



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 49

[EPA-HQ-OAR-2014-0606; FRL-9993-43-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:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing three amendments to the existing National Oil and Natural Gas Federal Implementation Plan (National O&NG FIP). This final rule 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 a 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 (Federal Indian Country Minor NSR rule). We are finalizing two amendments to apply the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area. The purpose of these two amendments is make available the streamlined authorization to construct process provided by the National O&NG FIP to the Uintah and Ouray Reservation (U&O Reservation)

as part of the Uinta Basin Ozone Nonattainment Area. We are also finalizing a minor technical correction to fix a typographical error in a provision of the National O&NG FIP.

**DATES:** The final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Christopher Stoneman, Outreach and Information Division, Office of Air Quality Planning and Standards (C-304-01), Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541-0823, facsimile number (919) 541-0072, email address: [stoneman.chris@epa.gov](mailto:stoneman.chris@epa.gov).

**SUPPLEMENTARY INFORMATION:** 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?*

Entities potentially affected by this final action include the Ute Indian Tribe,<sup>1</sup> as well as new and modified true minor sources that are in the oil and natural gas production and natural

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<sup>1</sup> 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 Ute Indian 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, 83 FR 34863, 34866 (July 23, 2018); 48 Stat. 984, 25 U.S.C. 5123 (IRA); Constitution and By-Laws of the Ute Indian Tribe of the U&O Reservation, available at: <https://www.loc.gov/law/help/american-indian-consts/PDF/37026342.pdf>.

gas processing segments of the oil and natural gas sector and that are in the Indian country<sup>2</sup> portion of the Uinta Basin Ozone Nonattainment Area. All the Indian country lands located within the Uinta Basin Ozone Nonattainment Area, of which the EPA is aware, are Ute Indian Tribe Indian country lands. Further, all of the Ute Indian Tribe Indian country lands of which the EPA is aware are located within the exterior boundaries of the U&O Reservation, and these amendments will apply to 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.<sup>3</sup> This action amends the National O&NG FIP, which only applies in Indian

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<sup>2</sup> Indian country is defined in the National O&NG FIP at 40 CFR 49.102, which adopts the definition at section 49.152 of the Federal Indian Country Minor NSR rule. 40 CFR 49.152 references 18 U.S.C. 1151, which defines Indian country 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. In 2014, the U.S. Court of Appeals for the D.C. Circuit addressed the EPA's authority to promulgate the FIP establishing the Federal Indian Country Minor NSR program (as well as another NSR permitting program) 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. To address this court decision, section 49.152 notes that the geographic scope of the Federal Indian Country Minor NSR rule is addressed at 40 CFR 49.151(c)(1). As described below, because the current revisions to the National O&NG FIP would apply only on Indian country lands that are within the exterior boundaries of the U&O Reservation, *i.e.*, on Reservation lands, they are unaffected by the *Oklahoma* court decision.

<sup>3</sup> 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

country, and it does not broaden its application to areas outside of Indian country. This final rule will not apply to any sources not in Indian country lands, including any areas within the exterior boundaries of the Reservation that are not Indian country lands.<sup>4</sup>

The list in Table 1 is not intended to necessarily be exhaustive, but rather to provide 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 Indian Country Minor NSR rule and the National O&NG FIP (40 Code of Federal Regulations (CFR) 49.153 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.

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

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

exterior boundaries of the U&O Reservation include any such tribal trust lands that may be acquired by the Ute Indian Tribe.

<sup>4</sup> Because of a series of federal court decisions, there are some areas within the exterior boundaries of the U&O 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).

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

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

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

*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 <https://www.epa.gov/nsr> and on the tribal NSR page at <https://www.epa.gov/tribal-air/tribal-minor-new-source-review>.

*C. Effective Date of this Rulemaking*

This final rule is effective immediately upon publication. The Administrative Procedure Act (APA) provides that final rules shall not become effective until 30 days after publication in the Federal Register, except for, among other exceptions, “a substantive rule which grants or recognizes an exemption or relieves a restriction.” 5 U.S.C. 553(d)(1). In the absence of this final action, the streamlined authorization to construct process associated with the National O&NG FIP would be unavailable to oil and natural gas sources constructing or modifying in the Indian country portion of the Uinta Basin Ozone Nonattainment Area, and such sources otherwise would have to comply with the site-specific permitting requirements of the Federal Indian Country Minor NSR rule to locate or expand on the U&O Reservation. The amendments finalized today allow such sources to comply with the O&NG National FIP instead of having to obtain permits under the Federal Indian Country Minor NSR rule that would otherwise apply in nonattainment areas because of a limitation on the applicability of the National O&NG FIP. The purpose of the generally applicable 30-day delayed effective date is to “give affected parties a reasonable time to adjust their behavior before the final rule takes effect.” *Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996). Here, affected sources are not subject to additional, new requirements such that they may need time to adjust their behavior before the rule takes effect, but are relieved of the requirement to follow just one specified permitting procedure and afforded the option to take advantage of an otherwise unavailable, streamlined approach to obtain authorization for construction. Accordingly, this action is excepted from the generally applicable APA 30-day delayed effective date requirement.<sup>5</sup>

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<sup>5</sup> The APA provides another exception to the general requirement that final rules shall not become effective until 30 days after publication in the Federal Register: except “as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d)(3). In determining whether good cause exists to waive the 30-day delay, an agency should “balance the necessity for immediate implementation against principles of fundamental fairness which

## II. Purpose of this Final Action

### A. Overview

In this action, after considering the comments received, the EPA is finalizing amendments to the National O&NG FIP<sup>6</sup> consistent with the authorities and requirements of sections 301(a), 301(d)(4) and 110(a)(2)(C) of the CAA and 40 CFR 49.11. The rule extends coverage of the FIP to eligible true minor new and modified oil and natural gas sources in the Indian country portion of the Uinta Basin Ozone Nonattainment Area, making the FIP available as a mechanism for authorizing construction in that area. (The Indian country lands within the Uinta Basin Ozone Nonattainment Area to which these amendments apply are on the U&O Reservation.) The Uinta Basin is a petroleum-producing region that contains thousands of active oil and natural gas wells. Oil and natural gas production activity in the area is the primary source of anthropogenic emissions of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>), ozone precursors that react to form wintertime ozone in the presence of sunlight and widespread

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require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.” *U.S. v Gavrilovic*, 551 F.2d 1099, 1105 (8<sup>th</sup> Cir. 1977). Here, affected sources are not adversely affected by making this action effective upon publication and fundamental fairness does not require that sources be prohibited from taking advantage of streamlined permitting of the National O&NG FIP for at least 30 days after publication. To the contrary, sources that can immediately pursue streamlined authorizations to construct may do so and sources that opt not to do so may still utilize the site-specific permitting approach of the Federal Indian Country Minor NSR rule. Under these circumstances, the EPA also finds that there is good cause under 5 U.S.C. 553(d)(3) to make this rule effective immediately upon publication.

<sup>6</sup> “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>.

snow cover.<sup>7</sup>

The National O&NG FIP currently 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. As promulgated in 2016, it does not apply in areas designated as nonattainment.<sup>8</sup> In 2012, the counties in the Uinta Basin were designated as unclassifiable with respect to the 2008 ozone National Ambient Air Quality Standards (NAAQS),<sup>9</sup> and those areas were not designated as nonattainment with any NAAQS until 2018. Thus, when the National O&NG FIP became effective on August 2, 2016, it was available as a streamlined option for authorizing construction in the U&O Reservation, and owners and operators of eligible oil and natural gas sources were able to use that streamlined approach from that date.

