ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL–5826–5]

RIN 2060–AH01

Prevention of Significant Deterioration of Air Quality (PSD) Program: Permit Review Procedures for Sources That May Adversely Affect Air Quality in Non-Federal Class I Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking (ANPR).

SUMMARY: Under the Clean Air Act's PSD program, States and Tribes may, with EPA approval, redesignate their lands as ''Class I'' areas to enhance protection of their air quality resources. This notice requests early public input on preliminary issues in clarifying the PSD permit review procedures for new and modified major stationary sources that may have an adverse effect on the air quality of these non-Federal Class I areas. EPA seeks to develop clarifying PSD permit procedures that are effective, efficient and equitable.

DATES: *Comments.* All public comments must be received by August 14, 1997.

Public Workshops. EPA will hold public workshops on this rulemaking. A **Federal Register** notice announcing the dates of these workshops will be published at least 30 days prior to the workshop.

ADDRESSES: *Comments.* Comments on this notice should be mailed (in duplicate if possible) to: U.S. EPA, Air Docket Section, Air Docket A–96–53; 401 M Street, S.W., Washington, D.C. 20460.

Public Workshops. EPA will hold public workshops in Phoenix, Arizona and in Chicago, Illinois. A **Federal Register** notice announcing the dates of these workshops will be published at least 30 days prior to the workshops. Please contact the EPA official listed under **FOR FURTHER INFORMATION CONTACT** if you are interested in participating in the public workshops.

Public Docket. Supporting information for this rulemaking is contained in Docket No. A–96–53. This docket is available for public review and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday at the EPA's Air Docket Section, 401 M Street, S.W., Washington, D.C.; Room M–1500. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: David LaRoche, U.S. EPA, Office of Air and Radiation (6102), 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7652.

SUPPLEMENTARY INFORMATION:

I. Overview

The PSD program authorizes States and Tribes to request redesignation of their lands as ''Class I'' areas. Over the past twenty years, only federally-recognized Tribes have sought redesignation under this authority. EPA has approved Class I redesignations 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). Recently, EPA approved Class I redesignation of the Yavapai-Apache Reservation, located in the State of Arizona. *See* 61 FR 56461 (Nov. 1, 1996) (to be codified at 40 CFR 52.150). EPA has proposed approval of the Forest County Potawatomi Community request for redesignation located in the State of Wisconsin. *See* 60 FR 33779 (June 29, 1995). EPA will provide opportunity for public comment and hold a public hearing before it makes a final decision on this proposed action.

During EPA's review of the Yavapai-Apache and Forest County Potawatomi redesignation requests, nearby States submitted formal objections to EPA. A common concern has been confusion about the PSD permit review procedures that would apply in these States in the event a Class I redesignation request is granted, and what EPA's specific role would be in resolving any intergovernmental disputes that arise over proposed permits for PSD sources that may adversely affect non-federal Class I areas. In response to these concerns, EPA has initiated this rulemaking to clarify the PSD permit review and dispute resolution procedures for proposed new and modified major stationary sources locating near non-Federal Class I areas.

The new procedures established in this rulemaking would apply for any State or Tribal lands redesignated as Class I. Thus, the rulemaking is intended to clarify PSD permit review procedures for proposed PSD sources that may adversely affect the air quality of any State or Tribal non-Federal Class I area, and would set forth more specific procedures for EPA's resolution of any intergovernmental permit disputes which may arise.

The discussion in part II below contains an overview of the PSD program to help provide context and further understanding of the issues presented in this notice. Part III of this notice examines preliminary issues on which EPA seeks early public input. Part IV describes the workshops EPA will hold to facilitate public input.

II. The PSD Program

The central purpose of the PSD program is to protect clean air resources. Thus, the PSD program is an important air pollution prevention program. The genesis of the program was a lawsuit 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 court granted the injunction reasoning that the congressionally-declared purpose of the Clean Air Act to ''protect and enhance'' the quality of the nation's air resources embodied a non-degradation policy. *Sierra Club*, 344 F.Supp. 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. Public Law 95–95, 91 Stat. 685. 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 in States not having approved programs and for federally-recognized Indian Tribes.[1]

A. PSD Areas

Areas nationwide are ''designated'' based on their air quality status relative to the national ambient air quality standards (NAAQS). The PSD program applies to areas designated ''attainment'' and ''unclassifiable'' under section 107 of the CAA, 42 U.S.C. Sec. 7407; these are areas that meet the NAAQS, or areas that cannot be determined on the basis

[1] The 1990 amendments to the Clean Air Act made relatively minor revisions to the PSD program. Pub. L. 101–549, 104 Stat. 2399. Conforming changes have not been made to the implementing regulations. Also, EPA has proposed rules under section 301(d) of the Clean Air Act that would treat Federally-recognized Indian Tribes in the same manner as States for purposes of numerous Clean Air Act programs including the PSD program. 59 FR 43 956 (Aug. 25, 1994). Depending on their final form, these rules may allow Tribes to administer Federally-approved PSD permit review programs in the same way that States do.

of available information as meeting or not meeting the NAAQS.

PSD areas are further categorized as Class I, II or III. The classification of an area determines the maximum increase in pollutant concentrations, or ''increment'' of air quality deterioration, allowed over a baseline air quality concentration. 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 are the overarching air pollution concentration ceilings. That is, regardless of the size of the increment, the NAAQS may not be violated in a PSD area.

There are PSD increments for particulate matter, sulfur dioxide and nitrogen dioxide. EPA's PSD regulations establish the incremental amount of air quality deterioration allowed for these pollutants in Class I, II and III areas. 40 CFR 51.166(c) and 52.21(c).

When Congress enacted the PSD program in 1977 it provided that specified Federal lands, including certain national parks and wilderness areas, must be designated as Class I areas and may not be redesignated to another classification. Because they may not be redesignated, these Federal areas are called mandatory Class I areas. CAA Secs. 162 and 163, 42 U.S.C. Secs. 7472 and 7473.

