



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 49**

**[EPA-HQ-OAR-2014-0606; FRL-9946-56-OAR]**

**RIN 2060-AS27**

**Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing a federal implementation plan (FIP) that applies to new true minor sources and minor modifications at existing true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector that are locating or expanding in Indian reservations or in other areas of Indian country over which an Indian tribe, or the EPA, has demonstrated the tribe's jurisdiction. The FIP satisfies the minor source permitting requirement under the "Federal Minor New Source Review (NSR) Program in Indian Country" (referred to as the "Federal Indian Country Minor NSR rule"). For the oil and natural gas production and natural gas processing segments of the oil and natural gas sector, the FIP requires compliance with emission limitations and other requirements from certain federal emission standards as written at the time of construction or modification for compression ignition and spark ignition engines; process heaters; combustion turbines; fuel storage tanks; glycol dehydrators; completion of hydraulically fractured oil and natural gas wells; reciprocating and centrifugal compressors (except those

located at well sites); pneumatic controllers; pneumatic pumps; storage vessels; and fugitive emissions from well sites, compressor stations and natural gas processing plants.

The EPA is also finalizing several amendments to the Federal Indian Country Minor NSR rule, including adding new text regarding the purpose of the program, revising the program overview provision, revising certain provisions to incorporate compliance with the FIP, revising the applicability provision to establish that oil and natural gas sources are required to comply with the FIP unless they either opt to obtain a source-specific permit or are otherwise required to do so, and revising the source registration provision for oil and natural gas sources constructing under this FIP. Also, we are revising the applicability of the Federal Indian Country Minor NSR rule to comport with a court decision that addressed the scope of the EPA's jurisdiction to implement the Federal Indian Country Minor NSR rule in Indian country: *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014). This court decision has the same effect on the scope of the EPA's jurisdiction under the Federal Major New Source Review Program for Nonattainment Areas in Indian Country and so we are changing the applicability of the Federal Indian Country Nonattainment Major NSR rule as well.

**DATES:** This final rule is effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2014-0606. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available

only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christopher Stoneman, Outreach and Information Division, Office of Air Quality Planning and Standards (C-304-01), Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541-0823, facsimile number (919) 541-0072, email address: [stoneman.chris@epa.gov](mailto:stoneman.chris@epa.gov). For questions about the applicability of this action to a particular source, please contact the appropriate EPA region:

- EPA Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin) – Ms. Genevieve Damico, Air Permits Section, Environmental Protection Agency, Region 5, Chicago, Illinois 60604; telephone number (312) 353-4761; fax (312) 385-5501; email address: [damico.genevieve@epa.gov](mailto:damico.genevieve@epa.gov).
- EPA Region 6 (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas) – Ms. Bonnie Braganza, Air Permits Section, Multimedia Permitting and Planning Division, Environmental Protection Agency Region 6, Dallas, Texas 75202; telephone number (214) 665-7340; fax number (214) 665-6762; email address: [braganza.bonnie@epa.gov](mailto:braganza.bonnie@epa.gov).
- EPA Region 8 (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming) – Ms. Claudia Smith, Air Program, Mail Code 8P-AR, Environmental Protection Agency Region 8, Denver, Colorado 80202; telephone number (303) 312-6520; fax number (303) 312-6520; email address: [smith.claudia@epa.gov](mailto:smith.claudia@epa.gov).
- EPA Region 9 (Arizona, California, Hawaii, Nevada, and Pacific Islands) - Ms. Lisa Beckham, Permits Office, Air Division, Air-3, Environmental Protection Agency Region 9, San Francisco, California 94105; telephone number (415) 972-3811; fax number (415) 947-

3579; email address: beckham.lisa@epa.gov.

- All other EPA regions - The permit reviewer for minor sources in Indian country for your EPA region. You can find the list of the EPA permit reviewers at:

<https://www.epa.gov/tribal-air/tribal-minor-new-source-review>. Scroll down to the heading,

“Existing Source Registration,” and click on “Reviewing Authority” to access

“Environmental Protection Agency’s Reviewing Authorities for Permits.”

**SUPPLEMENTARY INFORMATION:** The information presented in this preamble is organized as follows:

I. General Information

- A. What entities are potentially affected by this final action?
- B. Where can I get a copy of this document and other related information?

II. Summary of Final Oil and Natural Gas FIP

- A. Overview
- B. Eight Federal Rules and Exclusions in FIP
- C. Addressing Threatened and Endangered Species and Historic Properties
- D. Summary of Final Amendments to the Federal Indian Country Minor NSR Rule

III. Background

- A. Federal Indian Country Minor NSR Rule
- B. What is a FIP?
- C. Oil and Natural Gas Sector
- D. EPA Actions Affecting Oil and Natural Gas Minor Sources in Areas Covered by the Federal Indian Country Minor NSR rule

IV. Summary of Final Action, Comments and Responses

- A. Overview of Changes to the FIP and Federal Indian Country Minor NSR Rule
- B. Proposed Amendments to the Federal Indian Country Minor NSR Rule
- C. Implementation-Related Issues
- D. Requirements Relating to Threatened or Endangered Species and Historic Properties
- E. Rationale for the FIP
- F. The FIP as an Alternative to Source-specific Permits, General Permits and Permits by Rule
- G. Synthetic Minor Sources and Minor Modifications at Major Sources
- H. Nonattainment Areas
- I. How the EPA Selected Equipment Included in the Proposed FIP
- J. Pollutants Included in the Proposed FIP
- K. Exclusion of Existing Sources from the Proposed Oil and Natural Gas FIP
- L. General Comments (*e.g.*, Administrative, Incorporate by Reference)
- M. Other Comments
- V. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Paperwork Reduction Act (PRA)
- C. Regulatory Flexibility Act (RFA)
- D. Unfunded Mandates Reform Act (UMRA)
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
- I. National Technology Transfer and Advancement Act (NTTAA)
- J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act (CRA)

**I. General Information**

*A. What entities are potentially affected by this final action?*

Entities potentially affected by this action consist of owners/operators of facilities included in the following source categories that are located, or planning to locate, in an Indian reservation or in another area of Indian country (as defined in 18 U.S.C. 1151) over which an Indian tribe, or the EPA, has demonstrated that the tribe has jurisdiction where there is no EPA-approved program in place and that are subject to the requirements of the Federal Indian Country Minor NSR rule.

**TABLE 1 – SOURCE CATEGORIES AFFECTED BY THIS ACTION**

Industry Category	NAICS Code <sup>a</sup>	Examples of Regulated Entities/ Description of Industry Category
Oil and Natural Gas Production/Operations	21111	Exploration for crude petroleum and natural gas; drilling, completing, and equipping wells; operation of separators, emulsion breakers, desilting equipment, and field gathering lines for crude petroleum and natural gas; and all other activities in the

Industry Category	NAICS Code <sup>a</sup>	Examples of Regulated Entities/ Description of Industry Category
		<p>preparation of oil and natural gas up to the point of shipment from the producing property</p> <p>Production of crude petroleum, the mining and extraction of oil from oil shale and oil sands, the production of natural gas, sulfur recovery from natural gas, and the recovery of hydrocarbon liquids from oil and natural gas field gases</p>
Crude Petroleum and Natural Gas Extraction	211111	Exploration, development and/or the production of petroleum or natural gas from wells in which the hydrocarbons will initially flow or can be produced using normal pumping techniques or production of crude petroleum from surface shales or tar sands or from reservoirs in which the hydrocarbons are semisolids
Natural Gas Liquid Extraction	211112	Recovery of liquid hydrocarbons from oil and natural gas field gases; and sulfur recovery from natural gas
Drilling Oil and Natural Gas Wells	213111	Drilling oil and natural gas wells for others on a contract or fee basis, including spudding in, drilling in, redrilling, and directional drilling
Support Activities for Oil and Natural	213112	Performing support activities

Industry Category	NAICS Code <sup>a</sup>	Examples of Regulated Entities/ Description of Industry Category
Gas Operations		on a contract or fee basis for oil and natural gas operations (except site preparation and related construction activities) such as exploration (except geophysical surveying and mapping); excavating slush pits and cellars, well surveying; running, cutting, and pulling casings, tubes, and rods; cementing wells, shooting wells; perforating well casings; acidizing and chemically treating wells; and cleaning out, bailing, and swabbing wells
Engines (Spark Ignition and Compression Ignition) for Electric Power Generation	2211**	Provision of electric power to support oil and natural gas production where access to the electric grid is unavailable.

<sup>a</sup> North American Industry Classification System.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be potentially affected by this action. To determine whether your facility could be affected by this action, you should examine the applicability criteria in the final Federal Minor NSR Program in Indian Country (40 Code of Federal Regulations (CFR) 49.153), as well as the FIP applicability in §49.101. If you have any questions regarding the applicability of this action to a particular entity, contact the appropriate person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*B. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this final rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of

this final rule will be posted in the regulations and standards section of our NSR home page located at <http://www.epa.gov/nsr> and on the tribal NSR page at <https://www.epa.gov/tribal-air/tribal-minor-new-source-review>.

## **II. Summary of Final Oil and Natural Gas FIP**

### *A. Overview*

We are finalizing a FIP to protect air quality in Indian country due to the impact of new true minor sources<sup>1</sup> and minor modifications at existing true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector that are locating or expanding in an Indian reservation or in another area of Indian country over which a tribe, or the EPA, has demonstrated that the tribe has jurisdiction. The FIP applies to new and modified true minor sources that are located or expanding in the referenced areas of Indian country designated as attainment, unclassifiable or attainment/unclassifiable. It does not apply to new and modified true minor sources that are located or expanding in referenced areas of Indian country designated nonattainment. The FIP does not apply to minor modification of major sources; such sources are required to obtain a source-specific permit prior to beginning construction starting September 2, 2014, per the Federal Indian Country Minor NSR rule.

However, in response to comments, we are stating here our intent to potentially apply this national FIP's requirements as appropriate to nonattainment areas where the EPA has established

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<sup>1</sup> Under §49.52(d), true minor source means a source, not including the exempt emissions units and activities listed in §49.153(c), that emits, or has the potential to emit, regulated NSR pollutants in amounts that are less than the major source thresholds in §49.167 or §52.21, as applicable, but equal to or greater than the minor NSR thresholds in §49.153, without the need to take an enforceable restriction to reduce its potential to emit to such levels. That is, a true minor source is a minor source that is not a synthetic minor source. The potential to emit includes fugitive emissions, to the extent that they are quantifiable, only if the source belongs to one of the source categories listed in part 51, appendix S, paragraph II.A.4(iii) or §52.21(b)(1)(iii), as applicable.

a separate, area-specific FIP. In that separate, area-specific action, we would propose – and seek comment on – the application of this FIP’s requirements to new and modified true minor sources in those certain areas designated nonattainment. This possible, future extension of coverage of this FIP could provide a mechanism for streamlining permitting in nonattainment areas, protecting air quality and allowing continued oil and natural gas growth in Indian country.

This FIP fulfills the EPA’s obligation under the Federal Indian Country Minor NSR rule to issue minor source NSR pre-construction permits. The FIP provides a streamlined, alternative approach that fulfills the permitting requirement, while also ensuring air quality protection through requirements that are unambiguous and legally and practicably enforceable. The FIP approach is also transparent to the public; it is clear to the public what requirements will apply. The FIP reduces burden for sources and the Reviewing Authority and minimizes potential delays in new construction due to compliance with the minor NSR permitting obligation. True minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector are required to comply with the FIP instead of obtaining a source-specific minor source permit, unless a source chooses to opt out of the FIP and to obtain a source-specific minor NSR permit instead. In addition, with advance notice the Reviewing Authority can require a source to obtain a source-specific permit based on local or reservation-specific air quality concerns where the emissions from the source could cause or contribute to a National Ambient Air Quality Standards (NAAQS) or Prevention of Significant Deterioration (PSD) increment violation. To protect the NAAQS, the Reviewing Authority can regulate emissions from operations at the minor source not regulated by the FIP, or can require more stringent emission limitations for operations at the source than would be required by the FIP.

In this FIP, we require owners/operators of oil and natural gas production facilities and natural gas processing plants to comply with eight federal standards to reduce emissions of volatile organic compounds (VOC), nitrogen oxides (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>), particulate matter (PM, PM<sub>10</sub>, PM<sub>2.5</sub>), hydrogen sulfide (H<sub>2</sub>S), carbon monoxide (CO) and various sulfur compounds from the following units/processes in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector: compression ignition and spark ignition engines; process heaters; combustion turbines; fuel storage tanks; glycol dehydrators; completion of hydraulically fractured oil and natural gas wells; reciprocating and centrifugal compressors (except those located at well sites); pneumatic controllers; pneumatic pumps, and storage vessels; fugitive emissions from well sites; compressor stations and natural gas processing plants. The oil and natural gas FIP requires compliance with five NSPS and three national emission standards for hazardous air pollutants (NESHAP).<sup>2</sup> These regulations are listed in Table 2.

The eight regulations and the provisions of each that are included in the oil and natural gas FIP are discussed in more detail in this section. The FIP's requirements include emission standards (that contain emission limitations), monitoring, testing, recordkeeping and reporting. For purposes of this FIP, true minor sources must comply with these standards, as they currently exist or as amended in the future, except for those provisions that we specifically exclude under the FIP (unless the source opts-out of the FIP and obtains a source-specific permit or is otherwise required to obtain a source-specific permit by the Reviewing Authority). This includes the amendments to the oil and natural gas NSPS that have become part of the final oil and natural

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<sup>2</sup> Though this FIP only addresses new and modified true minor sources, it is important to note that NESHAPs not only apply to new sources but to existing sources as well.

gas NSPS as a result of the 2016 final oil and natural gas NSPS.<sup>3</sup> Sources subject to this FIP would be subject to any future changes to the eight underlying EPA standards only if they undergo a future minor modification as a true minor sources and would otherwise be subject to those future changes. To help understand the requirements of this oil and natural gas FIP, please see the 2016 final oil and natural gas NSPS and the provisions for each of the eight federal rules (*i.e.*, five NSPS and three NESHAP) identified in Table 2.<sup>4</sup> (This FIP does not change the applicability of the specified standards, nor does it relieve sources subject to the standards from complying with them, independently of this FIP.) The excluded provisions are listed below.

Also discussed in this section are features of the FIP and amendments to the Federal Indian Country Minor NSR rule that are largely necessary to facilitate implementation of the FIP.

**TABLE 2 – EIGHT FEDERAL RULES INCLUDED IN THE OIL AND NATURAL GAS FIP FOR INDIAN COUNTRY<sup>5</sup>**

40 CFR Part and Subpart	Title of Subpart	Potentially Affected Sources in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector	Location
40 CFR part 63, subpart	National Emission Standards for	Process heaters	<a href="http://www.ecfr.gov/cgi-bin/text-">http://www.ecfr.gov/cgi-bin/text-</a>

<sup>3</sup> “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed and Modified Sources,” U.S. Environmental Protection Agency, signed May 12, 2016, <http://www.epa.gov/airquality/oilandgas/actions.html>.

<sup>4</sup> The proposed FIP only included six emissions standards; in response to comments, we are adding two more, bringing the total to eight. For a discussion of this expansion and the pertinent comments, see Section IV.I.

<sup>5</sup> Three of the eight rules are NESHAPs. Our basis for requiring compliance with NESHAPs in this rule that is designed to fulfill requirements of the Federal Indian Country Minor NSR rule is to address emissions of criteria pollutants. The requirements from the NESHAPs are included because they effectively control emissions of all VOC, not just those that are also HAP. VOC is an NSR-regulated pollutant of concern in the Federal Indian Country Minor NSR rule.

40 CFR Part and Subpart	Title of Subpart	Potentially Affected Sources in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector	Location
DDDDD	Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters		<a href="http://www.ecfr.gov/cgi-bin/text-idx?SID=9f31077f895e9cb417f5386519941a47&amp;mc=true&amp;node=sp40.14.63.ddddd&amp;rgn=div6">idx?SID=9f31077f895e9cb417f5386519941a47&amp;mc=true&amp;node=sp40.14.63.ddddd&amp;rgn=div6</a>
40 CFR part 63, subpart ZZZZ <sup>6</sup>	Subpart ZZZZ— National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines	Reciprocating Internal Combustion Engines	<a href="http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr;rgn=div6;view=text;node=40%3A14.0.1.1.1;idno=40;sid=e94dcfde4a04b27290c445a56e635e58;cc=ecfr">http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr;rgn=div6;view=text;node=40%3A14.0.1.1.1;idno=40;sid=e94dcfde4a04b27290c445a56e635e58;cc=ecfr</a>
40 CFR part 60, subpart III	Standards of Performance for Stationary Compression Ignition Internal Combustion Engines	Compression Ignition Internal Combustion Engines	<a href="http://www.ecfr.gov/cgi-bin/text-idx?SID=9f31077f895e9cb417f5386519941a47&amp;mc=true&amp;node=sp40.7.60.iii&amp;rgn=div6">http://www.ecfr.gov/cgi-bin/text-idx?SID=9f31077f895e9cb417f5386519941a47&amp;mc=true&amp;node=sp40.7.60.iii&amp;rgn=div6</a>
40 CFR part 60, subpart JJJJ	Standards of Performance for Stationary Spark Ignition Internal Combustion Engines	Spark Ignition Internal Combustion Engines	<a href="http://www.ecfr.gov/cgi-bin/text-idx?SID=9f31077f895e9cb417f5386519941a47&amp;mc=true&amp;node=sp40.7.60.jjjj&amp;rgn=div6">http://www.ecfr.gov/cgi-bin/text-idx?SID=9f31077f895e9cb417f5386519941a47&amp;mc=true&amp;node=sp40.7.60.jjjj&amp;rgn=div6</a>

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<sup>6</sup> This regulation was not included in the proposed FIP but is being added to the final FIP in response to comments.

40 CFR Part and Subpart	Title of Subpart	Potentially Affected Sources in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector	Location
40 CFR part 60, subpart Kb	Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984	Fuel Storage Tanks	<a href="http://www.ecfr.gov/cgi-bin/text-idx?SID=9f31077f895e9cb417f5386519941a47&amp;mc=true&amp;node=sp40.7.60.k_0b&amp;rgn=div6">http://www.ecfr.gov/cgi-bin/text-idx?SID=9f31077f895e9cb417f5386519941a47&amp;mc=true&amp;node=sp40.7.60.k_0b&amp;rgn=div6</a>
40 CFR part 60, subpart OOOOa (final)	Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification, or Reconstruction Commenced after September 18, 2015	Storage Vessels, Pneumatic Controllers, Compressors (Reciprocating and Centrifugal), Hydraulically Fractured Oil and Natural Gas Well Completions, Pneumatic Pumps and Fugitive Emissions from Well Sites and Compressor Stations	<a href="http://www.epa.gov/airquality/oilandgas/actions.html">http://www.epa.gov/airquality/oilandgas/actions.html</a>
40 CFR part 63, subpart HH	National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities	Glycol Dehydrators	<a href="http://www.ecfr.gov/cgi-bin/text-idx?SID=9f31077f895e9cb417f5386519941a47&amp;mc=true&amp;node=sp40.11.63.hh&amp;rgn=div6">http://www.ecfr.gov/cgi-bin/text-idx?SID=9f31077f895e9cb417f5386519941a47&amp;mc=true&amp;node=sp40.11.63.hh&amp;rgn=div6</a>
40 CFR part 60, subpart KKKK <sup>7</sup>	Standards of Performance for New Stationary Combustion Turbines	Combustion Turbines	<a href="http://www.ecfr.gov/cgi-bin/text-idx?SID=4090b6cf5eea5cb67940a80906ff09a2&amp;mc=true&amp;node=sp40.7.60.kkkk&amp;rgn=div6">http://www.ecfr.gov/cgi-bin/text-idx?SID=4090b6cf5eea5cb67940a80906ff09a2&amp;mc=true&amp;node=sp40.7.60.kkkk&amp;rgn=div6</a>

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<sup>7</sup> Ibid.

### *B. Eight Federal Rules and Exclusions in FIP*

This oil and natural gas FIP requires owners/operators of new and modified existing true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector that are located in areas covered by the Federal Indian Country Minor NSR rule to comply with eight federal rules. One of the rules this FIP adopts is certain requirements of the final 40 CFR part 60, subpart OOOOa NSPS.<sup>8</sup> Requirements under the final NSPS, subpart OOOOa involve standards for oil and natural gas production and natural gas processing.<sup>9</sup>

We are requiring under this FIP that owners/operators of new true minor sources and modifications of existing true minor sources comply with all applicable requirements of the eight federal rules listed in Table 2 above in effect at the time they begin construction, except for the excluded provisions indicated below. In general, for this FIP, we are excluding specific provisions of the rules for three reasons: (1) they are not relevant (*e.g.*, equipment that is not used in this sector); (2) they would not apply to the oil and natural gas production and natural gas processing segments of the oil and natural gas sector; (3) they apply only to equipment manufacturers and not to owners/operators.

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<sup>8</sup> Finalized 40 CFR part 60, subpart OOOOa, covers the emission sources covered under existing 40 CFR part 60, subpart OOOO, as well as the added coverage of new, reconstructed and modified emission sources beyond those covered in existing 40 CFR part 60, subpart OOOO. These additional sources are hydraulically fractured oil well completions, pneumatic pumps and fugitive emissions from well sites and compressor stations.

<sup>9</sup> This list includes centrifugal compressors, reciprocating compressors, pneumatic controllers, pneumatic pumps, fugitive emissions from compressor stations, and storage vessels. It excludes sources located in the transmission and storage segment because they are not part of this FIP, which focusses on the oil and natural gas production and natural gas processing segments of the oil and natural gas sector.

For purposes of this FIP, owners/operators of true minor sources (and minor modifications at true minor sources) must comply with all of the applicable provisions of 40 CFR part 63, subpart DDDDD (NESHAP for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters), as written at the time<sup>10</sup> the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source.

For purposes of this FIP, owners/operators of true minor sources (and minor modifications at true minor sources) must comply with all of the applicable provisions of 40 CFR part 63, subpart ZZZZ (NESHAP for Stationary Reciprocating Internal Combustion Engines), as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source.

For purposes of this FIP, owners/operators of true minor sources (and minor modifications at true minor sources) must comply with all of the applicable provisions of 49 CFR part 60, subpart IIII (Standards of Performance for Stationary Compression Ignition Internal Combustion Engines), as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source, except for the following:<sup>11</sup>

- §60.4200(a)(1) – Am I subject to this subpart? (applies to manufacturers);
- §60.4200(b) – Not applicable to a stationary ignition internal combustion engine being tested at an engine test cell/stand;

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<sup>10</sup> “Written at the time” for a rule means as currently written and as may be amended in the future.

<sup>11</sup> In the proposal, we excluded the following provision that we are now not excluding because area sources that are also true minor sources may be subject to this rule: §60.4200(c) – Am I subject to this subpart? (area sources and exemptions from Title V permits).

- §60.4201 – What emission standards must I meet for non-emergency engines if I am a stationary compression ignition internal combustion engine manufacturer?;
- §60.4202 – What emission standards must I meet for emergency engines if I am a stationary compression ignition internal combustion engine manufacturer?;
- §60.4203 – How long must my engines meet the emission standards if I am a manufacturer of stationary compression ignition internal combustion engines?;
- §60.4210 – What are my compliance requirements if I am a stationary compression ignition internal combustion engine manufacturer?; and
- §60.4215 – What requirements must I meet for engines used in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands?.

For purposes of this FIP, owners/operators of true minor sources (and minor modifications at true minor sources) must comply with all of the applicable provisions of 40 CFR part 60, subpart JJJJ (Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification, or Reconstruction Commenced after September 18, 2015), as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source, except for the following:

- §60.4230(b) – Not applicable to stationary spark ignition internal combustion engines being tested at an engine test cell/stand;
- §60.4230(c) – Exemption for obtaining a Title V permit for an owner or operator of an area source subject to this part;
- §60.4231 and §60.4232 – Emission standards for manufacturers;
- §60.4238 through §60.4242 – Compliance Requirements for Manufacturers; and

- §60.4247 – Mobile source provisions that apply to manufacturers of stationary spark ignition internal combustion engines or equipment containing such engines.

For purposes of this FIP, owners/operators of true minor sources (and minor modifications at true minor sources) must comply with all of the applicable provisions of 40 CFR part 60, subpart Kb (Standards of Performance for Volatile Organic Liquid Storage Vessels), as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source, except for the following:

- §60.112b(c) – Site-specific standard for Merck & Co., Inc.'s Stonewall Plant in Elkton, Virginia; and
- §60.117b(a) and (b) – Delegation of authority.

For purposes of this FIP, owners/operators of true minor sources (and minor modifications at true minor sources) must comply with all of the applicable provisions of part 60, subpart OOOOa (Standards for New and Modified Sources in the Oil and Natural Gas Sector), as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source, except for the following:<sup>12</sup>

- §60.5365a(h)(4) – Existing sources constructed after August 23, 2011;
- §60.5370a(c) – Permit exemption;
- §60.5413a(a)(5) – Exemptions from performance testing – hazardous waste incinerator;
- §60.5420a(a)(2)(i) – Advance notification requirements for well completions; and

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<sup>12</sup> In the proposal, we excluded the following provision that we are now not excluding because we have expanded the scope of this FIP to include gas processing plants: §60.5365a(f)(3) – Equipment exemption at processing plant.

- §60.5420a(a)(2)(ii) – Advance notification requirements of well completions when subject to state regulation that requires advance notification.

For purposes of this FIP, owners/operators of true minor sources (and minor modifications at true minor sources) must comply with all of the applicable provisions of 40 CFR part 63, subpart HH (NESHAP from Oil and Natural Gas Production Facilities), as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source, except for the following:<sup>13</sup>

- §63.760(a)(2) – Facilities that process, upgrade or store hydrocarbon liquids;
- §63.760(b)(1)(ii) – Each storage vessel with the potential for flash emissions;
- §63.760(g) – Recordkeeping for major sources that overlap with other regulations for equipment leaks;
- §63.764(c)(2) – Requirements for compliance with standards for storage vessels;
- §63.766 – Storage vessel standards; and
- §63.769 – Equipment leak standards.

