6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

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

RIN 2060-AT96

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: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing three amendments to the existing National Oil and Natural Gas Federal Implementation Plan (National O&NG FIP) that applies to new true minor sources and minor modifications at existing true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector that are locating or expanding in Indian reservations or in other areas of Indian country over which an Indian tribe, or the EPA, has demonstrated the tribe's jurisdiction. The National O&NG FIP, which includes a mechanism for authorizing construction of true minor new and modified oil and natural gas sources, satisfies the minor source permitting requirement under the "Federal Minor New Source Review (NSR) Program in Indian Country" (referred to as the "Federal Indian Country Minor NSR rule"). We are proposing two amendments to apply the National O&NG FIP to the Uintah and Ouray Reservation (U&O Reservation) portion of the intended Uinta Basin Ozone Nonattainment Area. We are also proposing a minor technical correction to fix a typographical error in a provision in the National O&NG FIP.

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DATES: *Public Hearing.* A public hearing will be held May 30, 2018, at the EPA's Region 8 offices at 1595 Wynkoop Street, Denver, CO 80202. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the hearing.

Comments. The EPA must receive comments on this proposed action no later than **[INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER OR 30 DAYS AFTER MAY 30, 2018, WHICHEVER IS LATER]**.

ADDRESSES: *Public Hearing.* The hearing will be held at the EPA's Region 8 offices at 1595 Wynkoop Street, Denver, CO 80202. The hearing will convene at 9:00 a.m. (local time). The EPA will end the hearing two hours after the last registered speaker has concluded their comments but no later than 4:00 p.m. (local time). There will be a lunch break from 1:00 p.m. to 2:00 p.m. (local time).

Because the hearing is being held at a United States government facility, individuals planning to attend must plan for enough time to enter the facility. All visitors must ensure they have a valid photo ID and must pass through security screening, comparable to screening at an airport, they will sign in and obtain a visitor pass. No large signs, cameras, banners and/or weapons will be allowed in to the facility.

Docket. The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2014-0606, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. 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

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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 submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

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*.

Public Hearing. The EPA will begin pre-registering speakers for the hearing upon publication of this notice in the *Federal Register*. If you would like to speak at the public hearing, please register using the online registration form available at: *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry*. You may also register by contacting Tonya Blatcher at (919) 541-1929 or by email at *blatcher.tonya@epa.gov*. To register to speak, we request the following information: The time you wish to speak, name, affiliation, email address, and telephone number. If you register to speak online, you do not need to call. If you require reasonable accommodations, such as the service of a translator, please let us know as soon as possible, but no later than May 22, 2018.

The last day to pre-register to register to speak at the hearing will be Tuesday, May 25, 2018. On May 28, 2018, the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order. The general agenda will be posted at *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry*. The EPA will make

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every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk. The EPA will make every effort to accommodate all speakers who arrive and register, although preferences on speaking times may not be able to be fulfilled.

SUPPLEMENTARY INFORMATION: *Public Hearing.* Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) or in hard copy form.

The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Commenters should notify Tonya Blatcher at (919) 541-1929 or by email at *blatcher.tonya@epa.gov* if they will need specific equipment, or if there are other special needs related to providing comments at the hearings. Verbatim transcripts of the hearings and written statements will be included in the docket for the rulemaking.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry*. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact Tonya Blatcher at (919) 541-1929 or by email at *blatcher.tonya@epa.gov* to determine if there are any updates. The EPA does not intend to publish a notice in the *Federal Register* announcing updates.

The EPA will not provide audiovisual equipment for presentations unless we receive special requests in advance. Commenters should notify Tonya Blatcher when they pre-register to

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speak that they will need specific equipment. If you require the service of a translator or special accommodations such as audio description, please pre-register for the hearing and describe your needs by May 22, 2018. We may not be able to arrange for accommodations without advance notice.

The information presented in this preamble is organized as follows:

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I. General Information

A. What entities are potentially affected by this action?

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Entities potentially affected by this proposal include the Ute Indian Tribe,[1] as well as new and modified true minor sources that are in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector and are on Indian country[2] lands within the U&O Reservation. All of the Ute Indian Tribe Indian country lands of which the EPA is aware are located within the exterior boundaries of the Reservation, and these amendments will apply to all such lands. To the extent that there are Ute Indian Tribe dependent Indian communities under 18 U.S.C. 1151(b) or allotted lands under 18 U.S.C. 1151(c) that are located outside the exterior boundaries of the Reservation, those lands will not be covered by these amendments.[3] In

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[1] The Ute Indian Tribe is a federally recognized tribe organized under the Indian Reorganization Act of 1934, with a Constitution and By-Laws adopted by the Tribe on December 19, 1936, and approved by the Secretary of the Interior on January 19, 1937. *See* Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 82 FR 4915 (January 17, 2017); 48 Stat. 984, 25 U.S.C. 5123 (IRA); Constitution and By-Laws of the Ute Indian Tribe of the Uintah and Ouray Reservation, available at *https://www.loc.gov/law/help/american-indian-consts/PDF/37026342.pdf.*

[2] Indian country is defined at 18 U.S.C. 1151 as: (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

[3] Under the Clean Air Act (CAA), lands held in trust for the use of an Indian tribe are reservation lands within the definition at 18 U.S.C. 1151(a), regardless of whether the land is formally designated as a reservation. *See* Indian Tribes: Air Quality Planning and Management, 63 FR 7254, 7258 (1998) ("Tribal Authority Rule"); *Arizona Pub. Serv. Co. v. EPA*, 211 F.3d 1280, 1285-86 (D.C. Cir. 2000). The EPA's references in this FIP to Indian country lands within the exterior boundaries of the U&O Reservation include any such tribal trust lands that may be acquired by the Ute Indian Tribe. In addition, in 2014, the U.S. Court of Appeals for the D.C. Circuit addressed EPA's authority to promulgate a FIP establishing certain CAA permitting programs in Indian country. *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F. 3d 185 (D.C. Cir. 2014). In that case, the court recognized the EPA's authority to promulgate a FIP to directly administer CAA programs on Indian reservations, but invalidated the FIP at issue as applied to non-reservation areas of Indian country in the absence of a demonstration of an Indian tribe's jurisdiction over such non-reservation area. Because the current proposed rule would apply only on Indian country lands that are within the exterior boundaries of the U&O Reservation, *i.e.*, on Reservation lands, it is unaffected by the *Oklahoma* court decision.