However, on June 4, 2018, the EPA designated portions of the Uinta Basin as nonattainment with respect to the 2015 ozone NAAQS, and that designation became effective on August 3, 2018.<sup>10</sup> On that date, the Indian country portion of the nonattainment area fell out of the National O&NG FIP's coverage. Thus, the area currently lacks a streamlined mechanism to authorize construction of true minor new and modified oil and natural gas sources.

With this final action, the EPA is ensuring that the National O&NG FIP's streamlined

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<sup>7</sup> For more information, see: "Ozone in the Uinta Basin," <https://deq.utah.gov/legacy/destinations/u/uintah-basin/ozone/overview.htm>, accessed August 16, 2018.

<sup>8</sup> See 40 CFR 49.101(b)(1)(v).

<sup>9</sup> "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>.

<sup>10</sup> "Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards," U.S. Environmental Protection Agency, 83 FR 25776, June 4, 2018, <https://www.gpo.gov/fdsys/pkg/FR-2018-06-04/pdf/2018-11838.pdf>.

approach for authorizing construction and requirements to comply with various emission standards and standards of performance will re-apply on the U&O Reservation. The EPA intends to further address air quality in the Uinta Basin through a separate U&O Reservation-specific FIP<sup>11</sup> containing requirements to reduce ozone-forming emissions from oil and natural gas sources on Indian country lands within the U&O Reservation. Through that rulemaking, the EPA will further address the Uinta Basin's air quality situation in an area-specific manner.

### *B. Rationale for Final Action*

In the preamble to the final June 2016 National O&NG FIP, we indicated that we could extend the geographic coverage of the FIP to nonattainment areas, although we anticipated that we would also address emissions from oil and natural gas sources in separate area-specific FIPs. Specifically, we stated that the EPA could “potentially apply the national FIP’s requirements as appropriate to nonattainment areas where the EPA has established a separate, area-specific FIP.”<sup>12</sup> We described the need to develop area-specific plans if and when areas of Indian country were designated nonattainment. Further, we specifically noted concern about the air quality problem in the Uinta Basin and indicated our expectation to propose a separate U&O Reservation-specific FIP to address the issue in this particular area.<sup>13</sup>

At the time that the National O&NG FIP was issued there were no areas officially designated as nonattainment in Indian country with oil and natural gas activity. In the absence of

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<sup>11</sup> 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.”

<sup>12</sup> See 81 FR 35943, 35946, June 3, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf>.

<sup>13</sup> See 81 FR 35943, 35975, June 3, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf>.

any such areas but anticipating the possibility, the EPA initially opted to not apply the National O&NG FIP in such areas, recognizing that whether and to what extent it might be extended to apply to nonattainment areas could be subsequently evaluated in the event of particular, relevant nonattainment designations, such as in the Uinta Basin. As noted above, the EPA previously did anticipate that, in the event of a nonattainment designation applicable to the Uinta Basin, it likely would not extend the National O&NG FIP until after the EPA had issued an area-specific nonattainment FIP, but that particular anticipatory view was not expressly set out in the relevant regulatory text. Now, faced with an actual nonattainment designation for the Uinta Basin, the EPA is required to address the question of whether the National O&NG FIP should be extended to nonattainment areas in the context of an actual tribal nonattainment area with O&NG activity.

Upon careful consideration of an actual, specific nonattainment determination, the EPA has determined that, under the particular circumstances presented, the National O&NG FIP may be extended narrowly to cover the Indian country portion of the Uinta Basin Ozone Nonattainment Area. The EPA is not completely eliminating or changing the applicability parameters of the National O&NG FIP, but instead creating only a narrow exception to the limitation on its application in nonattainment areas, such that it may apply in the Indian country portion of the Uinta Basin Ozone Nonattainment Area.

In light of the actual nonattainment designation, the EPA now has more carefully assessed the question of the applicability of the National O&NG FIP in one specific such area -- the Indian country portion of the Uinta Basin Ozone Nonattainment Area -- and, unlike what the EPA preliminarily had anticipated in connection with the June 2016 publication of the National O&NG FIP (but had not been required to definitively address), the EPA is satisfied that extending the National O&NG FIP will be adequately protective of air quality for the reasons

stated here. That decision is made in consideration of comments received in response to the EPA's proposal and various other factors, including the extent and nature of the particular air quality concerns in the Uinta Basin, the nature of the nonattainment designation (e.g., Marginal nonattainment), the protections and controls associated with the National O&NG FIP, and the recent nature and extent of oil and natural gas development in the Uinta Basin.

Moreover, the CAA provides the EPA with significant authority to manage air quality in Indian country.<sup>14</sup> Here, the EPA is exercising that authority judiciously, consistent with the goals and basic requirements of the statute. The National O&NG FIP remains inapplicable to non-attainment areas, but the EPA has used our authority in a limited manner to extend the reach of the National O&NG FIP to only the Indian country portion of the Uinta Basin Ozone Nonattainment Area. As discussed below, we believe that the area will have adequate air quality

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<sup>14</sup> 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." Further, 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 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." CAA section 110(c) also authorizes the EPA to promulgate 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, ("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>.) 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).

protection in the near future as sources expanding or locating in the U&O Reservation adopt emissions controls required by the National O&NG FIP. This process is reasonable and adequately protective of air quality, while ensuring the Ute Indian Tribe can continue to benefit from economic development and industry can properly plan its activities. Commenters will have an opportunity to comment on the measures in the U&O Reservation-specific FIP that we will propose for the area to further protect its air quality in the longer term.

The narrow extension of the National O&NG FIP reflected in this rule will provide coverage under the National O&NG FIP for the Indian country portion of the Uinta Basin Ozone Nonattainment Area now that the EPA's nonattainment designation of a portion of the Uinta Basin is effective. The EPA's work on a separate rulemaking to establish a U&O Reservation-specific FIP remains ongoing and may be completed before the start of the 2019-2020 winter season in the Uinta Basin. Nonetheless, while the EPA continues its work on the U&O Reservation-specific FIP, we have decided to finalize this action before that work is completed. We believe that this approach is reasonable and appropriate for several reasons, as discussed in this notice, including:

First, the National O&NG FIP will help ensure that emissions from new and modified true minor sources are well-controlled.<sup>15</sup> In particular, it requires that all new and modified oil and natural gas production facilities and natural gas processing plants comply, as applicable, with eight federal emission standards – five New Source Performance Standards and three

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<sup>15</sup> The CAA does not specifically prohibit the construction of new minor sources in designated nonattainment areas like the Uinta Basin Ozone Nonattainment Area. Nor does the CAA specifically require the EPA to engage in any particular analysis before authorizing construction of new or modified minor sources in such areas. Here, the EPA has determined, under the particular circumstances presented, that extending the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area, while continuing to develop the U&O Reservation-specific FIP, is adequately protective of air quality.

National Emissions Standards for Hazardous Air Pollutants.<sup>16</sup> These standards control emissions of VOC, NO<sub>x</sub>, sulfur dioxide, particulate matter (PM, PM<sub>10</sub>, PM<sub>2.5</sub>), 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. We believe that these controls are sufficiently strict that authorizing construction of new or modified minor sources, under the relevant circumstances, will allow only modest, incremental increases in emissions, and will be adequately protective of air quality in the U&O Reservation during the period of time following the finalization of this rule, while we complete the separate rulemaking to establish a U&O Reservation-specific FIP.