For purposes of this FIP, owners/operators of true minor sources (and minor modifications at true minor sources) must comply with all of the applicable provisions of 40 CFR part 60, subpart KKKK (Standards of Performance for Stationary Combustion Turbines), as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source.

### *C. Addressing Threatened and Endangered Species and Historic Properties*

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<sup>13</sup> In the proposal, we excluded the following provision that we are now not excluding because we have expanded the scope of this FIP to include gas processing plants: §63.760(b)(1)(iii) – Equipment located at natural gas processing plants. Similarly, for the same reason, we have also modified the exclusion for §63.764(c)(2) by removing “and equipment at natural gas processing plants, respectively.”

We are requiring that, prior to beginning construction, under §49.104, new true minor sources and minor modifications at existing true minor sources document that potential impacts on threatened and endangered species and historic properties (collectively referred to as “protected resources”) have been assessed. The section provides two options for documenting this assessment: (1) submittal of documentation to the EPA Regional Office (and to the relevant tribe for the area where the source is located or locating) that a site-specific assessment conducted by another federal agency has been completed for the specific oil and natural gas activity, and that the owner/operator meets all air quality-related requirements as specified within all documents/approvals obtained through that assessment (these requirements are typically implemented and enforced as conditions of an approved Surface Use Plan of Operations and/or Application for Permit to Drill);<sup>14</sup> or (2) submittal of documentation to the EPA Regional Office (and to the relevant tribe for the area where the source is located or locating) demonstrating that the source has completed the screening processes specified by the EPA for consideration of threatened and endangered species and historic properties and received a determination from the EPA stating that it has satisfactorily completed these processes.<sup>15</sup> (The processes are contained in the following document: “Procedures to Address Threatened and Endangered Species and Historic Properties for the Federal Implementation Plan for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector,” <https://www.epa.gov/tribal-air/tribal-minor-new-source-review>.)

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<sup>14</sup> This assessment will typically be conducted through the National Environmental Policy Act process and result in either a Record of Decision or a Finding of No Significant Impact document.

<sup>15</sup> This process of source documentation submittal and the EPA’s confirmation that it has satisfactorily completed the procedures must occur prior to the source’s submittal of its Part 1 Registration Form pursuant to §49.160(c)(1)(iv).

#### *D. Summary of Final Amendments to the Federal Indian Country Minor NSR Rule*

This action finalizes several amendments to the Federal Indian Country Minor NSR rule.

First, we are revising §49.151(b)(1) to add new text regarding the purpose of the Federal Minor NSR Program in Indian Country. The revised text indicates that the program satisfies the requirements of section 110(a)(2)(C) of the Clean Air Act (CAA) by establishing: (1) a pre-construction permitting program for all new and modified minor sources (minor sources) and minor modifications at major sources located in Indian reservations and other areas of Indian country over which an Indian tribe, or the EPA, has demonstrated that the tribe has jurisdiction and where there is no EPA-approved program in place, and (2) a FIP (§§49.101 to 49.105) for true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector that are located in such areas of Indian country.

Second, we are revising §49.151(c)(1) (and §49.166(c)(1)) to comport the applicability of the Federal Indian Country Minor NSR rule with a court decision that addressed the scope of the EPA's jurisdiction to implement the Federal Indian Country Minor NSR rule: *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014) (hereinafter referred to as *ODEQ v. EPA*).<sup>16</sup> We are also noting in the definition of Indian country in §49.152(d) (and §49.167) that the geographic scope of the application of the rule is as specified in §49.151(c)(1) (and §49.166(c)(1)).<sup>17</sup>

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<sup>16</sup> In that case, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Federal Indian Country Minor NSR rule and Federal Indian Country Nonattainment Major NSR rule with respect to non-reservation areas of Indian country (*i.e.*, dependent Indian communities and Indian allotments located outside of reservations) in the absence of a demonstration of tribal jurisdiction by the EPA or a tribe.

<sup>17</sup> We are also revising §49.166(c)(1) to comport the applicability of the Federal Indian Country Nonattainment Major NSR rule with the *ODEQ v. EPA* decision. The court decision has the same effect on the scope of the EPA's jurisdiction under the Federal Major New Source Review

Third, we are revising §49.151(c)(1)(iii)(A) to clarify requirements for oil and natural gas activities with respect to the registration deadline that conforms with the permitting deadline in §49.151(c)(1)(iii)(B).

Fourth, we are revising §49.151(c)(1)(iii)(B) to clarify requirements for oil and natural gas activities with respect to the permitting deadline. We are also revising the provision to provide that true minor oil and natural gas sources can either comply with the FIP in lieu of obtaining a minor NSR permit or obtain a minor source permit if the source opts out of the FIP.

Fifth, we are revising §49.151(d)(1), (2) and (4) to incorporate compliance with the FIP. We are revising §49.151(d)(1) to indicate that if you begin construction of a new source or modification that is subject to the Federal Indian Country Minor NSR Program after the applicable date<sup>18</sup> without either applying for and receiving a permit pursuant to the program or complying with the FIP for the oil and natural gas production and natural gas processing segments of the oil and natural gas sector, the owner/operator of the source will be subject to appropriate enforcement action. We are revising §49.151(d)(2) to indicate that if you do not construct or operate your new source or existing source modification in accordance with the terms of your minor NSR permit or the FIP for the oil and natural gas production and natural gas processing segments of the oil and natural gas sector, you will be subject to appropriate enforcement action. We are revising §49.151(d)(4) to indicate that issuance of a permit or compliance with the FIP for the oil and natural gas production and natural gas processing segments of the oil and natural gas sector does not relieve the owner/operator of a source of the responsibility to comply fully with applicable provisions of any EPA-approved implementation

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Program for Nonattainment Areas in Indian Country and so we are changing the applicability of the Federal Indian Country Nonattainment Major NSR rule as well.

<sup>18</sup> This date is September 2, 2014, for all true minor sources, except oil and natural gas true minor sources, and October 3, 2016, for oil and natural gas true minor sources.

plan or FIP or any other requirements under applicable law.

Sixth, we are amending §49.152 by adding a definition for “Startup of production,” which, to ensure consistency across the EPA’s regulations for the oil and natural gas sector, points directly to the term as defined under 40 CFR part 60, subpart OOOOa.

Seventh, we are revising §§49.153(a)(1)(i)(B) and (a)(1)(ii)(B) to establish that true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector are required to comply with the FIP, unless the owner/operator of a source opts-out or is otherwise required by the EPA to obtain a minor source permit. Existing §49.153(a)(1)(i)(B) requires the owner/operator of a new source to determine whether the source’s potential to emit (PTE) is equal to or greater than the corresponding minor NSR threshold. If it is, then the source is subject to the pre-construction requirements of the Federal Indian Country Minor NSR rule for that pollutant. The amendment adds a clause to the end of the paragraph stating that for sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector, if the PTE for oil and natural gas production sources is equal to or greater than the corresponding minor NSR threshold, such sources shall instead comply with the requirements of §§49.101 to 49.105, unless the owner/operator of the source opts-out of the FIP pursuant to §49.101(b)(2), or is otherwise required by the EPA to obtain a source-specific minor source permit pursuant to §49.101(b)(3).

Existing §49.153(a)(1)(ii)(B) requires the owner/operator of modified sources to determine whether the increase in allowable emissions resulting from the modification would be equal to or greater than the minor NSR threshold for the pollutant being evaluated. If it is, then the source is subject to the pre-construction requirements of the Federal Indian Country Minor NSR rule for that pollutant. The amendment adds a clause to the end of the paragraph stating that, for sources

in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector, if the PTE for such sources is equal to or greater than the corresponding minor NSR threshold, such sources must instead comply with the requirements of §§49.101 to 49.105, unless the owner/operator of the source opts-out of the FIP pursuant to §49.101(b)(2) or is otherwise required by the EPA to obtain a minor source permit pursuant to §49.101(b)(3).

Finally, we are revising §§49.160(c)(1)(ii) and (iii), adding §49.160(c)(1)(iv) and revising §49.160(c)(4). For §49.160(c)(1)(ii), we are revising the provision to clarify requirements for oil and natural gas activities with respect to the registration deadline that conforms with the permitting deadline in §49.151(c)(1)(iii)(B). For §49.160(c)(1)(iii), we are revising the language to indicate that if your true minor source is an oil and natural gas source, and you commence construction or modification of your source on or after October 3, 2016,<sup>19</sup> you must report your source's actual emissions (if available) as part of your permit application (source-specific permits), unless you are subject to the FIP. (If you are subject to the FIP, then you must register your oil and natural gas source pursuant to §49.160(c)(1)(iv).) For source-specific oil and natural gas source permittees, your permit application will be used to fulfill the registration requirements described in §49.160(c)(2).

We are adding §49.160(c)(1)(iv) to indicate that sources subject to the FIP must still satisfy the requirement to register under the Federal Indian Country Minor NSR rule by using

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<sup>19</sup> In the proposed FIP action, we had proposed to extend the registration form from the then applicable date of March 2, 2016, to October 3, 2016. We have since finalized amendments to extend the permitting compliance and registration deadlines (“Review of New Sources and Modifications in Indian Country: Extension of Permitting and Registration Deadlines for True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country,” U.S. Environmental Protection Agency, 81 FR 9109, February 24, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-02-24/pdf/2016-03623.pdf>).

the two registration forms provided by the EPA<sup>20</sup> rather than a permit application. The registration form contains the information required in §49.160(c)(2). Minor sources complying with the FIP for the oil and natural gas production and natural gas processing segments of the oil and natural gas sector, must submit the Part 1 Registration Form that contains the information in §49.160(c)(2) 30 days prior to beginning construction. The Part 2 Registration Form must be submitted within 60 days after the startup of production as defined in §49.152(d). The source must determine the potential for emissions within 30 days after startup of production. The combination of the Part 1 and Part 2 Registration Form submittals satisfies the requirements in §49.160(c)(2). The forms are submitted instead of the application form otherwise required in §49.160(c)(1)(iii). After being reviewed by the permitting authority, completed registration forms will be available online on the appropriate EPA Regional Office website.

For §49.160(c)(4), we are adding language indicating that submitting a registration form does not relieve a source of the requirement to comply with the FIP for the oil and natural gas production and natural gas processing segments of the oil and natural gas sector if the source or any physical or operational change at the source would be subject to any minor or major NSR rule.

### **III. Background**

#### *A. Federal Indian Country Minor NSR Rule*

##### 1. What is the Federal Indian Country Minor NSR rule?

On August 21, 2006, the EPA proposed the regulation: “Review of New Sources and Modifications in Indian Country” (commonly referred to as the Federal Indian Country NSR

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<sup>20</sup> The registration forms are available at: <https://www.epa.gov/tribal-air/tribal-minor-new-source-review> or from the EPA Regional Offices.

rule).<sup>21</sup> Within this proposed regulation, the EPA proposed to protect air quality in Indian country, as defined in 18 U.S.C. 1151, by establishing a FIP program to regulate, among other matters, the modification and construction of minor stationary sources consistent with the requirements of section 110(a)(2)(c) of the CAA. We refer to this part of the Federal Indian Country NSR rule as the Federal Indian Country Minor NSR rule. Under the Federal Indian Country Minor NSR rule, we proposed to fill a regulatory gap and provide a mechanism for issuing pre-construction permits for the construction of new minor sources and certain modifications of major and minor sources in Indian country. We promulgated final rules on July 1, 2011,<sup>22</sup> and the FIP became effective on August 30, 2011.

The Federal Indian Country Minor NSR rule applies to new and modified minor stationary sources and to minor modifications at existing major stationary sources located in Indian country where there is no EPA-approved program in place for all new and modified minor sources (minor sources) and minor modifications at major sources located in areas covered by the Federal Indian Country Minor NSR rule.

Tribes can elect to develop and implement their own EPA-approved program under the Tribal Authority Rule,<sup>23</sup> but they are not required to do so.<sup>24</sup> In the absence of an approved tribal

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<sup>21</sup> “Review of New Sources and Modifications in Indian Country,” U.S. Environmental Protection Agency, 71 FR 48696, August 21, 2006, <https://www.gpo.gov/fdsys/pkg/FR-2006-08-21/pdf/06-6926.pdf>.

<sup>22</sup> “Review of New Sources and Modifications in Indian Country,” U.S. Environmental Protection Agency, 76 FR 38748, July 1, 2011, <https://www.gpo.gov/fdsys/pkg/FR-2011-07-01/pdf/2011-14981.pdf>.

<sup>23</sup> To obtain eligibility to develop and implement an EPA-approved plan, under the Tribal Authority Rule a tribe must meet four requirements: (1) be a federally-recognized tribe, (2) have a functioning government, (3) have the legal authority and (4) have the capacity to run the program. For more information go to: “Indian Tribes: Air Quality Planning and Management,” U.S. Environmental Protection Agency, 63 FR 7254, February 12, 1998, <http://www.gpo.gov/fdsys/pkg/FR-1998-02-12/pdf/98-3451.pdf>.

program, the EPA implements this program. Alternatively, tribes can take delegation of the program from the EPA to assist the EPA with administration of the federal program, including acting as the Reviewing Authority for the EPA.

Beginning September 2, 2014, any new stationary sources, other than true minor sources in the oil and natural gas sector, that will emit, or will have the potential to emit, a regulated NSR pollutant in amounts that will be: (a) equal to or greater than the minor NSR thresholds established in the Federal Indian Country Minor NSR rule; and (b) less than the amount that would qualify the source as a major source or a major modification for purposes of the PSD or nonattainment major NSR programs, must apply for and obtain a minor NSR permit before beginning construction of the new source. Likewise, any existing stationary source (minor or major) must apply for and obtain a minor NSR permit before beginning construction of a physical or operational change that will increase the allowable emissions of the stationary source by more than the specified threshold amounts, if the change does not otherwise trigger the permitting requirements of the PSD or nonattainment major NSR program(s).<sup>25</sup>

Among other things, the Federal Indian Country Minor NSR rule created a framework for the EPA to streamline the issuance of pre-construction permits to true minor sources by using general permits.

2. What is a true minor source and how does it differ from a synthetic minor source?

The designation of a source for the FIP applicability is dependent on the source's PTE.

Per §52.21(b)(4), PTE means the maximum capacity of a stationary source to emit a pollutant

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<sup>24</sup> Under tribal law, tribes may also be able to establish permit fees under a tribal permitting program, as do most states.

<sup>25</sup> A source may, however, be subject to certain monitoring, recordkeeping and reporting (MRR) requirements under the major NSR programs, if the change has a reasonable possibility of resulting in a major modification. A source may be subject to both the Federal Indian Country Minor NSR rule and the reasonable possibility MRR requirements of the major NSR program(s).

under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

“True minor source,” under the Federal Indian Country Minor NSR rule means a source that emits, or has the potential to emit, regulated NSR pollutants in amounts that are less than the major source thresholds under either the PSD Program at §52.21, or the Federal Major NSR Program for Nonattainment Areas in Indian Country at §§49.166-49.173, but equal to or greater than the minor NSR thresholds in §49.153, without the need to take an enforceable restriction to reduce its PTE to such levels. A source’s PTE includes fugitive emissions, to the extent that they are quantifiable, only if the source belongs to one of the 28 source categories listed in part 51, appendix S, paragraph II.A.4(iii) or §52.21(b)(1)(iii) of 40 CFR, as applicable.

By contrast, “synthetic minor source” means a source that otherwise has the potential to emit regulated NSR pollutants in amounts that are at or above those thresholds for major sources, but that has voluntarily taken a restriction so that its PTE is less than such amounts. Such restrictions must be enforceable as a legal and practical matter.

### 3. What is a general permit?

A general permit, for purposes of this action, is a permit document that contains standardized requirements that multiple stationary sources can use. The Federal Indian Country Minor NSR rule specifies the process and requirements for using general permits to authorize construction and modifications at minor sources as a streamlined permitting approach. The EPA

may issue a general permit for categories of emissions units or stationary sources that are similar in nature, have substantially similar emissions, and would be subject to the same or substantially similar permit requirements.<sup>26</sup> “Similar in nature” refers to size, processes, and operating conditions. The purpose of a general permit is to protect air quality while simplifying the permitting process for similar minor sources. General permits offer a cost-effective means of issuing permits and provide a quicker and simpler mechanism for permitting minor sources than the source-specific permitting process.

The final Federal Indian Country Minor NSR rule contemplated issuance of general permits by the EPA Regional Offices.<sup>27</sup> While to date the general permits that we have issued have been national in scope, we will issue general permits on a different geographic scale as appropriate.<sup>28</sup>

#### *B. What is a FIP?*

In our proposed rule of September 18, 2015,<sup>29</sup> we discussed the concept of a FIP, including our authority to issue FIPs, at great length. There are no currently approved Tribal

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<sup>26</sup> “Review of New Sources and Modifications in Indian Country,” U.S. Environmental Protection Agency, 76 FR 38770, July 1, 2011, <https://www.gpo.gov/fdsys/pkg/FR-2011-07-01/pdf/2011-14981.pdf>.

<sup>27</sup> If a tribe develops an EPA-approved implementation plan, then under that plan it could also issue its own general permits.

<sup>28</sup> We may in the future issue general permits on a smaller geographic scale for a particular state or region of the country. In fact, in the first batch of streamlined permits we issued in May 2015, we indicated that EPA Region 9 will be developing a general permit or permit by rule for areas within California for gasoline dispensing facilities. In addition, once the EPA issues a general permit at the national level, Regional Offices serving as Reviewing Authority do grant coverage under nationally-issued general permits (as well as any general permits issued by that region for a smaller geographic area). See “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories,” U.S. Environmental Protection Agency, 80 FR 25068, May 1, 2015, <http://www.gpo.gov/fdsys/pkg/FR-2015-05-01/pdf/FR-2015-05-01-FrontMatter.pdf>.

<sup>29</sup> “Review of New Sources and Modifications in Indian Country: Federal Implementation Plan for Managing Air Emissions from True Minor Sources Engaged in Oil and Natural Gas

Implementation Plans (TIPs) that require the issuance of pre-construction permits designed to reduce emissions related to oil and natural gas facilities. As a result, the Federal Indian Country Minor NSR rule serves this purpose. We have concluded that the issuance of source-specific permits to sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector has the potential to overwhelm the system. We initially considered issuing a general permit or permit by rule for these sources, but ultimately concluded that the issuance of a FIP would be a more effective way of addressing the situation for a few reasons. Both a general permit and a permit by rule provide a more streamlined approach for authorizing construction and modification of a source compared to site-specific permitting. However, a general permit still requires a source to submit an application and to obtain approval of coverage from the Reviewing Authority before beginning construction, and would, thus, pose a resource burden on reviewing authorities associated with processing the potentially large volume of requests from true minor sources in the oil and natural sector for coverage. So, from those standpoints a FIP is preferable to a general permit. In comparing a permit by rule to a FIP, the EPA prefers the FIP because it provides more certainty for affected sources than the permit by rule approach and, as discussed below, does not have any significant disadvantages as compared to the permit by rule approach.<sup>30</sup>

We believe a FIP is the most appropriate way of implementing the Federal Indian Country Minor NSR rule in that it protects air quality while at the same time reducing the impact

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Production in Indian Country,” U.S. Environmental Protection Agency, 81 FR 56554, September 18, 2015, <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-21025.pdf>.

<sup>30</sup> For a further discussion comparing these three options, see: “Review of New Sources and Modifications in Indian Country: Federal Implementation Plan for Managing Air Emissions from True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country,” U.S. Environmental Protection Agency, 81 FR 56554, September 18, 2015, <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-21025.pdf>.

on the Reviewing Authority arising from the issuance of source-specific permits for these sources. (The FIP also reduces the burden on industry and other interested stakeholders.)

Therefore, in this final action, we have determined that it is necessary or appropriate to exercise our discretionary authority under sections 301(a) and 301(d)(4) of the CAA and §49.11(a) to protect air quality by promulgating a FIP applicable to true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector in areas covered by the Federal Indian Country Minor NSR rule where there is no EPA-approved program in place that contains legally and practicably enforceable requirements to control and reduce air emissions from such sources.

### *C. Oil and Natural Gas Sector*

In our proposed rule of September 18, 2015, we provided background on the oil and natural gas sector. For a more complete description of the sector, the reader should consult the Advance Notice of Proposed Rulemaking (ANPR) we issued in June 2014.<sup>31</sup>

The oil and natural gas sector includes operations involved in the extraction and production of oil and natural gas, as well as the processing, transmission and distribution of natural gas. Specifically for oil, the sector includes all operations from the well to the point of custody transfer to an oil transmission pipeline or other means of transportation to a petroleum refinery. For natural gas, the sector includes all operations from the well to the final end user. The oil and natural gas sector can generally be separated into four segments: (1) oil and natural gas production; (2) natural gas processing; (3) natural gas transmission and storage; and (4) natural gas distribution.

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<sup>31</sup> “Managing Emissions from Oil and Natural Gas Production in Indian Country,” U.S. Environmental Protection Agency, 79 FR 32502, June 5, 2014, <http://www.gpo.gov/fdsys/pkg/FR-2014-06-05/pdf/2014-12951.pdf>.

*D. EPA Actions Affecting Oil and Natural Gas Minor Sources in Areas Covered by the Federal Indian Country Minor NSR rule*

1. Extension of Permitting Compliance and Registration Deadlines

On January 14, 2014, the EPA published a proposed rule, “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country,”<sup>32</sup> that included two proposed amendments that affected true minor sources in the oil and natural gas sector. The proposed amendments were: (1) the extension of the deadline by which new true minor sources and minor modifications of existing true minor sources in the oil and natural gas sector must receive minor NSR permits prior to commencing construction, from September 2, 2014, to March 2, 2016; and (2) an adjustment to the deadline by which existing true minor sources in the oil and natural gas sector must register, from September 2, 2014, to March 2, 2016. On June 16, 2014, the EPA finalized those amendments as proposed.<sup>33</sup> On September 18, 2015, the EPA proposed to extend these dates further to October 3, 2016.<sup>34</sup>

On February 24, 2016,<sup>35</sup> we finalized three amendments to the Federal Indian Country Minor NSR rule that we had proposed at the same time as the FIP and the other amendments we

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<sup>32</sup> “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country,” U.S. Environmental Protection Agency, 79 FR 2546, January 14, 2014, <http://www.gpo.gov/fdsys/pkg/FR-2014-01-14/pdf/2013-30345.pdf>.

<sup>33</sup> For more information, see: “Review of New Sources and Modifications in Indian Country Amendments to the Registration and Permitting Deadlines for True Minor Sources,” U.S. Environmental Protection Agency, 79 FR 34231, June 16, 2014, <http://www.gpo.gov/fdsys/pkg/FR-2014-06-16/pdf/2014-14030.pdf>.

<sup>34</sup> “Review of New Sources and Modifications in Indian Country: Federal Implementation Plan for Managing Air Emissions from True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country,” U.S. Environmental Protection Agency, 81 FR 56554, September 18, 2015, <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-21025.pdf>.

<sup>35</sup> As noted above, we have already finalized amendments to extend the permitting compliance and registration deadlines (“Review of New Sources and Modifications in Indian Country: Extension of Permitting and Registration Deadlines for True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country,” U.S. Environmental Protection Agency, 81 FR 9109, February 24, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-02-24/pdf/2016-03623.pdf>).

are finalizing in this action. The amendments are:

First, we revised the deadline under §49.151(c)(1)(iii)(B) by which new and modified true minor sources in the in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector that are located in (or planning to locate in) reservation areas of Indian country or other areas of Indian country for which tribal jurisdiction has been demonstrated, must obtain a minor NSR permit prior to beginning construction. We extended the deadline from March 2, 2016, to October 3, 2016, for all true minor sources (both new and modified true minor sources)<sup>36</sup> within the oil and natural gas sector located in Indian country.

Second, we revised §49.151(c)(1)(iii)(A) to conform the registration deadline to the extended permitting deadline in §49.151(c)(1)(iii)(B).

Finally, we revised §49.160(c)(1)(ii) to conform the registration deadline to the extended permitting deadline in §49.151(c)(1)(iii)(B).

## 2. Advance Notice of Proposed Rulemaking

On June 5, 2014, the EPA published an advance notice of proposed rulemaking (ANPR).<sup>37</sup> The purpose of the ANPR was to solicit broad feedback on the most effective and efficient means of implementing the Federal Minor NSR Program in Indian Country for sources in the production segment of the oil and natural gas sector. In it, we discussed alternatives to source-specific permits for new and modified minor sources engaged in oil and natural gas production activities. The EPA requested comments on the alternative approaches and other

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<sup>36</sup> The preamble in the February 24, 2016 Federal Register notice mistakenly indicates that the extension also applies to minor modifications at major oil and natural gas sources; this was an error. The rule language itself correctly indicates that the extension applies to only new and modified true minor oil and natural gas sources.

<sup>37</sup> For more information, see: “Managing Emissions from Oil and Natural Gas Production in Indian Country,” U.S. Environmental Protection Agency, 79 FR 32502, June 5, 2014, <http://www.gpo.gov/fdsys/pkg/FR-2014-06-05/pdf/2014-12951.pdf>.

aspects of managing air emissions from oil and natural gas sources in areas covered by the Federal Indian Country Minor NSR rule.

### 3. Proposed FIP and Associated Amendments

On September 18, 2015, the EPA proposed a FIP<sup>38</sup> that would apply to new true minor sources and minor modifications at existing true minor sources in the production segment of the oil and natural gas sector that are locating or expanding areas covered by the Federal Indian Country Minor NSR rule. We said that the FIP would satisfy the minor source permitting requirement under the Federal Indian Country Minor NSR rule. The proposed FIP proposed to require compliance with emission limitations and other requirements from six federal emission standards as written at the time of construction or modification for compression ignition and spark ignition engines, compressors (reciprocating and centrifugal), fuel storage tanks, fugitive emissions from well sites and compressor stations, glycol dehydrators, hydraulically fractured oil and natural gas well completions, pneumatic controllers in production, pneumatic pumps, process heaters and storage vessels.

