

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 300

[REG-139343-08]

RIN 1545-B171

#### User Fees Relating to Enrollment and Preparer Tax Identification Numbers; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking and notice of a public hearing.

**SUMMARY:** This document contains a correction to a notice of proposed rulemaking and notice of a public hearing (REG-139343-08) that was published in the **Federal Register** on Friday, July 23, 2010 (75 FR 43110). The proposed regulations contain proposed amendments to regulations relating to the imposition of certain user fees on certain tax practitioners. The proposed regulations establish a new user fee for individuals who apply for or renew a preparer tax identification number.

**FOR FURTHER INFORMATION CONTACT:** Emily M. Lesniak, (202) 622-4940 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The notice of proposed rulemaking and notice of a public hearing that is the subject of this document is under section 6109 of the Internal Revenue Code.

##### Need for Correction

As published, the notice of proposed rulemaking and notice of a public hearing (REG-139343-08) contains an error that is misleading and is in need of clarification.

##### Correction to Publication

Accordingly, the notice of proposed rulemaking and notice of a public

hearing which was the subject of FR Doc. 2010-18198 is corrected as follows:

On page 43110, column 1, in the heading, line 5, the language "RIN 1545-B171" is corrected to read "RIN 1545-B171".

**LaNita VanDyke,**

*Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 2010-19881 Filed 8-11-10; 8:45 am]

**BILLING CODE 4830-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 49

[EPA-R09-OAR-2007-0296, FRL-9188-9]

#### Approval and Promulgation of Gila River Indian Community's Tribal Implementation Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve the Gila River Indian Community's (GRIC or the Tribe) Tribal Implementation Plan (TIP) under the Clean Air Act (CAA) to regulate air pollution within the exterior boundaries of the Tribe's reservation. The proposed TIP is one of four CAA regulatory programs that comprise the Tribe's Air Quality Management Plan (AQMP). EPA approved the Tribe for treatment in the same manner as a State (Treatment as State or TAS) for purposes of administering the AQMP and other CAA authorities on October 21, 2009. In this action we propose to act only on those portions of the AQMP that constitute a TIP containing severable elements of an implementation plan under CAA section 110(a). The proposed TIP includes general and emergency authorities, ambient air quality standards, permitting requirements for minor sources of air pollution, enforcement authorities, procedures for administrative appeals and judicial review in Tribal court, requirements for area sources of fugitive dust and fugitive particulate matter, general prohibitory rules, and source category-specific emission limitations. The purpose of the proposed TIP is to implement, maintain,

and enforce the National Ambient Air Quality Standards (NAAQS) in the GRIC reservation. The intended effect of today's proposed action is to make the GRIC TIP federally enforceable.

**DATES:** Comments must be received on or before September 13, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2007-0296, by one of the following methods:

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

- *E-mail:* [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov)

- *Fax:* 415-947-3579

- *Mail:* Wienke Tax, Air Planning Office, Environmental Protection Agency, Region 9 Office, 75 Hawthorne Street, San Francisco, CA 94105-3901.

- *Hand Delivery:* Wienke Tax, Air Planning Office, Environmental Protection Agency, Region 9 Office, 75 Hawthorne Street, San Francisco, CA 94105-3901. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:55 excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R09-OAR-2007-0296. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any

disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Planning Office, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California, 94105-3901. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Wienke Tax, Air Planning Office, Environmental Protection Agency, Region 9 Office, 75 Hawthorne Street, San Francisco, CA 94105-3901, (415) 947-4192 or [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms "we", "us", and "our" refer to EPA.

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## I. Background

EPA is proposing to approve a TIP submitted by the GRIC for approval under section 110 of the CAA. The proposed TIP contains general and emergency authorities; procedures for the preparation, adoption, and submission of the GRIC's TIP and broader air quality management plan (AQMP)<sup>1</sup>; provisions adopting the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide, particulate matter, nitrogen dioxide, ozone, lead and carbon monoxide, as Tribal standards<sup>2</sup>; permit requirements for new and existing minor sources of air pollutants; procedures for civil and criminal enforcement; requirements and procedures for administrative appeals and judicial review in Tribal court; requirements for area sources of fugitive dust and fugitive particulate matter; general prohibitory rules for existing and new sources; and source category-specific emission limits and standards for existing and new sources. The Tribe also submitted an inventory of emission sources on the reservation and information about its air quality monitoring program to support the TIP.

The Gila River Indian Community is an Indian tribe federally recognized by the U.S. Secretary of the Interior (*see* 67

FR 46328, July 12, 2002). The GRIC Department of Environmental Quality (DEQ) was established by executive order in August 1995 by then-Governor Mary Thomas. Beginning in 1998, the GRIC DEQ, with assistance from EPA, began developing a draft AQMP with the goal of submitting it to EPA for approval under the CAA. On December 6, 2006, the GRIC also submitted a request that we find the Tribe eligible for TAS pursuant to section 301(d) of the CAA and Title 40, part 49 of the Code of Federal Regulations (CFR), for the purpose of implementing the AQMP. Specifically, the GRIC DEQ requested a TAS eligibility determination for purposes of implementing four CAA programs that together comprise the AQMP: (1) A Tribal Implementation Plan (TIP) that includes source-specific rules and a minor source permit program under CAA section 110; (2) the Federal New Source Performance Standards (NSPS) under CAA section 111; (3) the Federal National Emissions Standard for Hazardous Air Pollutants (NESHAP) under CAA section 112; and (4) an operating permit program under title V of the Act. In addition, the Tribe requested TAS for receiving notifications as an "affected State" under title V of the CAA and submitting recommendations to EPA on air quality designations under CAA section 107(d). On October 21, 2009, EPA determined that the Tribe is eligible for TAS for these purposes.<sup>3</sup>

The GRIC formally submitted the AQMP to EPA Region 9 on February 21, 2007, and submitted supplemental materials on July 11, 2007, June 22, 2009, and July 17, 2010. Having found that the GRIC is eligible for TAS to implement these regulatory programs, EPA is now proposing to approve the Tribe's TIP. We intend to act on the Tribe's title V operating permit program and request for delegation of the NSPS and NESHAPs in separate notice and comment processes, as appropriate.

Approval and implementation of the GRIC TIP will be an important step in ensuring that basic air quality protection is in place to protect public health and welfare in the GRIC reservation, consistent with the CAA's overarching goals of protecting air resources throughout the nation, including air resources in Indian Country.

<sup>1</sup> The TIP is one of four regulatory programs that comprise the AQMP. The other three AQMP programs implement the New Source Performance Standards (NSPS) under CAA 111; the National Emission Standards for Hazardous Air Pollutants (NESHAP) under CAA 112; and title V operating permit requirements. Although the procedural requirements in the GRIC's AQMP apply to the adoption, submission, and revision of all AQMP programs, in this action we are proposing to approve these procedures as part of and only for the purposes of the TIP.

<sup>2</sup> To date, GRIC has adopted only those Federal NAAQS that were effective as of October 2006. This does not alter the applicability, within the GRIC reservation, of any CAA requirement based on a new or revised NAAQS that the Tribe has not yet adopted under Tribal law. Nonetheless, to avoid confusion, we encourage the GRIC to adopt all new or revised Federal NAAQS as Tribal standards and to submit them to EPA as revisions to the TIP.

<sup>3</sup> EPA has also previously approved the Tribe's applications for TAS eligibility for tribal water pollution control grants under Section 106 of the Clean Water Act (CWA) (March 1990), air pollution control grants under Section 105 of the CAA (March 1999), and non point source management grants under Section 319 of the CWA (February 2004).

## II. CAA Requirements and the Role of Indian Tribes

### A. What authorities may Indian Tribes obtain under the CAA?

The CAA is implemented in two basic ways.<sup>4</sup> In the first approach, EPA is primarily responsible both for setting national standards or interpreting the requirements of the Act and for implementing the Federal requirements that are established. In general, this approach is reserved for programs requiring a high degree of uniformity in their implementation—e.g., regulation of substances that deplete stratospheric ozone under Title VI of the Act. *See* 59 FR 43956 at 43957.

The principal method of CAA implementation, however, is through a cooperative partnership between the states and EPA. While this partnership can take several shapes, generally EPA issues national standards or Federal requirements and the states assume primary responsibility for implementing these requirements. Prior to assuming implementation responsibility, states must submit their programs to EPA and must demonstrate that their programs meet minimum Federal CAA requirements. Among these requirements is the mandate that states demonstrate that they have adequate legal authority and resources to implement the programs. If a State program is approved or if the authority to implement a Federal program is delegated to a State, EPA maintains an ongoing oversight role to ensure that the program is adequately enforced and implemented and to provide technical and policy assistance. *See* 59 FR 43956 at 43957.

As part of the 1990 Amendments to the CAA, Congress enacted Section 301(d) authorizing EPA to “treat Indian tribes as States” under the Act so that Tribes may develop and implement CAA programs in the same manner as States within Tribal reservations or in other areas subject to Tribal jurisdiction. Section 301(d)(2) of the Act authorizes EPA to promulgate regulations specifying those provisions of the CAA “for which it is appropriate to treat Indian tribes as States.” 42 U.S.C. 7601(d)(2).

On February 12, 1998, EPA issued a final rule specifying those provisions of the CAA for which it is appropriate to treat eligible Indian tribes in the same manner as states, known as the Tribal

Authority Rule (TAR). 63 FR 7254, codified at 40 CFR part 49. As a general matter, EPA determined in the TAR that it is not appropriate to treat tribes in the same manner as states for purposes of specific program submittal and implementation deadlines. This is because, among other reasons (discussed at 59 FR at 43964–65), although the CAA contains many provisions mandating the submittal of State plans, programs, or other requirements by certain dates, the Act does not similarly require tribes to develop and seek approval of CAA programs. Thus, tribes are generally not subject to CAA provisions that specify a deadline by which something must be accomplished, e.g., provisions mandating the submission of State implementation plans under section 110(a) and Part D of the Act. 40 CFR 49.4. As a result, tribes are also not subject to the section 179 sanctions and certain other Federal oversight mechanisms in the Act that are triggered when states fail to meet these deadlines or when EPA disapproves a program submittal. 40 CFR 49.4(c), (d).