Second, we believe this is the case especially considering the slower growth of oil and natural gas sources on the U&O Reservation over the past two and a half years since August 2016 when the National O&NG FIP became effective. Since that time, we have seen limited construction of new and modified oil and natural gas sources on the U&O Reservation. Oil and natural gas sources planning to construct on or after October 3, 2016 have been required to either comply with the National O&NG FIP or to seek a minor source permit under the generally applicable (site-specific) permit provisions of the Federal Indian Country Minor NSR rule.<sup>17</sup> Sources complying with the National O&NG FIP are required to meet a two-part registration

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<sup>16</sup> See 40 CFR 49.105.

<sup>17</sup> See 40 CFR 49.151(c)(1)(iii)(B).

requirement: the Part 1 Registration Form is submitted 30 days before a source begins construction and contains information about source location and the Part 2 Registration Form is submitted within 60 days after the startup of production and contains information about emissions.<sup>18</sup>

Since October 2016, we have received only 122 Part 1 Registration Forms from sources planning on constructing a new or modified true minor oil and natural gas sources on the U&O Reservation. Of these, only 41 have submitted Part 2 Registration Forms.<sup>19</sup> The 41 sources covered by the Part 2 Forms estimate their total annual allowable (or potential) emissions to be about 623 tons per year (tpy) of VOC emissions, the chief pollutant of concern for the winter ozone problem in the Uinta Basin. As compared to the overall VOC emissions inventory in the U&O Reservation (about 72,718 tpy), the increase in total allowable (or potential) emissions represented by these 41 sources is very small (0.9 percent average increase per year). And, as a practical matter, it could be even smaller, since the actual emissions could be less than the allowable emissions.<sup>20</sup> We believe that this low growth rate for new and modified minor sources may continue for the short term, during which time we plan to complete the U&O Reservation-specific FIP.<sup>21</sup>

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<sup>18</sup> See 40 CFR 49.160(c)(1)(iv).

<sup>19</sup> These numbers (*i.e.*, 122 Part 1 Registration Forms and 41 Part 2 Registration Forms) cover only the period during the National O&NG FIP applied from October 2016 until the during or Uinta Basin nonattainment designation became effective in August 2018. Since August 2018, the EPA has received only one permit application from Encana Corporation/Newfield Exploration Company concerning a source modification; other operators have approached the EPA requesting pre-application meetings to gather information on what would be required for a permit application (Anadarko and Andeavor, in addition to Encana Corporation/Newfield Exploration Company).

<sup>20</sup> See Microsoft Excel spreadsheet titled "ONGFIP Registrations\_3-7-19.xlsx" in the docket for this rule (Docket ID No. EPA-HQ-OAR-2014-0606).

<sup>21</sup> There are indications, however, that some owners or operators have taken preliminary steps indicative of longer-range plans for greater development in the Uinta Basin, including requesting

Third, it is generally accepted in the field of oil and natural gas production that a production well's output (and associated emissions) peaks during the initial period of production and generally declines thereafter over time. That rate of decline is difficult to precisely quantify and can vary from well to well and from basin petroleum play to basin petroleum play. Nonetheless, it is a phenomenon that does occur and is generally accepted.<sup>22</sup> For example, the CAA permitting authorities for several oil and natural gas-producing states allow for the use of a decline factor in calculating potential emissions of production sources.<sup>23</sup> These emissions declines over time are relevant here because declines in emissions from existing oil and natural gas sources in the Uinta Basin could at least partially "offset" any increases from new or modified minor sources taking advantage of the streamlined authorization to construct process in the Indian country portion of the Uinta Basin Ozone Nonattainment Area.<sup>24,25</sup>

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approvals from the Bureau of Land Management and the Bureau of Indian Affairs. See, for example: (1) <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=62904&dctmId=0b0003e880ba28f6>; (2) <https://eplanning.blm.gov/epl-front-office/eplanning/legacyProjectSite.do?methodName=renderLegacyProjectSite&projectId=72548>; and (3) <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=53899&dctmId=0b0003e88092c30b>.

<sup>22</sup> See "Analysis of Decline Curves," J.J. Arps, British-American Oil Producing Company, Society of Petroleum Engineers, December 1945, [http://www.pe.tamu.edu/blasingame/data/z\\_zCourse\\_Archive/P648\\_15A/P648\\_15A\\_Lectures\\_\(working\\_lectures\)/20150402\\_P648\\_15A\\_Lec\\_15\\_AIME\\_1758\\_\(Arps\)\\_%5bPDF%5d.pdf](http://www.pe.tamu.edu/blasingame/data/z_zCourse_Archive/P648_15A/P648_15A_Lectures_(working_lectures)/20150402_P648_15A_Lec_15_AIME_1758_(Arps)_%5bPDF%5d.pdf).

<sup>23</sup> See "Oil and Gas Production Facilities Chapter 6, Section 2 Permitting Guidance," Revised May 2016, page 42, <http://deq.wyoming.gov/media/attachments/Air%20Quality/New%20Source%20Review/Guidance%20Documents/5-12-2016%20Oil%20and%20Gas%20Guidance.pdf>.

<sup>24</sup> This is not to say that the EPA believes that any such general decline trends are sufficient, alone, such that further measures or steps will not be needed to further ensure that the Uinta Basin achieves cleaner air quality and, ultimately, attainment.

<sup>25</sup> In addition, the EPA, as "Reviewing Authority," retains the discretion, even under the National O&NG FIP, to require sources "to obtain a source-specific permit to ensure protection of the [NAAQS]." 40 CFR 49.101(b)(3). Accordingly, contrary to the EPA's current expectations, in the event that the extension of coverage of the National O&NG FIP to this nonattainment area

Finally, it should be noted that, with the separate U&O Reservation-specific FIP that the EPA intends to pursue, the approach we expect to take goes beyond what comparable nonattainment areas classified as Marginal are required to submit on state-managed lands when an area under state jurisdiction is designated Marginal nonattainment for ozone. Under section 182(a) of the CAA, for the Uinta Basin Marginal Ozone Nonattainment Area for the 2015 ozone standard, a revised State Implementation Plan (SIP) must be prepared for the non-Indian country portion of the area. Under section 182(a) of the CAA, Marginal ozone nonattainment areas are required to submit and/or address a baseline emissions inventory, a nonattainment NSR permitting program, and general conformity. With respect to nonattainment NSR, new and modified major sources are required to obtain 1.1 tons of emissions offsets for each ton of emissions increase and are subject to stringent emissions controls (called Lowest Achievable Emission Rate). Under section 182(a) of the CAA, a State with a marginal nonattainment area is not required to submit a SIP demonstrating attainment of the ozone NAAQS. The U&O Reservation-specific FIP the EPA plans to propose to do so in an expeditious manner is expected to include emissions reductions measures which will represent more than what comparable areas classified as Marginal are required to submit on state-managed lands. And the nonattainment designation for the Uinta Basin Ozone Nonattainment Area (which includes the U&O Reservation) was only effective in August of last year.

