

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 49

[EPA-HQ-OAR-2014-0606; FRL-9931-75-OAR]

RIN 2060-AS27

### 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

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing a federal implementation plan (FIP) 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 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 would satisfy 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"). The FIP proposes to require 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, compressors (reciprocating and centrifugal), fuel storage tanks, fugitive emissions from well sites and compressor stations, glycol dehydrators, hydraulically fractured oil and gas well completions, pneumatic controllers in production, pneumatic pumps, process heaters and storage vessels.

The EPA is also proposing 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, 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 are revising the definition of Indian country

to comport with a court decision that addressed 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). This court decision also affects the definition of Indian country under the Federal Major New Source Review Program in Indian Country so we are changing the definition under the Federal Indian Country Major NSR rule as well.

**DATES:** *Comments.* Comments must be received on or before November 17, 2015.

*Public Hearing.* The EPA will hold a public hearing on this proposed action. Details will be announced in a separate notice.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2014-0606, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud or other file sharing system). For additional submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket.* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Docket Center (EPA/DC), Room 3334, EPA WJC West Building, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744,

and the telephone number for the Air Docket is (202) 566-1742.

**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 oil and natural gas new source performance standards (NSPS) proposed action,<sup>1</sup> please contact Mr. Bruce Moore, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (E-143-01), Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541-5460, facsimile number (919) 541-4312, email address: [moore.bruce@epa.gov](mailto:moore.bruce@epa.gov). For questions about the proposed action on the oil and natural gas source determination,<sup>2</sup> please contact Ms. Cheryl Vetter, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03), Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541-4391, facsimile number (919) 541-541-4312, email address: [vetter.cheryl@epa.gov](mailto:vetter.cheryl@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 (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;

<sup>1</sup> "Emission Standards for New and Modified Sources in the Oil and Natural Gas Sector," signed August 18, 2015, <http://www.epa.gov/airquality/oilandgas/actions.html>.

<sup>2</sup> "Source Determination for Certain Emission Units in the Oil and Natural Gas Sector," signed August 18, 2015, <http://www.epa.gov/airquality/oilandgas/actions/html>.

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](mailto: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: <http://www.epa.gov/air/tribal/tribalnsr.html>. 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 proposal?
  - B. What should I consider as I prepare my comments to the EPA?
  - C. Where can I get a copy of this document and other related information?
- II. Purpose
  - A. Proposed Oil and Natural Gas FIP
  - B. Proposed Amendments to the Federal Indian Country Minor NSR Rule
- III. Background

- A. Tribal Air Rule
- B. Federal Indian Country Minor NSR Rule
- C. General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country—Final Rules
- D. EPA Actions Affecting Oil and Natural Gas Minor Sources in areas covered by the Federal Indian Country Minor NSR Rule
- E. What is a FIP?
- F. Oil and Natural Gas Sector
- IV. Summary of Proposed Oil and Natural Gas FIP
  - A. Overview
  - B. What are the proposed FIP requirements?
  - C. Site-Specific Permits
- V. Summary of Proposed Amendments to the Federal Indian Country Minor NSR Rule
- VI. Implementation Issues
  - A. Requirements Relating to Threatened or Endangered Species and Historic Properties
  - B. What is the effect of this FIP on other Indian Country FIPs?
- VII. Rationale for Proposed FIP
  - A. Why are we choosing a FIP as an alternative to site-specific permits, general permits and permits by rule?
  - B. How did we select which equipment to include in this proposed FIP?
  - C. Why are we excluding existing sources from this proposed oil and natural gas FIP?
  - D. Why is the EPA extending the permitting deadline for oil and natural gas true minor sources in areas covered by the Federal Indian Country Minor NSR rule?
- VIII. 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 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

**I. General Information**

*A. What entities are potentially affected by this proposal?*

Entities potentially affected by this proposal consist of owners and 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 PROPOSED ACTION**

Industry category	NAICS Code <sup>a</sup>	Examples of regulated entities/description of industry category
Oil and 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 preparation of oil and gas up to the point of shipment from the producing property.
Crude Petroleum and Natural Gas Extraction .....	211111	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 gas field gases.
Natural Gas Liquid Extraction .....	211112	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.
Drilling Oil and Gas Wells .....	213111	Recovery of liquid hydrocarbons from oil and gas field gases; and sulfur recovery from natural gas.
		Drilling oil and gas wells for others on a contract or fee basis, including spudding in, drilling in, re-drilling, and directional drilling.

TABLE 1—SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION—Continued

Industry category	NAICS Code <sup>a</sup>	Examples of regulated entities/description of industry category
Support Activities for Oil and Gas Operations .....	213112	Performing support activities on a contract or fee basis for oil and 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 proposed FIP applicability in 40 CFR 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. What should I consider as I prepare my comments to the EPA?*

*Submitting CBI.* Do not submit this information to the EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI to only the following address: Ms. Tiffany Purifoy, c/o OAQPS Document Control Officer (Mail Code C404-02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA-HQ-OAR-2014-0606.

*Coordination of Comments on Four Actions Affecting Oil and Natural Gas Sector.* The EPA is proposing three rules that affect sources in the oil and natural gas sector. One is today's proposed rule, the oil and natural gas FIP for new true

minor sources and minor modifications at existing true minor sources for Indian country. The other two proposed rules are the 2015 proposed 40 CFR part 60, subpart OOOOa rulemaking, which updates the oil and natural gas NSPS, and the proposed rule addressing oil and natural gas source determinations for NSR purposes.<sup>3</sup> In addition, the EPA is making available for public review and comment a draft Control Techniques Guidelines (CTG) for the Oil and Natural Gas Source Category document.<sup>4</sup> We welcome comments on all four of these actions. To help us respond more efficiently to public comments on this proposal, we request that commenters submit comments addressing the oil and natural gas NSPS signed on August 18, 2015 to the docket for the oil and natural gas NSPS, Docket ID No. EPA-HQ-OAR-2010-0505. Please do not send comments on the proposed oil and natural gas NSPS to the docket for this proposed FIP. Comments addressing the 2015 proposed oil and natural gas NSPS would include comments, for example, about the level of proposed control for the oil and natural gas NSPS. For this proposal, we request comments on the concept of relying on the oil and natural gas NSPS (and other applicable EPA rules) for the oil and natural gas FIP for Indian country. We request that comments on this concept and other comments applicable to this proposed FIP be submitted to the docket (Docket ID No. EPA-HQ-OAR-2014-0606). In addition, on September 18, 2015, the EPA proposed to amend 40 CFR parts 51, 52, 70, and 71 to address major

<sup>3</sup>“Oil and Natural Gas Sector: Emission Standards for New and Modified Sources,” signed August 18, 2015, and “Source Determination for Certain Emission Units in the Oil and Natural Gas Sector,” signed August 18, 2015, <http://www.epa.gov/airquality/oilandgas/actions.html>.

<sup>4</sup>Draft Control Techniques Guidelines for the Oil and Natural Gas Source Category, signed August 18, 2015, <http://www.epa.gov/airquality/oilandgas/actions.html>.

source determinations for oil and gas extraction facilities for NSR purposes.<sup>5</sup> All comments related to source determinations for oil and gas extraction facilities should be addressed to Docket ID No. EPA-HQ-OAR-2013-0685. Finally, all comments on the draft oil and natural gas CTG document should be addressed to Docket ID No. EPA-HQ-OAR-2015-0216.

We have incorporated by reference Docket ID No. EPA-HQ-OAR-2010-0505 and Docket ID No. EPA-HQ-OAR-2013-0685 into DOCKET ID No. EPA-HQ-OAR-2014-0606. Comments submitted to Docket ID No. EPA-HQ-OAR-2010-0505 and Docket ID No. EPA-HQ-OAR-2013-0685 will be part of the official record for this oil and natural gas FIP proposed action.

*Docket.* The docket number for this action is Docket ID No. EPA-HQ-OAR-2014-0606.

*World Wide Web (WWW).* In addition to being available in the docket, an electronic copy of this document will be posted on the WWW. Following signature, the EPA will post a copy of this document at: <http://www.epa.gov/airquality/oilandgas/actions.html>, <http://www.epa.gov/nsr> (regulations and standards section of the NSR home page), and at: <http://www.epa.gov/air/tribal/tribalnsr.html> (tribal NSR page).

*Preparing Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Respond to specific questions and link comments to specific CFR references when appropriate.
- Explain why you agree or disagree and suggest alternatives. Include specific regulatory text that implements your requested changes.

<sup>5</sup>“Source Determination for Certain Emission Units in the Oil and Natural Gas Sector,” signed August 18, 2015, <http://www.epa.gov/airquality/oilandgas/actions.html>.

- Explain technical information and/or data that you used to as the basis of your comment and provide references to the supporting information.

- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Make sure to submit your comments by the comment period deadline identified.

*C. 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 proposal will also be available on the WWW. Following signature by the EPA Administrator, a copy of this notice will be posted on the regulations and standards section of the NSR home page located at: <http://www.epa.gov/nsr>, on the tribal NSR page at: <http://www.epa.gov/air/tribal/tribalnsr.html>, and at the oil and natural gas air pollution standards page at <http://www.epa.gov/airquality/oilandgas/actions.html>.

**II. Purpose**

*A. Proposed Oil and Natural Gas FIP*

We are proposing a FIP for 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 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 would apply to new and modified true minor sources that are located or expanding in the referenced areas of Indian country designated as unclassifiable, attainment, or attainment/unclassifiable. It would not apply to new and modified true minor sources that are located or expanding in referenced areas of Indian country designated nonattainment. (Requirements for such areas would be addressed through site-specific minor NSR permitting and/or separate, reservation-specific FIPs.).

This FIP would be used instead of site-specific permits to fulfill the EPA's obligation under the Federal Indian Country Minor NSR rule to issue minor NSR preconstruction permits. The FIP would provide a streamlined, alternative approach addressing the permitting requirement, while also ensuring air quality protection through requirements that are unambiguous and legally and practicably enforceable. The FIP would reduce burden for sources and the Reviewing Authority and prevent delays in new construction due to the minor NSR permitting obligation. True minor sources in the oil and natural gas sector would be required to comply with the FIP instead of being required to obtain a minor source permit, unless a source chooses to opt out of the FIP and to obtain a site-

specific minor NSR permit instead. In addition, the Reviewing Authority could require a source to obtain a site-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 increment violation. To protect the NAAQS, the Reviewing Authority could regulate emissions from operations at the minor source not regulated by the proposed FIP or could require more stringent emission limitations for operations at the source regulated by the proposed FIP.