A tribe that meets the eligibility criteria for TAS may, however, choose to implement a CAA program. A tribe may also submit reasonably severable portions of a CAA program, if it can demonstrate that its proposed air program is not integrally related to program elements not included in the plan submittal and is consistent with applicable statutory and regulatory requirements. 40 CFR 49.7(c); *see also* CAA 110(o). This modular approach is intended to give tribes the flexibility to address their most pressing air quality issues and acknowledges that tribes often have limited resources with which to address their environmental concerns. Consistent with the exceptions listed in 40 CFR 49.4, once submitted, a tribe’s proposed air program will be evaluated in accordance with applicable statutory and regulatory criteria in a manner similar to the way EPA would review a similar State submittal. 40 CFR 49.9(h). EPA expects tribes to fully implement and enforce their approved programs and, as with states, EPA retains its authority to impose sanctions for failure to implement an approved air program. *See* 59 FR 43956 at 43965 (Aug. 25, 1994) (explaining EPA’s rationale for treating Tribes in the same fashion as States for purposes of mandatory sanctions for nonimplementation of an approved part D program (CAA 179(a)(4)) and with respect to EPA’s discretionary authority to impose sanctions (CAA 110(m)); 40 CFR 49.4.

### B. What criteria must an Indian Tribe meet to be treated in the same manner as a State under the CAA?

Under section 301(d) of the CAA and the TAR, EPA may treat a tribe in the same manner as a State for purposes of administering certain CAA programs or grants if the tribe demonstrates that: (1) It is a federally-recognized tribe; (2) it has a governing body carrying out substantial governmental duties and powers; (3) the functions to be exercised by the tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation (or other areas under the tribe’s jurisdiction); and (4) it can reasonably be expected to be capable of carrying out the functions for which it seeks approval, consistent with the CAA and applicable regulations.

To receive EPA approval of a CAA program, a tribe must, as a threshold matter, obtain a determination from EPA that it meets these eligibility requirements. 40 CFR 49.6. As discussed in section III below, we previously determined that the GRIC meets these eligibility requirements for purposes of implementing the TIP and other CAA authorities.

### C. What is a CAA Implementation Plan?

Under the CAA, EPA has established NAAQS, or minimum air quality standards, for six pollutants found in ambient air: carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO<sub>2</sub>), ozone (O<sub>3</sub>), particulate matter (PM), and sulfur dioxide (SO<sub>2</sub>). The NAAQS are based on comprehensive studies of available ambient air monitoring data, health effects data, and studies of effects on materials. The primary standards are designed to protect the public from health risks, including children, people with asthma, and the elderly. The secondary standards are designed to prevent unacceptable effects on the public welfare, e.g., damage to crops and vegetation, buildings and property, and ecosystems.

An implementation plan is a set of programs and regulations developed by the appropriate regulatory agency to protect public health and welfare through the attainment and maintenance of the NAAQS. The regulatory agency is generally free to choose whatever mix of requirements it determines best suits its specific circumstances so long as the implementation plan meets applicable requirements and ensures attainment and maintenance of the NAAQS. These plans can be developed by states, eligible Indian tribes, or the EPA, depending on which entity has

<sup>4</sup> For a brief description of some of the many programs contained in the CAA, *see* “Addendum A to Preamble—General Description of Clean Air Act Programs,” 59 FR 43956 at 43976 (August 25, 1994) (Indian Tribes: Air Quality Planning and Management, proposed rule).

jurisdiction in a particular area. Implementation plans developed by states are called State Implementation Plans or SIPs. Similarly, plans developed by eligible Indian tribes are called Tribal Implementation Plans or TIPs. Occasionally, EPA will develop an implementation plan for a specific area. This is referred to as a Federal Implementation Plan or FIP. Following final approval and publication in the **Federal Register**, the provisions of a SIP, TIP or FIP become federally enforceable.

The contents of a typical implementation plan may fall into three broad categories: (1) Agency-adopted control measures which consist of prohibitory rules or source-specific requirements (e.g., orders, consent decrees or permits); (2) agency-submitted "non-regulatory" components (e.g., attainment plans, rate of progress plans, emission inventories, transportation control measures, statutes demonstrating legal authority, monitoring programs); and (3) additional requirements promulgated by the EPA (in the absence of a commensurate agency provision) to satisfy a mandatory Clean Air Act section 110 or part D requirement. The implementation plan is a living document which can be revised by the State or eligible Indian Tribe as necessary to address air pollution problems. Changes to the plan, such as new and/or revised regulations, that EPA approves following notice and comment rulemaking become part of the federally-enforceable implementation plan.

A geographic area that meets or does better than a primary standard is called an attainment area. An area for which there is insufficient information to determine whether the area meets the NAAQS is called an unclassifiable area. An area that does not meet a standard, or that contributes pollution to a nearby area that does not meet a standard, is called a nonattainment area. An area may be designated attainment or unclassifiable/attainment for some pollutants and nonattainment for others.

The CAA requires that the NAAQS be met nationwide and requires states to adopt SIPs that provide for the implementation, maintenance, and enforcement of the NAAQS. CAA 110(a). For attainment and unclassifiable areas, the CAA requires states to submit the basic program elements specified in section 110(a)(2) necessary to implement the NAAQS—e.g., enforceable emission limitations and other control measures (CAA 110(a)(2)(A)), a program to provide for the enforcement of these measures (CAA

110(a)(2)(C)), and necessary assurances that the State will have adequate personnel, funding, and authority under State law to carry out the plan (CAA 110(a)(2)(E)(i)). For nonattainment areas, in addition to these basic program elements, the CAA requires states to adopt SIPs containing specific program elements in part D, Title I of the Act, in accordance with specified deadlines based on the severity of the air pollution problem.

#### *D. What is a Tribal Implementation Plan?*

Section 301(d) of the CAA and the TAR authorize eligible Indian tribes to implement various CAA programs, including TIPs under section 110 of the Act. TIPs (1) are optional; (2) may be modular; (3) have flexible submission schedules; and (4) allow for joint tribal and EPA management.<sup>5</sup>

##### 1. Optional

The CAA requires each State to adopt a SIP. Unlike states, Indian tribes are not required to adopt a CAA implementation plan. In the TAR, we recognized that not all Indian tribes will have the need or the desire to implement an air pollution control program, and we specifically determined that it was not appropriate to treat tribes in the same manner as states for purposes of plan submittal and implementation deadlines. *See* 40 CFR 49.4(a) (exempting Tribes from the plan submittal deadlines for nonattainment areas set out in sections 172(a)(2), 182, 187, 189, and 191 of the Act); *see also* 59 FR 43956, 43964–67 (Aug. 25, 1994) (proposed TAR preamble) and 63 FR 7254, 7264–66 (Feb. 12, 1998) (final TAR preamble).

##### 2. Modular

The TAR allows eligible Indian tribes to submit partial elements of a CAA program, so that they can target their most important air quality issues without the corresponding burden of developing entire CAA programs. Under this modular approach, TIP elements that the eligible Indian tribe submits must be "reasonably severable" from program elements that the tribe chooses not to submit. "Reasonably severable" elements are those that are not integrally related to program elements not included in the TIP. *See* 40 CFR 49.7(c); *see also* 59 FR 43956, 43961–69 (Aug. 25, 1994) (proposed TAR preamble) and 63 FR 7254 (Feb. 12, 1998) (final TAR

preamble). So, for example, a tribe may choose to submit a TIP that addresses only specific types of sources and/or specific air pollutants.

##### 3. Have Flexible Submission Schedules

Neither the CAA nor the TAR requires Indian tribes to develop TIPs. Therefore, unlike states, Indian tribes are not required to meet the plan submittal or implementation deadlines specified in the CAA. Indian tribes may establish their own schedules and priorities for developing TIP elements (e.g., regulations to limit emissions of a specific air pollutant) and submitting them to the EPA. Indian tribes will not face sanctions for failing to submit or for submitting incomplete or deficient TIPs. *See* 40 CFR 49.4; 59 FR 43956, 43964–65 (Aug. 25, 1994) (proposed TAR preamble) and 63 FR 7254 at 7265 (Feb. 12, 1998) (final TAR preamble).

##### 4. Allow for Joint Tribal and EPA Management

Consistent with the CAA and the TAR, a tribe may revise a TIP and take on new programs based on changes in tribal need or capacity. In any case, EPA retains its general authority to directly implement CAA requirements in Indian Country as necessary or appropriate to protect tribal air resources. *See* CAA 301(a), 301(d)(4); 40 CFR 49.11; 59 FR 43956, 43958–61 (Aug. 25, 1994) (proposed TAR preamble explaining EPA's CAA authorities in Indian Country); 63 FR 7254, 7262–64 (Feb. 12, 1998) (final TAR preamble). Thus, where a tribe chooses not to adopt a CAA program or adopts only a partial program, EPA may exercise its discretionary authority to issue such regulations as are necessary or appropriate to protect tribal air resources. This type of joint management allows tribes to focus on their specific air quality needs while ensuring adequate protection of tribal air resources.

The CAA also authorizes EPA to enforce the regulations in an approved TIP. CAA 113. We work cooperatively with the Indian Tribe in exercising this enforcement authority.

### **III. Evaluation of the GRIC's Implementation Authorities**

#### *A. How did the GRIC demonstrate eligibility to be treated in the same manner as a State under the CAA?*

By letter dated November 17, 2006 and submitted to EPA on December 6, 2006, the GRIC requested an EPA determination that the Tribe is eligible for TAS for the purposes of implementing four CAA programs: (1) A

<sup>5</sup> For guidance on development of TIPs, see "Developing a Tribal Implementation Plan," Office of Air Quality Planning and Standards, U.S. EPA, October 2002 (EPA 452/R-02-010), <http://www.epa.gov/air/tribal/tip2002/index.html>.

TIP that includes source-specific rules and a minor source permit program under CAA section 110; (2) the Federal NSPSs under CAA section 111; (3) the Federal NESHAPs under CAA section 112; and (3) an operating permit program under title V of the Act. In addition, the Tribe requested TAS for receiving notifications as an “affected State” under title V of the CAA and for submitting recommendations to EPA on air quality designations under CAA section 107(d). The GRIC submitted supplemental materials for its TAS eligibility request on October 6, 2008 and March 18, 2009. EPA notified appropriate governmental entities and the public of the Tribe’s application and addressed all comments received as part of that process.

