

The EPA Administrator, Andrew R. Wheeler, signed the following notice on 3/6/2020, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's govinfo website (<https://www.govinfo.gov/app/collection/fr>) and on Regulations.gov (<https://www.regulations.gov>) in Docket No. EPA-HQ-OAR-2014-0606. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA-HQ-OAR-2014-0606; FRL-XXXX-XX-OAR]

RIN 2060-AU45

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) amends the Federal Implementation Plan (FIP) for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector (National O&NG FIP) and the Federal Minor New Source Review (NSR) Program in Indian Country. This final rule allows for concurrent, rather than sequential, submission of two sets of documents: the Part 1 Registration Form for source registration (Part 1 Form) and documentation of completion of the screening procedures (screening procedures documentation) for the evaluation of potential impacts of proposed projects on threatened or endangered species and historic properties (protected resources). The final rule also clarifies the 30-day period before construction may begin, and the potential forms of certain written notification by the EPA Regional Office to source owner/operators. Finally, this final rule includes minor edits to correct certain erroneous citations and cross references.

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

ADDRESSES: The EPA has established a docket for this action, identified by Docket ID No. EPA-HQ-OAR-2014-0606. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the docket or in hard copy at the EPA Docket Center Reading Room, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The hours of operation at the EPA Docket Center Reading Room are 8:30 a.m. - 4:30 p.m., Monday-Friday. The telephone number for the EPA Docket Center is (202) 566-1744.

FOR FURTHER INFORMATION CONTACT: For further information concerning this action, please contact Ben Garwood, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C504-03, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709; by telephone at (919) 541-1358 or by email at garwood.ben@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.

- 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*.
- EPA Region 8 (Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming) – Ms. Claudia Smith, Air Program, Mail Code 8P-AR, Environmental Protection Agency Region 8, Denver, Colorado 80202; telephone number (303) 312-6520; fax number (303) 312-6520; email address: *smith.claudia@epa.gov*.
- EPA Region 9 (Arizona, California, Hawaii, Nevada and Pacific Islands) - Ms. Lisa Beckham, Permits Office, Air Division, Air-3, Environmental Protection Agency Region 9, San Francisco, California 94105; telephone number (415) 972-3811; fax number (415) 947-3579; email address: *beckham.lisa@epa.gov*.
- All other EPA regions - For further information about minor sources in Indian country for your EPA region, please use to the Tribal New Source Review website at <https://www.epa.gov/tribal-air>. Scroll down to the heading, “Regulatory Resources,” and click on “Tribal Minor New Source Review (NSR)” and click on “Tribal and Permitting Programs in EPA's Regional Offices” to access the links for tribal programs in each EPA Regional Office.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

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I. Background

To authorize construction or modification of certain stationary sources under the Federal Minor NSR Program in Indian Country,¹ the National O&NG FIP² requires eligible sources to submit a two-part registration form (*see* 40 CFR 49.160). The National O&NG FIP also has requirements relating to protected resources, and, in certain circumstances, requires sources to submit documentation of completion of protected resources screening procedures (*see* 40 CFR 49.104). The existing National O&NG FIP currently requires, in part, that the screening procedures documentation be submitted (and the EPA's confirmation of satisfactory completion of the protected resources screening procedures be received) before the Part 1 Form may be submitted (*see* 40 CFR 49.104(a)(2)). On July 15, 2019, the EPA proposed to amend the

¹ 40 CFR 49.151-49.165.

² 40 CFR 49.101-49.105.

National O&NG FIP to allow owners or operators of true minor sources to concurrently submit to the EPA Regional Office the Part 1 Form and the screening procedures documentation (*see* 84 FR 33715). The EPA did not propose to change the substantive requirements for either the Part 1 Form or screening procedures documentation or the requirement for EPA review of the screening procedures documentation. In this final rule, the EPA is moving forward with the proposed amendment without significant revision. The appropriate EPA Regional Office will continue to assess whether the screening procedures have been satisfactorily completed before construction or modification of the proposed new and/or modified minor NSR source. This final rule also expressly clarifies that, even though the Part 1 Form may be submitted with the screening procedures documentation, construction may not begin until at least 30 days has passed from the date the Part 1 Registration Form was submitted, and the EPA Regional Office has provided written notification of satisfactory completion of the screening procedures documentation.

The EPA also proposed other minor changes, including the following: clarification that the EPA, under the National O&NG FIP, may provide written notification relating to its evaluation of the screening procedures documentation not just by mail, but also by email; and clarification that the Federal Minor NSR Program in Indian Country only requires that the Part 1 Form be submitted at least 30 days before construction begins, not exactly 30 days before construction begins. The EPA also proposed correcting a typographical error in a citation in the National O&NG FIP; changing certain references in the National O&NG FIP from “Reviewing Authority” to “EPA Regional Office;” and making minor edits, in the Federal Minor NSR Program in Indian Country, to enhance clarity and readability of a provision relating to the Part 2 Registration Form. The EPA received no adverse comments concerning these minor, clarifying or correcting changes and, in this final rule, the EPA is finalizing those changes, substantially as

proposed. The EPA does not anticipate the final rule changes will result in any increase in environmental impact(s) or cost increase(s) for the tribes, reviewing authorities or the regulated community.