The EPA also proposed several amendments to the Federal Indian Country Minor NSR rule, including adding new text regarding the purpose of the program, revising the program overview provision, establishing a compliance deadline of October 3, 2016 for all true minor sources (both new and modified true minor sources) within the oil and natural gas sector, revising certain provisions to incorporate compliance with the FIP, revising the applicability provision to establish that sources are required to comply with the FIP unless they opt to obtain a source-specific permit or are otherwise required to obtain a source-specific permit, and revising

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<sup>38</sup> “Review of New Sources and Modifications in Indian Country: Federal Implementation Plan for Managing Air Emissions from True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country,” U.S. Environmental Protection Agency, 81 FR 56554, September 18, 2015, <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-21025.pdf>.

the source registration provision. Also, we proposed to revise the definition of Indian country for purposes of the rule to comport with a court decision that addressed the scope of the EPA's jurisdiction to implement the Federal Indian Country Minor NSR rule: *ODEQ v. EPA*. This court decision also affects the scope of the EPA's jurisdiction under the Federal Nonattainment Major NSR Program in Indian Country so we proposed changing the definition under the Federal Indian Country Nonattainment Major NSR rule as well.

#### 4. Other Oil and Natural Gas Actions

On September 18, 2015, the EPA proposed updates to the NSPS for the oil and natural gas sector.<sup>39</sup> The proposed FIP would adopt the standards from six federal rules, including the oil and natural gas NSPS. Changes to these rules would affect requirements in the FIP because the proposed FIP would adopt all or parts of these six federal emission standards, including future amendments. In addition, on September 18, 2015, the EPA proposed an oil and natural gas source determination rule.<sup>40</sup> This action is also connected to this FIP as it would affect how oil and natural gas sources are defined for the purpose of major/minor source determinations.

### **IV. Summary of Final Action, Comments and Responses**

#### *A. Overview of Changes to the FIP and Federal Indian Country Minor NSR Rule*

The purpose of this section is to provide an overview of key aspects of our September 2015 proposed rule, our final action, and relevant comments and our responses. The EPA received numerous thoughtful and helpful comments on the proposal. After careful consideration of this input, we are finalizing the FIP with some changes. Overall, here are what we consider to

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<sup>39</sup> "Oil and Natural Gas Sector: Emission Standards for New and Modified Sources," U.S. Environmental Protection Agency, 80 FR 56593, September 18, 2015, <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-21023.pdf>.

<sup>40</sup> "Source Determination for Certain Emission Units in the Oil and Natural Gas Sector," U.S. Environmental Protection Agency, 80 FR 56579, September 18, 2015, <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-21026.pdf>.

be the most significant changes we are making in this final rule. These changes are discussed in greater detail below (except as noted):

- 1) Amending the Federal Indian Country Minor NSR rule in several ways, including:
  - a. Amending §§49.152 and 49.160 of the Federal Indian Country Minor NSR rule to provide for a two-part source registration process, including adding a definition to §49.152(d) for “Startup of production” that was not proposed but which is necessary to accommodate the modified registration process;
  - b. Amending §§49.151 and 49.160 of the Federal Indian Country Minor NSR rule to clarify how these provisions relate to the FIP, including adjusting references to the oil and natural gas sector so that the provisions being amended function properly with respect to that sector and the final FIP and to reflect the expanded source scope of the final FIP;
  - c. Amending §§49.151 and 49.152 (and §§49.166 and 49.167) to update the applicability of the Federal Indian Country Minor NSR rule (and Federal Indian Country Nonattainment Major NSR rule) to comport with a court decision that addressed the scope of the EPA’s jurisdiction to implement the Federal Indian Country Minor NSR rule: ODEQ v. EPA; and
  - d. Amending §49.160 to clarify that, after October 3, 2016, sources engaged in oil and natural gas activity not subject to the FIP will use their source-specific permit applications for registration (instead of a registration form);
- 2) Modifying the draft source registration form that we provided for comment at proposal to:

- a. Provide for a two-part source registration process, including making clear that the Part 1 Registration Form is due 30 days prior to beginning construction and that the Part 2 Registration Form is due within 60 days after the startup of production (as defined in §49.152(d));<sup>41</sup>
- b. Clarify what emissions-related information is required for submittal as part of the Part 2 Form registration process;
- c. Clarify that fuel usage and production rates should be provided on an annual basis;
- d. Removed the request for emissions and other information for hazardous air pollutants, which are not regulated by the Federal Indian Country Minor NSR rule;
- e. Provide a Confidential Business Information disclaimer;
- f. Clarify how sources should provide documentation that they are meeting the threatened and endangered species and historic properties criteria under §49.104 along with the registration form; and
- g. Condense and reorganize the request for emissions information to make it clearer to the source;

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<sup>41</sup> We also make it clear in the Part 2 Registration Form that sources must determine their potential emissions within 30 days after startup of production.

- 3) Providing guidance that we intend to potentially apply this national FIP's requirements as appropriate to nonattainment areas where the EPA has established a separate, area-specific FIP;
- 4) Changing the FIP as proposed in several areas:
  - a. Modifying §49.101 to change "oil and natural gas production facility" to "oil and natural gas source" and also clearly linking the modified wording to the reworded definition of oil and natural gas source in §49.102;
  - b. Replacing the definition of oil and natural gas production facility in §49.102 with oil and natural gas source, which also includes natural gas processing, but excludes natural gas transmission and distribution;
  - c. Expanding the scope of the FIP by revising §§49.101 and 49.102 to cover non-major gas processing plants and the definition of oil and natural gas source;
  - d. Adding a subparagraph to §49.101 to make it clear that the FIP does not apply to minor modifications at major sources;
  - e. Rewording §49.104 to specify the information that is acceptable to document that a source has addressed threatened and endangered species and historic properties;
  - f. Expanding §49.104 to add the process the Reviewing Authority will use to determine whether the screening procedures provided to the EPA have been satisfactorily completed to address threatened and endangered species and historic properties;
  - g. Expanding §49.105 to add two federal standards to the FIP's requirements:

- i. 40 CFR part 63, subpart ZZZZ – NESHAP for Stationary Reciprocating Internal Combustion Engines; and
  - ii. 40 CFR part 60, subpart KKKK – Standards of Performance for New Stationary Combustion Turbines;
- h. Adjusting exclusions from this FIP for the following two standards under §49.105 to reflect the expansion of the scope of the FIP to natural gas processing plants (not discussed below – instead, see Section II.B.):
- i. 40 CFR part 60, subpart IIII – Standards of Performance for Stationary Compression Ignition Internal Combustion Engines;
  - ii. 40 CFR part 60, subpart OOOOa – Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification, or Reconstruction Commenced after September 18, 2015; and
  - iii. 40 CFR part 63, subpart HH – NESHAP from Oil and Natural Gas Production Facilities; and
- i. Clarifying under §49.105 that the FIP applies not just to true minor sources but to minor modifications at true minor sources as well.

*B. Proposed Amendments to the Federal Indian Country Minor NSR Rule*

1. Proposed Rule

The EPA proposed amendments to the Federal Indian Country Minor NSR rule, including adding new text regarding the purpose of the program, revising the program overview

provision, establishing a compliance deadline of October 3, 2016 for all true minor sources (both new and modified true minor sources) within the oil and natural gas sector, revising certain provisions to incorporate compliance with the FIP, revising the applicability provision to establish that sources are required to comply with the FIP unless they opt to obtain a source-specific permit or are otherwise required to obtain a source-specific permit, and revising the source registration provision. Also, we proposed to revise the definition of Indian country for purposes of the rule to comport with a court decision that addressed the scope of the EPA's jurisdiction to implement the Federal Indian Country Minor NSR rule: *ODEQ v. EPA*. This court decision also affects the scope of the EPA's jurisdiction under the Federal Major NSR Program in Indian Country, so we proposed to change the definition under the Federal Indian Country Nonattainment Major NSR rule as well.

## 2. Final Action

As mentioned in Section III.D., we have already finalized three amendments to extend the permitting compliance and registration deadlines for true minor sources in the oil and natural gas sector.<sup>42</sup> In today's action, we are finalizing the remainder of the amendments as described in Section II.D., as proposed, with five exceptions:

First, we are amending §§49.151, 49.153 and 49.160 of the Federal Indian Country Minor NSR rule to clarify how these provisions relate to the FIP, including adjusting references to the oil and natural gas sector so that the provisions being amended function properly with respect to that sector and the final FIP and to reflect the expanded source scope of the final FIP.

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<sup>42</sup> "Review of New Sources and Modifications in Indian Country: Extension of Permitting and Registration Deadlines for True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country," U.S. Environmental Protection Agency, 81 FR 9109, February 24, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-02-24/pdf/2016-03623.pdf>.

Second, we are revising §49.160(c)(1)(iii) and (iv) as proposed by adding further revisions to provide for a modified, two-part registration process under the Federal Indian Country Minor NSR rule for sources covered by this FIP. We are also modifying the oil and natural gas registration form as made available at proposal by splitting the form into two forms to provide for the two-part source registration process, requiring emissions information from sources after production is started. The changes are described above in Section IV.A.

Third, associated with that change, we are adding a definition to §49.152(d) for “Startup of production” that was not proposed but which is necessary to accommodate the modified registration process.

Fourth, we are amending §49.160(c)(1)(iii) to clarify that, after October 3, 2016, sources engaged in oil and natural gas activity not subject to the FIP will use their source-specific permit applications for registration (instead of a registration form).

Finally, we are amending §§49.151(c)(1) and 49.152(d) (and §§49.166(c)(1) and 49.167) to update the applicability of the Federal Indian Country Minor NSR rule and Federal Indian Country Nonattainment Major NSR rule, respectively, to comport with a court decision that addressed the scope of the EPA’s jurisdiction to implement the Federal Indian Country Minor NSR rule: *ODEQ v. EPA*.

### 3. Comments and Responses

The following discussion contains comments on the proposed amendments to the Federal Indian Minor NSR rule and our responses. The comments and responses are also addressed in Section 1.0 of the Response to Comment (RTC) Document.

#### (a) Pre-construction Permit Requirements

Comment #1: Five commenters expressed concern about the proposed pre-construction requirements and the difficulty in determining PTE before a well starts production due to the unpredictable nature of well development and productivity. Two commenters stated the requirement is burdensome and would lead to inaccurate data due to the unpredictable nature of oil and natural gas production.

Several commenters thought that pre-construction estimated emissions would be of limited value to the EPA and would create confusion for the public once released or used in modeling the effects of oil and natural gas production. One commenter noted that the pre-construction requirements limit the usefulness of the proposed FIP because owners/operators will not have definitive source-specific information before production begins.

One commenter requested that if the EPA were to retain the pre-construction requirements, then the EPA should provide a mechanism for revising emissions estimates after actual emissions are known.

Several commenters pointed to rules or state permitting programs that require post-construction information to be submitted, rather than pre-construction. For example, the Federal Indian Country Minor NSR rule requires operators to submit registration forms within 90 days of initial production. Several commenters pointed to state requirements, which acknowledge the unique challenges of permitting well production sites. Wyoming allows operation prior to permitting as long as the operator satisfies certain emission control requirements. In Colorado, emissions information is not required to be submitted until after drilling, workovers, completions, and testing are completed. North Dakota also has owners/operators submit the oil and natural gas well registration form within 90 days of completion of a well. Commenters believe that providing information after the well begins production will conserve EPA resources

and provide the EPA with more accurate information, as well as align permitting processes on Indian lands with state permitting processes on adjacent lands.

As an alternative to pre-construction information, two commenters suggested that the EPA allow owners/operators to provide actual emissions data based on the first 30 days of production, due to the EPA 90 days after startup, similar to 40 CFR part 60, subpart OOOO.

As another alternative to providing pre-construction information, one commenter suggested a two-part approach:

Part 1: 30 days prior to the anticipated first date of production, submit owner/operator information, well location description, production equipment anticipated to be installed, and the anticipated first date of production.

Part 2: Within 60 days after first date of production, supply information on emissions and production rates as part of a notification process. The commenter requested 60 days as that date is used as part of the mineral rights royalty notification processes under the Department of Interior.

The same commenter submitted revisions to the draft registration form that we made available with the September 2015 proposed rule. The commenter asked the EPA to remove actual emissions data and to require operators to submit projected allowable emissions from the equipment, based on the initial production. The commenter stated that if the EPA needs to quantify actual emissions, the information will only be accurate through an emission inventory, versus using data submitted with the permit application, due to the actual emissions decreasing over time.

Response #1: The EPA has revised the Federal Indian Country Minor NSR rule and the registration form to incorporate a two-step registration process for oil and natural gas true minor

sources locating or expanding in Indian country, as suggested by commenters. Generally, we prefer to receive registration forms complete with source and emissions information prior to construction, as we proposed and as required in §49.160 of the Federal Indian Country Minor NSR rule for other source categories. However, we recognize the unique nature of the oil and natural gas industry and believe in this instance a two-part registration process is warranted.

The Part 1 Registration Form will be due 30 days before the source begins construction. The Part 2 Registration Form will be due within 60 days after the “startup of production,” in accordance with the subpart OOOOa definition of startup of production. (For the Part 2 Registration Form, we are adding the definition for “Startup of production” to §49.152(d), which points directly to the term as defined under 40 CFR part 60, subpart OOOOa.) Sources must determine the potential for emissions within 30 days after startup of production, information which is required as part of the Part 2 Registration Form. The EPA has selected 60 days as the submittal date for the Part 2 Registration Form – the date requested by the commenter – as that timeframe will allow sufficient time for sources to assemble the emissions information required as part of the the Part 2 Registration Form and to submit it to the EPA.

The control requirements from the eight NSPS and NESHAP standards in this FIP will apply during production (the six standards included in the original proposal and two standards being added in the final rule). The owner/operator must account for emissions from startup of production as required in the Part 2 Registration Form submission. We disagree with the commenter about the type of emissions information that must be submitted with the registration form. Pursuant to §49.160 of the Federal Indian Country Minor NSR rule, sources are required to submit allowable and actual emissions, not just allowable, as requested by the commenter. The owner/operator should calculate an estimate of the actual annual emissions

using estimated operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the upcoming consecutive 12 months.

The source, as documented by an owners/operators should use the definition in EPA's rulemaking on "Source Determination for Certain Emission Units in the Oil and Natural Gas Sector"<sup>43</sup> in defining each source on its registration form.

(b) The definition of Indian Country in §49.152

Comment #2: Several commenters expressed concern about the EPA's proposed definition change for the term Indian country as used in the rule. Two commenters disagreed with the fourth paragraph added to the definition of Indian country and noted that the EPA should not be vested with power to make determinations or demonstrations about tribal jurisdiction and that any such demonstration of jurisdiction should be left to the sovereign whose jurisdiction is being asserted. The commenters assert that although the EPA has indicated that this should only impact trust lands in Oklahoma, tribal allotments would also be impacted by the change in definition. One commenter recommended that the definition of Indian country include Indian reservation lands for which a TIP approved by the EPA pursuant to 40 CFR part 51 is not in effect, and over which an Indian tribe has demonstrated that it has jurisdiction.

One commenter stated that the EPA should be cautious of how the rule appears. By restating the definition of Indian country in the rule, it appears that the EPA is defining the term. Of course, the EPA cannot change the definition of Indian country through the proposed rule. The term Indian country was defined by Congress in statute. The EPA's regulations cannot

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<sup>43</sup> "Source Determination for Certain Emission Units in the Oil and Natural Gas Sector," signed May 12, 2016, <http://www.epa.gov/airquality/oilandgas/actions/html>.

change or modify this definition. The commenter suggested that the EPA should make it clear that Indian country is already statutorily defined and simply cross reference the relevant statute.

The commenter further states that the proposed and final rules should not state that the EPA is "revising the definition of Indian Country." The commenter states that the EPA is doing no such thing. As a result of *ODEQ v. EPA*, the EPA is required to consider how it will apply the proposed rule in certain portions of Indian country, but the EPA is not revising the definition of Indian country. In other words, *ODEQ v. EPA* is not about the definition of Indian country, but rather the process the EPA is using to apply the proposed rule to certain parts of Indian country. The commenter recommends that the EPA remove all references to revised definitions of Indian country from the proposed rule. Rather than purporting to revise the definition of Indian country, the commenter suggests that the EPA include a new section discussing the applicability of the proposed rule.

Response #2: Regarding the commenters who expressed concern about the EPA's proposed changes to the sections of the rule that define Indian country, the EPA acknowledges the potential for confusion given that Indian country is a statutorily defined term at 18 U.S.C. 1151. We note that the EPA did not intend to, nor could we, change or in any way affect the statutory definition at 18 U.S.C. 1151 or the manner in which that statute is interpreted and applied for other purposes. Rather, we intended simply to address a 2014 decision of the D.C. Circuit (*ODEQ v. EPA*) that addressed the scope within Indian country of the EPA's authority to administer the Federal Indian Country Minor NSR rule – and, thus, the FIP in this action – and the Federal Indian Country Nonattainment Major NSR rule.<sup>44</sup> In that decision, the court invalidated the rules as applied to non-reservation areas of Indian country, unless the EPA or a

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<sup>44</sup> *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014).

tribe demonstrates that a tribe has jurisdiction over such a non-reservation area. The court did not disturb application of the rules to Indian reservations. Our intent was, thus, not to alter the applicable definition of Indian country, but instead to address the scope of applicability of the rules within Indian country in light of the D.C. Circuit decision. To avoid potential confusion, we have altered the manner in which we are addressing this court ruling.

In the final rule, we have left the Indian country definitions largely intact and simply provided cross-references within the definitional sections of both rules – §§49.152 and 49.167 – stating that the geographic scope of the rules’ applicability will be as specified in the program overview sections of both rules – §§49.151 and 49.166. We have then addressed the limitation imposed by the court ruling (*i.e.*, that the rules will only apply in non-reservation areas of Indian country where there is a demonstration by a tribe or the EPA acting on behalf of a tribe of tribal jurisdiction over such area) in the program overview sections, which are more appropriate provisions in which to address this issue. These changes do not alter the substance of the revisions the EPA had proposed to address the *ODEQ v. EPA* ruling. Instead, they simply move the needed revisions to more appropriate locations in the rules, and, thus, avoid confusion about the applicable definition of Indian country as a general matter. Further, the EPA notes that the regulatory revisions finalized today to address the *ODEQ v. EPA* decision apply solely to the Federal Indian Country Minor NSR rule – and, thus, the FIP in today’s action – and the Federal Indian Country Nonattainment Major NSR rule. They are not intended to apply to any other matter outside the scope of these rules.

In addition, while the EPA acknowledges the commenter’s statement that an Indian tribe’s jurisdiction should not need to be demonstrated to exist, the EPA notes that, consistent with the *ODEQ v. EPA* decision, a demonstration of tribal jurisdiction (either by the EPA or by

an Indian tribe) would need to be made to support application of the Federal Indian Country Minor NSR rule in non-reservation areas of Indian country.

The EPA notes that the distinction between reservations and other areas that may be under an Indian tribe's jurisdiction (*i.e.*, non-reservation areas of Indian country) is derived from a CAA tribal-related provision (CAA section 301(d)(2)(B)). This provision includes a delegation of authority from Congress to eligible Indian tribes over their reservations, but expressly distinguishes other areas within a tribe's jurisdiction. For this reason, tribes seeking to administer their own CAA-regulatory programs would need to demonstrate their jurisdiction over any non-reservation area included in their application.<sup>45</sup> By virtue of the *ODEQ v. EPA* decision, such a demonstration of tribal jurisdiction must also be made (by a tribe or by the EPA) to support application of the Federal Indian Country Minor NSR rule in such non-reservation areas of Indian country.

Comment #3: Further, concerning the definition of Indian country, one commenter disagreed with the EPA's distinction between "on-reservation" and "off-reservation" Indian country and contended that tribes exercise jurisdiction over these lands through existing tribal sovereignty and in accordance with numerous federal programs that affirm tribal authorities and tribal self-determination over these lands and areas. The commenter contends that the distinction was not intended in the CAA and is not consistent with how tribes exercise authority over their lands. Nonetheless, the commenter generally supports the fourth paragraph added to the definition of Indian country, stating that the rule would apply to "all Indian reservation lands where no EPA-approved program is in place and all other areas of Indian country where no EPA-

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<sup>45</sup> For more information go to: "Indian Tribes: Air Quality Planning and Management," U.S. Environmental Protection Agency, 63 FR 7254, February 12, 1998, <http://www.gpo.gov/fdsys/pkg/FR-1998-02-12/pdf/98-3451.pdf>.

approved program is in place and over which an Indian tribe, or the EPA, has demonstrated that a tribe has jurisdiction.” However, the commenter does not believe that a tribe’s jurisdiction has to be “demonstrated” to exist.

Response #3: Regarding the comment on the EPA’s distinction between “on-reservation” and “off-reservation” Indian country, the EPA disagrees with the suggested changes. The EPA’s revisions reflect the holding in *ODEQ v. EPA*. The decision acknowledges that either a tribe or the EPA can make such a demonstration of tribal jurisdiction over a non-reservation area of Indian country. Although the EPA is not typically called upon to assess tribal jurisdiction in the context of implementing a federal rule, it is appropriate for the EPA to make such determinations where required. The EPA has experience reviewing tribal jurisdiction in other contexts, most notably where tribes apply to administer regulatory programs under the EPA’s statutes. In light of the *ODEQ v. EPA* decision, such jurisdictional assessments are also relevant for implementing federal permitting under the Federal Indian Country Minor NSR rule in non-reservation areas of Indian country.

Comment #4: One commenter acknowledged the EPA’s intent in the proposed rulemaking to protect the reservation airsheds, while allowing for streamlined permitting of minor oil and natural gas sources, and requested that the EPA achieve this goal by developing and implementing the rule in a manner that promotes tribal sovereignty, authority, self-determination and a tribe’s ability to develop resources. The commenter emphasized that the EPA should develop the proposed rule in a manner that recognizes that Indian lands are not public lands.

Another commenter noted that the EPA appears in the proposed rule to understand the concern for the oil and natural gas industry to be on tribal lands without tribal authorities having

the ability to properly regulate the industry on their own. The commenter encouraged the EPA to recognize this potential situation while maintaining the tribe's choice on who to do business with, as well as retaining the tribe's relative autonomy to create their own pollution plans. The commenter acknowledged that the EPA's intentions in the proposed rule would likely provide better protections than any TIP.

Response #4: The EPA acknowledges that Indian country lands are not public lands and has solicited tribal feedback on the development of a streamlined permitting process that allows for tribes to develop resources on their lands. In doing so, the EPA seeks to protect air quality in Indian country, while also recognizing the importance of oil and natural gas activity as an important source of revenue for tribes, and has developed the FIP accordingly. Moreover, the development of this FIP does not preclude tribes from requesting to assist the EPA with administration of the FIP through a delegation agreement or from developing TIPs, which could include different or additional pollution control plans that tribes feel are needed to preserve air quality given the unique characteristics of their lands. No changes will be made in response to this comment.

### *C. Implementation-Related Issues*

#### 1. Proposed Rule

In the proposed rule, we discussed the effect of the proposed FIP on other Indian Country FIPs.

The FIP proposed in September 2015 was intended to fulfill the requirements of the Federal Indian Country Minor NSR rule to address the air quality impacts of new and modified true minor sources and to impose appropriate air pollution control requirements that protect the NAAQS, while providing an alternative to obtaining source-specific pre-construction approval

through the NSR pre-construction permitting process. The proposed FIP was not intended to replace any other FIPs promulgated under the CAA for oil and natural gas sector sources in areas covered by the Federal Indian Country Minor NSR rule. Under the proposed FIP, an oil and natural gas source located in areas covered by the Federal Indian Country Minor NSR rule that is subject to another CAA FIP would have to continue to comply with that FIP and also have to comply with the proposed FIP. Generally, in cases where emission sources are already subject to a CAA FIP with more stringent requirements than those established for equivalent emission sources under the proposed FIP, those sources would be subject to the requirements of both FIPs, but those more stringent requirements supersede the requirements in this proposed FIP and compliance with the more stringent requirements would constitute compliance with both FIPs relative to those particular requirements. Conversely, if requirements for certain emission sources in the proposed FIP are more stringent than requirements for equivalent emission sources in another applicable CAA FIP, then those sources would be subject to the requirements of both FIPs, but the requirements in the proposed FIP supersede the requirements for equivalent emission sources in the other FIP and compliance with the more stringent requirements in the FIP would constitute compliance with the requirements of both FIPs relative to those particular requirements. In the case of the FIP for Oil and Natural Gas Well Production Facilities on the Fort Berthold Indian Reservation (FBIR FIP)<sup>46</sup> at §§49.4161-49.4168,<sup>47</sup> we defer to less stringent

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<sup>46</sup> In the proposed September 2015 FIP, we referred to “other FIPs” rather than just the FBIR FIP. Upon further review, we realize that the FBIR FIP is the only case of a FIP that illustrates an exception to the general concept.

<sup>47</sup> “Approval and Promulgation of Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa, and Arikara Nation), North Dakota,” U.S. Environmental Protection Agency, 78 FR 17836, March 22, 2013, <https://www.gpo.gov/fdsys/pkg/FR-2013-03-22/pdf/2013-05666.pdf>.

requirements in other federal CAA rules to avoid duplicative requirements. The FBIR FIP provides an exception to the general concept that the more stringent set of requirements govern.

In the September 2015 proposed FIP, we specifically addressed how it related to the FBIR FIP. The FBIR FIP is not a permitting program and does not exempt facilities from any federal CAA permitting requirements, which includes compliance with this FIP. Similarly, the proposed oil and natural gas FIP would not exempt facilities from complying with the FBIR FIP. The EPA recognizes that the VOC control requirements under the FBIR FIP are in some instances more stringent than those in the proposed FIP. For example, in the proposed FIP, we indicated that a new or modified oil and natural gas well production facility that is subject to the FBIR FIP – and also subject to the proposed FIP – would still need to comply with the FBIR FIP for casing head natural gas emissions and heater treater produced natural gas emissions. Requirements for these units were not contained in the proposed FIP.

## 2. Final Action

In this final action we are not changing our proposal in terms of how this FIP relates to other Indian country FIPs. However, there were several comments in this area that we are responding to below that relate to the proposal.