On October 21, 2009, based on the information submitted by the Tribe, and after consideration of all comments received in response to notice of the Tribe’s request, EPA determined that the GRIC met the eligibility requirements of CAA section 301(d) and 40 CFR 49.6 for these purposes under the CAA. *See* Memorandum, “Gila River Indian Community: Eligibility Determination under 40 CFR part 49 for Clean Air Act Sections 107, 110, 111, 112, 114, and Title V,” signed by Laura Yoshii, Acting Regional Administrator, EPA Region 9, October 21, 2009 (TAS Decision Document). Specifically, EPA determined that the GRIC had demonstrated: (1) That it is an Indian tribe recognized by the Secretary of the Interior (see 67 FR 46328 (July 12, 2002)); (2) that it has a governing body carrying out substantial governmental duties and functions; (3) that the functions to be exercised by the Tribe pertain to the management and protection of air resources within the exterior boundaries of the Tribe’s reservation;<sup>6</sup> and (4) that the Tribe is reasonably expected to be capable of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the CAA and all applicable regulations.

EPA notified the Tribe of this TAS eligibility determination by letter the same day. *See* letter dated October 21, 2009, from Laura Yoshii, Acting Regional Administrator, EPA Region 9, to the Honorable William Rhodes, Governor, Gila River Indian Community.

<sup>6</sup> The TAS Decision Document describes the geographic area within which the Tribe is approved for TAS.

#### *B. How would the GRIC administer and enforce the TIP?*

The proposed TIP would be implemented primarily by the GRIC DEQ Air Quality Program staff and the Tribe’s attorneys. Established in 1995, the GRIC DEQ has grown from an initial staff of six to a staff of 26 in 2009. The Air Quality Program staff has degrees ranging from Associate’s to Master’s degrees. They have received extensive training in TIP development, permit writing and regulatory enforcement.<sup>7</sup> Since 1995, the staff has also demonstrated considerable capabilities in the programmatic, administrative, and legal functions of implementing an air quality program. On January 9, 2003, the GRIC became the first Tribal Government that EPA recognized as capable of issuing permits with enforceable limitations on a source’s potential to emit, following case-by-case EPA review.<sup>8</sup>

As discussed above in section III.A, EPA evaluated the Tribe’s implementation and enforcement capabilities as part of our determination that the GRIC is eligible for TAS to implement this TIP and other CAA programs. Specifically, as part of that determination, EPA found that the GRIC is reasonably expected to be capable of implementing and enforcing the TIP and other AQMP programs in a manner consistent with the terms and purposes of the CAA and all applicable regulations. *See* TAS Decision Document. Also as part of that determination, EPA entered into a Memorandum of Agreement with the GRIC to facilitate intergovernmental cooperation in addressing criminal violations of the AQMP. *See* Memorandum of Agreement Between the Gila River Indian Community and the U.S. Environmental Protection Agency Regarding Criminal Enforcement of the Tribal Implementation Plan Pursuant to the Clean Air Act and 40 CFR part 49, dated October 21, 2009 (Criminal Enforcement MOA).

The GRIC DEQ staff is responsible for inspecting facilities within the exterior boundary of the reservation and responding to any complaints received. The GRIC air quality staff, and if needed, the GRIC tribal police, will assume enforcement activities for the

<sup>7</sup> *See* letter dated November 17, 2006, from William R. Rhodes, Governor, Gila River Indian Community, to Wayne Nastri, Regional Administrator, U.S. EPA Region 9 (transmitting TAS application), at page 10.

<sup>8</sup> *See* letter dated January 9, 2003, from Jack Broadbent, Director, Air Division, U.S. EPA Region 9, to Dr. Patricia Mariella, Director, Gila River Indian Community DEQ.

purposes of compliance with air regulations. Other GRIC agencies will also provide compliance and enforcement assistance, as appropriate, in accordance with applicable Tribal and Federal law. *See* GRIC AQMP, Part 1, Section 2.2.

Part III of the AQMP contains enforcement ordinances that establish requirements and procedures for civil and criminal enforcement. These ordinances authorize the GRIC DEQ to issue administrative compliance orders, assess civil penalties, and take other enforcement actions against persons who violate requirements of the TIP or other requirements of the AQMP within the exterior boundaries of the reservation. These enforcement provisions are discussed further in Section IV.C.3 of this notice.

#### **IV. Evaluation of the GRIC’s Tribal Implementation Plan**

##### *A. What air quality goals does the GRIC TIP address?*

The Gila River Indian Reservation is located in south-central Arizona, adjacent to the Phoenix Metropolitan Area, in Pinal and Maricopa Counties. The entire reservation is designated attainment or unclassifiable/attainment for the following NAAQS pollutants: Lead (Pb), carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), sulfur dioxide (SO<sub>2</sub>), particulate matter of 2.5 microns or less (PM<sub>2.5</sub>), and ground-level ozone. 40 CFR 81.303. EPA had initially included the Maricopa County portion of the GRIC reservation in the Maricopa County CO nonattainment area, but in 2005 we corrected the nonattainment boundary to exclude the GRIC reservation and redesignated the reservation to “nonclassifiable/attainment” for the CO NAAQS. *See* 69 FR 60328 (October 8, 2004)(proposed rule) and 70 FR 11553 (March 9, 2005)(final rule), as corrected by 70 FR 52926 (September 6, 2005). Similarly, EPA had initially included the Maricopa County portion of the GRIC reservation in the Phoenix metropolitan 1-hour ozone nonattainment area, but in 2005 we corrected the nonattainment boundary to exclude the GRIC reservation and redesignated the reservation to “unclassifiable/attainment” for the 1-hour ozone NAAQS. *See* 70 FR 13425 (March 21, 2005)(proposed rule) and 70 FR 68339 (November 10, 2005)(final rule).<sup>9</sup>

<sup>9</sup> As explained in the final rule, the effect of this action was to attach the Maricopa County portion of the GRIC reservation to the pre-existing “unclassifiable/attainment” area for the 1-hour ozone NAAQS that consists of all of those portions of the State of Arizona (including the rest of the

More recently, on October 14, 2009, we notified the Governor of Arizona and affected Arizona tribes, including the GRIC, that EPA was reviewing the initial recommendation to designate Pinal County as attainment/unclassifiable for the 2006 annual PM<sub>2.5</sub> standard, given recent data indicating violations of the standard in the Pinal County area. On December 30, 2009, we notified the same entities that EPA was also initiating a redesignation of Pinal County to nonattainment for the 1997 annual PM<sub>2.5</sub> standard and for the 1987 24-hour standard for particulate matter of 10 microns or less (PM<sub>10</sub>).<sup>10</sup> We have asked the Tribes in Pinal County, including the GRIC, to provide recommendations concerning their Indian country lands.

The only criteria pollutant for which a portion of the reservation is currently designated nonattainment is PM<sub>10</sub>. The northern portion of the GRIC reservation lies within the Maricopa County (Phoenix Planning Area) serious PM<sub>10</sub> nonattainment area. Approximately 92,000 acres of the GRIC reservation, along its northern boundary, were included in the Maricopa County area when it was originally designated as nonattainment (*see* 52 FR 29383, August 7, 1987) and reclassified from moderate to serious for the PM<sub>10</sub> NAAQS. 61 FR 21372 (May 10, 1996) (reclassification to serious nonattainment effective June 10, 1996). The remainder of the GRIC reservation is located in the portion of Pinal County that is currently designated as unclassifiable/attainment for PM<sub>10</sub>. 40 CFR 81.303.

While State and local regulatory agencies in the Maricopa County PM<sub>10</sub> nonattainment area have developed SIPs to comply with the nonattainment area requirements of subpart 4 of Part D, title I of the CAA, these SIP requirements do not apply within the exterior boundaries of the GRIC reservation. Rather, the CAA, as amended in 1990, broadly authorizes EPA to protect Tribal air resources by directly implementing the Act's requirements in Indian Country. CAA § 301(d)(4); 40 CFR 49.11; 59 FR 43956, 43958–61 (Aug. 25, 1994) (proposed TAR preamble explaining EPA's CAA authorities in Indian Country); 63 FR 7254, 7262–64 (Feb. 12, 1998) (final TAR). As discussed above, section 301(d) of the CAA also authorizes EPA to approve Indian Tribes

to implement their own CAA programs in Indian Country, provided they meet specified requirements.

The GRIC's TIP rules establish a basic air pollution control program for the protection of air resources within the GRIC reservation. The regulations in the TIP are enforceable and function independently of the PM<sub>10</sub> nonattainment area requirements of subpart 4 of Part D, Title I of the Act and, therefore, are not integrally related to these plan requirements. As such, the GRIC's plan submittal is reasonably severable from the PM<sub>10</sub> nonattainment area plan elements not included in the submittal, consistent with 40 CFR 49.7(c). We therefore turn to our evaluation of the GRIC DEQ's plan submittal in accordance with the applicable statutory and regulatory requirements.

#### *B. What procedural requirements did the GRIC satisfy?*

Section 110(a) of the CAA requires that implementation plans be adopted by the State after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, of a public hearing on the proposed revisions, a public comment period of at least 30 days, and an opportunity for a public hearing.

The GRIC DEQ developed the AQMP from 1998 to 2006 in consultation with EPA Region 9. Following an extensive public comment process, on December 13, 2006, the GRIC Tribal Council adopted the AQMP under Tribal Law.<sup>11</sup> The GRIC formally submitted the AQMP, which includes the TIP, to EPA Region 9 on February 21, 2007. On July 11, 2007, the GRIC submitted public process documentation for the AQMP, including documentation of a duly noticed public hearing held by the GRIC DEQ on July 20, 2006, in Chandler, Arizona. We find that the GRIC's process for adopting and submitting the TIP satisfied the procedural requirements for adoption and submission of implementation plans under CAA section 110(a) and EPA's implementing regulations.

#### *C. What authorities and requirements does the GRIC TIP contain?*

The AQMP is comprised of four regulatory programs: (1) A Tribal implementation plan (TIP) for the implementation, maintenance, and enforcement of the NAAQS under CAA 110; (2) regulations adopting the Federal New Source Performance Standards (NSPS) under CAA 111 as Tribal standards; (3) regulations adopting the Federal National Emission Standard for Hazardous Air Pollutants (NESHAP) under CAA 112 as Tribal standards; and (4) a Tribal operating permits program under title V of the Act.

