



EPN Comments on Minor New Source Review Program Air Permitting Public Participation Requirements for State Implementation Plans

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The [Environmental Protection Network](https://www.epn.org/) (EPN) harnesses the expertise of more than 800 former Environmental Protection Agency (EPA) career staff and confirmation-level appointees from Democratic and Republican administrations to provide the unique perspective of former regulators and scientists with decades of historical knowledge and subject matter expertise.

Introduction

EPN offers these comments on EPA's July 7, 2026, notice of proposed rulemaking: Minor New Source Review (NSR) Program Air Permitting Public Participation Requirements for State Implementation Plans.¹ EPA's current regulations at 40 CFR part 51.161 require the opportunity for public comment and include minimum requirements, such as a 30-day comment period for both major and minor new sources and modifications. In its notice of proposed rulemaking, EPA is proposing to remove minor New Source Review (NSR) public participation as a minimum requirement for State Implementation Plan (SIP) submissions. Instead, EPA is proposing to make such participation optional in a manner and extent the agency considers appropriate for such sources or modifications.

As discussed below, the proposed wholesale removal of the public participation requirement for virtually all minor source permitting would not be good public policy, since it could result not only in reduced transparency (an important goal in itself) but also in rules that are less effective than they otherwise might have been. Notably, "minor sources" does not mean the sources are insignificant. Therefore, for these and other reasons discussed below, EPN objects to the wholesale removal of the public participation requirement and calls upon EPA either to maintain the existing public participation requirement or to identify a more effective, responsible, and narrower option that maintains the requirement for most situations, but describes the limited hypothetical situations (and criteria) where discretion could be considered. Such an option must be consistent with Clean Air Act (CAA) section 110(a)(2)(C) - i.e., one that ensures "the regulation of the modification and construction of any stationary source... as necessary to assure that [the National Ambient Air Quality Standards (NAAQS)] are achieved." Such an option should, at a minimum, include requiring an opportunity for public participation for synthetic minor sources. Synthetic minor permits are major sources that have taken limits to avoid more stringent requirements. It is vital that the public have an opportunity to review limitations taken by these facilities to assure that the limitations will be sufficient.

The notice of proposed rulemaking also notes that EPA is not proposing to revise any of the following: (1) the public participation requirements that apply to the development and submittal of SIP submissions to the Agency²; (2) the minimum Federal public participation requirements that apply to the permitting of new major sources or major modifications to existing sources under the air agencies' major NSR programs; (3)

¹Minor New Source Review Program Air Permitting Public Participation Requirements for State Implementation Plans, 91 FR 41591 (July 7, 2026), available at <https://www.federalregister.gov/d/2026-13667>.

² 40 CFR part 51, Appendix V.

the public participation requirements for plantwide applicability limits applied to existing major stationary sources; (4) the Federal public participation requirements for air agencies' operating permit programs that implement CAA title V, the regulatory requirements of 40 CFR part 70.7(h), or federally enforceable State operating permit programs; (5) the public participation requirements associated with preconstruction authorizations issued in Indian country as Prevention of Significant Deterioration (PSD) permits, Nonattainment NSR permits, or minor NSR authorizations. EPN supports EPA not making any changes to the requirements for these particular programs.

Objections to the Removal of Public Participation for Minor Source Permitting

Importance of Transparency: A bedrock principle of EPA is “being transparent.” In a message to EPA employees on March 16, 2026, EPA Administrator Lee Zeldin stated the following:

Throughout the history of the U.S. Environmental Protection Agency, administrators have reaffirmed a commitment to transparency in our agency's operations. Since 1983, when Administrator Ruckelshaus first issued a memorandum about contacts with persons outside EPA, these memoranda have become known as the “fishbowl memos” because they have stressed that the agency should operate openly and transparently for all to see, as if it were in a fishbowl. When I appeared before Congress, I pledged transparency and accountability at EPA, and I am asking each one of you to help me ensure the agency operates in full compliance with this principle.³

Administrator Zeldin went on in his message to make two additional points that are relevant—and contrary—to the July 7, 2026, proposal:

- The mission of EPA is to protect human health and the environment. We exist to serve the public. As such, the public must be able to trust our work. We are committed to earning and maintaining the public's trust through transparency and accountability in our actions and civility and fairness in our public participation processes.
- In all its programs, EPA will provide for the fullest possible public participation in our decision making. This requires not only that EPA remain open and accessible to those representing all points of view, but also that EPA offices responsible for decisions take affirmative steps to solicit the views of those who will be affected by these decisions

Yet, not even four months after issuing that message and the Administrator's direction that “all EPA employees...uphold the contents of this memorandum and conduct themselves and their business in a manner worthy of the public's trust and confidence,”⁴ the Agency is proposing to eliminate a long-standing regulatory requirement to provide American citizens with information about potential air quality changes in their communities.