## 3. Comments and Responses

The following discussion contains comments on issues related to the FIP and our responses. The comments and responses are also addressed in Section 2.0 of the RTC Document.

Comment #5: One commenter requested that the EPA clarify how numerical VOC emission limitations will be applied through compliance with 40 CFR part 63, subpart HH, when the subpart has numerous compliance options that often do not contain specific numerical emission limitations. The commenter noted that the proposed FIP would create enforceable VOC

emission reductions for glycol dehydrators through the requirements of 40 CFR part 63, subpart HH, using HAPs as a surrogate for VOCs.

Response #5: The FIP does not impose a separate VOC limit for glycol dehydration units that are subject to 40 CFR part 63, subpart HH (*i.e.*, independently of the FIP, the source will have to comply with the HAP control requirements, which also effectively control VOC and may or may not involve numerical emissions limitations). While the EPA recognizes that 40 CFR part 63, subpart HH, specifies several different control requirements depending on several factors (*e.g.*, major/area source status of the facility, actual natural gas throughput of the dehydrators, urban/rural location), any dehydrators subject to those standards will satisfy compliance with the FIP for those units by fully complying with the MACT standard. We have not made any changes in response to this comment.

Comment #6: One commenter stated that the proposed oil and natural gas FIP falls short in meeting several core objectives for permitting oil and natural gas sector facilities. The commenter stated that the foundation of the proposed FIP is still based on site-specific reviews, which by definition will inhibit its streamlining capabilities, and that this poses an obstacle to permitting. This could place future oil and natural gas development in Indian country at a disadvantage compared to more streamlined options available under state jurisdictions.

Response #6: The EPA disagrees that the foundation of the proposed FIP is based on source-specific permit reviews. While source-specific permits remain an option available to sources that do not wish to comply with the FIP, apart from addressing threatened and endangered species and historic properties, those sources that do wish to comply with the FIP need only register in accordance with the provisions of §49.160(c)(1)(iv). This streamlined

permitting mechanism allows for sources to begin construction 30 days after submittal of the Part 1 registration information. We have not made any changes in response to this comment.

Comment #7: One commenter requested that the EPA clarify how the proposed FIP will provide practical enforceability when several of the six rules included in the proposed FIP, such as 40 CFR part 63, subpart HH, do not contain practically enforceable requirements. The commenter noted that, because several of the standards do not contain practically enforceable requirements, sources that wish to restrict their PTE will be forced to obtain a source-specific permit. The commenter stated that the proposed FIP would fail to achieve the objective of providing sources a streamlined approach for obtaining legal and practically enforceable emission limitations.

Response #7: A source has to be a true minor source to use the FIP. The FIP is not intended to provide a mechanism for establishing synthetic minor sources. We have not made any changes in response to this comment.

Comment #8: One commenter (a state agency) noted that North Dakota regulations for natural gas capture have been enforced on the Fort Berthold Indian Reservation under multiple tax and regulatory agreements between the state and tribes. The commenter stated that the proposed rule will increase the number and complexity of conflicts with North Dakota regulations and the existing negotiated agreements. One commenter stated that the proposed rule could have significant impacts on their ability to administer their oil and natural gas regulatory program, and recommended that the proposed rule recognize and give deference to existing state and tribal agreements for natural gas permitting and regulation.

Response #8: The FIP adopted through this final action only applies to sources locating in Indian country and does not impose any requirements on sources located on state lands. The EPA

also notes that the State of North Dakota has not been approved by the EPA to administer any program under the federal CAA on the Fort Berthold Indian Reservation. The EPA notes that there are no new requirements included as part of the FIP, only those rules already applicable to oil and natural gas sources under existing federal NSPS and NESHAP rules are included. We have not made any changes in response to this comment.

Comment #9: One commenter stated that the Federal Indian Country Minor NSR rule and the FIP should provide industry more flexible compliance options that are cost effective without compromising significant emissions reductions. The commenter suggested that the Federal Indian Country Minor NSR rule and the FIP should include an early action program, noting that, considering the uncertainty surrounding ozone standard designations in the Uinta Basin, an early action program would remove the risk for industry investments in emission reductions by ensuring appropriate credit for those investments. The commenter also suggested that the Federal Indian Country Minor NSR rule and the FIP should include an option for portfolio-wide emissions compliance, noting that a portfolio-wide approach would provide many operators the needed flexibility to more efficiently and cost-effectively achieve system-wide emission reductions that meet regulatory goals.

Response #9: Ozone Advance is the early action program that the EPA is offering to promote local efforts aimed at reducing ozone.<sup>48</sup> The program, which began in 2012, is available to states, local governments, and tribes that are interested in working proactively and collaboratively with the EPA to select and implement measures and programs that may reduce ozone air quality levels in attainment areas. Other stakeholders, such as industry, are encouraged to become actively involved in these efforts. Ozone Advance will continue to be available in

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<sup>48</sup> For more information, go to: [www.epa.gov/advance](http://www.epa.gov/advance).

conjunction with the Federal Indian Country Minor NSR rule, this FIP and any future, final FIPs developed for specific areas. As appropriate, such FIPs could consider portfolio-wide options allowing operators to reduce their emissions across entire tribal areas. We have not made any changes in response to this comment at this time.

Concerning “credit”, the EPA cannot pre-approve State Implementation Plan (SIP)/TIP “credit” for emission reductions in areas that are not the subject of a nonattainment designation. However, early actions to improve air quality can both serve to prevent areas from becoming nonattainment and better position an area to comply with the requirements associated with an eventual nonattainment designation. For example, early emission reduction actions could potentially receive “credit” in future SIPs/TIPs if an area is eventually designated nonattainment with a Moderate or higher classification, either in terms of reflecting a lower baseline from which additional reductions are needed to meet reasonable further progress goals or, if they occur after the baseline year, as a measure that shows progress toward attainment.

If emission reductions occur after the baseline year, the area may take credit for those reductions subject to CAA requirements, such as demonstrating that the reductions are surplus, quantifiable, enforceable, and permanent. The state or tribe would also need to meet any other relevant requirement in CAA section 110 and/or section 172, and if the measure is voluntary, the state or tribe would need to make an enforceable commitment to ensure that the estimated emission reductions are achieved. Credit earned in this manner means that fewer additional emission reductions will be needed to meet reasonable further progress goals and to demonstrate attainment, thereby bringing the finish line of attainment with the ozone NAAQS closer.

#### *D. Requirements Relating to Threatened or Endangered Species and Historic Properties*

##### 1. Proposed Rule

In the proposed rule, we proposed requirements for true minor oil and natural gas sources relating to threatened and endangered species and historic properties. The Endangered Species Act (ESA) requires federal agencies to ensure, in consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (the Services), that any action they authorize, fund, or carry out will not likely jeopardize the continued existence of any listed threatened and endangered species, or destroy or adversely modify the designated critical habitat of such species. The National Historic Preservation Act (NHPA) requires federal agencies to take into account the effects of their undertakings on historic properties – *i.e.*, properties that are either listed on, or eligible for listing on, the National Register of Historic Places – and to provide the Advisory Council on Historic Preservation (the Council) a reasonable opportunity to comment on such undertakings.

In developing the proposed FIP, EPA considered issues regarding listed species and historic properties and included provisions designed to ensure appropriate review of potential impacts on these protected resources. Although the individual coverage of each source that would operate under the FIP would not constitute a separate triggering action for ESA or NHPA purposes, we believe that the proposed FIP's procedures relating to listed threatened and endangered species and historic properties provide an appropriate site-specific means of addressing issues regarding potential impacts on those resources in connection with issuance of the FIP and, thus, in connection with sources that could be covered under the FIP. We provided two options, as follows, for sources to meet the proposed FIP's requirements regarding these resources:

- 1) For sources for which a prior ESA and/or NHPA assessment has been completed, in the proposed FIP we indicated that, where Federal Land Managers (FLMs) have concluded ESA

and/or NHPA compliance as part of the process in which an oil and natural gas operator makes an Application to Drill (APD) in connection with a particular source – whether as part of the FLM’s NEPA review or otherwise – the source would be able to rely on that prior review for compliance with the proposed FIP’s listed species (if prior ESA compliance has occurred) and historic properties (if prior NHPA compliance has occurred) requirements. No further assessment of impacts on these resources would be required by the proposed FIP as any such assessment would be duplicative of the prior work conducted by the FLM(s). We would require that documentation of completion of the APD process be provided before the owner/operator begins construction under the FIP.

2) For sources for which no prior ESA and/or NHPA assessment has been completed, in the proposed FIP we indicated that those facilities must first complete screening procedures relevant to the particular resource that have not previously been reviewed before the owner/operator can begin construction under the proposed FIP. These screening procedures are similar to those currently in place for existing general permits and permits by rule in areas covered by the Federal Indian Country Minor NSR rule that must be completed before the owner/operator can begin construction under those general permits and permits by rule.<sup>49</sup> We stated that the review of the screening procedures would be similar to our procedure for general permits and permits by rule, for the proposed FIP, where once an owner/operator completes the screening procedures,<sup>50</sup> they would submit documentation to the EPA Regional Office and receive written verification of completion before beginning construction. As we explained in the

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<sup>49</sup> These procedures are available for sources potentially subject to this proposed FIP in a document entitled: “Procedures to Address Threatened and Endangered Species and Historic Properties for the Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector,” <https://www.epa.gov/tribal-air/tribal-minor-new-source-review>.

<sup>50</sup> Ibid.

development of both the general permits and permits by rule for the “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country,”<sup>51</sup> to ensure listed species and critical habitats and historic properties are protected, we developed a framework for those permitting mechanisms requiring the source owner/operator to identify and assess potential effects on protected resources before obtaining coverage. Requiring this assessment aids in identifying any concerns related to potential impacts on listed species/critical habitat or historic properties early in the process when the greatest opportunities to mitigate or avoid any impacts – including changes to the facility’s location or footprint – are available. The EPA believes that requiring a similar process in the air quality permit by rule, the general air quality permit, and the proposed FIP will streamline the process for all concerned: the applicants, the EPA, the tribes, and any resource experts such as the Services or historic preservation officers.

## 2. Final Action

In the final FIP, we have not changed the overall approach for requiring sources to address threatened and endangered species and historic properties. We are continuing to provide two options for sources to address threatened and endangered species and historic properties.<sup>52</sup> However, we are modifying §49.104 of the proposed FIP to further specify what information will be accepted to document that a source has addressed threatened and endangered species and

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<sup>51</sup> “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country,” 79 FR 2546, January 14, 2014, <http://www.gpo.gov/fdsys/pkg/FR-2014-01-14/pdf/2013-30345.pdf>.

<sup>52</sup> Note that the two options for addressing threatened and endangered species and historic properties in the final FIP have also been made available to other source categories for which we have issued general permits and permits by rule, albeit in a different manner. Rather than prescribe the options in regulation, we have made the options available as part of the procedures information we have provided as attachments to the Request for Coverage Forms and the Notification of Coverage Forms for the general permits and permits by rule we have issued, respectively.

historic properties through actions by another federal agency. We are also clarifying that for sources providing documentation to the effect that they satisfy the criteria under §49.104(a)(1) through a prior assessment conducted by another federal agency, that they can submit the documentation with the Part 1 Registration Form.

With respect to specific documentation requirements, the final FIP requires the owner/operator to submit to the EPA Regional Office (and to the tribe where the source is located/locating) documentation demonstrating that prior ESA and/or NHPA compliance has been completed by another federal agency in connection with the specific oil and natural gas activity operated under the FIP. The appropriate documents would have to clearly show that the other Federal agency had met its statutory obligations under both the ESA and NHPA. A simple reference to a Record of Decision (ROD) or other final decision document will not be acceptable. An example of acceptable documentation would be a letter from the Fish and Wildlife Service (FWS) for ESA or a historic preservation office for NHPA stating they agree with the assessment for the subject project and that the relevant sections of those statutes have been satisfied by the agency conducting the review of the proposed oil and natural gas activity. In addition, if a biological assessment and/or biological opinion have been prepared as part of the assessment under the ESA, then copies of those documents shall also be provided. The owner/operator must be in compliance with all measures required as part of that prior ESA and/or NHPA process.

With respect to the process for sources using the screening procedures provided by the EPA for threatened and endangered species and historic properties, we indicated in the proposal that we would follow criteria similar to that used for general permits and permits by rule where the completed screening procedures are submitted to the EPA Regional office for review and written approval is obtained before beginning construction. Therefore, we are paralleling the

procedures used for Permits by Rule in §49.104(a)(2) of the FIP to address submittal and review of completed screening procedures. Within 30 days of receipt of a source's documentation, the Reviewing Authority must provide a determination by letter to the source that: (1) the documentation satisfactorily demonstrates completion of the threatened and endangered species and historic property screening procedures; or (2) the documentation is not adequate and additional information is needed. If the initial submittal is deficient, the Reviewing Authority will note any such deficiencies and may offer further direction on completing the screening procedures. Once the source has addressed the noted deficiencies, it must submit revised screening procedure documentation for review. An additional 15-day review notification period will be used for the Reviewing Authority to determine whether the screening procedures have been satisfied. Provided that they have, the Reviewing Authority will then send the source a letter indicating approval. The source must obtain a letter from the Reviewing Authority indicating that the source has adequately completed the processes regarding threatened and endangered species and historic properties before it can begin construction under the FIP. This process of source documentation submittal and the EPA's confirmation that it has satisfactorily completed the procedures must occur prior to the source's submittal of its Part 1 Registration Form pursuant to §49.160(c)(1)(iv).

### 3. Comments and Responses

The following discussion contains comments on requirements relating to threatened or endangered species and historic properties and our responses. The comments and responses are also addressed in Section 2.0 of the RTC Document.

Comment #10: Two commenters expressed concern about the EPA's authority to impose requirements relating to threatened or endangered species and historic properties in the proposed

national FIP. These commenters stated that where there is no federal nexus, the EPA has no jurisdiction to require ESA or NHPA consultations. These commenters also noted that the EPA is not a surface land management agency and does not have jurisdiction on state and private lands to require such consultations where a federal nexus does not exist. Another commenter claimed that imposition of these ESA and NHPA requirements as conditions of using the FIP is unlawful and unreasonable. The commenter stated that it is unlawful because the ESA and NHPA are triggered only when a federal action is taken, and that as EPA acknowledges in the preamble, the use of the FIP by an affected source does not require any federal action. Therefore, the commenter believes that there is no need or justification for imposing ESA or NHPA requirements when an affected source avails itself of the FIP.

Response #10: We disagree with the commenters' statement that the EPA lacks authority to require assessments of potential impacts on these resources as sources are covered under the FIP. Consistent with the EPA's authority under the CAA, the EPA has built the screening procedures into the FIP as an adequate and appropriate means of addressing potential impacts on these resources. Given the intended scope of the FIP, it would be very difficult, if not impossible, for the EPA to evaluate such potential impacts in all areas where the FIP might apply. As a result, the EPA has concluded that the only way to address potential impacts on these resources in conjunction with the FIP, which is intended to provide a streamlined mechanism for complying with the Federal Indian Country Minor NSR rule, is to require the owners/operators to do it. Although the EPA is not a land management agency, the EPA is the federal agency promulgating the FIP, which will cover sources irrespective of whether they locate on federal or non-federal land. The EPA understands that completing the screening procedures will impose some burden on covered sources. However, the EPA has attempted to streamline these

procedures to the extent practicable while ensuring appropriate consideration of the resources. We have not made any changes to the ESA/NHPA procedures as a result of these comments.

Comment #11: Four commenters expressed concern that the FIP's requirements for additional analysis addressing listed species and historic properties where a prior assessment by another federal agency has not been completed will lead to lengthy permitting delays. One commenter stated that the added secondary layer of listed species and historic property approval proposed by the EPA will add delay and expense, while duplicating existing protections for species and cultural resources. One commenter stated that the inclusion of site-specific reviews for listed species and historic properties contradicts the EPA's statement in the preamble that the purpose of the FIP is to provide a "streamlined" approach to permitting minor oil and natural gas sources on Indian lands, which would be accomplished in part by imposing "unambiguous" requirements on affected sources. The commenter asserted that case-specific listed species and historic property review is the antithesis of an unambiguous process.

Response #11: The EPA has promulgated the FIP to streamline the NSR permitting process to allow sources to avoid potential delays associated with individual source permitting. In connection with issuance of the FIP – which provides the relevant CAA authorization for sources to construct – the EPA has also added the threatened and endangered species and historic property screening procedures as an appropriate means of addressing potential impacts on these resources as sources are covered under the FIP. As indicated below, the EPA does not view coverage of individual sources under the FIP as separate ESA or NHPA triggering events. However, given the intended scope of the FIP, it would be very difficult, if not impossible, for the EPA to evaluate the potential impacts on the relevant resources in all areas where the FIP might apply. As a result, the EPA has concluded that the only way to address these impacts in

conjunction with issuing this FIP, which is intended to provide a streamlined mechanism for complying with the Federal Indian Country Minor NSR rule, is to require owners/operators to do it. The EPA has, however, provided significant streamlining opportunities in this process by providing an avenue for covered sources to rely on prior listed species/historic property assessments done in connection with other federal agency permits or authorizations, and the EPA anticipates that many of the covered sources will have undergone such prior assessments and, thus, will require no further analysis. If analysis is required in those few cases where no prior assessment is available, the EPA has provided straightforward procedures for sources to complete their own assessments.<sup>53</sup> No changes were made as a result of this comment.

Comment #12: Two commenters stated that, while federal actions trigger ESA consultation and NHPA review, compliance with the FIP itself is not a federal action triggering ESA and NHPA review. One of these commenters noted that the EPA acknowledged in the preamble that the use of the FIP by an affected source does not require any federal action. The other commenter stated that many of the new sources and modifications undertaken in reliance on this FIP will have already been authorized by another federal action that complies with ESA and NHPA, and that compliance with the FIP by these new sources and modifications is not the federal action. The commenter added that for projects that have not undergone some earlier or concurrent federal authorization process, compliance with the FIP is not the federal action. The commenter further indicated that NESHAPs and NSPS present an analogous situation – sources complying with NESHAPs and NSPS across the country do not trigger ESA and NHPA reviews.

Another commenter noted that the approach the EPA is taking with the FIP is unique as compared to any other directly applicable substantive CAA rule. For example, EPA recently

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<sup>53</sup> To find these procedures, go to: <https://www.epa.gov/tribal-air/tribal-minor-new-source-review>.

proposed changes to 40 CFR part 60, subpart OOOO, which also applies to affected sources that would be covered by the FIP (40 CFR part 60, subpart OOOO, is included in the proposed FIP). The commenter noted that there is no mention of ESA or NHPA in the 40 CFR part 60, subpart OOOOa, proposal. In the commenter's view, like the FIP, 40 CFR part 60, subpart OOOO (and the proposed 40 CFR part 60, subpart OOOOa), effectively authorize the construction of new sources and modification of existing sources. And, like the FIP, 40 CFR part 60, subpart OOOO, applies directly to affected sources without any need or requirement for case-specific authorization or decision-making. The commenter asserts that the difference in approach between the proposed FIP and other directly applicable CAA substantive rules is unexplained and unexplainable and that there is no justification for imposing ESA and NHPA requirements under the FIP.

Response #12: The EPA agrees that each separate coverage under the FIP does not constitute an action that triggers ESA/NHPA. However, the EPA disagrees that the listed species and historic property screening procedures included in the FIP impose ESA or NHPA compliance requirements on covered sources. These screening procedures are intended to be an appropriate means of addressing potential impacts on the relevant resources in connection with the EPA's issuance of the FIP, which provides CAA authorization for sources to construct in lieu of individual or other permitting under the Federal Indian Country Minor NSR rule.

The screening procedures are requirements of the FIP – not of the ESA or NHPA – and are consistent with the EPA's authority under the CAA. These requirements are appropriate for the FIP, which, as noted above, provides CAA authorization for sources to construct without the need for separate NSR permitting. By contrast, NSPSs and NESHAPs impose emission reduction

requirements on sources, but are not separate authorizations for construction. We have not made any changes as a result of these comments.

Comment #13: One commenter expressed concern about the potential burdens associated with the listed species and historic property compliance provisions and urged the EPA to clarify when an affected facility is permitted to rely on a prior NEPA analysis to fulfill these requirements. This commenter asked the EPA to clarify that the prior NEPA review need not be conducted simultaneously with the construction or modification of the affected facility, referring to cases where the BIA or BLM may have completed an applicable NEPA review well in advance of the specific construction activity. This commenter also requested that the EPA consider whether programmatic environmental impact statements (EISs) can satisfy the relevant requirements, noting that programmatic EISs can address both ESA and NHPA issues on a reservation-by-reservation basis in a manner that addresses both the historic resources and endangered species that may be present in a given area. This commenter stated that allowing individual sources to rely on prior ESA and NHPA analyses in a programmatic EIS can provide further streamlining benefits that will reduce the costs of implementation, while ensuring that environmental goals are met.

Response #13: The EPA has added regulatory text to the final rule to clarify the documentation that needs to be submitted with the Part 1 Registration Form, what the documentation must show, and the process by which it must be submitted. The documentation must demonstrate that, for the project site operating under the FIP, another Federal agency (*e.g.*, BLM or BIA) had met its applicable statutory obligations under the ESA and NHPA in connection with its involvement with the project. An example of acceptable documentation would be a letter from the FWS (for ESA) or a historic preservation office (for NHPA) stating

that the project has been reviewed, and the relevant statutes have been satisfied by the agency conducting the review, that any impacts of the project have been assessed, and any appropriate mitigation included. Such letters may, for instance, include a concurrence from FWS that a project will have no likely adverse effects on listed species or critical habitat.

Comment #14: One commenter requested that the EPA provide a procedure for reviewing the ESA and NHPA analyses conducted by other agencies (*e.g.*, BIA and BLM) to ensure that it is adequate and sufficient. The commenter stated that the EPA must ensure that emissions from a proposed project do not adversely impact threatened or endangered species or their habitat. The commenter added that the many sensitive cultural sites and areas of special cultural and spiritual significance to tribes and their members must receive the full protection they deserve under the law.

Response #14: The EPA appreciates the commenter's concern that listed species and historic properties, including properties of specific interest to Indian tribes, receive appropriate consideration and protection. The EPA believes as a general matter that the agencies with relevant resource expertise<sup>54</sup> (*e.g.*, the U.S. Fish and Wildlife Service and Tribal and State Historic Preservation Officers) are best qualified to ensure that the considerations the commenter is raising related to threatened and endangered species and cultural resources are addressed. The EPA has thus included appropriate screening procedures in the FIP to ensure that a complete assessment of covered projects occurs, either as part of a separate federal agency's prior compliance with the ESA and NHPA in connection with a source, or during a source's screening review under the FIP if no such prior assessment is available. In either scenario, the expert

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<sup>54</sup> These experts possess the knowledge – and, under their statutes and regulations, the authority and responsibility – necessary to assess impacts on protected resources and to judge the adequacy of any mitigation measures needed to protect those resources.

resource agencies will be appropriately involved in the consideration of any impacts on the resources and in the development of any relevant mitigation measures. The EPA will then ensure that sources have successfully completed the assessment process, that the documentation is available, and that the sources are in compliance with the FIP's requirements, including requirements with adequate measures to address air quality issues.

By way of example, the EPA envisions the process could work as follows: an oil and natural gas owner/operator submits a request to drill to BLM or BIA; BLM/BIA initiate a comprehensive review of the project's potential impacts on the protected resources and engage in any required consultations with the expert resource agencies prior to approving new oil and natural gas activity; these consultations and assessments address direct and indirect effects of the action on the protected resources; the process concludes with relevant concurrences or other final decisions regarding the project's impacts and identification of any mitigation measures; and the source submits required information to the EPA under the FIP to demonstrate compliance with the ESA and NHPA as part of the prior review. The EPA notes that this process may occur as part of a review by the other federal agency under NEPA, in which case the EPA may be involved as one of the reviewing agencies of the NEPA assessment. In light of the degree of involvement of the land management federal agencies in project oversight and the expertise of the resource agencies, the EPA anticipates that this process will result in appropriate consideration of any impacts on the protected resources and that additional involvement by the EPA in that review would not provide meaningful additional input. The EPA has revised the regulatory text to specify what documentation relating to another Federal agency's compliance with ESA and NHPA is acceptable to demonstrate that these requirements are met.

#### *E. Rationale for the FIP*

## 1. Proposed Rule

In the section of the preamble on the rationale for the proposed FIP, we addressed four topics:

- Choice of a FIP as an alternative to source-specific permits, general permits and permits by rule;
- How we select which equipment to include in the proposed FIP;
- Why we are excluding existing sources from the proposed oil and natural gas FIP; and
- Why we proposed to extend the permitting deadline for oil and natural gas true minor sources in areas covered by the Federal Indian Country Minor NSR rule?

We are addressing the first three topics in Sections IV. E., H. and J. below, respectively. The fourth topic concerning the extension has already been addressed in a separate final action.<sup>55</sup>

Generally, with respect to the rationale for the FIP, we indicated that our proposal represented a proper exercise of our authority under §49.11(a) of the Tribal Authority Rule which states that the EPA shall promulgate without unreasonable delay such FIP provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 301(a) and 301(d)(4), if a tribe does not submit a TIP meeting the completeness criteria of 40 CFR part 51, appendix V, or does not receive EPA approval of a submitted tribal implementation plan (see §49.11(a)). We indicated that the proposed FIP would apply to new and modified true minor sources that are located or expanding in the referenced areas of Indian country designated as attainment, unclassifiable or attainment/unclassifiable. It would not apply to new and modified

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<sup>55</sup> “Review of New Sources and Modifications in Indian Country: Extension of Permitting and Registration Deadlines for True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country,” U.S. Environmental Protection Agency, 81 FR 9109, February 24, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-02-24/pdf/2016-03623.pdf>.

true minor sources that are located or expanding in referenced areas of Indian country designated nonattainment. Thus, underlying the proposal was the EPA's belief that the FIP as proposed would be protective of air quality in areas of Indian country designated attainment, attainment/unclassifiable and unclassifiable but not areas designated nonattainment. Sources locating or expanding in areas designated as nonattainment would be required to obtain source-specific permits pursuant to the Federal Indian Country minor NSR rule, thereby allowing the EPA to include any requirements needed to provide air quality protection beyond that provided by the FIP. In addition, the EPA retains the authority under the FIP to require sources locating or expanding in areas designated attainment, attainment/unclassifiable and unclassifiable to obtain source-specific permits if it determines that this is necessary to protect air quality in a particular area. The FIP as proposed included a comprehensive set of standards, including the requirements under 40 CFR part 60, subpart OOOOa, which has undergone revision and reflects the latest in oil and natural gas control measures.