In this action, we propose to act only on the TIP. We intend to issue separate **Federal Register** notices proposing action on the Tribe's requests for delegation of authority to implement and enforce the Federal NSPSs and to implement and enforce the Federal NESHAPs, consistent with applicable CAA and regulatory requirements. The GRIC DEQ is currently revising its title V permit regulations and has requested that EPA not act at this time on the title V provisions it submitted with the AQMP. *See* Letter dated June 22, 2009, from Margaret Cook, Executive Director, GRIC DEQ, to Laura Yoshii, Acting Regional Administrator, EPA Region 9, "Re: Technical Corrections to the GRIC Air Quality Management Plan."

We discuss below each element of the TIP and our evaluation of it in light of applicable CAA requirements.<sup>12</sup>

#### *1. General Provisions*

Part I of the AQMP, "General Provisions," contains definitions, general authorities of the Director, procedures for the preparation, adoption, and submittal of plan elements and revisions, and provisions adopting Federal NAAQS as Tribal standards.<sup>13</sup>

Specifically, Section 1.0 of Part I contains definitions that generally apply to all AQMP programs, including the TIP.

Section 2.0 establishes the Director's general authorities, which include the responsibilities for: (1) Consulting with and making recommendations to the GRIC Governor and Community Council on matters concerning implementation of the AQMP; (2) encouraging industrial, commercial, residential and general development of the Community in a manner that protects and preserves

Reservation that lies in Pinal County) that are not designated as a "nonattainment" area or as an "attainment" area subject to a maintenance plan. 70 FR 68339 at 68344.

<sup>10</sup> EPA's air quality designations for the 2006 24-hour Fine Particle (PM<sub>2.5</sub>) standard were published in the **Federal Register** on November 13, 2009. 74 FR 58688.

<sup>11</sup> *See* Gila River Indian Community Ordinance GR-06-06 (December 13, 2006). Although the Ordinance indicates that the Tribal Council adopted the AQMP on December 6, 2006, we generally refer to the adoption date as December 13, 2006, consistent with the date of the GRIC Governor's signature.

<sup>12</sup> Throughout this discussion, the term "Director" means the Director of the GRIC DEQ. For ease of reference, we refer to each section of the TIP as a section of the AQMP, consistent with the structure of the Tribe's submittal.

<sup>13</sup> *See* footnote 2.

air quality; and (3) notifying Community members and other members of the public on a regular basis of incidences and areas in which the Tribe's adopted NAAQS were exceeded during the preceding calendar year, including the health risks associated with such exceedances. GRIC AQMP Part I, Section 2.1. These provisions satisfy the requirement in CAA section 110(a)(2)(f) to meet applicable requirements of CAA section 121 (relating to consultation) and section 127 (relating to public notification), and also satisfy the requirement in CAA section 110(a)(2)(M) to provide for consultation and participation by local political subdivisions affected by the plan.

In addition, if the Director determines that air pollution in any area constitutes or may constitute an emergency risk<sup>14</sup> to the health of those in the area or if the ambient air quality standards adopted by the GRIC are likely to be exceeded, the Director must notify the GRIC Governor. The Governor may then restrain or enjoin any person from engaging in emissions-generating activity that presents an imminent and substantial endangerment to the public health or welfare or to the environment. The Governor may also, to the extent of the Governor's authority, declare that an emergency exists and prohibit, restrict, or condition any of the following: motor vehicle traffic; retail, commercial, manufacturing, governmental, industrial or similar activity; operation of incinerators and other facilities that emit the air pollutant of concern; the burning or other consumption of fuels; the burning of any materials; any and all other activity which contributes or may contribute to the emergency. Orders of the Governor issued under this provision are enforceable by the GRIC DEQ and the GRIC tribal police. GRIC AQMP Part I, Section 2.2. These provisions meet the requirement in CAA section 110(a)(2)(G) to provide for authority comparable to the emergency powers in section 303 of the Act.

Section 3.0 establishes procedural requirements for preparation, adoption, submission to EPA, and revision of the AQMP. These requirements include publication of notices, by prominent advertisement in the *Gila River Indian News* and by other appropriate means, a public comment period of at least 30 days, and a public hearing following reasonable notice of such hearing.<sup>15</sup>

<sup>14</sup> The Director's determination must be based on scientific data in coordination with the GRIC Office of Emergency Management (OEM) and consistent with OEM protocol. See AQMP Part I, Section 2.2.A.

<sup>15</sup> Consistent with 40 CFR 51.102(c), however, the AQMP does not require a public hearing for any

Section 3.0 also contains technical support requirements and procedures for parallel processing. These provisions satisfy the applicable procedural requirements of CAA section 110(a)(2) and 40 CFR part 51, subpart F.

Finally, Section 4.0 of Part I contains the GRIC DEQ's provisions adopting Federal primary and secondary standards and measuring methods for SO<sub>2</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, CO, ozone (8-hour), NO<sub>2</sub>, and Pb as Tribal air quality standards. These standards and measuring methods are consistent with the Federal NAAQS that were effective in October 2006, shortly before the GRIC adopted the AQMP. See 40 CFR 50.4–50.8, 50.10–50.12 (2006). We are proposing to approve these air quality standards and measurement methods into the TIP.

We note that several revisions to the Federal NAAQS have become effective since October 2006,<sup>16</sup> and that all Federal NAAQS apply within the GRIC reservation whether or not the Tribe adopts these standards into the TIP under Tribal law. See footnote 2, above. The GRIC's TIP provides for progress toward the implementation, enforcement, and maintenance of the Federal NAAQS by regulating emissions of NAAQS pollutants within the reservation and establishing enforceable procedures to determine whether construction or modification of minor sources will interfere with attainment or maintenance of the NAAQS, as effective in October 2006. Accordingly, we are proposing to approve the TIP, including those Federal NAAQS that the Tribe has adopted under Tribal law, as a program containing severable elements of a plan under CAA section 110(a) that provides for the implementation, enforcement, and maintenance of the NAAQS. We note, however, that EPA retains its discretionary authority under CAA sections 301(a) and 301(d)(4) to directly implement CAA programs in the GRIC reservation and to promulgate such Federal implementation plan provisions as are necessary or appropriate to protect air quality in the GRIC reservation.

change to an increment of progress to an approved individual compliance schedule unless the change is likely to cause the source to be unable to comply with the final compliance date in the schedule. AQMP Part I, Section 3.2.D(3).

<sup>16</sup> See 71 FR 61224, October 17, 2006 (revised standards for particulate matter, effective December 18, 2006); 73 FR 67051, November 12, 2008 (revised standards for lead, effective January 12, 2009); 75 FR 2938, January 19, 2010 (proposed rule to revise 8-hour ozone standards); 75 FR 6474, February 9, 2010 (revised standards for NO<sub>2</sub>, effective April 12, 2010); 75 FR 35520, June 22, 2010 (revised standards for SO<sub>2</sub>, effective August 23, 2010).

## 2. Permit Requirements

Part II of the AQMP contains permit requirements for new and existing sources of air pollution. Specifically, it contains a title V operating permit program for "title V sources," and a preconstruction review and operating permit program to regulate "non-title V sources" (or "minor sources").

### a. Title V Permit Requirements

By letter dated June 22, 2009, the GRIC DEQ requested that EPA not act on the title V operating permit regulations submitted as part of the AQMP on February 22, 2007. EPA understands that the GRIC DEQ intends to submit a revised title V operating permit program at a later date, after adopting revisions to address requirements of the CAA and implementing regulations.<sup>17</sup> As such, we are not taking action today on those elements of Part II of the AQMP that pertain to title V permit program requirements.<sup>18</sup> At this time, EPA remains the title V permitting authority for all title V sources within the exterior boundaries of the GRIC reservation.

### b. Non-Title V Permit Requirements

Section 110(a)(2)(C) of the Act requires that each implementation plan include a program to regulate the construction and modification of stationary sources, including a permit program as required by parts C and D of title I of the Act, as necessary to assure that the NAAQS are achieved. Parts C and D, which pertain to prevention of significant deterioration (PSD) and nonattainment, respectively, address the major NSR programs for major stationary sources, and the permitting program for "nonmajor" (or "minor") stationary sources is addressed by section 110(a)(2)(C) of the Act. We commonly refer to the latter program as the "minor NSR" program. A minor stationary source is a source whose "potential to emit" is lower than the major source applicability threshold for a particular pollutant as defined in the applicable major NSR program.

The requirements that minor source programs must meet to be approved are outlined in 40 CFR 51.160 through 51.164. These regulations require states to develop "legally enforceable

<sup>17</sup> EPA has, however, determined that the Tribe is eligible for TAS to implement a title V permit program (as noted above in Section III.A). Accordingly, the Tribe's submittal at a later date of a revised title V permit program need not be accompanied by another TAS eligibility request.

<sup>18</sup> These include all regulatory definitions associated with title V requirements in Section 1.0; title V program applicability provisions in Section 2.0; the title V permitting regulations in Section 3.0; and requirements for title V permit revisions in Section 5.0.



procedures” to enable the State “to determine whether the construction or modification of a [source] will result in—(1) a violation of applicable portions of the control strategy; or (2) interference with attainment or maintenance of a national standard \* \* \*.” 40 CFR 51.160(a). The program must identify the types and sizes of sources subject to review, and the State’s plan must discuss the basis for determining which facilities will be subject to review. 40 CFR 51.160(e).

Every State implementation plan currently contains a minor NSR program. Minor sources located on the GRIC reservation, however, have not to date been subject to preconstruction review under the CAA. EPA has proposed a Federal NSR permit program that would apply to, among others, minor sources in Indian Country where there is no EPA-approved permit program under the CAA, but this rulemaking has not yet been finalized. 71 FR 48696 (August 21, 2006) (proposed rule to implement NSR in Indian Country).

Although the Act does not require tribes to develop and seek EPA approval of NSR permit programs, where a tribe decides to do so, EPA evaluates the program in accordance with applicable

statutory and regulatory criteria in a manner similar to the way EPA would review a similar State submittal. 40 CFR 49.9(h); 59 FR 43956 at 43965 (Aug. 25, 1994) (proposed TAR preamble); 63 FR 7254 (Feb. 12, 1998) (final TAR preamble). For the reasons discussed below, we propose to approve the GRIC’s minor NSR program in accordance with the TAR and the criteria for approval of minor NSR programs at 40 CFR 51.160 through 51.164. It is important to note, however, that we are proposing to approve this as a base program suitable to the GRIC’s reservation. Other Tribal NSR programs may differ significantly and should each be evaluated on a case-by-case basis in light of air quality needs in the relevant area.