³ Message to EPA Employees from Administrator Zeldin: Transparency and Earning Public Trust in EPA Operations in 2026 (March 16, 2026), available at

<https://www.epa.gov/aboutepa/message-epa-employees-administrator-zeldin-transparency-and-earning-public-trust-epa>

⁴ *ibid.*

In addition, it's worth noting that in a September 30, 2025, report *Lessons Learned from Prior Oversight Related to the EPA's Rulemaking*, the Agency's Office of Inspector General (OIG) also emphasized the importance of EPA being transparent:

Transparency is achieved when accurate information is provided through the required process, at the appropriate time, and to everyone who needs it. The EPA is responsible for providing the American public with the information it needs to understand how rules are made and for providing the public the opportunity to participate in the rulemaking process. Office of Management and Budget Circular A-4 highlights the need for transparency in regulatory analyses. Executive Order 12866 aims to make the regulatory process more accessible and open to the public. Openness in the rulemaking process, notification regarding publicly available information in the dockets, and public participation in the rulemaking process facilitate transparency in the EPA's decision-making. According to the EPA, transparency is a key goal for the Agency's work. Within the transparency theme, we identified one lesson learned for the EPA: commit to transparency.⁵

Although this OIG report was specific to the Agency's rulemaking process, its comments on transparency also apply to other aspects of implementation of the CAA, as indicated in prior OIG reports, such as the March 2020 OIG report discussed below.

Need for Public Participation: The Agency's OIG addressed public participation in the context of minor source permitting in its July 8, 2021, report *EPA Should Conduct More Oversight of Synthetic-Minor-Source Permitting to Assure Permits Adhere to EPA Guidance* (July 2021 OIG Report). In that report, the OIG identified the lack of public participation in the minor source permitting process as a deficiency. Citing a specific but not the only such example, the OIG noted that the Oklahoma Department of Environmental Quality (ODEQ) does not currently issue its individual synthetic-minor-source permits for public comment before they are finalized, as required by EPA regulations. Furthermore, the OIG noted that "(s)taff in the EPA's OAQPS told us that this may be the case for other state and local agencies as well."⁶

The July 2021 OIG Report raised the following concern:

Without the opportunity to review permit materials and provide comments on proposed synthetic-minor-source permits, citizens are deprived of the ability to assess information and provide input on facilities that may impact air quality where they live. The EPA should regularly confirm that states adhere to requirements on public participation for synthetic-minor-source permits.

The July 2021 OIG Report went on to note that:

Public participation requirements are intended to assure that citizens have the ability to provide input on the permit limitations, the pollutants that are emitted, and the quantity of emissions that will affect their communities. Not providing the opportunity to review permit materials and provide

⁵ Lessons Learned from Prior Oversight Related to the EPA's Rulemaking. *Environmental Protection Agency*. Office of Inspector General. September 30, 2025. Report No. 25-E-0053. Available at

www.epa.gov/office-inspector-general/lessons-learned-prior-oversight-related-epas-rulemaking.

⁶ EPA Should Conduct More Oversight of Synthetic Minor-Source Permitting to Assure Permits Adhere to EPA Guidance. *Environmental Protection Agency*. Office of Inspector General Audit Report. July 8, 2021. Available at

www.epa.gov/office-inspector-general/report-epa-should-conduct-more-oversight-synthetic-minor-source-permitting.

comments on proposed synthetic-minor-source permits hinders citizens' ability to weigh in on facilities that may impact air quality where they live.

In this report, the OIG recommended that "EPA...increase its oversight of synthetic-minor-source permits to better assure that limits adhere to EPA guidance and are practically enforceable."⁷ EPA by its own admission provides little routine oversight of minor permits, but told the OIG that permits that received public comment or press coverage did get attention. By allowing states to determine the extent to which, or even whether, to provide public notice for minor permits, especially the synthetic-minor permits issued to otherwise major sources, there will be even less EPA oversight of these permits. Without public notice, there will not be a public outcry to prompt EPA review. In addition, EPA's draft regulatory text changes to 40 CFR 51.161(c) would eliminate the requirement to provide EPA notice of any minor construction, including synthetic minor permits. This is antithetical to the direction given by the OIG.