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addition, this proposed rule will not apply to any sources not on Indian country lands, including any areas within the exterior boundaries of the Reservation that are not Indian country lands.[4]

TABLE 1 – SOURCE CATEGORIES AFFECTED BY THIS ACTION

Industry Category	NAICS Code[a]	Examples of Regulated Entities/ Description of Industry Category
Oil and Natural Gas Production/Operations	21111	Exploration for crude petroleum and natural gas; drilling, completing, and equipping wells; operation of separators, emulsion breakers, desilting equipment, and field gathering lines for crude petroleum and natural gas; and all other activities in the preparation of oil and natural gas up to the point of shipment from the producing property. Production of crude petroleum, the mining and extraction of oil from oil shale and oil sands, the production of natural gas, sulfur recovery from natural gas, and the recovery of hydrocarbon liquids from oil and natural gas field gases.

[4] As a result of a series of federal court decisions, there are some areas within the exterior boundaries of the Uintah and Ouray Indian Reservation that are not Indian country lands. See *Ute Indian Tribe v. Utah*, 521 F. Supp. 1072 (D. Utah 1981); *Ute Indian Tribe v. Utah*, 716 F.2d 1298 (10th Cir. 1983); *Ute Indian Tribe v. Utah*, 773 F.2d 1087 (10th Cir. 1985) (en banc), cert. denied, 479 U.S. 994 (1986); *Hagen v. Utah*, 510 U.S. 399 (1994); *Ute Indian Tribe v. Utah*, 935 F. Supp. 1473 (D. Utah 1996); *Ute Indian Tribe v. Utah*, 114 F.3d 1513 (10th Cir. 1997), cert. denied, 522 U.S. 1107 (1998); *Ute Indian Tribe v. Utah*, 790 F.3d 1000 (10th Cir. 2015), cert. denied, 136 S. Ct. 1451 (2016); and *Ute Indian Tribe v. Myton*, 835 F.3d 1255 (10th Cir. 2016), cert. denied, 137 S. Ct. 2328 (2017).

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Industry Category	NAICS Code[a]	Examples of Regulated Entities/ Description of Industry Category
Crude Petroleum and Natural Gas Extraction	211111	Exploration, development and/or the production of petroleum or natural gas from wells in which the hydrocarbons will initially flow or can be produced using normal pumping techniques or production of crude petroleum from surface shales or tar sands or from reservoirs in which the hydrocarbons are semisolids.
Natural Gas Liquid Extraction	211112	Recovery of liquid hydrocarbons from oil and natural gas field gases; and sulfur recovery from natural gas.
Drilling Oil and Natural Gas Wells	213111	Drilling oil and natural gas wells for others on a contract or fee basis, including spudding in, drilling in, redrilling, and directional drilling.
Support Activities for Oil and Natural Gas Operations	213112	Performing support activities on a contract or fee basis for oil and natural gas operations (except site preparation and related construction activities) such as exploration (except geophysical surveying and mapping); excavating slush pits and cellars, well surveying; running, cutting, and pulling casings, tubes, and rods; cementing wells, shooting wells; perforating well casings; acidizing and chemically treating wells; and

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Industry Category	NAICS Code[a]	Examples of Regulated Entities/ Description of Industry Category
Engines (Spark Ignition and Compression Ignition) for Electric Power Generation	22111	cleaning out, bailing, and swabbing wells. Provision of electric power to support oil and natural gas production where access to the electric grid is unavailable.

[a] 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 Federal Minor NSR Program in Indian Country and the National O&NG FIP (40 Code of Federal Regulations (CFR) 49153 and 49.101, respectively). If you have any questions regarding the applicability of this action to a particular entity, contact the appropriate person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

In addition to being available in the docket, an electronic copy of this final rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this final rule will be posted in the regulations and standards section of our NSR home page located at *http://www.epa.gov/nsr* and on the tribal NSR page at *https://www.epa.gov/tribal-air/tribal-minor-new-source-review.*

II. Purpose of this Proposed Action

A. Overview

In this action, the EPA is proposing to exercise its authority, in accordance with section 110(a)(2)(C) of the CAA and under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11

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by amending the National O&NG FIP[5] to extend it to eligible true minor oil and natural gas sources in the Indian country portion of the intended Uinta Basin Ozone Nonattainment Area, which includes making it available as a mechanism for authorizing construction in that area. (The Indian country lands within the Uinta Basin to which these amendments would apply are on the U&O Reservation.)

The National O&NG FIP provides a mechanism for authorizing construction for eligible true minor oil and natural gas sources wishing to locate or expand in areas of Indian country designated as attainment, unclassifiable and attainment/unclassifiable. The counties in the Uinta Basin are currently designated as unclassifiable with respect to the 2008 ozone National Ambient Air Quality Standards (NAAQS)[6] and, as such, owners/operators of eligible oil and natural gas sources on Indian country lands within the U&O Reservation have been utilizing the National O&NG FIP's streamlined approach to satisfy permitting requirements since August 2, 2016, when the FIP became effective. However, the EPA has announced its intention to designate portions of the Uinta Basin, including the U&O Reservation, as nonattainment for the 2015

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[5] "Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector," U.S. Environmental Protection Agency, 81 FR 35943, June 3, 2016, *https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf.*

[6] "Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards; Implementation of the 2008 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach, Attainment Deadlines and Revocation of the 1997 Ozone Standards for Transportation Conformity Purposes," U.S. Environmental Protection Agency, 77 FR 30087, May 21, 2012, *https://www.gpo.gov/fdsys/pkg/FR-2012-05-21/pdf/2012-11618.pdf.*

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ozone NAAQS.[7,8]

