

(iv) All comments received during the public comment period, including any extension or reopening;

(v) The tape or transcript of any hearing(s) held;

(vi) Any written material submitted at such a hearing;

(vii) Any new materials placed in the record as a result of the reviewing authority's evaluation of public comments;

(viii) The final permit and

(ix) Other documents in the supporting files for the final permit that were relied upon in the decision-making.

(2) The additional documents required under paragraph (c)(1) of this section should be added to the record as soon as possible after their receipt or preparation by the reviewing authority. The record must be complete on the date the final permit is issued.

(3) Material readily available or published materials that are generally available and that are included in the administrative record under the standards of paragraph (c)(1) of this section need not be physically included in the same file as the rest of the record as long as it is specifically referred to in that file.

(d) *Can permit decisions be appealed?*

(1) Permit decisions may be appealed under the permit appeal procedures of 40 CFR 124.19.

(2) An appeal under paragraph (d)(1) of this section is, under section 307(b) of the Act, a prerequisite to seeking judicial review of the final agency action.

(e) *Can my permit be reopened?* The reviewing authority may reopen an existing, currently-in-effect permit for cause on its own initiative, such as if it contains a material mistake or fails to assure compliance with applicable requirements. However, except for those permit reopenings that do not increase the emissions limitations in the permit, such as permit reopenings that correct typographical, calculation and other errors, all other permit reopenings shall be carried out after the opportunity of public notice and comment and in accordance with one or more of the public participation requirements under § 49.157(b)(1)(ii).

(f) *What is an administrative permit revision?* The following provisions govern administrative permit revisions.

(1) An administrative permit revision is a permit revision that makes any of the following changes:

(i) Corrects typographical errors.

(ii) Identifies a change in the name, address or phone number of any person identified in the permit or provides a similar minor administrative change at the source.

(iii) Requires more frequent monitoring or reporting by the permittee.

(iv) Allows for a change in ownership or operational control of a source where the reviewing authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage and liability between the current and new permittee has been submitted to the reviewing authority.

(v) Establishes an increase in an emissions unit's annual allowable emissions limit for a regulated NSR pollutant, when the action that necessitates such increase is not otherwise subject to review under major NSR or under this program.

(vi) Incorporates any other type of change that the reviewing authority has determined to be similar to those in paragraphs (f)(1)(i) through (v) of this section.

(2) An administrative permit revision is not subject to the permit application, issuance, public participation or administrative and judicial review requirements of this program.

[76 FR 38788, July 1, 2011, as amended at 85 FR 51656, Aug. 21, 2020]

§ 49.160 Registration program for minor sources in Indian country.

(a) *Does this section apply to my source?* This section applies to you if you are the owner/operator of a true minor source.

(b) *What is exempted from this section?* The exemptions in paragraphs (b)(1) and (b)(2) of this section apply to the registration program of this section.

(1) You are exempt from this registration program if any of the following paragraphs applies to your source:

(i) Your source is subject to the registration requirements under § 49.138—“Rule for the registration of air pollution sources and the reporting of emissions.”

(ii) Your source has a part 71 permit.

(iii) Your source is a synthetic minor source or a synthetic minor HAP source or a minor modification at a major source as defined in § 49.152(d).

(2) For purposes of determining the potential to emit, allowable or actual emissions of your source, you are not required to include emissions from the exempted emissions units and activities listed in § 49.153(c).

(c) *What are the requirements for registering your minor source?* The requirements for registrations are as follows:

(1) *Due date.* The due date of your source registration varies according to the following paragraphs:

(i) If you own or operate an existing true minor source (as defined in 40 CFR 49.152(d)), you must register your source with the reviewing authority by March 1, 2013.

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

(iii) If your true minor source is not engaged in an oil and natural gas activity, and you commence construction or modification of your source on or after September 2, 2014, and your source is subject to this rule, then you must report your source's actual emissions (if available) as part of your permit application and your permit application information will be used to fulfill the registration requirements described in paragraph (c)(2) of this section. If your true minor source is engaged in an oil and natural gas activity, and you commence construction or modification of

your source on or after October 3, 2016, then you must report your source's actual emissions (if available) as part of your permit application (source-specific permits), unless you are subject to the Federal Implementation Plan under §§ 49.101 through 49.105 (where the requirements under paragraph (c)(1)(iv) of this section shall be met). Your permit application for oil and natural gas production and natural gas processing sources seeking a source-specific permit will be used to fulfill the registration requirements described in paragraph (c)(2) of this section.

(iv) Minor sources complying with §§ 49.101 through 49.105 for the oil and natural gas production and natural gas processing segments of the oil and natural gas sector, as defined in § 49.102, must submit, at least 30 days prior to beginning construction, the Part 1 Registration Form containing the information in paragraph (c)(2) of this section. The Part 2 Registration Form, including emissions information, must be submitted within 60 days after the startup of production as defined in § 49.152(d). The source must determine the potential for emissions within 30 days after startup of production.

The combination of the Part 1 and Part 2 Registration Forms submittals satisfies the requirements in paragraph (c)(2) of this section. These forms are submitted to the EPA instead of the application form required in paragraph (c)(1)(iii) of this section. The forms are available at: <https://www.epa.gov/tribal-air/tribal-minor-new-source-review> or from the EPA Regional Offices.

(2) *Content.* You must submit all registration information on forms provided by the reviewing authority. Each registration must include the following information, as applicable:

(i) Identifying information, including your name and address (and plant name and address if different) and the name and telephone number of the plant manager/contact.

(ii) A description of your source's processes and products.

(iii) A list of all emissions units (with the exception of the exempt emissions units and activities listed in § 49.153(c)).

