SUPPORTING STATEMENT

Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon and Washington

OMB Control Number 2060-NEW, EPA ICR # 2730.01

Short Characterization/Abstract

In 2005, the U.S. Environmental Protection Agency (EPA) promulgated Federal Implementation Plans (FIPs) under the Clean Air Act (CAA) for Indian reservations located in Idaho, Oregon and Washington. The FIPs, also referred to as Federal Air Rules for Reservations (FARR), include basic air quality regulations to protect health and welfare on Indian reservations located in the Northwest. These rules are implemented by EPA Region 10 and delegated to Tribes. EPA Region 10 is proposing revisions to the FARR, including clarifying aspects of the initial rules; removing an exemption to the limiting visible emissions rule for smudge pots and adding new rules for residential solid fuel heating devices and woodstove curtailment; splitting the rule for general open burning permits into a large open burn and two small open burn permit options; removing provisions that have been superseded by provisions of the Tribal New Source Review (NSR) rule; and moving to online registration of air pollution sources and emissions reporting. In addition, EPA Region 10 is promulgating three new FIPs implementing the FARR on the Snoqualmie Indian Reservation, the Cowlitz Indian Reservation, and the lands held in trust for the Samish Indian Nation. These revisions also clarify that the FARR applies to lands held in trust for a Tribe that has not been formally designated as a reservation.

The Office of Management and Budget (OMB) approved an Information Collection Request (ICR) entitled “Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon and Washington” (OMB control number 2060-0558), on November 16, 2004 for the FARR as originally promulgated in 2005. Renewals of the ICR were approved by OMB on May 23, 2008; August 3, 2011; March 16, 2015; and August 31, 2018, with the latest renewal (EPA ICR # 2020.09) submitted to OMB for review and approval and published in the Federal Register on 8/13/2021 (86 FR 44708). This new ICR addresses the proposed revisions to the FARR listed above and provides burden estimates for respondents to comply with the various FIP provisions required by 40 CFR Part 49, Subpart M Implementation Plans for Tribes - Region 10. The rulemaking effort will utilize a new OMB control number and EPA ICR number. Any approved information collection activities associated with the final rule will be reintegrated with the base collection (under Control Number 2060-0558) at a later date.

The CAA establishes requirements for state and local air agencies (S/Ls) to implement the CAA through State Implementation Plans (SIPs). Since the 1990 CAA amendments, EPA is clearly on record that, absent explicit Congressional authorization, the S/L requirements (e.g., SIPs) approved by EPA under the CAA do not extend into Indian reservations. EPA promulgated these FIPs and is proposing revisions to the FIPs as an important step to better protect air quality on Indian reservations in Idaho, Oregon, and Washington. EPA does not intend, nor does it expect, the FIPs or their proposed revisions to impose significantly different regulatory burdens upon industry or residents within reservations than those imposed by the rules of S/Ls in their SIPs.

Prior to 1990, the CAA was almost completely without any reference to American Indian Tribes or Indian reservation lands. Therefore, the S/Ls had generally implemented their programs throughout their designated land area, including reservation lands. In most cases, sources located on Indian reservations complied with S/L rules, and most industrial sources installed or upgraded air pollution control equipment. Therefore, EPA has found that most sources affected by the FIPs and their proposed revisions already had sufficient control equipment to enable them to attain and maintain compliance with these FIPs.

**ICR Revisions**

The ICR and this supporting statement have been updated to reflect changes to the FARR. Our calculations in the supporting statement include the burden of the existing 2005 FARR as well as the proposed revisions to the rules. All estimates have been updated and revised relative to previous FARR ICRs to reflect the FARR rule revisions, include new reservations and off-reservation trust lands, reflect new information about the number of air pollution sources on the affected Indian reservations and off-reservation trust lands, reflect updated wage rates, and update burden and cost estimates based on both experience implementing the rule and knowledge gained through respondent consultations.

**Summary of the FIP Rules**

The rules, including proposed revisions, are presented in categories, as follows:

**Rules for which an ICR has been prepared include:**

Section 49.122. Partial delegation of administrative authority to a Tribe

Section 49.123. General provisions

Section 49.124. Rule for limiting visible emissions

Section 49.126. Rule for limiting fugitive particulate matter emissions

Section 49.127. Rule for woodwaste burners[[1]](#footnote-3)

Section 49.130. Rule for limiting sulfur in fuels

Section 49.131. General rule for open burning

Section 49.132. Rule for large open burning permits1

Section 49.133 Rule for agricultural burning permits1

Section 49.134 Rule for forestry and silvicultural burning permits1

Section 49.135 Rule for emissions detrimental to public health or welfare

Section 49.138. Rule for the registration of air pollution sources and the reporting of emissions

Section 49.139. Rule for non-Title V operating permits

Section 49.141. Woodstove curtailment rule for specific areas1

Section 49.142. Rule for small open burning annual permits1

Section 49.143. Permit by rule for small open burns1

**Rules for which an ICR was not prepared include (see rationale below):**

Section 49.125. Rule for limiting the emissions of particulate matter

Section 49.128. Rule for limiting particulate matter emissions from wood products industry sources1

Section 49.129. Rule for limiting emissions of sulfur dioxide

Section 49.137. Rule for air pollution episodes

Section 49.140 Rule for residential wood burning devices

**Rules – for which as ICR has been Prepared**

As outlined above, an ICR has been prepared for 16 of the 21 FIP rules. These sections represent 16 individual information collection (IC) activities and are described below.

**Section 49.122 – Partial delegation of administrative authority to a Tribe**. Section 49.122 establishes a process for EPA to delegate to a Tribal government the authority to assist EPA in administering one or more of the Federal rules that have been promulgated for the Tribe’s reservation. This provision sets out the process a Tribe must follow to request a partial delegation, how that delegation will be accomplished, and how the public and regulated sources will be informed of the delegation. This provision allows EPA to delegate distinct and severable Federal regulations to a qualified Tribe for implementation, without requiring a Tribe to take on all aspects of the Federal air regulations. Nothing in these rules requires EPA to delegate administrative authorities to Tribes. Under a partial delegation agreement, EPA would authorize a Tribal government to administer specific functions of one or more of the rules, with Tribal government employees acting as authorized representatives of EPA and with the oversight of EPA staff. Any challenges to an action will be handled directly by EPA, and any formal appeals or enforcement actions will proceed under EPA’s administrative and civil judicial procedures.

**Section 49.123 – General provisions**. This section contains the definitions for specific terms used in the FARR, specifies the general requirements for testing, monitoring, recordkeeping and reporting, specifies requirements for performance tests and identifies American Society for Testing and Materials (ASTM) materials that are incorporated by reference in these rules. An ICR was not prepared for this rule under the existing FARR because the general provisions are implemented through other statutes and rules such as Section 114 of the Clean Air Act and various permitting regulations[[2]](#footnote-4). However, under the proposed revisions to the FARR, a provision is being added to allow sources to request alternative testing, recordkeeping, or reporting practices under this section.

**Section 49.124 – Rule for limiting visible emissions**. Section 49.124 limits the visible emissions of air pollutants from certain air pollution sources to control emissions of particulate matter. The EPA proposes to revise this section in several respects. First, the EPA is clarifying that the rule limiting visible emissions does not apply to activities associated with single-family residences or residential buildings with four or fewer dwelling units. Although the current rule exempts furnaces and boilers used to heat single family residences and residential buildings with four or fewer dwelling units, the EPA never intended to regulate other emissions associated with residential activities, such as home workshops. The EPA is also clarifying that the rule does not apply to any particulate matter emissions from public roads and not just to fugitive dust from public roads. The EPA did not intend to regulate any emissions from public roads under the FARR. The current rule unintentionally limits the exemption to only fugitive dust. However, there are other emissions that come from roads that do not come from the tailpipe of a motor vehicle or nonroad vehicle, such as emissions associated with the application of dust suppressants. This change clarifies that all particulate emissions from public roads, not only fugitive dust, are exempt from the visible emission limit.