## 2. Final Action

The EPA continues to believe that this final FIP that relies on eight federal standards for its requirements will be protective of air quality in attainment, attainment/unclassifiable and unclassifiable areas, provided the EPA retains the ability to require source-specific permits and/or area-specific FIPs where needed to protect air quality in specific areas. Below are several comments on this issue and our responses.

## 3. Comments and Responses

The following discussion contains comments on issues related to the rationale for the proposed FIP and our responses. The comments and responses are also addressed in Section 3.0 of the RTC Document.

Comment #15: One commenter stated that the EPA has provided no assurance that the regulations included in the FIP will adequately address air quality problems in Indian country and ensure compliance with all applicable standards, including the NAAQS, PSD Program, and the visibility protection program. The commenter noted that, although the EPA proposes a FIP to streamline the permitting process, the proposed FIP does not achieve the goals of the case-by-case permitting the EPA established in the Federal Indian Country Minor NSR rule—namely adequate protection of public health and the environment. The proposed FIP would allow minor oil and natural gas sources to forego pre-construction review and permitting altogether and instead simply self-certify that they will comply with the six regulations that already apply within Indian country. The EPA has provided no analysis of whether these six regulations will adequately address the air quality problems in Indian country or ensure compliance with the NAAQS, PSD Program, and the visibility protection program.

Response #15: The EPA believes that the eight regulations included in the final rule represent a robust set of control measures that are adequate to protect air quality in Indian country in attainment, attainment/unclassifiable and unclassifiable areas. The EPA can require source-specific permits where needed to further protect air quality in these areas.

In addition, the Federal Indian Country Minor NSR rule does not require an air quality analysis in all instances for minor source permits even in the context of a source-specific permit. While §49.154(c)(1)(i) indicates that we will consider “[l]ocal air quality” in determining whether to issue a source-specific permit, it does not require an air quality analysis and in fact §49.154(d) establishes specific circumstances in which the Reviewing Authority can require the owner/operator to conduct an air quality impacts analysis (AQIA). Air quality factors are just

one consideration with a source-specific permit. We have not made any changes as a result of this comment.

Comment #16: One commenter stated that the EPA did not conduct any control technology review, air quality impacts analysis, or dispersion modeling for the proposed FIP.

Response #16: The EPA's analysis and review consisted of establishing a set of requirements that we believe are sufficient to protect the NAAQS and PSD increments in attainment, attainment/unclassifiable and unclassifiable areas with the caveat that the EPA can require source-specific permits where needed to further protect air quality in a given area. Moreover, all eight regulations included in this FIP are based on the EPA's analyses of available technologies. The FIP requires compliance with the most current version of these regulations. So, the control requirements in this FIP will stay up to date, as these rules are based on the most current technologies. Finally, as noted above, the Federal Indian Country Minor NSR rule does not require an air quality analysis in all instances when a permit is issued even with a source-specific permit. No changes were made as a result of this comment.

Comment #17: One commenter expressed concern about the lack of any requirements in the proposed FIP for air quality monitoring and modeling, and recommended that the proposed FIP include requirements to improve air quality monitoring and modeling within Indian country. This commenter noted that the air quality in many areas of Indian country with oil and natural gas development exceeds federal public health standards for ozone and particulates. The commenter expressed concern that, without adequate monitoring, the EPA cannot ensure that it is protecting public health from the emissions associated with oil and natural gas development. This commenter stated that the most efficient and expedient method of providing such a monitoring network is requiring operators to install and operate monitors. The commenter noted

that the EPA has authority under CAA section 114 to require operators to install and operate ambient air quality monitors.

Response #17: With respect to monitoring, the EPA works closely with tribes, as well as state and local partners, to implement and maintain a national ambient air monitoring program. In many cases, ambient networks include more monitors than are required by minimum requirements in the EPA's monitoring regulations. The EPA Regional Administrators have the authority to require additional monitoring in a variety of situations; such authority is specifically noted throughout the language in Appendix D to 40 CFR part 58, Network Design Criteria for Ambient Air Quality Monitoring. Accordingly, the EPA believes that the current authority to require monitoring above minimum requirements is sufficient to support this final rule and the need to employ additional air quality monitoring in areas of Indian country where the air quality may not be fully characterized. As the commenter points out, the EPA has the authority under section 114 of the CAA to require air quality monitoring if it determines that this is necessary in a particular areas. For these reasons, we do not believe that including monitoring requirements in this rule is necessary. Additionally, the EPA is exploring alternative sensor technology that can be used to compliment traditional compliance-based monitoring based on Federal Reference Method or Federal Equivalent Method monitoring equipment. The EPA anticipates that alternative sensor technology may be used in the future as a screening tool to determine if longer term monitoring with more specialized equipment is needed.

Regarding modeling, as noted above, the Federal Indian Country Minor NSR rule does not require an air quality analysis (and the modeling that would accompany it) in all instances when a permit is issued even with a source-specific permit. With respect to the final FIP, we do not believe that modeling is necessary; rather, we believe that the suite of eight federal

regulations that constitute the FIP's set of control requirements are sufficient to protect air quality in areas of Indian country designated attainment, attainment/unclassifiable and unclassifiable.

We have not made any changes in response to this comment.

With respect to air quality in areas of Indian country with oil and natural gas development, currently we are not seeing widespread air quality problems. Based on air quality data for 2012-2014,<sup>56</sup> (outside of Oklahoma) there are only two counties that meet three criteria: have Indian country present; have design values (DVs) above the level of the current ozone NAAQS ( 70 parts per billion [ppb]); and have oil and natural gas activity. The two counties that meet these three criteria are in Utah and are: Duchesne and Uintah Counties.<sup>57</sup> The majority of the land area in both of these counties is on the Uintah and Ouray Reservation. For the Uintah and Ouray Reservation, we have sufficient concerns about the air quality impacts from existing sources that we plan to propose a separate reservation-specific FIP.

For areas designated nonattainment for NAAQS (2008 ozone NAAQS, 2006 and 2012 PM<sub>2.5</sub> NAAQS), based on air quality DVs for 2012-2014, there are not any areas that meet three criteria: have Indian country present; have DVs above the level of the NAAQS; and have oil and natural gas activity.<sup>58</sup>

Comment #18: One commenter expressed concern about the lack of enforcement requirements in the FIP. The commenter noted that the proposed FIP provides few, if any, enforcement tools, and requested that the EPA clarify, add, and expand enforcement requirements in the final rule. The commenter encouraged the EPA to implement Next Generation Compliance techniques (such as self-certification and photographic verification, per

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<sup>56</sup> The EPA will not designate areas as nonattainment based on these data, but likely based on 2014 - 2016 data.

<sup>57</sup> Supporting information can be found in: Docket ID No. EPA-HQ-OAR-2014-0606.

<sup>58</sup> Ibid.

40 CFR part 60, subpart OOOO) in the final rule, and recommended that the EPA should also robustly pursue standard enforcement procedures in Indian country.

Response #18: Since the EPA is relying on the monitoring, recordkeeping and reporting requirements in the eight rules underlying this final FIP to be comprehensive in ensuring compliance, we do not feel that additional, separate compliance measures are needed. The requirements in the eight rules are independently enforceable under those rules as well as being enforceable under the FIP. An owner/operator is responsible for correctly permitting its sources. If it is later determined that the source is not complying with the emission limitations and standards prescribed in the eight rules as required by the FIP, the EPA can take enforcement action to bring a source into compliance. The EPA can also enforce major source requirements in situations where it is determined that a source emitted or has the potential to emit pollutants in major source amounts. We have not made any changes as a result of this comment.

*F. The FIP as an Alternative to Source-specific Permits, General Permits and Permits by Rule*

1. Proposed Rule

With respect to source-specific permits, we proposed that owners/operators of new and modified true minor oil and natural gas sources that meet all of the following criteria must comply with the requirements contained in §§49.101 through 49.105 of the proposed FIP, unless the owner/operator opts-out of the FIP and instead obtains a source-specific permit per proposed §49.101(b)(2) and (3):

- The facility is an oil and natural gas production facility as defined in proposed §49.102;
- The oil and natural gas production facility is located in areas covered by the Federal Indian Country Minor NSR rule as defined in §49.152(d) as proposed to be amended in the action;

- The oil and natural gas production facility is a new true minor source or a minor modification of an existing true minor source as determined under §49.153;
- The oil and natural gas production facility begins construction or modification on or after October 3, 2016, the proposed extended permitting deadline date; and
- The oil and natural gas production facility is not located in a designated nonattainment area (the proposed FIP would only apply to true minor sources in the oil and natural gas sector locating or expanding in areas designated as attainment, attainment/unclassifiable or unclassifiable).

Under the proposed FIP, sources covered by the Federal Indian Country Minor NSR rule that do not meet all of the criteria listed above are not eligible to use the FIP and must, therefore, obtain a source-specific permit prior to beginning construction, on or after October 3, 2016.

If a source owner/operator does not want to comply with the FIP, they have the option to apply for a source-specific permit instead to meet the obligation under §49.151(c)(1)(iii)(B) of the Federal Indian Country Minor NSR rule to obtain a permit prior to commencing construction of a new true minor source or modification of an existing true minor source. As part of the FIP, we proposed specific rule language in §49.101(b)(2) to allow true minor sources proposing to construct on or after the proposed, extended deadline date of October 3, 2016, to opt-out of the default FIP if preferred by the owner/operator. We proposed that an owner/operator of a source otherwise subject to the proposed FIP can opt out and seek a source-specific permit under §49.151(c)(1)(iii).

We also proposed that the EPA, or other Reviewing Authority, may require owners/operators to obtain a source-specific permit in lieu of complying with the proposed FIP to ensure protection of the NAAQS. Under §49.101(b)(3), we proposed to specify that the

Reviewing Authority may require an owner/operator of a source proposing to construct in certain areas of Indian country on or after October 3, 2016, to apply for a source-specific permit for a new true minor source or minor modification of an existing true minor source where necessary to protect air quality. In particular, the Reviewing Authority may determine that the source is not sufficiently controlled under the proposed FIP to protect the NAAQS in the area of the proposed project (*e.g.*, if the measured DV for the area is close to or above the level of the NAAQS). In that circumstance, the Reviewing Authority can require the minor source to obtain a source-specific permit. The agency recommends that at the time of registration, the owner/operator of new and modified sources contact the Reviewing Authority about the air quality status of the area, and the need to obtain a source-specific permit.

Concerning the selection of a FIP as an alternative to source-specific permits, general permits and permits by rule, in the ANPR, we committed to developing an alternative to source-specific permits primarily to avoid delays in new construction due to the burden of processing hundreds of true minor source permits in a timely manner. A FIP provides a regulatory tool that protects air quality, streamlines implementation and compliance assurance, and meets the EPA's obligation to permit minor NSR sources. The alternatives – source-specific permits, general permits and permits by rule – do not satisfy all of these concerns, which we explain in the preamble of the September 18, 2015 action proposing the FIP.

Unlike NSR general permits and permits by rule, which cannot be used to address existing sources, a FIP could extend to existing sources; this is a key distinction between general permits and permits by rule versus a FIP. However, the proposal did not contain requirements for existing sources. We indicated that our plan is to address existing sources, to the extent necessary, in the context of area- or reservation-specific FIPs designed to address areas or

reservations with air quality issues (including nonattainment or possible nonattainment areas), as they arise, that are associated with oil and natural gas activities. Such FIP(s) would need to address, as necessary, requirements for existing sources, as well as additional requirements beyond those in this proposal for new and modified sources.

## 2. Final Action

After carefully considering the comments received, we have decided to retain the FIP as the streamlined mechanism for permitting true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector in Indian country. We believe that our initial reasoning laid out in our proposal is still sound in light of comments received. We also believe that we need to retain the provision in the FIP as proposed with respect to source-specific permits. In the final FIP under §49.101(b)(2), owners/operators of facilities that meet the criteria specified for eligibility in the FIP can choose to obtain a source-specific permit in lieu of complying with the FIP as specified in 40 CFR 49.155 before beginning construction; any such source would not be required to comply with the requirements of §§49.101 to 49.105. In addition, under §49.101(b)(3) of the final FIP, with advance notice owners/operators of facilities that meet the criteria specified for eligibility in the FIP can be required by the Reviewing Authority to obtain a source-specific permit to ensure protection of the NAAQS as specified in 40 CFR 49.155 before beginning construction; any such source would not be required to comply with §§49.101 to 49.105.

## 3. Comments and Responses

The following discussion contains comments on issues related to the choice of FIP as an alternative to source-specific permits, general permits and permits by rule and our responses. The comments and responses are also addressed in Section 4.0 of the RTC Document.

Comment #19: One commenter proposed that a general permit or permit by rule would be the best permitting approach for Indian country and could allow for legally and practically enforceable limits. They further suggested that ambient air quality impact modeling could be used to develop the general permit or permit by rule to ensure protection of the NAAQS.

Response #19: In the ANPR, the EPA committed to developing an alternative to source-specific permits primarily to avoid delays in new construction due to our inability to process potentially thousands of true minor oil and natural gas source permits in an acceptable timeframe. Comments received on the ANPR and on the proposed FIP were generally supportive of a FIP approach, which we are finalizing. As indicated above, we continue to believe that the FIP approach can best protect air quality in attainment, attainment/unclassifiable and unclassifiable areas, while providing streamlined permitting. We do not believe that modeling is necessary to ensure air quality protection in attainment, attainment/unclassifiable and unclassifiable areas given the comprehensive nature of the requirements in the eight standards underlying this FIP.

Comment #20: Several commenters expressed concern that a FIP would not provide an opportunity for comment about a specific facility's coverage under a FIP. In particular, commenters noted that there may be concerns specific to particular sites that are not addressed within the existing FIP. One commenter noted that under a FIP, tribes and the public are only provided a one-time opportunity to provide feedback on the proposed rule and would not be provided the opportunity to comment on individual sources proposed in their tribal area.

Response #20: The EPA agrees with the importance of providing opportunity for comment on the FIP. The EPA held three public hearings across the country<sup>59</sup> to solicit comments on the proposed FIP and also extended the public comment period on the proposed FIP by 21 days from November 14, 2015 until December 4, 2015. If the EPA requires a source-specific permit or develops an area-specific FIP, there will be additional opportunity for public comment on those specific permitting actions at that time.

In addition, new and modified sources under the FIP will have to register and provide source information and emissions. Each completed registration will be added to the EPA Regional Office web sites.<sup>60</sup> If a citizen has information that a particular source may not be complying with the FIP, or that compliance with the FIP may not be sufficient due to air quality concerns in a particular areas, the information could be brought to the EPA's attention.

Comment #21: One commenter requested a commitment from the EPA to provide funding to tribes for the development of TIPs to regulate minor oil and natural gas sources specific to areas under their jurisdiction, including the potential future regulation of existing minor sources. One commenter expressed an interest in developing a TIP. The commenter noted that the EPA promulgated the "Tribal Authority Rule" in 1998 to provide more detailed criteria and procedures for tribes to be treated as states under the CAA if they seek CAA program approval, and that tribes are authorized to develop a comprehensive TIP and to seek full

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<sup>59</sup> The dates and locations of the hearings were as follows: Denver, Colorado, September 23, 2015; Dallas, Texas, September 23, 2015; and Pittsburgh, Pennsylvania, September 29, 2015. "Source Determination for Certain Emission Units in the Oil and Natural Gas Sector; Oil and Natural Gas Sector: Emission Standards for New and Modified Sources; and Review of New Sources and Modifications in Indian Country: Federal Implementation Plan for Managing Air Emissions From True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country," U.S. Environmental Protection Agency, 80 FR 51991, August 27, 2015, <https://www.gpo.gov/fdsys/pkg/FR-2015-08-27/pdf/2015-21255.pdf>.

<sup>60</sup> For example, for EPA Region 8, the following web site will be used to provide the completed registration forms: <https://www.epa.gov/caa-permitting/tribal-nsr-permitting-region-8>.

authority to monitor and enforce the NAAQS within their reservation. The commenter expressed interest in exploring the possibility of working toward a TIP so that it may one day assume primacy over certain regulatory functions and gradually expand its authority.

Response #21: The EPA supports tribes developing their own air programs and, as desired, TIPs. The EPA has historically provided funding and other technical support towards this goal, and we will continue to seek tribal air funding and support. In particular, we anticipate proactively supporting development of TIPs, especially in areas with air quality DVs above the NAAQS.

Comment #22: Several commenters expressed concern about provisions in the proposed FIP allowing the EPA the discretion to require source-specific permitting to “ensure attainment of the NAAQS” on a case-by-case basis. This might particularly affect areas in Indian country where design values are close to the current ozone NAAQS of 70 ppb. In addition, commenters expressed concern that given the 30-day notice provided for under the FIP, the notification that a facility has been denied coverage under the FIP and will be required to obtain a source-specific permit might be received only at the last minute, causing financial burden on operators that have already initiated procurement of construction materials and labor. The commenters explained that the EPA should provide the criteria by which they will require source-specific permits, and should consider including modeling demonstrations as part of source-specific permitting. One commenter objected to the broad and unrestricted manner under which the FIP allows the EPA to require a source to obtain a source-specific permit, and requested that the EPA provide more definitive language on what criteria it would use to disallow a source to construct under the FIP and to require a source-specific permit.

Response #22: The EPA continues to believe that this FIP will be protective of air quality in attainment, attainment/unclassifiable and unclassifiable areas of Indian country, provided we retain the ability to require source-specific permitting as needed to protect air quality. The EPA intends to make those determinations on a case-by-case basis. Factors we will consider include: levels of measured air quality relative to the NAAQS and rates of growth in oil and natural gas production activity and associated changes in emissions. Any decision to require source-specific permitting will apply to the entire area in question and to all sources planning to locate or expand in such area and we will provide advance notice to owners/operators and tribes in the affected area prior to a programmatic, area-wide imposition of source-specific permitting.

Comment #23: Several commenters encouraged the EPA to develop reservation-specific or region-specific FIPs that account for particular air quality concerns and that are consistent with the permitting rules and requirements of the surrounding states. This will help level the playing field between neighboring permitting jurisdictions and ensure that oil and natural gas development on tribal lands is not disadvantaged solely due to permitting differences. One commenter specifically referred to the Uintah and Ouray Indian Reservation, which is a tribal area at risk of nonattainment designation under the lowered ozone standard. The commenter noted that revenue generated from oil and natural gas development in this area is an important part of the tribal and regional economy. One commenter suggested that the EPA not wait until certain areas are re-designated as nonattainment to develop area-specific FIPs, but that the EPA should develop area-specific FIPs for areas in danger of re-designation immediately, notably the Uinta Basin and the San Juan Basin.

One commenter stated that the EPA should define “necessary or appropriate” by identifying more specific criteria for when reservation-specific FIPs will be issued. The

commenter suggested that one such criterion would be ozone concentrations close to the NAAQS. The commenter further recommended that the EPA should base its decision on the availability of two years of valid monitoring data, considering data from all available, reliable monitors, regardless of whether the EPA has certified them as regulatory monitors.

Response #23: The EPA continues to believe that this FIP will be protective of air quality in attainment, attainment/unclassifiable and unclassifiable areas of Indian country. We, nevertheless, have the authority to promulgate reservation-specific FIPs if we determine that it is necessary or appropriate to protect air quality. The EPA intends to make those determinations on a case-by-case basis. Factors we will consider include: levels of air quality the area in question is experiencing relative to the NAAQS, rates of growth in oil and natural gas production activity, and associated changes in emissions in the area in question. We will work with tribes in developing any area-specific FIP that we determine is necessary or appropriate to protect air quality and will provide notice and an opportunity for comment prior to the promulgation of an area-specific FIP.

Comment #24: One commenter noted that tribal areas across the country currently include thousands of wells, and that there are thousands more forthcoming. Accordingly, all of this activity gives rise to ever-increasing emissions, exposes tribal members to harmful air toxics and impacts visibility in Class I areas such as national parks and wilderness areas. In addition, oil and natural gas sector emissions include large quantities of methane, which contributes to climate change. The commenter encourages the EPA to develop national uniform requirements to protect public health and welfare and to mitigate the severity of climate change.

Response #24: The EPA agrees with the commenters that oil and natural gas development in tribal areas results in emissions of harmful air toxics and other pollutants of

concern. To mitigate these impacts, the proposed FIP included a uniform set of requirements from six current federal rules that apply in all tribal areas. In addition to these six, the EPA is adding two additional rule to the final FIP: 40 CFR part 60, subpart KKKK, and 40 CFR part 63, subpart ZZZZ. This suite of eight federal rules ensures: (1) comprehensive application of the latest control technologies and unit processes found in the oil and natural gas sector; and (2) that the sector is controlled under the FIP. In addition, as needed to protect air quality, the EPA will continue to develop area-specific FIPs and/or utilize source-specific permitting for areas with poor or degraded air quality. The Federal Indian Country Minor NSR rule is not intended to address climate change per se; however, compliance with a number of the included rules will lead to co-reductions in emissions of methane, which is a potent greenhouse gas (GHG).

Comment #25: One commenter requested to have certain activities not considered modifications, including in-kind replacement of internal combustion and temporary engines, as well as control device additions, removals, and replacements as allowed by federal rules. This would allow operators to move equipment off site to perform needed repairs or maintenance to avoid production delays and to mitigate potential hazards associated with on-site maintenance.

Response #25: On May 30, 2014, the EPA finalized revisions to the Federal Indian Country Minor NSR rule that exempted certain internal combustion engines from the permitting requirements under the rule.<sup>61</sup> These included certain emergency generators and stationary engines with a horsepower rating less than 50. The final rule also provided guidance to industry specifically in response to a comment regarding the relocation or replacement of single pieces of equipment (*e.g.*, an internal combustion engine) in the oil and natural gas sector. The source

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<sup>61</sup> “Review of New Sources and Modifications in Indian Country – Amendments to the Federal Indian Country Minor New Source Review Rule,” U.S. Environmental Protection Agency, 79 FR 31035, May 30, 2014, <https://www.gpo.gov/fdsys/pkg/FR-2014-05-30/pdf/2014-11499.pdf>.

owner/operator should verify with its Reviewing Authority that the “matching” situation described in the preamble to the final May 30, 2014 rule, and its stated outcome, applies to its case. Concerning control device additions, removals, and replacements, a broad exclusion for consideration as a modification cannot be given. Changes regarding control devices have the potential to increase emissions, and, thus, the potential emissions impact would have to be assessed by the owner/operator. To the extent that these changes result in emissions increases that fall below the minor NSR thresholds or satisfy the criteria under the definition of modification in §49.152, there would be no requirement to register the unit(s) or to make a change to a prior registration. Under §49.152, the following exemptions to modifications apply:

- A physical or operational change does not include routine maintenance, repair or replacement.
- An increase in the hours of operation or in the production rate is not considered an operational change unless such change is prohibited under any permit condition that is enforceable as a practical matter.
- A change in ownership at a stationary source.
- The emissions units and activities listed in §49.153(c).

### *G. Synthetic Minor Sources and Minor Modifications at Major Sources*

#### 1. Proposed Rule

With respect to synthetic minor sources, in the September 2015 proposed FIP, the EPA did not structure the requirements to accommodate the creation of synthetic minor sources.<sup>62</sup> In

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<sup>62</sup> Per §49.152(d), synthetic minor source means a source that otherwise has the potential to emit regulated NSR pollutants in amounts that are at or above those for major sources in §49.167, §52.21 or §71.2, as applicable, but that has taken a restriction so that its potential to emit is less than such amounts for major sources. Such restrictions must be enforceable as a practical matter.

the Background portion of the notice, we noted that in May 2015 we took final action<sup>63</sup> on a set of general permits and permits by rule in which we also authorized the use of general permits established under the program to create synthetic minor sources. We did this by including requirements in the general permits that otherwise major sources could comply with to reduce their PTE to below major source levels. We indicated in that action that general permits (and not permits by rule) can serve as an appropriate mechanism for creating synthetic minor sources because permits by rule do not provide for the same level of review and scrutiny by the Reviewing Authority as general permits. They also do not provide the same level of public participation. More specifically, in the May 2015 final action, based on comments received, we decided to issue final general permits for two categories (and not the three others) that involve more complex operations and multiple pollutants because the general permit approval process provides an opportunity for case-specific Reviewing Authority review. Because permits by rule do not involve the same level of review, the EPA did not finalize the use of permits by rule to create synthetic minor sources.

With respect to minor modifications at major sources, we did not address the issue per se in the proposed FIP, but we did address how to treat such cases in the permitting documents associated with the final May 2015 rule.<sup>64</sup> In the Request for Coverage and Notification of Coverage Forms<sup>65</sup> from the May 2015 rule, the EPA established requirements that sources include all existing, new and modified units in their PTE determinations for purposes of comparing that PTE to the major source thresholds. This exercise is necessary for determining

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<sup>63</sup> “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories,” U.S. Environmental Protection Agency, 80 FR 25068, May 1, 2015, <http://www.gpo.gov/fdsys/pkg/FR-2015-05-01/pdf/FR-2015-05-01-FrontMatter.pdf>.

<sup>64</sup> Ibid.

<sup>65</sup> These forms can be found at: <https://www.epa.gov/tribal-air/tribal-minor-new-source-review>.

eligibility for the general permits. If the sum of the potential emissions from all of these units exceeds the major source threshold, then the source is not eligible for the general permit.

