

the emission guidelines are achieved. Also, in section 111(d) of the CAA, Congress explicitly required that EPA establish procedures that are similar to those under section 110(c) for State Implementation Plans. Although Congress required EPA to propose and promulgate a Federal plan for States that fail to submit approvable State plans on time, States and tribes may submit approvable plans after today's publication of this Federal plan. The EPA strongly encourages States that are unable to submit approvable plans to request delegation of the Federal plan so that they can have primary responsibility for implementing the emission guidelines, consistent with Congress' intent.

Approved and effective State plans or delegation of the Federal plan is EPA's preferred outcome since EPA believes that State and local agencies not only have the responsibility to implement and enforce the emission guidelines, but also have the practical knowledge and enforcement resources critical to achieving the highest rate of compliance. For these reasons, EPA will do all that it can to expedite delegation of the Federal plan to State and local agencies, whenever possible.

The EPA also believes that Indian tribes are the primary parties responsible for regulating air quality within Indian country, if they desire to do so. See EPA's Indian Policy ("Policy for Administration of Environmental Programs on Indian Reservations," signed by William D. Ruckelshaus, Administrator of EPA, dated November 4, 1984), reaffirmed in a 1994 memorandum ("EPA Indian Policy," signed by Carol M. Browner, Administrator of EPA, dated March 14, 1994).

B. Delegation of the Federal Plan and Retained Authorities

If a State or Indian tribe intends to take delegation of the Federal plan, the State or Indian tribe must submit to the appropriate EPA Regional Office a written request for delegation of authority. The State or Indian tribe must explain how it meets the criteria for delegation specified in Delegation No. 7-139, "Implementation and Enforcement of sections 111(d)(2) and 111(d)(2)/129(b)(3) Federal Plans". See generally "Good Practices Manual for Delegation of NSPS and NESHAP" (EPA, February 1983). In order to obtain delegation, an Indian tribe must also establish its eligibility to be treated in the same manner as a State. The letter requesting delegation of authority to implement the Federal plan must demonstrate that the State or tribe has

adequate resources, as well as the legal and enforcement authority to administer and enforce the program. A memorandum of agreement between the State or tribe and EPA will set forth the terms and conditions of the delegation, the effective date of the agreement, and will also serve as the mechanism to transfer authority. Upon signature of the agreement, the appropriate EPA Regional Office will publish an approval notice in the **Federal Register**, thereby incorporating the delegation of authority into the appropriate subpart of 40 CFR part 62.

If authority is not delegated to a State or Indian tribe, EPA will implement and enforce the Federal plan. Also, if a State or tribe fails to properly implement a delegated portion of the Federal plan, EPA will assume direct implementation and enforcement of that portion. The EPA will continue to hold enforcement authority along with the State or tribe even when a State or tribe has received delegation of the Federal plan. In all cases where the Federal plan is delegated, EPA will retain and will not transfer to a State or tribe certain authorities which could change the stringency of the underlying standard, which are likely to be nationally significant, or which may require a national rulemaking and subsequent **Federal Register** notice. The following authorities may not be delegated to State, tribal or local agencies: approval of alternative non-opacity emission standards, approval of alternative opacity standard, approval of major alternatives to test methods, approval of major alternatives to monitoring, waiver of recordkeeping, and approval of exemption to operating practice requirements in § 62.15145(e)(5).

C. Mechanisms for Transferring Authority

There are two mechanisms for transferring implementation authority to State or tribal agencies: When EPA approves a State or tribal plan after the Federal plan is in effect; and if a State or tribe does not submit or obtain approval of its own plan, EPA may delegate to a State or tribe the authority to implement the Federal plan. Both of these options are described in more detail below.

1. State or Tribe Submits a Plan After Small MWC Units Located in the Area Are Subject to the Federal Plan

After small MWC units in a State or tribal area become subject to the Federal plan, the State or tribal agency may still adopt and submit a plan to EPA. If EPA determines that the State or tribal plan is as protective as the emission

guidelines, EPA will approve the State or tribal plan. If EPA determines that the plan is not as protective as the emission guidelines, EPA will disapprove the plan and the small MWC units proposed to be covered in the State or tribal plan will remain subject to the Federal plan until a State or tribal plan covering those small MWC units is approved and effective.

Upon the effective date of a State or tribal plan, the Federal plan will no longer apply to small MWC units covered by such a plan and the State or tribal agency will implement and enforce the State or tribal plan in lieu of the Federal plan. When an EPA Regional Office approves a State or tribal plan, it will amend the appropriate subpart of 40 CFR part 62 to indicate such approval.

2. State Takes Delegation of the Federal Plan

The EPA, in its discretion, may delegate to State or tribal agencies the authority to implement the Federal plan. As discussed above, EPA believes that it is advantageous and the best use of resources for State agencies to agree to undertake, on EPA's behalf, the administrative and substantive role in implementing the Federal plan to the extent EPA decides it is appropriate and where authorized by State law. If a State requests delegation, EPA will generally delegate the entire Federal plan to the State agency. These functions include administration and oversight of compliance reporting and recordkeeping requirements, small MWC inspections, and preparation of draft notices of violation and enforcement. Enforcement authority can be delegated to State and tribal agencies, but EPA always retains Federal enforcement authority. The EPA also believes that it is the best use of resources for tribal agencies to undertake a role in the implementation of the Federal plan. The Tribal Authority Rule (TAR) issued on February 12, 1998 (63 FR 7254), provides tribes the opportunity to develop and implement Clean Air Act programs. However, due to resource constraints and other factors unique to tribal governments, it leaves to the discretion of the tribe whether to develop these programs and which elements of a program they will adopt. Consistent with the approach of the TAR, EPA may choose to delegate a partial Federal plan (*i.e.*, to delegate authority for some functions needed to carry out the plan) in appropriate circumstances and where authorized by tribal law. Both States, or tribal agencies, that have taken delegation, as well as EPA, will have responsibility for