In addition, we wish to remind the Agency that its OIG has provided direction on public participation for many years, as discussed in the reports below:

- (1) In its August 7, 2002, report *Public Participation in Louisiana's Air Permitting Program and EPA Oversight*, the OIG pointed out that "public participation is a critical part of the permitting process because it allows the public access to information on proposed environmental actions. Allowing and enabling citizens who live near facilities that emit pollutants to review and comment on proposed permits should result in more complete and enforceable permits, improved compliance, and cleaner air."⁸ Although the OIG's focus was on the state's title V permitting program, its comments should apply across all permitting programs. The OIG went on to note that "although LDEQ met the public participation requirements for air permitting, its process could be more effective. According to EPA, an effective process enables citizens to gather relevant information related to proposed permits and aids them in making informed judgments about environmental issues in their locality."⁹
- (2) In its July 15, 2019, report *FY 2019: EPA Management Challenges*, the OIG noted that "one of the EPA's management challenges is to improve risk communication by providing individuals and communities with sufficient information to make informed decisions to protect their health and the environment. EPA Administrator Andrew Wheeler identified risk communication as one of his top priorities in his July 2018 speech to EPA employees, stating: Risk communication goes to the heart of EPA's mission of protecting public health and the environment. We must be able to speak with one voice and clearly explain to the American people the relevant environmental and health risks that they face, that their families face and that their children face."¹⁰
- (3) In its March 31, 2020, report *Management Alert: Prompt Action Needed to Inform Residents Living Near Ethylene Oxide-Emitting Facilities About Health Concerns and Actions to Address Those Concerns*, the OIG noted that while it "did not identify any specific statutory, regulatory, or policy requirements for the

⁷ *ibid.*

⁸ *Public Participation in Louisiana's Air Permitting Program and EPA Oversight*. *Environmental Protection Agency*. Office of Inspector General Audit Report. August 7, 2002. Available at www.epa.gov/office-inspector-general/report-public-participation-louisianas-air-permitting-program-and-epa.

⁹ *Ibid.*

¹⁰ *FY 2019 Management Challenges*. *Environmental Protection Agency*. Office of Inspector General. July 15, 2019. Available at www.epa.gov/sites/default/files/2019-07/documents/epaog_20190715-19-n-0235.pdf.

EPA to provide the public additional information regarding its preliminary determination that certain ethylene oxide-emitting facilities may present health risks to surrounding communities. However, the EPA's mission statement includes working to ensure that "[a]ll parts of society ... have access to accurate information sufficient to effectively participate in managing human health and environmental risks."¹¹

The OIG went on to point out that "the EPA's risk communication guidance states that a "cardinal rule" of risk communication is to accept and involve the public as a legitimate partner. The guidance also states that communities have the right to participate in decision-making processes that affect their lives and livelihoods. To fulfill its mission statement and risk communication principles, the EPA should assure that all impacted communities are provided an opportunity to engage in an interactive exchange of information with the EPA and state agencies to more fully understand the health concerns related to ethylene oxide exposure and the actions that the EPA is taking to address those concerns."¹²

Other OIG reports similarly criticize the lack of public participation.^{13,14}

Current Public Participation Requirement: As noted above, the CAA requires "the regulation of the modification and construction of any stationary source... as necessary to assure that [the NAAQS] are achieved." Over 50 years ago, EPA adopted a set of SIP requirements for NSR permitting, which collectively were presumably intended to satisfy the statutory language. Those requirements include the public availability of information.¹⁵

EPA now raises concern about the lack of distinction between requirements for major and minor source permitting, noting that since these requirements were adopted in 1973, Congress established major NSR requirements in 1977. Claiming that the still-in-effect 1973 requirements are a "historical remnant," EPA fails to recognize that it has twice undertaken significant rulemakings related to the regulatory text since 1977 and has maintained the basic public participation requirements (*e.g.*, November 7, 1986,¹⁶ and October 18, 2016¹⁷).

¹¹ Management Alert: Prompt Action Needed to Inform Residents Living Near Ethylene Oxide Emitting Facilities About Health Concerns and Actions to Address Those Concerns. *Environmental Protection Agency*. Office of Inspector General. March 31, 2020. Available at www.epa.gov/office-inspector-general/report-management-alert-prompt-action-needed-inform-residents-living-near.

¹² Ibid.

