking action to approve the Tribe's PSD redesignation request, published elsewhere in today's Federal Register, are not subject to the requirements of sections 202 and 205 of the UMRA because they do not contain Federal mandates that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year.

Authority: 42 U.S.C. 7401–7671q.

List of Subjects in 40 CFR Part 52

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

Dated: October 2, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–27848 Filed 10–31–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[AZ 58–1–7131–a; FRL–5634–4]

Arizona Redesignation of the Yavapai-Apache Reservation to a PSD Class I Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this action is to approve the request by the Yavapai-Apache Tribal Council to redesignate the Yavapai-Apache Reservation (''the Reservation'') as a non-Federal Class I area under the Clean Air Act program for prevention of significant deterioration of air quality. The Class I designation will result in lowering the allowable increases in ambient concentrations of particulate matter, sulfur dioxide, and nitrogen dioxide on the Reservation.

EFFECTIVE DATE: December 2, 1996.

ADDRESSES: The public docket for this rulemaking, which includes additional information related to the final rule and materials submitted to EPA, is available for public inspection and copying during normal business hours. Please contact the EPA official listed below at the given address. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Jessica Gaylord, Air and Toxics Division (A–5–1), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1290. An electronic copy of this Federal Register notice and other pertinent information is available on the World Wide Web at this Internet address: http://www.epa.gov/region09/air/yavapai/

SUPPLEMENTARY INFORMATION:

I. The Clean Air Act's Program to Prevent Significant Deterioration of Air Quality (PSD)

A. Background

The genesis of the PSD program under the Clean Air Act (CAA) was a lawsuit brought by the Sierra Club to enjoin EPA's approval of state implementation plans that allowed air quality degradation in areas having air quality better than the national ambient air quality standards. *Sierra Club* v. *Ruckelshaus,* 344 F. Supp. 253 (D.D.C. 1972), *aff'd per curiam,* 4 Env't Rep. Cases 1815 (D.C. Cir. 1972), *aff'd by an equally divided court, sub. nom. Fri* v. *Sierra Club,* 412 U.S. 541 (1973). The district court granted the injunction reasoning that the stated purpose of the Clean Air Act in section 101(b)(1) to ''protect and enhance'' the quality of the nation's air embodied a non-degradation policy. *Sierra Club* at 255–56.

In response to the *Sierra Club* decision EPA adopted a PSD program. *See* 39 FR 42510 (Dec. 5, 1974). The administrative program was superseded by a congressionally-crafted program in the 1977 amendments to the Clean Air Act. Pub. L. No. 95–95, 91 Stat. 685; *see generally Alabama Power* v. *Costle,* 636 F.2d 323, 346–52 (D.C. Cir. 1979) (recounting history of PSD program preceding and including the adoption of the 1977 amendments). EPA presently has two sets of regulations implementing the 1977 statutory PSD program: (1) 40 CFR 51.166 establishes the requirements for state-administered PSD programs, and (2) 40 CFR 52.21 provides for Federal implementation of PSD requirements to address programmatic gaps.[1]

B. PSD Areas and Classifications

EPA establishes national ambient air quality standards (NAAQS) under the CAA. *See* 40 CFR Part 50. Areas nationwide are ''designated'' under section 107 of the CAA based on their air quality status relative to the NAAQS. The PSD program applies to areas designated ''attainment'' and ''unclassifiable'' under section 107 of the CAA—areas that meet the NAAQS, or areas that cannot be determined on the basis of available information as meeting or not meeting the NAAQS. These areas are often referred to as ''PSD areas.''

PSD areas are further categorized as Classes I, II or III. The classification of an area determines the amount or ''increment'' of air quality deterioration that is allowed over a baseline level. Class I areas have the smallest increments and therefore allow the least amount of air quality deterioration. Conversely, Class III areas have the largest air quality increments and allow the greatest deterioration. In all instances, the NAAQS represent the overarching ceiling that may not be exceeded in a PSD area, notwithstanding any increment.

There are PSD increments for particulate matter, sulfur dioxide and nitrogen dioxide. EPA's PSD regulations establish the incremental amount of air quality deterioration of these pollutants that is allowed in Class I, II and III areas. *See* 40 CFR 52.21(c).

When Congress enacted the PSD program in 1977 it provided that specified Federal lands, including

[1] The regulations have not been revised to conform with changes made in the 1990 Clean Air Act amendments. Pub. L. No. 101–549, 104 Stat. 2399.

certain national parks and wilderness areas, must be designated as Class I areas and may not be redesignated to another classification. *See* section 162(a) of the CAA. These areas are called mandatory Federal Class I areas. The statute also carried forward as Class I areas any areas redesignated as Class I under EPA's pre-1977 regulations. The Northern Cheyenne reservation was a redesignated Class I area affected by this provision. *See Nance* v. *EPA*, 645 F.2d 701 (9th Cir. 1981), *cert denied, Crow Tribe of Indians* v. *EPA*, 454 U.S. 1081 (1981). In the 1977 amendments Congress provided that all other PSD areas of the country would be designated as Class II areas. *See* section 162(b) of the CAA.

C. PSD Class I Redesignation Requests and Procedural Requirements

As noted, Congress designated all PSD areas of the country as Class II, except for special Federal lands and pre-existing redesignated Class I areas. At the same time, Congress gave States and Indian Tribes broad authority to redesignate Class II areas as Class I. *See* section 164 of the CAA.

Section 164(c) of the CAA expressly provides for PSD redesignations by Federally recognized Indian Tribes:

> Lands within the exterior boundaries of reservations of Federally recognized Indian tribes may be redesignated only by the appropriate Indian governing body.

The Department of the Interior periodically publishes a list of Tribes officially recognized by the Federal government. *See* 60 FR 9250 (Feb. 16, 1995) (identifying Yavapai-Apache Nation of the Camp Verde Reservation, Arizona).

Congress has generally established a narrow role for EPA in reviewing State and Tribal PSD redesignations. Under EPA's pre-1977 regulations, EPA would disapprove a redesignation submittal if the requesting State or Tribe arbitrarily and capriciously disregarded the following considerations: (1) growth anticipated in the area, (2) the social, environmental, and economic effects, or (3) any impacts on regional or national interests. *See* 39 FR at 42515.