Second, the EPA is proposing to narrow the exemption for agricultural activities so that orchard heating devices are no longer exempt from the visible emissions limit. An orchard heating device is defined as a fuel burning device capable of being used for frost-prevention or protection in orchards, vineyards, field crops, or truck crops, and includes smudge pots and open-pot heaters. The diesel fuel sometimes used in these devices produces the thick heavy smoke that some believe prevents frost damage. Orchard heating devices are typically used in the spring when plants are budding and an atmospheric inversion traps cold air at the surface. The inversion also traps air pollutants, such as the thick smoke generated by some types of orchard heating devices, and can result in unhealthy levels of air pollution. Under the visible emissions rule currently in effect, orchard heating devices are covered by the exemption for agricultural activities because such devices are used as part of the usual and customary activities in growing crops. The EPA’s ongoing evaluation of the FARR and input from Tribes on reservations where orchard heating devices are used identified concerns with air pollution from these unregulated sources of particulate matter.

This proposed revision would therefore require that visible emissions from orchard heating devices not exceed 20% opacity, averaged over any consecutive 6-minute period, and would apply to any person who owns or operates an orchard heating device. We expect that there are categories of orchard heating devices that will not be capable of complying with the 20% opacity standard and this action, if finalized, would therefore effectively prohibit the continued use of such devices. Since the FARR was promulgated in 2005, however, cleaner and more effective methods of orchard heating have become more readily available. Newer alternatives such as propane-powered fans and propane heaters are becoming accepted and reliable alternate methods of orchard heating. These cleaner devices are capable of complying with the visible emission limit and, as such, will help minimize air pollution in areas that are already dealing with high levels of PM2.5 and PM10. Other State and local air agencies have similar provisions.

To ensure current users of orchard heating devices that cannot comply with the visible emission standard have adequate time to find alternatives to the use of such devices, the proposed provision of § 49.124 requiring that visible emissions from an orchard heating device not exceed 20% opacity would not go into effect until 3 years after this revision is finalized and becomes effective. Furthermore, to ensure that this new requirement does not cause an unreasonable burden on any person, the rule includes a provision that would allow the Regional Administrator to grant a two-year extension (with no limit on the number of extensions) provided that the person demonstrates that there is no alternative that is reasonably available that can comply with the 20% opacity limit. In the interim, the EPA intends to work with Tribal air programs to provide outreach to orchards affected by this rule and identify sources of funding that may help lower the costs for alternate methods of orchard heating.

**Section 49.126 – Rule for limiting fugitive particulate matter emissions**. This section limits fugitive particulate matter emissions by requiring reasonable precautions to prevent such emissions. Under the current language of the fugitive particulate matter emissions rule, it is unclear when portable sources, such as portable rock crushers and asphalt plants, are required to conduct their fugitive particulate emission surveys and prepare and update their written plans to prevent fugitive particulate matter emissions. Therefore, the EPA is proposing revisions that specify when the surveys and plans are required to be conducted and submitted for portable sources in a manner that is consistent with the temporary and transient nature of portable sources. For example, the EPA is proposing to specifically require portable sources to conduct a survey within 7 days after beginning operation at a new location and to conduct an annual survey thereafter to identify sources of fugitive particulate matter emissions. Additionally, for portable sources, the written plan specifying the reasonable precautions and procedures to prevent fugitive particulate matter emissions is required prior to beginning operation at a new location and must be updated within 7 days of a completed survey. The EPA is also clarifying that, for all other sources, the written plan to prevent fugitive emissions must be prepared within 30 days after completing the required survey. All plans for subject sources must be reviewed and updated by the owner or operator at least annually after each survey and more frequently if warranted due to changes.

The EPA is also proposing to add language to clarify that the written plan must be implemented as soon as practicable. The current rule requires a source to implement its written plan, including installing any control measures that were identified as reasonable precautions, but does not include language regarding when the plan needs to be implemented.

In addition, if the facility is required to be registered under § 49.138, the EPA is proposing to require that a copy of the most recent fugitive particulate matter survey and current fugitive particulate matter plan be submitted with the annual registration. Under the proposed revisions, a new source or new operation will be required to submit a copy of the fugitive particulate matter survey and plan to EPA within 90 days of beginning operation. The proposed revisions also provide that sources must maintain a copy of the survey and plan on site.

Lastly, the EPA is proposing to establish that a revision to the plan may be required if the EPA determines that the plan is not adequate to prevent or minimize fugitive particulate matter emissions. All of the proposed revisions are designed to enhance compliance and enforceability of the rule.

**Section 49.127 – Rule for woodwaste burners**. This section phases out the operation of woodwaste burners, and in the interim limits the visible emissions from woodwaste burners. There are no proposed changes to this section except for the revisions with respect to the applicability date discussed here and non-substantive and other administrative changes discussed elsewhere in this notice. This section continues to only apply on the Colville Reservation and on the Nez Perce Reservation, as shown in Table 2 in Section B of this notice. The effective date of this section for any lands held in trust for the Colville or Nez Perce Tribes that have not been formally designated as a reservation, will be the effective date of this rulemaking and, as such, any woodwaste burners that are located on such lands will be required to be dismantled within 2 years from the effective date of this rulemaking. However, we are not aware of any woodwaste burners on these lands.

**Section 49.130 – Rule for limiting sulfur in fuels**. This section limits the amount of sulfur contained in fuels that are burned at stationary sources operating within an Indian reservation to control emissions of SO2. The EPA is proposing to update the reference methods used to determine compliance with the sulfur emission limits for fuel. We are updating the reference methods to incorporate into this rule the most recent Federally approved versions of the ASTM methods for determining the amount of sulfur in fuel oil or liquid fuels, coal, solid fuels and gaseous fuels.

In addition, the EPA proposes to revise the sulfur limit for gaseous fuels by deleting the 1.1 grams per dry standard cubic meter (dscm) limit and retaining only the 400 parts per million (ppm) limit. The current rule establishes a limit for sulfur in gaseous fuels in two different sets of units (grams/dscm and ppm) that were intended to be equivalent in stringency. However, because the proper number of significant figures for the grams/dscm limit were not included when the FARR was promulgated, the two are not equivalent. This resulted in confusion as to whether sources had to comply with both limits, the more stringent limit, or a limit of their choice. The proposed revisions correct this error and make this standard consistent with the EPA’s intent in promulgating this emission standard in 2005.

**Section 49.131 – General rule for open burning**. This section limits the types of materials that can be openly burned within an Indian reservation to control emissions of particulate matter. The EPA is proposing to simplify the approach to the General rule for open burning from one that prohibits the open burning of a long list of materials to one that identifies the materials that can be openly burned. The proposed revisions prohibit open burning with exceptions for certain materials, during specific situations, and under certain conditions. The intent of this revision is to more clearly delineate the materials that may be burned, thereby simplifying the regulatory scheme for the public, the EPA, and delegated Tribes. The proposed revisions to § 49.131 will better ensure that only those materials that do not significantly degrade air quality are allowed to be burned.

More specifically, with limited exceptions, the proposed revisions prohibit all open burning except the open burning of natural vegetation; untreated wood; paper products generated and burned on site at a single-family residence or residential building with four or fewer dwelling units; and paper and manufactured fire starters used to start a fire. With this proposed revision, certain definitions, such as “garbage,” are no longer used and are being eliminated. The EPA is proposing to define “untreated wood” as wood of any species that has not been chemically impregnated, painted, coated, or similarly modified to prevent weathering and deterioration.

