

and local agencies. See section 101(a)(3) of the CAA. Consistent with that overall determination, Congress established sections 111 and 129 of the CAA with the intent that the States would assume primary responsibility for ensuring that the emission limitations and other requirements in the emission guidelines would be achieved. Also, in section 111(d) of the CAA, Congress explicitly required the EPA to establish procedures similar to those under section 110(c) for State implementation plans. Although Congress required the 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 promulgation of the CISWI 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 the EPA's preferred outcome since we believe that State agencies not only have the responsibility to carry out the emission guidelines, but also have the practical knowledge and enforcement resources critical to achieving the highest rate of compliance. For these reasons, the EPA will do all that it can to expedite delegation of the Federal plan to State agencies, whenever possible.

The EPA also believes that Indian Tribes should be the primary parties responsible for regulating air quality within Indian Country, if they desire to do so. See the 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 2001 memorandum ("EPA Indian Policy," signed by Christine Todd Whitman, Administrator of EPA, dated July 11, 2001).

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. 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 (see section VII.E.1 of this preamble). 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 the EPA would set forth the terms and conditions of the delegation, the effective date of the agreement, and would also serve as the mechanism to transfer authority. Upon signature of the agreement, the appropriate EPA Regional Office would publish an approval notice in the **Federal Register**, thereby incorporating the delegation authority into the appropriate subpart of 40 CFR part 62.

If authority is not delegated to a State or Indian Tribe, the EPA will implement the Federal plan. Also, if a State or Tribe fails to properly implement a delegated portion of the Federal plan, the 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, the EPA will withhold and will not transfer to a State or Tribe authority to perform several specific actions. We typically do not delegate authority to devise alternative requirements that 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 the State, Tribal or local agencies: Approval of alternative non-opacity emission standards, approval of alternative opacity standards, approval of major alternatives to test methods, approval of major alternatives to monitoring, and waiver of recordkeeping and reporting. For this Federal plan we are also maintaining the following authorities:

- (1) Alternative site-specific operating parameters established by facilities using CISWI controls other than a wet scrubber (§ 62.14640 of subpart III),
- (2) Petitions to the Administrator under section 62.14530 to add a chemical recovery unit to section 62.14525(n) of subpart III, and
- (3) Alternative methods of demonstrating compliance.

CISWI owners or operators who wish to establish alternative operating parameters or alternative methods of demonstrating compliance should submit a request to the Regional Office

Administrator with a copy to the appropriate State or Tribe.

C. Mechanisms for Transferring Authority

There are two mechanisms for transferring implementation authority to State or Tribal agencies: (1) EPA approval of a State or Tribal plan after the Federal plan is in effect; and (2) if a State or Tribe does not submit or obtain approval of its own plan, EPA delegation to a State or Tribe of the authority to implement certain portions of this Federal plan to the extent appropriate and if allowed by State or Tribal law. Both of these options are described in more detail below.

1. Federal Plan Becomes Effective Prior to Approval of a State or Tribal Plan

After CISWI 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 the EPA. If the EPA determines that the State or Tribal plan is as protective as the emission guidelines, we will approve the State or Tribal plan. If the EPA determines that the plan is not as protective as the emission guidelines, we will disapprove the plan and the CISWI units covered in the State or Tribal plan will remain subject to the Federal plan until a State or Tribal plan covering those CISWI units is approved and effective.

Upon the effective date of an approved State or Tribal plan, the Federal plan will no longer apply to CISWI 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 or Tribe Takes Delegation of the Federal Plan

The EPA, in its discretion, may delegate to State or eligible Tribal agencies the authority to implement this Federal plan. As discussed above, we believe that it is advantageous and the best use of resources for State or Tribal agencies to agree to undertake, on the EPA's behalf, the administrative and substantive roles in implementing the Federal plan to the extent appropriate and where authorized by State or Tribal law. If a State requests delegation, we will generally delegate the entire Federal plan to the State agency. These functions include administration and oversight of compliance reporting and recordkeeping requirements, CISWI