In this FIP, we are proposing to require owners and operators of oil and natural gas production facilities to comply with six 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: 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 gas well completions, pneumatic controllers in production, pneumatic pumps, process heaters and storage vessels. The proposed oil and natural gas FIP requires compliance with four NSPS and two national emission standards for hazardous air pollutants (NESHAP). These rules are listed in Table 2.

TABLE 2—SIX FEDERAL RULES INCORPORATED BY REFERENCE IN THE PROPOSED OIL AND NATURAL GAS FIP FOR INDIAN COUNTRY<sup>6</sup>

40 CFR part and subpart	Title of subpart	Potentially affected sources in the production segment	Location
40 CFR part 63, subpart DDDDD ..	National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters.	Process heaters .....	<a href="http://www.ecfr.gov/cgi-bin/text-idx?SID=9f31077f895e9cb417f5386519941a47&amp;mc=true&amp;node=sp40.14.63.dddd&amp;rgn=div6">http://www.ecfr.gov/cgi-bin/text-idx?SID=9f31077f895e9cb417f5386519941a47&amp;mc=true&amp;node=sp40.14.63.dddd&amp;rgn=div6</a>
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 IIII .....	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.iiii&amp;rgn=div6">http://www.ecfr.gov/cgi-bin/text-idx?SID=9f31077f895e9cb417f5386519941a47&amp;mc=true&amp;node=sp40.7.60.iiii&amp;rgn=div6</a>

<sup>6</sup> Two of the six 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 primarily to address criteria pollutants. These two NESHAPs control VOC and/or NO<sub>x</sub>. VOC and NO<sub>x</sub> are NSR-

regulated pollutants of concern in the Federal Indian Country Minor NSR rule.

TABLE 2—SIX FEDERAL RULES INCORPORATED BY REFERENCE IN THE PROPOSED OIL AND NATURAL GAS FIP FOR INDIAN COUNTRY<sup>6</sup>—Continued

40 CFR part and subpart	Title of subpart	Potentially affected sources in the production segment	Location
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>
40 CFR part 60, subpart OOOOa (proposed).	Standards for New and Modified Sources in the Oil and Natural Gas Sector.	Storage Vessels, Pneumatic Controllers, Compressors (Reciprocating and Centrifugal), Hydraulically Fractured Oil and 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>

For purposes of this FIP, we are proposing that compliance with these rules would effectively satisfy the NSR requirements. Therefore, we are proposing that true minor oil and natural gas sources subject to these standards must comply with these standards as they currently exist and as they may be amended, except for those provisions that we specifically exclude. (This proposed 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.)

We are seeking comment on the concept of relying on these EPA standards as written at the time construction or modification of the source is begun for the requirements of the proposed oil and natural gas FIP. The purpose is to protect air quality in Indian reservations and in other areas of Indian country for which an Indian tribe, or the EPA, has demonstrated the tribe's jurisdiction and are designated as attainment, unclassifiable, or attainment/unclassifiable. It is our intent that oil and natural gas sources in areas covered by the Federal Indian Country Minor NSR rule using the proposed FIP would be subject, for purposes of the proposed FIP, to any amendments to an NSPS or NESHAP, including any amendments to the oil and natural gas NSPS that become part of the final oil and natural gas NSPS as a result of the 2015 proposed oil and natural gas NSPS.<sup>7</sup> Sources subject to this proposed FIP would be subject to

any future changes made to these six underlying EPA standards only if they would otherwise be subject to those future changes. To help understand the requirements of this proposed oil and natural gas FIP, please see the 2015 proposed oil and natural gas NSPS and the provisions for each of the six federal rules (*i.e.*, four NSPS and two NESHAP) identified above.

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

Today's action proposes several amendments to the Federal Indian Country Minor NSR rule. First, we are proposing to revise § 49.151(b)(1) to establish as one of the purposes of the Federal Minor NSR Program in Indian Country the incorporation of the FIP (§§ 49.101 through 105) for oil and natural gas production true minor sources located in an Indian reservation or in another area of Indian country over which an Indian tribe, or the EPA, has demonstrated that the tribe has jurisdiction. Also, to clarify the purpose of subpart C, we are proposing to revise the subpart heading.

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

Third, we are proposing to revise § 49.151(c)(1)(iii)(B) to establish a deadline for when new and modified true minor sources in the production segment of the oil and natural gas sector that are located in an Indian reservation or in another area of Indian country over which an Indian tribe, or the EPA, has demonstrated that the tribe has jurisdiction or planning to locate in

such areas must comply with the FIP in lieu of obtaining a minor NSR permit, unless the source opts for a site-specific minor NSR permit. If a source opts-out of the FIP, then we are proposing to extend the date for when the source must obtain a minor source permit. We are proposing to extend the deadline from March 2, 2016, to October 3, 2016.

Fourth, we are proposing to revise § 49.151(d)(1), (2) and (4) to incorporate compliance with the FIP.

Fifth, we are proposing to revise §§ 49.153(a)(1)(i)(B) and (ii)(B) to establish that oil and natural gas production true minor sources are required to comply with the FIP, unless a source opts out of the FIP pursuant to § 49.101(b)(2) or is required by the EPA to obtain a source-specific minor source permit pursuant to § 49.101(b)(3).

Sixth, we are proposing to revise §§ 49.160(c)(1)(ii) and (iii), to add § 49.160(c)(1)(iv) and to revise § 49.160(c)(4). We are revising § 49.160(c)(1)(ii) to conform the registration deadline to the extended permitting deadline in § 49.151(c)(1)(iii)(B). For § 49.160(c)(1)(iii) and § 49.160(c)(1)(iv), we are establishing that sources subject to the FIP still have to register with the Reviewing Authority, and we describe how to do that. For § 49.160(c)(4), we are proposing to clarify that submitting a registration form does not relieve a source of the requirement to comply with the FIP if the source (or any physical or operational change at the source) would be subject to any minor NSR rule.

Finally, we are revising the definition of Indian country in § 49.152(d) to comport with a court decision that

<sup>7</sup> "Oil and Natural Gas Sector: Emission Standards for New and Modified Sources," signed August 18, 2015, <http://www.epa.gov/airquality/oilandgas/actions.html>.

addressed 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). This court decision also affects the definition of Indian country under the Federal Major New Source Review Program in Indian Country so we are changing the definition under the Federal Indian Country Major NSR rule in § 49.167.

### III. Background

#### A. Tribal Authority Rule

Section 301(d) of the Clean Air Act (CAA) authorizes the EPA to treat Indian tribes in the same manner as states and directs the EPA to promulgate regulations specifying those provisions of the CAA for which such treatment is appropriate. (42 U.S.C. § 7601(d)(1) and (2)). It also authorizes the EPA, in circumstances in which the EPA determines that the treatment of Indian tribes as identical to states is inappropriate or administratively infeasible, to provide by regulation other means by which the EPA will directly administer the CAA. (42 U.S.C. § 7601(d)(4)) Acting principally pursuant to that authority, on February 12, 1998,<sup>8</sup> the EPA promulgated what we refer to as the Tribal Authority Rule (TAR). (40 CFR 49.1–49.11). In the TAR, we determined that it was appropriate to treat tribes in the same manner as states for all CAA and regulatory purposes except a list of specified CAA provisions and implementing regulations thereunder. (40 CFR 49.4) Among those provisions of the CAA for which we determined that tribes will not be treated in the same manner as states are specific plan submittal and implementation deadlines for NAAQS-related requirements, including the requirement under section 110(a)(2)(c) to submit a program, including a permit program as required in parts C and D of the CAA, to regulate the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. In the TAR, we also determined that we would not treat tribes in the same manner as states with respect to CAA section 110(a)(1) (State Implementation Plan (SIP) submittal) and CAA section 110(c)(1) (directing the EPA to promulgate a FIP “within 2 years” after we find that a state has failed to submit a required plan, or has submitted an incomplete plan, or within 2 years after we disapproved all or a

portion of a plan), among other provisions.<sup>9</sup>

The TAR preamble clarified that by including CAA section 110(c)(1) on the § 49.4 list, “EPA is not relieved of its general obligation under the CAA to ensure the protection of air quality throughout the nation, including throughout Indian country. The preamble confirmed that the “EPA will continue to be subject to the basic requirement to issue a FIP for affected tribal areas within some reasonable time.”<sup>10</sup> In the TAR, we thus exercised our discretionary authority under CAA §§ 301(a) and 301(d)(4) to establish a regulation providing that we would promulgate without unreasonable delay such FIP provisions as are necessary or appropriate to protect air quality (40 CFR 40.11(a)). Section 49.11(a) provides that the EPA will promulgate a FIP as necessary or appropriate to protect tribal air quality within a reasonable time if tribal efforts do not result in adoption and approval of tribal plans or programs.<sup>11</sup>

On August 21, 2006, acting pursuant to that authority, we proposed the regulation: “Review of New Sources and Modifications in Indian Country” (*i.e.*, Indian Country NSR rule).<sup>12</sup> Within this regulation, the EPA proposed to protect air quality in areas covered by the Federal Indian Country Minor NSR rule by establishing a FIP program to regulate the modification and construction of stationary sources consistent with the requirements of section 110(a)(2)(c) of the CAA. We call this part of the Indian Country NSR rule the Federal Indian Country Minor NSR rule. Under the Federal Indian Country Minor NSR rule, we proposed to provide a mechanism for issuing preconstruction permits for the construction of new minor sources and certain modifications of major and minor sources in areas covered by the Federal Indian Country Minor NSR rule. In developing the rule, the EPA conducted extensive outreach and

consultation along with a 7-month public comment period that ended on March 20, 2007. The comments provided detailed information specific to Indian country and the final Federal Indian Country Minor NSR rule incorporated many of the suggestions we received. We promulgated final rules on July 1, 2011,<sup>13</sup> and the FIP became effective on August 30, 2011.

#### B. Federal Indian Country Minor NSR Rule

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

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<sup>14</sup> where there is no EPA-approved program in place. Tribes can elect to develop and implement their own EPA-approved program under the Tribal Authority Rule (TAR),<sup>15</sup> but they are not required to do so.<sup>16</sup> In the absence of an EPA-approved tribal program, the EPA implements the program. Alternatively, tribes can take administrative delegation of the federal program from the EPA and become the Reviewing Authority.