The EPA is also proposing to expand the scope of the regulated entities under this rule to include the lessee of the property on which open burning is conducted to ensure parties that may be responsible for burning decisions on a given property are responsible for complying with the requirements of this section. As under the existing rule, all but specified exempt open burning continues to be prohibited when a burn ban, air stagnation advisory, air pollution alert, air pollution warning, or air pollution emergency is declared due to deteriorating air quality. The EPA is however, proposing to add language clarifying that, in addition to extinguishing a fire and withholding additional material from a fire when such an event is declared, a person must also discontinue lighting a fire (e.g., cease using a drip torch to light the edge of an agricultural field).

The current exemptions from the prohibition on open burning remain, with some revisions. Open fires continue to be exempt in all respects if set for cultural or traditional purposes, including fires within structures such as sweat houses or sweat lodges. The proposed revisions clarify that fires set for cultural or traditional purposes in smoke houses are covered by this exclusion. Open burning for the disposal of diseased animals or other material by order of a public health official continues to be exempt except during burn bans and specified periods of deteriorating air quality, as under the current rule. In addition, we retain exceptions for outdoor fires used for the training of firefighters and the disposal of fireworks by Tribal governments. Both firefighting training fires and fireworks disposal fires continue to require prior written permission from the Regional Administrator to allow for the burning of materials not otherwise authorized under the open burning rule. The EPA is proposing to add language to the provisions for fire fighter training fires to ensure that EPA’s requirements for removal of asbestos containing materials are met prior to burning a structure and also to revise the deadline for requesting permission to be the same 10 days as the notification requirement in the asbestos rule (see 40 CFR part 61, subpart M).

In addition, if the large open burning permit rule applies on the Indian reservation where the burn is occurring and the burn meets the definition of “large open burn,” outdoor fires used for the training of firefighters and outdoor fires used for the disposal of fireworks by Tribal governments also require a large open burning permit under § 49.132 Rule for large open burning permits to ensure air quality concerns are taken into account in deciding when to allow such burns. In the unlikely event such burns do not meet the definition of a “large open burn,” a small open burn permit would not be required for such burns. As revised, the General rule for open burning clarifies that requests for permission for fires for the disposal of fireworks is limited to Tribes, but no longer limits such fires to a single outdoor fire per year. The proposed revisions also provide increased specificity of the approval process for such burns.

An exemption for “cooking fires” has been added, along with a definition of that term, to distinguish such fires from “recreational fires,” which term is now also defined. A cooking fire is an open burn in a fire pit or outdoor appliance for the purpose of cooking food and may burn firewood, charcoal briquettes, wood pellets, or other fuels suitable for cooking food. This list of permissible fuels for cooking fires is broader than under the General rule for open burning. Because cooking fires are exempt from the rule, cooking fires are not subject to the prohibition that applies to recreational fires during burn bans. The proposed revisions define recreational fires as campfires and bonfires burning materials authorized under the General rule for open burning for pleasure or celebratory purposes but excludes cooking fires and fires used for debris disposal purposes. Although recreational fires are no longer included in the list of exemptions, there is no substantive difference in how they are addressed under the proposed revisions. As under the current rule, the materials that may be burned in a recreational fire have not changed and recreational fires remain prohibited when burn bans are in effect. Recreational fires remain exempt from the more specific requirements in paragraph (e)(1) that apply to open burns, such as the provisions regarding smoldering.

The EPA has also added a proposed exemption for fires set as part of a firefighting strategy (e.g., back burn, fire break, or safety perimeter burn), but only if approved by the appropriate fire safety jurisdiction and under an emergency or incident command situation. Such fires may reduce the duration or size of uncontrolled fires and therefore may have a positive impact on levels of particulate matter overall.

The EPA is also proposing revisions to the provisions of this rule that specify the requirements for conducting open burning. The proposed revisions clarify that a burn ban declared by the Regional Administrator remains in effect until the Regional Administrator makes a new determination and terminates the burn ban, as well as to describe the methods the EPA uses to announce a burn ban and its termination. The EPA is also adding language to clarify that a burn ban can be declared for specific geographic areas within an Indian reservation. We are also clarifying that burn bans are based on the 24-hour PM NAAQS and that the time period for projections of air quality levels is a maximum of 72 hours. These clarifications are consistent with the intent of the rule and how it has been implemented in practice.

The EPA has heard concerns that the criterion for triggering burn bans, specifically 75% of any 24-hour PM NAAQS, could be overly conservative and impede the increased use of prescribed fire to help reduce the risk of wildfire within the Indian reservations covered by the FARR by reducing the number of available burn days. As mentioned previously, the EPA is currently reviewing the PM2.5 NAAQS and there are additional concerns that if that review results in a lower level of the 24-hour PM2.5 NAAQS, the number of available burn days could be further reduced.

The purpose of a burn ban is to protect human health and air quality by preventing emissions from open burning from pushing PM concentrations above the level of the NAAQS, so it is important to call a burn ban before concentrations reach the level of the NAAQS. The EPA acknowledges that there are a number of other criteria for declaring burn bans that could also accomplish this objective. The EPA is therefore soliciting comment on changing the criteria to whether PM concentrations exceed or are projected to exceed the NAAQS anytime during the next 72 hours. Because the meteorological forecasting tools and availability of real-time air monitoring data have improved significantly since 2005 when the FARR was promulgated, relying on projections of the PM NAAQS, rather than a percentage below the PM NAAQS, for calling burn bans may also provide reasonable assurance that emissions from open burning will not cause or contribute to an exceedance of the PM NAAQS. This revision would potentially reduce the number of burn bans and thus increase the available days during which prescribed burning could be conducted.

The EPA is also proposing revisions to account for the fact that, in certain defined instances (e.g., multi-day fires) and with the appropriate permits, a fire is allowed to smolder when it would have less impact on air quality than putting the fire out and relighting it. The revisions would also explicitly require that a person 18 years of age or older must be in attendance of the fire at all times; that there be means available for extinguishing the fire, such as water or chemical fire suppressant; and that a fire be extinguished if safe to do so, at the request of the EPA based on a determination that the open burning is causing or has the potential to cause or contribute to an exceedance of a national ambient air quality standard. When relevant, the EPA will also request that a fire be extinguished if safe to do so, based on a determination that the open burning is causing any other adverse impact on air quality. These simple precautions help ensure that fires are responsibly managed, considering changing adverse meteorological conditions, other scheduled burning activities in the surrounding area and other factors that could impact a burn. For burns that could significantly impair visibility on roadways, coordination with traffic safety authorities must take place before igniting a burn in order to provide an opportunity for such authorities to require appropriate transportation safety measures. “Small open burns”, as defined in § 49.123, are exempt from this requirement. Because of the limited size of small open burns, the amount of material consumed would not be expected to cause a plume large enough and dense enough to impair visibility on roadways.

Finally, the EPA is clarifying that nothing in the open burning rule exempts or excuses any person from complying with applicable laws and ordinances of Tribal governments. This was already encompassed in the language in the existing rule stating that nothing in the open burning rule “exempts or excuses any person from complying with applicable laws and ordinances of…other governmental jurisdictions.” The proposed revision is being made for clarity here, as well as in the burn permit sections discussed below.

**Section 49.132 – Rule for large open burning permits**. The FARR promulgated in 2005 had a General rule for opening burning (discussed in § 49.131), which specified conditions under which open burning could be conducted but did not require prior approval. The FARR also had a rule setting forth a program for permitting, or granting prior approval of, general open burns. This rule was designed only for Indian reservations where the EPA, in coordination and consultation with the relevant Tribe, determined that a general open burning permitting program was necessary or appropriate, and was generally expected to include a delegation of authority from the EPA to the Tribe, under § 49.122 for implementation of the general open burning permit program (67 FR 11748, 11751). This general open burning permit rule was promulgated to apply on the Nez Perce Reservation and the Umatilla Indian Reservation. These Tribes have been implementing the rule for general open burning permits on their respective Indian reservations under a delegation with the EPA for more than 15 years.