(iv) For each emissions unit that is listed, both the allowable and estimated actual annual emissions of each

regulated NSR pollutant in tpy (including fugitive emissions, to the extent that they are quantifiable, if the emissions unit or source is in one of the source categories listed in § 51, Appendix S, paragraph II.A.4(iii) or § 52.21(b)(1)(iii) of this chapter), with supporting documentation.

(v) The following information: Fuels, fuel use, raw materials, production rates and operating schedules.

(vi) Identification and description of any existing air pollution control equipment and compliance monitoring devices or activities.

(vii) Any existing limitations on source operation affecting emissions or any work practice standards, where applicable, for all NSR regulated pollutants at the source.

(viii) Any other information specifically requested by the reviewing authority.

(3) *Procedure for estimating emissions.* Your registration should include potential to emit or estimates of the allowable and actual emissions, in tpy, of each regulated NSR pollutant for each emissions unit at the source.

(i) Estimates of allowable emissions must be consistent with the definition of that term in § 49.152(d). Allowable emissions must be calculated based on 8,760 operating hours per year (*i.e.*, operating 24 hours per day, 365 days per year) unless the reviewing authority approves a different number of annual operating hours as the basis for the calculation.

(ii) Estimates of actual emissions must take into account equipment, operating conditions and air pollution control measures. For a source that operated during the entire calendar year preceding the initial registration submittal, the reported actual emissions typically should be the annual emissions for the preceding calendar year, calculated using the actual operating hours, production rates, in-place control equipment and types of materials processed, stored or combusted during the preceding calendar year. However, if you believe that the actual emissions in the preceding calendar year are not representative of the emissions that your source will actually emit in coming years, you may submit an estimate of projected actual emissions along

with the actual emissions from the preceding calendar year and the rationale for the projected actual emissions. For a source that has not operated for an entire year, the actual emissions are the estimated annual emissions for the current calendar year.

(iii) The allowable and actual emission estimates must be based upon actual test data or, in the absence of such data, upon procedures acceptable to the reviewing authority. Any emission estimates submitted to the reviewing authority must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

- (i) Source-specific emission tests;
- (ii) Mass balance calculations;
- (iii) Published, verifiable emission factors that are applicable to the source;
- (iv) Other engineering calculations or
- (v) Other procedures to estimate emissions specifically approved by the Regional Administrator.

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

(d) *What are the requirements for additional reports?* After you have registered your source, you must submit the following additional reports, when applicable:

(1) *Report of relocation.* After your source has been registered, you must report any relocation of your source to the reviewing authority in writing no later than 30 days prior to the relocation of the source. Unless otherwise specified in an existing permit, a report of relocation shall be provided as specified in paragraph (d)(1)(i) or (ii) of this section, as applicable. In either case,

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the permit application for the new location satisfies the report of relocation requirement.

(i) Where the relocation results in a change in the reviewing authority for your source, you must submit a report of relocation to the current reviewing authority and a permit application to the new reviewing authority.

(ii) Where the reviewing authority remains the same, a report of relocation is fulfilled through the permit application for the new location.

(2) *Report of change of ownership.* After your source has been registered, the new owner/operator must report any change of ownership of a source to the reviewing authority in writing within 90 days after the change in ownership is effective.

(3) *Report of closure.* Except for regular seasonal closures, after your source has been registered, you must submit a report of closure to the reviewing authority in writing within 90 days after the cessation of all operations at your source.

[76 FR 38788, July 1, 2011, as amended at 79 FR 31045, May 30, 2014; 79 FR 34239, June 16, 2014; 81 FR 9113, Feb. 24, 2016; 81 FR 35981, June 3, 2016; 85 FR 15733, Mar. 19, 2020]

§ 49.161 Administration and delegation of the minor NSR program in Indian country.

(a) *Who administers a minor NSR program in Indian country?*

(1) If the Administrator has approved a TIP that includes a minor NSR program for sources in Indian country that meets the requirements of section 110(a)(2)(C) of the Act and §§ 51.160 through 51.164 of this chapter, the Tribe is the reviewing authority and it will administer the approved minor NSR program under Tribal law.

(2) If the Administrator has not approved an implementation plan, the Administrator may delegate the authority to assist EPA with administration of portions of this Federal minor NSR program implemented under Federal authority to a Tribal agency upon request, in accordance with the provisions of paragraph (b) of this section. If the Tribal agency has been granted such delegation, it will have the authority to assist EPA according to paragraph (b) of this section and it will

be the reviewing authority for purposes of the provisions for which it has been granted delegation.

(3) If the Administrator has not approved an implementation plan or granted delegation to a Tribal agency, the Administrator is the reviewing authority and will directly administer all aspects of this Federal minor NSR program in Indian country under Federal authority.

(b) *Delegation of administration of the Federal minor NSR program to Tribes.* This paragraph (b) establishes the process by which the Administrator may delegate authority to a Tribal agency, with or without signature authority, to assist EPA with administration of portions of this Federal minor NSR program, in accordance with the provisions in paragraphs (b)(1) through (8) of this section. Any Federal requirements under this program that are administered by the delegate Tribal agency will be subject to enforcement by EPA under Federal law. This section provides for administrative delegation of the Federal minor NSR program and does not affect the eligibility criteria under § 49.6 for treatment in the same manner as a state.

(1) *Information to be included in the Administrative Delegation Request.* In order to be delegated authority to assist EPA with administration of this FIP permit program for sources, the Tribal agency must submit a request to the Administrator that:

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

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

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

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

(B) 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 and

(C) A description of the laws of the Tribe that provide adequate authority to administer the Federal rules and