



Eligibility Determination and the Treatment in the Same Manner as a State (TAS) Process

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Overview



- Regulatory requirements for TAS eligibility under the Clean Air Act (CAA)
- TAS application process

Regulatory Requirements for TAS Eligibility under the CAA

- A tribe must meet these regulatory provisions prior to submitting a TAS application

Federal Recognition

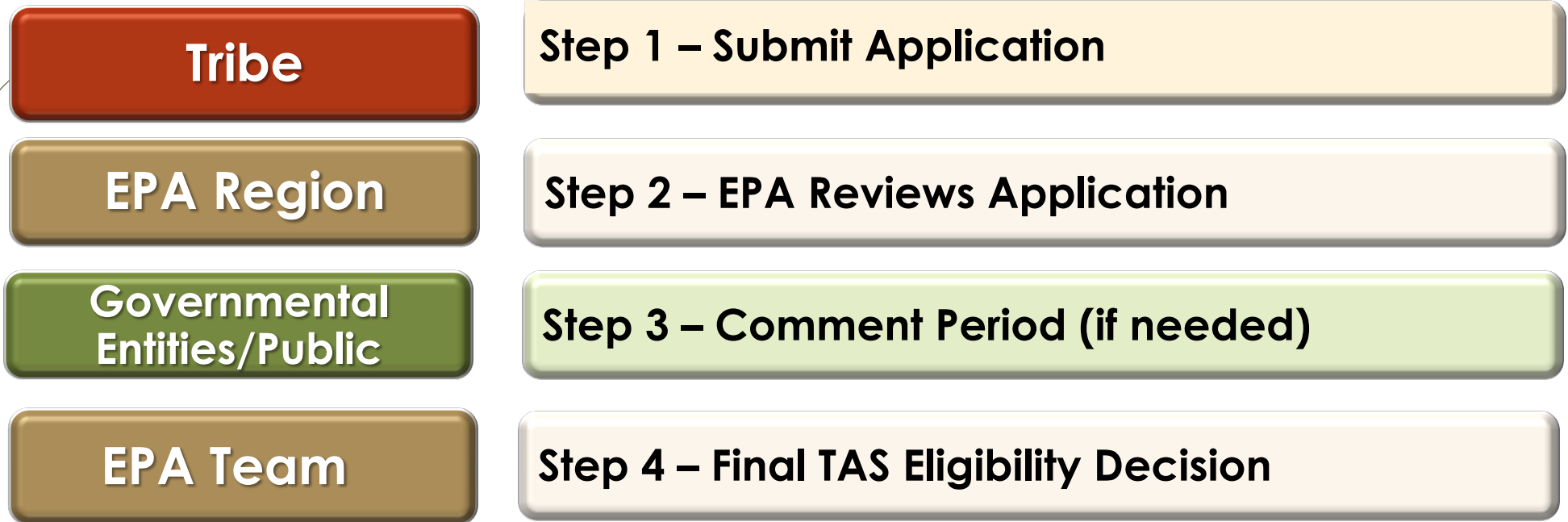
Governing body currently carrying out substantial governing duties and powers

Authority to regulate air quality

Capability to administer the CAA program that the tribe seeks approval for

TAS Application Process

- Procedural steps for processing tribal applications for TAS eligibility for regulatory programs under the CAA



TAS Application Process (cont.)

Tribe

• STEP 1 – Submit Application

- Work with EPA region in developing TAS eligibility application
 - ❑ Pre-application discussions and technical assistance
 - ❑ EPA review of pre-application materials (if requested)
 - ❑ Tribe formally submits application to EPA regional office
- EPA region notifies tribe of receipt of application
 - ❑ EPA has 30 days from receipt of application to request additional information if needed
- Tribe submits additional information (if needed)

TAS Application Process (cont.)

EPA Region

• Step 2 – Reviews Application

- EPA TAS Team determines if application is complete and if tribe meets eligibility determination requirements
- Notifies tribe, in writing, that the application is complete
 - ❑ Within 30 days of receipt of initial, complete application

TAS Application Process (cont.)

