



www.ntaatribalair.org
928.523.0526 office
928.523.1266 fax

National Tribal Air Association
P.O. Box 15004
Flagstaff, AZ 86011-5004

Executive Committee

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September 24, 2019

Peter Tsirigotis, Director OAQPS
U.S. Environmental Protection Agency
EPA Docket Center
Docket ID No. EPA-HQ-OAR-2019-0282
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Mr. Tsirigotis:

The National Tribal Air Association (NTAA) is pleased to submit these comments on the Environmental Protection Agency's proposed Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act, 84 Fed. Reg. 36,304 (July 26, 2019) (Proposed Rule).

The NTAA is a member-based organization with 148 principal member Tribes. The organization's mission is to advance air quality management policies and programs, consistent with the needs, interests, and unique legal status of Indian Tribes. As such, the NTAA uses its resources to support the efforts of all federally recognized Tribes in protecting and improving the air quality within their respective jurisdictions. Although the organization always seeks to represent consensus perspectives on any given issue, it is important to note that the views expressed by the NTAA may not be agreed upon by all Tribes. Further, it is also important to understand interactions with the organization do not substitute for government-to-government consultation, which can only be achieved through direct communication between the federal government and Indian Tribes.

Section 112 of the Clean Air Act requires that major sources of hazardous air pollutants (HAPs), or sources that emit or have the potential to emit 10 tons per year of one HAP or 25 tons per year of any combination of HAPs, comply with standards that achieve the "maximum degree of reduction" in HAP emissions (referred to as MACT).¹ 42 U.S.C. § 7412(d)(2), (3). Area sources, or HAP sources that are not major sources, are generally subject to less stringent standards than those required by MACT and less monitoring, reporting, and recordkeeping. *See* 42 U.S.C. § 7412(d)(5). In 1995, EPA released the Once in Always In (OIAI) policy, which provided that once a major source was required to comply with MACT standards, it could not "reclassify" as an area source, even if it now emitted less than the 10 or 25 ton per year major source HAP threshold.² EPA explained that the OIAI policy "follows most naturally from the language and structure of the [Clean Air Act]," and that it "ensures that

¹ HAPs, even in small quantities, are or may be carcinogenic, mutagenic, teratogenic, neurotoxic, or cause or may cause reproductive dysfunction, or adverse environmental effects. *See* 42 U.S.C. § 7412(b)(2).

² Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Potential to Emit for MACT Standards – Guidance on Timing Issues (May 16, 1995).



MACT emissions reductions are permanent, and that the health and environmental protection provided by MACT standards is not undermined.”³

On January 25, 2018, without Tribal consultation, EPA revoked the OIAI policy in a four-page memorandum by William Wehrum (Wehrum Memo). The Wehrum Memo asserted that the Clean Air Act requires the revocation because the Act’s definition of “major source” does not reference the MACT compliance date. EPA now proposes to turn the Wehrum Memo into regulatory text.

The Proposed Rule and Wehrum Memo are contrary to the Clean Air Act and will allow increased HAP emissions that harm public health and the environment. Although recognizing that this proposal will impact Tribes, EPA is ignoring its consultation obligations. EPA’s analysis of the revocation is incomplete: EPA does not analyze costs to human health and the environment, and makes unsupported assumptions about emissions. EPA’s limited analysis, along with the many questions EPA poses about potential changes, makes fully informed consultation or comment, impossible. The NTAA is concerned that the Proposed Rule and Wehrum Memo will negatively impact Tribal air quality and Tribal air regulators’ abilities to protect air quality. EPA should withdraw the Proposed Rule and Wehrum Memo and reinstate the OIAI policy.

I. The Proposed Rule and Wehrum Memo Were Unlawfully Implemented and Proposed

A. Tribal Consultation

The Proposed Rule and Wehrum Memo violate EPA’s trust and consultation obligations with Tribes. The Proposed Rule states, “This action has tribal implications,” but then states, “EPA specifically solicits comment on the proposed amendments from tribal officials and, consistent with EPA policy, intends to specifically offer to consult with the potentially impacted tribes and other tribes on their request.” 84 Fed. Reg. at 36,335. The Wehrum Memo does not mention Tribes. Neither explain why an action with Tribal implications was drafted, released, implemented, and then proposed, without Tribal consultation.