In conclusion, for the multiple reasons stated, the EPA believes that this action – along with the EPA’s related, forthcoming action to issue a separate, area-specific FIP – will be protective of air quality on the U&O Reservation, while maintaining a mechanism for

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may lead to serious concerns about adequate protection of the NAAQS, the EPA retains the authority, notwithstanding the potential availability of the streamlined permitting, to require site-specific permitting.

authorizing construction that helps ensure continued responsible oil and natural gas production on the U&O Reservation. Even if this action may be regarded as reflecting some difference from how the EPA previously anticipated it would proceed, an agency may change its course and must have ample latitude to adapt their rules and policies to changing circumstances. When an agency changes course, its action ordinarily is not subject to a more searching review, and the agency need only provide a reasoned explanation for its action. To the extent that the EPA's decision to make a limited extension of the application of the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area is viewed as a change of course, the EPA's action is permissible under the CAA and the reasons articulated provide a sound basis for this action. The EPA has decided that this approach is a reasonable course, in light of the particular facts and circumstances associated with this specific nonattainment designation, the area in question, the recent nature and extent of oil and natural gas development in the area, the protections afforded by the National O&NG FIP, and the Agency's on-going development of the area-specific FIP. We believe that the action is protective of air quality, meets the requirements of the CAA and provides a much-needed method for streamlining construction authorizations that the Ute Indian Tribe and industry are seeking. Finally, based on feedback from the 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.

### **III. Background**

In the proposed rule,<sup>26</sup> we provided background information on several topics relating to this rulemaking. We suggest interested parties consult the proposed action for that background information, as we are not repeating it here. The following topics were covered in the background discussion: (1) Indian country FIPs, including the Federal Indian Country Minor NSR rule and the National O&NG FIP; (2) areas for which the EPA received comment on the National O&NG FIP relevant to this action; (3) the Uinta Basin air quality and nonattainment designation; and (4) the authority for this action. In terms of updates on the background information since the proposal, the nonattainment designation for the Uinta Basin Ozone Nonattainment Area has been finalized and, as noted, became effective on August 3, 2018.<sup>27</sup>

#### **IV. Amendments to Regulations**

For the reasons described above, this action executes two amendments to 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 Uinta Basin Ozone Nonattainment Area. The FIP provides a streamlined mechanism for authorizing construction of oil and gas sources. We also are also correcting a typographical error in §49.101(c).

First, this action makes two amendments to the regulation to extend the scope of the FIP to include the area described above. In the first of these two amendments, this action adds a new subparagraph to the CFR, to be codified at § 49.101(e). In the new subparagraph, we narrowly extend the geographic scope of the National O&NG FIP to cover eligible true minor oil and natural gas sources seeking to locate or expand in the Indian country portion of the Uinta Basin Ozone Nonattainment Area. This extension of coverage to this one nonattainment area does not

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<sup>26</sup> See 83 FR 20775, 20781-20784, May 8, 2018, <https://www.gpo.gov/fdsys/pkg/FR-2018-05-08/pdf/2018-09652.pdf>.

<sup>27</sup> See 83 FR 25776, June 4, 2018, <https://www.gpo.gov/fdsys/pkg/FR-2018-06-04/pdf/2018-11838.pdf>.

otherwise alter the National O&NG FIP's current geographic coverage of attainment, unclassifiable and attainment/unclassifiable areas regarding the rest of Indian country across the nation. The geographically limited extension is in addition to the current coverage. Under this 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 in the Indian country portion of the Uinta Basin Ozone Nonattainment Area will 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 National O&NG FIP and prevents the FIP from applying in the Uinta Basin Ozone Nonattainment Area. The new § 49.101(e) displaces existing § 49.101(b)(1)(v) for Indian country within the Uinta Basin Ozone Nonattainment Area—and only for that area of Indian country.

To accomplish this extension, it is also necessary to execute a second amendment to the regulation, to define the boundaries of the Uinta Basin Ozone Nonattainment Area to which the National O&G FIP applies under this final rule. To accomplish this, the EPA incorporates the boundaries for the 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. This action does not govern the development and final decision of the boundaries for the Uinta Basin Ozone Nonattainment Area. Instead, the regulatory and other processes that have occurred within and outside the EPA and between the EPA and state and tribal governments determined those boundaries, and this action takes those boundaries as given.

Finally, this action makes a typographical 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 correcting 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 (in that EPA plainly intended the second “101” to instead read “105”) and does not constitute a substantive change of the existing regulatory provision.

## **V. Summary of Comments and Responses**

### *A. Comments Pertaining to Extending the Applicability of the National O&NG FIP to the Indian Country Portion of the Uinta Basin Ozone Nonattainment Area*

Four oil and natural gas industry commenters, one Indian tribe and one state agency commenter supported extending the applicability of the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area. As summarized and discussed in the following paragraphs, these commenters cited several main arguments in their support of the amendments.

*Comment #1:* Two oil and natural gas industry commenters and one Indian tribe commenter agreed with the EPA that extending the National O&NG FIP is an appropriate path forward while the agency works through the nonattainment process for the area.

One oil and natural gas industry commenter stated that the amendments are a reasonable exercise of the EPA’s discretion in regulating minor source emissions and that the proposed action is a sensible solution to address emissions from minor source oil and gas operations on tribal land. One oil and natural gas industry commenter and one Indian tribe commenter expressed that the proposed action is a reasonable and environmentally protective way to address emissions during the period between designation and implementation of the attainment plan, while preventing the development in the Basin from coming to a standstill.

Two oil and natural gas industry commenters and one state agency commenter agreed with the EPA's identification of several consequences of not extending the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area. The commenters stated that many producers that operate in Indian country have come to rely on the streamlined approach that is available through the National O&NG FIP and will now be required to seek site-specific permits for new and modified sources. The commenters asserted that this would subject O&NG development on the U&O Reservation to variable and uncertain timelines and requirements. One state agency commenter added that, based on discussions with Utah's Division of Air Quality about future permitting requirements for companies that are operating on projects that overlap in and out of Indian country and in and out of attainment and nonattainment areas, it is complicated for government attorneys to understand, and a challenging issue for industry.

*Response #1:* After considering the comments, the EPA agrees to extend the coverage of the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area. We believe that extending coverage is reasonable and can be done in an environmentally protective manner. We recognize that the site-specific permitting that is available as an alternative to the National O&NG FIP poses less certain and more variable timetables and can be more challenging and complicated than the streamlined process. We believe that extending the National O&NG FIP and resuming streamlined authorizations to construct that had been available in the area before the nonattainment designation will help alleviate these concerns.

*Comment #2:* Four oil and natural gas industry commenters and one Indian tribe commenter agreed with the EPA's position that extending the National O&NG FIP would provide a much-needed, streamlined construction authorization mechanism for the U&O

Reservation. One oil and natural gas industry commenter and one Indian tribe commenter noted that it is important that there be a streamlined mechanism for obtaining construction authorization in the Uinta Basin so there is no gap in coverage while the EPA and the Ute Indian Tribe develop and adopt a U&O Reservation-specific FIP for the U&O Reservation. One Indian tribe commenter noted that without the adoption of the proposed amendments to the National O&NG FIP, the EPA would face the administrative burden of processing hundreds of true minor source permits within a short time frame. One oil and natural gas industry commenter noted that the amendments allow the Agency to focus its resources on a reservation-specific regulatory scheme.