The statute also carried forward as Class I areas any areas redesignated as Class I under EPA's pre-1977 regulations. CAA Sec. 162(a). The Northern Cheyenne reservation was the only 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).

All other PSD areas of the country were designated as Class II areas under the 1977 Clean Air Act amendments. CAA Sec. 162(b). At the same time, States and Tribes were authorized to seek redesignation of their Class II areas as Class I or Class III. CAA Sec. 164, 42 U.S.C. Sec. 7474. As noted, several Tribes have sought a Class I air quality designation. Currently, there are no Class III areas.

B. PSD Sources

The PSD preconstruction review permit program applies to new and modified major stationary sources. Construction, or subsequent operation, of new major stationary sources and major modifications to existing major stationary sources are prohibited unless the source obtains a permit meeting PSD requirements.

Major stationary sources generally include sources that have the potential to emit at least 250 tons of air pollution annually. 40 CFR 51.166(b)(1)(i)(b) and 52.21(b)(1)(i)(b). Major stationary sources also include specific ''listed'' sources that have the potential to emit at least 100 tons per year of air pollution. 40 CFR 51.166(b)(1)(i)(a) and 52.21(b)(1)(i)(a). The listed sources include, among other facilities, coal-fired power plants (with more than 250 million British thermal units per hour heat input), primary zinc and copper smelters, and portland cement plants. Thus, the PSD program applies to relatively large stationary sources.

Major modifications to existing major stationary sources are also subject to the PSD preconstruction review permit program. Major modifications include a physical or operational change at a major stationary source that would result in a significant net emissions increase in any regulated air pollutant. 40 CFR 51.166(b)(2) and 52.21(b)(2).

C. General PSD Preconstruction Review Permit Requirements

In broad overview, the PSD preconstruction review permit program requires the owner or operator of a proposed source to adopt the best available control technology (BACT) and analyze the air quality impacts associated with the source. CAA Sec. 165(a), 42 U.S.C. Sec. 7475(a). BACT is defined in section 169(3) of the CAA, 42 U.S.C. Sec. 7479(3) as an emission limitation based on the maximum degree of pollutant reduction that is achievable taking into account energy, environmental and economic impacts.

The PSD air quality impact assessment involves several considerations. Generally, the owner or operator of the proposed source must demonstrate that it will not contribute to air pollution that violates any NAAQS or PSD increment. CAA Sec. 165(a)(3). The source must also analyze the ambient air quality, climate and meteorology, terrain, soils and vegetation, and visibility at the site and in the area potentially affected by its emission. CAA Sec. 165(e).

D. Special PSD Program Protection for Class I Areas

There are additional, special protections under the PSD program that apply for Class I areas. As examined in more detail below, the statute appears to distinguish between the preconstruction review permit procedures that apply for Federal Class I areas and non-Federal Class I areas. As a necessary prerequisite, the discussion below first explores in more detail the delineation between Federal and non-Federal Class I areas.

1. Federal Class I Areas

a. Mandatory Federal Class I Areas

The Clean Air Act provides two ways for Federal lands to be designated as Class I—either by congressional mandate, or by EPA approval of a State or Tribal request to redesignate Federal lands. Congress specified certain Federal lands as mandatory Class I areas. National parks larger than 6000 acres, national memorial parks and national wilderness areas larger than 5000 acres, and international parks that were in existence on August 7, 1977 are designated by statute as mandatory Class I areas. CAA Sec. 162(a). These areas cannot be redesignated.

b. Other Federal Class I Areas

Congress also authorized States and Tribes to seek redesignation of other Federal public lands within their boundaries as Class I. These are lands currently designated as Class II. To inform such redesignation decisions, Congress directed the Federal Land Managers (FLM) to review all national monuments, primitive areas and national preserves and to recommend the areas having important air quality related values (AQRVs) be redesignated as Class I. CAA Sec. 164(d). The FLM is defined as the Secretary of the Federal Department with authority over the lands.[2] CAA Sec. 302(i), 42 U.S.C. Sec. 7602(i). The recommendations have not resulted in the redesignation of any Federal lands from Class II to Class I. The only Federal Class I areas that presently exist are the original mandatory areas.

2. Non-Federal Class I Areas

Class I areas may also be created if EPA approves a State or Tribal request to redesignate its own lands as Class I. The resulting areas would be non-Federal Class I areas. The PSD permit review procedures that apply to new or modified PSD sources that may adversely affect these non-Federal Class I areas are the central focus of this notice.

As noted in part I, a few Tribes have exercised their discretion to seek heightened air quality protection status under the PSD program by requesting redesignation of lands within reservation boundaries as Class I areas. States may similarly request

[2] The FLM authority has been delegated to other officials within these Departments. For example, the Assistant Secretary for Fish and Wildlife and Parks is the FLM for areas under the jurisdiction of the National Park Service and the U.S. Fish and Wildlife Service.

redesignation of their lands as Class I in accordance with the procedures outlined at 40 CFR 51.166(g) and 52.21(g). Thus, the permit review procedures developed in this rulemaking would apply equally for all non-Federal Class I areas—State or Tribal.

It is important to understand the differences implied by the use of the terms ''Federal'' and ''non-Federal'' areas. The PSD program treats as ''Federal'' lands various national public lands that the Federal government owns and for which it has stewardship responsibility. These public lands include the following: national parks, national memorial parks, national wilderness areas, national monuments, national lakeshores and seashores, national primitive areas, national preserves, national recreation areas, national wild and scenic rivers, national wildlife refuges, and other similar national public lands. *See, e.g.*, CAA Secs. 160(2), 162(a) and 164(a), (d). The term ''non-Federal'' refers to State lands or to lands within the boundaries of an Indian reservation that are not Federal lands within the meaning of the CAA's PSD program. *See, e.g.*, CAA Sec. 164(c). For example, the legislative history distinguishes between the ''Federal lands'' which the Federal government manages as a ''property owner * * * under the stewardship of various Federal agencies'' and tribal lands. Senate Comm. on Environment and Public Works, 95th Cong., 2d Sess., A Legislative History of the Clean Air Act Amendments of 1977 724 (Comm. Print 1978) (statement of Senator Muskie).