Governmental Entities/Public

• Step 3 – Comment Period (if needed)

- EPA Region notifies appropriate governmental entities of the tribal application
 - ❑ Start of 30 day comment period
 - ❑ Comments accepted on Tribe's reservation boundaries and tribal authority over non-reservation areas
 - ❑ Public Notice of the comment opportunity
- EPA region provides comments to tribe
 - ❑ Within 30 days of close of comment period
- Tribe reviews comments and may provide responses

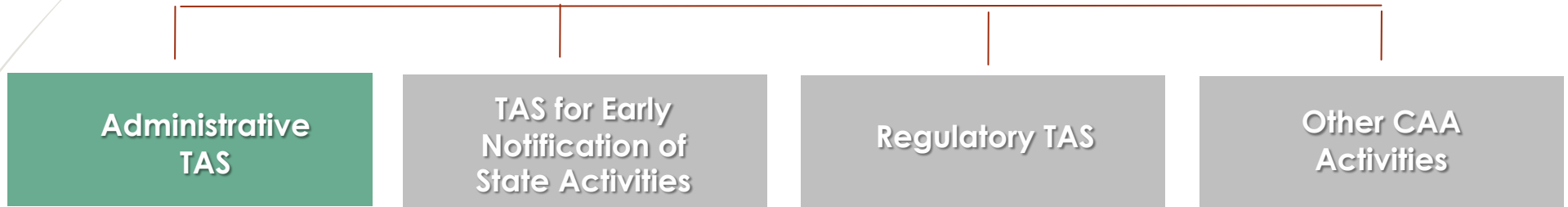
TAS Application Process (cont.)

EPA TEAM

• Step 4 – Final TAS Eligibility Decision

- EPA TAS Team reviews all materials
 - ❑ Application
 - ❑ Administrative record
 - ❑ Comments submitted
 - ❑ Tribal responses (if any)
- If TAS application is approved
 - ❑ EPA team prepares decision document and response to comments
 - ❑ EPA regional official signs decision document
 - ❑ EPA region notifies tribe of decision within 30 days of signature

Tribal Decision Matrix



- Administrative TAS may have less scrutiny from the surrounding jurisdictions
- Allows a tribe to build capacity
- Allows the tribes an opportunity to influence state decision making on sources that impact the tribe
- Allows tribes to establish interest in ongoing programs and assert sovereignty without committing to regulatory programs

Administrative TAS – 105 Grants

- Tribe may receive grant funds under section 103 or 105
 - ❑ 103 (no TAS required) are research and capacity building grants
 - ❑ 105 (may get TAS) are programmatic grants, they are designed for ongoing air programs. Provides for expedited eligibility and financial assistance. 105 grants require a matching contribution from the tribe
 - Tribes must have TAS to receive an initial tribal match of 5%
 - Tribes without TAS have to provide a 50% match for the first two years moving to 40% match
 - There is hardship waiver
- **Pros**
 - ❑ TAS for 105 demonstrates the tribe intends to have an ongoing program
 - ❑ Raises the level of consideration of tribal program for States and EPA
 - ❑ More support for an ongoing program but not a guarantee
- **Cons**
 - Have to establish jurisdictional boundaries
 - Match may be difficult

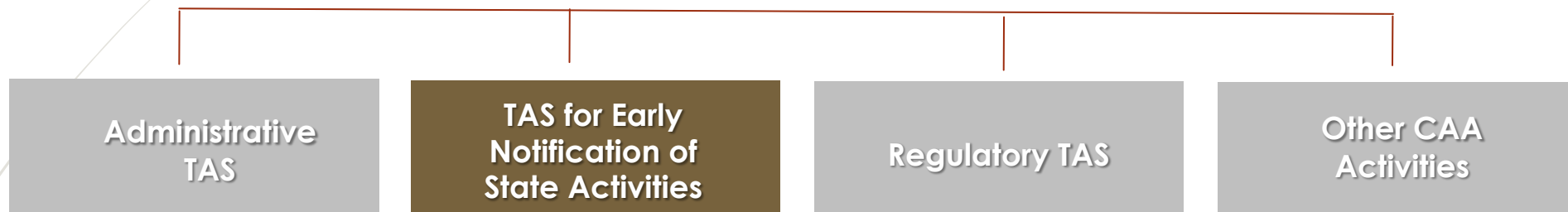


Administrative TAS – 107

Air Quality Control Regions and Designations

- **107 (a)** allows states and tribes to establish air quality control regions
 - ❑ For planning for implementing National Ambient Air Quality Standards (NAAQS)
 - ❑ Can allow for new baseline for PSD increment
- **107 (c-d)** allows states and tribes to participate in the designations process following the establishment of the new NAAQS (TAS not required)
 - ❑ Tribes can submit recommendations for designation
 - ❑ Tribes can consult on the Agency designations
 - ❑ Tribes may recommend designations based on their jurisdiction
- **Pros**
 - ❑ Asserts tribal sovereignty
 - ❑ Signals tribes interest in NAAQS implementation to states and EPA
- **Cons**
 - ❑ Must establish tribal boundaries/jurisdiction
 - ❑ May be political implications

Tribal Decision Matrix



- ▶ Allows the tribes to engage with the state planning activities
- ▶ Allows a tribe to build capacity
- ▶ Allows the tribes an opportunity to influence state decision making on sources that impact the tribe
- ▶ Allows tribes to establish interest in ongoing programs and assert sovereignty without committing to regulatory programs