*Response #2:* After considering the comments, the EPA agrees to extend the coverage of the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area. We believe that extending coverage of the National O&NG FIP will provide a more efficient and certain path for affected true minor sources. We have sought to minimize the gap in streamlined construction authorizations that began after the nonattainment designation became effective, and we are also working on completing the U&O Reservation-specific FIP. We also agree that extending the National O&NG FIP will enable the Agency to focus on completing the U&O Reservation-specific FIP, instead of having to process site-specific permits.

*Comment #3:* Three oil and natural gas industry commenters noted that the extension of the National O&NG FIP will help to make sure that the Ute Indian Tribe is treated fairly by avoiding a potential disparity in the regulatory landscape in the newly designated nonattainment area in comparison to surrounding areas and other areas of Indian country covered by the National O&NG FIP. One oil and natural gas industry

commenter, referring to the Utah Division of Air Quality's streamlined Permit by Rule process, stated that the extension of the National O&NG FIP will help end the EPA's allegedly discriminatory approach to the development of Tribal minerals.

*Response #3:* Finalizing this proposal and extending the streamlined authorization process to the Indian country portion of the Uinta Basin Ozone Nonattainment Area will enhance consistency by ensuring that there are similar authorization processes available to sources in Indian country and other areas. In particular, in the portion of the Uinta Basin under Utah jurisdiction, the state has a permit by rule program available that is also streamlined, like the streamlined authorization to construct process provided by the National O&NG FIP. Oil and natural gas sources wishing to construct on lands in the Uinta Basin under Utah jurisdiction are subject to the Utah Administrative Code Chapter R307-401-10 (Permit: New and Modified Sources. Source Category Exemptions).<sup>28</sup> Under Utah's rules, such oil and natural gas sources that are not major sources can simply register with the state and then proceed with construction.<sup>29</sup> This process is substantially similar to what is required of eligible true minor sources that wish to gain coverage under the National O&NG FIP.

The EPA does not agree with the comment that we have engaged in a discriminatory approach relative to the development of tribal minerals. With respect to oil and natural gas new

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<sup>28</sup> See <https://rules.utah.gov/publicat/code/r307/r307.htm> for a list of, and links to, all effective rules under Title R307. Environmental Quality, Air Quality.

<sup>29</sup> Oil natural gas sources that include well sites (as defined at 40 CFR 60.5430a), including centralized tank batteries, that are not major sources (as defined in Utah Administrative Code R307-101-2) and that register with the UDAQ as required by Utah Administrative Code R307-505 (Oil and Gas Industry: Registration Requirements), are exempt from the requirement to obtain an approval order (the UDAQ equivalent of a site-specific NSR permit). The registration program at Utah Administrative Code R307-505 requires the operator of a non-major well site to certify that they are in compliance with a suite of emission unit-specific requirements in Utah Administrative Code R307-506 through R307-510, as applicable (i.e., Oil and Gas Industry Storage Vessels, Dehydrators, VOC Control Devices, Leak Detection and Repair and Natural Gas Engines).

or modified minor sources in Indian country, since October 2016 (and up to August 2018), the streamlined authorization process the National O&NG FIP has been available. As noted, that process is comparable to Utah's permit by rule approach in terms of the degree to which it streamlines the relevant construction authorization process.

*Comment #4:* Three oil and natural gas industry commenters and one Indian tribe commenter agreed with the EPA's position that use of the National O&NG FIP will continue to be adequately protective of air quality while the EPA follows the process detailed under the CAA that allows time to develop an attainment plan. Specifically, one oil and natural gas industry commenter noted that the National O&NG FIP requires compliance with eight federal emission standards that are required for all new and modified sources and, thus, will allow *de minimis* incremental increases in emissions, while the EPA follows the CAA nonattainment process. One Indian tribe commenter stated that the proposed action correctly noted that the air quality issues in the Uinta Basin will not manifest until winter, and, therefore, these amendments are a reasonable step to protect development in the Uinta Basin from coming to a standstill, while protecting public health and the environment.

Another oil and natural gas industry commenter cited the EPA's language in the EPA's proposal that the ozone problems in the Uinta Basin are limited to the winter season and that preliminary monitoring data from the 2017-2018 winter ozone season across the region shows values well below the 2015 ozone NAAQS, and asserted that extending the current National O&NG FIP to Uinta Basin now will not exacerbate the Basin's wintertime ozone air quality problem in the future.

*Response #4:* The EPA agrees that the eight emissions standards are sufficiently strict that authorizing construction of new or modified minor sources, under the relevant circumstances, will allow only modest, incremental increases in emissions, and will be adequately protective of air quality in the U&O Reservation during the period in which we establish the U&O Reservation-specific FIP. As noted above in Section II.B. where we compared the process we are adopting here (and with the U&O Reservation-specific FIP to follow) to what is required in the CAA for Marginal ozone nonattainment areas, the approach we intend to take is not unlike the CAA process that occurs when an area under state jurisdiction is designated nonattainment. However, under the CAA, as a Marginal nonattainment area, an attainment plan – or SIP demonstrating attainment -- is not required.

The EPA agrees that air quality issues in the Uinta Basin will not manifest until winter and that these amendments are a reasonable step to ensure development in the Uinta Basin from coming to a standstill, while protecting public health and the environment. For the reasons stated above, we believe that the National O&NG FIP will be protective of air quality after this rule is finalized and until the U&O Reservation-specific FIP is finalized (which may be before the next winter ozone season).<sup>30</sup>

*Comment #5:* Four oil and natural gas industry commenters and one Indian tribe commenter agreed with the EPA's concerns that the U&O Reservation would be adversely affected if the National O&NG FIP did not apply to nonattainment areas. One oil and natural gas

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<sup>30</sup> Ozone air quality levels in the Uinta Basin during the winter "ozone season" can be quite variable. For example, in 2017-18, preliminary monitoring data for the winter ozone season from across the region show values well below the 2015 ozone NAAQS. Preliminary information from the recent 2018-19 season, on the other hand, show values above the standards. See Microsoft Excel spreadsheets titled: "Uinta Basin Ozone Data, Dec. 2017-Feb. 2018," "2018 Duchesne\_data.csv," "2019 Duchesne\_data.csv," "2018 Uintah\_data.csv," and "2019 Uintah\_data.csv," Docket No. EPA-HQ-OAR-2014-0606.

industry commenter noted that, due to permitting delays in the affected area, operators may divert operating capital to areas where there are more predictable regulatory requirements in state jurisdiction where the Utah Division of Air Quality "Permit by Rule" exists, thus denying the economic benefits of oil and gas developments to the U&O Reservation. One oil and natural gas industry commenter and one Indian tribe commenter expressed that the amendments will encourage a smooth transition (with the streamlined authorization approach) in allowing continued oil and gas operations to occur on tribal lands within the Uinta Basin in the wake of the nonattainment designation, as well as prevent further regulatory burdens that have historically served as a disincentive for the development of oil and gas resources on the U&O Reservation.

*Response #5:* After considering the comments, we believe that the approach in the final rule will both protect air quality and avoid potential permitting delays that could accompany site-specific permitting, which may lead operators to look outside the U&O Reservation for oil and gas development opportunities. In addition, through this rulemaking, the EPA is seeking to ensure a consistent set of regulatory requirements for oil and natural gas activity between Indian country lands within the U&O Reservation and lands under state of Utah jurisdiction. Finally, the EPA agrees that this final rule will help with the transition for the U&O Reservation from being in an area designated as unclassifiable to being included in the Uinta Basin Ozone Nonattainment Area.