The EPA is proposing to revise the rule for permitting general open burns by replacing it with three rules for different types of open burns and different types of open burning approval processes: § 49.132 Rule for large open burning permits, § 49.142 Rule for small open burning annual permits and § 49.143 Permit by rule for small open burns. The EPA is proposing these different open burning permit options based on input from these Tribes, other Tribes that have expressed interest in seeking delegation of permitting general open burning on their Indian reservations, and the EPA’s experience in working with the delegated Tribes in implementing this rule. The EPA has concluded that options that distinguish between large and small open burns and, for small open burns, allow for an annual permit or coverage under a permit by-rule better allow for the scaling of requirements to the potential air pollution impact of open burns and the resources of implementing agencies.

Only materials that may be burned under § 49.131 General rule for open burning may be burned in a permitted large or small open burn. As under § 49.131, compliance with the permitting requirements rests with the person who is conducting the burn as well as the owner and lessee, if any, of the property on which the burn is conducted to ensure parties that may be responsible for burning decisions on a given property are responsible for complying with the burn permitting rules, where applicable.

The proposed “large open burning” permit rule is very similar to the current general open burning permit rule in § 49.132. The proposed revisions define a “large open burn” or “large open burning” as the open burning of a single pile of the specified materials greater than 10 feet in diameter or more than 60 feet of ditch bank or fence line vegetation. These are the criteria that have been used by the EPA and delegated Tribal authorities that have been implementing the general open burning permit program under the FARR to distinguish between large and small open burns.

As revised, this section would require that persons subject to the rule must 1) have a permit for large open burning; 2) have approval to burn on the day(s) of the burn(s); 3) ensure that the person conducting the burn is familiar with the requirements of the permit; 4) ensure that the permit is available on-site during the open burn; 5) conduct the open burn in accordance with the terms and conditions of the permit; and 6) comply with the General rule for open burning (§ 49.131) or the EPA-approved Tribal open burning rules in a TIP. To ensure consistency with the use of forms under rules of the Office of Management and Budget, the revisions clarify that the application must be submitted on forms approved by the EPA. The revisions add a requirement that applications for large open burns include a description of the burning method or methods to be used, the amount of material to be burned with each method, and the means of ignition.

The proposed revisions clarify the process for getting approval to burn on the requested days under the permit. The revisions specify that the person conducting the large open burn must request approval for the burn at least one day before the burn in the manner specified in the permit. As under the current open burning permit rule, in determining whether to authorize a large open burn for a particular day or days, the Regional Administrator or delegated Tribal authority will take into consideration relevant factors including, but not limited to, the size, duration, and location of the proposed open burn; the current and projected air quality conditions; forecasted meteorological conditions; other scheduled burning activities in the surrounding area; and other factors indicating whether or not the proposed open burn can be conducted without causing or contributing to an exceedance of a national ambient air quality standard. When relevant, the Regional Administrator or delegated Tribal authority will also consider whether or not the proposed open burn can be conducted without causing or contributing to any other adverse impact on air quality. These other adverse impacts on air quality would be specific to the particular burn, such as the type of burn and its location, the local meteorology, and the areas expected to be impacted by the smoke. The EPA proposes to add a provision allowing the Regional Administrator or delegated Tribal authority to revoke the approval to burn based on changes in these air quality considerations. In such cases, the permittee would be required, after being contacted about the revocation, to immediately extinguish the fire if safe to do so, discontinue lighting the fire, and withhold additional material such that the fire burns down, as applicable.

The exemptions to the requirement to obtain a large open burning permit are generally the same as the exemptions in the General rule for open burning (§ 49.131) with a few exceptions. Recreational fires meeting the definition of “large open burn” are exempt from permitting. In addition, agricultural burns and forestry and silvicultural burns are exempt from the Rule for large open burning permits (§ 49.132).

The large open burning permit rule will continue to apply on the Nez Perce Reservation and the Umatilla Indian Reservation, as shown in Table 2 in Section B of this notice. The EPA is also proposing that § 49.132 be newly applied on the Yakama Reservation, as shown in Table 2. The EPA anticipates that the Nez Perce Tribe and the Umatilla Indian Tribe will update their EPA delegation to implement this revised rule on their respective reservations. The EPA also anticipates that the Confederated Tribes and Bands of the Yakama Nation will seek EPA delegation to implement this revised rule on their reservation.

**Section 49.133 – Rule for agricultural burning permits**. This section establishes a permitting program for agricultural burning within an Indian reservation. As with the previous open burning permit rules, the EPA is proposing to expand the applicability of this section to apply to lessees of land on which agricultural burning is conducted to ensure parties that may be responsible for burning decisions on a given property are responsible for complying with the requirements of this section. To ensure consistency with the use of forms under rules of the Office of Management and Budget, the revisions clarify that the application must be submitted on forms approved by EPA. The EPA is clarifying the air quality criteria considered in determining whether a burn permit will be issued consistent with the same criteria in § 49.132 Rule for large open burning permits. Consistent with the other burn permit rules, the revisions provide that an application must be submitted at least 1 day prior to the proposed burns. The EPA is also clarifying that the permit authorizes burning only for the date(s) and time(s) specified in the permit, the procedures for obtaining approval to burn under the permit, and that the permit may include other necessary provisions to ensure compliance with § 49.131 General rule for open burning or the EPA-approved applicable Tribal open burning rule, as well as to protect health and welfare.

This section continues to apply on the Nez Perce Reservation and the Umatilla Indian Reservation. The EPA is also proposing that § 49.133 be newly applied on the Yakama Reservation. The EPA anticipates that the Nez Perce Tribe and the Umatilla Indian Tribe will update their EPA delegations to implement this revised section on their Indian reservations. The EPA also anticipates that the Confederated Tribes and Bands of the Yakama Nation will seek EPA delegation to implement this revised section on their reservation.

**Section 49.134 – Rule for forestry and silvicultural burning permits**. This section establishes a permitting program for forestry and silvicultural burning within an Indian reservation. The EPA is proposing the same revisions to this section as to the Rule for agricultural burn permits (§ 49.133).

This section continues to apply on the Nez Perce Reservation and the Umatilla Indian Reservation. As with the Rule for agricultural burning permits (§ 49.133), the EPA anticipates that these Tribes will update their EPA delegation to implement this revised section on their Indian reservations.

**Section 49.135 – Rule for emissions detrimental to public health or welfare.** This section provides the EPA with the authority to require the installation of air pollution controls or other measures in order to reduce emissions to protect the NAAQS or prevent imminent and substantial endangerment. The section currently allows EPA to require such controls through either a permit to construct or a non-Title V operating permit under § 49.139. Since the FARR was enacted, the EPA has promulgated rules for permits to construct in Indian country (the Federal Minor New Source Review Program in Indian Country at §§ 49.151 through 49.164 and the Federal Major New Source Review Program for Nonattainment Areas in Indian Country at §§ 49.166 through 49.173). Region 10 has determined that it is not appropriate to use permits to construct to implement this section because the Indian Country Minor NSR rules apply only to projects at existing sources that increase emissions and do not include provisions for the permitting authority to require reductions in emissions when there is not a proposed modification to the existing source. Therefore, the EPA is proposing to remove permits to construct as an option for implementing this section. Requirements under this section would be established solely through issuance of a non-Title V operating permit under § 49.139.

This provision currently provides that nothing in the provision shall be construed to impair any cause of action or legal remedy of any person, or the public, for injury or damages arising from the emission of any air pollutant in such place, manner, or amount as to constitute a common law nuisance. The EPA is proposing to revise the reference to “common law nuisance” to “nuisance under any other applicable law” to ensure this provision includes applicable statutory and regulatory nuisance provisions as well as common law nuisance.