In a recent proposal to reform the PSD program, EPA explained that lands within reservation boundaries may or may not be Federal lands within the meaning of the PSD program. In fulfilling its fiduciary responsibility toward federally-recognized Indian Tribes, the Federal government holds some Tribal lands in ''trust'' for the benefit of the Tribe. Such lands may have a federal feature under Federal Indian law but are not ''Federal'' lands within the meaning of the PSD program. However, national public lands within reservation boundaries, such as national monuments, are included within the term ''Federal'' lands. *See* 61 FR 38250, 38293, n. 71 (July 23, 1996). Thus, the PSD permit review procedures for State lands and lands within Indian reservation boundaries that are non-Federal or non-public lands and redesignated as Class I are the subject of this notice.

3. PSD Permit Review Provisions for Federal and Non-Federal Class I Areas

A congressionally-declared purpose of the PSD program is 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. CAA Sec. 160(2). To this end, Congress established special PSD permit review procedures that apply to proposed PSD sources whose emissions may adversely impact Federal Class I areas. Based on the statutory text, statutory structure and legislative history it appears that these special permit review procedures, set out at section 165(d) of the CAA, are intended to apply only to Federal lands originally designated, or subsequently redesignated, as Class I areas. The legislative history indicates that these special requirements were intended ''to provide additional protection for air quality in areas where the Federal Government has a special stewardship to protect the natural values of a *national* resource. Such areas are the federally-owned class I areas under the bill.'' S. Rep. No. 127, 95th Cong., 1st Sess. at 34 (1977) (emphasis added).

The central focus of the permit review procedures for Federal Class I areas is to protect the air quality related values (AQRVs) of these areas. The Clean Air Act specifies that AQRVs include visibility. CAA Sec. 165(d). The legislative history further provides that for Federal Class I areas the term AQRVs includes ''the fundamental purposes for which such lands have been established and preserved by the Congress and the responsible Federal agency. For example, under the 1916 Organic Act to establish the National Park Service (16 U.S.C. 1), the purpose of such national park lands 'is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.' '' S. Rep. No. 127, 95th Cong., 1st Sess. 36 (1977).

Specifically, for Federal Class I areas, the statute places an ''affirmative responsibility'' on the FLM to protect the air quality related values of Federal lands. CAA Sec. 165(d)(2)(B).

The FLMs protect AQRVs through a prescribed statutory role. If the proposed source will cause or contribute to a violation of a Class I increment, then the owner or operator must demonstrate to the satisfaction of the FLM that the emissions will not adversely impact AQRVs. If the FLM so certifies, then the permit may be issued. Conversely, even if a proposed source will not cause or contribute to a violation of a Class I increment, the FLM may nevertheless demonstrate to the satisfaction of the permitting authority that the source will have an adverse impact on AQRVs. If so demonstrated, then the permit shall not be issued. CAA Sec. 165(d)(2)(C). Thus, compliance with the Class I increments determines the burden of proof for demonstrating the presence or absence of an adverse impact on AQRVs.

EPA recently proposed significant changes to its PSD and nonattainment New Source Review (NSR) program. The proposal includes revisions to the PSD permit review procedures for sources that may adversely impact Federal Class I areas. *See* 61 FR 38250, 38282–38295 (July 23, 1996). The proposed revisions are intended to improve coordination and cooperation, and clarify relative responsibilities among FLMs, proposed sources, and permitting agencies.

Part III below examines whether EPA's permit review procedures for non-Federal Class I areas should be similar to EPA's recent proposal for Federal Class I areas in all respects or whether some differences must or should exist. While, as noted above, section 165(d) contains specific permit review procedures for Federal Class I areas, the Clean Air Act does not contain such specific provisions for non-Federal Class I areas. However, the CAA does contain provisions aimed at protecting air quality in non-Federal Class I areas when a dispute arises between affected States or Tribes. The Clean Air Act recognizes that a PSD source proposing to locate in one jurisdiction can have adverse effects on the air quality of another jurisdiction. By contrast with the provisions that give the FLM responsibility for protecting Federal Class I areas, any State or Tribal government, concerned that a proposed source outside its jurisdiction may adversely impact the air quality of a non-Federal Class I area, may seek to protect such area. The Clean Air Act establishes a special dispute resolution process to address such intergovernmental disagreements.

The Clean Air Act provides that the Governor of an affected State or the Indian ruling body of an affected Indian Tribe may request the EPA Administrator to enter negotiations with the parties involved to resolve the dispute. If the parties are unable to reach agreement, the Clean Air Act makes EPA the ultimate arbiter of the intergovernmental dispute. Section 164(e) of the CAA establishes the special process for resolving these

intergovernmental disputes, and reads in relevant part as follows:

[I]f a permit is proposed to be issued for any new major emitting facility proposed for construction in any State which the Governor of an affected State or governing body of an affected Indian tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected State or tribal reservation, the Governor or Indian ruling body may request the Administrator to enter into negotiations with the parties involved to resolve such dispute. If requested by any State or Indian tribe involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the parties involved do not reach agreement, the Administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan.

Thus, the broad contours of this provision include (but are not limited to) intergovernmental PSD permit disputes over potential impacts on non-Federal Class I areas.[3] This provision is codified in 40 CFR 52.21(t).

In this rulemaking, EPA endeavors to clarify the PSD permit review procedures in a manner that will facilitate amicable resolution of intergovernmental disputes about potential impacts on non-Federal Class I areas without the need for recourse to EPA. Additionally, EPA will examine the methods EPA should consider and the procedures it should employ in the event it is necessary for EPA to resolve an intergovernmental PSD permit dispute. In resolving any intergovernmental permit disputes EPA will act consistent with its trust responsibilities toward Tribes.