Executive Order 13,175 explains: “The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions.” Consultation and Coordination With Indian Tribal Governments, § 2(a), 65 Fed. Reg. 67,249 (Nov. 6, 2000). The Executive Order makes clear that consultation must occur during the development of the policies. *Id.* § 5(a). EPA policy unambiguously requires consultation for policies, guidance documents, and directives, in addition to regulations or rules.⁴ EPA’s Policy explains: “Consultation is a process of meaningful communication and coordination between EPA and tribal officials *prior to* EPA taking actions or implementing decisions that may affect tribes.”⁵ The Policy further explains: “Consultation should occur early enough to allow tribes the opportunity to provide meaningful input that can be considered prior to EPA deciding whether, how, or when to act on the matter under consideration.”⁶

Soliciting public comments and stating an intent to offer to consult after a change in policy was implemented, and after a regulatory change was proposed, is not consistent with EPA policy,

³ *Id.* at 9.

⁴ EPA Policy on Consultation and Coordination With Indian Tribes, at 5 (May 4, 2011), <https://www.epa.gov/sites/production/files/2013-08/documents/cons-and-coord-with-indian-tribes-policy.pdf>.

⁵ *Id.* at 1 (emphasis added).

⁶ *Id.* at 7.



Executive Order 13,175, or the federal government's trust responsibility.⁷ EPA should withdraw the Proposed Rule and Wehrum Memo at least until it consults with impacted or interested Tribes.

Moreover, the Proposed Rule's statements about its impacts on Tribes are unsupported, incomplete, or misleading. The Proposed Rule states that it will not impose substantial direct compliance costs on Tribal governments, 84 Fed. Reg. at 36,335, but offers no support for this statement. The Proposed Rule recognizes that at least some Tribes "may have additional actions needed for sources in their jurisdiction." *Id.* at 36,336. The Proposed Rule's suggestion that the only burden on Tribal governments will be to review and modify permits of sources seeking to reclassify, which will be offset by reduced oversight obligations, *id.*, is baseless.

The Proposed Rule (and the Wehrum Memo) did not attempt to measure, or compensate for, the additional burdens imposed on Tribes. First, Tribes and their air quality departments will need to spend additional, already limited, resources to address the proposed permitted increase in HAP emissions within their lands, or even just to monitor sources releasing HAPs. This is heightened by the limited (or sometimes nonexistent) monitoring and reporting requirements for area sources, as well as the limited public review area sources receive. Second, as explained below, if EPA goes forward with the Proposed Rule, Tribes must be able to participate in reclassifications and enforce limits for sources near their lands.⁸ This will impose additional costs on Tribes. The Proposed Rule does not analyze, nor consider providing, the direct substantial additional costs it proposes to impose on Tribes. *See* Exec. Order 13,175, § 5(b), 65 Fed. Reg. at 67,250.

Relatedly the Proposed Rule requests comments on fifty-nine questions, plus any relevant matter, 84 Fed. Reg. at 36,333, and provides numerous alternative options for implementation, *e.g.*, *id.* at 36,333-34. The Proposed Rule does all this without analysis or presentation of Tribal impacts. EPA has provided only sixty days and only one public hearing to respond to the Proposed Rule. *Id.* at 36,304. Ignoring its consultation obligations, proposing a vague rule, and only providing limited opportunity for public comment, prevents meaningful responses to the Proposed Rule. Proposals must "provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully." *Honeywell Int'l, Inc. v. EPA*, 372 F.3d 441, 445 (D.C. Cir. 2004). EPA should withdraw the Proposed Rule and reinstate the OIAI policy.

B. Environmental Justice

The Proposed Rule and Wehrum Memo ignore environmental justice. Executive Order 12,898 applies to agency "programs, policies and activities" and directs agencies to identify and address, as appropriate, "disproportionately high and adverse human health or environmental effects of [agency] programs, policies and activities on minority populations and low-income populations." Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed. Reg. 7,629 (Feb. 16, 1995).

EPA created Guidance for determining when environmental justice should be considered that explains a regulatory action may involve a potential environmental justice concern if it could:

- Create new disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples;

⁷ Neither is a webinar describing the Proposed Rule after its publication and after the policy has been implemented.