By contrast, the PSD program enacted by Congress in 1977 provides that EPA may disapprove a redesignation request only if it finds, after notice and opportunity for public hearing, that the request does not meet the applicable procedural requirements. *See* section 164(b)(2) of the CAA. The legislative history indicates that Congress's 1977 amendments were intended to curtail EPA's authority to disapprove a redesignation request under its pre-1977 regulations, giving States and Tribal governments greater discretion in this area:

> The intended purposes of [the congressional 1977 PSD program] are . . . (3) to delete the current EPA regulations and to substitute a system which gives a greater role to the States [, Tribal,] and local governments and which restricts the Federal Government in the following ways: . . . (b) By eliminating the authority which the Administrator has under current EPA regulations to override a State's [or Tribe's] classification of an area on the ground that the State [or Tribe] improperly weighed energy, environment, and other factors.

See H.R. Rep. No. 294, 95th Cong., 1st Sess. 7–8 (1977) *reprinted in* Senate Comm. on the Environment and Public Works, 95th Cong., 2d Sess., A Legislative History of the Clean Air Act Amendments of 1977, vol. 4 at 2474–75 (1978) (hereafter ''1977 CAAA Legislative History'').[2]

Accordingly, EPA's current regulations provide for EPA disapproval of a redesignation only if the requesting State or Tribe did not meet the applicable procedural requirements in adopting its proposed redesignation:

> The Administrator shall disapprove, within 90 days of submission, a proposed redesignation of any area only if he finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of [40 CFR 52.21(g)].

See 40 CFR 52.21(g)(5). In adopting the regulatory revisions to reflect the statutory provisions, EPA explained that in light of section 164(b)(2) of the CAA it ''will no longer be able to base a disapproval of a proposed redesignation on a finding that the State [or Tribal] decision was arbitrary or capricious.'' *See* 42 FR 57479, 57480 (Nov. 3, 1977). Thus, so long as the applicable procedures are met, the statute and implementing regulations generally leave the decision to constrict or expand the amount of allowable air quality deterioration to the State or Tribal authority requesting the redesignation.

Several Indian Tribes have had lands within reservation boundaries redesignated as Class I areas. The EPA has previously approved Class I redesignation requests for the Northern Cheyenne Indian Reservation, the Flathead Indian Reservation, the Fort Peck Indian Reservation and the Spokane Indian Reservation. *See* 40 CFR 52.1382(c) and 52.2497(c).

The procedural requirements for a Class I redesignation by an Indian Governing Body are as follows:

(1) At least one public hearing must be held in accordance with procedures established in 40 CFR 51.102;

(2) Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation must be notified at least 30 days prior to the public hearing;

(3) At least 30 days prior to the Tribe's public hearing, a discussion of the reasons for the proposed redesignation including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation must be prepared and made available for public inspection, and the public hearing notice must contain appropriate notification of the availability of such discussion;

(4) Prior to the issuance of the public notice for a proposed redesignation of an area that includes Federal lands, the Tribe must provide written notice to the appropriate Federal Land Manager and an adequate opportunity for the Federal Land Manager to confer with the Tribe and submit written comments and recommendations;

(5) Prior to proposing the redesignation, the Indian Governing Body must consult with the State(s) in which the Reservation is located and that border the Reservation. *See* 40 CFR 52.21(g)(4).

II. Yavapai-Apache Tribe Request to Redesignate its Reservation From Class II to Class I

On December 17, 1993, the Yavapai-Apache Tribal Council (''the Tribal Council'' or ''the Tribe'') submitted to EPA a request to redesignate the Yavapai-Apache Reservation from Class II to Class I. The Tribe's submittal explains that its redesignation request is to protect its air quality for its citizens:

> The Yavapai-Apache Tribe desires to maintain high quality air standards for its citizens by redesignating Reservation lands as a Class I Clean Air area.

See Yavapai-Apache Tribe Air Quality Redesignation Plan, Sept. 1993, at p. 1.

The Yavapai-Apache Reservation is located in the State of Arizona. The Reservation is comprised of five land parcels which total approximately 635 acres. The Tribe's redesignation request includes its entire Reservation. Maps of the Reservation are included as appendices to the Tribe's September 1993 Air Quality Redesignation Plan, which is available at the public docket identified at the beginning of this document.

[2] While this language refers only to states, both the statute and the legislative history make it clear that the discussion applies equally to redesignations by tribes. *See, e.g.,* S. Rep. No. 127, 95th Cong., 1st Sess. 9 (1977) *reprinted in* 1977 CAAA Legislative History, vol. 3 at 1383.

The Reservation is approximately 90 miles north of Phoenix in the Verde Valley of central Arizona. The Verde Valley is situated near the ''red rock'' country of Sedona and Oak Creek Canyon. Nearby national forests include the Coconino National Forest, the Kaibab National Forest and the Prescott National Forest. The Montezuma Castle, Montezuma Well and Tuzigoot National Monuments are located within the Verde Valley in the vicinity of the Reservation. In addition, the Sycamore Canyon Wilderness Area, designated a mandatory Federal Class I area under the CAA, is located a few miles north of the Town of Clarkdale. *See* 40 CFR 81.403.

EPA reviewed the Tribe's request and preliminarily determined that it met the applicable procedural requirements of 40 CFR 52.21(g)(4). On April 18, 1994, EPA published a notice of proposed rulemaking in the Federal Register proposing to approve the request and announced a 30-day period to receive public comment regarding whether the Tribe had met the procedural requirements. *See* 59 FR 18346.

At the request of the Town of Clarkdale, which is located adjacent to the Clarkdale parcel of the Yavapai-Apache Reservation, EPA held a public hearing on the proposed redesignation on June 22, 1994. EPA's public hearing notice provided that the scope of the public hearing would be limited to whether the Tribe has satisfied the redesignation procedural requirements. EPA indicated that only comments which address this issue would be considered in EPA's final decision to approve or deny the redesignation request. EPA's public hearing notice also indicated that EPA would allow until July 6, 1994 for the submittal of written comments. In order to facilitate public understanding about EPA's proposed action, EPA indicated that it would begin the public hearing with an explanation of the Class I redesignation process and the PSD program.

Following the public hearing, the Town of Clarkdale requested an extension of the public comment period. On July 20, 1994, EPA published a Federal Register document announcing an extension of the public comment period, providing the public until August 22, 1994 to submit written comments addressing whether the Tribe has met all of the procedural requirements of 40 CFR 52.21(g). See 59 FR 37018–19.

The Governor of Arizona submitted a letter dated August 22, 1994, to EPA indicating that ''[t]he effects of the proposed redesignation are not apparent to all of the stakeholders, and confusion exists about the potential impacts of the Agency's proposed action.'' The Governor's letter requested that EPA initiate dispute resolution of the matter pursuant to section 164(e) of the CAA.