<sup>13</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>.

<sup>14</sup> The Federal Indian Country Minor NSR rule defines “Indian country” to include three categories of lands consistent with 18 U.S.C. 1151, *i.e.*, Indian reservations, dependent Indian communities, and Indian allotments. The U.S. Court of Appeals for the District of Columbia Circuit vacated the rule with respect to non-reservation areas of Indian country (*i.e.*, dependent Indian communities and Indian allotments) (*Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014)). The court held that the state, not tribes or the EPA, has initial primary responsibility for implementation plans under CAA section 110 in non-reservation areas of Indian country in the absence of a demonstration of tribal jurisdiction by the EPA or a tribe. The rule, therefore, does not apply in non-reservation areas of Indian country unless a tribe or the EPA has demonstrated that a tribe has jurisdiction in a particular non-reservation area of Indian country.

<sup>15</sup> To be eligible to develop and implement an EPA-approved program, under the Tribal Authority Rule a tribe must meet four requirements: (1) Be a federally-recognized tribe; (2) have a functioning government carrying out substantial duties and powers; (3) propose to carry out functions pertaining to air resources of the reservation or other areas within the tribe's jurisdiction; and (4) be reasonably expected to be capable of carrying out 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>.

<sup>16</sup> Tribes can also establish permit fees under a tribal permitting program, as do most states.

<sup>9</sup> See 40 CFR 49.4(a) and (d) and 63 FR at 7262–66, February 12, 1998.

<sup>10</sup> See CAA section 301(a) and 63 FR at 7265, February 12, 1998.

<sup>11</sup> Section 49.11(a) states that the EPA, “[s]hall promulgate without unreasonable delay such federal implementation plan 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 tribal implementation plan meeting the completeness criteria of 40 CFR part 51, Appendix V, or does not receive EPA approval of a submitted tribal implementation plan” (see 40 CFR 49.11(a)).

<sup>12</sup> “Review of New Sources and Modifications in Indian Country,” U.S. Environmental Protection Agency, 71 FR 48696, August 21, 2006, <http://www.gpo.gov/fdsys/pkg/FR-2006-08-21/html/06-6926.htm>.

<sup>8</sup> “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>.

Beginning September 2, 2014,<sup>17</sup> any new stationary source that will emit, or will have the potential to emit (PTE), 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 Prevention of Significant Deterioration (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>18</sup>

In addition, among other things, the Federal Indian Country Minor NSR rule created a framework for the EPA to streamline the issuance of preconstruction permits to true minor sources by using general permits.

2. What are the minor NSR thresholds?

The “minor NSR thresholds” establish cutoff levels for each regulated

NSR pollutant. If a source has a PTE in amounts lower than the thresholds, then it is exempt from the Federal Indian Country Minor NSR rule (see Table 3 and 40 CFR 49.153) for that pollutant. New or modified sources that have a PTE in amounts that are: (1) Equal to or greater than the minor NSR thresholds; and (2) less than the major NSR thresholds (generally 100 or 250 tons per year (tpy)) are “minor sources” of emissions and subject to the Federal Indian Country Minor NSR rule requirements at 40 CFR 49.151 through 161.

TABLE 3—MINOR NSR THRESHOLDS FOR SOURCES IN INDIAN COUNTRY <sup>19</sup>

Regulated NSR pollutant	Minor NSR thresholds for non-attainment areas (tpy)	Minor NSR thresholds for attainment areas (tpy)
CO .....	5	10
NO <sub>x</sub> .....	<sup>20</sup> 5	10
SO <sub>2</sub> .....	5	10
VOC .....	<sup>21</sup> 2	5
PM .....	5	10
PM <sub>10</sub> .....	1	5
PM <sub>2.5</sub> .....	0.6	3
Lead .....	0.1	0.1
Fluorides .....	NA	1
Sulfuric acid mist .....	NA	2
H <sub>2</sub> S .....	NA	2
Total reduced sulfur (including H <sub>2</sub> S) .....	NA	2
Reduced sulfur compounds (including H <sub>2</sub> S) .....	NA	2
Municipal waste combustor emissions .....	NA	2
Municipal solid waste landfill emissions (measured as nonmethane organic compounds) .....	NA	10

There may be sources that have emissions that are above the emission thresholds defined for a true minor source but which fall below the applicability levels for specific requirements referenced in the FIP. For example, the oil and natural gas sector NSPS, subpart OOOOa, includes a VOC threshold of 6 tpy for storage vessel applicability. In cases where a facility may have VOC emissions above 5 tpy but below 6 tpy, owners or operators would not be subject to the storage vessel provisions but would still be required under the proposed FIP to

register with their appropriate regional office.

3. What is a true minor 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 40 CFR 52.21, or the Federal Major NSR Program for Nonattainment Areas in Indian Country at 40 CFR 49.166–49.173, but equal to or greater than the minor NSR thresholds in 40 CFR 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 40 CFR 52.21(b)(1)(iii), as applicable.

4. What is a general permit?

The Federal Indian Country Minor NSR rule specified the process and requirements for using general permits to authorize construction and modifications at true minor sources as a

<sup>17</sup> For oil and natural gas true minor sources, this date was extended to March 2, 2016. This notice proposes to extend it to October 3, 2016. For more information, see: “Review of New Sources and Modifications in Indian Country Amendments to the Registration and Permitting Deadlines for True Minor Sources,” 79 FR 34231, June 16, 2014, <http://www.gpo.gov/fdsys/pkg/FR-2014-06-16/pdf/2014-14030.pdf>.

<sup>18</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).

<sup>19</sup> If part of a tribe’s area of Indian country is designated as attainment and another part as nonattainment, the applicable threshold for a proposed source or modification is determined based on the designation where the source would

be located. If the source straddles the two areas, the more stringent thresholds apply.

<sup>20</sup> In extreme ozone nonattainment areas, section 182(e)(2) of the CAA requires any change at a major source that results in any increase in emissions to be subject to major NSR permitting. In other words, any changes to existing major sources in extreme ozone nonattainment areas are subject to a “0” tpy threshold, but that threshold does not apply to minor sources.

<sup>21</sup> Id.

streamlined permitting approach. A general permit, for purposes of this action, is a permit document that contains standardized requirements that multiple stationary sources can use. The EPA may issue a general permit for categories of emission 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>22</sup> “Similar in nature” refers to size, processes, and operating conditions. The purpose of a general permit is to provide for protection of 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 site-specific permitting process.

##### 5. What is a permit by rule?

Like a general permit, a permit by rule is a standard set of requirements that can apply to multiple stationary sources with similar emissions characteristics. For purposes of this action, a permit by rule would differ from a general permit in that the EPA would codify a permit by rule directly into the Federal Indian Country Minor NSR rule. The process for a source to obtain coverage under a permit by rule is more streamlined compared to a standard general permit, or a site-specific permit.

##### *C. General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country—Final Rules*

On May 1, 2015, the EPA published a final rule, “General Permits and Permits by Rule for the Federal Minor NSR Program in Indian Country for Five Source Categories,” to simplify the CAA permitting process for certain smaller sources of air pollution commonly found in Indian country.<sup>23</sup> In the action, the EPA finalized general permits for use in areas covered by the Federal Indian Country Minor NSR rule for new or modified minor sources in the following two source categories: Hot mix asphalt plants and stone quarrying, crushing and screening facilities. The

EPA also finalized permits by rule for use in areas covered by the Federal Indian Country Minor NSR rule for new or modified minor sources in three source categories: Auto body repair and miscellaneous surface coating operations; gasoline dispensing facilities; and petroleum dry cleaning facilities. The EPA also took final action authorizing the use of general permits established under the program to create synthetic minor sources.

On July 17, 2014, the EPA published a proposed rule, “General Permits and Permits by Rule for the Federal Minor NSR Program in Indian Country,” to simplify the CAA permitting process for certain other smaller sources of air pollution commonly found in Indian country.<sup>24</sup> In the action, the EPA made available draft general permits for use in areas covered by the Federal Indian Country Minor NSR rule for new or modified minor sources in the following five source categories: Concrete batch plants; boilers; stationary spark ignition engines; stationary compression ignition engines; and sawmill facilities. The EPA also proposed a permit by rule for use in areas covered by the Federal Indian Country Minor NSR rule for new or modified minor sources in the graphic arts and printing operations source category.

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

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>25</sup> that included two proposed amendments that affected true minor sources in the production segment of 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 production segment of 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 production segment of 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>26</sup>

On June 5, 2014, the EPA published an advance notice of proposed rulemaking (ANPR).<sup>27</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 site-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 aspects of managing air emissions from oil and natural gas sources in areas covered by the Federal Indian Country Minor NSR rule. The ANPR asked for public comment on: (1) The inclusion of existing minor source emissions in a FIP; (2) the advantages and disadvantages of available approaches (*i.e.*, FIP, permit by rule, or general permit) to manage emission impacts from the sources in the production segment of the oil and natural gas sector in areas covered by the Federal Indian Country Minor NSR rule; (3) the activities and pollutants that warrant regulation; (4) the coordination of compliance between any approach selected and the Federal Minor NSR Program in Indian Country; and (5) the appropriate emission control requirements.

We received 20 comments on the issues raised in the ANPR. Three comments were from tribes; one comment was from a federal government agency; three comments were from environmental groups; ten comments were from oil and natural gas companies or industry trade associations; and three comments were from anonymous commenters. The comments are summarized in a document entitled: “Summary of Public Comments for Managing Emissions: Oil and Natural Gas Production in Indian Country” and can be found in Docket ID

<sup>22</sup> “Review of New Sources and Modifications in Indian Country,” U.S. Environmental Protection Agency, 76 FR 38770, July 1, 2011, <https://www.federalregister.gov/articles/2011/07/01/2011-14981/review-of-new-sources-and-modifications-in-indian-country>.

<sup>23</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>24</sup> “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country,” 79 FR 41846, July 17, 2014, <http://www.gpo.gov/fdsys/pkg/FR-2014-07-17/pdf/2014-16814.pdf>.

<sup>25</sup> The “General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country” was proposed on January 14, 2014 (79 FR 2546). Proposed changes to the Federal Indian Country Minor NSR rule are on pages 79 FR 2570–2572. Electronic copies are available in the docket and in the regulations and standards section of our NSR home page located at <http://www.epa.gov/nsr>.