⁸ The Proposed Rule leaves unclear whether, to what extent, and how Tribes can provide input when nearby sources seek to reclassify in ways that could harm Tribal air quality, public health, and environment. The Proposed Rule also leaves unclear what rights, if any, Tribes will have to enforce, or even monitor, the non-federally enforceable limits that the EPA proposes reclassifying sources can take. This fails to provide Tribes and the public fair notice of how EPA would implement a final rule and the Proposed Rule and Wehrum Memo should be withdrawn.



- Exacerbate existing disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples; or
- Present opportunities to address existing disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples through the action under development.⁹

The Guidance explains that “some level of analysis is needed, be it qualitative, quantitative, or some combination of both.”¹⁰ The Proposed Rule does not provide any environmental justice analysis. It asserts it is not subject to Executive Order 12,898 “because it does not establish an environmental health or safety standard,” but proposes procedural changes that do “not impact the technology performance nor level of control of the NESHAP governed by the General Provisions.” 84 Fed. Reg. at 36,336. This is unlawful: Executive Order 12,898 is not limited to actions that “establish an environmental health or safety standard,” and there is no “procedural change” exclusion.

Because minority and low-income populations have historically been underrepresented in agency decision making, Executive Order 12,898 also aims to improve participation of these populations in the process. 59 Fed. Reg. at 7,630-32. With one English language hearing held in Washington DC, EPA has hindered meaningful participation of minority and low-income populations.

Furthermore, the Proposed Rule ignores EPA’s Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples: “This Policy provides early meaningful involvement opportunities for federally recognized tribes, indigenous peoples, and others living in Indian country, at all stages of Agency activity, including the development of public participation activities, the administrative review process, and any analysis conducted to evaluate environmental justice issues.”¹¹ Because revoking the OIAI policy may increase pollution on Tribal lands, EPA must analyze these impacts, confer with Tribes on environmental justice issues, and pursue environmental justice through EPA’s Office of Environmental Justice. EPA has failed to meet these responsibilities.

II. The Proposed Rule and Wehrum Memo are Unlawful and Harmful

A. EPA’s Interpretation is Contrary to the Clean Air Act

EPA does not support its interpretation reversing twenty-three years of successful implementation of the OIAI policy.¹² EPA claims it is proposing to implement “the plain language reading of the statute,” and that “EPA had no authority for the OIAI policy under the plain language of the CAA.” 84 Fed. Reg. at 36,309-10. Tellingly, EPA also asks if its revocation of the policy would be a permissible interpretation of the statute. *Id.* at 36,313. Revoking the OIAI policy is not required, nor allowed, by the Clean Air Act and EPA must withdraw the Proposed Rule and Wehrum Memo.

The Proposed Rule and Wehrum Memo narrowly focus on the section 112’s definition section, 42 U.S.C. § 7412(a), and ignore that section’s implementation and substantive provisions, *e.g.*, *id.* § 7412(d). The definition cannot be read alone but must be read with the rest of the section. Section 112 contains a mandate that large, industrial sources of HAPs implement the “maximum degree of reduction in [HAP emissions]” that EPA “determines is achievable,” “including a prohibition on such emissions, where achievable.” *Id.* § 7412(d)(2). MACT can include requiring measures

⁹ Guidance on Considering Environmental Justice During the Development of Regulatory Actions, May 2015, at 10, <https://www.epa.gov/sites/production/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf>.

¹⁰ *Id.* at 15.

¹¹ EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples, at 2 (July 24, 2014), <https://www.epa.gov/sites/production/files/2017-10/documents/ej-indigenous-policy.pdf>.

¹² This section responds to questions C-2, 10, and 11.



which “eliminate [HAP] emissions.” *Id.* EPA has promulgated MACT standards that require facilities to reduce their HAP emissions at an efficiency of 95% or higher. For many of the most dangerous HAPs, a 10-ton per year threshold requires no pollution controls at all. For example, EPA estimated that the sixth highest mercury emitting source category, *as a whole*, emits about 3.1 tons per year. 75 Fed. Reg. 63,260, 63,275-76 (Oct. 14, 2010).

