

FACT SHEET

CLEAN AIR ACT FINAL RULE

INDIAN TRIBES: AIR QUALITY PLANNING AND MANAGEMENT

Commonly known as the Tribal Authority Rule (TAR)

OVERVIEW

- The Clean Air Act (CAA) authorizes EPA to issue regulations specifying the provisions of the CAA for which Indian tribes may be treated in the same manner as states.
- This final rule implements the provisions of section 301(d) of the Act to authorize eligible tribes to implement their own tribal air programs.

HIGHLIGHTS OF THE RULE

Applicable CAA Programs

- The rule provides that tribes will be treated in the same manner as states for virtually all CAA programs.
- The rule notes that Congress provided for a grant to tribes -- with approved CAA programs -- of authority over all air resources within the exterior boundaries of a reservation (including non-Indian owned fee lands). For non-reservation areas, tribes must demonstrate the basis for jurisdiction.

Eligibility for Treatment in a Manner Similar to States

- Criteria for eligibility include demonstrating that the tribe: (1) is federally recognized; 2) has a governing body carrying out substantial governmental duties and powers; and (3) is capable of implementing the program consistent with the CAA and applicable regulations. The tribe must also identify the exterior boundaries of the reservation and, for non-reservation areas, must demonstrate the basis for jurisdiction.
- A tribe previously determined eligible (or meeting "treatment in the same manner as a state" criteria) under another EPA program will simply have to note such determination has been made in order to demonstrate that it is federally recognized and has an adequate governing body.
- EPA generally will simultaneously review tribal applications for eligibility and CAA program submittals.

Flexibility

- The rule authorizes tribes to submit CAA programs; however, it does not require tribes to develop CAA programs.
- Tribes may implement those programs, or even portions of programs, that are most relevant to the air quality needs of tribes.

Federal Requirements

- All tribal CAA programs submitted to EPA for approval must meet the applicable CAA requirements for that program.
- Tribes will have the same authority as states do under the CAA to impose more stringent requirements.
- The rule also lays out a strategy for federal implementation of the CAA in Indian country when tribes choose not to implement their own CAA programs.

Financial Assistance

- Financial assistance for tribes will continue to be available under section 103 for studies and air quality assessments and section 105 for support of air pollution control programs. In addition, tribes can apply for funding assistance for developing environmental programs under the Agency's Indian Environmental General Assistance Grants Program.
- For tribes that establish eligibility to be treated in a manner similar to states, the rule establishes an initial tribal match of 5% for federal assistance under section 105 authority, with the possibility of a waiver for demonstrated financial hardship. After two years, EPA may raise the match to 10% if EPA determines (based on objective criteria) that the tribe can afford the increased match. EPA commits to review the experience of the program to determine appropriate long-term cost share rates within five years of the promulgation of the rule.
- Tribes that do not establish eligibility to be treated in a manner similar to states will continue to be eligible for § 105 grants but they must provide the 40% tribal match and comply with the maintenance of effort requirements.

FOR MORE INFORMATION

- Please direct your questions to:
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TAR Timeline

- Nov. 1990** Provision for tribal authority added to the Clean Air Act
- 1992 - 1994** Consultation with tribal leaders and development of proposed implementing regulations
- Aug. 1994** Proposed implementing regulations published in the Federal Register
- 1995 - 1997** Address comments on the proposal and develop final rule
- Feb. 1998** Final implementing regulations published in the Federal Register
- Mar. 1998** Effective date of rule implementation