The Uinta Basin is a petroleum producing system that contains thousands of active oil and natural gas wells, and existing oil and natural gas production activity is the primary source of the emissions of concern for air quality: volatile organic compounds (VOC) and nitrogen oxides (NOx), ozone precursors that react to form ozone in the presence of sunlight and widespread snow cover. The Uinta Basin's air quality problem is wintertime ozone caused by these existing sources' emissions. However, because the agency is under a court order to finalize the Basin's designation with respect to the 2015 ozone NAAQS by April 30, 2018,[9] and because the agency intends to designate some portions of the Basin as nonattainment, including portions of the U&O Reservation, under the National O&G FIP, in its current form, the Indian country portions of the Basin (U&O Reservation) will fall out of that FIP's coverage. Thus, the area will lack a streamlined mechanism to authorize construction of true minor new and modified oil and natural gas sources. This will immediately cause a disparity in the regulatory landscape facing such activity in the affected area, as compared to all other areas of Indian country that will remain covered by the FIP—even though the Basin's air quality problem that drives the impending nonattainment designation will not manifest until the winter.

With this proposed action, the EPA is proposing to ensure that the National O&NG FIP's requirements to comply with eight federal rules (and the mechanism for authorizing

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[7] The EPA intends to make final designation determinations for the areas of the country addressed by the EPA responses to state and tribal area boundary recommendations (which cover the Uinta Basin region) no earlier than 120 days from the date (December 21, 2017) the EPA notified states and tribes of the agency's intended designations.

[8] "EPA Responses to Certain State Designation Recommendations for the 2015 Ozone National Ambient Air Quality Standards: Notice of Availability and Public Comment Period," U.S. Environmental Protection Agency, 83 FR 651, January 5, 2018, *https://www.gpo.gov/fdsys/pkg/FR-2018-01-05/pdf/2018-00024.pdf.*

[9] In re Ozone Designation Litigation, No. 17-cv-06900-HSG (N.D. Cal. March 12, 2018).

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construction) will continue to apply on the U&O Reservation, recognizing that the geographically limited extension of the National O&NG FIP to the area is occurring while the EPA moves quickly to complete a separate rulemaking to further address the air quality problem on the U&O Reservation.

The separate EPA rulemaking[10] addressing air quality is a reservation-specific FIP action that will contain requirements to reduce ozone-forming emissions from new, modified and existing oil and natural gas sources on Indian country lands within the U&O Reservation. The rulemaking will seek to achieve three goals for the Indian country portion of the Uinta Basin: (1) clean air; (2) continued, uninterrupted development of the oil and natural gas resources; and (3) consistent CAA regulatory requirements between Indian country lands within the U&O Reservation and lands under state of Utah jurisdiction. Through that rulemaking, the EPA will address the Uinta Basin's particular situation in an area-specific manner; this proposal today seeks to bridge the gap in authority that the nonattainment designation will cause during the interim period where the designation will be in place, but the environmental needs requiring area-specific treatment have not yet materialized.

B. Authority for Proposed Action

CAA section 110(a)(2)(C) is part of the foundation for the minor NSR program, and it requires states to submit plans that include programs for the regulation of "the modification and construction of any stationary source."[11] CAA section 110(c) authorizes the EPA to promulgate

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[10] The rulemaking is listed on the Office of Management and Budget's Unified Agenda of Regulatory and Deregulatory Actions. For more information, go to: *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=2008-AA03*. In the Agenda, the rulemaking appears as: "Federal Implementation Plan for Oil and Natural Gas Sources; Uintah and Ouray Indian Reservation in Utah."

[11] Section 110(a)(2)(C) of the CAA requires state plans to include "a program to provide for the…regulation of the modification and construction of any stationary source within the areas

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a Federal implementation plan in the absence of a satisfactory state plan. CAA section 301(a) generally authorizes the EPA to prescribe regulations as are necessary to carry out its functions under the Act.

Section 301(d) of the 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. (CAA sections 301(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. (CAA section 301(d)(4)). Acting principally pursuant to that authority, on February 12, 1998,[12] 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).

The TAR preamble clarified that by including CAA section 110(c)(1) on the §49.4 "exception" 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."[13] The TAR includes a provision that

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covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter."

[12] "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.*

[13] See CAA section 301(a) and 63 FR 7254, 7265, February 12, 1998, *http://www.gpo.gov/fdsys/pkg/FR-1998-02-12/pdf/98-3451.*

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provides the EPA the authority to promulgate a Federal implementation plan in the absence of a satisfactory tribal plan. (40 CFR 49.11(a)).

On August 21, 2006, the EPA proposed the regulation: "Review of New Sources and Modifications in Indian Country" (commonly referred to as the Federal Indian Country NSR rule).[14] With this proposed regulation, the EPA proposed to protect air quality in Indian country, as defined in 18 U.S.C. 1151, by establishing a FIP program to regulate, among other matters, the modification and construction of minor stationary sources consistent with the authorities and requirements of sections 301 and 110(a)(2)(C) of the CAA. We refer to this part of the Federal Indian Country NSR rule as the Federal Indian Country Minor NSR rule. Under the Federal Indian Country Minor NSR rule, we proposed to provide a mechanism for issuing pre-construction permits for the construction of new minor sources and certain modifications of major and minor sources in Indian country. We promulgated a final rule on July 1, 2011,[15] and the rule became effective on August 30, 2011. The Federal Indian Country Minor NSR rule applies to new and modified minor stationary sources and to minor modifications at existing major stationary sources located in Indian country where there is no EPA-approved program in place for all new and modified minor sources and minor modifications at major sources located in areas covered by the Federal Indian Country Minor NSR rule.

Tribes can elect to develop and implement their own EPA-approved program under the

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

[15] "Review of New Sources and Modifications in Indian Country," U.S. Environmental Protection Agency, 76 FR 38748, July 1, 2011, *https://www.gpo.gov/fdsys/pkg/FR-2011-07-01/pdf/2011-14981.pdf.*

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TAR,[16] but they are not required to do so.[17] In the absence of an approved program, the EPA implements this program. Alternatively, tribes can take delegation of the program from the EPA to assist the EPA with administration of the federal program, including acting as the Reviewing Authority for the EPA.