In brief, section 164(e) of the CAA provides that if a State affected by the redesignation of an area by an Indian Tribe disagrees with the redesignation, the Governor may request EPA to enter into negotiations with the parties involved to resolve the dispute. Section 164(e) further provides that if the parties do not reach agreement, EPA shall resolve the dispute.

III. Today's Action

A. EPA's Final Decision to Approve the Tribe's Class I Redesignation Request

In today's document, EPA is announcing its decision to approve the Yavapai-Apache Tribe's December 17, 1993 request to redesignate its reservation from Class II to Class I for PSD purposes. The approval means that Class I PSD increments will apply within the reservation's boundaries, allowing a smaller amount of allowable air quality deterioration within the reservation than as a Class II area. *See* 40 CFR 52.21(c). In addition, a new major source or major modification which would construct within 10 km of the Reservation will be subject to review under PSD if emissions would have an impact on the Reservation equal to or greater than one microgram per cubic meter ($\mu g/m^3$), (24-hour average). *See* 40 CFR 52.21(b)(2), 40 CFR 52.21(b)(23), and 40 CFR 52.21(i).

EPA received a number of comments on its April 18, 1994 proposal to approve the Tribe's Class I redesignation. EPA has carefully reviewed and considered comments received during the public comment period in making its decision to approve the redesignation request. A number of the commenters raised issues outside the scope of EPA's review. As previously discussed, generally EPA may disapprove a redesignation request only if EPA finds that the redesignation does not meet the applicable procedural requirements. *See* 40 CFR 52.21(g)(5). EPA's review of the Tribe's request in light of the comments revealed no procedural error by the Tribe. Thus, EPA is finalizing its April 18, 1994 preliminary judgment that the Tribe met the procedural requirements.

In a separate document published in today's Federal Register, EPA explained the section 164(e) dispute resolution process, and addressed the issues presented. EPA's notice settles the dispute, as the State and the Tribe were unable to resolve their disagreements about the proposed redesignation. Once dispute resolution has been initiated, the CAA provides in section 164(e) that EPA ''consider the extent to which the lands involved are of sufficient size to allow effective air quality management * * *.'' The State thus argued that the five separate parcels that comprise the Yavapai-Apache Reservation are too small and scattered to allow for effective air quality management. Among the principal issues, the State also emphasized its concern regarding public understanding of the possible effects of this redesignation and issues related to potential future requests for redesignation by other Tribes. In settling the dispute, EPA disagreed with the State's conclusion that effective air quality management would be adversely affected by the redesignation. In addition, EPA has pledged its continuing commitment to facilitating public understanding of the effects of the redesignation. Moreover, each redesignation request must be evaluated on its merits, and concerns relating to potential future requests do not provide a basis for the denial of the Yavapai-Apache request. EPA's resolution of the dispute is consistent with the decision announced here, to approve the Tribe's Class I redesignation request. The reader is referred to the separate document published in today's Federal Register for more information on EPA's decision making in resolving the intergovernmental dispute.

B. Public Comments

As noted, EPA received many comments on its April 18, 1994 proposal to approve the Yavapai-Apache Tribe's Class I redesignation request. Many commenters, including local residents who are not Tribal members, supported EPA's proposal. Other commenters identified alleged procedural errors or objected to the Class I redesignation for other reasons. EPA also received comments questioning whether all of the land parcels identified by the Tribe are part of the Tribe's reservation.

While EPA has reviewed all comments received, only those comments identifying potential procedural errors and claiming that the Tribal submittal includes lands outside the reservation are relevant in determining whether EPA should modify its proposal and disapprove the request, in part or full. As noted, EPA may disapprove a redesignation request only if EPA finds that it does not meet the applicable procedural requirements. *See* section 164(b)(2) of the CAA & 40 CFR 52.21(g)(5). In addition to pertinent procedural issues, the question

regarding the affected land parcels is relevant because the underlying statutory authority for Tribal redesignations only includes lands within reservation boundaries. *See* section 164(c) of the CAA.

All other public comments objecting to the redesignation do not provide a basis for EPA disapproval. In the discussion that follows, EPA has nevertheless addressed many such comments contesting the redesignation, for the sole purpose of facilitating the public's understanding of today's action. EPA is providing separate responses to the remaining comments in the Technical Support Document (TSD) available in the public docket for this action, identified at the beginning of this document.

1. Scope of Yavapai-Apache Reservation

As noted, the Yavapai-Apache Tribe redesignation request encompassed five separate land parcels that collectively comprise the Tribe's reservation. EPA received comments questioning whether two of the parcels included in the redesignation request, the parcel near the Montezuma Castle National Monument and the Clarkdale parcel, were actually encompassed in the Yavapai-Apache Reservation and therefore allowed to be redesignated under the Act.

The Clean Air Act provides that lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated by the appropriate Indian governing body. *See* section 164(c) of the CAA. The PSD regulations define ''Indian Reservation'' as ''any federally recognized reservation established by Treaty, Agreement, executive order, or act of Congress.'' *See* 40 CFR 52.21(b)(27). In addition to lands formally designated as ''reservations,'' EPA considers trust land validly set apart for use of a tribe to be an ''Indian Reservation.'' *See Oklahoma Tax Commission* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma,* 498 U.S. 505, 511 (1991); *United States* v. *John,* 437 U.S. 634, 648–49 (1978); 59 FR 43956, 43960 (Aug. 25, 1994); 56 FR 64876, 64881 (Dec. 12, 1991). EPA has indicated that it will be guided by relevant case law in interpreting the scope of ''reservation'' under the Clean Air Act. *See* 59 FR 43960.

The Bureau of Indian Affairs (BIA) has certified by letter to EPA, dated May 13, 1994, that all five parcels identified in the redesignation request are lands held in trust by the U.S. government for the beneficial use of the Tribe, including the parcels near Montezuma Well National Monument and Clarkdale. The BIA certification was accompanied with an abstract of the various title documents and BIA and U.S. Geological Survey quadrangle maps showing the parcels. The BIA certification is available for inspection at the public docket identified at the beginning of this document. EPA therefore concludes that all of the lands included in the Tribe's redesignation submittal are lands encompassed within its reservation.

2. Analysis of Health, Environmental, Economic, Social and Energy Effects

EPA's regulations require that a ''satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation'' must be available for public inspection 30 days prior to the public hearing held by the Tribe. *See* 40 CFR 52.21(g)(2)(iii). (The public hearing held by the Tribe is separate from the one conducted by EPA.)