**Section 49.138 – Rule for the registration of air pollution sources and reporting of emissions**. Under the current rules, any person who owns or operates a part 71 source, a source subject to a standard under CAA sections 111 or 112, or any other air pollution source not expressly exempted from this section is required to annually register the source with the EPA and report emissions. This section was intended to ensure a current and accurate record of the emissions from non-trivial air pollution sources operating within an Indian reservation is developed and maintained. Subject sources were required to register by February 15, 2007, and “new air pollution sources” must register within 90 days after beginning operation. A “new air pollution source” is currently defined as a source that begins actual construction after the effective date of the original rule (June 7, 2005). Any other source is considered an existing source.

Shortly after the EPA began implementing § 49.138, it became apparent that the rule was unintentionally overbroad. Because § 49.138 is structured such that the 2 ton per year emissions exemption applies only to “any other air pollution source,” the current language could be read to require very small sources subject to CAA section 111 or section 112 standards to register. For example, the current rule language could require wood stoves and small emergency generators subject to New Source Performance Standards under section 111 to register. This section could also be read to require some sources subject to National Emission Standards for Hazardous Air Pollutants under CAA section 112 to register even though they would have no (or trivial) emissions of the air pollutants that are required to be reported under the registration rule.

To address this unintended consequence, Region 10 issued an interpretative guidance document in 2005 to clarify the EPA’s expectation that non-Title V sources that were subject to CAA section 111 or 112 standards were required to register only if they had the potential to emit more than 2 tons per year of any of the listed air pollutants. In this rulemaking, Region 10 is proposing to revise § 49.138 to be consistent with this interpretation. We are proposing to remove the language that required sources subject to CAA section 111 or 112 standards to register regardless of the level of emissions and are proposing to add language that any air pollutant source that has the potential to emit more than 2 tons of the listed air pollutants is required to register unless it is covered by one of the categorical exemptions. Because the 2 ton per year criterion would be an applicability provision, we are proposing to remove that criterion from the list of exemptions.

In addition to this change, we are proposing revisions to the registration rule to be generally consistent with the applicability provisions of the Indian Country Minor NSR Rule (§§ 49.151 to 49.164), which was promulgated after the FARR was promulgated in 2005 and which applies to new and modified minor stationary sources and to minor modifications at existing major stationary sources where the increase in emissions is above specified thresholds. Currently, the FARR registration rule includes sources required to have part 71 operating permits in the list of sources required to register. Since the Indian Country Minor NSR Rule was promulgated after the 2005 promulgation of the FARR, the EPA is proposing to revise the applicability criteria in § 49.138 to include sources required to have a permit under the Indian Country Minor NSR Rule, as well as sources required to have a non-Title V operating permit under § 49.139. These additions will help accomplish the goal of this section (ensuring a current and accurate inventory of emissions from non-trivial air pollution sources) by requiring all sources on Indian reservations that are required to have permits under the Clean Air Act to register under the FARR.

The EPA is also proposing revisions to the list of sources specifically exempt from the registration rule. The registration rule contains a list of source categories that are exempt from registration because emissions from sources in the category are likely to be trivial (e.g., consumer use of office equipment and products) or because a registration program is not appropriate for sources in the category (e.g., mobile sources). When the EPA promulgated the Indian Country Minor NSR Rule, it exempted from the program various emissions units and activities that were based, in part, on the FARR registration exemptions but included some additional categorical exemptions that are not currently in the FARR registration rule. See § 49.153(c). The EPA has considered these additional categories and is proposing to add two of them to the FARR registration rule: 1) emergency generators, designed solely for the purpose of providing electrical power during outages, provided the total maximum manufacturer’s site-rated horsepower of all units is below 1000; and 2) stationary internal combustion engines with a manufacturer’s site rated horsepower of less than 50. Although the potential to emit pollutants of such units would likely be less than the 2 ton per year applicability threshold, adding them to the list of categorically exempted sources reduces the burden of having to do emission calculations to confirm the exemption.

Another area of revisions to this rule relates to the date by which registration is required. As discussed previously in section C, the EPA is proposing to extend the requirements of this section to the Cowlitz Indian Reservation, the Snoqualmie Indian Reservation, and lands held in trust for the Samish Indian Nation and to clarify that this rule also applies to all lands held in trust for a Tribe in Idaho, Oregon, and Washington that have not been formally designated as a reservation. The EPA is therefore revising the registration provision to provide a date by which existing sources in such areas are required to register. Under the proposed revisions, subject sources located on the Tribal lands listed in this section in existence on the effective date of the FARR revisions would be required to register by no later than 6 months after the effective date of FARR revisions. “New air pollution sources” continue to be required to register within 90 days after beginning operation. The EPA has also revised the definition of “new air pollution source” to accommodate the additional Tribal lands proposed for coverage under these FARR revisions. All subject sources continue to be required to re-register each year and provide updates on any changes to the information provided in the previous registration and promptly report any changes in ownership, location, or operation.

The EPA is also proposing to update provisions specifying the information required to be submitted in the initial and annual registration to include more commonly used current technology (e.g., email rather than facsimile, Global Positioning System coordinates rather than latitude and longitude). We are also proposing to require that the copy of the most recent fugitive particulate matter survey and current fugitive particulate matter plan be submitted with the registration to better assure compliance with the requirements of § 49.126 Rule for limiting fugitive particulate matter emissions.

The EPA is also proposing to update the method for submitting the initial and annual registrations. Currently, all registrants can register and report either through a paper application or through the FARR Online Reporting System (FORS). The online database was implemented in 2016 to simplify the registration process from year to year. Through the online database, the EPA is collecting the same information from facilities as it does from paper registrations. The benefits of the online registration include improved recordkeeping by allowing better and faster access to previous registrations, populating each annual registration with existing, basic information about the facility and decreasing the amount of time and resources needed to report emissions after initial registration. In 2016 (the emission reporting year for calendar year 2015), when FORS became the preferred method of registration, 88 facilities out of a total of 154 facilities, or 57%, registered online. In 2020 (the emission reporting year for calendar year 2019), approximately 117 facilities out of 138 facilities, or 85%, chose to register online. As the Federal government moves toward e-government, in an attempt to streamline and simplify current procedures through electronic reporting, Region 10 is proposing to require all registration information and reports be submitted online through FORS within the EPA’s Central Data Exchange (CDX), at https://cdx.epa.gov/. Exceptions will be made if a facility attains prior written approval from Region 10 to submit a paper application.

The EPA is also proposing clarifying revisions to the requirement to report any relocation of the source in subsection (d)(5). As revised, § 49.138 makes clear that report of relocation is required whether the relocation is within, off, or onto an Indian reservation, but that more limited information is required to be reported when the source is moving to a site outside of an Indian reservation in Idaho, Oregon, and Washington. EPA notes that relocation of a source may also trigger preconstruction permitting requirements. In addition, EPA is making a revision to the report of closure to clarify that the report must include the actual emissions through the date of closure.

Finally, for sources subject to part 71, we are eliminating the requirement to submit information already required by part 71 reporting requirements. The EPA is proposing to revise § 49.138 to clarify that the only requirements of this section applicable to part 71 sources are the requirement to submit estimates of total actual emissions from the air pollution source and the requirement to submit a copy of the most recent fugitive particulate matter survey and plan as required under § 49.126. The EPA is also proposing revisions to require that part 71 sources report the specified information by February 15 of each year (the same date as all other sources subject to the registration rule) rather than the date that their part 71 reports are due. Part 71 required reports are now often submitted online through CEDRI within the EPA’s Central Data Exchange (CDX), at https://cdx.epa.gov/. Finally, the EPA is proposing that the owner or operator of a part 71 source submit reports of a change in ownership and closure, as applicable, because this information is not routinely required in a part 71 permit.

**Section 49.139 – Rule for non-Title V operating permits**. This section provides a permitting program to establish Federally-enforceable requirements for air pollution sources on Indian reservations. In this rulemaking, the EPA is proposing to rescind a duplicative provision of this section pertaining to certain owner-requested limits and to add administrative procedures to clarify the process for issuing or revising a permit.