Under the Federal Indian Country Minor NSR rule, initially beginning September 2, 2014,[18] any new stationary source, that will emit, or will have the potential to emit, a regulated NSR pollutant in amounts that will be: (a) equal to or greater than the minor NSR thresholds established in the Federal Indian Country Minor NSR rule; but (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 (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).[19] The Federal Indian Country Minor NSR rule also created a framework

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[16] To obtain eligibility to develop and implement an EPA-approved plan, under the TAR a tribe must meet four requirements: (1) be a federally recognized tribe, (2) have a functioning government, (3) have the legal authority and (4) have the capacity to run the program. For more information, see 63 FR 7254, February 12, 1998, *http://www.gpo.gov/fdsys/pkg/FR-1998-02-12/pdf/98-3451.pdf.*

[17] Under tribal law, tribes may also be able to establish permit fees under a tribal permitting program, as do most states.

[18] For true minor sources in the oil and natural gas sector, this date was extended twice. The final date of October 3, 2016, was included in the National O&NG FIP.

[19] 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).

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for the EPA to streamline the issuance of pre-construction permits to true minor sources by using general permits.

In promulgating the National O&NG FIP we determined that it was appropriate to promulgate a FIP to remedy an existing regulatory gap with respect to oil and natural gas production and natural gas processing operations in areas covered by the Federal Indian Country Minor NSR rule where there is no EPA-approved plan in place. The authority that underlies and supports the National O&NG FIP (as well as the Federal Indian Country Minor NSR FIP) also authorizes this proposed action, which simply would amend the National O&NG FIP. In summary, just as we had the authority to establish the National O&NG FIP, we believe that we have authority under the CAA (§§ 301(a), 301(d)(4) and 110(a)(2)(C)) and regulatory authority under the TAR (40 CFR 49.1 – 49.11) to carry out this action and extend the applicability of the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area. As described above, the CAA provides broad authority to manage air resources throughout Indian country, regardless of area designation under the CAA. This is well established authority and we have exercised it on many occasions, including to regulate activity in areas of Indian country designated nonattainment. Foremost, the Agency is responsible for ensuring that NAAQS are achieved throughout Indian country and to implement CAA programs in Indian country that tribal governments do not elect to implement. This proposed action is consistent with and supported by our successful use of these authorities in these prior actions.

Finally, in light of the intended, pending final designation of nonattainment for the Uinta Basin for the 2015 ozone NAAQS, this action is consistent with the CAA general provisions for nonattainment areas in CAA sections 172(b) and 172(c), which include references to CAA section 110(a)(2), as well as the major source nonattainment NSR permitting program in CAA

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section 173. This proposed action is consistent with CAA section 110(a)(2)(C), which requires that implementation plans include programs for all areas (attainment and nonattainment) that provide for the regulation of the modification and construction of any stationary source "as necessary to assure that national ambient air quality standards are achieved" for the reasons discussed elsewhere in this notice. In addition, CAA sections 172 and 173 provide that programs relating to permits to construct for major sources should take into consideration emissions from existing sources, as well as new or modified sources that "are not major emitting facilities," i.e, new or modified minor sources. Thus, the emissions from minor sources covered by this action would be considered in CAA section 173 major source permitting actions in the intended Uinta Basin Ozone Nonattainment Area, though they are not directly subject to regulation under CAA sections 172 and 173.[20]

C. Rationale for Proposed Action

In the preamble to the final National O&NG FIP, we made clear that we could extend the geographic coverage of the FIP to nonattainment areas, provided that we also addressed existing, new and modified sources in a separate, reservation-specific FIP. We stated the need to develop area-specific plans if and when areas of Indian country become nonattainment. Further, we specifically noted concern about the air quality problem in the Uinta Basin and indicated our intent to propose a separate reservation-specific FIP to address the issue.

The extension of the National O&NG FIP proposed in this notice will, if finalized, provide coverage under the National O&NG FIP for Indian country portion of the intended Uinta basin Ozone Nonattainment Area after EPA's intended designation of portions of the Uinta

[20] The Federal Indian Country NSR rule also provides for major source permitting in nonattainment areas in Indian country. See 76 FR 38748, July 1, 2011, *https://www.gpo.gov/fdsys/pkg/FR-2011-07-01/pdf/2011-14981.pdf*

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Basin as being in nonattainment of the 2015 ozone NAAQS, which the EPA intends to issue by April 30, 2018. We indicated in the preamble to the final National O&NG FIP that we intended "to potentially apply the national FIP's requirements as appropriate to nonattainment areas where the EPA has established a separate, area-specific FIP."[21] The EPA does intend to do just that for the Indian country portion of the intended Uinta Basin Ozone Nonattainment Area, but in the meantime we are proposing this action. The agency believes that this approach is reasonable in light of the following considerations.

First, as noted above, the EPA is moving quickly to undertake a separate rulemaking to establish a U&O Reservation-specific FIP for the area. We intend to complete this other action – the U&O Reservation-specific FIP – before the start of the 2018-2019 winter ozone season in the Uinta Basin. Our intent is for the FIP to contain VOC emissions control requirements that will apply to existing, new and modified minor oil and natural gas sources on the U&O Reservation. Our intent is for some of those requirements (i.e., VOC requirements on new and modified minor sources) to apply before the start of the 2018-2019 winter ozone season on the U&O Reservation, by which time we expect the final U&O Reservation-specific FIP to be effective with the requirements on existing oil and natural gas minor sources to follow. It should also be noted that preliminary monitoring data from the current 2017-2018 winter ozone season from across the region show values well below the 2015 ozone NAAQS.[22]

Second, the relatively short, initial period of time before a U&O Reservation-specific FIP is in place during which the National O&NG FIP will apply to the U&O Reservation (as part of

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[21] See 81 FR 35943, 35946, June 3, 2016, *https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf.*

[22] See spreadsheet titled: "Uinta Basin Ozone Data, Dec. 2017-Feb. 2018," Docket No. EPA-HQ-OAR-2014-0606.