III. Preliminary Issues

The overall objective of the rulemaking revisions addressed in this notice is to clarify and improve the PSD permit review procedures applicable to proposed sources that may adversely affect non-Federal Class I areas.[4] In developing these rules EPA will be guided by the core purposes of the Clean Air Act and the PSD program. As noted, the genesis of the PSD program was the non-degradation policy embodied in section 101(b)(1) to ''protect and enhance'' air quality resources to ''promote the public health and welfare.'' The congressionally declared objectives of the PSD program include ensuring that ''economic growth will occur in a manner consistent with the preservation of existing clean air resources'' and ensuring that ''any decision to permit increased air pollution'' is made ''only after careful evaluation of all the consequences * * * and after adequate procedural opportunities for informed public participation.'' CAA Sec. 160 (3) and (5), 42 U.S.C. 7470 (3) and (5). EPA seeks to develop workable rules that consider preservation of existing clean air resources and potential impacts on economic growth. EPA intends to fashion rules that are clear, sensible and improve the PSD permit process.

EPA seeks public input on the following preliminary issues for use in developing proposed revisions to its PSD permit review procedures at 40 CFR 51.166 and 52.21. EPA's public workshops, discussed in Part IV of this document, will focus on these preliminary issues and other issues raised by members of the public. EPA also encourages public commenters to address the issues in their written submissions to the Agency.

A. Scope of New Rulemaking Initiative

EPA seeks public input on the appropriate scope of this regulatory initiative. Currently, after more than 20 years of authority to redesignate, there are five non-Federal Class I areas. By contrast, there are more than 150 mandatory Federal Class I areas. Thus, non-Federal Class I areas are not nationally prevalent in the same manner as Federal Class I areas.

EPA already has detailed PSD permit review procedures in place. In addition, EPA's recent proposal to reform its PSD rules includes proposed revisions related to permit review procedures for Federal and non-Federal Class I areas. 61 FR 38282–38295. For example, EPA proposed to define the term ''air quality related value'' for both Federal and non-Federal Class I areas as ''a scenic, cultural, physical, biological, ecological, or recreational resource which may be affected by a change in air quality, as defined by the FLM for Federal lands and as defined by a State or Indian Governing Body for non-Federal lands within their respective jurisdictions.'' 61 FR 38283–38284.

EPA has also proposed significance levels for all Class I areas. 61 FR 38291–38292. Under the proposal, PSD sources with a predicted (modeled) air quality impact below the significance levels would be excluded from the requirement to conduct a full Class I increment analysis. EPA indicated that permitting authorities could use the finding of an insignificant impact to determine that the source's emissions would not contribute to an increment violation. However, an impact below the significance level of the PSD increments would not necessarily indicate that the proposed source also has an insignificant impact on AQRVs.

In the pending rulemaking to reform the PSD program, EPA also clarified the PSD requirements applicable to non-Federal lands redesignated as Class I areas. 61 FR 38293–38295. EPA explained that States and Tribes with non-Federal Class I areas may identify AQRVs for their lands and may pursue protection of the AQRVs through the intergovernmental dispute resolution provisions under section 164(e) of the CAA. EPA proposed to adopt a regulation at 40 CFR 51.166(t) to implement section 164(e), as a companion to the regulation currently in place at 40 CFR 52.21(t). 61 FR 38293–38295. EPA also proposed to define ''Federal Class I areas'' to clarify the distinctions between Federal and non-Federal Class I areas. 61 FR 38293–38295.

As noted, section 164(e) provides that a State or Tribe may request intergovernmental dispute resolution if a State or Tribe determines that emissions from a proposed PSD source ''will cause or contribute to a cumulative change in air quality in excess of that allowed in [the PSD program] within the affected State or tribal reservation.'' Section 164(e) further provides that if requested by the State or Tribe involved, EPA shall make a recommendation to resolve the dispute and ''protect the air quality related values of the lands involved.'' If the parties do not reach agreement, EPA shall resolve the dispute and its determination shall become part of the applicable plan. Because section 164(e) specifically provides for protection of AQRVs, EPA has previously explained its view that States and Tribes may seek protection of AQRVs through these intergovernmental dispute resolution provisions. [Letter to George Meyer, Wisconsin Department of Natural Resources, from Valdas Adamkus, EPA

[3] Further, several additional provisions of the Clean Air Act and PSD program are aimed at curbing interjurisdictional air pollution transport. A purpose of the PSD program is to assure that emissions from a source in one jurisdiction do not interfere with PSD in another jurisdiction. CAA Sec. 160(4). State air quality management plans are required to contain provisions that prohibit in-State emissions from interfering with PSD measures in another State. CAA Sec. 110(a)(2)(D). The interstate pollution abatement provisions of the CAA direct State Implementation Plans (SIPs) to require PSD sources to notify nearby States whose air pollution levels may be affected by the source. CAA Sec. 126.

[4] EPA is not proposing to modify its rules on the PSD redesignation process itself. The statute clearly prescribes the process and the implementing regulations (i.e., 40 CFR 51.166(g) and 52.21(g)) provide adequate guidelines.

Regional Administrator for Region V (July 27, 1994).]

In the PSD reform proposal, EPA explained its interpretation of the language authorizing intergovernmental dispute resolution if a proposed source ''will cause or contribute to a cumulative change in air quality in excess of that allowed in [the PSD program].'' EPA stated that a State or Tribe may request intergovernmental dispute resolution when a State or Tribe determines that a proposed source will cause or contribute to a violation of the NAAQS or PSD increment or will harm AQRVs identified by the State or Tribe. 61 FR 38294.

EPA believes its interpretation is supported by the plain language of the statute and statutory structure. The statutory language at issue is expansive—referring generally to ''changes in air quality.'' The increments are a central limit on air quality deterioration established under the PSD program and well within the ambit of this language. At the same time, increments are explicitly referred to elsewhere in the PSD provisions as ''maximum allowable increases'' and ''maximum allowable concentrations'' of pollutants. CAA Secs. 163 & 165(a)(3)(A). Thus, EPA believes that the language in section 164(e)is not confined to PSD increments. The statutory text also appears to encompass adverse impacts on AQRVs due to ''changes in air quality.'' EPA believes AQRVs are properly a basis for initiating dispute resolution since their protection is a stated purpose of the provision. 61 FR 38294. In other words, to allow states or tribes to initiate intergovernmental dispute resolution because of adverse impacts on AQRVs is consistent with the statutory language in section 164(e) that calls for EPA to ''make a recommendation to resolve the dispute and protect the air quality related values of the land involved.'' Today, EPA seeks further public comment on this interpretation.