This rule, as currently written, provides for the issuance of a permit containing Federally-enforceable requirements in the following three situations: 1) the owner or operator of any source wishes to obtain a Federally-enforceable limitation on the source’s actual emissions or potential to emit; 2) the Regional Administrator determines that additional Federally-enforceable requirements for a source are necessary to ensure compliance with the applicable implementation plan, which would include any applicable FIP or TIP; or 3) the Regional Administrator determines that additional Federally-enforceable requirements for a source are necessary to ensure the attainment and maintenance of any NAAQS or Prevention of Significant Deterioration (PSD) increment.

On July 1, 2011, the EPA promulgated the Indian Country Minor NSR Rule, which includes provisions for establishing synthetic minor permits in Indian country (§ 49.158). The rule defines “synthetic minor source” as a source that otherwise has the potential to emit regulated NSR pollutants in amounts that are at or above those for major sources in 40 CFR 49.167, 52.21 or 71.2, but that has taken a restriction so that its potential to emit is less than such amounts for major sources. § 49.152(d). In promulgating the Indian Country Minor NSR Rule, the EPA stated that sources seeking synthetic minor status within the exterior boundaries of Indian reservations in Idaho, Oregon, and Washington must apply for synthetic minor source permits under the provisions of that rule and may no longer seek limits to become a “synthetic minor source” under the FARR (76 FR 38748, 38749). To be consistent with the Indian Country Minor NSR Rule, the EPA is proposing to rescind the provisions of § 49.139 that are superseded by § 49.158 of the Indian Country Minor NSR Rule and to add language making clear that applications for owner-requested synthetic minor limits must be submitted under § 49.158 of the Indian Country Minor NSR Rule. For the same reason, we are proposing to delete the provision that authorizes owner-requested limits to be established in permits under 40 CFR part 71 or a Tribal operating permit program approved under 40 CFR part 70. The proposed revisions will now limit the application of § 49.139 to the owner or operator of any air pollution source who wishes to obtain a Federally-enforceable limitation on the source’s emissions that cannot be obtained under the Indian Country Minor NSR Rule (§§ 49.151 through 49.173). Examples of such situations include Federally-enforceable limits to implement netting or offsets because the Indian Country Minor NSR Rule defines “synthetic minor source” as including only those sources that take a limit on potential to emit “so that its potential to emit is less than such amounts for major sources.” § 49.152(d).

The EPA is also proposing to broaden the applicability provisions of § 49.139 to provide Region 10 the authority to require a source to obtain a non-Title V operating permit where the Regional Administrator determines that additional Federally-enforceable requirements are necessary to implement or ensure compliance with any other provisions of the Clean Air Act (e.g., regional haze). The EPA anticipates that such situations are likely to be extremely rare. In the more than 15 years since the FARR has been in effect, the EPA has not found it necessary to require a source to obtain a permit under § 49.139. Having that authority available through a permit issuance process, should the need arise, however, would avoid the far more resource intensive process of promulgating a source-specific FIP to address an air quality issue.

We are also proposing to revise the existing administrative procedures for issuing non-title V operating permits and to add provisions for reopening and revising such permits. The Indian Country Minor NSR rule has detailed procedures for issuing, reopening, and revising Clean Air Act permits on Indian reservations. For administrative efficiency, the EPA is proposing to use generally the same procedures for issuing, reopening, and revising non-title V operating permits. The EPA has also added a proposed definition of “non-title V operating permit,” defined as a permit issued by the Regional Administrator under this section.

**Section 49.141 – Rule for curtailment of residential wood burning devices for specific areas.** The EPA is proposing to require the curtailment of residential wood burning devices (commonly referred to as “burn bans”) during periods of poor air quality in specific geographical areas on certain Indian reservations with demonstrated elevated concentrations of particulate matter. This prohibition would apply to wood stoves and similar wood burning devices as well as to fireplaces. In some areas of Indian reservations in Idaho, Oregon, and Washington, stagnant air and use of wood burning devices, particularly in winter, drive particulate matter concentrations to elevated levels, causing concern for human health. Fine particles can make asthma symptoms worse and trigger asthma attacks. Fine particles can also trigger heart attacks, stroke, irregular heart rhythms and heart failure, especially in people who are already at risk for these conditions. As discussed in section I.B, PM2.5 concentrations that exceed the NAAQS over a 3-year period can result in a “nonattainment” designation under the CAA, which in turn can result in more stringent air pollution reduction measures. A burn ban rule would help areas with elevated PM2.5 levels take proactive steps to avoid a “nonattainment” designation. Many State and local air agencies in the Pacific Northwest have curtailment programs for residential wood heating devices with procedures, conditions, and exemptions similar to those the EPA is proposing.

This proposed curtailment program establishes two burn ban stages. During a Stage 1 ban, only EPA-certified residential wood burning devices are permitted to be used. During a Stage 2 ban, no wood burning devices, even EPA-certified devices, are permitted to be used. A residence that self-certifies that wood is the sole source of heat or that the use of an available alternative heat source would impose an economic hardship would be exempt from both stages of burn bans. This exemption would remain in effect for 5 years from the date of self-certification, unless there is a change to the qualification status of the residence covered by the exemption. A “Self-Certification” exemption form will be available on Region 10’s website and other locations and must be completed and kept on site for any residence relying on this exemption.

The EPA is proposing a phased in approach for implementation and enforcement of this rule. The first year after promulgation, the EPA or delegated Tribe will run a voluntary curtailment program to help familiarize homeowners with the curtailment program. The mandatory curtailment program will begin October 1st of the 2nd calendar following the year of promulgation of this rule for a particular reservation. After the implementation date, EPA and delegated tribes will continue to focus on compliance assistance work. This will be in the form of assistance, outreach, and education, in partnership with affected Tribes regarding the new rules, the process for certifying for exemption status and the adverse health effects of high particulate matter levels.

After coordination and consultation with the affected Tribes, for the reasons explained in section B, the EPA is proposing that § 49.141 apply on the Colville, the Nez Perce and the Yakama Reservations, as shown in Table 2 in Section B of this notice. The EPA anticipates that each of these Tribes will seek EPA delegation to implement this section on their reservations.

**Section 49.142 – Rule for small open burning annual permits.** The EPA is also proposing to establish a permitting program option requiring an annual permit for “small open burning” within an Indian reservation. The proposed revisions define a “small open burn” or “small open burning” as the open burning of a single pile of the specified materials that is 10 feet or less in diameter or 60 feet or less of ditch bank or fence line vegetation. These are the criteria that have been used by the EPA and delegated Tribal authorities that have been implementing the general open burning permit program under the FARR to distinguish between large and small open burns.

This proposed new rule would require the owner or lessee of property on an Indian reservation where this section applies and on which small open burns will be conducted to apply for and obtain an annual permit for open burning. To ensure consistency with the use of forms under rules of the Office of Management and Budget, the proposed rule specifies that the application must be submitted on forms approved by the EPA. The obligations to comply with the permit and other requirements of this section would extend to any owner and lessee of the property and any person conducting a small open burn on the property. The permit would cover all small open burns conducted at a given property for the calendar year in which it is issued, without the need to apply for and obtain a burn permit for each individual small open burn. Should the owner or lessee of the property covered by the annual permit change within the year, a new application and permit would be required.

To conduct a small open burn under this permit on any particular day, persons subject to this section must 1) ensure that the person conducting the burn is familiar with the requirements of the permit; 2) ensure that the permit is available on-site during the open burn; 3) conduct the open burn in accordance with the terms and conditions of the permit; 4) comply with the General rule for open burning (§ 49.131) or the EPA-approved Tribal open burning rules in a TIP; and 5) prior to igniting a burn, check whether burning is allowed for the area on that day and complete the burning within the designated time period. The proposed exemptions are generally the same as for large open burning permits.