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the expected Uinta Basin Ozone Nonattainment Area), will be before the Uinta Basin winter ozone season. As noted above, the Uinta Basin does not have a summertime ozone air quality problem. We are, therefore, confident that – with this action – the eight emissions standards that apply to oil and natural gas sources under the National O&NG FIP will continue to be adequately protective of air quality in the U&O Reservation while we complete the separate rulemaking to establish a U&O Reservation-specific FIP, all of which we expect to occur before the start of the 2018-2019 winter ozone season in the Uinta Basin.

Finally, the two-part approach we are taking is similar to the process that occurs under the CAA when an area within a state is designated nonattainment: a plan addressing the air quality problem is not due to the EPA until a period of time after an area is designated nonattainment. Thus, the approach we are presenting here, we believe, is reasonable.

We also believe that this action – along with the EPA's related, forthcoming action to reduce oil and natural gas source emissions in the area – will address the air quality problem on the U&O Reservation, while maintaining a mechanism for authorizing construction that helps ensure continued oil and natural gas production on the U&O Reservation in compliance with the eight federal rules that apply to true minor oil and natural gas sources under the FIP.[23] Based on feedback from Ute Indian Tribe leadership, continued oil and natural gas production is important for the maintenance of the local tribal economy, as the Ute Indian Tribe is dependent upon oil and natural gas revenue for its economic prosperity. Because the action we propose today will avoid disruption of that activity during the period before the wintertime ozone problem

[23] This includes the EPA's New Source Performance Standards (NSPS) for oil and natural gas sources (40 CFR part 60, subpart OOOO) with affected facilities that commenced construction, modification or reconstruction after August 23, 2011. The standard includes emissions standards for VOC and sulfur dioxide (SO_2) from a number of units, including storage tanks, compressors, and pneumatic controllers.

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manifests, while the EPA works to promulgate an area-specific protective measure to address that problem, the agency believes this course of action will appropriately protect the Basin's environment without causing unnecessary disruption to its economy.

We are proposing that the extension of the National O&NG FIP to eligible true minor oil and natural gas sources in the Indian country portion of the intended Uinta Basin Ozone Nonattainment Area be permanent. However, we also are seeking comment on whether, instead, it should be temporary and expire before the onset of the 2018-2019 ozone season. We seek comment on whether the extension should be temporary, in light of the facts surrounding the Uinta Basin's situation as described above and with respect to: (1) this proposed action, (2) its impending nonattainment designation, and (3) the forthcoming area-specific FIP.

In particular, we seek comment on how the EPA can protect air quality on the U&O Reservation and ensure continued oil and natural gas development under two general scenarios. In the first scenario, we finalize the extension as permanent, as proposed, but we do not complete the U&O Reservation-specific FIP by the start of the 2018-2019 Uinta Basin winter ozone season. A concern may be that continuing to allow the Uinta Basin Ozone Nonattainment Area to be covered by the National O&NG FIP in the absence of any emissions reductions that may be associated with the U&O Reservation-specific FIP. We seek comment relating to this scenario, including on what the Agency could do in this action, when finalized, to mitigate possible impacts.

In another scenario, we, instead finalize the extension as temporary and we set it to expire at the end of calendar year 2018, say, but we do not complete the U&O Reservation-specific FIP by the start of the 2018-2019 Uinta Basin winter ozone season. Here, the concern would be the effect on oil and natural gas activity on the U&O Reservation, if the area loses coverage under

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the National O&NG FIP. In the absence of other measures, sources in the Indian country portion of Uinta Basin Ozone Nonattainment Area (the U&O Reservation) would need to obtain source-specific minor source permits in order to construct and operate. Oil and natural gas owners and operators in the U&O reservation and the Ute Indian Tribe have significant concerns about delays associated with this type of permitting. As noted above, the Ute Indian Tribe relies on revenue from oil and natural gas activity for its livelihood and has expressed concerns about the lengthier timeframes associated with EPA approvals under source-specific permitting. We seek comment relating to this scenario, including on what the Agency could do to mitigate possible impacts.

III. Background

A. FIPs Under the Indian Country Minor NSR Rule

1. Federal Indian Country Minor NSR Rule

As noted above, CAA section 301(d)(4) authorizes the EPA to issue regulations directly administering, in Indian country, provisions of the Act. Exercising its authority, including its authority under 301(d)(4), the EPA promulgated the Federal Indian Country Minor NSR rule, a type of FIP. 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 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.

2. National O&NG FIP

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Following the issuance of the Federal Indian Country Minor NSR FIP, EPA proposed the National O&NG FIP.[24] Because there were 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 proposed a FIP to protect air quality in areas covered by the Federal Indian Country Minor NSR rule. The National O&NG FIP was published in final form on June 3, 2016.[25] The National O&NG FIP adopted legally and practicably enforceable requirements to control and reduce air emissions from oil and natural gas production.

The National O&NG FIP was developed to protect air quality in Indian country due to the impact of new true minor sources and minor modifications at existing true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector that are locating or expanding in an Indian reservation or in another area of Indian country over which a tribe, or the EPA, has demonstrated that the tribe has jurisdiction. The FIP applies to new and modified true minor sources that are located or expanding in such areas of Indian country designated as attainment, unclassifiable or attainment/unclassifiable. It currently does not apply to new and modified true minor sources that are located or expanding in such areas of Indian country designated nonattainment. However, this action proposes to extend the National O&NG FIP's geographic coverage to the Uinta Basin Ozone Nonattainment Area. The FIP does not apply to minor modification of major sources; such sources are required to obtain a source-specific permit prior to beginning construction, per the Federal Indian Country Minor NSR rule.