The proposed revisions to reform the PSD program are the outgrowth of extensive discussions with representatives of State and local governments, regulated industry, Federal Land Managers, and environmental organizations. EPA held a public hearing in September 1996 and has provided abundant opportunity for public comment. Except for interpretation of section 164(e) discussed immediately above, regarding the basis for initiating intergovernmental disputes, EPA does not intend to reopen in this rulemaking the proposals advanced in the separate rulemaking to reform the PSD program published on July 23, 1996 (61 FR 38250).

Thus, the question for this new rulemaking initiative is what additional changes to the PSD permit program are needed to clarify and improve the permit review procedures for proposed sources that may adversely affect air quality in non-Federal Class I areas. EPA requests public input on the appropriate scope of this rulemaking, considering the previously proposed revisions to improve the PSD program and the relatively small number of non-Federal Class I areas.

B. Improving Coordination Between Permitting Authorities and States or Tribes With Non-Federal Class I Areas

The July 1996 proposed rules to reform the PSD program contained provisions to address concerns about the PSD permit review procedures for Federal Class I areas. 61 FR 38282–38295. The proposal is intended to reduce delays and disputes associated with permitting near Federal Class I areas by facilitating coordination between the FLM, the permit applicant and the permit authority, and clarifying the relative roles and responsibilities of the involved parties. A central goal of improved coordination is to help identify potential disagreements early in the permit process, when it is less disruptive. Roles are clarified to ensure that responsibilities are reasonably, and mutually, allocated.

EPA seeks public comment on whether some of the basic policy concerns reflected in EPA's recent proposal to revise the PSD rules for Federal Class I areas are also concerns that should be addressed when developing proposed programmatic improvements for non-Federal Class I areas. These basic policy concerns, as they apply to non-Federal Class I areas, are outlined below. [5]

1. Permit Application Coordination

A State or Tribe with a non-Federal Class I area will be aware of sources proposing to locate within its jurisdiction and can work with the permitting authority to review and resolve potential impacts on non-Federal Class I areas. However, if the source is located in another jurisdiction, a State or Tribe can only effectively protect its non-Federal Class I area from potentially adverse effects if it knows about the proposed source.

In its July 1996 proposed revisions to the PSD rules, EPA generally proposed to require submittal of permit applications to the FLMs for sources locating within 100 kilometers (km) of a Federal Class I area. EPA also proposed to require basic source information concerning sources locating more than 100 km from a Federal Class I area to be input into an electronic database in lieu of transmitting entire permit applications to the FLMs. The database enables the FLMs to review information about proposed PSD sources and determine whether further information about the project is needed. 61 FR 38287–38288.

EPA's current regulations generally require State-administered PSD programs to send the public notice of PSD permits to any State or Indian Governing Body whose lands may be affected by emissions from the source or modification. 40 CFR 51.166(q)(2)(iv). The public notice includes the following information: indicates that a PSD permit application has been received, states the permitting authority's preliminary determination to approve or deny the permit, describes the degree of increment consumption that is expected, and addresses the opportunity for comment at a public hearing as well as written public comment.

EPA requests public comment on whether EPA should clarify when a permit authority must provide an affected State or Tribe with a copy of the public notice. EPA also requests comment addressing whether, when a non-Federal Class I area may be affected, EPA should also require permit authorities to provide affected States or Tribes with copies of the permit application or other advance notice before the permit authority makes a preliminary determination to grant or deny the permit.

For example, commenters should address whether EPA should establish standard procedures for permit application notification of sources that may adversely affect non-Federal Class I areas, and how such notification could be effectively and efficiently accomplished. Using the distance between the proposed source and non-Federal Class I area as a basis for determining whether coordination is necessary is simplistic and clear. However, rigid distances alone can be over- and under-inclusive. For example, if States or Tribes with non-Federal Class I areas were required to be notified of all proposed sources within 100 km of the Class I area, then this may place a burden on some sources that do not threaten the area and exclude some

[5] As noted, this notice does not seek public comment on EPA's proposed revisions to the permit review procedures for Federal Class I areas published on July 23, 1996 and already subjected to public comment.

large sources that may impact the area. EPA seeks suggestions on how to ensure that States and Tribes with non-Federal Class I areas receive adequate information about proposed sources that may affect the areas without placing undue burdens on PSD permit applicants and permit agencies.

EPA also requests public comment on how to facilitate intergovernmental coordination during the permit review process to avoid the need for EPA to resolve disputes over potential impacts on non-Federal Class I areas. EPA's July 1996 proposal contained several potential revisions to the PSD rules that call for consultation between the permitting authority and FLM at various key stages of the permit process. 61 FR 38283–38295. Intergovernmental consultation may facilitate resolution of concerns. Further, the earlier all parties are aware of potential concerns, then the sooner the concerns can be resolved and constructive discourse can begin. EPA requests public comment addressing consultation and other measures that can be taken to help resolve intergovernmental permit disputes at an early stage in the permit process. Commenters should address whether consultation would be productive, what alternative measures would be appropriate, and what stages in the permit process consultation should be formalized.

2. Identifying and Disseminating Information About Air Quality Related Values

As noted, EPA's July 1996 proposed PSD revisions define ''AQRVs'' for Federal and non-Federal lands as visibility or a scenic, cultural, physical, biological, ecological, or recreational resource that may be affected by a change in air quality, as defined by the Federal Land Manager for Federal lands and as defined by the applicable State or Indian Governing Body for non-Federal lands. 61 FR 38284. EPA's July 1996 notice sought public comment on this proposed definition and EPA is not seeking further comment in today's notice.