To determine if burning is allowed under an annual permit on any given day, the Regional Administrator or delegated Tribal authority will identify and publicize each day as a “burn day” or a “no burn day” and, for a burn day, specify the hours and the geographic area for which burning is allowed. When deciding whether to call a burn day, the Regional Administrator or delegated Tribal authority will take into consideration relevant factors, including but not limited to, the current and projected air quality conditions, the forecasted meteorological conditions, other scheduled burning activities in the surrounding area and other factors indicating whether or not open burning can be conducted without causing or contributing to an exceedance of a national ambient air quality standard. When relevant, the Regional Administrator or delegated Tribal authority will also consider whether open burning can be conducted without causing or contributing to any other adverse impact on air quality.

A permit issued under this section expires at the end of the calendar year unless it is revoked prior to that time based on a written notice to the permit holder finding that the permit must be revoked or revised to ensure compliance with this section, § 49.131 General rule for open burning or the applicable EPA-approved Tribal open burning rule, or to protect the public health and welfare.

This option for a single permit for all small open burns conducted on a specific property within a calendar year greatly reduces the burden on individuals who would otherwise need to apply for a permit multiple times when conducting more than one burn during the calendar year. Permit issuance once per year also reduces the workload for the EPA and delegated Tribal air programs, and in turn allows for burn approvals to be processed more quickly, benefiting all parties involved.

In coordination and consultation with the affected Tribes, the EPA is proposing that § 49.142 apply on the Umatilla Indian Reservation, as shown in Table 2 in Section B of this notice. This is, in essence is a continuation of the burn permit program that the Umatilla Indian Tribe has been implementing on its Reservation under a delegation with the EPA for many years. The EPA is also proposing that § 49.142 apply on the Yakama Reservation, as shown in Table 2. As with the Rule for large open burning permits (§ 49.132), the EPA anticipates that these Tribes will either update their EPA delegation or seek EPA delegation to implement this new section on their reservation.

**Section 49.143 – Permit by rule for small open burning.** The EPA is also proposing another option for small open burns: a permit by rule that would apply within a specific Indian reservation. Like § 49.142 Rule for small open burning annual permits, the obligation to submit an application (referred to in this section as a “request for coverage”) applies to the owner or lessee of the property on which the burning will be conducted, but other compliance obligations extend to any person conducting a small open burn on an Indian Reservation where this section applies, as well as to the owner or lessee of the subject property. The proposed exemptions under both rules are also the same.

In contrast to the Rule for small open burning annual permits (§ 49.142), this section would require the owner or lessee of the property on which small open burning will be conducted to submit a one-time request for approval to burn. This “approval of coverage” under this permit by rule would remain valid for the property until the owner or lessee changes, at which time a new request for approval of coverage would be required. Another key difference from the rule for annual permits for small open burns is that the approval under this permit by rule would be immediately effective, with no explicit approval required by the implementing agency. Note, however, that a request for approval of coverage may be denied if it is not consistent with the requirements of this section, § 49.131 General rule for open burning or the applicable EPA-approved Tribal open burning rule. In addition, prior to conducting a burn on a given day, a person subject to this section must confirm that the day is a “burn day,” as further explained in the following paragraphs.

The owner or lessee of the property on which small open burns will be conducted under this permit by rule must apply for approval of coverage. To conduct a small open burn, persons subject to this section must 1) ensure that the person conducting the burn is familiar with the requirements of the approval of coverage; 2) ensure that the approval of coverage is available on-site during the open burn; 3) conduct the open burn in accordance with the approval of coverage; 4) comply with the General rule for open burning (§ 49.131) or the EPA-approved Tribal open burning rules in a TIP; and 5) prior to igniting a burn, check whether burning is allowed for the area on that day and complete the burning within the designated time period.

As under the Rule for small open burning annual permits (§ 49.142), to determine if burning is allowed on any given day, the Regional Administrator or delegated Tribal authority will identify and publicize each day as a “burn day” or a “no burn day” and for a burn day, specify the hours and the geographic area for which burning is allowed. When deciding whether to call a burn day, the Regional Administrator or delegated Tribal authority will take into consideration relevant factors including, but not limited to, the current and projected air quality conditions, the forecasted meteorological conditions, other scheduled burning activities in the surrounding area and other factors indicating whether or not open burning can be conducted without causing or contributing to an exceedance of a national ambient air quality standard. When relevant, the Regional Administrator or delegated Tribal authority will also consider whether open burning can be conducted without causing any other adverse impact on air quality.

This proposed rule is also expected to reduce the burden on individuals of filling out multiple burn applications when conducting more than one burn during the period of property ownership, as well as the burden on the EPA and the delegated Tribe in implementing the permit program. The reduction in burden would be expected to be even greater than under the Rule for small open burning annual permits (§ 49.142) because the application process is a one-time action and no action by the implementing agency is required to make the approval of coverage under the permit by rule effective as to a specified property.

In coordination and consultation with the affected Tribe, the EPA is proposing that § 49.143 apply on the Nez Perce Reservation, as shown in Table 2 in Section B of this notice. As with the other burn permit rules, the EPA anticipates that the Nez Perce Tribe will update their EPA delegation to implement this burn permit program on its reservation.

**Rules - ICR Not Prepared and Rationale**

**Section 49.125 – Rule for limiting the emissions of particulate matter**.

The purpose of this section is to reduce particulate matter by setting emission limits for certain air pollution sources that operate within an Indian reservation. The EPA is proposing language to clarify that this rule only applies to emissions from a stack as defined in § 49.123. The EPA is also proposing to revise the list of sources specifically exempt from this rule in several respects. As with the limitation on visible emissions discussed in § 49.124, the EPA never intended to regulate residential activities, such as home workshops under this section. We are therefore proposing to add an exemption for activities associated with single-family residences or residential buildings with four or fewer dwelling units. Second, with the clarification that this rule only applies to particulate matter emissions from a stack, the EPA has deleted open burning from the list of exempt sources, because an open burn, by definition, does not have a “stack.” Third, with the clarification that this rule only applies to particulate matter emissions from a stack, the EPA is adding orchard heating devices to the list of exempt sources. Unlike the Rule for Limiting Visible Emissions (§ 49.124), this rule does not exempt agricultural activities. By its terms, this section applies only to stationary sources with stacks. (see § 49.125(d)(1), (2), and (3)). Most agricultural activities, as defined in the FARR, are not subject to the numeric particulate matter emission limits because such activities do not have “stacks” that emit air pollution. However, some orchard heating devices, although within the definition of agricultural activities, do have short “stacks.” The EPA is therefore adding orchard heating devices to the list of exemptions so that orchard heating devices will continue to be exempt from the numeric particulate matter emission limits and other requirements of this section. Given that orchard heating devices are relatively small in comparison to many other stationary sources with stacks, are portable, are used only seasonally, and that conducting source testing using the reference test methods in this section on orchard heating devices could be challenging, the EPA believes that limiting particulate matter emissions from orchard heating devices with a limitation on visible emissions under § 49.124, rather than a limit on particulate matter emissions, is appropriate.

In addition to proposing to add these two exemptions to the applicability of this section, the EPA is updating the reference method for determining compliance to explicitly provide that EPA Methods 1 through 4, as appropriate, must be used to calculate the volumetric flow, oxygen content, and moisture content of the samples in conjunction with EPA Method 5. Although EPA Method 5 specifies when the use of EPA Methods 1 through 4 are required, the EPA is making the reference explicit in this section for ease of use. A complete description of the test methods discussed in this paragraph can be found in appendix A of 40 CFR part 60.

Finally, EPA is proposing to correct an inadvertent error in the particulate matter emission limits that resulted from failure to use the same number of significant figures for the grams per dry standard cubic meter (g/dscm) limits and the grains per dry standard cubic feet (gr/dscf) limits. The g/dscm limits had two significant figures whereas the gr/dscf limits only had only one significant figure, which resulted in the limits being slightly different in stringency. EPA is proposing to correct this error by adding a second significant figure to the gr/dscf limits.