The GRIC DEQ’s minor NSR permit program, entitled “Non-Title V Permit Requirements,” applies to stationary sources that are neither “major” under the Act<sup>19</sup> nor subject to the requirements of CAA title V.<sup>20</sup> AQMP Part II, Section 2.1. For all major sources, major modifications, and sources otherwise subject to title V on the reservation, EPA will continue to implement applicable CAA permitting requirements, including the

requirements of parts C and D of title I of the Act, as appropriate.

Specifically, the GRIC’s minor NSR permit program applies to any person who proposes to construct, operate, or modify any source that emits or has the potential to emit “regulated air pollutants,” unless the source or modification is either (1) a major source or major modification and/or subject to title V of the Act, or (2) exempt from review as “de minimis” under the AQMP. See Part II Sections 2.1.B, 2.1.C, 5.1.A. “Regulated air pollutant” is defined as any criteria pollutant, any air contaminant subject to an NSPS under CAA 111, any hazardous air pollutant (HAP) listed under CAA 112(b) or “ultrahazardous” air pollutant listed under CAA 112(r)(3), or any class I or II substance listed in CAA section 602.

A stationary source that is not a “major stationary source” under the CAA and that does not operate in conjunction with another facility or source that is subject to permit requirements may be exempt under Section 2.1.C from permit requirements as a “de minimis facility,” if the source’s “actual emissions”<sup>21</sup> of air pollutants are equal to or less than all of the following levels:

TABLE 1—“DE MINIMIS” THRESHOLDS IN THE GRIC’S MINOR NSR PERMIT PROGRAM<sup>22</sup>

Any single regulated air pollutant except a hazardous air pollutant .....	1 ton per year (tpy).
Any single hazardous air pollutant (HAP), or Any combination of HAPs .....	1000 lbs per year (single HAP), or 1 tpy (combination of HAPs).
Any single ultrahazardous air pollutant, or any combination of ultrahazardous air pollutants .....	300 lbs per year.

In addition, Section 2.1.C(2) identifies several types of minor sources that are categorically treated as “de minimis facilities” and, therefore, exempt from permit requirements. These categorical “de minimis facilities” include agricultural equipment used in normal farm operations, except for equipment that is subject to requirements of title V or 40 CFR parts 60 or 61; air-conditioning equipment and general combustion equipment with aggregated input capacity of less than 2 MMBtu/hour or, if oil-fired, maximum rated input capacity or aggregated input capacity of less than 500,000 Btu/hour; stationary storage tanks used for storing

organic liquids with true vapor pressure of 1.5 psia or less, or that have a capacity of 250 gallons or less; and portable internal combustion engines that, individually, have a rating less than 500 horsepower output or operate less than 200 hours per calendar year.

The GRIC DEQ’s supporting documentation demonstrates that these *de minimis* facilities are appropriately exempt from permit requirements based on their insignificant environmental impacts, in accordance with the criteria set forth in *Alabama Power Co. v. Costle*, 636 F.2d 323 (D.C. Cir. 1979). See Letter dated June 22, 2009, from Margaret Cook, Executive Director, GRIC

DEQ, to Laura Yoshii, Acting Regional Administrator, EPA Region 9, “Re: Technical Corrections to the GRIC Air Quality Management Plan,” enclosure entitled “Minor New Source Review Demonstration.”

The GRIC DEQ’s minor NSR permit program requires each applicant for a “non-title V” permit to submit, among other things, a certified application containing information about the facility, the industrial process, the nature and amount of emissions, and any information needed to determine applicable technology-based emission limitations. In some cases, the GRIC DEQ may also require the source to

<sup>19</sup> Section 302(j) of the CAA generally defines “major stationary source” as any stationary source that has the potential to emit at least 100 tons per year (tpy) of any air pollutant, unless the statute specifies a different threshold. Part D of title I of the Act establishes lower major source thresholds based on severity of air pollution in nonattainment areas. For hazardous air pollutants (HAP), CAA

section 112 defines “major source” as a source that emits or has the potential to emit considering controls, in the aggregate, 10 tpy or more of any HAP or 25 tpy or more of any combination of HAP.

<sup>20</sup> Title V requirements apply to, among other sources, any major source, any source subject to an NSPS under CAA 111, and any source subject to a NESHAP under CAA 112. 40 CFR 71.3(a), (b).

<sup>21</sup> For any emissions unit at a minor source that has not begun normal operations, “actual emissions” shall be based on applicable control equipment requirements and projected conditions of operation.” AQMP Part II, Section 1.0.D (definitions).

<sup>22</sup> AQMP Part II, Section 2.1.C(1).



model its impact on ambient air quality in accordance with 40 CFR part 51, Appendix W.

Importantly, any new minor source that has a “potential to emit” (PTE) at or above specified levels, or a modification at an existing minor source that increases a source’s PTE by specified levels, will be subject to a technology-based emission limitation that reflects

the Best Reasonable and Demonstrated Technology (BRDT), as determined by the GRIC DEQ on a case-by-case basis. BRDT is defined as “an emission limitation or design equipment, work practice or operational standard” that is “based on the maximum degree of reduction of each criteria pollutant or hazardous air pollutant determined on a case-by-case basis” or by rule, “taking

into account energy, environmental, and economic impact, feasibility of achieving the emission limitation for a particular source, and the existing air quality in the area to be impacted by the source.” Part II Section 1.0. The PTE levels (or, for modifications, PTE increases) at which BRDT applies are identified in Table 2.

TABLE 2—PTE THRESHOLDS AT WHICH BRDT APPLIES IN THE GRIC’S MINOR NSR PERMIT PROGRAM <sup>23</sup>

For a new source, any single criteria pollutant .....	75 tpy.
For a new source, any single HAP .....	3 tpy.
For a new source, any combination of HAPs .....	5 tpy.
For a new source, any single or any combination of ultrahazardous air pollutants .....	300 lbs per year.
For a modification, an increase of any single criteria pollutant (that does not make the source a major source) .....	25 tpy.
For a modification, any single new HAP or increase in a HAP already emitted by the source .....	3 tpy.
For a modification, an increase in any combination of HAPs already emitted by the source .....	5 tpy.

Each non-title V permit is issued for a five-year term and must include, among other things: (1) Enforceable emissions limitations or source- or unit-specific requirements that assure maintenance of the Tribe’s adopted ambient air quality standards, protection of public health, compliance with all applicable control standards, such as BRDT, NSPSs, NESHAPs, and other requirements of the CAA <sup>24</sup>; (2) monitoring, testing, reporting, and recordkeeping requirements adequate to evaluate the source’s compliance; (3) a requirement that any revision of an emission limitation, monitoring, testing, reporting, or recordkeeping requirement be made in accordance with the permit revision procedures for non-title V sources at Part II, Section 5.0 of the AQMP; (4) a requirement to allow the GRIC DEQ or EPA representatives to enter and inspect the premises at reasonable times; (5) a requirement to submit an annual compliance certification, and (6) a requirement to submit an annual emissions report. Part II, Section 4.4.A. A non-title V permit authorizes both construction and operation of the minor source or modification.

The permit program establishes administrative procedures for the GRIC DEQ action on permit applications, including public notice and a comment period of at least 30 days on all proposed new permits, permit renewals, and significant permit revisions.<sup>25</sup> AQMP Part II, section 4.6.A. The program also provides for public

hearings on such permit applications upon written request. The issuance or denial of a non-title V permit may be appealed administratively to the GRIC DEQ and, thereafter, judicially to the GRIC Tribal Court. *See* discussion below at section IV.C.4, “Administrative Appeals and Judicial Review.” Finally, the permit program contains stack height procedures consistent with the requirements of 40 CFR 51.164; continuous source emissions monitoring requirements generally consistent with the provisions of 40 CFR part 51, appendix P; requirements for the treatment of confidential information; and permit fee provisions. AQMP Part II, sections 6.0, 9.0, 10.0, and 11.0. Our Technical Support Document (TSD) contains more information about these provisions and suggestions for improvement that do not affect our proposed action.

We propose to approve these procedures as legally enforceable procedures that establish a base program suitable to the GRIC’s reservation and that satisfy the minimum requirements of CAA section 110(a)(2)(C) and 40 CFR 51.160 through 51.164.

### 3. Enforcement

Part III of the AQMP contains requirements and procedures for civil and criminal enforcement against persons who violate AQMP provisions.

Section 1.0 of Part III authorizes the Director to take several kinds of civil enforcement actions against persons who violate AQMP requirements. First,

if the Director has reasonable cause to believe that a person has violated or is violating a provision of the AQMP or any requirement of a permit issued under Part II, the Director may issue an administrative compliance order (ACO) requiring compliance as expeditiously as practicable but no later than 1 year after the date the ACO was issued. An ACO becomes final and enforceable in the Community Court, unless within 30 days after receipt of the ACO, the alleged violator requests a hearing before an administrative law judge (ALJ) in accordance with the provisions of Part IV of the AQMP. If a hearing is requested, the ACO does not become final until the ALJ has issued a recommended decision and the Director has issued a final decision on the appeal.

Second, the Director may assess an administrative civil penalty of up to \$5,000 per day per violation, and/or the GRIC Community Court may issue a civil judicial penalty of up to \$10,000 per day per violation, to any person found to be in violation of an ordinance, an ACO, or any provision of a permit issued under Part II. Each day of a failure to perform any act or duty for which a civil penalty may be assessed constitutes a separate offense. The Director is required to consider specified factors in assessing civil penalties, such as the size of the business, the economic impact of the penalty on the business, and the violator’s good faith efforts to comply.

<sup>23</sup> Part II, Sections 4.2.A(2), 4.2.A(3)(c), 4.2.B.

<sup>24</sup> Generally, a source that is subject to an NSPS under section 111 or a NESHAP under section 112 of the CAA will be subject to title V permitting requirements and, therefore, not subject to GRIC’s non-title V permit program. EPA has, however, exempted certain NESHAP area sources by rule

from title V permitting requirements. In those limited cases where a NESHAP area source is exempt from title V, such source may be required to obtain a GRIC non-title V permit that identifies the applicable NESHAP, among other requirements.

<sup>25</sup> A significant permit revision is, among other things, any change to a non-title V permit that will

result in an increase in the source’s potential to emit a regulated pollutant of more than either 25 tons per year or certain “significant” levels in Section 1.0 of Part II, whichever is less. AQMP Part II, Section 5.5.a(3).