II. Response to Comments

A total of 20 comments³ were received on the proposed rule, two-thirds (13) were generally supportive with some requests for clarification. We received only one adverse comment expressing concern that the EPA's proposed streamlining would reduce the time and attention provided for the EPA review process. Some commenters submitted concerns that were outside the scope of this rulemaking.

Comment: Nine commenters supported the rule as proposed noting that streamlining the process for submitting the Part 1 Form and the protected resources screening procedures documentation results in an improvement by reducing unnecessary administrative delays, with no loss of the EPA oversight in evaluating protected resources or of environmental protection.

Response: We agree with the commenters that concurrent submission of the Part 1 Form and documentation of protected resources screening procedures may streamline the process for sources subject to the National O&NG FIP. In addition, there have been no changes to the environmental protections of the rule and, under the revised provisions that allow concurrent submission, the EPA still must review and approve the screening procedures documentation before construction or modification can begin, all of which ensures that threatened or endangered

³ Some comments are summarized and some brief responses are provided, here, but for more complete responses to comments see the Responses to Comments (RTC) in the docket for this rule. Refer to the RTC for more information about the identity of the commenters and comment summaries and response(s) not included in this discussion. A total of 23 comments were received with 3 comments not related to the current rulemaking; therefore 20 comments were received related to this rulemaking.

species, historic properties, and the environment will continue to be protected as under the existing rule.

Comment: One commenter expressed concern about EPA's consultation and coordination with Indian Tribal Governments as per EPA's Policy on Consultation and Coordination with the Indian Tribes.⁴ The commenter asserted that when the EPA Regional Office reviews the protected resources screening documentation (whether generated by the owner/operator or by another agency), as well as when the owner/operator submits the Part 1 Form, the EPA Regional Office must consult and coordinate with the affected Indian Tribe(s) whose resources may be impacted by the source's operations. The commenter further recommended that the EPA Regional Office notify the affected Indian Tribe(s) immediately upon the EPA's receipt of the Part 1 Form or the screening procedures documentation, noting that, because consultation and coordination potentially can take significant time, the earlier the notification, the better and that the affected Indian Tribe(s) have governmental programs with substantial expertise regarding screening documentation review and adequacy, such as a Historic Preservation Officer and Departments of Cultural Resources, Fisheries, Wildlife, Water, Air Quality, and Forestry. The commenter also stated that the relevant EPA Regional Office must consult and coordinate with the affected Indian Tribe(s) regarding the EPA Regional Office's review and determination of adequacy of the protected resources screening documentation.

Response: The EPA proposed no changes to the EPA's rules, policies, or practices concerning Tribal consultation or coordination, including in connection with the National O&NG FIP. The issues raised by the commenter were not the subject of the proposed amendments to the National

⁴ <https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>

O&NG FIP and they are outside the scope of this rulemaking and will not be addressed here.

However, we note that the existing regulations at 40 CFR 49.104(a)(1) and (2) require that sources submit screening procedures documentation to the relevant tribe as well as to the EPA Regional Office, and the proposed amendments do not change these requirements.

Comment: One commenter opposed the proposed rule asserting that it removes critical protections from oil and gas emissions and that the EPA has not met its obligations to protect public health and welfare and has not fulfilled its trust responsibilities to Indian tribes. The commenter further stated that the EPA does not have an understanding of the impacts of oil and gas development on native communities in Indian country, noting the lack of air monitors for PM_{2.5}, PM₁₀, and ozone within the tribal boundaries of the Ft. Berthold Reservation. The commenter also said that increasing the pace of review for oil and gas minor sources is not the answer to an increase in development, and expressed significant concerns that the proposal could lead to less stringent enforcement and implementation of the Endangered Species Act (ESA), less protection of threatened or endangered species, and disregard for protected cultural resources such as historic properties. Further, the commenter asserted that the proposed changes to the FIP would result in tying approval of the protected resources screening procedures documentation to approval of the Part 1 Form, reducing the time and attention provided to the review of true minor source applications. The commenter also stated that any automatic approval after a certain time period is not adequate consideration of the threatened or endangered species of this land or the cultural heritage and artifacts of native people. The commenter commented that the proposal supported faster review of oil and gas minor sources, which is unnecessary and part of a dangerous trend from this Administration in removing critical protections from oil and gas emissions, endangering the lives of native people living on reservations.

Response: In general, the EPA appreciates the commenter's concerns about air quality. The EPA does not agree that the limited amendments proposed to the National O&NG FIP will have a significant adverse effect, if any, on air quality. Although the EPA maintains that there may be some administrative streamlining advantages associated with the proposed amendments, the EPA does not agree that the amendments will substantially increase the rate of oil and natural gas development or production. The proposed amendments also do not reduce or remove existing air quality protections associated with the National O&NG FIP.