Effectively, this precludes minor modifications at major sources from general permit eligibility.<sup>66</sup>

Such sources require source-specific permits that undergo Reviewing Authority review. We did provide an exception in the May 2015 action for otherwise major sources that are willing to accept certain emissions limits, throughput, fuel and other limits and become synthetic minor sources, provided that the limits accepted by the source would lower source-wide PTE to below the major source NSR thresholds, counting emissions from all new, modified and existing units.

## 2. Final Action

After careful consideration of the comments, we continue to believe that the FIP is not an appropriate mechanism for establishing synthetic minor sources. We have, therefore, not made any changes to the FIP to accommodate its use to create synthetic minor sources. As indicated above, the EPA has an established policy that requires the Reviewing Authority have the opportunity to review any requests from a source for synthetic minor status; the FIP does not provide that opportunity.

In this final action, we are also not modifying the FIP to authorize modifications at major sources. The FIP is being made available to true minor sources in lieu of a true minor source permit. As mentioned above, the general permits (and, as noted, permits by rule) the EPA has issued to date are for true minor sources and are not available for minor modifications at major sources. Since the FIP is in lieu of a minor source permit, similar to non-oil and natural gas sources, minor modifications at major sources must have source-specific permits that have undergone Reviewing Authority review. As noted above, we do allow general permits to create

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<sup>66</sup> Minor modifications at major sources are also, of course, not covered by the permits by rule we have issued thus far for reasons similar to the reasons for general permits.

synthetic minor sources, which could involve a minor modification at a major source. Since we are not allowing for the creation of synthetic minor sources under the FIP for the reasons explained above, we are not allowing for the FIP to cover minor modifications at major sources.

By definition, major sources are more complex than minor sources and, as noted above, we believe such complexity necessitates that a review – under a general permit or source-specific permit – needs to be conducted for all permitting-type changes, whether to obtain synthetic minor status or for a modification at an existing major source. Since this FIP does not provide for any EPA source-specific permit review, and is intended as a streamlining alternative to source-specific permitting, we do not believe it is appropriate to cover modifications at major sources in this FIP.

We have added regulatory text to §49.101 to make it clear that the FIP does not apply to minor modifications at major sources.

### 3. Comments and Responses

The following discussion contains comments on the use of the FIP for establishing synthetic minor sources and minor modifications at major sources as an alternative to source-specific permits, general permits and permits by rule and our responses. The comments and responses are also addressed in Section 4.0 of the RTC Document.

Comment #26: Several commenters requested that the EPA provide a mechanism for obtaining synthetic minor permits under the FIP. One commenter noted that there are a number of emission units common at oil and natural gas facilities that are not subject to the six federal regulations included in the proposed FIP, and that, therefore, would not be eligible for federally enforceable limits that are available for units covered under the six other rules. The commenter stated that unless such provisions were included, an overwhelming number of operators in Indian

country will have to obtain source-specific permits. One commenter noted that most states with significant oil and natural gas production have streamlined permitting mechanisms (*e.g.*, general permits or permits by rule) in place for synthetic minor sources, as does the Fort Berthold Indian Reservation FIP. Another commenter noted that this would disadvantage oil and natural gas development on tribal lands because companies may prefer to locate where streamlined synthetic minor permitting options are available. It was also suggested that other limits, such as those imposed by tribal authorities or the BLM, be considered “enforceable as a practical matter” when considering the PTE and permit level. One commenter suggested insertion of the following language to allow for federally enforceable limits for emission units not subject to the six other rules:

“(a) Sources not subject to NSPS or NESHAPs may elect to comply with a NSPS or NESHAP under this FIP as a mechanism to establish enforceable conditions on the source’s potential to emit. Once the source elects to be subject to the NSPS or NESHAP, the NSPS or NESHAP are enforceable against the source under this FIP.

(b)(i) Sources may elect to be subject to one or more facility-wide emission limits listed below.

- a. 249 tons per year of any NSR regulated pollutant in an attainment area;
- b. 99 tons per year of any NSR regulated pollutant in any nonattainment area;
- c. 24 tons per year of total hazardous air pollutants;
- d. 9 tons per year of any single hazardous air pollutant;
- e. 99 tons per year of any regulated pollutant;

(ii) The facility-wide emission limits are 12-month rolling limits. Once a source elects coverage under this paragraph, the source must demonstrate compliance every month based on emissions of the prior 12 months.

(iii) Sources subject to this paragraph shall demonstrate compliance and determine emissions based on the monitoring and recordkeeping dictated in any NSPS or NESHAP for the types of equipment covered under the facility-wide emissions limit.

(iv) Sources subject to this paragraph shall monitor emissions and emissions-related data and keep records consistent with NSPS or NESHAP monitoring and recordkeeping for the types of equipment covered by the emissions limit for the purposes of compliance with this paragraph, even if such equipment is not subject to the NSPS or NESHAP.”

The commenter suggested that the EPA allow for flexibility in synthetic minor limits in terms of production, throughput, or hours of operation. One commenter suggested that the EPA provide a general permit, or separate general permits for different unit types, pursuant to §49.156 with a suite of standards that would allow for federally enforceable limits on units not subject to the six other rules included in the proposed FIP. Several commenters suggested that self-certification could be included in provisions allowing for synthetic minor limits, and that this would reduce the burden on the EPA to have to issue synthetic minor limits under a source-specific permit.

Response #26: The current Federal Indian Country Minor NSR rule only allows the permitting of synthetic minor sources on a source-specific basis. The EPA’s review is necessary to establish synthetic minor limits because without the verification that the required controls and associated compliance provisions will accomplish their objective, the source is a major source. Due to the streamlined nature of the oil and natural gas FIP, such review is not part of the FIP’s process, which only requires source registration. Synthetic minor sources are more appropriately

permitted under source-specific permits as they provide an opportunity for case-specific, Reviewing Authority evaluation.

Moreover, the EPA's Reviewing Authorities in our Regional Offices have seen no evidence of a high volume of requests for synthetic minor permits from oil and natural gas sources. Nor did commenters provide information on the volume of synthetic minor status requests to support the need for a synthetic minor option. Sources subject to the FIP are free to seek a source-specific synthetic minor permit pursuant to §49.158.

No changes will be made as a result of this comment.

Comment #27: Several commenters requested that the EPA provide a mechanism under the FIP to allow for construction of minor modifications at major sources, as well as modifications at synthetic minor sources. One commenter noted that modifications occurring at major sources may be of the same type and size as a modification at a true minor source, yet these situations would be treated differently under the proposed FIP as they would require time-consuming source-specific permits. One commenter noted that the EPA should not use the term "minor modifications at true minor sources" in the rule because all modifications at a true minor source are covered under minor NSR. One commenter requested that the EPA replace references to "minor modifications at existing true minor oil and natural gas sources" with "minor modifications at existing oil and natural gas sources." In addition, the commenter requested that the FIP allow for minor modifications at major sources as such modifications are allowed under the Federal Indian Country Minor NSR rule (§49.151). The proposed verbiage revisions would reflect that such modification at major sources were covered under the FIP.

Response #27: The July 2011 Federal Indian Country Minor NSR rule provided for the streamlining of the permitting of true minor sources through the use of general permits (and

eventually permits by rule), with the permitting of minor modifications at major sources requiring source-specific permitting. As indicated above in the discussion of the general permits and permits by rule that the EPA has already issued under the Federal Indian Country Minor NSR rule, this FIP is not a permitting option available for minor modifications at major sources. Major sources are more complicated than minor sources, and modifications at major sources are likely to be as well. Such sources require the in-depth review of source-specific permits. By streamlining less significant actions (*i.e.*, true minor sources), we are freeing up resources for the EPA to address actions at the larger, more complex sources. As this FIP is limited to true minor sources (see response to comments above), the suggested change is not necessary and no change will be made as a result of this comment.

Comment #28: One commenter requested that the EPA amend the Federal Indian Country Minor NSR rule to expand the definition of enforceability to allow limits to be considered “enforceable as a practical matter” to mean that a limit or standard is legally and practicably enforceable if a government authority, federal or tribal, has the right to enforce it. In particular, the commenter suggested that such limits could be imposed by the BLM or a tribal authority.

Response #28: The definition of “enforceable as a practical matter” in §49.152 states that an emission limitation or other standard is legally enforceable if the reviewing authority has the right to enforce it. Under this FIP, the EPA is the Reviewing Authority. Therefore, limits or other standards that are not enforceable by the EPA cannot be considered and no change will be made to the definition as a result of this comment.

#### *H. Nonattainment Areas*

##### 1. Proposed Rule

In the proposed rule, we addressed the issue of how to address nonattainment areas under the proposed FIP given that it only applies to attainment, attainment/unclassifiable and unclassifiable areas. It would not apply to any areas designated nonattainment. We indicated that the EPA or tribes will need to develop area-specific plans if and when areas of Indian country become nonattainment for ozone or other NAAQS pollutants. At that time, any such area that has oil and natural gas minor source activity may require additional controls on existing (and new and modified) sources in order to achieve attainment of the NAAQS. One source of potential control options will be the EPA's CTGs for oil and natural gas activity that the EPA has made available for comment and will finalize in 2016.<sup>67</sup>

## 2. Final Action

The EPA has not made any changes to the final FIP's requirements as it relates to nonattainment areas. The FIP does not apply in such areas. Before or after such an area is designated as nonattainment, we will promulgate an area-specific FIP for existing sources if we determine that it is "necessary or appropriate" pursuant to the Tribal Authority Rule. At that time, we will determine whether the final FIP should apply in the area or whether something more is required and will include in the area-specific FIP a provision or provisions putting the FIP, or some variation thereof, into effect in the area. The public will have an opportunity to comment on any such expansion of coverage of this FIP in the separate, area-specific action.

## 3. Comments and Responses

The following discussion contains comments on our proposal that the FIP does not apply in nonattainment areas and our responses. The comments and responses are also addressed in Section 4.0 of the RTC Document.

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<sup>67</sup> For more information, go to: <https://www3.epa.gov/airquality/oilandgas/index.html>.

Comment #29: Several commenters requested that the EPA include provisions in the FIP to allow for streamlined permitting of minor oil and natural gas sources in nonattainment areas, including permitting in areas during the transition period between the time an area is designated as nonattainment and the time a FIP to control emissions adequately in such nonattainment area is in place. One commenter noted that with the lowered ozone standard, this issue may become particularly problematic in certain areas, most notably the Uinta Basin. Commenters requested that the FIP continue to provide for minor source permitting in such areas until a basin-specific permitting program becomes effective under the implementation planning process. Because an attainment plan is not due until three years after an area becomes nonattainment, the absence of a vehicle to allow for continuing minor source permitting would require source-specific permits during this transition period and would disadvantage oil and natural gas development in Indian country. One commenter suggested that the FIP continue as the permitting vehicle during the transition period, and that the EPA develop area-specific FIPs for re-designated areas that would supersede the national FIP upon issuance.

Response #29: The EPA recognizes the potential for certain tribal areas to be designated as nonattainment for the new ozone standard. Currently, the permitting mechanism in place under the Federal Indian Country Minor NSR rule for oil and natural gas sources wishing to locate in nonattainment areas is limited to source-specific permits. We believe that this FIP as designed will be protective of air quality in attainment, attainment/unclassifiable and unclassifiable areas, but will not necessarily be protective in nonattainment areas without further action to reduce emissions from existing sources. Therefore, we are stating our intent to potentially apply this national FIP's requirements as appropriate to nonattainment areas where the EPA has established a separate, area-specific FIP action. In that separate, area-specific action

we would propose – and seek comment on – the application of this FIP’s requirements to new and modified true minor sources in those certain areas designated nonattainment.

It is important to note that the geographic scope of this FIP cannot be extended to cover any nonattainment areas without the EPA first proposing to apply its requirements to such an area through a separate rulemaking subject to notice and an opportunity to comment. We are here merely expressing our intent to use the approach described above in the future to provide coverage for new and modified true minor sources in Indian country nonattainment areas, should such areas exist, where the EPA believes that the FIP, or some variation thereof, in combination with an area-specific FIP, is sufficient to protect air quality.

Our expression of intent to consider adopting this FIP in nonattainment areas as an accompaniment to an area-specific FIP addressing existing sources is in direct response to comments requesting that this FIP be extended to tribal nonattainment areas at least for a period of time after designation and until it is replaced by another FIP that addresses new and modified sources. A factor in considering whether to extend the coverage of this FIP is if we believe that existing source emissions will be reduced to a great enough extent to allow room for further growth of the industry in the area, while also protecting air quality. As noted above, the public will have an opportunity to comment on any such expansion of coverage of this FIP in the separate, area-specific action.

### *I. How the EPA Selected Equipment Included in the Proposed FIP*

#### 1. Proposed Rule

The proposed oil and natural gas FIP focused on the production segment of the oil and natural gas sector, because we believed this segment includes the majority of the true minor sources in the sector that would need to obtain a minor source permit in areas covered by the Federal Indian Country Minor NSR rule. In the preamble to the proposed rule, we described the

natural gas production segment as ending where the natural gas enters a natural gas processing plant. In situations where there is no processing plant, the natural gas production segment ends at the point where the natural gas enters the transmission segment for long-line transport. The crude oil production segment ends at the storage and load-out terminal which is the point of custody transfer to an oil pipeline or for transport of the crude oil to a petroleum refinery via trucks or railcars. The petroleum refinery is not considered part of the oil and natural gas sector.

In determining which equipment to include in the proposed oil and natural gas FIP, we reviewed the EPA regulations that apply to emission units within the oil and natural gas production segment. We have relied substantially on analyses performed in support of the 2015 proposed NSPS, subpart OOOOa, to help determine which emission units the EPA should consider regulating in the oil and natural gas sector in areas covered by the Federal Indian Country Minor NSR rule as part of this proposed FIP.<sup>68</sup> In addition to the production segment sources proposed to be covered under NSPS, subpart OOOOa, in the proposed FIP, we proposed requirements from existing EPA standards for three emission sources not covered by the proposed NSPS, subpart OOOOa, because they are present at oil and natural gas production sites and emit NO<sub>x</sub> and/or VOC: engines, process heaters and glycol dehydration units. Three of the six federal rules in the proposed FIP regulate these air emissions sources, among others. Therefore, we determined that a combination of existing federal regulations and the 2015 proposed NSPS, subpart OOOOa, provides a comprehensive and consistent regulatory approach

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<sup>68</sup> “Oil and Natural Gas Sector: Standards for Crude Oil and Natural Gas Facilities. Background Technical Support Document for the Proposed New Source Performance Standards 40 CFR Part 60, subpart OOOOa,” U.S. Environmental Protection Agency, August 2015, EPA-HQ-OAR-2010-0505-5021, <http://www.regulations.gov>.

for addressing true minor oil and natural gas production sources in areas covered by the Federal Indian Country Minor NSR rule.

We concluded that these federal regulations include emission limitations that are technically and economically feasible, and cost effective because we have vetted the existing regulations via the public comment process and sources are currently complying with these federal standards, including new and modified sources in the oil and natural gas sector located in areas covered by the Federal Indian Country Minor NSR rule. The referenced NSPS are all promulgated pursuant to the EPA's authority under CAA section 111. Under CAA section 111(a), the emission limitations for all the affected sources, except process heaters and glycol dehydrators, "reflect the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator determines have been adequately demonstrated." We refer to this level of control as the Best System of Emission Reduction (BSER). In determining BSER, we typically conduct a technology review that identifies what emission reduction systems exist and how much they reduce air pollution in practice. For each control system identified, we also evaluate its costs and other impacts.

The NESHAP for process heaters and glycol dehydrators are promulgated pursuant to the EPA's authority under CAA section 112. Under CAA section 112(d)(3), the emission limitations for glycol dehydrators and process heaters at major sources of hazardous air pollutants (HAPs) reflect the application of maximum achievable control technology (MACT). The MACT emission limitation for new sources cannot be less stringent than the emission control achieved in practice by the best-controlled similar source, without considering costs. In addition, under

CAA section 112(d)(5), the emission reduction requirements for triethylene glycol dehydrators at area sources reflect “generally available control technology” (GACT). For GACT there is no statutory minimum level of emissions reduction for new or existing sources and costs can be considered. We proposed that the oil and natural gas FIP require sources to comply with the applicable MACT (for glycol dehydrators and process heaters located at major sources of HAP) or GACT (for glycol dehydrators located at area sources of HAP) emission limitations. Because the individual HAP pollutants regulated from glycol dehydrators by the NESHAP (and to some degree from process heaters, as well) for oil and natural gas production sources are also VOC, which are regulated NSR pollutants, the proposed FIP would create enforceable VOC reduction requirements for glycol dehydrators and process heaters. HAPs would serve as a surrogate for VOC with respect to emission limitations, monitoring, testing and compliance. In addition, compliance with the 40 CFR part 63, subpart DDDDD, MACT also provides beneficial reductions of other non-targeted NSR pollutants, *i.e.*, NO<sub>x</sub>.

We indicated that the rationale supporting the applicability, emission limitations, monitoring, recordkeeping, reporting, and other provisions for each of the six federal rules is found in the preambles and background documents for those rulemakings. The six federal rules are available on the Electronic Code of Federal Regulations at: <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>.

## 2. Final Action

In response to comments, we are expanding the scope of the FIP to provide coverage of natural gas processing plants. In §49.102, we have modified the definition of oil and natural gas source (termed oil and natural gas production facility in the proposal) to facilitate this expansion.

In part due to this expansion (resulting from our response to comments), we are also modifying §49.105 of the proposed FIP by adding two federal standards to the FIP's set of requirements:

- 40 CFR part 63, subpart ZZZZ – NESHAP for Stationary Reciprocating Internal Combustion Engines; and
- 40 CFR part 60, subpart KKKK – Standards of Performance for New Stationary Combustion Turbines.

Adding these standards to the FIP will provide standards for combustion turbines at gas processing plants and expand the standards in the FIP covering reciprocating internal combustion engines.

### 3. Comments and Responses

The following discussion contains comments related to how the EPA selected equipment included in the proposed FIP and our responses. The comments and responses are also addressed in Section 5.0 of the RTC Document.

Comment #30: One commenter expressed concern that, in the absence of a FIP condition expressly requiring installation of equipment subject to the six other EPA rules included in the proposed FIP, a source could utilize second-hand equipment with no applicable NSPS or NESHAP requirement and, thus, operate with no control technology requirements or emission limitations as required by §49.154(c). The commenter recommended adding language to §§49.101 and §49.105 expressly requiring installation of equipment subject to the six other rules included in the proposed FIP.

Response #30: The EPA believes that the commenter's proposal is not workable as it would limit operators to only installing equipment that is regulated by an EPA standard.

Mandating the use of equipment that meets an EPA standard runs contrary to the FIP's intent of applying a consistent set of national requirements across Indian country. In some instances sources may need to use a piece of equipment that is not subject to an EPA standard. Instead, our approach under the FIP is to require that equipment subject to one or more of the eight EPA standards comply with those standards for purposes of the FIP. As long as the equipment in question can meet the limits to which they are subject, regardless of the mechanism used to do so, the owner/operator should be able to use that equipment. We believe that this approach is sufficient to protect air quality in attainment, attainment/unclassifiable and unclassifiable areas. No change will be made as a result of this comment.

Comment #31: Three commenters asked the EPA to expand the scope of the proposed rule to include minor oil and natural gas sources outside the production segment. All three commenters requested that natural gas processing plants be added; two commenters requested that natural gas transmission and storage facilities be added, and one commenter requested that natural gas distribution facilities be added. One commenter asked the EPA to indicate whether it intends to regulate any or all of these segments in the future, and if so, what is the EPA's projected timetable. One commenter recommended that the language in §49.101(b)(1)(i) be modified to read:

“The facility is an oil and natural gas production facility or natural gas processing plant as defined in §49.102;”

Response #31: In response to these comments, the EPA has determined to expand the regulatory language in the FIP to cover true minor natural gas processing plants. The EPA has added the requirements of 40 CFR part 60, subpart KKKK, to the list of standards to cover turbines at compressor stations. The EPA notes that it is not necessary to add 40 CFR 60, subpart

KKK - Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011, or 40 CFR part 60, subpart LL - Standards of Performance for SO<sub>2</sub> Emission from Onshore Gas Processing for which Construction Commenced after January 20, 1984, and on or Before August 23, 2011. These rules are already included in the current FIP requirements because they are already included in the oil and natural gas NSPS rule at 40 CFR part 60, subpart OOOOa. The EPA is also adding the requirements of 40 CFR 63, subpart ZZZZ - National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines to the FIP in the final rule. We are comfortable with including these additional facilities under the FIP to cover true minor natural gas processing facilities because the rules will require adequate control and we do not feel that source-specific review is necessary just as we do not regard it as necessary (unless we make an exception for air quality concerns) for true minor sources in the oil and natural gas production segment of the oil and natural gas sector.

With respect to the timetable for any future regulation of the oil and natural gas sector, all segments in the sector are already subject to regulation by the EPA under the Federal Indian Country Minor NSR rule. However, only certain segments are included in this FIP because we believe that the vast majority of true minor sources in the oil and natural gas sector are in the oil and natural gas production and natural gas processing segments of the sector.

Comment #32: One commenter stated that the proposed definition for “oil and natural gas production facility” should be revised to exclude references to mobile and temporary sources, such as well drilling, completion, workover activities, and portable non-self-propelled equipment because the CAA expressly precludes application of NSR and title V to mobile sources, such as

portable, engine-powered well-drilling equipment and portable reciprocating internal combustion engines. The commenter recommended that the EPA should make it clear that these sources are not subject to air permitting requirements under the oil and natural gas FIP. This same commenter stated that the proposed oil and natural gas production facility definition does not include common unit operations such as water treatment, sweetening units (acid gas removal units), truck loading, and dew point suppression skids. The commenter noted that language such as “low to medium pressure, small diameter” are arbitrary descriptions for gathering pipelines, and that these equipment are better described by purpose (*i.e.*, to gather field gas). The commenter recommended the following change to the oil and natural gas production facility definition. They recommended the following additions and deletions:

- Adding “water” to the list of materials to be separated or treated;
- Adding the following items to the list of production components: natural gas sweetening, truck loading, and dew point suppression skids; and
- Deleting the following items from the list of production components: well drilling, completion and workover processes and portable non-self-propelled apparatuses associated with those operations; and low to medium pressure, smaller diameter, gathering pipelines and related components that collect and transport the oil, natural gas and other materials and wastes from the wells or well pads.

Response #32: The EPA has replaced the definition of “oil and natural gas production facility” in §49.102 as proposed with “oil and natural gas source.” The new definition incorporates some of the suggestions recommended by the commenter. We did not include the segments of transmission or distribution of natural gas in the definition because they do not fall

within the scope of coverage of this FIP.<sup>69</sup> However, we believe that completion and workover processes should not be removed from the definition because they are stationary sources regulated under 40 CFR part 60, subpart OOOOa. This makes the treatment of these sources under the FIP definition (§49.102) consistent with definitions related to the oil and natural gas sector in 40 CFR part 60, subpart OOOOa; 40 CFR part 63, subpart HH; and the FBIR FIP.

Comment #33: One commenter recommended that specific oil and natural gas exploration and production equipment be regulated under the proposed FIP. Specific equipment recommended for inclusion in the FIP includes: drill rigs, liquids unloading, dehydrators, truck loadout, and phase separation. The commenter recommended that plunger lifts be required for all liquids unloading. The commenter recommended that dehydrators be required to control VOC by 95 percent by using a condenser.

Response #33: The EPA feels that the original suite of six federal rules proposed to be included in the FIP, in conjunction with the two additional federal rules added under this final action, combine to adequately control emissions from oil and natural gas facilities for purposes of the FIP. It should be noted that drilling rig engines are not considered stationary sources for purposes of permitting under the Federal Indian Country Minor NSR rule, and dehydrators are addressed under 40 CFR part 63, subpart HH (National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities), which is one of the eight federal rules included in the FIP. No change has been made as a result of this comment.

Comment #34: One commenter recommended that the proposed FIP include regulation of emissions from well completions for both oil and natural gas wells, as well as casinghead gas

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<sup>69</sup> This FIP only covers the oil and natural gas production and natural gas processing segments of the oil and natural gas sector because we believe that the vast majority of true minor sources in the oil and natural gas sector are in those two segments.

and associated gas emissions. The commenter referenced recommendations in an ICF International report (ICF International, Economic Analysis of Methane Emission Reduction Opportunities in the U.S. Onshore Oil and Natural Gas Industries (March 2014), at 3-3, available at: [http://www.edf.org/sites/default/files/methane\\_cost\\_curve\\_report.pdf](http://www.edf.org/sites/default/files/methane_cost_curve_report.pdf)).

Response #34: The FIP includes the recently revised Standards of Performance for New and Modified Sources in the Oil and Natural Gas Sector (40 CFR part 60, subpart OOOOa), which requires control of oil and natural gas well completions for hydraulically fractured wells. Casinghead gas and associated gas emissions from venting or flaring during ongoing production are not currently addressed under the eight federal rules included in the final FIP; however, if those emissions sources are regulated under a future revision of subpart OOOOa, then they would automatically fall under the requirements of this FIP at true minor sources. No change has been made as a result of this comment.

Comment #35: Two commenters recommended that the EPA clarify the definition of natural gas processing plant by revising it to be consistent with the definition in other air rules. Both commenters stated that the EPA should clarify that a Joule-Thompson valve, dew point depression valve, or an isolated or standalone Joule-Thompson skid does not make a site a natural gas processing plant. Both commenters recommended that the EPA reference or include in §49.102 the definition of a natural gas processing plant contained in 40 CFR part 60, subpart OOOO (§60.5430).

Response #35: The FIP proposal did not include a definition of natural gas processing plant. In this final action we are modifying §49.102 to revise the definition of an “oil and natural gas production facility” (now “oil and natural gas source”) to make the treatment of these sources under the FIP definition (§49.102) consistent with definitions related to the oil and

natural gas sector in 40 CFR part 60, subpart OOOOa; 40 CFR part 63, subpart HH; and the FBIR FIP. We have also included natural gas processing plant as part of the definition of “oil and natural gas source” under §49.102.