¹³ *EPA Delayed Risk Communication and Issued Instructions Hindering Region 5's Ability to Address Ethylene Oxide Emissions*, April 15, 2021, Report No. 21-P-0123. Available at

<https://www.epa.gov/office-inspector-general/epa-delayed-risk-communication-and-issued-instructions-hindering-region-5s>

¹⁴ *EPA Region 7 Did Not Effectively Engage with the Community Surrounding the Findett Corp. Superfund Site*, April 17, 2024, Report No. 24-E-0033. Available at

<https://www.epa.gov/office-inspector-general/report-epa-region-7-did-not-effectively-engage-community-surrounding>.

¹⁵ 40 CFR part 51.161.

¹⁶ Federal Register Notice for November 7, 1986. *Environmental Protection Agency*. Vol. 51 No. 216 Available at <https://www.govinfo.gov/content/pkg/FR-1986-11-07/pdf/FR-1986-11-07.pdf>

¹⁷ Revisions to Public Notice Provisions in Clean Air Act Permitting Programs. *Environmental Protection Agency*. October 16, 2016. Available at: <https://www.federalregister.gov/documents/2016/10/18/2016-24911/revisions-to-public-notice-provisions-in-clean-air-act-permitting-programs>

Notably, in its 1986 rulemaking, EPA spoke directly to the importance of 40 CFR 51.161 with respect to air quality protection. In responding to a comment concerning the need to notify EPA of permitting actions for minor sources, EPA defended the notification requirement for these types of sources because “a large number of minor sources could have a significant cumulative effect on air quality.”

“Minor” is a regulatory classification; it does not establish that a source is insignificant to the community in which it is located. Communities experience the airshed as a whole, not permit-by-permit. Multiple minor industrial sources, warehouses, generators, waste-processing facilities, transportation corridors, and other activities may individually fall below major-source thresholds while collectively creating substantial localized burdens. Public participation is one of the few opportunities for residents and neighboring jurisdictions to identify conditions and nearby sources that may not be apparent from an individual permit application.

In its July 7, 2026, proposal, EPA has provided no discussion about why it now believes that certain such minor source permitting requirements are not needed to assure that the NAAQS are achieved when it previously recognized, in the context of 40 CFR 51.161, that these sources may present air quality problems. In addition, in 2012, The Tribal Minor NSR rule (40 CFR 49.161) required a demonstration of impacts on air quality where the NAAQS is in jeopardy, and public comment on source specific and synthetic minor permits. General permits and permit-by-rule, developed to support implementation of the Tribal Minor NSR rule, were proposed and went through public comment, and notification to the Impacted Tribes is required for the use of both.

State and Local Air Agency Input: In its notice of proposed rulemaking, EPA summarizes discussions it had with state and local air agencies in 2022 and 2023 on public participation for minor NSR permits.¹⁸ Some air agencies noted that providing public participation on all minor source preconstruction activities would be an ineffective use of their limited resources and, instead, asserted that public participation should focus on those activities with greater air quality impact and greater public interest. Additionally, some air agencies expressed concern about the specific length of a comment period. Notably, the air agencies did not apparently advocate for the wholesale elimination of public participation for minor source permitting, as EPA is now proposing. While the air agencies expressed concerns with the current regulatory text, EPA is using this input to help justify throwing the baby out with the bath water. Rather than looking for some middle ground in terms of mandatory public participation, which is what the air agencies appear to be asking for, EPA is proposing a simple and irresponsible option.

We also note EPA misstates the summary of the discussions of State and Local Agencies in the docket to give the sense of more uniformity than actually exists. EPA says in the proposal:

“For these reasons, **most** air agencies concluded that their minor source public participation practices were already well-tailored to the unique characteristics of their respective jurisdictions and stakeholder bases, allowing them to focus their limited resources on the preconstruction activities that piqued genuine public interest and posed the most consequential air quality impacts, such as authorizing the construction and modification of major sources or issuing operating permits under their CAA title V programs”¹⁹ [emphasis added].

¹⁸ <https://www.federalregister.gov/d/2026-13667/p-157>

¹⁹ <https://www.federalregister.gov/d/2026-13667/p-161>

In fact the word “most” appears only twice in the meetings summary document that is in the docket. The first time it says in “most” cases agencies used public participation in developing general permits and permits-by-rule. The second use of the word discusses the “most consequential air quality impacts.” In fact, the term used in the summary in the docket is “some” and “multiple,” neither of which imply significant numbers of agencies and certainly is not a majority (the word majority is not in the document at all). We would also point out the total lack of other stakeholders in these discussions. This is especially significant in this rulemaking, which regulates State and Local agencies. So this is a situation where EPA asked the regulated community and only the regulated community how they would like to be regulated, and some of them said they would like less regulation. If anything, the fact that it wasn’t a majority shows that most State and Local agencies recognize the importance of public notification in minor NSR.