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[24] "Review of New Sources and Modifications in Indian Country: Federal Implementation Plan for Managing Air Emissions from True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country," U.S. Environmental Protection Agency, 80 FR 56553, September 18, 2005, *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-21025.pdf.*
[25] See 81 FR 35943, 35946, June 3, 2016, *https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf.*

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The National O&NG FIP fulfills the EPA's obligation under the Federal Indian Country Minor NSR rule to issue minor source NSR pre-construction permits to oil and natural gas sources. The National O&NG FIP provides a streamlined, alternative approach that fulfills the permitting requirement, while also ensuring air quality protection through requirements that are unambiguous and legally and practicably enforceable. The FIP approach is also transparent to the public: it is clear to the public what requirements will apply. The FIP reduces burden for sources and the Reviewing Authority and minimizes potential delays in new construction due to compliance with the minor NSR permitting obligation. True minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector are required to comply with the FIP instead of obtaining a source-specific minor source permit, unless a source chooses to opt out of the FIP and to obtain a source-specific minor NSR permit instead.

Under the FIP, we require owners/operators of oil and natural gas production facilities and natural gas processing plants to comply with eight federal standards to reduce emissions of VOC, NO_x, SO_2, particulate matter (PM, PM_{10}, $PM_{2.5}$), hydrogen sulfide, carbon monoxide and various sulfur compounds from the following units/processes in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector: compression ignition and spark ignition engines; process heaters; combustion turbines; fuel storage tanks; glycol dehydrators; completion of hydraulically fractured oil and natural gas wells; reciprocating and centrifugal compressors (except those located at well sites); pneumatic controllers; pneumatic pumps; storage vessels; and fugitive emissions from well sites, compressor stations and natural gas processing plants. The oil and natural gas FIP requires compliance with five

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NSPS and three national emission standards for hazardous air pollutants (NESHAP).[26] These regulations are listed in Table 2.

The eight regulations and the provisions of each that are included in the oil and natural gas FIP are discussed in more detail in this section. The FIP's requirements include emission standards (that contain emission limitations), monitoring, testing, recordkeeping and reporting. For purposes of the National O&NG FIP, true minor sources must comply with these standards, as they currently exist or as amended in the future, except for those provisions that we specifically exclude under the National O&NG FIP (unless the source opts out of the FIP and obtains a source-specific permit or is otherwise required to obtain a source-specific permit by the Reviewing Authority). Sources subject to the National O&NG FIP would be subject to any future changes to the eight underlying EPA standards only if they undergo a future minor modification as a true minor source and would otherwise be subject to those future changes. (The National O&NG 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 the National O&NG FIP.)

TABLE 2 – EIGHT FEDERAL RULES INCLUDED IN THE OIL AND NATURAL GAS FIP FOR INDIAN COUNTRY[27]

[26] Though this FIP only addresses new and modified true minor sources, it is important to note that NESHAPs not only apply to new sources but to existing sources as well.

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

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

40 CFR Part and Subpart	Title of Subpart	Potentially Affected Sources in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector	Location
40 CFR part 60, subpart Kb	Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984	Fuel Storage Tanks	*http://www.ecfr.gov/cgi-bin/text-idx?SID=9f31077f895e9cb417f538651994 1a47&mc=true&node=sp40.7.60.k_0b&rgn=div6*
40 CFR part 60, subpart OOOOa	Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification, or Reconstruction Commenced after September 18, 2015	Storage Vessels, Pneumatic Controllers, Compressors (Reciprocating and Centrifugal), Hydraulically Fractured Oil and Natural Gas Well Completions, Pneumatic Pumps and Fugitive Emissions from Well Sites and Compressor Stations	*https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/actions-and-notices-about-oil-and-natural-gas*
40 CFR part 63, subpart HH	National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities	Glycol Dehydrators	*http://www.ecfr.gov/cgi-bin/text-idx?SID=9f31077f895e9cb417f538651994 1a47&mc=true&node=sp40.11.63.hh&rgn=div6*
40 CFR part 60, subpart KKKK	Standards of Performance for New Stationary Combustion Turbines	Combustion Turbines	*http://www.ecfr.gov/cgi-bin/text-idx?SID=4090b6cf5eea5cb67940a80906ff09a2&mc=true&node=sp40.7.60.kkkk&rgn=div6*

3. National O&NG FIP and Areas of Comment the EPA Received Relevant to this Action

In the response to comments section of the preamble to the final rule establishing the National O&NG FIP, we addressed some issues that are related to this proposed action.[28] We provided that the FIP does not apply in a nonattainment area, but that it could, if we addressed existing sources in such an area.[29] We stated that, parallel to designating such an area is designated as nonattainment, we would promulgate an area-specific FIP for existing sources if we determine that it is "necessary or appropriate" to do so pursuant to the TAR.[30] We received comments concerning extending the geographic reach of the National O&NG FIP to nonattainment areas. Commenters were concerned with how permitting requirements would be satisfied in such areas during the transition period between the time an area is designated as nonattainment and the time a separate, area-specific FIP to control emissions adequately in such a nonattainment area is in place. The Uinta Basin was given as an example of where the absence of a streamlined means to satisfy permitting requirements during this transition period could pose problems. In response to the comments, we stated our intent to potentially apply the National O&NG FIP's requirements as appropriate to nonattainment areas, where the EPA has established a separate, area-specific FIP. As discussed earlier, our proposed approach here is slightly different, in that the extension of the National O&NG FIP to the Uinta Basin nonattainment area may precede the separate, area-specific FIP for that area. However, our plan is for the separate,

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[28] 81 FR 35943, June 3, 2016, *https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf.*

[29] In the preamble to the final National O&NG FIP we also indicated as a general matter - and not in response to comments - that new and modified sources also need to be addressed in reservation-specific FIPs (in addition to existing sources) when considering whether to extend the geographic coverage of the National O&NG FIP to nonattainment area. 81 FR 35943, 35964, 35968, June 3, 2016, *https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf.*

[30] 63 FR 7254, February 12, 1998, *http://www.gpo.gov/fdsys/pkg/FR-1998-02-12/pdf/98-3451.pdf.*

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area-specific FIP to be in place before the next winter ozone season. Because, as discussed above, ozone problems in the Uinta Basin are limited to the winter season, we believe this approach is appropriately protective of air quality, without unduly impeding oil and natural gas activity in Indian Country.