Third, at the request of the GRIC Director, the GRIC General Counsel may file an action for a temporary restraining order, a preliminary injunction, a permanent injunction, or any other relief provided for by law if the Director has reasonable cause to believe that: (1) A person has violated or is violating any provision of an ordinance, an order requiring compliance with an ordinance, or any provision of a permit; (2) a person has violated or is violating an effective compliance order; or (3) a person is creating an imminent and substantial endangerment to public health or the environment.

Finally, the Director may deny a request for a permit if the applicant is incapable of meeting the requirements of an ordinance, and the Director may revoke a permit issued by DEQ based on a finding of noncompliance with material conditions in the permit or when continued operation would violate an ordinance or create a consistent pattern of imminent and substantial endangerment to public health or the environment. Any such denial or revocation of a permit by the Director may be appealed to an ALJ and thereafter to the Community Court, in accordance with the appeal provisions in Part IV of the AQMP. These provisions provide for enforcement of the measures contained in the TIP, as required by CAA section 110(a)(2)(C), and provide necessary assurances that the Tribe will have adequate authority under Tribal law to carry out the TIP, as required by CAA section 110(a)(2)(E)(i).

Section 2.0 of Part III establishes procedures for criminal enforcement and referral of certain criminal matters to EPA. Specifically, Section 2.1 requires the GRIC's General Counsel to consult with the appropriate Federal agencies and, as appropriate, refer for Federal prosecution any person who has willfully or knowingly violated an AQMP provision or a permit issued under Part II. The procedures for the GRIC DEQ's referral of potential criminal violations to the appropriate Federal agencies, for possible criminal prosecution under Section 113(c) of the CAA, are outlined in the Criminal Enforcement MOA discussed above in Section III.B of this notice.

Section 3.0 of Part III contains citizen suit provisions. By letter dated July 17, 2010, the GRIC DEQ requested that EPA not act on these provisions as part of the TIP. The GRIC clarified that these provisions, which remain effective under Tribal law, are not intended to alter the Tribe's liability to civil suit based on established principles of Tribal sovereign immunity and the provisions

of the CAA, nor are they intended to limit any existing Federal jurisdiction under the CAA. *See* letter dated July 17, 2010 from Margaret Cook, Executive Director, GRIC DEQ, to Deborah Jordan, Air Division Director, EPA Region 9, "Re: Gila River Indian Community Tribal Implementation Plan." Nothing in our proposed action alters the effect of the citizen suit provisions of CAA section 304 as they may apply to the Tribe consistent with established principles of Tribal sovereign immunity.

#### 4. Administrative Appeals and Judicial Review

Part IV of the AQMP contains requirements and procedures for administrative appeals, final administrative decisions, and judicial review of final administrative decisions.

Section 1.0 states that the provisions of Part IV apply to "all appealable agency actions," which are: (1) The issuance or denial of an air quality permit; (2) a significant revision to an air quality permit; (3) failure of the GRIC DEQ to act on an air quality permit in a timely manner or as required by the provisions of Part II; (4) revocation of an air quality permit; (5) the issuance of a compliance order; or (6) the imposition, by order, of an administrative civil penalty. Section 2.0 contains relevant definitions.

Section 3.0 establishes procedures for administrative appeals. Specifically, any party whose legal rights, duties, or privileges were determined by an "appealable agency action" may file a notice of appeal with the DEQ within 30 days after receiving notice of the action from the DEQ. Any other party who will be adversely affected by the issuance or denial of a permit and who exercised any right to comment on the action may also file such a notice of appeal, provided that the grounds for appeal are limited to issues raised in that party's comment. Within 5 business days of DEQ's receipt of a notice of appeal containing the required information, the Director must provide specific information regarding the notice to the GRIC Governor's office, after which the Governor must assign an ALJ to the matter and schedule a hearing, in accordance with specified timeframes. Section 3.0 also authorizes the ALJ to schedule a pre-hearing conference in accordance with specified criteria, and establishes procedures and evidentiary requirements for the hearing.

Section 4.0 of Part IV establishes requirements and procedures for the Director's final administrative decision following the hearing and the ALJ's issuance of a recommended decision. The Director may accept, reject or

modify the ALJ's recommended decision, but prior to rejecting or modifying the recommendation, the Director must consult with and obtain the written consent of the GRIC Governor or his/her designee. The Director's decision becomes final unless, within 35 days, a party appeals the final decision judicially.

Section 5.0 establishes requirements and procedures for judicial review of final administrative decisions, jurisdiction over which is vested in the GRIC Community Court. Except in cases where trial de novo is appropriate or justice demands the admission of new or additional evidence, judicial review is limited to the administrative record before the court. Section 5.0 specifies the GRIC Community Court's authorities and the limits on those authorities. For example, the court may stay the Director's final decision in whole or in part for substantial good cause, pending final disposition of the case, and may ultimately modify, affirm, or reverse the decision. The court may not, however, reverse a finding of fact by the Director unless it is "clearly erroneous" and may not reverse the Director's final administrative decision unless it has "no substantial evidentiary basis in the record or is erroneous as a matter of law." Part IV, Section 5.7. Decisions of the GRIC Community Court may be further appealed to the GRIC Court of Appeals.

These provisions establish adequate procedures for review of the Director's decisions under the TIP. Our finding applies only to this TIP under section 110 of the Act and does not apply to other CAA programs submitted by the Tribe, each of which we will evaluate separately in accordance with applicable CAA and regulatory requirements.

#### 5. Area Source Emission Limits

Part V of the AQMP contains two rules that regulate air pollution from specific types of area sources. The purpose of these rules is to reduce emissions of particulate matter from open burning and fugitive dust-generating activities.

Section 1.0 (Open Burning) limits the types of materials that can be openly burned within the GRIC reservation and requires permits for open burning of specified materials. Three types of fires are allowed only if the GRIC DEQ issues an open burn permit: (1) Residential fires to dispose of yard waste, except for materials that generate toxic fumes; (2) commercial fires to dispose of vegetative waste resulting from land clearing, commercial development or other large scale permitted fires; and (3)

agricultural fires for weed control or abatement, clearing fields or the disposal of other naturally grown products, except for materials that generate toxic fumes. The rule requires: (1) that any person seeking an open burn permit submit to the DEQ an application with specific information, (2) identifies types of conditions that the DEQ may include in a permit, and (3) contains specific criteria for the DEQ's grant or denial of an open burn permit.

The rule categorically prohibits open burning of certain materials, such as garbage resulting from the processing, storage, service or consumption of food; asphalt shingles; tar paper; plastic and rubber products; petroleum products; transformer oils; hazardous material containers; tires; construction and demolition debris; and asbestos containing materials. Certain other types of open fires are exempted from the rule—*e.g.*, fires used only for the domestic cooking of food, fires used for cultural, religious or ceremonial purposes, and fires used only for providing warmth.

Section 2.0 (General Requirements for Fugitive Dust-Producing Activities) regulates fugitive dust and fugitive particulate matter emissions from earthmoving, land clearing, and demolition activities, construction sites, unpaved parking lots at industrial plants, and other activities that generate dust. The rule prohibits all owners/operators of sources of fugitive dust or fugitive particulate matter emissions, as well as owners/operators of certain unpaved parking lots and haul/access roads, from allowing visible emissions to exceed 20 percent opacity at any time.

Under this rule, two types of permit applications must be accompanied by a dust control plan. First, any person required to obtain an earthmoving permit under the rule must submit a dust control plan and obtain the GRIC DEQ's approval before commencing any dust generating operation. An earthmoving permit is required for any source owner/operator seeking to conduct certain earthmoving operations, except for normal farming practices. Second, any person who is required to obtain a title V permit, a non-title V permit, or a general permit under Part II of the AQMP must submit a dust control plan and obtain the GRIC DEQ's approval before commencing dust generating operations. A proposed dust control plan must contain specific information, including an illustration of the entire project site boundaries and acres to be disturbed, the expected duration of the project, and control measures or combinations thereof to be

applied to all actual and potential fugitive dust-generating operations.

In addition to the requirements for dust control plans, the rule establishes specific control measures and work practices for specified dust-generating operations, which apply to the specified activities independent of any approved dust control plans. The rule also contains detailed test methods and recordkeeping requirements to ensure that compliance with the required control measures, work practice standards, and any approved dust control plans can be verified. Certain specified activities and individuals are exempted from the rule—*i.e.*, owners and occupants of single family residences, owners or managers of residential buildings with four or less units, normal farming practices, and public roads owned or maintained by any Federal, tribal, or local government.

We have determined that Part V of the AQMP contains specific, well-defined requirements that meet EPA's enforceability requirements under CAA section 110(a)(2)(A). As described above, the rules contain test methods and recordkeeping requirements adequate to determine compliance; clearly identify the activities that are subject and those that are exempt from rule requirements; and do not allow for variations from the rules other than those specified in limited exemptions. EPA is proposing to approve these rules as elements of a base TIP suitable to the GRIC's reservation and regulatory capacities. Our TSD contains more information about each of these rules and suggestions for rule improvement that do not affect our proposed action.

#### 6. Generally Applicable Individual Source Requirements for Existing and New Sources

Part VI of the AQMP contains three rules that regulate visible emissions, volatile organic compound (VOC) emissions, and degreasing and solvent metal cleaning operations. The purpose of these rules is to reduce visible emissions and emissions of particulate matter and gaseous organic compounds.

Section 1.0 (Visible Emissions) generally prohibits the discharge of any air contaminant into the ambient air from any single source of emissions, other than uncombined water, in excess of 20 percent opacity. Compliance is determined by observations of visible emissions conducted in accordance with EPA Test Method 9 (40 CFR part 60, appendix A), except that for purposes of measuring visible emissions from intermittent sources, at least twelve (12) rather than twenty-four (24) consecutive readings are required at 15-

second intervals for the averaging time. Part VI, Section 1.0, subsection 4.0. The rule provides limited exceptions for certain activities or equipment, such as the charging or back-charging of an electric arc furnace for which construction commenced prior to February 2, 1963, and for equipment or processes used to train individuals in opacity observations.