*Comment #6:* Three oil and natural gas industry commenters and one Indian tribe commenter agreed with the EPA's position that use of the National O&NG FIP, after designation of the Uinta Basin as an ozone nonattainment area, will continue to be

adequately protective of air quality while the EPA follows the process detailed under the CAA that allows areas time to develop an attainment plan.

*Response #6:* After considering the comments, the EPA agrees with the comment in part. We believe that the National O&NG FIP will be protective of air quality as we develop the U&O Reservation-specific FIP, which we intend to issue by the start of the next winter ozone season. Specifically, the terms and conditions of the construction authorization permitted by the National O&NG FIP will help protect air quality. To further protect air quality in the Uinta Basin, the EPA continues to develop the U&O Reservation-specific FIP.

*Comment #7:* One oil and natural gas industry commenter expressed that the industry's objective is that final regulations protect the environment and the public and cost-effectively address VOC emissions that as a co-benefit also reduce methane emissions, without unnecessarily hampering manufacturing and business expansion. According to the commenter, this objective can be met while the private sector develops and delivers more natural gas and oil to its customers. According to the oil and natural gas industry commenter, their efforts are producing real results based on the EPA's latest Greenhouse Gas Inventory which continues to show a downward trend in methane emissions, even as U.S. oil and natural gas production rose dramatically. The commenter reported that the inventory report indicates that methane emissions from natural gas systems and petroleum systems increased 14 percent between 1990 and 2016, at a time when the natural gas output increased by more than 50 percent. This is in addition to the U.S. continuing to lead the world in reducing carbon emissions, which are at 25-year lows, largely due to the increased use of natural gas.

*Response #7:* After considering the comments, the EPA believes that it is possible, as the commenter suggests, to protect the environment and public health by controlling VOC emissions

from oil and natural gas activity in a cost-effective manner, while also ensuring responsible oil and natural gas development. The EPA also recognizes the trends found in an EPA report on greenhouse gas emissions, but because they are not relevant to this rulemaking we find it unnecessary to provide a response here.<sup>31</sup>

*Comment #8:* Three oil and natural gas industry commenters and one Indian tribe commenter were opposed to a temporary implementation of the proposed amendments. One oil and natural gas industry commenter noted that classifying this proposal as a permanent construction authorization mechanism for the Uinta Basin will conserve resources as the Agency will not have to reinvent a new scheme when a temporary extension would expire. One oil and natural gas industry commenter and one Indian tribe commenter stated that they agree with the EPA's concern that a temporary extension of the National O&NG FIP could have a significant effect on oil and natural gas activity on the U&O Reservation, with a resulting serious effect on the revenue which the Ute Indian Tribe relies upon for its livelihood.

*Response #8:* After considering the comments, the EPA agrees to finalize the extension of the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area, without expressly providing that it is temporary, to provide certainty to the Ute Indian Tribe and to the affected oil and natural gas companies that operate in the U&O Reservation. Deciding not to make the extension temporary will help the tribal leadership plan their services and activities on the U&O Reservation, knowing that they can rely on the important revenue from oil and natural gas activity. It also helps

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<sup>31</sup> Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2016, U.S. Environmental Protection Agency, EPA 430-R-18-003, April 2018, [https://www.epa.gov/sites/production/files/2018-01/documents/2018\\_complete\\_report.pdf](https://www.epa.gov/sites/production/files/2018-01/documents/2018_complete_report.pdf).

the affected oil and natural gas companies operating in the U&O Reservation as they plan their activities in the Uinta Basin and decide where to locate or expand their activities. The EPA believes that extending the streamlined authorization approach to the Indian country portion of the Uinta Basin Ozone Nonattainment Area will be adequately protective of air quality for the reasons outlined in Section II.B. above.

*B. Legal Authority to Extend Applicability of the National O&NG FIP to the Indian Country Portion of the Uinta Basin Ozone Nonattainment Area*

*Comment #9:* One oil and natural gas industry commenter stated that the EPA has the legal authority to extend the National O&NG FIP to an area designated as nonattainment. According to the commenter, the EPA has legal authority to extend the National O&NG FIP to all parts of the U&O Reservation, including nonattainment areas, citing CAA section 301(d) as granting the EPA authority to treat Indian tribes the same as states under the CAA, when appropriate. The commenter, quoting language from EPA's published proposal (83 FR at 20780), asserts that this authority extends to all areas, including nonattainment areas.

The commenter asserted that the CAA's nonattainment provisions are consistent with the EPA's proposal to apply the existing National O&NG FIP to address the time between designation and implementation of the attainment plan for the Uinta Basin. According to the commenter, CAA sections 110, 172, and 173 require nonattainment areas to have permitting programs for new or modified major stationary sources in nonattainment areas and, for both attainment and nonattainment areas, regulation of all stationary sources as necessary to assure achievement of the NAAQS. The commenter asserted that the CAA does not establish specific requirements for how nonattainment implementation plans should address true minor sources and that states (and the EPA) have wide discretion in addressing true minor sources. According

to the commenter, the CAA does not require reservation-specific or area-specific FIPs, let alone require them immediately after nonattainment designations are made.

The commenter stated that the EPA's statements in the proposed and final rule issuing the National O&NG FIP do not preclude this action and the proposed extension is not contrary to such previous statements because the EPA currently lacks the necessary information and input to issue an area-specific FIP. The commenter stated that the proposal will protect air quality and allow for oil and natural gas development while the EPA undergoes the process of determining how to bring this area back into attainment and that the EPA's position stated in the National O&NG FIP preamble concerning the need for an area-specific FIP before extending the National O&NG FIP to nonattainment areas is not required by the CAA and does not bind the EPA in this rulemaking, citing *FCC v. Fox Television Stations, Inc.*

*Response #9:* After considering the comments, the EPA agrees that, consistent with the authorities and requirements of sections 301(d)(4) and 110(a)(2)(C) of the CAA and 40 CFR 49.11, we possess the authority to take this action amending the National O&NG FIP to extend it to eligible true minor oil and natural gas sources in the Indian country portion of the Uinta Basin Ozone Nonattainment Area. In addition, we recognize that the CAA does not specifically or expressly prescribe detailed requirements for the treatment of new and modified true minor sources in nonattainment areas and that the EPA has discretion in developing measures for Indian country nonattainment areas. To the extent that the commenter's statements relate to the timing or content of an area-specific FIP, those comments are better addressed in the context of that rulemaking, but

the EPA does not agree that it is necessary to gather significantly more information before proceeding to propose the U&O Reservation-specific FIP.

*C. Non-Air Quality Impacts of Extending or Not Extending the National O&NG FIP to the Indian Country Portion of the Uinta Basin Ozone Nonattainment Area*

*Comment #10:* Two oil and natural gas industry commenters stated that amending the National O&NG FIP will facilitate the continued development of tribal minerals and land and provide an uninterrupted and valuable source of income to the Ute Indian Tribe. One of the commenters further stated that the development of oil and natural gas resources is a huge economic opportunity and job creator for the Ute Indian Tribe and is vitally important.

*Response #10:* After considering the comments, the EPA recognizes that revenue from oil and natural gas activity in the U&O Reservation is important for the Ute Indian Tribe's prosperity. It provides for economic development and services for tribal members. As the EPA crafts solutions for the U&O Reservation's air quality challenges, the EPA remains cognizant of these facts.