In addition, we received comments recommending that we add monitoring and modeling requirements to the National O&NG FIP. Our response to those comments included a discussion about the state of air quality in areas of Indian country with oil and natural gas activity. With respect to air quality in areas of Indian country with oil and natural gas development, we noted in June 2016 when we promulgated the National O&NG FIP that we were not seeing widespread air quality problems in Indian country due to oil and natural gas activity. We mentioned in June 2016 that, in all of Indian country, only two counties in the Uinta Basin (including land within the U&O Reservation) had air quality problems due to oil and natural gas activity. That is still the case and is discussed further in Section III.C. We had (and still have) sufficient concerns about the air quality impacts from existing sources in that area that we intend to soon propose a separate reservation-specific FIP, which, as noted above, is expected to be in place before next winter's ozone season.

B. Uinta Basin Air Quality and Intended Nonattainment Designation

On October 1, 2015, the EPA promulgated revised primary and secondary ozone NAAQS.[31] The EPA strengthened both standards to a level of 0.070 parts per million (ppm). In accordance with section 107(d) of the CAA, whenever the EPA establishes a new or revised NAAQS, the EPA must promulgate designations for all areas of the country for that NAAQS.

[31] "National Ambient Air Quality Standards for Ozone," U.S. Environmental Protection Agency, 80 FR 65292, October 26, 2015, *https://www.gpo.gov/fdsys/pkg/FR-2015-10-26/pdf/2015-26594.pdf.*

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The EPA must complete this process within 2 years of promulgating the NAAQS, unless the Administrator has insufficient information to make the initial designations decisions in that time frame. In such circumstances, the EPA may take up to 1 additional year to complete the designations. Under CAA section 107(d), states were required to submit area designation recommendations to the EPA for the 2015 ozone NAAQS no later than 1 year following promulgation of the standards (i.e., by October 1, 2016).

On September 29, 2016, the state of Utah provided designation recommendations for counties in Utah based on air quality data from 2013-2015. The state recommended a designation of nonattainment for townships in the counties of Duchesne and Uintah under state air jurisdiction that are at and below the 6,000-ft elevation. On February 26, 2018, the state of Utah provided further input on the nonattainment boundaries. On September 27, 2016, the Ute Indian Tribe of the Uintah and Ouray Reservation recommended that the Indian country area at an unspecified distance around the Ouray ozone monitor in the Uinta Basin be designated as nonattainment for the 2015 ozone NAAQS based on air quality data from 2013-2015. However, the Tribe recommended a designation of attainment for all of Indian country in the Uinta Basin, assuming the EPA concurs with an exceptional event package submitted to the agency (by the Tribe) covering two days in June 2015.

On December 20, 2017, in our response to the state and tribal designation boundary recommendations, we indicated our intent to modify the state's and tribe's recommendations for the Uinta Basin area. We provided the intended boundary in a Technical Support Document.[32] In

[32] Utah: Northern Wasatch Front, Southern Wasatch Front, and Uinta Basin Intended Area Designations for the 2015 Ozone National Ambient Air Quality Standards Technical Support Document (TSD)," U.S. Environmental Protection Agency, December 20, 2017, *https://www.epa.gov/sites/production/files/2018-01/documents/ut_120d_tsd.pdf.*

short, the EPA's boundary for the intended nonattainment area for the Uinta Basin includes both state and Indian country lands within portions of Duchesne and Uintah Counties. A comment period followed the EPA's statement on its intended nonattainment boundaries for the Uinta Basin and other areas.[33]

IV. Summary of Proposed Amendments

This action proposes to amend the National O&NG FIP to extend its application to eligible true minor oil and natural gas sources in the Indian country portion of the intended Uinta Basin Ozone Nonattainment Area, which includes its mechanism for authorizing construction. We also are proposing to make a technical correction to fix a typographical error in §49.101(c).

First, this action proposes to add a new subparagraph to the CFR, to be codified at §49.101(e). In the new subparagraph, we are proposing to narrowly extend the geographic scope of the National O&NG FIP to cover eligible true minor oil and natural gas sources wishing to locate or expand in the Indian country portion (U&O Reservation) of the intended Uinta Basin Ozone Nonattainment Area.[34] This proposed extension of coverage to this one nonattainment area does not alter the FIP's current geographic coverage of attainment, unclassifiable and attainment/unclassifiable areas with regard to the rest of Indian country across the nation. The proposed, geographically limited extension is in addition to the current coverage. Under this proposed amendment, true minor oil and natural gas sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector wishing to locate or expand

[33] 83 FR 651, January 5, 2018, *https://www.gpo.gov/fdsys/pkg/FR-2018-01-05/pdf/2018-00024.pdf.*

[34] Utah: Northern Wasatch Front, Southern Wasatch Front, and Uinta Basin Intended Area Designations for the 2015 Ozone National Ambient Air Quality Standards Technical Support Document (TSD)," U.S. Environmental Protection Agency, December 20, 2017, *https://www.epa.gov/sites/production/files/2018-01/documents/ut_120d_tsd.pdf.*

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in the Indian country portion of the intended Uinta Basin Ozone Nonattainment Area would also have to meet the criteria under §49.101(b)(1) to qualify, except for §49.101(b)(1)(v). Section 49.101(b)(1)(v) contains the requirement governing the primary geographic scope of the FIP and not its limited extension to the intended Uinta Basin Ozone Nonattainment Area, and, thus, would not be relevant for such sources. In other words, the new paragraph 49.101(e) would displace existing 49.101(b)(1)(v) for Indian country within the intended Uinta Basin Ozone Nonattainment Area—and *only* for that area of Indian country.

To accomplish this extension, it is also necessary to define the boundaries of the intended Uinta Basin Ozone Nonattainment Area to which the National O&G FIP would apply if the EPA finalizes this proposed rule. To accomplish this, the EPA proposes to incorporate the boundaries for the intended nonattainment area for the Uinta Basin, or areas within the Uinta Basin, as defined at 40 CFR part 81, Designations of Areas for Air Quality Purposes.[35] The regulatory and other processes that have occurred within and outside the EPA and between the EPA and state and tribal governments govern the development and final decision on the boundaries for the intended Uinta Basin Ozone Nonattainment Area and not this action.