Section 2.0 (VOC Usage, Storage and Handling) generally limits the discharge of VOC emissions from operations involving the usage, storage, transfer or disposal of VOC-containing materials. For example, the rule prohibits the discharge of more than 15 pounds of VOCs a day from any device in an operation involving heat, and prohibits the discharge of more than 40 pounds of VOCs a day from any device in an operation involving the use of non-complying solvents.<sup>26</sup> If these VOC limits are exceeded, the rule requires application of specific control methods that achieve at least 85 percent overall control efficiency or compliance with certain operating standards. Owners or operators who choose to use an emissions control system (ECS) to reduce VOC emissions must provide to the GRIC DEQ for approval an Operation and Maintenance Plan (O&M Plan), together with the initial application for an operating permit.

The rule establishes detailed control techniques and operational standards for the handling, storage and disposal of VOC-containing materials, monitoring and inspection requirements, recordkeeping and reporting requirements, and specific test methods. Certain specified facilities and activities are exempt from the rule—*e.g.*, organic solvent manufacturing facilities and the overland transport of organic solvents and VOC-containing materials; the spraying or other employment of insecticides, pesticides, or herbicides; and metal processing operations such as foundries, smelters, melting or roasting of metal, ore, or dross. Part VI, Section 2.0, subsection 1.2.

Section 3.0 (Degreasing and Solvent Metal Cleaning) establishes equipment specifications and operating standards for degreasing and solvent metal cleaning operations. The rule applies to all new and existing solvent cleaning operations that use VOCs, including cold cleaning, open-top vapor degreasing, and conveyorized degreasing operations.

<sup>26</sup> The rule defines "non-complying solvent" as a solvent that exceeds the applicable percentage composition limit for any of four specific chemical groupings. Section 2.0, subsection 2.0 (definitions).

Specifically, Section 3.0 establishes generally applicable solvent handling requirements, operating and signage requirements, and equipment specifications for solvent cleaning operations. The rule also contains equipment specifications and operating standards specific to owners and operators of cold cleaning degreasers, open-top vapor degreasers, and conveyorized degreasers. Any owner or operator of a solvent cleaning business in operation on or after November 1, 2004 must submit an O&M Plan for an ECS to the GRIC DEQ. An owner/operator of an open-top vapor degreaser or conveyorized degreaser may, in lieu of meeting certain equipment specifications, meet the requirements of the rule through the use of an ECS.

The rule establishes specific monitoring, reporting, and recordkeeping requirements and test methods for determining compliance. Additionally, upon startup of a new solvent cleaner, replacement of an existing solvent cleaner with a different model, change of a control device used on a solvent cleaner, or upon request by the GRIC DEQ, the owner of any solvent cleaner must perform tests and submit a compliance certification to the GRIC DEQ. Certain specified activities are exempt from the rule—*e.g.*, solvent cleaning operations specifically regulated by another rule in Part VI; laundering and housekeeping supplies and activities; and cleaning solutions containing 20 percent or less VOC by either weight or volume.

We have determined that Part VI of the AQMP contains specific, well-defined requirements that meet EPA's enforceability requirements under CAA section 110(a)(2)(A). As described above, the rules contain test methods and monitoring, recordkeeping, and reporting requirements adequate to determine compliance; clearly identify the activities that are subject and those that are exempt from rule requirements; and do not allow for variations from the rules other than those specified in limited exemptions. EPA is proposing to approve these rules as elements of a base TIP suitable to the GRIC's reservation and regulatory capacities. Our TSD contains more information about each of these rules and suggestions for rule improvement that do not affect our proposed action.

#### 7. Source/Category-Specific Emission Limits for Existing and New Sources

Part VII of the AQMP contains three rules that regulate secondary aluminum production facilities, aerospace manufacturing and rework operations, and nonmetallic mineral mining and

processing operations. The purpose of these rules is to reduce visible emissions and emissions of VOCs and particulate matter from these operations.

Section 1.0 (Secondary Aluminum Production) applies to all new, existing and modified secondary aluminium production facilities. The requirements of Section 1.0 are in addition to the requirements of the Federal NESHAP for Secondary Aluminum Production at 40 CFR part 63, subpart RRR, which are incorporated by reference into the rule.<sup>27</sup>

Specifically, Section 1.0 prohibits any person from causing, allowing or permitting the discharge into the atmosphere of any air contaminant, other than uncombined water, in excess of 20 percent opacity from any emission source at a secondary aluminium production facility. The rule also requires that the owner/operator of any source subject to the rule propose a VOC baseline emission rate (in tpy) as part of its initial permit application to the GRIC DEQ, and to demonstrate annually by February 15 that total VOC emissions in the preceding calendar year were reduced by at least three percent of the VOC baseline emission rate. This demonstration is required for five consecutive years after issuance of the source's initial permit, for a total VOC reduction of at least 15 percent from the VOC baseline emission rate.

Additionally, the rule requires any owner/operator using an ECS to reduce emissions to submit an O&M plan for approval to the GRIC DEQ. It also requires any person engaged in incinerating, adsorbing, or otherwise processing organic materials to properly install, maintain, calibrate, and operate monitoring devices to determine whether air pollution control equipment is functioning properly. Finally, the rule establishes recordkeeping requirements and test methods for determining compliance.

Section 2.0 (Aerospace Manufacturing and Rework Operations) applies to any aerospace manufacturing or rework facility whose plantwide PTE exceeds 10 pounds of VOCs per day. The rule establishes VOC content limits for primers, topcoats, chemical milling maskants, and specialty coatings. In lieu of meeting the applicable coating limits in the rule, an owner/operator of a

subject facility may comply with the rule by installing and operating an approved ECS, provided the owner/operator can demonstrate to the GRIC DEQ that the control system will achieve a combined VOC emission capture and control efficiency of at least 81% by weight. The rule establishes techniques for the application of primers and topcoats, as well as operational standards for hand-wipe cleaning, solvent cleaning, and housekeeping. The rule also establishes detailed recordkeeping and reporting requirements and identifies specific methods for determining compliance. Certain specified activities are exempt from the rule—*e.g.*, research and development operations, chemical milling (except for application of chemical milling maskants), electronic parts and assemblies (except for cleaning and topcoating of completed assemblies), and wastewater treatment operations.

Section 3.0 (Nonmetallic Mineral Mining and Processing) regulates VOC emissions from cutback asphalt operations and particulate matter (PM-10) emissions from sand and gravel facilities. Specifically, the rule applies to any commercial and/or industrial nonmetallic mineral mining or rock product plant, concrete batch plant, hot mix asphalt plant, or vermiculite and/or perlite processing plant.

First, the rule establishes several general prohibitions, including a prohibition on the sale, offer for sale, use, or application of the following materials at facilities covered by the rule: (1) Rapid cure cutback asphalt, (2) any cutback asphalt material, road oils, or tar that contains more than 0.5 percent by volume VOCs that evaporate at 500 degrees Fahrenheit or less, or (3) any emulsified asphalt or emulsified tar containing more than 3.0 percent by volume VOCs that evaporate at 500 degrees Fahrenheit or less.

Second, the rule establishes specific limitations on visible emissions and emissions of PM-10 from nonmetallic mineral processing plants, concrete batch plants, hot mix asphalt plants, and vermiculite and perlite processing facilities. Any person subject to the rule must install and operate a wet dust suppression system or other control method approved by the GRIC DEQ to minimize fugitive dust emissions from any material handling system, conveyance system transfer point, screening operation or crusher without a capture and collection system, and nonmetallic mineral loading/unloading operation, unless the materials have sufficient moisture content to prevent

<sup>27</sup> Section 1.0 incorporates by reference 40 CFR part 63, subpart RRR, as effective July 1, 2006. Part VII, Section 1.0, subsection 1.0. Subpart RRR contains emission limits for dioxins, furans and other hazardous air pollutants that may be formed during the smelting of aluminum scrap. Subpart RRR also contains testing, monitoring, recordkeeping, reporting, and labelling requirements to ensure compliance with the limits and standards.

visible emissions in excess of the limits in the rule.

Third, any owner/operator using an ECS to reduce emissions must submit an O&M Plan for approval to the GRIC DEQ, together with the initial application for an operating permit. The O&M Plan must contain specific conditions and procedures to ensure proper operation of the ECS, and the owner/operator must fully comply with each submitted O&M Plan, unless notified otherwise in writing by the GRIC DEQ.

Finally, the rule establishes detailed monitoring, reporting and recordkeeping requirements, as well as specific methods for determining compliance with the PM-10 emission limitations and opacity limitations in the rule.

We have determined that Part VII of the AQMP contains specific, well-defined requirements that meet EPA's enforceability requirements under CAA section 110(a)(2)(A). As described above, the rules contain test methods and monitoring, recordkeeping, and reporting requirements adequate to determine compliance; clearly identify

the activities that are subject and those that are exempt from rule requirements; and do not allow for variations from the rules other than those specified in the limited exemptions. EPA is proposing to approve these rules as elements of a base TIP suitable to the GRIC's reservation and regulatory capacities. Our TSD contains more information about each of these rules and suggestions for rule improvement that do not affect our proposed action.

D. What other information has the GRIC submitted to support the TIP?

1. Emissions Inventory

An emissions inventory is a quantitative list of the amounts and types of pollutants that are entering the air from the pollution sources in a given jurisdiction. The inventory may be comprehensive, looking at all pollutants, or focused on only selected pollutants of concern. The fundamental elements in an emissions inventory are the characteristics and locations of the air emissions sources, and the amounts and types of pollutants emitted. Periodic inventories are used to track changes in emissions over time,

estimate the effectiveness of emission reduction strategies, and track the progress of air quality.<sup>28</sup>

The GRIC DEQ has chosen an annual emission inventory as its approach to identifying the pollutants emitted and the pollution sources in its jurisdiction. The most recent emissions inventory that the GRIC DEQ submitted to EPA uses a baseline year of 2007 and provides estimates of the VOC, nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), sulfur oxides (SO<sub>x</sub>) and PM<sub>10</sub> emissions from point sources, area sources, and mobile sources within the GRIC reservation. See Letter dated June 22, 2009, from Margaret Cook, Executive Director, GRIC DEQ, to Laura Yoshii, Acting Regional Administrator, EPA Region 9, "Re: Technical Corrections to the GRIC Air Quality Management Plan," enclosure entitled "2007 Emissions Inventory Update for the Gila River Indian Community." We find that the method used by the GRIC DEQ to produce the emissions inventory is acceptable, and that the inventory is comprehensive, accurate, and current. Table 3 provides a summary of the GRIC emissions inventory.