However, EPA does request public input on measures to encourage identification and dissemination of information about the AQRVs for non-Federal lands. EPA's July 1996 proposal included provisions for the public dissemination of information about the AQRVs for Federal lands. 61 FR 38283–86. EPA proposed to place responsibility on the FLM to ensure that permit applicants and permit agencies have adequate information about any AQRV which the FLM has identified. Public commenters should address reasonable steps that can be taken by States or Tribes with AQRVs to inform PSD permit agencies and applicants about the AQRVs. Commenters should also suggest the type of information that would be useful to potential permit applicants and permit agencies.

A related issue is the level of technical support that should accompany identification of AQRVs. Technical or scientific information about AQRVs may be necessary for a neighboring permit agency and permit applicant to understand and address potential concerns. EPA requests comments on whether EPA should propose rules addressing the technical support information for AQRVs identified by a State or Tribe, and seeks input on approaches that may be appropriate.

3. No Affirmative Responsibility to Protect AQRVs of Non-Federal Lands

As noted, the Clean Air Act places an affirmative responsibility on FLMs to protect the AQRVs of Federal Class I areas. Thus, the FLM has a special duty under Federal law to protect the air quality related resources of Federal Class I areas.

However, it does not seem appropriate for a State or Tribe with a non-Federal Class I area to be under a similar responsibility to protect AQRVs. This is an area where a departure between Federal and non-Federal lands seems appropriate. Because a decision by a State or Tribe to seek redesignation of its lands as a Class I area is entirely discretionary, EPA believes that it would be inappropriate to place an affirmative responsibility on a State or Tribe to challenge permit applications from proposed sources locating in other jurisdictions. Thus, EPA is disinclined in this rulemaking to place any duty on an affected State or Tribe to invoke the intergovernmental dispute resolution process and intends to leave this entirely within the State's or Tribe's discretion. EPA solicits public comment on this proposed approach.

C. EPA Resolution of Intergovernmental Permit Disputes

When a State or Tribe does elect to invoke the dispute resolution process, section 164(e) of the CAA makes EPA the arbiter of intergovernmental PSD permit disputes. Section 164(e) of the CAA provides that if the Governing Body of an affected Indian Tribe or the Governor of an affected State determines that a proposed PSD source ''will cause or contribute to a cumulative change in air quality in excess of that allowed [under the PSD program],'' the Tribe or State may request EPA to enter into negotiations with the parties involved to resolve the dispute. Then, if requested by a State or Tribe, EPA will make a recommendation to resolve the dispute and protect the AQRV's of the lands involved. If that does not lead to resolution, EPA is ultimately called upon to resolve such disputes regardless of whether the proposed permit is being reviewed under a State, Tribal, or Federally administered program. EPA seeks public input on the issues outlined below related to EPA's resolution of permit disputes about potential air pollution impacts on non-Federal Class I areas.

1. EPA's Discretion to Fashion Reasonable Solutions

EPA has broad discretion in crafting solutions to intergovernmental permit disputes under section 164(e) of the CAA. The key statutory text in section 164(e) provides as follows:

> If requested by any State or Indian tribe involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the parties involved do not reach agreement, the Administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan.

Thus, Congress has directed EPA to ''make a recommendation to resolve the dispute and protect the air quality related values of the lands involved.'' If the parties cannot reach agreement, EPA is authorized to ''resolve the dispute.'' The statute does not specify or constrain the measures or methods EPA may employ to resolve the dispute.

EPA's discretion to resolve disputes may mean that EPA draws from a variety of methods in resolving any particular PSD permit dispute. This will enable EPA to tailor a solution to the circumstances and issues presented. For example, in the event that EPA is requested to resolve a dispute involving a proposed source's potential impacts on AQRVs and the affected governments disagree about the nature of the projected effects, EPA may need to explore and resolve underlying technical and scientific issues. EPA seeks comment on whether it should elaborate how it might evaluate such technical or scientific disagreements.

Post-construction monitoring may be an effective way to resolve some disputes conditionally. Where there are irreconcilable disputes over the potential impact of a proposed source, post-construction monitoring and subsequent evaluation provides a means

to ascertain actual source impacts and assess the need for any further action.

EPA also requests comment on whether it should address measures that could be employed to mitigate effects on AQRVs. In the July 1996 PSD rulemaking proposal, EPA explored methods to mitigate adverse impacts on the AQRVs of Federal Class I areas to allow permitting of sources that would otherwise face permit modification or denial. 61 FR 38290–38291. Similarly, if resolution of an intergovernmental permit dispute necessitated permit modification or denial to protect the AQRVs of non-Federal Class I areas, mitigation of source impacts through emissions offsets from other sources or other mitigation techniques may present a means to avoid harsher results.

It is also possible that a proposed source may not adversely impact AQRVs but still exceed Class I increments. If that is the case, EPA may consider whether, in certain circumstances and consistent with its trust responsibilities toward tribes, it is within EPA's discretion under section 164(e) to allow issuance of a permit that exceeds Class I increments. It is unclear whether section 164(e) would authorize such action by EPA. This issue is examined in more detail below.

As noted, the Class I increments are the most stringent PSD increments. Therefore, it is conceivable that a proposed source could exceed a Class I increment and yet not adversely impact AQRVs. The Clean Air Act expressly recognizes this situation for **Federal** Class I areas. As noted, under the specific statutory provisions for Federal Class I areas at section 165(d)(2) of the CAA, a source's contribution to the Class I increments determines who bears the burden of proof for demonstrating the presence or absence of an adverse impact on AQRVs and is not decisive of whether a permit may be issued. If a proposed source will contribute to a Class I increment violation in a Federal Class I area, then the owner or operator may nevertheless demonstrate to the satisfaction of the FLM that the source will not adversely impact AQRVs. Therefore, the FLM may conclude that AQRVs are not threatened despite the Class I increment violation. If the FLM certifies that no adverse impact will occur despite the source's violation of the Class I increment, the permitting authority may issue a PSD permit provided the source demonstrates compliance with the Class II increments (as well as a more stringent three-hour sulfur dioxide concentration level).[6] CAA Sec. 165(d)(2)(C)(iv), 40 CFR 51.166(p)(4) and 52.21(p)(5). Thus, in limited circumstances for Federal Class I areas, the Clean Air Act contemplates that a PSD permit could be issued for a source that exceeds the Class I increments.