<sup>26</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,” 79 FR 34231, June 16, 2014, <http://www.gpo.gov/fdsys/pkg/FR-2014-06-16/pdf/2014-14030.pdf>.

<sup>27</sup> For more information, see: “Managing Emissions from Oil and Natural Gas Production in Indian Country,” 79 FR 32502, June 5, 2014, <http://www.gpo.gov/fdsys/pkg/FR-2014-06-05/pdf/2014-12951.pdf>.



No. EPA-HQ-OAR-2011-0151, which has been incorporated by reference into the docket for this action, Docket ID No. EPA-HQ-OAR-2014-0606.

We reviewed and carefully considered all the comments we received on the ANPR in developing this proposed FIP. Although not presented in a comment and response format, our consideration of the comments is evident throughout the discussions in this preamble. Commenters who wish their comments on the ANPR to also be considered in the development of the final FIP must resubmit those comments to the docket during the open public comment period for this proposed action.

On September 18, 2015, the EPA proposed updates to the NSPS for the oil and natural gas sector.<sup>28</sup> This proposed FIP adopts the standards from six federal rules, including the oil and natural gas NSPS (see Table 2). Future changes to these rules could affect requirements in the FIP because the proposed FIP adopts 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>29</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.

#### E. What is a FIP?

Under section 302(y) of the CAA, the term “Federal implementation plan” means “. . . a plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a SIP, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions of emission allowances), and provides for attainment of the relevant national ambient air quality standard.”

We interpret the reference to a “gap” in a SIP as including circumstances where a SIP does not apply (*i.e.*, on most Indian reservations and other areas of Indian country over which an Indian tribe, or the EPA, has demonstrated that the tribe has jurisdiction) and the relevant tribe has not implemented an EPA-approved plan. SIPs do not apply in these areas. In these circumstances,

<sup>28</sup> “Oil and Natural Gas Sector: Emission Standards for New and Modified Sources,” signed August 18, 2015, <http://www.epa.gov/airquality/oilandgas/actions.html>.

<sup>29</sup> “Source Determination for Certain Emission Units in the Oil and Natural Gas Sector,” signed August 18, 2015, <http://www.epa.gov/airquality/oilandgas/actions.html>.

CAA §§ 301(a) and 301(d)(4) and 40 CFR 49.11(a) authorize the EPA to promulgate FIPs as are necessary or appropriate to protect air quality.

The Federal Indian Country Minor NSR rule is an example of a FIP. In that rule, we identified a regulatory gap that could have the effect of adversely impacting air quality due to the lack of approved minor NSR permit programs to regulate construction of new and modified minor sources and minor modifications of major sources in areas covered by the Federal Indian Country Minor NSR rule. The EPA promulgated the FIP to ensure that air resources in areas covered by the Federal Indian Country Minor NSR rule are protected by establishing a preconstruction permitting program to regulate emission increases resulting from construction and modification activities that are not already regulated by the major NSR permitting programs.

Because there are also no currently approved TIPs specifically applying to the issuance of general permits with respect to the reduction of emissions related to oil and natural gas production facilities, we believe a FIP is needed to protect air quality in areas covered by the Federal Indian Country Minor NSR rule. This proposed FIP would adopt legally and practicably enforceable requirements to control and reduce air emissions from oil and natural gas production. Therefore, in this rule, we propose to 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) to promulgate a FIP to remedy an existing regulatory gap under the CAA with respect to oil and natural gas production operations in areas covered by the Federal Indian Country Minor NSR rule where there is no EPA-approved plan in place.

#### F. Oil and Natural Gas Sector

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.<sup>30</sup> 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.

The proposed oil and natural gas FIP focuses on the first segment, oil and natural gas production, because we believe the oil and natural gas production 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. The oil and natural gas production segment includes the wells and all related processes used in the extraction, production, recovery, lifting, stabilization, and separation or treatment of oil and/or natural gas (including condensate). Production components may include, but are not limited to, wells and related casing head, tubing head and “Christmas tree” piping, as well as pumps, compressors, heater treaters, separators, storage vessels, pneumatic devices and natural gas dehydrators. Production operations also include the well drilling, completion and workover processes and include all the portable non-self-propelled apparatuses associated with those operations. Production sites include not only the sites where the wells themselves are located, but also include centralized gas and/or liquid gathering facilities where oil, condensate, produced water, and natural gas from several wells may be separated, stored, and treated. The production segment also includes the 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.

The natural gas production segment ends 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. Thus, with respect to crude oil, the oil and natural gas sector ends at point of custody transfer where crude oil enters an oil transmission pipeline or other means of transportation to a petroleum refinery.

Pollutants emitted from these activities that would be regulated through the proposed Federal Minor

<sup>30</sup> For a more detailed discussion about the oil and natural gas sector, see the preamble to the ANPR at 79 FR 32505–32508, June 5, 2014.

NSR Program in Indian Country (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>31</sup>

#### IV. Summary of Proposed Oil and Natural Gas FIP

##### A. Overview

This proposed oil and natural gas FIP would require owners and operators of new and modified existing minor sources in the oil and natural gas production segment that are located in areas covered by the Federal Indian Country Minor NSR rule to comply with six federal rules. One of the rules this FIP proposes to adopt is certain requirements of the proposed 40 CFR part 60, subpart OOOOa requirements.<sup>32</sup> Requirements under proposed NSPS, subpart OOOOa that have been proposed include those requirements that involve oil and natural gas production.<sup>33</sup>

These six rules are listed in Table 2 and provide requirements for:

- Storage vessels;
- Pneumatic controllers in production;
- Compressors (reciprocating and centrifugal);
- Hydraulically fractured oil and gas well completions;
- Pneumatic pumps;
- Fugitive emissions from well sites and compressor stations;
- Glycol dehydrators;
- Compression ignition and spark ignition engines;
- Fuel storage tanks; and
- Process heaters

The six rules and the provisions of each that the proposed oil and natural gas FIP would reference are discussed in

more detail in this section. The proposed FIP requirements cover emission limitations and standards, monitoring, and testing and recordkeeping and reporting. For purposes of this FIP, we are proposing that true minor sources subject to these adopted standards 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). The excluded provisions are listed below. (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.)

Also discussed in this section are proposed features of the FIP and proposed amendments to the Federal Indian Country Minor NSR rule.

##### B. What are the proposed FIP requirements?

We are proposing for purposes of this FIP, that owners and operators who determine that their new true minor source, or the modification of their existing true minor source, meets the applicability criteria of the proposed FIP must comply with all of the applicable and relevant requirements of the six federal rules listed in Table 2 above as written at the time construction or reconstruction of the source is begun, unless we exclude certain provisions as proposed below. In general, for this proposed FIP, we are proposing to exclude specific provisions of the rules because they are not relevant they would not apply to oil and natural gas production operations (*e.g.*, emission points at natural gas processing plants) or they apply only to manufacturers and not owner/operators.

For purposes of this FIP, we are proposing that 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), must comply with all of the applicable provisions of the standard as written at the time construction or reconstruction of the source is begun.

For purposes of this FIP, we are proposing that true minor sources that are subject to part 60, subpart IIII—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, must comply with all of the applicable provisions of the standard as written at the time construction or reconstruction of the

source is begun, except for the following:

- § 60.4200(a)(1)—Am I subject to this subpart? (applies to manufacturers);
- § 60.4200(b)—Not applicable to stationary ignition internal combustion engine being tested at an engine test cell/stand;
- § 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, we are proposing that true minor sources that are subject to part 60, subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines, must comply with all of the applicable provisions of the standard as written at the time construction or reconstruction of the source is begun, 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 if 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, we are proposing that true minor sources that are subject to part 60, subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels, must comply with all of the provisions of the standard as written at the time

<sup>31</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>.

<sup>32</sup> Proposed 40 CFR part 60, subpart OOOOa covers the emission sources covered under existing 40 CFR part 60, subpart OOOO, as well as adding coverage of new 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>33</sup> This list includes centrifugal compressors, reciprocating compressors, pneumatic controllers, pneumatic pumps, fugitive emissions from compressor stations, storage vessels. It excludes sources located in the transmission and storage segment because they are not part of this FIP proposal, which focusses on production.

construction or reconstruction of the source is begun, 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, we are proposing that true minor sources that are subject to proposed part 60, subpart OOOOa—Standards for New and Modified Sources in the Oil and Natural Gas Sector, must comply with all of the applicable provisions of the standard as written at the time construction or reconstruction of the source is begun, except for the following:

- § 60.5365a(f)(3)—Equipment exemption at processing plant;
- § 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
- § 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, we are proposing that true minor sources that are subject to 40 CFR part 63, subpart HH—NESHAP from Oil and Natural Gas Production Facilities, must comply with all of the applicable provisions of the standard as written at the time construction or reconstruction of the source is begun, except for the following:

- § 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(b)(1)(iii)—Equipment located at natural gas processing plants;
- § 63.760(g)—Recordkeeping for major sources that overlap with other regulations for equipment leaks;
- § 63.764(c)(2)–(3)—Requirements for compliance with standards for storage vessels and equipment at natural gas processing plants, respectively;
- § 63.766—Storage vessel standards; and
- § 63.769—Equipment leak standards.

Additionally, we are proposing that prior to beginning construction, under proposed § 49.104, true minor sources are required to address procedures for assessing threatened and endangered species and historic properties. The

proposed section provides two options: (1) A site-specific National Environmental Policy Act (NEPA) process has been completed for the specific oil and natural gas activity, and the owner/operator also meets all air quality-related requirements as specified by the decision document (Record of Decision or Finding of No Significant Impact) for its NEPA analysis (these requirements are typically implemented and enforced as conditions of an approved Surface Use Plan of Operations and/or Application for Permit to Drill); or (2) submittal of documentation to the EPA Regional Office (and to the tribe where the source is located/locating) demonstrating that the source has completed the screening processes specified 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. (The processes are contained in the following document: “Procedures to Address Threatened and Endangered Species and Historic Properties for New or Modified True Minor Oil and Natural Gas Production Sources in Indian Country Complying with the Oil and Natural Gas Minor Source Federal Implementation Plan,” <http://www.epa.gov/air/tribal/tribalnsr.html>.)