In addition, the summary makes clear that some minor sources are truly insignificant while others can be important. It is worth noting that in some situations, a source emitting 240 tons of Nitrogen Oxides (NO_x) or Volatile Organic Compounds (VOCs) can be a minor source. Such a source would almost certainly be a very significant source to the community that has to live next to it. This points out how EPA’s lack of data and analysis is so important. There is a great range of differences among minor sources – some of which may not need public notification while others most definitely do.

National Consistency: By proposing to make public participation optional, EPA is creating a system where citizens in some states will have less information about and less access to the air quality they are breathing. In particular, many states are limited by their own laws and regulations to not be more stringent than federal regulatory requirements. In those states, assuming the state moves forward with a SIP revision to remove their existing requirement for public participation—because it would no longer be required by 40 CFR 51.161, the state could avoid public notice for future permits and, thus, deprive its citizens of critical and potentially desirable air quality and public health information.

A case in point is the current growth in new data centers across the country. Under the new world created by EPA’s proposal, if finalized, citizens in State A (which has a “no more stringent than” limitation) may not get any information about a new data center facility in its community, while citizens in a neighboring State B (which has no such limitation) would.

The concern is not merely regulatory variation among States. The proposal risks creating geographic variation in a basic procedural protection: whether people receive timely notice and an opportunity to participate before a pollution-emitting source is authorized to locate or expand in their community. Cooperative federalism properly allows substantial State flexibility, but flexibility is different from eliminating a federal floor.

The rapid construction and expansion of data centers illustrates why source-specific public review remains important. Large campuses may include numerous stationary combustion units, emergency or backup generators, and other onsite generation equipment. Whether a particular facility or modification qualifies as minor may depend upon potential-to-emit calculations, operating-hour assumptions, generator classifications, enforceable limitations, aggregation determinations, and assumptions concerning testing or other operation. In such circumstances, the important question is not simply whether the facility has been labeled a “minor source,” but whether the assumptions and permit limitations supporting that classification are accurate, complete, and practically enforceable.

Emerging industrial processes involving plastics pyrolysis, gasification, solvent-based processing, or other technologies sometimes described as “chemical” or “advanced” recycling may present complex questions concerning feedstocks, process emissions, combustion emissions, criteria pollutants, hazardous air pollutants, control technologies, and the interaction of multiple Clean Air Act programs. Depending upon facility design and applicable limits, a facility or modification may proceed through minor NSR even where the underlying process is technically complex. Where technologies, source classifications, or emissions profiles are evolving, transparency and independent review become more, not less, important.

Reliance Interests: EPA states that it has authority to reconsider and revise its CAA regulations “so long as it acknowledges the change in position offers a reasonable explanation for the change and considers legitimate reliance interests, where relevant.” EPA goes on to shrug off any reliance interests here because it is not requiring states to amend their existing SIPs. As such, “EPA does not believe that this change impacts legitimate reliance interests on the part of States, regulated parties, or the general public.” Why is the public interest in emissions that impact their lives not legitimate? What interests are legitimate? EPA appears to overlook the fact that NAAQS attainment monitors are not present in all locations. Consequently, local communities most affected by pollution changes in their neighborhoods may not be captured as nonattainment areas, even when NAAQS violations could be occurring locally. EPA needs to explain why the concerns of the neighboring community about their health and the health of their children are not legitimate interests?

EPA also ignores Section 127 of the CAA titled “Public Notification,” a separate section of the Act, which creates an interest of public notification that the public should be able to rely on. Section 127(a) states in part, “Each State plan shall contain measures which ... to advise the public of the health hazards associated with such pollution, and to enhance public awareness of the measures which can be taken to prevent such standards from being exceeded and the ways in which the public can participate in regulatory and other efforts to improve air quality” [emphasis added]. While EPA believes that minor sources as a collective group will not impact attainment - a belief for which EPA has provided no evidence or analysis of any kind - EPA cannot claim that removing public participation in minor NSR is inconsistent with the Act’s clear call to allow the public to “participate in regulatory and other efforts to improve air quality” [emphasis added].

Residents, local governments, Tribes, workers, technical experts, and neighboring communities may possess information concerning nearby emissions sources, operating practices, localized air-quality conditions, prior compliance concerns, sensitive receptors, or proposed operations that may not otherwise appear in the permit record. Eliminating participation therefore can reduce the information available to the permitting authority itself.