*Comment #11:* Two oil and natural gas industry commenters noted that one benefit of these actions is the creation of a needed streamlined mechanism for authorizing oil and gas construction in the Uinta Basin Indian country and the U&O Reservation.

One oil and natural gas industry commenter added that the proposal conserves Agency resources because the Ute Indian Tribe and the EPA will not have to process and issue site-specific permits, which allows the Agency to instead focus time and energy on working with the Ute Indian Tribe and stakeholders to develop an appropriate U&O Reservation-specific FIP. This commenter expressed that the proposal will achieve consistency between Uinta Basin Indian country and basin lands under state of Utah jurisdiction by creating a "self-executing" authorization scheme for new and modified minor sources of emissions in the tribal air shed that

is similar to the current state of Utah's R-307 series of rules for oil and natural gas production or Permit by Rule ("PBR") Program, for state-managed areas.

*Response #11:* The EPA generally agrees with these comments. This action will provide a streamlined construction authorization mechanism, allowing the EPA to focus its efforts on issuing the U&O Reservation-specific FIP and helping to achieve consistency of approach for authorizing sources to construct on Indian country lands within the Uinta Basin versus adjacent Utah state-managed lands, as discussed above. The EPA does not agree, however, that this action will conserve Ute Indian Tribe permitting resources, because the Ute Indian Tribe is not currently authorized to issue CAA minor source permits on its Reservation.

*D. Timing of Nonattainment Designation Process for Newly Designated Indian Country Areas as it Relates to Timing of this Rulemaking Action*

*Comment #12:* Two oil and natural gas industry commenters encouraged the EPA to finalize this rule revision as close to the nonattainment designation becoming effective on August 3, 2018, as possible to minimize any gaps between the effective dates of both actions. One oil and natural gas industry commenter noted that consequences and hardships can be avoided by meeting that date, such as the absence of a streamlined construction authorization mechanism, the significant pressure and time constraints associated with processing individual permits under a novel site-specific permitting program, and redirection of Agency focus from development of the reservation-specific regulations.

*Response #12:* After considering the comments, the EPA agrees and has sought to minimize the lapse in streamlined authorizations to construct that started after August 3, 2018. Because there is a gap, though, the EPA has committed the staff resources as needed to process

any site-specific permits in a timely manner. In addition, until the nonattainment area designation became effective, sources could have taken advantage of the streamlined mechanism of the existing National O&NG FIP, provided such sources were able to meet certain registration form submittal deadlines.<sup>32</sup>

#### *E. Uintah and Ouray Reservation-Specific FIP*

##### 1. Timing of U&O Reservation-specific FIP

*Comment #13:* One oil and natural gas industry commenter supported the EPA's intention to use the same process for nonattainment areas on tribal lands as the states generally use for all other nonattainment areas. The commenter agreed with the EPA that the proposal is similar to how nonattainment areas in states are treated, where there is a gap in time between the nonattainment designation and the deadline for the attainment plan. The commenter expressed the view that the process used on tribal lands should align with other nonattainment areas, which allows for a period of time to develop a plan to achieve attainment. The commenter argued that states are not under any obligation to immediately have an implementation plan for nonattainment areas and there is no reason that the EPA should single out the U&O Reservation for different treatment by imposing this strict timeline. According to the commenter, the EPA should focus its efforts on developing the best plan to reach attainment and this planning process must involve appropriate stakeholder outreach and input.

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<sup>32</sup> As noted, the National O&NG FIP registration requirement consists of two parts: Part 1 is submitted 30 days before a source begins construction; Part 2 is submitted within 60 days after the startup of production. In our view, Part 1 Registration Forms that were submitted before the effective date of the nonattainment designation (August 3, 2018) allow sources to begin construction after the effective date of the designation. Thus, Part 1 Registration Forms filed prior to the nonattainment designation taking effect (on August 3, 2018) allowed construction to begin after that date. (It is important to note that any such sources may be subject to future control under a U&O Reservation-specific FIP.) See correspondence: Letter from Peter Tsirigotis, Director, Office of Air Quality and Standards, EPA, to Doug Jordan, Newfield Exploration Company, June 6, 2018, in Docket ID No. EPA-HQ-OAR-2014-0606.

*Response #13:* While the U&O Reservation-specific FIP is an important component of the EPA's approach to addressing the U&O Reservation as part of the Uinta Basin Ozone Nonattainment Area, this rulemaking is not the appropriate context in which to address comments on the specifics of the forthcoming U&O Reservation-specific FIP. Therefore, as a general matter, the EPA will not be responding, here, to comments on any such U&O Reservation-specific FIP, including the timing of such FIP. Concerning the development process and stakeholder engagement for that FIP, the EPA is committed to working closely with the Ute Indian Tribe, as well as the state of Utah and other interested stakeholders.<sup>33</sup>

## 2. Consistency with Utah's R-307 Series of Rules for Oil and Natural Gas Production

*Comment #14:* One oil and natural gas industry commenter acknowledged the EPA's commitment to develop a U&O Reservation-specific FIP and encouraged the EPA to develop the FIP with requirements that are equivalent to or consistent with the Utah Division of Air Quality Permit by Rule to mitigate potential disparities between state and federal air jurisdictions.

*Response #14:* As noted, while the U&O Reservation-specific FIP is an important part of the EPA's approach to the U&O Reservation as part of the Uinta Basin Ozone Nonattainment Area, this rulemaking is not the appropriate context in which to address comments on the specifics of the forthcoming U&O Reservation-specific FIP. Therefore, as a general matter, the EPA will not be responding, here, to comments concerning such FIP.

## 3. Stakeholder engagement

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<sup>33</sup> For more discussion of stakeholder engagement, see the response to Comment #15.

*Comment #15:* Four oil and natural gas industry commenters and one Indian tribe commenter expressed interest in the opportunity to work with the Agency on the development of the U&O Reservation-specific FIP and the identification of proper emission controls that will result in a direct reduction of ozone in the Uinta Basin. One Indian tribe commenter indicated interest in continuing consultation with the Agency about the unique characteristics of the reservation and to balance the regulation with the Ute Indian Tribe's interests in developing its resources without harming future natural resource and economic development.

Two oil and natural gas industry commenters encouraged the EPA to engage stakeholders, including the Ute Indian Tribe, trade associations and operators in advance of proposing the U&O Reservation-specific FIP. One oil and natural gas industry commenter recommended a collaborative stakeholder engagement process, modeled after the stakeholder program implemented by Wyoming Department of Environmental Quality that established the Upper Green River Basin Air Quality Citizens Advisory Task Force. According to the commenter, the stakeholder outreach process should contain highly inclusive public outreach early in the planning process, involvement of stakeholders in advance of development of formal plans to seek additional emission reductions, continuous engagement throughout the duration of the attainment planning process, a process specific to the Basin's unique winter ozone air quality problem that drives the nonattainment designation, and a mechanism to allow for transparent and collaborative dialog with all parties.

*Response #15:* The comments concerning the process for development of the U&O Reservation-specific FIP are not material to this action amending the existing National O&NG FIP and the EPA is not responding to them here. However, the EPA notes that, consistent with

the federal government's trust responsibility and established EPA policy and to improve our understanding of the potential environmental implications of oil and natural gas production operations, the Agency has consulted (and will continue to consult) with the Ute Indian Tribe on issues related to this action and to the U&O Reservation-specific FIP. We appreciate the importance of oil and natural gas activity for the U&O Reservation, as expressed to us by the Tribe during our government-to-government consultations.