### C. Site-Specific Permits

We are proposing that owners and 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 this proposed FIP, unless the owner or operator opts-out of the FIP and instead obtains a site-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 this 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 minor sources in the oil and natural gas sector locating or

expanding in areas designated as unclassifiable, attainment, or attainment/unclassifiable).

Sources covered by the Federal Indian Country Minor NSR rule that do not meet all of the criteria are, thus, not eligible to use the FIP and must, therefore, obtain a site-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 site-specific permit instead to meet the obligation under 40 CFR 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 are proposing 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 or operator. We are proposing that an owner/operator of a source otherwise subject to the proposed FIP can opt out and seek a true minor source site-specific permit under 40 CFR 49.151(c)(1)(iii).

We are also proposing that the EPA, or other Reviewing Authority, may require owners or operators to obtain a site-specific permit in lieu of complying with the proposed FIP to ensure protection of the NAAQS. Under § 49.101(b)(3), we are proposing to specify that the Reviewing Authority may require an owner or operator of a source, in certain areas of Indian country proposing to construct on or after October 3, 2016, to apply for a site-specific permit for a new true minor source or minor modification of an existing true minor source. 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 design value 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 site-specific permit. The agency recommends at the time of registration, the owner/operator of all new sources or all sources scheduled for modification contact the Reviewing Authority for a review of the air quality status of that area, and the possibility of a requirement for a site specific permit.

## V. Summary of Proposed Amendments to the Federal Indian Country Minor NSR Rule

Today's action proposes several amendments to the Federal Indian Country Minor NSR rule. First, we are proposing to revise § 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 CAA by establishing a preconstruction 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 plan in place and by establishing a FIP (§§ 49.101 to 49.105) for oil and natural gas production true minor sources located in such areas of Indian country.

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

Third, we are proposing to revise § 49.151(c)(1)(iii)(B) to establish a deadline by which new and modified true minor sources in the oil and natural gas sector that are located in or plan to locate in Indian reservations or other areas of Indian country over which an Indian tribe, or the EPA, has demonstrated that the tribe has jurisdiction must 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). We are proposing to extend the permitting deadline from March 2, 2016, to October 3, 2016.

Fourth, we are proposing to revise § 49.151(d)(1), (2) and (4) to incorporate compliance with the FIP. We are proposing to revise § 49.151(d)(1) to indicate that if the owner/operator of a source begins construction of a new source or modification that is subject to this program after the applicable date (September 2, 2014, for all true minor sources, except oil and natural gas sources, and October 3, 2016, for oil and natural gas true minor sources) without applying for and receiving a permit pursuant to this program or complying with the FIP for oil and natural gas production, the owner/operator of the source will be subject to appropriate enforcement action. We are proposing to revise § 49.151(d)(2) to indicate that if you do not construct or operate your source or modification in accordance

with the terms of your minor NSR permit or the FIP for oil and natural gas production, you source will be subject to appropriate enforcement action. We are proposing to revise § 49.151(d)(4) to indicate that issuance of a permit or compliance with the FIP for oil and natural gas production does not relieve the owner/operator of a source of the responsibility to comply fully with applicable provisions of any EPA-approved implementation plan or FIP or any other requirements under applicable law.

Fifth, we are proposing to revise §§ 49.153(a)(1)(i)(B) and (ii)(B) to establish that oil and natural gas true minor sources 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 PTE is equal to or greater than the corresponding minor NSR threshold. If it is, then the source is subject to the preconstruction requirements of the Federal Indian Country Minor NSR Permit rule for that pollutant. The proposed amendment adds a clause to the end of the paragraph stating that for oil and natural gas production sources, 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 proposed §§ 49.101 to 49.105, unless the owner/operator of the source opts-out of the FIP pursuant to proposed § 49.101(b)(2) or is required by the EPA to obtain a source-specific minor source permit pursuant to proposed § 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, the source is subject to the preconstruction requirements of the Federal Indian Country Minor NSR rule for that pollutant. The proposed amendment adds a clause to the end of the paragraph stating that, for oil and natural gas production sources, 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 proposed §§ 49.101 to 49.105, unless the owner/operator of the source opts-out of the proposed FIP pursuant to proposed § 49.101(b)(2) or is required by the EPA to obtain a minor

source permit pursuant to proposed § 49.101(b)(3).

Sixth, we are proposing to revise §§ 49.160(c)(1)(ii) and (iii), to add § 49.160(c)(1)(iv) and to revise § 49.160(c)(4). For § 49.160(c)(1)(ii), we are proposing to conform the registration deadline to the proposed extended permitting deadline in § 49.151(c)(1)(iii)(B). For § 49.160(c)(1)(iii), we are proposing 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, you must report your source's actual emissions (if available) as part of your permit application or registration of oil and natural gas production sources using a form provided by the EPA ("Registration for New Oil and Natural Gas Minor Sources and Minor Modifications at Existing True Minor Oil and Natural Gas Sources," <http://www.epa.gov/air/tribal/tribalnsr.html>). Your permit application or registration form for oil and natural gas production sources will be used to fulfill the registration requirements described in § 49.160(c)(2). This registration should occur each time an existing true minor source that would be subject to the proposed FIP undergoes a modification. For § 49.160(c)(1)(iv), we are proposing to add a paragraph indicating that sources subject to the proposed FIP must still satisfy the requirement to register under the Federal Indian Country Minor NSR rule by using the registration form provided by the EPA that is tailored to the oil and natural gas sector rather than a permit application. The registration form contains the information required in § 49.160(c)(2). After being reviewed by the permitting authority, completed registration forms will be available online on the EPA Regional Office Web sites. For § 49.160(c)(4), we are proposing to add language indicating that submitting a registration form does not relieve a source of the requirement to comply with the FIP for oil and natural gas production if the source or any physical or operational change at the source would be subject to any minor NSR rule.

Finally, we are proposing to revise the definition of Indian country in § 49.152 to comport with a court decision that addressed the EPA's authority to implement the Federal Indian Country Minor NSR rule in areas covered by the Federal Indian Country Minor NSR rule: *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014). This court decision also affects the definition of Indian country under the Federal Major NSR Program in

Indian Country so we are changing the definition under the Federal Indian Country Major NSR rule § 49.167.

The Federal Indian Country Minor NSR rule and Federal Indian Country Major NSR rule currently define “Indian country” to include three categories of lands consistent with 18 U.S.C. 1151, *i.e.*, Indian reservations, dependent Indian communities, and Indian allotments. The U.S. Court of Appeals for the District of Columbia Circuit vacated the rule with respect to non-reservation areas of Indian country (*i.e.*, dependent Indian communities and Indian allotments) (*Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014)). The court held that the states, not tribes or the EPA, have initial primary responsibility for implementation plans under CAA section 110 in non-reservation areas of Indian country in the absence of a demonstration of tribal jurisdiction by the EPA or a tribe. We are proposing to revise the definition of Indian country in §§ 49.152(d) and 49.167 to add a clause indicating that, for purposes of the Federal Indian Country Minor NSR rule and the Federal Indian Country Major NSR rule, references to Indian country include 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.

These proposed changes will address the minor NSR permitting requirements for the affected sources, while reducing the permitting burden through a more efficient and effective means of implementing the requirements.

## VI. Implementation Issues

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

#### 1. Overview

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 or 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 has considered issues regarding listed species and historic properties and has included provisions designed to ensure appropriate review of potential impacts on the 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 or endangered species and historic properties provide an appropriate site-specific means of addressing issues regarding potential impacts on those resources in connection with sources that could be covered under the FIP. We have provided two options, as described below, for sources to meet the proposed FIP’s requirements regarding these resources.

#### a. Sources for Which a Prior ESA and/or NHPA Assessment Has Been Completed

In most of Indian country, oil and natural gas production activities cannot begin before an owner/operator has obtained an approved application for permit to drill (APD). This authorization will include a National Environmental Policy Act Review (NEPA)<sup>34</sup> review that is typically provided by certain agencies within the U.S. Department of the Interior—the Bureau of Land Management (BLM) and the Bureau of Indian Affairs (BIA), (herein after referred to as “Federal Land Managers (FLMs)” for simplicity).<sup>35</sup> Under this review process, BLM is typically responsible for authorizing the mineral rights (*i.e.*, permission to produce oil and/or natural gas) and BIA for authorizing surface activities (*i.e.*, preparing the site for well-drilling activities and operating equipment for the production of oil and/or natural gas). (There are also cases where only one of these agencies will be involved or where another federal agency is involved as well.) Such APD authorizations are considered general triggering actions under the ESA and NHPA, and the FLMs will typically conduct review procedures to ensure that the requirements of these statutes are met. Frequently, these reviews occur

in connection with an analysis performed by the appropriate FLM.<sup>36</sup>

Since an oil and gas exploration/production site involves surface activities and accessing the mineral resource below, thereby potentially requiring an approval from both BLM and BIA, these agencies often enter into agreements where one agency takes the lead in the overall NEPA (and associated ESA and NHPA) review process (*i.e.*, evaluations of the potential impacts regarding mineral rights and surface rights are combined). The lead agency may vary depending on the particular Indian reservation at issue. We believe that a majority of oil and gas activity in areas covered by the Federal Indian Country Minor NSR rule occurs on land within the jurisdiction of these agencies. This means that before an oil and natural gas owner/operator can begin construction under the FIP, the APD must be approved by the FLMs. As part of the NEPA review process, the following steps are generally performed:

- For the ESA, impacts to threatened and endangered species and critical habitats are assessed through interaction with local U.S. Fish and Wildlife Service field offices, with appropriate measures put in place to protect those resources. These conditions are incorporated in the FLMs’ authorization.
- For the NHPA, impacts to historic properties are evaluated by interaction with State and/or Tribal Historic Preservation Offices. Approval of an action will address any appropriate measures needed to protect a historic property (*e.g.*, production equipment must be located a specified distance from a designated structure/road/etc.).

The assessment(s) conducted by the FLMs will likely consider a facility’s air emissions with respect to well drilling, completion, well-pad construction activities and future operations and may require measures to reduce air emissions. In addition to any air pollution measures implemented through the FLM’s NEPA (and associated ESA and NHPA) review, our proposed FIP would require each source to comply with the six federal rules listed in Table 2 above in order to protect ambient air quality. The measures employed under the proposed FIP would require compliance with specific requirements from the NSPS and NESHAP control requirements for the following emission points: compression ignition and spark ignition engines, compressors (reciprocating and centrifugal), fuel storage tanks, fugitive

<sup>34</sup> The NEPA regulatory requirements can be found at 40 CFR parts 1500–1508.