The Proposed Rule and Wehrum Memo unlawfully nullify Congress’s directions to prohibit or eliminate emissions where achievable. By allowing major sources to reclassify, EPA essentially replaces section 112 with an annual emissions cap of 10 tons of one HAP, or 25 tons of all HAPs. The Proposed Rule means that EPA could never eliminate or prohibit emissions of a HAP because once a source’s HAP emissions fall below 10 or 25 tons per year, the Proposed Rule would allow that source to reclassify and generally no longer be subject to MACT.

Relatedly, the Proposed Rule and Wehrum Memo unlawfully nullify section 112(d)(6), which requires EPA to review and revise MACT standards, based on new technological developments at least every eight years. 42 U.S.C. § 7412(d)(6). Under the Proposed Rule, advances in technology become irrelevant once existing controls bring a facility’s emissions under the 10/25 tons per year threshold, which some control technologies passed decades ago.

Although the Proposed Rule and Wehrum Memo recognize and discuss the 1995 Memo that formalized the OIAI, they ignore key parts of it that explain the policy is needed based on the language and mandates from Congress. In 1995, EPA explained that:

*EPA believes that this once in, always in policy follows most naturally from the language and structure of the statute. In many cases, application of MACT will reduce a major emitter’s emissions to levels substantially below the major thresholds. Without a once in, always in policy, these facilities could “backslide” from MACT control levels by obtaining potential-to-emit limits, escaping applicability of the MACT standard, and increasing emissions to the major-source threshold (10/25 tons per year). Thus, the maximum achievable emissions reductions that Congress mandated for major sources would not be achieved.*¹³

The Proposed Rule also ignores comments from the EPA Regional Offices in 2005 regarding a similar proposal to revoke the OIAI policy, which said:

The Clean Air Act requires the maximum degree of reduction in emissions of HAPs from sources subject to the MACT standards. The reductions anticipated through the MACT program will not be achieved through the strategy described in the draft rule proposal. . . . Clearly, the intent in promulgating MACT standards was to reduce emissions to the extent feasible, not just to the minor source level.¹⁴

The Proposed Rule and Wehrum Memo prevent the maximum achievable emissions reductions that Congress mandated from being achieved, which is in violation of the Clean Air Act.

¹³ Seitz Memorandum, at 9 (emphasis added).

¹⁴ Memorandum from Michael S. Bandrowski, Chief, Air Toxics, Radiation and Indoor Air Office, Region IX, *Regional Comments on Draft OIAI Policy Revisions*, to David Cozzie, Group Leader, Minerals and Inorganic Chemicals Group, Office of Air Quality Planning and Standards, at 3 (Dec. 13, 2005), [https://www.edf.org/sites/default/files/content/EPA Regional Comments on Draft OIAI Policy Revisions.pdf](https://www.edf.org/sites/default/files/content/EPA%20Regional%20Comments%20on%20Draft%20OIAI%20Policy%20Revisions.pdf).



B. The Proposed Rule and Wehrum Memo Will Harm Air Quality

The Proposed Rule and Wehrum Memo will cause more HAP emissions, less enforcement, and worse air quality: A source that was subject to MACT standards could reclassify to an area source subject to weaker emission standards and weaker monitoring, record-keeping, and reporting requirements.

The Proposed Rule makes unsupported and contradictory assertions that HAP emissions might decrease, stay the same, or not increase, 84 Fed. Reg. at 36,312, 36,324, 36,332, concedes HAP emissions might increase, *id.*, and claims EPA does not have enough information to know what will happen, *id.* at 36,312, 36,327, 36,332.¹⁵ The Proposed Rule also ignores the increased enforcement difficulties if sources reclassify and are no longer subject to Title V monitoring, record-keeping, and reporting. The Proposed Rule says that scenarios that HAP emissions will increase need “to be evaluated and addressed in determining how the agency should implement the plain language of the statute.” 84 Fed. Reg. at 36,312. Until EPA decides on the Proposed Rule’s implementation and properly analyzes the Proposed Rule’s impact (providing fair notice for the public to comment on it), it must withdraw the Proposed Rule and Wehrum Memo.