TABLE 3—SUMMARY OF EMISSIONS (BY POLLUTANT) FROM AIR POLLUTANT EMISSION SOURCES ON THE GRIC RESERVATION, 2007  
[Tons/year]<sup>a</sup>

Pollutant→Source	PM-10	CO	NO <sub>x</sub>	VOC	SO <sub>x</sub>
Point .....	1048	161	175	142	31
Mobile .....	386	10,588	2055	929	37
Area .....	759	63	52	56	0
Total .....	2193	10,812	2282	1127	68

<sup>a</sup> From Table 4–1, 2007 Emissions Inventory Update for the Gila River Indian Community. Totals may not be precise due to rounding.

The emissions inventory is not part of the TIP but supports the GRIC's ongoing evaluations of air pollution within the reservation and efforts to further develop its regulatory programs to address the Tribe's air quality needs.

2. Air Quality Monitoring Network

An air quality monitoring network consists of one or more sites where instruments are located to measure the concentrations of pollutants in the air at regular intervals. Meteorological stations often are part of an air quality monitoring network. Data collected by the monitoring network can be used to identify changes in air quality and to determine whether the area meets the NAAQS for the criteria pollutants.

An air quality monitoring network should be designed to meet at least one

of the following basic monitoring objectives:

- To determine highest concentrations expected to occur in the area covered by the network;
- To determine representative concentrations in areas of high population density;
- To determine the impact on ambient pollution levels of significant sources or source categories; and
- To determine general background pollution concentration levels.

EPA's ambient air monitoring regulations in 40 CFR part 58 establish minimum quality assurance requirements and monitor network design criteria. Effective December 18, 2006, these regulations require that monitoring organizations submit to EPA, beginning July 1, 2007, an annual

monitoring plan that explains how the siting and operation of each monitor in the network meets the quality assurance requirements of 40 CFR part 58, among other things. 40 CFR 58.10. Although Indian Tribes are generally not required to monitor ambient air, Tribes may choose to do so and, in some cases, may be required by EPA to institute quality assurance programs that comply with 40 CFR part 58 appendix A and to insure that the monitoring data they collect is representative of their respective airsheds. 71 FR 61236 at 61242 (October 17, 2006) (final rule: revisions to ambient air monitoring regulations).

The GRIC submitted its first annual monitoring network plan pursuant to the requirements of 40 CFR 58.10 on

<sup>28</sup> See "Developing a Tribal Implementation Plan," Office of Air Quality Planning and Standards, US

EPA, October 2002 (EPA 452/R-02-010), <http://www.epa.gov/air/tribal/tip2002/index.html>, at Chapter 3.

December 19, 2007.<sup>29</sup> See Gila River Indian Community Department of Environmental Quality, Air Quality Program, 2006 Tribal Ambient Air Monitoring Network Review (2006 Annual Network Plan). The 2006 Annual Network Plan describes the Tribe's ozone and PM<sub>10</sub> monitoring networks and how each monitor in these networks meets the Tribe's monitoring objectives consistent with the quality assurance requirements of 40 CFR part 58. EPA reviewed and approved the GRIC's 2006 Annual Network Plan on May 9, 2008. See letter dated May 9, 2008, from Sean Hogan, Air Quality Analysis Office, US EPA Region 9, to Leroy Williams, Air Quality Program, GRIC DEQ.

The GRIC's ozone monitoring network is comprised of two State and Local Air Monitoring Station (SLAMS) monitors in the reservation. See 2006 Annual Network Plan at 7. One of these monitors is located at the GRIC DEQ building in Sacaton, Arizona, about 40 miles southeast of Phoenix. The other SLAMS monitor in the ozone monitoring network is at St. Johns-Gila Crossing North Middle School. Both monitors are regional/rural scale monitors designed to monitor population exposure and are long-term trends sites that operate on a seasonal schedule, from April through October. The areas surrounding both monitors are a mixture of residential areas and businesses. *Id.* at 7–9.

The GRIC's PM<sub>10</sub> monitoring network consists of one SLAMS monitoring site located at the Casa Blanca-Va Ki Elementary School. See 2006 Annual Network Plan at 9. This monitor is designed to measure neighborhood and regional-scale air pollutant concentrations and operates on a one-in-three-day sampling schedule. The area surrounding the monitor is a mixture of residential areas, businesses, and agricultural operations. The GRIC also operates several PM<sub>10</sub> Special Purpose Monitor (SPM) stations throughout the reservation and anticipates adding three continuous PM<sub>10</sub> SLAMS monitors to its PM<sub>10</sub> monitoring network, at the Casa Blanca, St. Johns, and Sacaton sites. *Id.* at 4, 9–11.

The air quality data collected by the GRIC DEQ are used for a variety of purposes including: determining compliance with the NAAQS, determining the location of maximum

pollutant concentrations, determining the effectiveness of air pollution control programs, evaluating the effects of air pollution on public health, supporting dispersion models, developing cost-effective pollution control strategies, and determining air quality trends. See 2006 Annual Network Plan at 1. The GRIC regularly submits its data to EPA's Air Quality System (AQS) database.

The GRIC Air Program also monitored for PM<sub>2.5</sub> in two locations in the reservation between 2002 and 2004. On September 21, 2004, EPA Region 9 concurred with the GRIC DEQ's request to discontinue operation of the PM<sub>2.5</sub> monitors based on the low concentrations of recorded PM<sub>2.5</sub> data and a determination that PM<sub>2.5</sub> monitoring in the reservation is not required by EPA regulations. See letter dated September 21, 2004, from Robert S. Pallarino, EPA Region 9, to Leroy Williams, GRIC DEQ.

The air quality monitoring network is not part of the TIP but supports the GRIC's ongoing evaluations of air pollution within the reservation and efforts to further develop its regulatory programs to address the Tribe's air quality needs.

#### V. Proposed Action

Under CAA sections 110(o), 110(k)(3) and 301(d), EPA is proposing to fully approve the TIP submitted by the GRIC DEQ on February 21, 2007, as supplemented on July 11, 2007, June 22, 2009, and July 17, 2010. The TIP includes general and emergency authorities, ambient air quality standards, permitting requirements for minor source of air pollution, enforcement authorities, procedures for administrative appeals and judicial review in Tribal court, requirements for area sources of fugitive dust and fugitive particulate matter, general prohibitory rules, and source category-specific emission limitations and standards. These provisions establish a base TIP that is suitable for the GRIC's reservation and regulatory capacities and that meets all applicable minimum requirements of the CAA and EPA regulations.

We are proposing to act only on those portions of the GRIC AQMP that constitute a TIP containing severable elements of an implementation plan under section 110(a) of the CAA, as discussed in this notice. We are not proposing today to act on those elements of the GRIC AQMP that address requirements of CAA title V or any other program under the Act. We intend to take separate action on other CAA programs submitted by the GRIC DEQ, as appropriate.

#### VI. Statutory and Executive Order Reviews

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." EPA has concluded that this proposed rule will have tribal implications in that it will have substantial direct effects on the GRIC. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. EPA is proposing to approve the GRIC's TIP at the request of the Tribe. Tribal law will not be preempted as the GRIC incorporated the TIP into Tribal Law on December 13, 2006. The Tribe has applied for, and fully supports, the proposed approval of the TIP. If it is finally approved, the TIP will become federally enforceable.

EPA worked and consulted with officials of the GRIC DEQ early in the process of developing this proposed regulation to permit them to have meaningful and timely input into its development. In order to administer an approved TIP, tribes must be determined eligible (40 CFR part 49) for TAS for the purpose of administering a TIP. During the TAS eligibility process, the Tribe and EPA worked together to

<sup>29</sup> On September 12, 2006, the GRIC submitted a Quality Assurance Project Plan (QAPP) for its ambient air monitoring program. EPA approved the QAPP for collection of environmental data on April 13, 2007. See letter dated April 13, 2007, from Eugenia McNaughton and Sean Hogan, US EPA Region 9, to Leroy Williams, GRIC DEQ.

ensure that the appropriate information was submitted to EPA. The GRIC and EPA also worked together throughout the process of development and Tribal adoption of the TIP. The Tribe and EPA also entered into a criminal enforcement MOA.

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255 (August 10, 1999)). This action merely proposes to approve a Tribal rule implementing a TIP covering areas within the exterior boundaries of the GRIC reservation, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994). This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885 (April 23, 1997)), because it is not economically significant.

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

#### List of Subjects in 40 CFR Part 49

Environmental protection, Air pollution control, Carbon monoxide,

Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: July 29, 2010.

**Jeff Scott,**

*Acting Regional Administrator, EPA Region IX.*

[FR Doc. 2010-19926 Filed 8-11-10; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA-R06-OAR-2005-NM-0009; FRL-9187-7]**

### Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Revisions to Emissions Inventory Reporting Requirements, and General Provisions

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve revisions to the New Mexico State Implementation Plan (SIP). These revisions concern two separate actions. First, we are proposing to approve revisions to regulations on Emissions Inventories (EIs) submitted by stationary sources of air pollutants. EIs are critical for the efforts of State, local, and federal agencies to attain and maintain the National Ambient Air Quality Standards that EPA has established for criteria pollutants such as ozone, particulate matter, and carbon monoxide. The revisions add new definitions, modify existing definitions, and require stationary sources of air pollutants located in New Mexico outside of Bernalillo County to report emissions location information, PM<sub>2.5</sub> emissions, and ammonia emissions to New Mexico Environment Department (NMED). The revisions also allow NMED to require speciation of hazardous air pollutants for emissions reporting. Second, we are proposing to approve revisions to the General Provisions of the NMAC (20.2.1 NMAC—General Provisions). We are proposing to add a new definition for Significant Figures into the New Mexico SIP. EPA is proposing to approve these two actions pursuant to section 110 of the Federal Clean Air Act.

**DATES:** Written comments must be received on or before *September 13, 2010*.

**ADDRESSES:** Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the Addresses section of the direct final rule located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Emad Shahin for Emission Inventory inquiries, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-6717; fax number 214-665-7263; e-mail address [shahin.emad@epa.gov](mailto:shahin.emad@epa.gov), and Mr. Alan Shar for General Provisions inquiries, Air Planning Section (6PD-L), telephone 214-665-6691; fax number 214-665-7263; e-mail address [shar.alan@epa.gov](mailto:shar.alan@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register**.

Dated: August 3, 2010.

**Al Armendariz,**

*Regional Administrator, Region 6.*

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