<sup>35</sup> The NEPA review process produces a decision document that is either a Record of Decision or a Finding of No Significant Impact.

<sup>36</sup> NEPA regulatory requirements can be found at 40 CFR parts 1500–1508.

emissions from well sites and compressor stations, glycol dehydrators, hydraulically fractured oil and gas well completions, pneumatic controllers in production, pneumatic pumps, process heaters and storage vessels. We believe the reductions achieved through the required emission controls, by virtue of being protective of ambient air quality, are also protective of threatened and endangered species, their habitats and historic properties.

Where the FLM(s) have concluded ESA and/or NHPA compliance as part of the APD process 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.

**b. Sources for Which No Prior ESA and/or NHPA Assessment Has Been Completed**

For oil and natural gas production activities that do not undergo ESA and/or NHPA review as part of an authorization from the FLM(s), we propose that those facilities first complete screening procedures relevant to the particular resource that has 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 before the owner/operator can begin construction under the proposed FIP. Similar to our procedure for general permits and permits by rule, for the proposed FIP, once an owner/operator completes the screening procedures,<sup>37</sup> they would submit documentation to the EPA Regional Office and receive written verification of completion before

<sup>37</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 New or Modified True Minor Oil and Natural Gas Production Sources in Indian Country Complying with the Oil and Natural Gas Minor Source Federal Implementation Plan," <http://www.epa.gov/air/tribal/tribalnsr.html>.

beginning construction. As we explained in the 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>38</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 to 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, this proposed FIP and the general stormwater permits, will streamline the process for all concerned: the applicants, the EPA, the tribes, and the Services.

**B. What is the effect of this proposed FIP on other Indian Country FIPs?**

The objectives of this proposed FIP are 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 preconstruction approval through the NSR preconstruction permitting process. This proposed FIP does not 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. An oil and natural gas source in areas covered by the Federal Indian Country Minor NSR rule that is subject to another CAA FIP must also comply with this 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 this proposed FIP, the more stringent requirements supersede the requirements in this proposed FIP. Conversely, if requirements for certain emission sources in this proposed FIP are more stringent than requirements for equivalent emission sources in another

<sup>38</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/jdsys/pkg/FR-2014-01-14/pdf/2013-30345.pdf>.

applicable CAA FIP, then the requirements in this proposed FIP supersede the requirements for equivalent emission sources in the other FIP. In some cases, other applicable CAA FIPs defer to less stringent requirements in other federal CAA rules to avoid duplicative requirements. Those cases would provide an exception to this general concept.

In the case of the FIP for Oil and Natural Gas Well Production Facilities on the Fort Berthold Indian Reservation (FBIR FIP) at 40 CFR 49.4161–4168 (78 FR 17836), we stated in the preamble to that rulemaking that the FBIR FIP is not a permitting program and does not exempt facilities from any federal CAA permitting requirements, which would include compliance with this proposed FIP, and PSD preconstruction permitting requirements at 40 CFR 52.21, Federal Indian Country NSR permitting requirements for minor sources at 40 CFR 49.151, or federal Title V operating permit requirements at 40 CFR part 71. The FBIR FIP does provide legal and practical enforceability for the use of VOC emission controls, and compliant emission reductions achieved can be taken into account in calculating potential VOC emissions when determining the applicability of CAA permitting requirements. However, facilities subject to the FBIR FIP may emit VOCs from emission sources not regulated under the FBIR FIP, and/or may emit other NSR-regulated pollutants not regulated by the FBIR FIP at levels above the minor source thresholds in the Federal Indian Country Minor NSR rule or the major source PSD thresholds at 40 CFR 52.21, thus triggering NSR permitting requirements.

This proposed oil and natural gas FIP does not exempt facilities from complying with the FBIR FIP. The EPA recognizes that the VOC emission control requirements under the FBIR FIP are in some instances more stringent than the VOC emission reduction requirements of this proposed oil and natural gas FIP. For instance, the FBIR FIP requires up to 98 percent reduction of VOC emissions from storage tanks, while this proposed FIP, which relies on applicability under the 2015 proposed NSPS, subpart OOOOa, proposes to require 95 percent reduction of VOC emissions from storage vessels. To avoid duplicative requirements, the FBIR FIP specifies that facilities operating emission sources regulated under the FBIR FIP that are also subject to the storage vessel requirements under the 2015 proposed NSPS, subpart OOOOa, must comply with the applicable

requirements of the 2015 proposed NSPS, subpart OOOOa for those emission sources, rather than the requirements for produced oil and water storage tanks in the FBIR FIP. The FBIR FIP also regulates VOC emissions from oil and natural gas well completions, well casing heads, and heater treaters at oil and natural gas production facilities, which are not currently regulated by NSPS subpart OOOO, and, thus, are not part of this proposed FIP. Hydraulically fractured oil well completions were proposed for regulation in the 2015 proposed NSPS, subpart OOOOa signed on August 18, 2015. Therefore, a new or modified oil and natural gas well production facility that is subject to the FBIR FIP that would also be subject to this proposed FIP once final to meet the requirements of the Federal Indian Country Minor NSR rule would also need to comply with the FBIR FIP for casing head natural gas emissions and heater treater produced natural gas emissions.

## VII. Rationale for Proposed FIP

### A. Why are we choosing a FIP as an alternative to site-specific permits, general permits and permits by rule?

In the ANPR, we asked for comment on three alternatives to site-specific permits: general permits, permits by rule, and FIPs. Although commenters on the ANPR differed in their opinions on the best approach, the alternative approach garnering the most support was a FIP. Commenters supported using a FIP because it would streamline the permitting approach, eliminate the need for preconstruction approval from the permitting authority and apply requirements directly to sources. Commenters also supported a FIP because appropriate control measures would be in place and would provide the EPA and tribes assurances that construction and modification activities would be adequately and appropriately regulated. Some commenters supported a FIP because it could apply to existing sources. One commenter argued against a FIP approach because a FIP does not afford the same level of opportunity for a regulatory authority or the public to review, provide input on, or object to sources' coverage under a FIP as compared to a general permit.

We committed to developing an alternative to site-specific permits primarily to avoid delays in new construction due to our inability to process hundreds of true minor source permits in an acceptable timeframe. 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—site-specific permits, general permits and permits by rule—do not satisfy all of these concerns.

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. A FIP, however, has the advantage of not requiring a source to initiate advance review and obtain approval of coverage from the Reviewing Authority before beginning construction (as would a general permit), and it would reduce the resource burden on reviewing authorities associated with processing the potentially large volume of requests from true minor sources in the oil and natural gas production segment for coverage under a general permit. So, from those standpoints a FIP is preferable to a general permit.

In comparison to a general permit, a FIP would provide less upfront scrutiny of an individual new construction or modification project and a citizen would not have the ability to object to a specific source gaining coverage. While we recognize these concerns, we believe that the proposed oil and natural gas FIP contains a robust set of emission control requirements and compliance monitoring and reporting provisions that will help ensure that a new or modified true minor source would not cause or contribute to a NAAQS or PSD increment violation.<sup>39</sup> In addition, any citizen could enforce the provisions of a FIP, as that person can with respect to requirements of any other implementation plan or CAA requirement, by commencing a civil action in the district court in the judicial district in which the source is located. Citizens retain the right under CAA section 304(a)(1) to commence a civil action "against any person . . . who is alleged to have violated . . . or to be in violation of (A) an emission standard or limitation under this [Act] . . . ." The Administrator also would retain the ability to enforce the requirements of a FIP under section 113(a)(1) of the CAA.

Another streamlined method, the permit by rule approach, also lacks the upfront scrutiny found with a general permit. In the first set of permits by rule that the EPA has issued for use in areas covered by the Federal Indian Country Minor NSR rule, we established the process for individual sources to obtain

<sup>39</sup> True minor sources in Indian country in the oil and natural gas sector are also required to register under 40 CFR 14.160 and provide certain information about their new or modified operations.

coverage under the EPA's permits by rule. It is a source notification process in which individual sources, unlike the general permit process, are not required to obtain the EPA's review and approval of a permit application prior to beginning construction.<sup>40</sup> In a manner similar to a FIP, a permit by rule establishes a set of requirements to which a source becomes subject when it obtains coverage under that permit by submitting a Notification of Coverage Form to the EPA, which the EPA then posts online. (For the sources subject to this proposed FIP, the EPA intends to post the registration forms that the EPA receives (see 40 CFR 49.160(c)). Thus, on the issue of public scrutiny, the FIP and the permit by rule approaches are essentially the same. 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.

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, this proposal does not contain requirements for existing sources. The EPA's 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 areas), as they arise, that are associated with oil and natural gas activities. Such FIP(s) will need to address, as necessary, requirements for existing sources, as well as additional requirements beyond those in this proposal for new and modified sources.

### B. How did we select which equipment to include in this proposed FIP?

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

<sup>40</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>.

rule as part of this proposed FIP.<sup>41</sup> In addition to the production segment sources proposed to be covered under NSPS, subpart OOOOa, in today's FIP, we are proposing requirements from existing EPA standards for three emission sources not covered by the 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 listed in Table 2 above regulate these sources of pollution, 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 for addressing true minor oil and natural gas production sources in areas covered by the Federal Indian Country Minor NSR rule.

We have concluded that these federal regulations employ 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 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 are proposing 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 40 CFR part 63, subpart DDDDD MACT also provides beneficial reductions of non-targeted NSR pollutants, *i.e.*, NO<sub>x</sub>.

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>.

### *C. Why are we excluding existing sources from this proposed oil and natural gas FIP?*

This section provides a brief overview of some of the significant comments on the inclusion of existing sources in a FIP, followed by a discussion of the EPA's rationale for why requirements for existing sources are not included in this proposed action. A complete summary of the comments on this and other issues we raised in the June 5, 2014, ANPR, can be found in Docket ID No. EPA-HQ-OAR-2011-0151, which has been incorporated by reference into the docket for this action, Docket ID No. EPA-HQ-OAR-2014-0606.