The Proposed Rule states that it may create an incentive for “many” sources to evaluate their operations and consider changes that can further reduce their HAP emissions to below the major source thresholds. 84 Fed. Reg. at 36,328. It also states that reclassifying sources “would, in most cases, achieve and maintain area source status by operating the emission controls or continuing to implement the practices they used to comply with the major source NESHAP requirements.” *Id.* at 36,330. Realizing that its flawed analysis shows some sources will increase HAP emissions, the Proposed Rule states that when reviewing reclassification applications, the local regulatory authority will “evaluate the potential for emission increases due to reclassification and whether safeguards are needed to prevent any emission increases due to reclassification.” *Id.* at 36,332.

The Proposed Rule ignores EPA Regions’ comments that rejected many of these premises in 2005:

Regional experience indicates that sources requesting synthetic minor limits to avoid a MACT standard typically request, and are frequently given, limits of at least 24 tpy (*tons per year*) for a combination of HAPs and 9 tpy for a single HAP. The Regional Offices anticipate that many sources would take limits less stringent than MACT requirements, if allowed. Thus, the cumulative impact of many “area” sources whose status is derived after the MACT compliance date could be significant. This change in policy would offset the intended environmental benefits of the MACT standards.¹⁶

The Proposed Rule does not explain how, why, or to what extent it encourages innovation. MACT and the eight-year review required by Congress already do this. If there is any incentive, it would only apply to major sources that currently emit slightly above the 10/25 tons per year thresholds in compliance with MACT standards. EPA does not analyze or compare these sources with the larger number below the 10/25 tons per year threshold that could increase their emissions.

EPA’s assumptions based on its review of sources that have reclassified are unsupported. Looking at the emissions analysis, EPA points to nothing that is stopping a source from increasing its HAP

¹⁵ See also Larry Sorrels, *Regulatory Impact Analysis for the Proposed Reclassification of Major Sources as Area Sources under Section 112 of the Clean Air Act, Final Report*, Environmental Protection Agency Office of Air Quality Planning and Standards, at 5-1 (May 2019).

¹⁶ Bandrowski, *Regional Comments on Draft OIAI Policy Revisions*, at 4.



emissions as long as they remain below 10/25 tons per year.¹⁷ And similarly, its vague claims that another regulatory authority will consider safeguards for sources that could increase HAP emissions shirks EPA's obligations and does not prevent sources from increasing HAP emissions.

The Proposed Rule ignores the fact that control devices can be operated at different efficiencies. Because operating controls at less efficient levels can lower costs, sources can decrease the efficiency and allow emissions to increase. Additionally, since potential to emit is calculated using averages over time, sources can stop controlling emissions for part of the time and stay below the major source threshold. While EPA vaguely suggests that the rule will not result in increased HAP emissions, nothing in the proposal prevents sources from increasing their emissions after reclassification, and EPA offers no regulatory strategy to ensure emissions will not increase. Finally, area source HAP limits will be difficult to enforce because area sources are subject to less monitoring and reporting.

Because the Proposed Rule improperly assumes reclassified sources will operate the same the emission controls or implement the same practices they used to comply with MACT requirements and therefore will not increase emissions, the Proposed Rule does not even attempt to calculate the costs of the additional HAP emissions it allows.¹⁸ These ignored costs include additional medical expenses, work-days lost to illness, lives cut short from disease, and declining property values in neighborhoods impacted by air pollution. Even with EPA's improper assumptions, the Proposed Rule ignores the public health costs of now reclassified sources not further reducing their emissions as EPA updates the MACT at least every eight years. This provides a back door for sources to avoid making continued improvements as new standards are developed to protect human health. Moreover, the Proposed Rule ignores all the lost co-benefits that the major source MACT standards create when they control other harmful pollutants.¹⁹

III. NTAA Provides the Following Comments on Parts of the Proposed Rule that Should be Changed if EPA Does Not Withdraw It

A. Require MACT for Reclassified Sources

If EPA moves forward with this unlawful proposal, only sources emitting HAPs that require MACT for area sources as well as major sources should be allowed to reclassify, or EPA should require that the source seeking to reclassify remain subject to applicable MACT control level(s). Moreover, any sources that have been reclassified since the Wehrum Memo, must be required to have MACT controls. This is the only way that EPA's assumptions could be valid: the costs and benefits of reclassification would occur from reduced monitoring and reporting, rather than from increased HAP emissions. While Tribes and the public would lose the enforcement benefits from the monitoring and reporting requirements, at least in theory the sources' HAP limits would not be permitted to increase to the 10 or 25 tons per year thresholds that the current Proposed Rule and Wehrum Memo allow.