EPA did not receive public comments that the Tribe failed to follow proper procedures by failing to conduct a public hearing, by failing to have the analysis available prior to the hearing, by failing to provide timely notice of the hearing, or by failing to consult with the State prior to proposing the redesignation. *See* 1977 CAAA Legislative History, vol. 3 at 373 (colloquy between Senators Garn and Muskie, during the Senate's consideration of the Conference report, about the types of procedural error that might trigger a disapproval). EPA, however, has received comments alleging that the Tribe's analysis of health, environmental, economic, social and energy effects was inadequate.

A threshold question is the level of scrutiny EPA should apply to the Tribe's analysis in the face of claims that it is inadequate. As previously discussed, section 164(b)(2) of the CAA and the implementing regulations at 40 CFR 52.21(g)(5) provide that EPA may disapprove a redesignation request only if it finds that the request does not meet the procedural requirements. EPA believes that the availability of a satisfactory effects analysis is central to meaningful notice and public hearing and therefore a relevant procedural consideration. At the same time, there is considerable discretion involved in determining what is ''satisfactory.''

The specific use of the word ''satisfactory'' in the statute and implementing regulations suggests a relatively low threshold. Congress, by contrast, did not dictate that the analysis be comprehensive or exhaustive. Further, the statutory language does not assign any specific weight to the consideration of health, environmental, economic, social or energy effects, or suggest that one consideration should be given priority over another. The commenters objecting to the Tribe's analysis appeared to assume that the Tribe had to justify its redesignation. These commenters suggested that potential adverse effects, particularly possible economic impacts, should be disabling. These comments are discussed further below. In any event, EPA's implementing regulations do not elaborate what constitutes a ''satisfactory'' description and analysis, nor do the regulations specify to what extent this discussion should focus on the lands being proposed for redesignation or surrounding areas.

The legislative and regulatory history generally indicate that EPA's review of the analysis should be deferential. The legislative history accompanying the 1977 amendments, described previously, provides that Congress intended to eliminate EPA's authority to override a redesignation on the grounds that energy, environment and other factors were improperly weighed. *See* H.R. Rep. No. 294 at 7–8. The resulting 1977 amendments supplanted EPA's administrative scheme with provisions that limited EPA to a procedural review. *See* section 164(b)(2). In developing subsequent regulations, EPA indicated that EPA would no longer be able to disapprove a redesignation based on its finding that the State or Tribal decision was arbitrary or capricious. *See* 42 FR at 57480.

EPA's decision to approve a redesignation by the Northern Cheyenne Tribe was upheld under the pre-existing regulatory regime that expressly provided for an analysis that included consideration of growth anticipated, regional impacts, and social, environmental and economic effects as well as stricter EPA scrutiny of the analysis. The petitioners claimed that the Tribe's analysis was inadequate in several respects. The reviewing court affirmed EPA's approval, rejecting the claim that the Tribe was required to meet exacting analysis requirements and holding that the Tribe had considered the factors identified in EPA's regulations. *Nance* v. *EPA,* 645 F.2d at 712. The court further reasoned that the Tribe's decision was bolstered by the policy for maintaining clean air embodied in the CAA:

> [T]he Clean Air Act contains a strong presumption in favor of the maintenance of clean air, and the nature of a decision which simply requires that the air quality be maintained at a certain level prevents any exact prediction of its consequences. The Tribe has considered the factors enumerated in EPA regulations, and its choice in favor of the certainty of clean air is a choice

supported by the preferences embodied in the Clean Air Act.

Nance v. *EPA*, 645 F.2d at 712.

Accordingly, EPA generally has a limited role in reviewing the Class I redesignation requests. The emphasis is on assuring that there are no procedural defects. At the same time, EPA must refrain from substituting its judgment for that of the state or tribe requesting the redesignation. Thus, EPA must balance reviewing the Tribe's analysis to ensure that relevant considerations were examined without inappropriately ''second-guessing'' the Tribe's judgment.

EPA finds the Yavapai-Apache Tribe's analysis of the required factors to be satisfactory. The Tribe's submittal describes and analyzes the environmental, health, economic, social and energy effects of the proposed redesignation, including present conditions, the effects of redesignating to Class I and the effects of remaining a Class II area. The submittal describes the Tribe's reasons for proposing the redesignation as well as alternatives to the redesignation and the potential impacts of the redesignation. *See generally* Yavapai-Apache Tribe Air Quality Redesignation Plan, Sept. 1993.

The Town of Clarkdale commented that the Tribe failed to provide an accurate assessment and description of the health, environmental, economic, social and energy effects of the proposed redesignation on off-reservation areas including particularly Clarkdale. The Town of Clarkdale commented that it would be seriously and adversely affected by the redesignation of a reservation parcel near the Town. Another commenter asserted that the Tribe's analysis is incomplete and inadequate because the requirement to perform a description and analysis ''implies that the Tribe must weigh all relevant considerations and then justify its request.'' The commenter stated that the analysis must include adverse economic impacts on the surrounding areas and activities. The commenter stated that the Tribe may not take action ''that will inflict economic harm on off-Reservation landowners, communities, and citizens, just because the Tribe believes that the action will benefit the Tribe.'' The commenter was concerned about increased regulation, increased costs to industry and negative economic impacts on future mining activities outside the reservation.

EPA disagrees that the Tribe must justify its redesignation request in the manner suggested. A description and analysis of factors does not dictate calculating and demonstrating that certain factors outweigh others. Moreover, the fact that no weight or priority is assigned to any particular consideration, taken together with the broad redesignation discretion conferred on States and Tribes, indicates that the Tribe does not have to justify or overcome a balancing test in its redesignation request or show that a proposed redesignation will have no impact on the surrounding community. The Tribe's responsibility is to perform a ''satisfactory discussion and analysis'' of health, environmental, economic, social and energy effects.

The Tribe's request contained an analysis of health, environmental, economic, social and energy effects, including an examination of effects on conditions within the reservation. As noted, EPA's regulations do not prescribe whether or to what extent impacts outside the area being requested for redesignation must be examined. Nevertheless, the Tribe's submittal addressed impacts to housing, roads, public services, and general impacts to tourism and jobs in the surrounding areas, as well as a more detailed discussion of the impacts to the reservation lands. The Tribe's description of potential effects includes a discussion of the jobs related to tourism in comparison with those related to industrial expansion, and the potential effects on certain types of facilities located outside the Reservation boundaries. The Tribe noted that some industries may incur the cost of additional pollution controls to reduce impacts on the Class I area. The Tribe's submittal also identified the presence of mineral resources off reservation.