EPA further points to the SIP revision process, for any states that do undertake SIP revisions (*e.g.*, those states with “no more stringent than” limitations), as involving mandatory public participation. In the real world, those opportunities for comment are not the same. In most areas the rulemaking would be done at the State level where there are not likely to be opportunities for local level participation. States are not going to hold hearings in every community that might, at some unknown future date, have a facility undergo minor NSR. As to EPA’s review, EPA is making it clear in this action that they will not require public notice—after all that is the whole point of this rulemaking—so EPA’s review provides no protection to the public.

A generic opportunity to comment on a SIP revision cannot substitute for notice years later concerning a specific facility, location, emissions profile, permit limitation, and affected community. Source-specific participation allows concerns to be identified before construction occurs and before capital has been committed. That prospective opportunity is itself an important reliance interest.

EPA Failure to Provide a Rationale for This Action: According to EPA, the rationale for this action is based on *Loper Bright v. Raimondo* 603 U.S. 369 (2024), but that case does not provide a rationale for EPA's action. EPA's logic chain is that:

1. EPA has discretionary authority to determine whether a State's minor NSR program is "sufficient to assure maintenance and attainment of the NAAQS."
2. "Because of its lack of specificity and use of the term "as necessary," which leaves EPA flexibility, CAA section 110(a)(2)(C) is best read to limit the EPA's authority to impose specific regulatory requirements in determining what is "necessary" for a minor NSR program to satisfy statutory requirements such that it is approvable under CAA section 110(k)(3)."
3. Therefore, EPA does not have to require public notification and can provide discretion to State and Local agencies in developing minor NSR programs.

The problem with this logic is just because EPA can do something doesn't mean that it makes sense to do it. In this rulemaking, EPA, as it seems to do in other recent actions, takes the position that the fact that it is not required to do something is enough of a rationale to not do it. EPA has been requiring public notification for decades under Republican and Democratic administrations, including under the first Trump administration. EPA has presented *no* data or analysis to show that public notification has either been a problem or that it has no value to the protection of local communities and the environment. While Congress did not explicitly require public notification in this case, the CAA has multiple requirements for public notification including the generic call for public notification in section 127 which shows that Congress gave it some value. If nothing else, citizens in a free country have the inherent right to have input on government activities that put their health and the health of their children at risk. The idea that a generic notification in SIP approval is somehow the equivalent of specific notification years later to a specific community under threat from the local impacts of a specific source of pollution in their neighborhood is ridiculous on its face.

Public Participation Is a Protective Function, Not Merely an Administrative Procedure: Public participation in minor NSR is not merely an administrative procedure occurring after the substantive environmental decision has been made. It is one of the mechanisms through which the accuracy, completeness, enforceability, and legitimacy of permitting decisions are tested. Public review can identify errors or omissions in emissions calculations, potential-to-emit determinations, synthetic-minor limits, operating assumptions, source classifications, monitoring provisions, and other factors that directly affect whether a source should be authorized. EPA therefore cannot simply presume, without analysis, that eliminating this longstanding safeguard will have no environmental consequence.

More importantly, EPA has not laid out any criteria for how it will in the alternative judge whether a SIP meets CAA requirements. Instead, EPA says, "Should air agencies decide to revise the public participation requirements in their existing minor source NSR programs in light of any final action the EPA takes on this proposed action, such revisions must be consistent with Federal and State law"²⁰ [emphasis added]. With this sentence, EPA is saying that there are situations where public notification is required. What are those

²⁰ <https://www.federalregister.gov/d/2026-13667/p-156>

situations? How will EPA judge programs that don't have public notification requirements in light of the rest of the State's program? EPA raises this point multiple times but gives away the game when it finally says, "For SIP submissions of this nature, so long as they meet the minimum requirements of the CAA and any applicable EPA regulations, a satisfactory CAA section 110(l) explanation might only require a written analysis to explain that the proposed SIP revisions: (a) are administrative or procedural in nature; (b) will not affect emissions; and (c) will not interfere with requirements of the CAA related to such administrative or procedural provisions."²¹ This is of course not an analysis, just a few sentences strung together that EPA has said it will accept.

But how can EPA or a State say removing public participation will not affect emissions? The whole point of public comments is that they raise emission related comments concerning misapplication of standards or point out other flaws in the permit application or State's analysis of the application. A State can only know that public comment will have no impact on emissions if it takes the position that all permit applications or the Agency's review of those applications will always be perfect without any mistakes or that the Agency ignores all public comments or some combination of the two.