One of the two commenters recommending including the definition of gas processing plant from 40 CFR part 60, subpart OOOO, provided incorrect language for the definition. Nonetheless, we have concluded that adding a definition for natural gas processing plant to the FIP is unnecessary; including natural gas processing plant in the definition of source is sufficient to extend the coverage of this FIP to non-major natural gas processing plants. At the beginning of §49.102 we make it clear that all terms not defined in the section shall have the meaning given them in 40 CFR part 60, subpart OOOOa, among other sources, which would include how natural gas processing plant is defined in the subpart.

Comment #36: One commenter noted that the current list of referenced federal NSPS and NESHAP regulations does not include 40 CFR part 63, subpart ZZZZ – National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines. The commenter stated that the EPA should make it clear in the preamble and ensure that no regulatory language of the FIP excludes oil and natural gas sources from relying on subpart ZZZZ to limit the PTE of engines to be able to qualify for the FIP. The commenter recommended that subpart ZZZZ be included in the list of referenced rules (at §49.105(g)) as follows:

“For sources that are subject to subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, for purpose of this FIP, sources must comply with all of the applicable provisions of the standard as written as of [INSERT DATE OF FINAL PROMULGATION OF O&G FIP]:”

Response #36: The EPA has included the requirements of 40 CFR part 63, subpart ZZZZ, into the final FIP as requested by the commenter. As with all of the applicable requirements from all eight of the regulations referenced in this FIP, a source can rely on the reductions required by 40 CFR part 63, subpart ZZZZ, to reduce its PTE.

Comment #37: One commenter recommended that the FIP require all new compressor engines to install steam injection and control technologies such as low-emission combustion retrofit, selective catalytic reduction (SCR), or selective non-catalytic reduction (SNCR) and to require existing sources to retrofit with the appropriate control. The commenter further recommended that the EPA should require the use of electric motors for new engines unless the operator shows it is infeasible to do so. One commenter recommended that the FIP require all external combustion units to control NO<sub>x</sub> emissions with SNCR, SCR, or a combination of SCR plus low NO<sub>x</sub> burners.

Response #37: The proposed FIP incorporates control requirements for internal and external combustion units in accordance with 40 CFR part 63, subpart DDDDD (National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters); 40 CFR part 63, subpart ZZZZ (National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines); 40 CFR part 60, subpart IIII (Standards of Performance for Stationary Compression Ignition Internal Combustion Engines); 40 CFR part 60, subpart JJJJ (Standards of Performance for Stationary Spark Ignition Internal Combustion Engines); and 40 CFR part 60, subpart KKKK (Standards of Performance for New Stationary Combustion Turbines). In the development of the FIP, we have relied on the analysis conducted in the development of these existing rules to determine adequate control technology requirements for these types of sources. The FIP only

applies to new true minor sources and modifications at existing true minor sources thus does not address the control of emissions from existing source.

### *J. Pollutants Included in the Proposed FIP*

#### 1. Proposed Rule

In the preamble to the proposed rule, we indicated that the pollutants emitted from the activities regulated through the proposed Federal Indian Country Minor NSR rule (regulated NSR pollutants) include: VOC, NO<sub>x</sub>, SO<sub>2</sub>, PM, PM<sub>10</sub>, PM<sub>2.5</sub>, H<sub>2</sub>S, CO and various sulfur compounds. Hydrogen sulfide and SO<sub>2</sub> are emitted from production and processing operations that handle and treat sour gas.<sup>70</sup>

#### 2. Final Action

In the final FIP, there is no change in the pollutants covered.

#### 3. Comments and Responses

The following discussion contains comments related to the pollutants included in the proposed FIP and our responses. The comments and responses are also addressed in Section 6.0 of the RTC Document.

Comment #38: One commenter recommended that the EPA expand the pollutants regulated in the proposed FIP to include methane. The commenter noted that, in the proposed FIP, the EPA states that it will include the requirements of the proposed, amended 40 CFR part 60, subpart OOOOa, in the FIP. The commenter stated that adding methane to the list of

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<sup>70</sup> Sour gas is natural gas with more than 5.7 milligrams of H<sub>2</sub>S per normal cubic meters (0.25 grains/100 standard cubic feet), see AP-42 Compilation of Air Pollutant Emission Factors, Chapter 5.0 Introduction to Petroleum Industry, Section 5.3 Natural Gas Processing, available at: <http://www.epa.gov/ttnchie1/ap42/ch05/final/c05s03.pdf>.

pollutants covered by the rule would provide operators and tribes with certainty that the parts of the NSPS rule governing methane emissions also apply in Indian country.

Response #38: The Federal Indian Country Minor NSR rule does not regulate GHGs, which include methane. The FIP is implementing the Federal Indian Country Minor NSR rule for the oil and natural gas sector, and, therefore, does not regulate GHGs. However, it is worth noting that, while the rule does not directly regulate methane, any controls that effectively control VOC emissions will also control methane emissions. In addition, in the event that subpart OOOOa as adopted requires control of methane, methane emissions will be reduced. No change has been made as a result of this comment.

*K. Exclusion of Existing Sources from the Proposed Oil and Natural Gas FIP*

1. Proposed Rule

In the proposed rule, the EPA indicated that, while the Federal Indian Country Minor NSR rule only addresses new and modified sources, including such sources in the oil and natural gas sector, the EPA believes that managing emissions from existing oil and natural gas sources in some areas of Indian country also may be important. This is because of the significant emissions associated with existing activity in the oil and natural gas sector in some areas of Indian country and the resultant need to protect public health and the environment. Addressing existing sources through a FIP could be useful in areas of Indian country for which surrounding state requirements apply to existing oil and natural gas sources located on lands that are within a state's jurisdiction. In doing so, EPA would consider tribes' views and interests, including any interest in promoting economic development.

While EPA believes that it has the necessary authority to promulgate a FIP regulating existing sources should it determine that it is necessary or appropriate to do so, in the September

2015 action, we proposed that the FIP only apply to new and modified true minor sources in the production segment of the oil and natural gas sector. In the proposed rule, we indicated that the proposed FIP for new and modified true minor sources in the oil and natural gas production segment locating or located in Indian reservations (and other areas of Indian country over which an Indian tribe, or the EPA, has demonstrated that the tribe has jurisdiction) would apply to all such areas designated attainment, attainment/unclassifiable, or unclassifiable. It would not apply to any areas designated nonattainment. The Federal Indian Country Minor NSR rule allows us to manage minor source emission increases in Indian country and to ensure that new source emissions do not cause or contribute to a NAAQS or PSD increment violation. We are concerned that the rapid growth of the oil and natural gas production segment, in combination with existing exploration and production activities, could result, or in some cases already has resulted, in adverse air quality impacts, especially in light of the approximately 6,300 existing true minor source registrations received in the EPA Region 8 Office for facilities in the oil and natural gas sector.<sup>71</sup> However, we believe that the most appropriate means for addressing impacts from existing sources is through area- or reservation-specific FIPs and not through a national FIP. If we determine that it is “necessary or appropriate” to exercise our discretionary authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) of our implementing regulations, we will publish a proposed area- or reservation-specific FIP that provides an opportunity for full public review and comment. At a minimum, the EPA or tribes will need to develop area-specific plans if and when areas of Indian country become nonattainment for ozone or other NAAQS

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<sup>71</sup> In the Federal Indian Country Minor NSR rule, EPA established a registration program that required owners/operators of existing true minor sources to file a one-time registration with the appropriate Reviewing Authority by March 1, 2013. The EPA’s Region 8 Office has received about 6,300 registrations from true minor sources in the oil and natural gas sector. This far exceeded the amount received from sources in any other category.

pollutants. At that time, any such area that has oil and natural gas minor source activity may require additional controls on existing (and new and modified) sources in order to achieve attainment of the NAAQS. One source of information for control options will be the EPA's control techniques guidelines (CTGs) for oil and natural gas activity that the EPA has made available for comment and will finalize in 2016.<sup>72</sup>

We believe that existing sources are best addressed through tailored, federal or tribal air quality plans because each basin producing oil and/or natural gas possesses different geological and meteorological characteristics and, thus, the primary fossil fuel resource extracted can be very different in quality and type and the impacts from emissions associated with extraction activities can vary widely. For example, the predominant resource extracted from the Bakken Pool<sup>73</sup> is a light, volatile oil, while the primary resource extracted from the Uintah Basin is a heavy, thick oil. Each of these types, in many cases, call for different sets of control requirements that are best addressed through tailored plans versus a national FIP.

We believe that through tailored plans a number of cost-effective emission reduction measures could be applied to existing emission units to balance new growth by mitigating the potential for adverse air quality impacts from overall increases in emissions. A number of state air pollution control agencies already regulate some existing emissions from this segment.<sup>74</sup> For example, in February 2014, Colorado adopted additional regulations for oil and natural gas production operations that include such requirements as expanding nonattainment area

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<sup>72</sup> For more information, go to: <https://www3.epa.gov/airquality/oilandgas/index.html>.

<sup>73</sup> Bakken Pool means oil produced from the Bakken, Three Forks, and Sanish formations.

<sup>74</sup> See, e.g., L. Gribovicz, WRAP, "Analysis of States' and EPA Oil and Gas Air Emissions Control Requirements for Oil and Gas Emissions Control Requirements for Selected Basins in the Western United States (2013 Update)," Nov. 8, 2013, available at [http://www.wrapair2.org/pdf/2013-11x\\_O&G%20Analysis%20\(master%20w%20State%20Changes%2011-08\).pdf](http://www.wrapair2.org/pdf/2013-11x_O&G%20Analysis%20(master%20w%20State%20Changes%2011-08).pdf).

pneumatic controller requirements statewide and reducing venting and flaring of gas streams at well sites, among other control strategies.<sup>75</sup> In addition, these regulations determined leak detection and repair monitoring to be cost effective at oil and natural gas production facilities. Some technologies may even provide the industry with cost savings due to recovered product. For example, the EPA's Natural Gas Star program estimates that adding a vapor recovery unit to a storage tank could pay for itself in 3 to 37 months, and thereafter result in cost savings.<sup>76</sup>

## 2. Final Action

The final FIP does not address existing oil and natural gas sources. As we discussed in our proposal, this FIP is used in lieu of source-specific permits to fulfill our requirement under the Federal Indian Country Minor NSR rule to issue pre-construction permits to new and modified sources. Further, when we proposed the Federal Indian Country Minor NSR rule on August 21, 2006, we asked for comment on how to address existing sources and we presented four options.<sup>77</sup> Of the proposed options, in response to comments, we chose to require that existing sources have to register with their Reviewing Authority, including the submittal of emissions data, with no additional requirements, unless they modify the existing source. While one of the options presented was not to include any requirements for existing sources, and would have been more consistent with state minor NSR programs, we stated that collecting source emissions data was necessary to successfully implement the minor source program. We still

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<sup>75</sup> See Colorado Dept. of Public Health and Environment, Air Quality Control Commission website at <http://www.colorado.gov/cs/Satellite/CDPHE-AQCC/CBON/1251647985820>.

<sup>76</sup> See "Lessons Learned from Natural Gas STAR Partners; Installing Vapor Recovery Units on Storage Tanks," available at [http://epa.gov/gasstar/documents/ll\\_final\\_vap.pdf](http://epa.gov/gasstar/documents/ll_final_vap.pdf) on the EPA's Natural Gas Star website: <http://epa.gov/gasstar/index.html>.

<sup>77</sup> "Review of New Sources and Modifications in Indian Country," U.S. Environmental Protection Agency, 71 FR 48696, August 21, 2006, <https://www.gpo.gov/fdsys/pkg/FR-2006-08-21/pdf/06-6926.pdf>.

believe that to be the case today and that an area-specific FIP is the most appropriate way to address emissions from existing sources.

In addition, we are indicating in this final action that in the future (subject to notice and comment) the requirements of this FIP may be extended to certain areas designated nonattainment for which the EPA has issued an area-specific FIP. This possible, future extension of coverage of this FIP could provide a mechanism for the EPA to provide streamlined permitting in nonattainment areas where we have addressed existing sources, providing air quality protection and a way to allow continued oil and natural gas growth in Indian country where it represents an important source of tribal government revenue. So, while we are not regulating existing sources in this action, we do believe that existing sources will need to be addressed before new and modified emissions can occur in nonattainment areas.

Finally, on March 10, 2016, the Obama Administration and the EPA announced the next step in reducing emissions of methane from the oil and natural gas industry: moving to regulate emissions from existing sources. The agency is beginning with a formal process to require companies operating existing oil and natural gas sources to provide information to assist in the development of comprehensive regulations to reduce methane emissions.<sup>78</sup>

### 3. Comments and Responses

The following discussion contains comments related to the exclusion of existing sources from the proposed FIP and our responses. The comments and responses are also addressed in Section 7.0 of the RTC Document.

Comment #39: Several commenters submitted comments on the subject of regulating existing sources in the proposed FIP. Three commenters recommended that the EPA regulate

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<sup>78</sup> For more information, go to: <http://www3.epa.gov/airquality/oilandgas/methane.html>.

existing sources; one commenter recommended that the EPA create a voluntary process for existing sources to register and to be regulated under the FIP; three commenters agreed with the EPA's position not to regulate existing sources; and one commenter recommended that the EPA regulate existing sources only in the context of area-specific rules. One of the commenters favoring the regulation of existing sources noted that there is substantial evidence demonstrating that existing oil and natural gas sources are responsible for considerable air pollution emissions within Indian country, and that a FIP is the only method by which the EPA may regulate existing sources. This commenter further noted that many areas of Indian country are already in nonattainment despite the six regulations already in place, and that it might be necessary for the EPA to regulate existing sources in other areas in order to prevent them from slipping into nonattainment. One of the commenters recommended that the EPA develop an approach for regulating existing true minor source oil and natural gas facilities in Indian country apart from the Proposed Rule that not only takes into account those parts of Indian country where the EPA finds an area- or reservation FIP is necessary for existing sources, but addresses existing sources throughout all of Indian country. Such an approach could include the use of FIPs, general permits, or permits by rule.

The three commenters requesting that the EPA not regulate existing sources recommended that regulation of existing sources should be addressed in the context of area-specific rulemakings, developed on a regional basis in a way that reflects local air quality characteristics, current air quality data, and emissions inventories. One of the commenters requesting that the EPA address existing sources in the context of area-specific rulemakings suggested that not all existing minor sources should be regulated in the same manner; the EPA should target those sources most directly contributing to air quality degradation. This commenter

further recommended that, should the EPA choose to regulate existing sources, the EPA should apply control requirements to existing source emissions in a flexible manner, gradually increasing enforcement as appropriate.

Response #39: The purpose of the proposed FIP was to address pre-construction permitting for new and modified true minor sources locating or located in reservation areas of Indian country and other areas of Indian country over which a tribe has jurisdiction in order to satisfy the requirements of the Federal Indian Country Minor NSR rule. We chose this approach both because of our concern that the number of applications for source-specific permits from true minor sources in the oil and natural gas sector would overwhelm the available resources of the Reviewing Authority and to provide consistency in the regulation of such sources throughout the areas where the Federal Indian Country Minor NSR rule is in effect. The proposed FIP does not address existing sources, unless they undergo modification. We see no reason to change that in the final FIP. Rather, as discussed above, we believe the best way to address emissions from existing sources is through a reservation- or area-specific FIP if and when we determine that one is necessary or appropriate to protect air quality. In addition to satisfying the requirements of the Federal Indian Country Minor NSR rule, we believe that the final FIP addressing only new and modified true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector is sufficient to protect air quality in all of the areas to which it applies regardless of the current level of oil and natural gas production and natural gas processing activities in any particular area. The exception to this statement is the Uintah and Ouray Reservation in Utah. For the Uintah and Ouray Reservation, we have sufficient concerns with the impact of emissions from existing sources that we plan to propose a separate reservation-specific FIP addressing such sources. Similarly, we will consider promulgating such

reservation- or area-specific FIPs in the future as we believe necessary or appropriate to protect air quality.

Comment #40: One commenter recommended that specific existing oil and natural gas production equipment be regulated under the proposed FIP, including: reciprocating compressors, centrifugal compressors, liquids unloading at existing wells, glycol dehydrators, liquid storage vessels, and pneumatic controllers.

The commenter recommended that the EPA require: (1) the replacement of the rod packing of existing reciprocating compressors every 36 months or 26,000 hours of operation; (2) replacement of wet seal configurations on centrifugal compressors with one that utilizes dry seals or that captures the emissions from the oil degassing unit; (3) that plunger lifts be required for all liquids unloading; (4) that dehydrators control VOC by 95 percent with a condenser; (5) that storage vessels capture VOC emissions via a closed vent system and route those emissions to a beneficial use; and (6) that high bleed pneumatic controllers be replaced with low-bleed controllers except when technically necessary.

Response #40: As stated above, the purpose of the FIP, as proposed and as finalized herein, is to satisfy the requirements of the Federal Indian Country Minor NSR rule, and not to regulate existing sources.

Comment #41: One commenter recommended that the proposed FIP be revised to require regular Leak Detection and Repair (LDAR) surveys at all new and existing facilities, including well pads, other production facilities, gathering compressor stations, and natural gas processing plants that are not covered under 40 CFR part 60, subparts KKK and OOOO. This commenter recommended that instrument-based LDAR surveys be carried out quarterly on all

sources in the production segment and that auditory, visual, and olfactory inspections should be performed monthly.

Response #41: The EPA proposed to add LDAR requirements for well sites and compressor stations, including gathering and boosting stations, to 40 CFR part 60, subpart OOOOa, rule in September 2015.<sup>79</sup> As those requirements have been incorporated into the final subpart OOOOa regulation<sup>80</sup> – and, thus, the FIP – any LDAR requirements finalized under 40 CFR part 60, subpart OOOOa, are part of the FIP. Thus, new and modified true minor sources subject to the FIP will be required to comply with certain LDAR requirements. As noted in response to Comments #39 and #40, and for the reasons stated therein, we did not propose to regulate existing sources under the FIP, and the final FIP does not regulate existing sources.

L. General Comments (e.g., Administrative, Incorporation by Reference)

1. Proposed Rule

The proposed FIP proposed to require that owners/operators of oil and natural gas production facilities comply with six federal rules, as applicable, to reduce emissions of certain pollutants from certain equipment and processes present at oil and natural gas sources. For purposes of the proposed FIP, we proposed that compliance with these rules would effectively satisfy the NSR permitting requirement. Therefore, we proposed that true minor oil and natural gas sources subject to these applicable standards would have to comply with these standards as they currently exist and as they may be amended in the future, except for those provisions that we specifically excluded. (The proposed FIP would not have changed the applicability of the

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<sup>79</sup> “Oil and Natural Gas Sector: Emission Standards for New and Modified Sources in the Oil and Natural Gas Sector,” U.S., Environmental Protection Agency, 80 FR 56593, September 18, 2015, <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-21023.pdf>.

<sup>80</sup> “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed and Modified Sources,” signed May 12, 2016, <http://www.epa.gov/airquality/oilandgas/actions.html>.

specified standards, nor would it have relieved sources subject to the standards from having to comply with them, independently of the proposed FIP.)

## 2. Final Action

In the final FIP, we are using the same approach that we proposed: to satisfy the FIP, sources must comply with the requirements of the six federal standards (and two other standards, which are being added in response to comments), to the extent that they apply, as they exist at the time construction begins.

## 3. Comments and Responses

The following discussion contains comments related to general comments and our responses. The comments and responses are also addressed in Section 8.0 of the RTC Document.

Comment #42: One commenter noted that the proposed language for §49.105 requires that oil and natural gas sources using the FIP registration process comply with six specific federal NSPS and NESHAP regulations. The commenter stated that “The proposed rule appears to make an “evergreen” incorporation by reference – *i.e.*, whenever the oil and natural gas FIP is invoked, the rule appears to require application of the then-current version of each incorporated regulation.” The commenter stated that it is beyond the EPA’s authority to make an evergreen incorporation by reference because any amendment of the incorporated rules would result in an amendment to the oil and natural gas FIP, which effectively would be accomplished without notice and comment rulemaking for the FIP. The commenter recommended that the EPA incorporate into the oil and natural gas FIP the rules as they stand at the time the FIP is promulgated, noting that the FIP can easily be amended later if significant changes are made to the underlying rules. The commenter recommended that the text of §49.105 be revised to directly incorporate by reference each of the six rules.

Response #42: The EPA notes that, under 1 CFR part 51, it cannot incorporate other regulations by references. It believes the proposed approach to including the NSPS and NESHAP standards in the FIP is the most efficient method of maintaining consistency with the applicable standards. Having to amend the FIP every time a standard is changed would be burdensome and create ambiguity for sources. We disagree that we lack the authority to adopt this approach through notice and comment rulemaking. While some of the requirements with which sources must comply may change over time, this does not result in a de facto amendment of the FIP. Rather, the FIP at all times requires compliance with the eight other rules, to the extent that they apply. Even in the absence of the FIP, sources subject to any of the eight other rules would be required to comply with those standards as they exist at the time the source begins construction. The public will have ample opportunity to comment on any proposed changes to the standards themselves. No changes have been made as a result of this comment.

Comment #43: One commenter noted that there is a typographical error in the reference to the proposed 40 CFR part 60, subpart OOOOa, standard; the word “applicable” should be included, as it is in the references to the other five regulations.

Response #43: The EPA has corrected the error in the final rule.

#### *M. Other Comments*

The following discussion contains comments that did not fall into another section and were not covered by the proposal but merit a response. The comments and responses are also addressed in Section 9.0 of the RTC Document.

Comment #44: One commenter stated that the final rule should not implement a setback requirement. The commenter stated that including a setback requirement undermines tribal sovereignty, contravenes explicit requirements embodied in existing Indian mineral leases, and is

contrary to existing BIA regulations. The commenter also noted that the EPA cannot exceed the authority granted by Congress. The commenter characterized setback requirements as unnecessary regulations, stating that the tribes can determine the appropriate setback distance.

Response #44: There was no setback requirement in the proposed FIP, and the EPA is not adding a setback requirement in the final rule. No changes have been made as a result of this comment.

Comment #45: Two commenters submitted comments on whether state requirements should be the basis for the FIP requirements. One commenter recommended that, if the EPA chooses not to regulate existing sources throughout Indian country, then the EPA should at least regulate existing sources located in states that already do so. The commenter noted that putting state and tribal lands on a level playing field will protect the health of tribal members. The commenter also noted that, in order to comply with the requirements of Executive Order 12898, the EPA should regulate existing sources on tribal lands that are located within states that already regulate existing sources. Another commenter stated that it is not appropriate to apply state regulations to Indian country. Reservation- or region-specific FIPs should be developed that address tribes' concerns and the unique characteristics of the regions or reservations at issue.

Response #45: As discussed above, and for the reasons stated, the FIP does not regulate existing sources. Further, a mere desire to "level the playing field" is not a sufficient, sole basis for imposing regulatory requirements on oil and natural gas source owners/operators. Rather, the EPA would need to determine that the state law requirements in question were necessary or appropriate. No changes have been made as a result of this comment.

## **V. Statutory and Executive Order Reviews**

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:  
Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

*B. Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the Federal Indian Country Minor NSR rule and has assigned OMB control number 2060-0003. This action establishes a FIP which serves as a mechanism for true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector locating or located in areas covered by the Federal Indian Country Minor NSR rule to satisfy the requirements of that rule other than by obtaining a source-specific minor source permit. Because it substitutes for a source-specific permit, which would contain information collection activities covered by the Information Collection Request for Federal Indian Country Minor NSR rule issued in July 2011, it does not impose any new obligations or enforceable duties on any state, local or tribal government or the private sector. In addition, the information collection activities contained in the eight rules that are referenced in this FIP have also been previously approved by OMB.<sup>81</sup>

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<sup>81</sup> 40 CFR part 60, subpart Kb: Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984 (OMB Control No. 2060-0074); 40 CFR part 60, subpart III: Standards of Performance for Stationary Compression Ignition Internal Combustion Engines (OMB Control No. 2060-0590); 40 CFR part 60, subpart JJJJ: Standards of Performance for Stationary Spark Ignition Internal Combustion Engines (OMB Control No. 2060-0610); 40 CFR part 60, subpart OOOOa: Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification, or Reconstruction Commenced after September 18, 2015 (OMB Control No. 2060-0673); 40 CFR part 63, subpart DDDDD: National

### *C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The EPA analyzed the impact on small entities of streamlined permitting under the Federal Indian Country Minor NSR rule<sup>82</sup> and determined that it would not have a significant economic impact on a substantial number of small entities. (By allowing sources to avoid having to obtain source-specific permits, this FIP also relieves regulatory burden.) This action merely implements a particular aspect of the Federal Indian Country Minor NSR rule. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

### *D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandates, as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal government or the private sector. It simply

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Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (OMB Control No. 2060-0616); 40 CFR part 63, subpart HH: National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities (OMB Control No. 2060-0417); 40 CFR part 63, subpart ZZZZ: National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (OMB Control No. 2060-0548); and 40 CFR part 60, subpart KKKK: Standards of Performance for New Stationary Combustion Turbines (OMB Control No. 2060-0582).

<sup>82</sup> “Review of New Sources and Modifications in Indian Country,” U.S. Environmental Protection Agency, 76 FR 38748, July 1, 2011, <https://www.federalregister.gov/articles/2011/07/01/2011-14981/review-of-new-sources-and-modifications-in-indian-country>.

provides one option for sources to comply with the Federal Indian Country Minor NSR rule. The Federal Indian Country Minor NSR rule itself, not this FIP, imposes the obligation that true minor sources in areas covered by the Federal Indian Country Minor NSR rule obtain a minor source NSR permit prior to commencing construction. This FIP merely provides a streamlined mechanism for meeting that obligation.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The EPA conducted outreach on this rule via ongoing monthly meetings with tribal environmental professionals in the development of the proposed action. This action reflects tribal comments on, and priorities for, developing a streamlined approach for permitting true minor sources in the oil and natural gas sector in areas covered by the Federal Indian Country Minor NSR rule.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011),<sup>83</sup> the EPA offered consultation on the proposed FIP to elected tribal officials, but no tribe requested a consultation.