The Tribe's request to redesignate its reservation as Class I would limit the amount of future air quality deterioration within the reservation's boundaries. While the Tribe described and analyzed relevant effects, specific prospective impacts are speculative and would depend on the nature of future activities and their particular ambient air quality impacts. It is difficult to assess such impacts because ''the nature of a decision which simply requires that the air quality be maintained at a certain level prevents any exact prediction of its consequences.'' *Nance* v. *EPA*, 645 F.2d at 712.

3. Concern About Potential Impacts

Much of the concern about the potential off-reservation impacts stems from misimpressions about the scope of the PSD program and the protection of a non-Federal Class I area under the program. To facilitate public understanding, EPA has addressed the concerns about off-reservation impacts in the ensuing discussion.

a. *Concern About Increased Regulation.* Some commenters were under the misimpression that a Class I redesignation would place the residents of the Verde Valley ''under the strictest air control measures of the Federal law.'' These commenters expressed concerns that redesignation would activate restrictions on wood burning and any form of earth movement in order to curtail dust and smoke, as well as requiring vehicle smog inspections.

The residents of the Verde Valley will not be brought under the strictest air control measures of Federal law as a result of a Class I redesignation. As discussed in the proposal (59 FR 18346, April 18, 1994) and at EPA's presentation during the public hearing, the Verde Valley and the Reservation are currently subject to the PSD program. As noted, the PSD program applies to the following areas: (1) ''attainment'' areas that meet the NAAQS and (2) ''unclassifiable'' areas that cannot be classified as meeting or not meeting the NAAQS.

The Class I designation does not change which sources on or off the reservation are subject to PSD. In all instances, only ''major'' stationary sources in PSD areas are subject to the PSD program. *See, e.g.*, 40 CFR 52.21(b)(1)(i). Major stationary sources are relatively large industrial sources. The PSD provisions do not apply to mobile sources, such as cars. Major stationary sources are sources that emit, or have the potential to emit, over 250 tons per year (tpy) of a regulated air pollutant, or 100 tpy if the source is one of the 28 source categories listed in 40 CFR 52.21(b)(1). Iron and steel mills are an example of a listed source category that would be subject to PSD if the facility has the potential to emit more than 100 tpy of a regulated air pollutant. Particulates from unpaved roads could be affected by the redesignation only insofar as they occur at a major stationary source. Redesignation will not limit the home use of wood-burning stoves, nor will it create restrictions on controlled forest burning, as commenters suggested.

Further, PSD applies prospectively to proposed new major stationary sources or to proposed major modifications of existing major stationary sources. Very generally, major modifications are changes at an existing major stationary source that result in a significant net increase of regulated air pollutants. *See* 52.21(b)(2).

The central change resulting from the Class I redesignation approved today is that it allows for less air quality deterioration on the reservation than would have been allowed under its

Class II designation. The area around the reservation will continue to maintain its Class II designation. EPA's PSD regulations establish the incremental amount of air quality deterioration that is allowed for Class I, II and III areas for particulate matter, sulfur dioxide and nitrogen dioxide. *See* 40 CFR 52.21(c). In addition, a new major stationary source or major modification which would construct within 10 km of a Class I area is subject to review under the PSD regulations if emissions from the source would have an impact on the Class I area equal to or greater than the 1 $\mu g/m^3$ significance level. *See* 40 CFR 52.21(b)(2), 40 CFR 52.21(b)(23), and 40 CFR 52.21(i).

There is another program under separate provisions of the Clean Air Act that imposes more stringent requirements in nonattainment areas, or so called ''dirty air'' areas, in which air quality does not meet the NAAQS. Under the nonattainment area requirements, states may need to develop more stringent or broader requirements; these may affect smaller stationary sources than would be regulated under the PSD program, or in some instances necessitate vehicle inspection and maintenance (smog-check) programs. Such a program would not go into effect in the Verde Valley as a result of the redesignation. In fact, one of the primary objectives of the PSD program is to prevent air quality in attainment areas from deteriorating such that they fail to meet the NAAQS, become ''nonattainment'' and necessitate more stringent air pollution control measures.

Commenters also expressed concern that the redesignation would place additional burdens on local regulatory agencies, as well as the Arizona Department of Environmental Quality (ADEQ) to apply the Class I increments to off-reservation sources. As the PSD permitting authority for the lands outside the reservation in the Verde Valley, ADEQ would be the only agency affected by the redesignation. Air quality modeling to assess potential impacts on PSD increments is currently required for Class II areas, and performed by a PSD permit applicant. In certain circumstances, a proposed source may now also have to assess its impact on the Class I increment in effect on the Reservation.

Any additional administrative resources which would be required as a result of the Class I designation would not be substantial. ADEQ must currently review a permit applicant's analysis of the amount of increment that is consumed (if any) when a major source or major modification is constructed in a PSD Class II area near any existing Federal Class I area in Arizona. In the Verde Valley, for example, a major source locating near the Sycamore Canyon Wilderness Area—a Federal Class I area—would already be required to perform a Class I increment analysis. The redesignation of the Yavapai-Apache Reservation may increase the likelihood that a source must perform an increment analysis for nearby Class I areas. While the total number of such Class I analyses may increase, the Class I analysis is only one component of an analysis which sources are already required to submit. The responsibility to review the adequacy of any Class I increment analyses resulting from the redesignation does not pose substantial additional burdens for ADEQ in the review of PSD permit applications.

b. *Concern About Increased Costs to Industry.* Some commenters expressed concern that the redesignation would significantly increase the cost of complying with the PSD requirements.

EPA does not expect significant additional delay or cost for companies attempting to comply with the Class I requirements. As noted, the only types of industrial development affected by the Class I designation would be major stationary sources of air pollution. The permit applicant for a major stationary source in the Verde Valley subject to PSD is currently required to perform a modeling analysis to ensure that the Class II increments are protected. The applicant would therefore have to gather the necessary data, and conduct studies on air quality for the Class II analysis. The Class I designation may simply require in certain circumstances that additional receptor points be added to the model in order to simulate the effect of potential emissions on the Class I area to ensure that the Class I increments are protected. The cost of this additional component of an increments analysis is not expected to be substantial.

Further, every major stationary source proposing to locate in a PSD area, irrespective of the area's classification, must employ best available control technology (BACT). *See* sections 165(a)(4) and 169(3) of the CAA. Thus, every major source locating in a Class II area is required to utilize state-of-the-art air pollution controls and proximity to a Class I area generally would not affect the level of control required. Thus, as a general rule, a source would not incur additional control costs due to the redesignation. However, it is possible that in some instances impacts on a Class I area would require further decreases in emissions. A source could choose to achieve such emission reductions in a number of ways, including restrictions on hours of operation or throughput, additional emission controls or obtaining emission reductions from other sources in the area. In such a case a source would likely incur additional costs.

c. *Concern About Impacts on Development.* Some commenters expressed concern that the redesignation would hinder all future economic development in the Verde Valley. Others stated that it would place a significant economic and regulatory burden on future economic development in general, and on the development of hardrock mining resources in particular.