EPA states:

"To the extent an air agency would take the position that their program's public participation requirements are not administrative or procedural, the air agency would need to determine the nature of an appropriate CAA section 110(l) analysis for its SIP submission. Factors that may be relevant to such an analysis may include, but are not limited to, the characteristics of minor sources and minor modifications that would be affected by the change to the public participation requirements (*e.g.*, pollutants emitted, resulting emissions increases, and emissions control technologies or practices used by sources and modifications) and the characteristics of the air agency's airshed (*e.g.*, overall emissions profile, meteorology and topography, industrial density and composition, volume of applications, and level of public interest in those applications)."²²

EPA's own proposal identifies much of the analysis that is missing from this rulemaking. If pollutants emitted, emissions increases, control technologies, industrial density, airshed characteristics, and public interest are relevant when a State evaluates removal of public participation, EPA should evaluate those same factors before eliminating the federal minimum requirement nationally. EPA cannot logically require or contemplate this analysis at the State level while declining to undertake substantially the same analysis before changing the federal floor.

In this way, EPA not only removes the requirement for notification but puts its thumb heavily on the scale against States keeping it. Drop public notification and say a few sentences and you're good, keep it and you have to go through a complex and costly analysis.

More importantly, this is exactly the type of analysis that EPA should undertake, and take comment on, before changing the multi-decade, bipartisan requirements for SIP approval without any data or analysis of the impacts. As EPA knows, minor NSR spans a large range of sources from the truly negligible to sources that have complex artificial minor provisions to sources that emit significant levels of pollution to the neighbors who have to breathe in those pollutants.

²¹ <https://www.federalregister.gov/d/2026-13667/p-203>

²² <https://www.federalregister.gov/d/2026-13667/p-204>

EPA acknowledges these differences when it says, “The EPA does not believe that minor source public participation is generally [emphasis added] ‘necessary to assure that [the NAAQS] are achieved’ in the context of developing a program for the “regulation of” minor source construction and modification.”²³ Later EPA adds, “Although the EPA believes that procedures for minor NSR public participation typically [emphasis added] will not be ‘necessary,’ as compared to substantive regulatory requirements, State and local air agencies may determine that public participation requirements are among these features or otherwise desirable.”²⁴ “Generally” and “typically” are doing a lot of work in those sentences, but clearly they mean that there are situations where public participation is in the words of the proposal, “necessary to assure that [the NAAQS] are achieved.” The public is entitled to know what those untypical and not general situations are and how this rulemaking protects the public when they occur. EPA needs to present a full, data based, analysis of the variety of minor NSR situations and be clear on how this rule protects the public interest in all of these specific situations or change the proposal to specify when public notice is and is not required. EPA needs to provide this analysis for a second round of public comment.

The proposal cites three Supreme Court cases to correctly point out that “EPA ... has the authority to reconsider and revise these regulations so long as it acknowledges the change in position, offers a reasonable explanation for the change, and considers legitimate reliance interests, where relevant.”²⁵ EPN is just asking that EPA do that, offering an explanation that is based on data and analysis of the consequences of its action, including a recognition that its action impacts a wide number of situations and how the impact of its change will impact States, sources and most importantly the public in those different situations. Instead EPA’s explanation is basically we don’t have to and some unknown (but minority) number of State and local agencies would like us to.

EPA is not merely proposing to allow States to eliminate public participation for certain minor NSR actions; the proposed revisions would also eliminate the existing requirement to provide EPA notice of minor-source construction actions. These are distinct but complementary safeguards. Removing both mechanisms simultaneously increases the possibility that an incorrect applicability determination, inadequate synthetic-minor limitation, or deficient permit could escape both public and federal review. EPA should analyze this combined loss of oversight before finalizing any change.

Interaction with other Permitting Programs

As EPA acknowledges in its proposal, a lack of public participation for a minor or synthetic-minor permit has consequences in the title V permitting process. The CAA provides a unique opportunity for the public to petition EPA to review a title V permit issued by a state. These public petitions often raise issues to EPA related to the limits established in the NSR permit, major or minor. EPA has been consistent of late in limiting review of these NSR issues, provided that there was an opportunity to comment on and seek adjudication of those permit terms in the state process. If there was not such an opportunity, EPA has said it would review them in the title V petition. We appreciate and support EPA’s caution to states that might make changes to their minor NSR public notice programs, particularly for sources subject to title V. The title V petition should be the last resort for the public to provide input to the permitting process, but it must remain an available option if states chose to eliminate other opportunities for the public to participate.