Second, this action proposes a technical correction to §49.101(c), which currently reads: "*When must I comply with §§49.101 through 49.105*? You must comply with §§49.101 through 49.101 on or after October 3, 2016." This provision is supposed to reference §§49.101 through 49.105, as the title indicates. We are proposing to correct it to read: "*When must I comply with §§49.101 through 49.105*? You must comply with §§49.101 through 49.105 on or after October 3, 2016." The EPA believes that this is a correction of a self-evident scrivener's error and does not constitute a substantive change of the existing regulatory provision.

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[35] Ibid.

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V. Statutory and Executive Order Reviews

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

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

B. 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 extending the streamlined authorization-to-construct method for true minor new and modified oil and natural gas sources. The streamlined authorization, which was established by the EPA in 2016, reduces the resource burden on the permitting authority and regulated community associated with submitting and reviewing permit applications for these sources in attainment and unclassifiable areas. This action proposes to extend the streamlined authorization to the intended Uinta Basin Ozone Nonattainment Area.

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 Indian Country Minor NSR rule and has assigned OMB control number 2060-0003.[36] This action amends the National O&NG FIP which provides a mechanism for authorizing construction for true minor sources in the oil and natural gas production and natural gas processing segments of

[36] Since the Federal Indian Country Minor NSR rule was promulgated, the Information Collection Request 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.*

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the oil and natural gas sector locating or located in areas covered by the Federal Indian Country Minor NSR rule to satisfy the requirements of that rule other than by obtaining a source-specific minor source permit. Because it substitutes for a source-specific permit, which would contain information collection activities covered by the Information Collection Request for Federal Indian Country Minor NSR rule issued in July 2011, neither the proposed amendments nor the National O&NG FIP impose any new obligations or enforceable duties on any state, local or tribal government or the private sector. In fact, the proposed amendments would have the effect of reducing paperwork burden on sources wishing to locate or expand in the Indian country portion of the Uinta Basin as the amendments provide an alternative to source-specific permitting for such sources.

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. The EPA analyzed the impact on small entities of streamlined permitting under the Federal Indian Country Minor NSR rule[37] and determined that it would not have a significant economic impact on a substantial number of small entities. (By allowing sources to avoid having to obtain source-specific permits, this proposed action also would relieve

[37] "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.*

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regulatory burden.) This action merely implements a particular aspect of the Federal Indian Country Minor NSR rule. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

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. It simply modifies one option for sources to comply with the Federal Indian Country Minor NSR rule. The Federal Indian Country Minor NSR rule itself, not this proposed action, imposes the obligation that true minor sources in areas covered by the Federal Indian Country Minor NSR rule obtain a minor source NSR permit prior to commencing construction. This proposed action merely applies the National O&NG FIP to the U&O Reservation as part of the Uinta Basin Nonattainment Area, which includes a streamlined mechanism for authorizing construction for meeting the obligation of the Federal Indian Country minor NSR rule.

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 has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. Consistent

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with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011),[38] the EPA offered consultation on the concerns addressed in this proposed action, which include the lack of a streamlined permitting for the U&O Reservation should the area be designated nonattainment. The EPA conducted outreach on the issues addressed by the previous rule via ongoing monthly meetings with tribal environmental professionals in the development of the past proposed action,[39] and further as follows via: 1) tribal consultation with the Ute Indian Tribe Business Committee on July 22, 2015; December 17, 2016; November 13, 2017; and March 22, 2018, regarding options that the EPA considered in addressing the Uinta Basin air quality concerns; 2) stakeholder meetings where the Tribe was included and participated in emissions contributions discussions specific to the EPA's strategy for addressing the Uinta Basin air quality concerns; 3) ongoing stakeholder working group meetings; and 4) tribally-convened stakeholder meetings on March 22, 2017, and June 1-2, 2017.

This action reflects tribal concerns about, and priorities for, developing a streamlined approach for permitting true minor sources in the oil and natural gas sector in areas covered by the Federal Indian Country Minor NSR rule in the intended Uinta Basin Ozone Nonattainment Area. As these amendments, if finalized, are implemented, we will continue to provide regular outreach to tribes to ensure we address issues concerning the FIP if and when they arise. The EPA is available for consultation with any interested tribe.

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

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[38] For more information, go to: *https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes.*

[39] These monthly meetings are general in nature, dealing with many air-related topics, and are not specific to this proposed action.

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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

As discussed in Section II.B, we believe that this action is reasonable in light of our intended, separate rulemaking to establish a reservation-specific FIP and the expected short period of time before these requirements would apply. Therefore, the EPA believes the amendments in this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. Through these amendments, we seek: (1) to extend geographically the National O&NG FIP and its mechanism for authorizing construction that effectively provides a streamlined method for implementing a pre-construction permitting program for true minor sources in the oil and natural gas sector in areas covered by the Federal Indian Country Minor NSR rule, and (2) to pursue an approach that enables a streamlined process, which helps promote economic development by minimizing delays in new construction.

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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.

APR 30 2018

Dated: _____.

E. Scott Pruitt,
Administrator.

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

PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

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

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

Subpart C -- General Federal Implementation Plan Provisions

2. Section 49.101 is amended by modifying paragraph (c):

* * * * *

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

3. Section 49.101 is amended by adding paragraph (e):

* * * * *

(e) Notwithstanding paragraph (b)(1)(v), oil and natural gas sources located in the Indian country portion of the Uinta Basin Ozone Nonattainment Area are subject to §§49.101 through 49.105 (except for paragraph (b)(1)(v)), provided subparagraphs (b)(1)(i) – (iv) are also satisfied.

4. Section 49.102 is amended by adding an additional definition:

* * * * *

Uinta Basin Ozone Nonattainment Area means the nonattainment area for the Uinta Basin, or such parts or areas of the Uinta Basin, as it is or may hereafter be defined at 40 CFR part 81, Designations of Areas for Air Quality Purposes.

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