The commenters cited increased costs and increased regulatory burdens as the bases for the alleged impacts on development. As discussed above, EPA believes that significant increases in cost will be rare and generally unlikely to affect development in the area. As noted, the redesignation does not affect which sources will be subject to PSD. In all instances, ''major stationary sources'' in PSD areas are subject to PSD. The Verde Valley area outside the reservation is a PSD area and its PSD classification is unaffected by EPA's approval of the Class I designation for the Tribe.

There are many Class I areas located adjacent to communities that are Class II areas. For example, the Saguaro National Park, a Federal Class I area, is adjacent to the eastern and western boundaries of Tucson, Arizona. Tucson has a population size and economic activity level that far exceeds that presently found in the Verde Valley.

EPA performed a modeling analysis to assess the potential impact of some ''typical'' major sources proposing to locate near the Yavapai-Apache Reservation, to facilitate the public's understanding about the implications of the redesignation. This analysis suggests that while the Class I redesignation will protect existing air quality on the Reservation by limiting the amount of deterioration allowed, major stationary sources with well-controlled emissions locating near the Reservation should not exceed the Class I increment. More detailed information about EPA's analysis is available for public review in the docket listed at the beginning of this document.

As noted, commenters expressed specific concerns about the effect of the redesignation on development of mining resources in the area, noting that ore bodies cannot be relocated. One commenter argued that any conventional mining operation requiring crushing and concentration

would fall well within the category of a new major stationary source.

The discussion above regarding economic and regulatory effects of the redesignation in general also applies to mining operations. In addition, whether proposed mining activity would even be subject to PSD depends on the quantity and type of expected emissions. As noted, to be subject to PSD a facility must have the potential to emit more than 250 tpy of a regulated air pollutant, or more than 100 tpy if the facility is included in one of the 28 listed source categories. Mining operations are not included in the list of 28 source categories, and therefore the 250 tpy threshold applies. *See* 40 CFR 52.21(b)(1)(i). In addition, for many types of mining operations, fugitive emissions (emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening) make up a majority of pollutants emitted. *See* 40 CFR 52.21(b)(20). Fugitive emissions, such as dust, are counted towards the 250 tpy threshold for determining whether PSD applies only for specified source categories, which do not include most mining activities. *See* 40 CFR 52.21(b)(1)(c)(iii). Thus, the exclusion of fugitive emissions and the higher pollutant threshold may exclude mining activity from PSD review.

4. Disperse Reservation Lands and Character of Reservation Lands.

Some commenters stated that they were opposed to the redesignation because the reservation is comprised of five distinct land parcels. The commenters were concerned about the small size (i.e., 635 acres) and dispersed nature of the reservation lands and the impact on effective air quality management. As noted, EPA may disapprove a redesignation only if the Tribe did not follow the applicable procedures in adopting its redesignation. Because these comments do not relate to any alleged procedural transgression, they are not a basis for disapproval in this action.

However, section 164(e) calls for EPA to consider ''the extent to which the lands involved are of sufficient size to allow effective air quality management'' in resolving intergovernmental disputes about redesignations. Thus, EPA has fully assessed this consideration in addressing the State of Arizona's objection to the Tribe's Class I redesignation. As noted, EPA's resolution of the intergovernmental dispute is addressed in another notice in today's Federal Register and the reader is referred to that notice.[3]

Another commenter stated that the Class I redesignation is inappropriate because Class I status is intended for the protection of truly unique areas of national or regional significance because of their natural, scenic, recreational, or historic values, and that the Yavapai-Apache Reservation no more reflects any of these characteristics than any neighborhood in the Verde Valley or the country.

Congress made specified Federal lands, including certain national parks and wilderness areas, mandatory Class I areas that may not be redesignated. *See* section 162(a) of the CAA. This is consistent with one of the purposes of the PSD program to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic or historic value. *See* section 160(2) of the CAA.

However, Congress did not restrict redesignation of additional Class I areas by States and Tribes to lands deemed meritorious by the Federal government. Rather, Congress gave States and Tribes broad latitude to redesignate additional areas within their jurisdiction as Class I. Congress generally limited EPA's authority to disapprove the proposed redesignation of ''any'' area to circumstances where the redesignation does not meet procedural requirements. *See* section 164(b)(2) of the CAA

There may be a variety of reasons for a State or Tribe to propose redesignation of an area as Class I. One purpose of the PSD program is to protect health and welfare from actual or potential adverse effects, notwithstanding attainment of the national ambient air quality standards. *See* section 160(1) of the CAA.

Another purpose of the PSD program is to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources. *See* section 160(3) of the CAA.

The Tribe's redesignation request provides as follows:

> The Tribe is not seeking to change its air quality status to prevent development on or around the reservation * * *. The Tribe is against increased air pollution from industrial activity that could cause serious health problems for the people living on or near the Reservation * * *.
>
> People are concerned about the increase in pollution under Class II because of its anticipated effects on their most vulnerable age groups: the very young and the elderly people on the Reservation. * * *
>
> The uncertainty that surrounds these absolute [NAAQS] leads the Tribe to seek additional protection for the People and their finite resources through the maintenance of the lowest levels of pollution currently allowable: a Class I air quality designation.

See Yavapai-Apache Tribe Air Quality Redesignation Plan, Sept. 1993 at ps. 27, 30 and 40. The Tribe's request also examines the natural resource and cultural benefits of the proposed redesignation as well as the unique nearby natural resources.

In the final analysis, it is generally inappropriate for EPA to substitute its judgment for that of the Tribe's in these circumstances. As discussed, Congress generally placed only procedural restrictions on a Tribe's redesignation of non-Federal lands as Class I areas. The legislative history indicates that limited Federal review was a deliberate congressional decision.

5. Applicable Implementation Plan.

Some commenters stated that a redesignation cannot be approved under section 164 of the CAA until there is an applicable state implementation plan for the reservation. These commenters do not believe that such a plan exists for this area, and therefore the Tribe's request cannot be approved. The commenters reason that the State does not have jurisdiction over the reservation, therefore no applicable State implementation plan exists on the reservation and the absence of an applicable State implementation plan precludes approval of any Tribal redesignation.