We have held numerous consultations with the Ute Indian Tribe, and participated in numerous tribally-convened stakeholder and other meetings, in 2015, 2016, 2017, 2018 and 2019. We have also reached out to the following stakeholders: (1) oil and natural gas operators and representatives; (2) environmental groups; (3) Federal Land Managers; and (4) local county officials. These consultations and meetings addressed, at least in part, the issue that has prompted this rulemaking, i.e., the need expressed by the Ute Indian Tribe and others for continued streamlined authorizations to construct to continue to be available on the U&O Reservation as part of the Uinta Basin Ozone Nonattainment Area. For a complete list of these consultations and meetings, including dates, locations and attendees, please consult the docket to this rulemaking.<sup>34</sup>

A significant purpose of the government-to-government consultations was to receive tribal comments and concerns for consideration by the EPA as it developed this action. The purposes of the EPA, Tribe, and UDEQ meetings were to discuss our intent to address ozone issues in the Uinta Basin and to solicit input on potential solutions to the region's air quality problem, while ensuring continued resource development. We strive to provide greater regulatory certainty and consistency across the Uinta Basin in the

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<sup>34</sup> "Meetings and Consultations Held with the Ute Indian Tribe Concerning at Least Partly the National Oil and Natural Gas Federal Implementation Plan for Indian Country," March 26, 2019, EPA-HQ-OAR-2014-0606.

regulation of these operations through enhanced data collection and analysis, improved information sharing and partnerships, and focused compliance assistance and enforcement. The enforcement. The EPA is committed to working closely with the Ute Indian Tribe, the state of state of Utah and other stakeholders during the U&O Reservation-specific FIP development process.

#### 4. Other construction permitting options for U&O Reservation

*Comment #16:* One Indian tribe commenter requested that the EPA work with the Ute Indian Tribe to mitigate air quality impacts during the winter ozone season. The commenter stated that the Tribe seeks to make sure all options are evaluated for permitting in the development of the U&O Reservation-specific FIP so that the best permitting solutions can be achieved. The commenter asserted that the National O&NG FIP on the U&O Reservation should not be the only option available for authorizing construction on the Reservation once the U&O Reservation-specific FIP is developed. The commenter requested that the EPA remain open to other flexible, targeted controls and permitting schemes or mechanisms for inclusion in the U&O Reservation-specific FIP that will be key to bringing the Uinta Basin back into attainment, including a streamlined permitting system for minor modifications at major sources and synthetic minor sources.

*Response #16:* Again, the EPA is not responding, here, to comments concerning the development of the U&O Reservation-specific FIP. The EPA is committed to continuing to work with the Ute Indian Tribe to find permitting solutions for the U&O Reservation that protect air quality and address the needs of the Tribe. Specifically, the EPA is willing to engage in discussions with the Tribe about permitting mechanisms and other regulatory options in Indian

country that may apply in lieu of or in addition to the National O&NG FIP (i.e., general permits and synthetic minor permits).

#### *F. Out-of-Scope Comments*

*Comment #17:* Four anonymous commenters did not address the proposal and included general comments on the oil and natural gas industry, greenhouse gases and other environmental concerns.

*Response #17:* Because these comments are out of scope and do not relate to this action, the EPA is not providing responses to them as part of this final rulemaking.

## **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 an Executive Order 13771 deregulatory action. This final rule provides 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, unclassifiable and attainment/unclassifiable areas. This action finalizes the extension of streamlined authorizations to the Indian country portion of the 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.<sup>35</sup> 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 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 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 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 final amendments should have the effect of reducing paperwork burden on sources wishing to locate or expand in the Indian country portion of the Uinta Basin Ozone Nonattainment Area, as the amendments provide an alternative to site-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

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<sup>35</sup> 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](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201702-2060-005).

relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The EPA analyzed the impact on small entities of streamlined permitting under the Federal Indian Country Minor NSR rule<sup>36</sup> and determined that it would not have a significant economic impact on a substantial number of small entities. (By allowing sources to avoid having to obtain site-specific permits, this action also will relieve 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 mandate, as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. It simply modifies one option for sources to comply with the Federal Indian Country Minor NSR rule. The CAA and the Federal Indian Country Minor NSR rule itself, not this final action, impose 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 final action merely applies the National O&NG FIP to the Indian country portion 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*

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<sup>36</sup> “Review of New Sources and Modifications in Indian Country,” U.S. Environmental Protection Agency, 76 FR 38748, July 1, 2011, <https://www.federalregister.gov/articles/2011/07/01/2011-14981/review-of-new-sources-and-modifications-in-indian-country>.

This action does not have federalism implications. It will 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 with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011),<sup>37</sup> the EPA offered consultation on the concerns addressed in this final 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 through ongoing monthly meetings with tribal environmental professionals in the development of the proposed action.<sup>38</sup> We have held numerous consultations with the Ute Indian Tribe, and participated in numerous tribally-convened stakeholder and other meetings, in 2015, 2016, 2017, 2018, and 2019. We have also reached out to the following stakeholders: (1) oil and natural gas operators and representatives; (2) environmental groups; (3) Federal Land Managers; and (4) local county officials. These consultations and meetings addressed, at least in part, the issue that has prompted this rulemaking, i.e., the need expressed by the Ute Indian Tribe and others for continued streamlined authorizations to construct to continue to be available on the U&O Reservation as

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<sup>37</sup> For more information, go to: <https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>.

<sup>38</sup> These monthly meetings are general in nature, dealing with many air-related topics, and are not specific to this proposed action.

part of the Uinta Basin Ozone Nonattainment Area. For a complete list of these consultations and meetings, including dates, locations and attendees, please consult the docket to this rulemaking.<sup>39</sup>

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 Uinta Basin Ozone Nonattainment Area. As these amendments are implemented, we will continue to provide regular outreach to tribes to ensure we address issues concerning the National O&NG 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*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The action merely implements a previously-promulgated FIP for oil and natural gas sources in Indian country.<sup>40</sup>

#### *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.

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<sup>39</sup> “Meetings and Consultations Held with the Ute Indian Tribe Concerning at Least Partly the National Oil and Natural Gas Federal Implementation Plan for Indian Country,” March 26, 2019, EPA-HQ-OAR-2014-0606.

<sup>40</sup> See 81 FR 35943, June 3, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf>.

*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 the amendments in this action will not have potential disproportionately high and adverse human health or environmental effects on minority or low-income populations. Through these amendments, we are: (1) extending 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) continuing an approach that enables a streamlined process, which helps promote economic development by minimizing delays in new construction.

*L. Congressional Review Act (CRA)*

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

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

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

Dated: May 2, 2019.

Andrew R. Wheeler,  
Administrator.

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

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

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

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

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

2. In § 49.101, revise paragraph (c) and add paragraph (e) to read as follows:

**§49.101 Introduction.**

\* \* \* \* \*

(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.

\* \* \* \* \*

(e) Notwithstanding paragraph (b)(1)(v) of this section, 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 paragraphs (b)(1)(i) through (iv) of this section are also satisfied.

3. In §49.102, add a definition for “*Uinta Basin Ozone Nonattainment Area*” in alphabetical order to read as follows:

**§49.102 Definitions.**

\* \* \* \* \*

*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.

[FR Doc. 2019-09829 Filed: 5/13/2019 8:45 am; Publication Date: 5/14/2019]