However, section 164(e) does not contain a similar express exemption of the Class I increments for non-Federal lands. Further, other provisions of the Clean Air Act specify that a proposed source must comply with increments to qualify for a PSD permit. For example, as underscored, section 163 establishes the Class I increments providing that ''the maximum allowable increase in concentrations of sulfur dioxide and particulate matter *shall not exceed*'' certain prescribed amounts. *See also* 40 CFR 51.166(c) and 52.21(c). Further, section 165(a) directs PSD sources to demonstrate that emissions will not contribute to an increment exceedance more than one time per year. Thus, the absence of an explicit statutory exemption to the Class I increments for non-Federal Class I areas would suggest that section 164(e) should not be construed to provide one.

Additionally, for non-Federal Class I areas, the Class I increments appear to have relevance independent of AQRVs. The intergovernmental dispute resolution provisions for non-Federal lands provide that a State or Tribe may object to a proposed PSD permit if it determines that emissions ''will cause or contribute to a cumulative change in air quality in excess of that allowed [under Part C of the Act—the PSD program] within the affected State or tribal reservation.'' CAA Sec. 164(e). As noted, EPA has previously proposed to interpret excess air quality changes to include a proposed source's contribution to a NAAQS violation, PSD increment violation or AQRV impact. 61 FR 38294. Thus, EPA interprets this provision to direct EPA mediation, at the request of a State or Tribe, when a State or Tribe determines that a proposed source will cause or contribute to a violation of a NAAQS or increment, or contribute to AQRV impacts. The bases for invoking the PSD intergovernmental dispute provisions arguably suggest that Class I increments should be among the concerns protected in resolving disputes.

Further, for non-Federal Class I areas, there are additional reasons to give the Class I increments consideration independent of AQRVs. Because Congress gave States and Tribes broad latitude to seek redesignation of non-Federal lands as Class I areas, States and Tribes could seek redesignation to prevent incremental air quality deterioration without regard to protection of AQRVs. In such a situation, compliance with Class I increments enables States and Tribes to advance public health and welfare concerns associated with air quality degradation independent of AQRVs. Thus, EPA may be requested to resolve a dispute involving only a PSD increment, where no AQRV has been defined. In that case, it could be argued that EPA should never waive a PSD increment in a non-Federal Class I area because the State's or Tribe's goal in redesignating the area to Class I may have been solely the protection of the increments.

At the same time, the section 164(e) dispute resolution provisions direct EPA to ''make a recommendation to resolve the dispute and protect the air quality related values of the lands involved.'' This might suggest that AQRVs, not increments, are the principal focus of protection under section 164(e). But, relying on the objective of protecting AQRVs in section 164(e) as a basis for a Class I increment exemption could be very broad since this explanation could conceivably justify an exemption of the Class II or III increments. Perhaps in exercising its administrative discretion under section 164(e) EPA would be confined to a Class I increment exemption, by direct analogy to the statutory exemption provisions for Federal Class I areas.

EPA requests comment on whether EPA should explore in this rulemaking EPA's discretion to waive the Class I increments for non-Federal Class I areas in resolving permit disputes under section 164(e) of the CAA. While it is clear that such action is impermissible unless AQRVs will also be protected, there may nevertheless be circumstances when Class I increment violations occur that do not threaten AQRVs. EPA also seeks comment on the circumstances under which it might be appropriate for EPA to consider providing an exemption for a Class I

[6] The source must demonstrate compliance with a concentration level for sulfur dioxide measured over three hours that is more stringent than the Class II increment but less stringent than the Class I increment. CAA Sec. 165(d)(2)(C)(iv), 40 CFR 51.166(p)(4) and 52.21(p)(5). If the FLM declines to certify that no adverse impact will occur, the permit must be denied or modified. If the proposed source may not be constructed because of the sulfur dioxide increment for periods of twenty-four hours or less, the Governor may grant a variance of the increment if doing so will not adversely affect AQRVs and the FLM concurs. If the Governor and FLM do not agree, their respective recommendations may be transmitted to the President who may grant the variance if it is in the national interest and the facility meets specific limits on its sulfur dioxide concentrations. CAA Sec. 165(d)(2)(D), 40 CFR 51.166 (p)(5) through (p)(7) & 52.21 (p)(6) through (p)(8).

increment. EPA also requests comment on how to weigh competing concerns in determining whether a Class I increment exclusion may be appropriate. For example, if a State or Tribe with a Class I area was very concerned about increases in direct particulate matter pollution, perhaps it would be appropriate for EPA to consider an exclusion from the short-term sulfur dioxide increment but not from PM–10.

In sum, EPA requests public comment on whether EPA should address in this rulemaking some of the potential measures and tools that may be employed to resolve intergovernmental disputes and, if so, what approaches may be appropriate. Alternatively, it may be appropriate for EPA to adopt very general rules that enable EPA to take any number of actions depending upon the circumstances.

2. Dispute Resolution Procedures

EPA also seeks input on whether and to what extent EPA should prescribe the procedures to be followed in resolving intergovernmental permit disputes under section 164(e). For example, EPA is interested in the public's views about whether EPA should establish a particular dispute resolution process. Further, EPA requests comment on whether EPA should address how the dispute resolution process relates to the permit proceeding and how the resulting solution is implemented.

3. Incentives for Amicable Dispute Resolution

Ideally, intergovernmental permit disputes could be amicably resolved without recourse to EPA. EPA seeks public comment on incentives EPA could create for governments to resolve their concerns amicably.

D. Miscellaneous Changes

EPA also seeks public input on any clarifying, administrative changes EPA should make to its existing PSD regulations in light of the distinctions between Federal and non-Federal Class I areas. Comments regarding consistent use of terminology would be appropriate. For example, the existing rules may generally refer to Class I areas where the context implies that Federal Class I areas is the intended meaning. Technical revisions may help avoid any confusion.