TAS for Notification – 126/110(a)(2)(D)(i)

- 126 Good Neighbor Provision (interstate pollution abatement)
 - ❑ 126(a) – requires states to provide notice to neighboring jurisdictions for new major source emissions (Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR) permits) and on State Implementation Plan (SIP) revision
 - ❑ 126(b) – allows states and tribes to petition the Agency if a neighboring state is not addressing the sources that are impacting air quality
 - ❑ 110(a)(2)(D)(i) – requires states to include provisions in their SIP that ensure that air quality in the neighboring jurisdictions are protected
- **Pros**
 - ❑ Provides more opportunity for tribes to engage in the states decisions
 - ❑ Early notification on NSR/PSD Permits and SIPs
 - ❑ Asserts tribal sovereignty
 - ❑ May help build communication channels between states and tribes
- **Cons**
 - ❑ Tribes will have to establish boundaries and jurisdictions
 - ❑ May have political implications



TAS for Notification – 505(a) Title V Permit Review

- Allows tribe to receive early notification of Title V permits within 50 miles of Indian country, and allow the tribe the opportunity for submitting written comments
- **Pros**
 - ❑ Provides more opportunity for tribes to engage in the states' decisions
 - ❑ Early notification on Title V Permits asserts tribal sovereignty
 - ❑ May help build communication channels between states and tribes
- **Cons**
 - ❑ Tribes will have to establish boundaries and jurisdictions
 - ❑ May have political implications

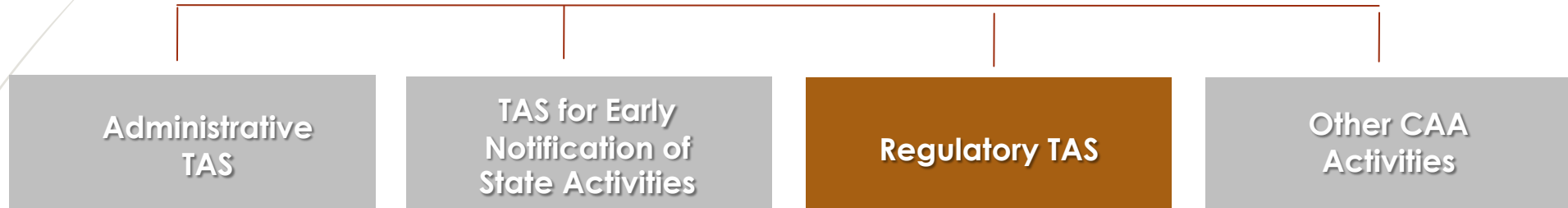


TAS for Notification – 164

Class I Redesignation

- Allows tribes to redesignate their area from Class II to Class I under the PSD program
 - ❑ Provides for additional air quality protection for the area of Indian country and tribal resources
 - ❑ Provides for tribes to review PSD permits that impact air quality
 - ❑ Provides for tribes to establish Air Quality Related Values that are important for the tribe
- **Pros**
 - ❑ Asserts tribal sovereignty
 - ❑ Allows additional protection of air quality and other important resources
- **Cons**
 - ❑ Resource intensive
 - ❑ Politically difficult

Tribal Decision Matrix



- Asserts tribal sovereignty
- Allows a tribe to build capacity
- Tribes can get regulatory TAS to develop their own regulations or take delegation of Federal rules
- Tribes taking delegation MAY get TAS but don't have to

Online Resources



- **Office of Air and Radiation Tribal Air Website**
<https://www.epa.gov/tribal-air>
- **Tribal Authority Rule (TAR) Under the Clean Air Act**
<https://epa.gov/tribal-air/tribal-authority-rule-tar-under-clean-air-act>
- **Federal Register notice announcing the Tribal Authority Rule (63 FR 7254)**
<https://www.gpo.gov/fdsys/pkg/FR-1998-02-12/pdf/98-3451.pdf>
- **Strategy for Reviewing Tribal Eligibility Applications to Administer EPA Regulatory Programs**
(see Attachments F and G for TAS under the CAA)
<https://www.epa.gov/tribal/strategy-reviewing-tribal-eligibility-applications-administer-epa-regulatory-programs>
- **Clean Air Act: Summary of Content for Applicability for TAS for Titles I, III, and V**
<https://www.epa.gov/tribal-air/clean-air-act-summary-content-applicability-tas-titles-i-iii-and-v>
 - Provides a brief summary of the content of CAA Titles I, III and V — key programs in the Act where tribes frequently express interest
- **Example of TAS Application**
<https://www.epa.gov/sites/production/files/2017-02/documents/quapaw-tribe-cover-and-narrative.pdf>