### *1. Comments in Favor of Regulation of Existing Sources*

In response to the ANPR the EPA issued on June 5, 2014 (79 FR 32502), several commenters expressed support for the regulation of existing sources under a minor source permitting program (*i.e.*, a FIP) for oil and natural gas sources. Two commenters agreed with the ANPR that the cumulative impacts from existing sources could exceed that of large, new major sources. Some commenters voiced concerns about the impact of unregulated existing sources on the health and welfare of tribal members. One commenter asserted that there is substantial evidence demonstrating that existing oil and gas sources are responsible for considerable air pollution emissions within Indian country, noting that in response to the Federal Indian Country Minor NSR rule, Region 8 received approximately 6,300 registrations from existing minor sources in the oil and natural gas sector. The commenter asserted that regions like the Uintah Basin are already exceeding the ozone NAAQS, and even in regions where there are not yet NAAQS violations, emissions from oil and natural gas sources contribute to elevated ozone levels and HAP emissions. The commenter stated that the EPA's approach must reduce emissions from existing sources in order for the EPA to meet its duty to protect public health and welfare, in addition to improving visibility impairment and nitrogen deposition in national parks and wilderness areas. Another commenter indicated that they could provide modeling and monitoring data to the EPA demonstrating air quality impacts to the National Park System. One commenter also argued that requiring existing source controls would reduce methane emissions and subsequent climate impacts.

One commenter argued that the EPA must regulate existing sources to fulfill goals directed by the Obama administration, including recommendations from the Secretary of Energy's Advisory Board that "measures should be taken to reduce emissions of air pollutants, ozone precursors, and methane as quickly as practicable." One commenter asserted that the EPA has the statutory authority to implement regulations for existing oil and natural gas sources. One commenter expressed support for regulating existing sources, but stated that not all existing minor sources should be regulated in the same manner. Other commenters indicated that cost-effective controls are available

<sup>41</sup> "Background Technical Support Document for the Proposed New Source Performance Standards, 40 CFR part 60, subpart OOOOa," <http://www.epa.gov/airquality/oilandgas/actions.html>.



and should be applied to existing sources.

## 2. Comments in Opposition of Regulation of Existing Sources

In response to the ANPR the EPA issued on June 5, 2014 (79 FR 32502), many commenters objected to the regulation of existing sources. Commenters urged the EPA to prioritize development of a streamlined permitting process implementing the Federal Minor NSR Program in Indian Country and to not include existing sources. Several commenters provided legal arguments challenging the EPA's authority to impose requirements on existing sources. Two commenters stated that the EPA has not demonstrated that there is a need to regulate existing sources on a national basis. The commenter further argued that the EPA must make a much more definitive showing of adverse air quality impacts to justify existing source FIP requirements, taking into account the air quality, mix of emissions, and characteristics of each area in which it seeks to impose existing source controls.

Two commenters urged the EPA to develop an emissions inventory using emissions monitoring data prior to implementing a FIP. Five commenters asserted that the EPA must establish an attainment plan prior to regulating existing sources. The commenters urged that to regulate existing sources, the EPA must make a determination that regulation is needed to attain the NAAQS and develop an attainment plan for the nonattainment areas in which the sources are located, and only for the relevant nonattainment pollutants. Other commenters stated that the EPA must evaluate the need for any regulation of existing minor sources in each tribal area on a case-by-case basis.

## 3. The EPA's Approach in This Proposed Action on Existing Oil and Natural Gas Minor Sources in Indian Country

While the focus of the minor source permitting program is on new and modified oil and natural gas sources, 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 existing activity associated with the oil and natural gas sector in some areas of Indian country and the resultant need to protect public health and the environment from those emissions. Addressing existing sources through a FIP could be especially 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, in this action, we are proposing a FIP that only applies to new and modified true minor sources in the production segment of the oil and natural gas sector. This 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, unclassifiable, or attainment/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 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>42</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 this proposed, 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 pollutants. At that time, any such area that has oil and natural gas minor source activity

<sup>42</sup> In the Federal Indian Country Minor NSR rule, EPA established a registration program that required owners and 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.

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 CTGs for oil and natural gas activity that the EPA has made available for comment and will finalize in 2016.<sup>43</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, what primary fossil fuel resource is 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>44</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>45</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 pneumatic controller requirements statewide and reducing venting and flaring of gas streams at well sites, among other control strategies.<sup>46</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

<sup>43</sup> For more information, go to: <http://www.epa.gov/airquality/oilandgas/actions.html>.

<sup>44</sup> Bakken Pool means oil produced from the Bakken, Three Forks, and Sanish formations.

<sup>45</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).

<sup>46</sup> See Colorado Dept. of Public Health and Environment, Air Quality Control Commission Web site at <http://www.colorado.gov/cs/Satellite/CDPHE-AQCC/CBON/1251647985820>.

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>47</sup>

*D. Why is the EPA extending the permitting deadline for oil and natural gas true minor sources in areas covered by the Federal Indian Country Minor NSR rule?*

The EPA is proposing to extend the deadline to allow us sufficient time to develop an approach for permitting new and modified true minor oil and natural gas production sources in areas covered by the Federal Indian Country Minor NSR rule that is consistent and coordinated with the EPA's overall approach to addressing emissions from this sector. Specifically, we have needed additional time to coordinate with the larger EPA effort to regulate methane and VOCs from the oil and natural gas sector. On January 14, 2015, as part of the Obama administration's methane strategy, the EPA outlined a series of steps it plans to take to address methane and smog-forming VOC emissions from the oil and gas industry, in order to ensure continued, safe and responsible growth in U.S. oil and natural gas production.<sup>48</sup> This commonsense strategy will reduce methane pollution from new sources in this rapidly growing industry, reduce ozone-forming pollutants from existing sources in areas that do not meet federal ozone health standards, and build on work that states and industry are doing to address emissions from existing sources elsewhere.

We intend to ensure the approach that we use to permit true minor oil and natural gas sources in areas covered by the Federal Indian Country Minor NSR rule reflects the EPA technical expertise gained through the work that has and will be done to understand feasible control opportunities in the oil and natural gas sector. In particular, we are drawing on the knowledge gained through the development of the technical white papers released on April 15, 2014, that address emerging data on VOCs and methane emissions from certain sources in the oil and natural gas sector, as well as techniques for mitigating those emissions.<sup>49</sup> The white papers, and the comments we received

<sup>47</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 Web site: <http://epa.gov/gasstar/index.html>.

<sup>48</sup> For more information, go to: <http://www.epa.gov/airquality/oilandgas/pdfs/20150114fs.pdf>.

<sup>49</sup> The white papers can be found at: <http://www.epa.gov/airquality/oilandgas>.

on them, are helping us better understand the sector, including sources located in Indian country. We are also considering in this action the comments provided in response to the ANPR (79 FR 32502, June 5, 2014) in which we sought feedback on the most effective and efficient means of implementing the Federal Minor NSR Program in Indian Country for sources in the oil and natural gas production segment of the oil and natural gas sector.

**VIII. Statutory and Executive Order Reviews**

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

This proposed action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget 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 existing regulations and has assigned OMB control number 2060-0003. This action merely proposes to establish a FIP which serves as a mechanism for true minor sources in the production segment 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 the Federal Indian Country Minor NSR rule in lieu of obtaining a site-specific minor source permit. Because it is intended as a substitute for a site-specific permit which would contain information collection activities in the Information Collection Request for Federal Indian Country Minor NSR rule issued in July 2011, it would 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 6 rules proposed to be part of the proposed FIP have also been previously approved by OMB.<sup>50</sup>

<sup>50</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 OOOO: Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution (OMB Control No. 2060-0673); 40 CFR

*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 of streamlined permitting on small entities in the Federal Indian Country Minor NSR rule (76 FR 38748, July 1, 2011). The EPA determined that that action would not have a significant economic impact on a substantial number of small entities. This proposed 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 mandate, 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 governments or the private sector. It simply provides one option for sources to comply with the Federal Indian Country Minor NSR rule. The Federal Indian Country Minor NSR rule itself imposes the obligation that true minor sources in areas covered by the Federal Indian Country Minor NSR rule obtain a minor source NSR permit and not this proposed FIP. This proposed FIP merely provides a vehicle 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.

part 63, subpart DDDDD: National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (OMB Control No. 2060-0616) and 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).

*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 has conducted outreach on this rule via on-going monthly meetings with tribal environmental professionals in the development of this proposed action. This action reflects tribal comments on and priorities for developing an approach for permitting true minor sources in the production segment of the oil and natural gas sector in areas covered by the Federal Indian Country Minor NSR rule. The EPA offered consultation on the ANPR to elected tribal officials and the following tribes requested a consultation, which was held on July 18, 2014, with the tribes and/or their representatives: MHA (Mandan, Hidatsa and Arikara) Nations (Three Affiliated Tribes), Ute Tribe of the Uintah and Ouray Reservation, and Crow Nation.

At the consultation, the tribes present expressed a number of concerns regarding federal regulation of oil and natural gas activity in Indian country. Three main themes were expressed. First, the tribes expressed the concern that many areas of Indian country are facing difficult economic circumstances and are in need of economic development to improve the quality of life of tribal members; revenue from oil and natural gas activity in many areas provides that economic development. Second, in Indian country they indicated that oil and natural gas activity is already regulated by the federal government and that the EPA does not need to add to the burden. They expressed a wish to be able to manage their own resources without undue interference from the federal government. Finally, the tribes also expressed a need for greater resources so that they can implement their own environmental programs as they determine in their own lands.

We believe that the FIP is directly responsive to the first two issues in that, for attainment and related areas, we are proposing a FIP to fulfill our CAA responsibilities to protect air quality in Indian country in a manner that: (1) Does not create an uneven playing field with respect to federal requirements in adjacent states where oil and natural gas sources face the same EPA requirements; and (2) minimizes the processing burden on oil and natural gas sources. We will continue to provide outreach to tribal environmental

professionals and offer to consult with tribal leadership on this proposed action.

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

This action is not subject to Executive Order (EO) 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 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 proposed rule implements certain aspects of the Federal Indian Country Minor NSR rule.

Our primary goal in developing this program 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 production segment of the oil and natural gas sector. In addition, through this proposed FIP, we seek to establish a mechanism that provides an effective and efficient method for implementing a preconstruction permitting program for true minor sources in areas covered by the Federal Indian Country Minor NSR rule 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 in areas covered by the Federal Indian Country Minor NSR rule..

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

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

Dated: August 18, 2015.

**Gina McCarthy,**  
Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 49 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.*

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

**Federal Implementation Plans for Tribes**

Sec.