Section 164 of the CAA makes no reference to an ''applicable state implementation plan.'' Section 164(e), the dispute resolution provisions, refers only to the ''applicable plan,'' providing that EPA's decision resolving the dispute shall become part of the applicable plan and shall be enforceable as part of such plan. Section 302(q) of the CAA in turn defines applicable implementation plan to include a plan approved under section 110 of the CAA, a plan Federally-promulgated under section 110(c) of the CAA or a plan approved or promulgated under section 301(d) of the CAA. Thus, a redesignation could be part of a state implementation plan (SIP), a Federal implementation plan (FIP), or eventually, a tribal implementation plan in accordance with sections 110(o) and 301(d) of the CAA. *See* 59 FR 43956.

The PSD regulations, however, provide that redesignations may be

[3] Responses to these comments are also contained in the TSD for this rulemaking action, available in the public docket identified at the beginning of this notice.

proposed by states or tribes, ''subject to approval by the Administrator as a revision to the applicable State implementation plan.'' *See* 40 CFR 52.21(g)(1). At the time this language was promulgated, the Agency had not clearly focused on the complex issues of tribal sovereignty as it relates to States. *Compare* 59 FR 43956.

The PSD rules at 40 CFR part 52 establish a Federal PSD program, or Federal implementation plan, where there would otherwise be gaps in programmatic coverage.[4] The Federal implementing rules expressly apply to Indian reservations. *See* 40 CFR 52.21(a) (''the provisions [of this section] shall also be applicable to all * * * Indian Reservations). The Federal implementing regulations also expressly provide for redesignations by Indian Tribes. *See* 40 CFR 52.21(g)(4).

Based on the language in section 164(c) of the CAA and 40 CFR 52.21(g)(4) of the regulations expressly authorizing Tribes to redesignate lands within reservation boundaries, it could not have been EPA's intent at the time it promulgated the language in 40 CFR 52.21(g)(1) to frustrate the ability of Tribes to redesignate their lands, and render meaningless the statutory and regulatory Tribal redesignation authority, by requiring that there be an applicable *State* implementation plan. Further, requiring that a State implementation plan apply on a reservation before EPA would approve a Tribal redesignation would be inappropriately treating Tribes as subdivisions of States instead of relating to Tribes on a ''government-to-government'' basis as called for by Federal policy. *See* part III.B.6, below.

Thus, EPA interprets the regulatory provision to have the same meaning as the statutory provision on which it is based, and to require that redesignations become part of the applicable implementation plan. Accordingly, for States, the applicable plan is the State implementation plan as specifically recognized in the regulations. Because Indian Tribes do not yet have authority to administer Tribal implementation plans, the Federal PSD rules issued at 40 CFR 52.21 establish, pursuant to section 110(c)(1) of the CAA, the Federal implementation plan as the applicable plan for the Tribe. *See* section 302(q) of the CAA. Thus, the redesignation approved today will become part of the Federal implementation plan for the reservation.

6. Additional Public Comments.

One commenter expressed concern that the redesignation could be detrimental to the economic well-being of the community. The commenter also asserted that it appears to be ''both unnecessary and possibly immoral'' to allow ''an extremely small minority of the population to impose a significantly higher level of bureaucratic regulation.'' The commenter encouraged EPA to suggest to the Tribe that it could pursue more ''meaningful and productive opportunities.''

In the preceding discussion, EPA has attempted to address concerns, and misimpressions, about potential economic impacts. Also as addressed previously, the PSD program gives States and Federally recognized Indian Tribes broad authority to redesignate lands within their jurisdictional boundaries. That authority is not limited by the size of population the requesting governmental entity represents or its population relative to the surrounding jurisdictions.

EPA is also guided by Federal and Agency Tribal policy in making decisions affecting Tribes. *Washington Department of Ecology* v. *EPA*, 752 F.2d 1465, 1471 & n. 5 (9th Cir. 1985). As outlined below, these policies direct EPA to treat Tribes as sovereign governments.

On January 24, 1983, the President issued a Federal Indian Policy stressing two related themes: (1) That the Federal government will pursue the principle of Indian ''self-government'' and (2) that it will work directly with Tribal governments on a ''government-to-government'' basis. An April 29, 1994 Presidential Memorandum reiterated that the rights of sovereign Tribal governments must be fully respected. 59 FR 22951 (May 4, 1994).

EPA's Tribal policies commit to certain principles, including the following:

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

See November 8, 1984 ''EPA Policy for the Administration of Environmental Programs on Indian Reservations''; Policy Reaffirmed by Administrator Carol M. Browner in a Memorandum issued on March 14, 1994.

Congress further enhanced Tribal sovereignty under the CAA in the 1990 amendments. The 1990 amendments added sections 110(o) and 301(d) to the CAA, which provide for administration of specified CAA programs in the same manner as States. These provisions further evidence strong Congressional commitment to tribal sovereignty and the desire to put tribes on an equal footing with states with regard to managing air quality resources. *See* 59 FR 43956.

The United States also has a unique fiduciary relationship with Tribes, and EPA must consider Tribal interests in its actions. *Nance* v. *EPA*, 645 F.2d at 710.

It would be inappropriate, under Federal law and policy, for EPA to disapprove the Tribe's request to seek additional protection of the reservation environment for the reasons suggested by the commenter.

EPA also received a comment from the attorney for the Town of Clarkdale objecting ''to the lack of procedural due process in the conduct of the Public Hearing held by EPA on * * * June 22, 1994.'' The commenter alleged that the EPA hearing officer was unfair and impartial because the Hearing Officer asked the attorney to conclude his comments when a five-minute time limit had been exceeded, some proponents of the project who spoke exceeded the five-minute time limit without interruption from the hearing officer, and the hearing officer failed to control applause and verbal expressions by members of the audience supporting the request which had the effect of a ''chilling process'' on any person in attendance intending to make public comment in opposition. The commenter therefore alleged that the entire EPA review process is tainted.

An opportunity for a public hearing is expressly provided for in conjunction with EPA disapproval of a redesignation request. Section 164(b)(2) of the CAA provides that EPA may disapprove an area redesignation request only if it finds ''after notice and opportunity for public hearing,'' that the redesignation

[4] *See* section 110(c)(1) of the CAA; *see also Phillips Petroleum Co.* v. *EPA*, 803 F.2d 545, 555–56 (10th Cir. 1986) (affirming EPA's authority to directly implement Safe Drinking Water Act Underground Injection Control program on Indian lands in Oklahoma where concluding otherwise would contradict the meaning and purpose of the Act by creating ''a vacuum of authority over underground injections on Indian lands, leaving vast areas of the nation devoid of protection from groundwater'').

does not meet the applicable procedural requirements. EPA's implementing regulations similarly provide that EPA shall disapprove, within 90 days of submission, a redesignation request only if it finds ''after notice and opportunity for public hearing'' that the redesignation does not meet the applicable procedural requirements. *See* 40 CFR 52.21(g)(5).