As to the comments relating to minor source applications and the EPA's review of such applications, sources covered by the National O&NG FIP ordinarily are not required to submit site-specific permit applications, but are required to register and comply with various stated requirements and emissions standards. There is no application, as such, for the EPA to review and the limited amendments here make no change to this basic framework. With respect to the ESA/National Historic Preservation Act (NHPA) screening procedures, the National O&NG FIP continues to require review of the adequacy of the screening procedures documentation. Both in the prior National O&NG FIP, and the FIP as amended by this action, construction may not begin until the EPA provides written notification of adequate completion of the screening procedures.

III. Environmental Justice Considerations

This action revises existing rules to streamline the administrative process for sources covered by the National O&NG FIP by allowing the the Part 1 Form to be submitted to the EPA at the same time as the screening procedures documentation. It does not remove any of the prior rules' environmental or procedural protections. The EPA believes that this final action will not

have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations.

VI. Statutory and Executive Order Reviews

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

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

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 deregulatory action. This proposed rule is expected to provide meaningful burden reduction by potentially reducing the waiting time before certain true minor new and modified oil and natural gas sources can begin construction.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the Federal Minor NSR Program in Indian country rule and has assigned OMB control number 2060-0003.⁵ The

⁵ Since the Federal Minor NSR Program in Indian country rule was promulgated, the Information Collection Request (ICR) has been renewed and approved by OMB twice. The most recent approval extended the ICR until October 31, 2020. The ICR covers the activities of the National O&NG FIP. For more information, go to:

https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201702-2060-005.

National O&NG FIP, which this action amends, provides a mechanism for authorizing construction or modification of true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector in areas covered by the Federal Minor NSR Program in Indian country to satisfy the requirements of that rule other than by obtaining a site-specific minor source permit. Because it substitutes for a site-specific permit, which would contain information collection activities covered by the Information Collection Request for Federal Minor NSR Program in Indian country rule issued in July 2011, neither the proposed amendments nor the National O&NG FIP impose any new obligations or new enforceable duties on any state, local or tribal government or the private sector.

D. 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. This action merely modifies the timing to allow required documentation to be submitted at an earlier point in the regulatory process. The EPA analyzed the impact on small entities of streamlined permitting resulting from this rule and determined that it would not have a significant economic impact on a substantial number of small entities. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandates, as described in UMRA, 2 U.S.C.

1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal government or the private sector. In material part, it simply modifies the permissible time-frame for submission of otherwise required forms to streamline the National O&NG FIP and Federal Minor NSR Program in Indian country.

F. 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.

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

This action may have tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011),⁶ the EPA offered consultation on the proposed action. The EPA conducted outreach on issues related to the Federal Minor NSR Program in Indian country and the National O&NG FIP via ongoing monthly meetings with tribal environmental professionals.⁷ We did not receive a formal tribal consultation request for this rulemaking.

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

⁶ For more information, go to: <https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>.

⁷ These monthly meetings are general in nature, dealing with many air-related topics, and are not specific to this final action.

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

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

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

J. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards.

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

The EPA believes this action does not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. Through this amendment, we seek to further streamline the process for true minor sources in the oil and natural gas sector in areas covered by the Federal Minor NSR Program in Indian country . This action does not remove any of the prior rules' environmental or procedural protections.

L. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties.

M. Judicial Review

Under section 307(b)(1) of the CAA, petitions for review of this final action must be filed in the U.S. Court of Appeals for the appropriate circuit within 60 days from the date this final action is published in the **Federal Register**.

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List of Subjects in 40 CFR Part 49

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

Dated:

Andrew R. Wheeler,
Administrator.

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

PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

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

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

Subpart C--General Federal Implementation Plan Provisions

2. Section §49.104 is amended by:

- a. Revising paragraph (a);
- b. Revising Paragraph (a)(2);
- c. Revising paragraph (a)(2)(i);
- d. Revising paragraph (a)(2)(i)(B); and
- e. Revising paragraph (a)(2)(ii).

The revisions read as follows:

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

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

(1) * * *

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

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

(i) Within 30 days of receipt of your documentation, by written notification to you, the EPA Regional Office must provide one of the following determinations:

(A) * * *

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

(ii) You must obtain written notification from the EPA Regional Office indicating that the source has adequately completed the screening procedures. The EPA Regional Office may send

written notification by mail, email, or any other written means of notification. You may not begin construction under this FIP until the following two conditions are met: (1) at least 30 days has passed from the date the Part 1 Registration Form was submitted, and (2) the EPA Regional Office has provided this notification.

3. Section §49.160 is amended by:

a. revising paragraph (c)(1)(iv).

The revision reads as follows:

§ 49.160 Federal Minor New Source Review In Indian Country

(c) ***

(1) ***

(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.