49.101 Introduction.

49.102 Definitions.

49.103 Delegation of authority of administration to Indian tribes.

49.104 Requirements regarding threatened or endangered species and historic properties.

49.105 Requirements.

**Federal Implementation Plans for Tribes**

**§ 49.101 Introduction.**

*What is the purpose of §§ 49.101 through 49.105?* (a) 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 oil and natural gas production segment operations.

(b) *Am I subject to §§ 49.101 through 49.105?* You are subject to the requirement if you meet the following criteria:

(1) Owners and operators of new true minor oil and natural gas sources or minor modifications at existing true minor oil and natural gas sources as determined pursuant to 40 CFR 49.153(a) that meet the criteria specified in paragraphs (b)(1)(i) through (b)(1)(v)

of this section, shall comply with the requirements of §§ 49.104 and 49.105, unless the owner or operator obtains a site-specific permit as specified in paragraph (b)(2) or (b)(3) of this paragraph.

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

(ii) The oil and natural gas production facility is located in Indian country as defined in § 49.102;

(iii) The oil and natural gas production facility is a new true minor source or minor modification of an existing true minor source as determined under § 49.153;

(iv) The oil and natural gas production facility begins construction or modification on or after October 3, 2016; and

(v) The oil and natural gas production facility is not located in a designated nonattainment area.

(2) Owners and operators of facilities that meet the criteria specified in paragraphs (b)(1) of this section that choose to obtain a site-specific permit as specified in 40 CFR 49.155 before beginning construction are not required to comply with the requirements of §§ 49.101 to 49.105.

(3) Owners and operators of facilities that meet the criteria specified in paragraph (b)(1) of this section that the Reviewing Authority requires to obtain a site-specific permit to ensure protection of the NAAQS as specified in 40 CFR 49.155 before beginning construction are not required to comply with §§ 49.101 to 49.105.

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

#### § 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 subpart A, and subpart OOOOa of 40 CFR part 60, in the Prevention of Significant Deterioration regulations at 40 CFR 52.21, or in the Federal Minor NSR Program in Indian Country at 40 CFR 49.152. The following terms shall have the specific meanings given them:

*Oil and natural gas production facility* means a minor stationary source engaged in the extraction and production of oil and natural gas, as well as the processing, transmission and distribution of natural gas, including the wells and all related processes used in the extraction, production, recovery, lifting, stabilization, and separation or treatment of oil and/or natural gas (including condensate). Oil and natural gas production 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; natural gas dehydrators; 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.

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

*Owner or operator* means any person who owns, leases, operates, controls, or supervises an oil and natural gas production facility.

*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 Federal Implementation Plan (§§ 49.101–49.105). This section provides for administrative delegation and does not affect the eligibility criteria under 40 CFR 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 40 CFR 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 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 information:

(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 has the technical capability and adequate resources to administer the FIP provisions for which the 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 required to meet the

requirements contained in §§ 49.101 through 49.105 to satisfy its obligation under § 49.151(c)(1)(iii)(B) shall meet paragraph (a)(1) or (2) of this section.

(1) The owner/operator shall submit to the EPA Regional Office (and to the tribe where the source is located/locating) 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. The owner/operator must be in compliance with all measures required as part of that prior ESA and/or NHPA process.

(2) The owner/operator shall submit to the EPA Regional Office (and to the tribe 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. The procedures document, "Procedures to Address Threatened and Endangered Species and Historic Properties for New or Modified True Minor Oil and Natural Gas Production Sources in Indian Country Complying with the Oil and Natural Gas Minor Source Federal Implementation Plan," August 13, 2015, Version 1.0, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To view or download the document, go to [http://www.epa.gov/air/tribal/pdfs/procedures\\_for\\_esa\\_and\\_nhpa\\_for\\_ong\\_sources\\_8-13-15.pdf](http://www.epa.gov/air/tribal/pdfs/procedures_for_esa_and_nhpa_for_ong_sources_8-13-15.pdf).

#### § 49.105 Requirements.

(a) For 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 construction or reconstruction of the source is begun.

(b) For 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 construction or reconstruction of the source is begun, except for the following:

(1) § 60.4200(a)(1)—Am I subject to this subpart? (applies to manufacturers);

(2) § 60.4200(b)—Not applicable to stationary spark ignition internal combustion engines being tested at an engine test cell/stand;

(3) § 60.4200(c)—Am I subject to this subpart? (area sources and exemptions from Title V permits);

(4) § 60.4201—What emission standards must I meet for non-emergency engines if I am a stationary compression ignition internal combustion engine manufacturer?;

(5) § 60.4202—What emission standards must I meet for emergency engines if I am a stationary compression ignition internal combustion engine manufacturer?;

(6) § 60.4203—How long must my engines meet the emission standards if I am a manufacturer of stationary compression ignition internal combustion engines?;

(7) § 60.4210—What are my compliance requirements if I am a stationary compression ignition internal combustion engine manufacturer?; and

(8) § 60.4215—What requirements must I meet for engines used in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands?

(c) For 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 construction or reconstruction of the source is begun, except for the following:

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

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

(3) § 60.4231 and § 60.4232—Emission standards for manufacturers;

(4) § 60.4238 through § 60.4242—Compliance Requirements for Manufacturers; and

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

(d) For 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 construction or reconstruction

of the source is begun, except for the following:

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

(2) § 60.117b(a) and (b)—Delegation of authority.

(e) For true minor sources that are subject to subpart OOOOa, Emission Standards for New and Modified Sources in the Oil and Natural Gas Sector, for purposes of this FIP, sources must comply with all of the provisions of the standard as written at the time construction or reconstruction of the source is begun, except for the following:

(1) § 60.5365a(f)(3)—Equipment exemption at processing plant;

(2) § 60.5365a(h)(4)—Existing sources constructed after August 23, 2011;

(3) § 60.5370a(c)—Permit exemption;

(4) § 60.5413a(a)(5)—Exemptions from performance testing—hazardous waste incinerator;

(5) § 60.5420a(a)(2)(i)—Advance notification requirements for well completions; and

(6) § 60.5420a(a)(2)(ii)—Advance notification requirements of well completions when subject to state regulation that requires advance notification.

(f) For 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 construction or reconstruction of the source is begun, except for the following:

(1) § 63.760(a)(2)—Facilities that process, upgrade or store hydrocarbon liquids;

(2) § 63.760(b)(1)(ii)—Each storage vessel with the potential for flash emissions;

(3) § 63.760(b)(1)(iii)—Equipment located at natural gas processing plants;

(4) § 63.760(g)—Recordkeeping for major sources that overlap with other regulations for equipment leaks;

(5) § 63.764(c)(2)—(3)—Requirements for compliance with standards for storage vessels and equipment at natural gas processing plants, respectively;

(6) § 63.766 Storage vessel standards; and

(7) § 63.769 Equipment leak standards.

■ 3. Section 49.151 is amended by revising paragraphs (b)(1), (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 preconstruction 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 to 49.105) for oil and natural gas production true minor sources located in Indian country.

(c) \* \* \*

(1) \* \* \*

(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 an oil and natural gas source, as defined in § 49.102, 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 an oil and natural gas source, as defined in § 49.102, 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 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 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 oil and natural gas production sources located in Indian country (§§ 49.101 to 49.105) from the day you begin construction or opt out of those requirements pursuant to § 49.101(b)(2) and 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 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 to 49.105 for oil and natural gas production, 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 oil and natural gas production at §§ 49.101 to 49.105, you will be subject to appropriate enforcement action.

(3) \* \* \*

(4) Issuance of a permit or compliance with the Federal Implementation Plan for oil and natural gas production at §§ 49.101 to 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 by revising the introductory text of paragraph (d) and adding paragraph (4) to the definition of “Indian country” 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) For purposes of this rule, references to Indian country include 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.

\* \* \* \* \*

■ 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, you are subject to the preconstruction requirements of this program for that pollutant, except that oil and natural gas production sources shall instead comply with the requirements of the Federal Implementation Plan at §§ 49.101 to 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 preconstruction 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 not, go 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, you are subject to the preconstruction requirements of this program for that pollutant, except oil and natural gas production sources shall instead comply with the requirements of the Federal Implementation Plan at §§ 49.101 to 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 preconstruction 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 not, go 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 an oil and natural gas source, as defined in § 49.102, and you commence construction after August 30, 2011, and before September 2, 2014, 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 an oil and natural gas source, as defined in § 49.102, and you commence construction after August 30, 2011, and before October 3, 2016, 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 an oil and natural gas source, as defined in § 49.102, and you commence construction or modification of your source on or after September 2, 2014, and your source is subject to this rule, 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 § 49.160(c)(2). If your true minor source is an oil and natural gas source, as defined in § 49.102, and you commence construction or modification of your source on or after October 3, 2016, you must report your source's actual emissions (if available) as part of your permit application or registration of oil and natural gas production sources using a form provided by the

EPA, "Registration for New True Minor Oil and Natural Gas Sources and Minor Modifications at Existing True Minor Oil and Natural Gas Sources" (available at: <http://www.epa.gov/air/tribal/tribalnsr.html> or from EPA Regional Offices), and your permit application or registration for oil and natural gas production sources will be used to fulfill the registration requirements described in § 49.160(c)(2).

(iv) Minor sources complying with §§ 49.101 to 49.105 for oil and natural gas production, as defined in § 49.102, must submit a registration form 30 days prior to beginning construction that contains the information in § 49.160(c)(2). The form titled "Registration for New True Minor Oil and Natural Gas Sources and Minor Modifications at Existing True Minor Oil and Natural Gas Sources" is available at: <http://www.epa.gov/air/tribal/tribalnsr.html> or from EPA Regional Offices. This form is submitted instead of the application form required in § 49.160(c)(1)(iii).

(4) *Duty to obtain a permit or comply with the Federal Implementation Plan for oil and natural gas production sources.* Submitting a registration form does not relieve you of the requirement

to obtain any required permit, including a preconstruction permit, or to comply with the Federal Implementation Plan for oil and natural gas production if your source or any physical or operational change at your source would be subject to any minor or major NSR rule.

\* \* \* \* \*

■ 7. Section 49.167 is amended by revising the introductory text of paragraph (d) and adding paragraph (d)(4) to read as follows:

**§ 49.167 Definitions.**

\* \* \* \* \*

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

\* \* \* \* \*

(4) For purposes of this rule, references to Indian country include 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.

\* \* \* \* \*

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