On April 18, 1994, EPA published a notice of proposed rulemaking in the Federal Register proposing to approve the Tribe's Class I redesignation request based on EPA's preliminary determination that it met the applicable procedural requirements, and announced a 30-day public comment period. *See* 59 FR 18346. EPA subsequently held the June 22, 1994 public hearing in question to be responsive to a request for a public hearing from the Town of Clarkdale attorney. In the announcement of the public hearing, EPA indicated that it would allow until July 6, 1994 for the submittal of written comments following the public hearing.

To facilitate the public's understanding of the issues, EPA began the public hearing with an informational discussion of the Class I redesignation process and an overview of the PSD permit program. Subsequently, a panel of EPA officials, including a presiding hearing officer, heard oral presentations from members of the public.

In her introductory remarks the presiding officer made the following statement:

> Please make your oral comments brief so that everyone has an opportunity to speak. To assist in this effort, please limit your comments to five minutes. If you have lengthier comments or comments that contain a significant amount of technical detail, I would ask that you submit them in writing before the end of the comment period. If you brought a written copy of your remarks with you today, you may hand it to the reporter after your testimony for inclusion in the record of the hearing.

See Hearing Transcript at p. 6.

The Town of Clarkdale attorney was the first speaker at the public hearing. After he spoke for approximately 10 minutes, the presiding officer asked him to conclude his comments in order to ensure that everyone would have time to speak. After providing those who expressed an interest in making an oral presentation with an opportunity to speak, EPA provided time for any additional comment including supplementary statements by those who had previously spoken.

EPA has reviewed the transcript and a videotape of the public hearing. The Town of Clarkdale attorney had a fair and reasonable opportunity to express his views at the public hearing during his statements at the outset of the hearing and again at the end of the hearing when EPA provided an opportunity for additional statements. Everyone present was afforded an equal opportunity to speak. While some members of the audience did applause and comment in response to the statements of others, their conduct did not create an intimidating or ''chilling'' atmosphere.

Further, EPA provided additional opportunities for submission of views to the Agency. As noted, in its announcement of the public hearing, EPA stated that it would consider post-hearing written comments submitted by July 6, 1994. Following the public hearing, the Town of Clarkdale requested an extension of the public comment period ''[t]o allow additional time for the public to respond to information presented by EPA and the public comment at the Public Hearing'' and ''[t]o allow for public comment not made at the Public Hearing of June 22, 1994, by reason of curtailment of opposing viewpoints.'' On July 20, 1994, in response to the Town of Clarkdale's request, EPA published a Federal Register document announcing an extension of the public comment period, providing the public until August 22, 1994 to submit written comments. *See* 59 FR 37018. The Town of Clarkdale submitted public comments dated August 22, 1994, in addition to several other written communications with EPA both preceding and following the EPA public hearing.

EPA has satisfied the procedures required by law, and arguably more, in reviewing the Tribe's PSD redesignation request. EPA has provided ample opportunity for public participation and has fully considered the resulting public comments in taking today's final action. EPA has acted well within its lawful discretion. *See Vermont Yankee Nuclear Power Co.* v. *NRDC,* 435 U.S. 519 (1978).

IV. Administrative Review

A. Executive Order 12866

The Office of Management and Budget has exempted this rulemaking action from centralized regulatory review pursuant to section 6 of Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et seq., EPA must prepare a regulatory flexibility analysis describing the impact of a final rule on small entities. *See* 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000. This final rulemaking action to approve the Tribe's PSD redesignation request does not impose new requirements on small entities and may only potentially have an impact on major stationary sources, as defined by 40 CFR 52.21. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if EPA publishes with the final rule an explanation why that alternative was not adopted.

EPA has determined that this final rulemaking action to approve the Tribe's PSD redesignation request does not contain Federal mandates that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule

and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

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

Dated: October 2, 1996.

Felicia Marcus,

Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart D—Arizona

2. Subpart D is amended by adding § 52.150 to read as follows:

§ 150 Yavapai-Apache Reservation.

(a) The provisions for prevention of significant deterioration of air quality at 40 CFR 52.21 are applicable to the Yavapai-Apache Reservation, pursuant to § 52.21(a).

(b) In accordance with section 164 of the Clean Air Act and the provisions of 40 CFR 52.21(g), the Yavapai-Apache Indian Reservation is designated as a Class I area for the purposes of preventing significant deterioration of air quality.

[FR Doc. 96–27849 Filed 10–31–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 126–0011a; FRL–5616–6]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; Mojave Desert Air Quality Management District; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules from the Mojave Desert Air Quality Management District (MDAQMD) and the South Coast Air Quality Management District (SCAQMD). The rules control oxides of nitrogen (NO_x) from boilers and process heaters, internal combustion engines, residential natural gas-fired water heaters, and stationary gas turbines. This action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate emissions of NO_x in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: This action is effective on December 31, 1996 unless adverse or critical comments are received by December 2, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: MDAQMD Rule 1157, Boilers and Process Heaters; MDAQMD Rule 1160, Internal Combustion Engines; SCAQMD Rule 1121, Control of Nitrogen Oxides from Residential Type Natural Gas-Fired Water Heaters; and SCAQMD Rule 1134, Emissions of Oxides of Nitrogen from Stationary Gas Turbines.

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA or the Act) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_x emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a Notice of Proposed Rulemaking entitled ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_x Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). 57 FR 55620. The NO_x Supplement should be referred to for further information on the NO_x requirements and is incorporated into this notice of direct final rulemaking by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of volatile organic compound (VOC) emissions, in moderate or above ozone nonattainment areas. The Southeast Desert Air Basin is classified as severe, and the Los Angeles-South Coast Air Basin Area is classified as extreme;[1] therefore these areas were subject to section 182(f), the RACT requirements of section 182(b)(2), and the November 15, 1992 deadline, cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions not covered by either a pre-enactment or post-enactment control techniques guideline (CTG) document by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions, are expected to require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

MDAQMD Rule 1157 and Rule 1160 were both adopted on October 26, 1994, and submitted by CARB to EPA on November 30, 1994. SCAQMD Rule 1121 was adopted on March 10, 1995,

[1] The Southeast Desert Air Basin and the Los Angeles-South Coast Air Basin Area retained their designations of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).