One tribal commenter did raise concerns about consultation in their written comments. The commenter recommended that, in order to develop an effective and equitable FIP, the EPA should first consult with the Ute Indian Tribe so that the Tribe can offer its expertise, experience,

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<sup>83</sup> For more information, go to: <https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>.

and input into developing the FIP. The commenter stated that the EPA should not attempt to revise the definition of Indian country. The Ute Indian Tribe requested that the EPA engage the Tribe in additional government-to-government consultation once the EPA has reviewed comments on the proposed rule and is prepared to discuss those comments and any changes to the proposed rule. After the comment period for this rulemaking closed in December, we followed up on the Ute Indian Tribe's request and it was determined that the requested consultation was no longer necessary.

The EPA agrees with the commenter that consultation with affected tribes is important to development of a successful FIP. The EPA remains available to consult with tribes in regards to issues that affect them, or proactively in connection with tribal efforts to develop a TIP. The EPA has reached out to tribes during the development of this FIP. The EPA notes that the Mandan, Hidatsa, and Arikara Nation expressed an interest in working with us to develop this FIP, although the Tribe did not submit comments on the proposed FIP.

We have made changes to the FIP proposal as a result of tribal comments. Most notably, at the request of a tribal commenter, we have clarified that we are not changing the definition of Indian country. Instead, we are clarifying the geographic applicability of the FIP with respect to areas of Indian country.

As the FIP is implemented, we will continue to provide regular outreach to tribes to ensure we address issues concerning the FIP if and when they arise. The EPA is always available for consultation with any interested tribe.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

This action is not subject to Executive Order 13045 because it is not economically significant as defined in EO 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

This action does not involve technical standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This rule implements certain aspects of the Federal Indian Country Minor NSR rule.

Our primary goal in developing this FIP is to ensure that air resources in areas covered by the Federal Indian Country Minor NSR rule will be protected in the manner intended by the CAA. This action will help ensure air quality protection in areas covered by the Federal Indian Country Minor NSR rule, by including in a FIP a comprehensive set of control requirements for new and modified true minor source in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector. In addition, through this FIP, we seek to establish a mechanism that provides an effective and efficient method for implementing a pre-construction permitting program for true minor sources in the oil and natural gas sector in areas

covered by the Federal Indian Country Minor NSR rule. Under this rule we are finalizing an approach that enables a streamlined process, which helps promote economic development by minimizing delays in new construction; and provides a process comparable to those programs operated outside of Indian county, which helps tribes compete for new oil and natural gas production and natural gas processing in areas covered by the Federal Indian Country Minor NSR rule.

*K. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 49**

Environmental protection, Administrative practices and procedures, Air pollution control, Indians, Indians-law, Indians-tribal government, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 12, 2016.

Gina McCarthy,  
Administrator.

For the reasons set forth in the preamble, 40 CFR part 49 is amended as follows:

**PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT**

1. The authority citation for part 49 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

**Subpart C -- General Federal Implementation Plan Provisions**

2. Subpart C of part 49 is amended by adding an undesignated center heading and §§49.101 through 49.105 to read as follows:

**Federal Implementation Plan for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector**

**§49.101 Introduction.**

(a) *What is the purpose of §§49.101 through 49.105?* Sections 49.101 through 49.105 adopt legally and practicably enforceable requirements to control and reduce emissions of volatile organic compounds, nitrogen oxides, sulfur dioxide, particulate matter (PM, PM<sub>10</sub>, PM<sub>2.5</sub>), hydrogen sulfide, carbon monoxide and various sulfur compounds from new and modified true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector.

(b) *Am I subject to §§49.101 through 49.105?* You are subject to the requirements if you:

(1) Own or operate a new true minor oil and natural gas source or an existing true minor oil and natural gas source undergoing modification as determined pursuant to §49.153(a) that meets the criteria specified in paragraphs (b)(1)(i) through (v) of this section. Then you shall comply with the requirements of §§49.104 and 49.105, unless you obtain a source-specific permit as specified in paragraph (b)(2) or (3) of this section.

(i) The source is an oil and natural gas source as defined in §49.102;

- (ii) The oil and natural gas source as defined in §49.102 is located in Indian country as defined in §49.152(d), within the geographic scope of the Federal Minor New Source Review Program in Indian Country, as specified in §49.102;
- (iii) The oil and natural gas source as defined in §49.102 is a new true minor source or a minor modification of an existing true minor source, as determined under §49.153;
- (iv) The oil and natural gas source as defined in §49.102 begins construction or modification on or after October 3, 2016; and
- (v) The oil and natural gas source as defined in §49.102 is not located in a designated nonattainment area.

(2) Owners/operators of sources that meet the criteria specified in paragraph (b)(1) of this section that choose to obtain a source-specific permit as specified in §49.155 before beginning construction are not required to comply with the requirements of §§49.101 through 49.105.

(3) Owners/operators of sources that meet the criteria specified in paragraph (b)(1) of this section that the Reviewing Authority requires to obtain a source-specific permit to ensure protection of the National Ambient Air Quality Standards as specified in §49.155 before beginning construction are not required to comply with §§49.101 through 49.105.

(c) *When must I comply with §§49.101 through 49.105?* You must comply with §§49.101 through 49.101 on or after October 3, 2016.

(d) This Federal Implementation Plan (FIP) does not apply to minor modifications at major sources.

#### **§49.102 Definitions.**

As used in §§49.101 through 49.105, all terms not defined herein shall have the meaning given them in the Clean Air Act, in subparts A and OOOOa of 40 CFR part 60, in the

Prevention of Significant Deterioration regulations at 40 CFR 52.21, or in the Federal Minor New Source Review Program in Indian Country at §49.152. The following terms shall have the specific meanings given them:

Oil and natural gas source means a stationary source engaged in the extraction and production of oil and natural gas and/or the processing of natural gas, including the wells and all related processes used in the extraction, production, recovery, lifting, stabilization, and separation or treatment of oil, water, and/or natural gas (including condensate). Oil and natural gas production and processing components may include, but are not limited to: wells and related casing head; tubing head and “Christmas tree” piping; pumps; compressors; heater treaters; separators; storage vessels; pneumatic devices; stationary engines; natural gas sweetening; truck loading; dewpoint suppression skids; natural gas dehydrators; completion and workover processes; gathering pipelines and related components that collect and transport the oil, natural gas and other materials and wastes from the wells or well pads; and natural gas processing plants.

Oil and natural gas well means a single well that extracts subsurface reservoir fluids containing a mixture of oil and/or natural gas, and water.

Owner/operator means any person who owns, leases, operates, controls, or supervises an oil and natural gas source.

Regional Administrator means the Regional Administrator of an EPA Region or an authorized representative of the Regional Administrator.

#### **§49.103 Delegation of authority of administration to Indian tribes.**

(a) *What is the purpose of this section?* The purpose of this section is to establish the process by which a Regional Administrator may delegate to a federally-recognized tribe the

authority to assist the EPA with administration of this FIP (§§49.101 through 49.105). This section provides for administrative delegation and does not affect the eligibility criteria under §49.6 for treatment in the same manner as a state or a tribe's ability to obtain approval of a tribal implementation plan under §49.7.

(b) *How does a tribe request delegation?* In order to be delegated authority to assist us with administration of this FIP, the authorized representative of a federally-recognized tribe must submit a request to a Regional Administrator that:

(1) Identifies the specific provisions for which delegation is requested;

(2) Identifies the Indian Reservation or other affected areas of Indian country for which delegation is requested;

(3) Includes a statement by the applicant's legal counsel (or equivalent official) that includes the following:

(i) A statement that the applicant is a tribe recognized by the Secretary of the Interior;

(ii) A descriptive statement that is consistent with the type of information described in §49.7(a)(2) demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area;

(iii) A description of the laws of the tribe that provide adequate authority to administer the Federal rules and provisions for which delegation is requested; and

(iv) A demonstration that the tribal agency that will be responsible for administration has the technical capability and adequate resources to administer the FIP provisions for which delegation is requested.

(c) *How is the delegation of administrative authority accomplished?* (1) A Delegation of Authority Agreement will set forth the terms and conditions of the administrative delegation, will

specify the rule and provisions that the tribe shall be authorized to implement on behalf of the EPA, and shall be entered into by the Regional Administrator and the tribe. The Agreement will become effective upon the date that both the Regional Administrator and the authorized representative of the tribe have signed the Agreement. Once the delegation becomes effective, the tribe will be responsible, to the extent specified in the Agreement, for assisting us with administration of this FIP and shall act as the Regional Administrator as that term is used in these regulations. Any Delegation of Authority Agreement will clarify the circumstances in which the term “Regional Administrator” found throughout this FIP is to refer only to the EPA Regional Administrator and when it is intended instead to refer to the EPA Regional Administrator or a federally-recognized tribe.

(2) A Delegation of Authority Agreement may be modified, amended, or revoked, in part or in whole, by the Regional Administrator after consultation with a tribe.

(d) *How will any Delegation of Authority Agreement be publicized?* The Regional Administrator shall publish a notice in the Federal Register informing the public of any Delegation of Authority Agreement with a tribe to assist us with administration of all or a portion of this FIP and will identify such delegation in the Code of Federal Regulations. The Regional Administrator shall also publish an announcement of the Delegation of Authority Agreement in local newspapers.

#### **§49.104 Requirements regarding threatened or endangered species and historic properties.**

(a) *What are sources required to do to address threatened or endangered species and historic properties?* An owner/operator subject to the requirements contained in §§49.101 through 49.105 to satisfy its obligation under §49.151(c)(1)(iii)(B) to obtain a minor NSR permit shall meet either paragraph (c)(1) or (2) of this section, as appropriate.

(1) *Prior completion of assessment by another federal agency.* The owner/operator shall submit to the EPA Regional Office (and to the relevant tribe for the area where the source is located/locating) valid documentation demonstrating that prior Endangered Species Act (ESA) and/or National Historic Preservation Act (NHPA) compliance has been completed by another federal agency in connection with the specific oil and natural gas activity operated under this FIP (we would consider a document no longer valid if the issuing agency has reopened consultation for the prior approval). The appropriate documents shall clearly show that the other federal agency had met its obligations under both the ESA and NHPA. A simple reference to a Record of Decision or other final decision document will not be acceptable. For listed species, acceptable documentation can include a copy of a letter or biological opinion from the U.S. Fish and Wildlife Service addressing the effects of the project on listed species and critical habitat and demonstrating compliance by the federal action agency with ESA requirements. Where the federal action agency prepares a biological assessment of the action as part of its ESA compliance, that document shall also be provided to the EPA Regional Office. For historic properties, acceptable documentation can include: a letter from the appropriate historic preservation office, or a memorandum of agreement with that office, addressing the effects of the project on historic properties and demonstrating compliance by the federal action agency with NHPA requirements. All documentation shall be attached to the Part 1 Registration Form submitted in accordance with §49.160(c)(1)(iv).

(2) *Screening procedures completed by the owner/operator.* The owner/operator shall submit to the EPA Regional Office (and to the relevant tribe for the area where the source is located/locating) documentation demonstrating that it has completed the screening procedures specified for consideration of threatened and endangered species and/or historic properties and

receive written confirmation from the EPA stating that it has satisfactorily completed these procedures. This process of source documentation submittal and the EPA's confirmation that it has satisfactorily completed the procedures must occur prior to the source's submittal of its Part 1 Registration Form pursuant to §49.160(c)(1)(iv). (The procedures are contained in the following document: "Procedures to Address Threatened and Endangered Species and Historic Properties for the Federal Implementation Plan for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector," <https://www.epa.gov/tribal-air/tribal-minor-new-source-review>). Review of your submittal will be conducted by the Reviewing Authority in accordance with the procedure in paragraphs (a)(2)(i) and (ii) of this section:

(i) Within 30 days of receipt of your documentation, by letter to you, the Reviewing Authority must provide one of the following determinations:

(A) The documentation satisfactorily demonstrates completion of the screening procedures; or

(B) The documentation is not adequate, and additional information is needed. If the initial submittal is deficient, the Reviewing Authority will note any such deficiencies and may offer further direction on completing the screening procedures. Once you have addressed the noted deficiencies you must resubmit your revised screening procedure documentation for review. An additional 15-day review notification period will be used for the Reviewing Authority to determine whether the listed species and/or historic property screening procedures have been satisfied. If the Reviewing Authority makes such a determination, they will send you a letter stating that conclusion.

(ii) You must obtain a letter from the Reviewing Authority indicating that the source has adequately completed the screening procedures before you can submit the Part 1 Registration Form under §49.160(c)(1)(iv) and begin construction under this FIP.

(b) [Reserved]

#### **§49.105 Requirements.**

(a) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 63, subpart DDDDD (National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source.

(b) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 63, subpart ZZZZ (NESHAP for Stationary Reciprocating Internal Combustion Engines), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source.

(c) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 60, subpart IIII (Standards of Performance for Stationary Compression Ignition Internal Combustion Engines), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source, except for paragraphs (c)(1) through (7) of this section:

(1) Section 60.4200(a)(1) – Am I subject to this subpart? (applies to manufacturers);

- (2) Section 60.4200(b) – Not applicable to a stationary spark ignition internal combustion engine being tested at an engine test cell/stand;
- (3) Section 60.4201 – What emission standards must I meet for non-emergency engines if I am a stationary compression ignition internal combustion engine manufacturer?;
- (4) Section 60.4202 – What emission standards must I meet for emergency engines if I am a stationary compression ignition internal combustion engine manufacturer?;
- (5) Section 60.4203 – How long must my engines meet the emission standards if I am a manufacturer of stationary compression ignition internal combustion engines?;
- (6) Section 60.4210 – What are my compliance requirements if I am a stationary compression ignition internal combustion engine manufacturer?; and
- (7) Section 60.4215 – What requirements must I meet for engines used in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands?

(d) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 60, subpart JJJJ (Standards of Performance for Stationary Spark Ignition Internal Combustion Engines), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source, except for paragraphs (d)(1) through (5) of this section:

- (1) Section 60.4230(b) – Not applicable to stationary spark ignition internal combustion engines being tested at an engine test cell/stand;

(2) Section 60.4230(c) – Exemption for obtaining a Title V permit if owner or operator of an area source subject to this part;

(3) Sections 60.4231 and 60.4232 – Emission standards for manufacturers;

(4) Sections 60.4238 through 60.4242 – Compliance Requirements for Manufacturers;  
and

(5) Section 60.4247 – Mobile source provisions that apply to manufacturers of stationary spark ignition internal combustion engines or equipment containing such engines.

(e) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 60, subpart Kb (Standards of Performance for Volatile Organic Liquid Storage Vessels), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source, except for paragraphs (e)(1) and (2) of this section:

(1) Section 60.112b(c) – Source-specific standard for Merck & Co., Inc.'s Stonewall Plant in Elkton, Virginia; and

(2) Section 60.117b(a) and (b) – Delegation of authority.

(f) For true minor sources (and minor modifications at true minor sources) that are subject to subpart OOOOa (Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification, or Reconstruction Commenced after September 18, 2015), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor

source or on the minor modification at an existing true minor source, except for paragraphs (f)(1) through (5) of this section:

- (1) Section 60.5365a(h)(4) – Existing sources constructed after August 23, 2011;
- (2) Section 60.5370a(c) – Permit exemption;
- (3) Section 60.5413a(a)(5) – Exemptions from performance testing – hazardous waste incinerator;
- (4) Section 60.5420a(a)(2)(i) – Advance notification requirements for well completions;  
and
- (5) Section 60.5420a(a)(2)(ii) – Advance notification requirements of well completions when subject to state regulation that requires advance notification.

(g) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 63, subpart HH (National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities), for purposes of this FIP, sources must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source, except for paragraphs (g)(1) through (6) of this section:

- (1) Section 63.760(a)(2) – Facilities that process, upgrade or store hydrocarbon liquids;
- (2) Section 63.760(b)(1)(ii) – Each storage vessel with the potential for flash emissions;
- (3) Section 63.760(g) – Recordkeeping for major sources that overlap with other regulations for equipment leaks;

(4) Section 63.764(c)(2) – Requirements for compliance with standards for storage vessels;

(5) Section 63.766 -- Storage vessel standards; and

(6) Section 63.769 -- Equipment leak standards.

(h) For true minor sources (and minor modifications at true minor sources) that are subject to 40 CFR part 60, subpart KKKK (Standards of Performance for Stationary Combustion Turbines), for purposes of this FIP, the owner/operator must comply with all of the applicable provisions of the standard as written at the time the owner/operator begins construction on the new true minor source or on the minor modification at an existing true minor source.

3. Section 49.151 is amended by revising paragraphs (b)(1), (c)(1) introductory text, (c)(1)(iii)(A) and (B), and (d)(1), (2), and (4) to read as follows:

**§49.151 Program overview.**

\* \* \* \* \*

(b) \* \* \*

(1) It satisfies the requirements of section 110(a)(2)(C) of the Act by establishing a pre-construction permitting program for all new and modified minor sources (minor sources) and minor modifications at major sources located in Indian country and by establishing a Federal Implementation Plan (§§49.101 through 49.105) for true minor sources in the oil and natural gas production and natural gas processing segments that are located in Indian country.

\* \* \* \* \*

(c) *When and where does this program apply?* (1) The provisions of this program apply in all Indian reservation lands where no EPA-approved program is in place and all other areas of

Indian country where no EPA-approved program is in place and over which an Indian tribe, or the EPA, has demonstrated that a tribe has jurisdiction, according to the implementation schedule in paragraphs (c)(1)(i) through (iii) of this section:

\* \* \* \* \*

(iii) \* \* \*

(A) If you own or operate an existing true minor source in Indian country (as defined in §49.152(d)), you must register your source with the Reviewing Authority in your area by March 1, 2013. If your true minor source is not engaged in an oil and natural gas activity and you commence construction after August 30, 2011, and before September 2, 2014, you must also register your source with the Reviewing Authority in your area within 90 days after the source begins operation. If your true minor source is engaged in an oil and natural gas activity and you commence construction after August 30, 2011, and before October 3, 2016, you must register your source with the Reviewing Authority in your area within 90 days after the source begins operation. You are exempt from these registration requirements if your true minor source is subject to §49.138.

(B) If your true minor source is not engaged in an oil and natural gas activity and you wish to begin construction of a new true minor source or a minor modification at an existing true minor source on or after September 2, 2014, you must first obtain a permit pursuant to §§49.154 and 49.155 (or a general permit/permit by rule pursuant to §49.156, if applicable). If your true minor source is an oil and natural gas source, as defined in §49.102, and you wish to begin construction of a new true minor source or a minor modification at an existing true minor source on or after October 3, 2016, you must either comply with the Federal Implementation Plan for sources in the oil and natural gas production and natural gas processing segments of the oil and

natural gas sector that are located in Indian country (§§49.101 through 49.105) from the day you begin construction or opt out of those requirements pursuant to §49.101(b)(2) and instead obtain a minor source permit pursuant to §§49.154 and 49.155 before beginning construction.

Alternatively, you may be required by the EPA, pursuant to §49.101(b)(3), to obtain a minor source permit pursuant to §§49.154 and 49.155 before beginning construction. All proposed new sources or modifications of existing sources are also subject to the registration requirements of §49.160, except for sources that are subject to §49.138.

\* \* \* \* \*

(d) \* \* \*

(1) If you begin construction of a new source or modification that is subject to this program after the applicable date specified in paragraph (c) of this section without applying for and receiving a permit pursuant to this program or complying with the Federal Implementation Plan at §§49.101 through 49.105 for the oil and natural gas production and natural gas processing segments of the oil and natural gas sector, you will be subject to appropriate enforcement action.

(2) If you do not construct or operate your source or modification in accordance with the terms of your minor NSR permit or the Federal Implementation Plan for the oil and natural gas production and natural gas processing segments of the oil and natural gas sector at §§49.101 through 49.105, you will be subject to appropriate enforcement action.

\* \* \* \* \*

(4) Issuance of a permit or compliance with the Federal Implementation Plan for the oil and natural gas production and natural gas processing segments of the oil and natural gas sector at §§49.101 through 49.105 does not relieve you of the responsibility to comply fully with

applicable provisions of any EPA-approved implementation plan or Federal Implementation Plan or any other requirements under applicable law.

\* \* \* \* \*

4. Section 49.152 is amended in paragraph (d) by revising the introductory text and adding paragraph (4) to the definition of “Indian country” and adding in alphabetical order the definition “Startup of production” to read as follows:

**§49.152 Definitions.**

\* \* \* \* \*

(d) \* \* \*

*Indian country*, as defined in 18 U.S.C. 1151, means the following as applied to this program:

\* \* \* \* \*

(4) The geographic scope of applicability of this rule is as specified in §49.151(c)(1).

\* \* \* \* \*

*Startup of production* is as defined at §60.5430a.

\* \* \* \* \*

5. Section 49.153 is amended by revising paragraphs (a)(1)(i)(B) and (a)(1)(ii)(B) to read as follows:

**§49.153 Applicability.**

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(B) *Step 2.* Determine whether your proposed source's potential to emit for the pollutant

that you are evaluating, (including fugitive emissions, to the extent they are quantifiable, only if the source belongs to one of the source categories listed pursuant to section 302(j) of the Act), is equal to or greater than the corresponding minor NSR threshold in Table 1 of this section. If it is, then you are subject to the pre-construction requirements of this program for that pollutant, except that sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector shall instead comply with the requirements of the Federal Implementation Plan at §§49.101 through 49.105, unless you opt-out of the Federal Implementation Plan pursuant to §49.101(b)(2) in which case you are subject to the pre-construction requirements of this program for that pollutant or are required by the EPA to obtain a minor source permit pursuant to §49.101(b)(3). If it is not, then proceed to Step 3 (paragraph (a)(1)(ii)(C) of this section).

(ii) \* \* \*

(B) *Step 2.* Determine whether the increase in allowable emissions from the proposed modification (calculated using the procedures of paragraph (b) of this section) would be equal to or greater than the minor NSR threshold in Table 1 of this section for the pollutant that you are evaluating. If it is, then you are subject to the pre-construction requirements of this program for that pollutant, except oil and natural gas production and natural gas processing sources shall instead comply with the requirements of the Federal Implementation Plan at §§49.101 through 49.105, unless you opt-out of the Federal Implementation Plan pursuant to §49.101(b)(2) in which case you are subject to the pre-construction requirements of this program for that pollutant or are required by the EPA to obtain a minor source permit pursuant to §49.101(b)(3). If it is not, then proceed to Step 3 (paragraph (a)(1)(ii)(C) of this section).

\* \* \* \* \*

6. Section 49.160 is amended by revising paragraphs (c)(1)(ii) and (iii), adding paragraph (c)(1)(iv), and revising paragraph (c)(4) to read as follows:

**§49.160 Registration program for minor sources in Indian country.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) If your true minor source is not engaged in an oil and natural gas activity, and you commence construction after August 30, 2011, and before September 2, 2014, then you must register your source with the Reviewing Authority within 90 days after the source begins operation. If your new true minor source or minor modification of an existing true minor source is engaged in an oil and natural gas activity, and you commence construction after August 30, 2011, and before October 3, 2016, then you must register your source with the Reviewing Authority within 90 days after the source begins operation.

(iii) If your true minor source is not engaged in an oil and natural gas activity, and you commence construction or modification of your source on or after September 2, 2014, and your source is subject to this rule, then you must report your source's actual emissions (if available) as part of your permit application and your permit application information will be used to fulfill the registration requirements described in paragraph (c)(2) of this section. If your true minor source is engaged in an oil and natural gas activity, and you commence construction or modification of your source on or after October 3, 2016, then you must report your source's actual emissions (if available) as part of your permit application (source-specific permits), unless you are subject to the Federal Implementation Plan under §§49.101 through 49.105 (where the requirements under paragraph (c)(1)(iv) of this section shall be met). Your permit application for oil and natural gas

production and natural gas processing sources seeking a source-specific permit will be used to fulfill the registration requirements described in paragraph (c)(2) of this section.

(iv) Minor sources complying with §§49.101 through 49.105 for the oil and natural gas production and natural gas processing segments of the oil and natural gas sector, as defined in §49.102, must submit the Part 1 Registration Form 30 days prior to beginning construction that contains the information in paragraph (c)(2) of this section. The Part 2 Registration Form must be submitted within 60 days after the startup of production as defined in §49.152(d), which include emissions information. The source must determine the potential for emissions within 30 days after startup of production. The combination of the Part 1 and Part 2 Registration Forms submittals satisfies the requirements in paragraph (c)(2) of this section. The forms are submitted to the EPA instead of the application form required in paragraph (c)(1)(iii) of this section. The forms are available at: <https://www.epa.gov/tribal-air/tribal-minor-new-source-review> or from the EPA Regional Offices.

\* \* \* \* \*

(4) *Duty to obtain a permit or to comply with the Federal Implementation Plan for sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector.* Submitting a registration form does not relieve you of the requirement to obtain any required permit, including a pre-construction permit, or to comply with the Federal Implementation Plan for the oil and natural gas production and natural gas processing segments of the oil and natural gas sector if your source or any physical or operational change at your source would be subject to any minor or major NSR rule.

\* \* \* \* \*

7. Section 49.166 is amended by revising paragraph (c)(1) to read as follows:

**§49.166 Program overview.**

\* \* \* \* \*

(c) *When and where does this program apply?* (1) The provisions of this program apply to new major sources and major modifications at existing major sources located in nonattainment areas in all Indian reservation lands where no EPA-approved program is in place and all other areas of Indian country where no EPA-approved program is in place and over which an Indian tribe, or the EPA, has demonstrated that a tribe has jurisdiction, and where there is no EPA-approved nonattainment major NSR program beginning on August 30, 2011. The provisions of this program apply only to new sources and modifications that are major for the regulated NSR pollutant(s) for which the area is designated nonattainment.

\* \* \* \* \*

8. Section 49.167 is amended by revising the introductory text and adding paragraph (4) to the definition of “Indian country” to read as follows:

**§49.167 Definitions.**

\* \* \* \* \*

*Indian country*, as defined in 18 U.S.C. 1151, means the following as applied to this program:

\* \* \* \* \*

(4) The geographic scope of applicability of this rule is as specified in §49.166(c)(1).

\* \* \* \* \*

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