The public should also comment on whether EPA should make any conforming regulatory changes to the Guideline on Air Quality Modeling to clarify and improve the PSD permit procedures for non-Federal Class I areas. The Guideline prescribes the air quality models employed to estimate the air quality impacts of proposed PSD sources and is codified at 40 CFR part 51, Appendix W.

E. Summary of the Principal Issues

To facilitate public input, EPA has summarized the issues raised for comment in this notice.

1. Scope of Rulemaking. What regulatory changes should EPA consider in this rulemaking beyond the PSD programmatic revisions proposed in EPA's July 23, 1996 **Federal Register** notice (61 FR 38250)?

2. Analogy to Federal Class I Area Issues. To what extent should EPA draw from the PSD permit review procedures proposed for Federal Class I areas in the July 23, 1996 notice in considering rule changes for non-Federal Class I?

3. Permit Application Notification. What effective, and efficient, measures should EPA consider to ensure that States and Tribes with non-Federal Class I areas receive adequate information about proposed sources that may adversely impact such areas?

4. Intergovernmental Coordination. How can EPA facilitate intergovernmental consultation and coordination during the permit review process in a manner that helps avoid intergovernmental disputes?

5. Identifying AQRVs. What guidance, if any, should EPA provide about the technical support that should accompany identification of AQRVs by States and Tribes?

6. Disseminating Information about AQRVs. What methods should EPA consider to ensure that States and Tribes with AQRVs provide adequate, timely information about their AQRVs to permit applicants and permit agencies?

7. Responsibility to protect AQRV. Should non-Federal land managers have the same affirmative responsibility as Federal land managers to protect AQRVs?

8. EPA Resolution of Intergovernmental Disputes. Should EPA specify the procedures, measures and techniques that might be employed in resolving intergovernmental permit disputes under section 164(e) and, if so, which of these might be appropriate?

9. Waiver of Class I Increments. Should EPA explore in this rulemaking EPA's discretion to waive the Class I increments for non-Federal Class I areas in resolving permit disputes?

10. Dispute Resolution Procedures. What rules, if any, should EPA consider to govern the manner in which EPA will conduct resolution of intergovernmental permit disputes under section 164(e)?

11. Incentive for Amicable Intergovernmental Dispute Resolution. How can EPA create incentives for amicable resolution of intergovernmental permit disputes?

12. Additional Clarifying Regulatory Changes. What regulatory revisions are necessary to clarify the distinction between Federal and non-Federal Class I areas?

13. Regulatory Flexibility Act. What steps can EPA take in this rulemaking to facilitate public participation by any small entities that may be adversely affected and to mitigate any such impacts?

14. Paperwork Reduction Act. What steps can EPA take in this rulemaking initiative to ensure that any informational requirements are necessary and of practical utility, and to minimize the burden of any information requirements?

IV. Public Workshops

EPA recognizes the complexities of the issues surrounding the PSD permit application process. EPA seeks input from all interested members of the public in formulating a reasonable, workable approach to the PSD permit review procedures for sources potentially impacting non-Federal Class I areas.

The preceding discussion has attempted to identify some major issues in developing an approach to this rulemaking. However, these are only preliminary ideas that do not necessarily exhaust all possible issues and approaches regarding the PSD permit review process. EPA wishes to engage in a public discussion about the PSD permit review process and intends to hold public workshops that will provide opportunity for interested members of the public to address the issues raised in this notice and suggest additional approaches.

The first of these public workshops will be held in Phoenix, Arizona and in Chicago, Illinois. A **Federal Register** notice announcing specific dates, times, and locations of these workshops will be published at least 30 days prior to the workshops. If there is public interest, additional public workshops will be announced in the **Federal Register**.

V. Additional Information

A. Public Docket

This rulemaking action involves promulgation or revision of PSD regulations. Thus, the rulemaking is subject to the procedures in section 307(d) of the CAA, 42 U.S.C. Sec. 7607(d), in accordance with section 307(d)(1)(J). The public docket for this rulemaking action is A–96–53. The docket is a file of information relied on by EPA in the development of

regulations. All written comments and accompanying materials received in response to this notice will be placed in the public docket. The docket is available for public review and copying at EPA's Air Docket, as indicated in the **ADDRESSES** section at the beginning of this document.

B. Executive Order (EO) 12866

Section 3(f) of EO 12866 defines ''significant regulatory action'' for purposes of centralized regulatory review by the Office of Management and Budget (OMB) to mean any regulatory action that is likely to result in a rule that may:

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

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

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

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

A draft of this ANPR and associated materials were reviewed by OMB prior to publication. Information related to OMB's review of this ANPR has been placed in the public docket referenced at the beginning of this notice, including: (1) Materials provided to OMB in conjunction with OMB's review of this ANPR; and (2) Materials that identify substantive changes made between the submittal of a draft ANPR to OMB and this notice, and that identify the changes that were made at the suggestion or recommendation of OMB.

C. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

Under the RFA, 5 U.S.C. 601–612, EPA must prepare an initial Regulatory Flexibility Analyses to accompany notices of proposed rulemaking that assess the impact of proposed rules on small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000. However, the requirement of preparing such analyses is inapplicable if the Administrator certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

The regulatory revisions that are being considered in this rulemaking initiative would affect the PSD permit review procedures for new major stationary sources and major modifications to existing major stationary sources. This regulatory initiative is also intended to clarify and improve the existing rules. It is unclear at this stage of the rulemaking process whether this rulemaking initiative may have a significant adverse impact on a substantial number of small entities. Nevertheless, EPA seeks public comment on steps EPA can take in this rulemaking to facilitate public participation by any small entities that may be adversely affected and to mitigate any such impacts.

D. Paperwork Reduction Act

EPA requests public comments on steps EPA can take in this rulemaking initiative to ensure that any informational requirements are necessary and of practical utility, and to minimize the burden of any information requirements.

Dated: May 8, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

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