²³ <https://www.federalregister.gov/d/2026-13667/p-124>

²⁴ <https://www.federalregister.gov/d/2026-13667/p-125>

²⁵ <https://www.federalregister.gov/d/2026-13667/p-127>

Responses to EPA's Specific Questions:

Question #1: How would a final version of this rule affect how State and local air agencies analyze, publish, and act upon applications requesting permission to construct new minor sources and minor modifications under State and local minor NSR programs approved by the EPA as part of their SIPs, including potential reductions in administrative burdens (costs or hours) associated with this type of permitting?

EPA has already taken steps to ease the administrative burden of public notice on states by allowing electronic notification. Gone are the days of requiring notification by newspaper. Instead, an electronic notice is sufficient. It is easier than ever to provide information to the public and yet EPA has chosen this time to eliminate the requirement altogether rather than refine it to address the public's need and right to know about the emissions in their communities.

Question #2: What regulatory alternatives, if any, should the EPA consider instead of the action presented in this proposed rule?

EPA should undertake a rulemaking to provide direction to states on a minimum level of public notice for minor source permitting actions. That may not necessarily require that *every* minor action require 30 days for notice and comment. Nor should it be that *no* action deserves public notice. Does an otherwise major source (synthetic minor) warrant notice to EPA and the public? Probably. Does a minor modification at a major source that has a history of non-compliance deserve a look? Definitely. This is not a one-size-fits-all problem and it deserves better than a one-size-fits-all solution. Not requiring public or EPA notice of any construction or modification is simply an abdication of EPA's policy making responsibilities.

Question #4: In light of the reading of CAA section 110(a)(2)(C) that is presented in this proposed rule, should the EPA pursue a separate rulemaking that would propose to make regulatory changes to the Federal public participation requirements for authorizing new minor sources and minor modifications locating within Indian country? If so, how should the EPA propose to amend the minor NSR public participation requirements in Indian country?

Tribal NSR and Minor NSR: Although the proposed rule indicates that it does not impact the Tribal NSR rule and Tribal Minor NSR rule, it does request comment on if the Agency should modify the rule in the future. EPN does not support modification of the NSR rule to be consistent with this proposal. In drafting the Tribal NSR rule, EPA was very mindful of the need to balance the implementation of the CAA in Indian country with protecting Tribal Sovereignty. As such, the current Tribal NSR rule requires synthetic minor permits and source specific permits to undergo public comment so that Tribal members, the public and the Tribal Governments have an opportunity to address these sources, and particularly for Tribal Governments to request consultation on these permits. Similarly, for sources applying for coverage under general permits or coverage under a permit-by-rule, EPA is required to notify the Tribe in order for consultation to occur. Reducing these opportunities not only impacts transparency of the program but would also reduce the opportunity for Tribal leaders to consult on sources potentially located in Indian country. This is particularly important as developers of data centers have targeted locations in Indian country and Tribal governments have expressed concerns about the impact on air quality, water resources and Tribal infrastructures.

Tribal Consultation: Many Tribal governments engage in permit review of permits issued by state and local air agencies. Removing the public comment period on minor source permits for sources that impact air quality in the Tribes' area Indian country could reduce the Tribe's ability to influence those permits and prevent the Tribes from engaging/consulting with the air agencies.

Question #5: What factors, if any, should the EPA describe in situations in which an air agency does not find that a revision to its minor NSR program's public participation requirements is administrative or procedural in nature, for purposes of evaluating whether the SIP submission is consistent with CAA section 110(l)?

EPN suggests a concrete list of factors that a State should have to evaluate before reducing participation requirements: categories and numbers of permits affected; pollutants and emissions levels; prevalence of synthetic minors; evidence that public comments have identified permit deficiencies; monitoring coverage; existing industrial density and cumulative burdens; impacts on Tribes or neighboring jurisdictions; and what alternative oversight mechanism would replace the eliminated public process.

Conclusion

EPN therefore urges EPA not to finalize the proposed elimination of the federal minimum public-participation requirements for minor NSR. The record does not demonstrate that public participation is merely administrative, that its removal will have no effect on emissions or enforceability, or that State-level SIP participation can substitute for source-specific review. If EPA believes the existing requirements are unnecessarily burdensome for genuinely insignificant activities, the appropriate response is targeted modernization, not wholesale elimination. EPA should retain a federal participation floor for synthetic minors and other consequential permits while allowing streamlined procedures for low-impact activities.