¹⁷ See, e.g., Documentation of the emission impacts analysis for the proposed rulemaking "Reclassification of Major Sources as Area Sources under Section 112 of the Clean Air Act," at 33-34 (2700 Real State Holding, Elkhart, IN), 34 (Arkwright Advanced Coatings, Fiskeville/Coventry, RI), 37-38 (Fairhaven Shipyard Companies Inc, North Shipyard, Fairhaven, MA), 38-39 (Geiger International, Atlanta, GA).

¹⁸ See Sorrels, *Regulatory Impact Analysis for the Proposed Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act*, at 5-8 ("we did not attempt to estimate the impacts associated with changes in emissions of the HAP in this analysis. Instead, we provide a qualitative analysis of the health effects associated with the various HAP that may be affected by this rule").

¹⁹ See *id.* at 5-1 to 5-8.



B. Provide Rights to Participate in Reclassification and Enforce Limits

The Proposed Rule states that “EPA recognizes that to be effective, PTE limits must carry with them a credible risk for enforcement if they are violated, that sources be on notice of their legal obligation to comply, and that sources are cognizant of the consequences of non-compliance.”²⁰ 84 Fed. Reg. at 36,318. However, the Proposed Rule only requires that “the regulatory authority issuing the limits must also have the authority to enforce the limits.” *Id.* EPA ignores Tribes in this discussion and did not analyze the abilities or likelihood of local regulatory authorities to enforce the limits or whether impacted Tribes or citizens can step in. If EPA goes forward with this unlawful proposal, it must assure that potential to emit limits are legally and practicably enforceable by at least providing Tribes and the public notice of proposed reclassifications, the right to participate in the reclassification, the right to sue if a regulatory agency allows an unlawful reclassification, and the right to enforce the potential to emit limitations.

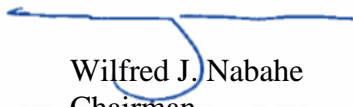
C. Require Reclassifying Sources to Meet Standards Immediately

If EPA moves forward with the unlawful proposal and memo, sources reclassifying back to major sources must comply immediately with the current MACT standard.²¹ EPA’s proposal to allow sources additional time for compliance if the major source standard has changed is unlawful and harmful. When to increase emissions and revert to major source status is fully within the control of sources, so it is equally within their control, and responsibility, to comply with the revised MACT standard by the time of the reversion. There is no defensible reason in law or policy why the public should suffer increased HAP emissions from sources that wish to increase their HAP emissions and forego the controls required by the revised MACT standard. EPA has no authority to authorize “violation of such standard, limitation or regulation” by major sources in defiance of section 112(i)(3). As the EPA Regions explained in 2005, “by continually going back and forth between major and area source status, a facility could be a major source for most of its operating life and never have to comply with the MACT standard requirements.”²² The Regions stated, “This type of problem must be addressed if the OIAI policy is changed.”²³ The Proposed Rule does not do so. Immediate compliance with the relevant standards upon reclassification is required.

IV. Conclusion

For these reasons, the NTAA opposes the finalization of the Proposed Rule and urges the EPA to withdraw it as well as the Wehrum Memo. The NTAA appreciates this opportunity to comment. If you have any questions or require clarification from the NTAA, please do not hesitate to contact the NTAA’s Project Director Andy Bessler at 928-523-0526 or andy.bessler@nau.edu.

On Behalf of the NTAA Executive Committee,


Wilfred J. Nabahe
Chairman
National Tribal Air Association

Cc: Ms. Elineth Torres, Sector Policies and Programs Division, OAQPS

²⁰ This section responds to questions C-20, 22, 23, 28, 29, 31, 32, and 33.

²¹ This responds to C-36, 37, 38, 43, 44, and 45.

²² Bandrowski, *Regional Comments on Draft OIAI Policy Revisions*, at 4.

²³ *Id.*