**Rationale for not preparing ICR.** This section does not require any recordkeeping, reporting, or other information collection activities.

**Section 49.128 – Rule for limiting particulate matter emissions from wood products industry sources**.

The purpose of this section is to limit the condensible particulate matter from high temperature processes at wood products facilities that would not be captured by the test method required for demonstrating compliance with the particulate matter emission limits in § 49.125. This section only applies to emission units at wood products facilities that emit at high temperatures. Currently § 49.128 specifies that the reference method for determining compliance with the PM10 limits is EPA Method 202 in conjunction with EPA Method 201A. These methods are found in appendix M of 40 CFR part 51.

The EPA is proposing to update the reference method for determining compliance. The EPA is clarifying that EPA Methods 1 through 2H, as appropriate, must be used to calculate the volumetric flow of the samples in conjunction with EPA Methods 202 and 201A. A complete description of these additional test methods can be found in appendix A of 40 CFR part 60.

This section continues to apply on the Colville Reservation and the Nez Perce Reservation, as shown in Table 2 in Section B of this notice. The EPA is also proposing that § 49.128 be applied on the Coeur D’Alene Reservation because the operations of a wood products facility located on the Coeur D’Alene Reservation may contribute to elevated levels of particulate matter.

**Rationale for not preparing ICR**. This section does not require any recordkeeping, reporting, or other information collection activities.

**Section 49.129 – Rule for limiting emissions of sulfur dioxide**.

This section limits the amount of sulfur dioxide (SO2) that may be emitted from air pollution sources operating within an Indian reservation. The EPA is proposing to clarify that this rule only applies to emissions from a stack.

As under § 49.125 and for the same reasons, we are also proposing to clarify that orchard heating devices are exempt from this section.

The EPA is also proposing to update the reference methods for determining compliance with the SO2 emission limits established in the current rule. The EPA is clarifying that EPA Methods 1 through 4, as appropriate, must be used to calculate the volume, oxygen content and moisture content of the sample in conjunction with EPA Methods 6, 6A, 6B and 6C. A complete description of these additional test methods can be found in appendix A of 40 CFR part 60.

**Rationale for not preparing ICR.** This section does not require any recordkeeping, reporting, or other information collection activities.

**Section 49.137 – Rule for air pollution episodes**. This section establishes procedures for preventing and addressing the excessive buildup of certain NAAQS pollutants within an Indian reservation to prevent the occurrence of an air pollution emergency. It establishes criteria for issuing air stagnation advisories. It also establishes air pollution action levels and the action level triggers (air quality levels) that are used for the declaration of an air pollution alert, air pollution warning, or air pollution emergency. The current air pollution action level triggers are based on 40 CFR part 51, appendix L (Example Regulations for Prevention of Air Pollution Emergency Episodes) and currently do not include action level triggers for PM2.5.

We are proposing to revise the current action level triggers for the three action levels (air pollution alert, air pollution warning, and air pollution emergency) to align with the Air Quality Index (AQI) categories (unhealthy, very unhealthy, and hazardous) and the associated concentration thresholds. The AQI categories and concentration thresholds are found in Table 2 of 40 CFR part 58, appendix G, Uniform Air Quality Index and Daily Reporting. This revision will also add action level triggers for PM2.5. Based on input from Tribes, and after careful consideration, the EPA is proposing this approach for several reasons. First, if the NAAQS and corresponding AQI categories and concentrations are ever revised, the more generalized language would automatically be up to date. Second, the AQI is based on short term concentrations, which are more appropriate for action level triggers. Finally, the action level triggers will now better align with the health messaging associated with the AQI categories and concentrations, which are publicly available and widely used. The EPA is also clarifying that air pollution alerts, air pollution warnings, and air pollution emergencies can be declared under situations other than just periods of stagnant air such as high wind events associated with dust storms and wildfires. Finally, the EPA is proposing revisions to update the description of the methods the EPA will consider in order to announce an air stagnation advisory, an air pollution alert, an air pollution warning, or an air pollution emergency, such as posting the announcement to Region 10’s social media, and to clarify the method for terminating a declaration.

**Rationale for not preparing ICR**. This section does not require any recordkeeping, reporting, or other information collection activities.

**Section 49.140 – Rule for residential wood burning devices.** The EPA is proposing to add a rule regulating the installation of certain residential wood burning devices and limiting what fuels can be burned in such devices in order to control the emissions of particulate matter and other pollutants to the atmosphere. In many areas of the Pacific Northwest, smoke from residential wood burning devices is a significant source of PM2.5 and PM10 emissions. Regulating residential wood burning devices and the burning in such devices therefore helps protect air quality.

The proposed rule would prohibit, after the effective date of the rule, the installation of new and used residential wood heaters, hydronic heaters, forced air furnaces, or central heaters unless they have been certified by the EPA to meet the applicable particulate matter emission standards for woodfired heating devices established in the Standards of Performance for New Residential Wood Heaters (40 CFR part 60, subpart AAA) and the Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces (40 CFR part 60, subpart QQQQ) as amended in 2015 (80 FR 13672, March 16, 2015), or any later promulgation of these standards, and have a permanent label affixed to the device as provided in 40 CFR 60.536 or 40 CFR 60.5478. Certified wood burning devices generate less smoke (fewer particulates) than non-certified wood burning devices and use less wood to create heat, improving air quality in communities where people burn wood for heat. Individuals living on Indian reservations would be able to continue using uncertified and older certified residential wood heaters, hydronic heaters, forced air furnaces, or central heaters as long as the devices were installed prior to the effective date of this new rule. The proposed rule is more protective of air quality and would better reduce particulate matter from residential wood burning devices in comparison to requirements in surrounding jurisdictions that allow installation of any certified residential wood burning device. The EPA is therefore also proposing, in the alternative, a rule more consistent with surrounding jurisdictions and that would prohibit the installation of new and used residential wood heaters, hydronic heaters, forced air furnaces, and central heaters unless they have been certified by the EPA to meet the applicable particulate matter emission standards for woodfired heating devices established in the Standards of Performance for New Residential Wood Heaters (40 CFR part 60, subpart AAA) and Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces (40 CFR part 60, subpart QQQQ), and have a permanent label affixed to the device as provided in 40 CFR 60.536 or 40 CFR 60.5478. In effect, the proposal in the alternative would allow the installation of any new or used residential wood heater, hydronic heater, forced air furnace, or central heater that has been certified by the EPA since subparts AAA and QQQQ were first promulgated.

The EPA is requesting comment specifically on whether the proposed rule or the proposed alternative should be finalized in order to regulate the installation of new and used residential wood heaters, hydronic heaters, forced air furnaces, and central heaters on Indian reservations in Idaho, Oregon, and Washington. In taking final action, EPA will consider the input we receive regarding the benefits of enhanced environmental protection and the benefits of consistency with surrounding jurisdictions.

This proposed rule would also limit materials that can be burned in all existing and newly installed types of residential wood burning devices (including fireplaces) to: 1) seasoned firewood, which is firewood that has a moisture content of 20% or less; 2) kiln dried or air dried lumber that has not been treated, impregnated, painted or coated; 3) products manufactured for the purpose of being used as a fuel for a residential wood burning device, such as wood pellets and biomass fire logs intended for burning in a wood stove or fireplace; and 4) manufactured fire starters and paper sufficient to start a fire.

These new requirements are consistent with the intent of the FARR: to ensure that residents within the boundaries of Indian reservations enjoy air quality protection similar to those existing outside reservations. Over the years, many jurisdictions on State lands outside of Indian reservations have similarly banned the installment of uncertified wood burning devices and limited material that can be burned in residential wood burning devices. This proposed section would therefore help ensure a similar degree of protection from environmental and health hazards on Indian reservations as in neighboring areas.

**Rationale for not preparing ICR**. This section does not require any recordkeeping, reporting, or other information collection activities.

Four of the FIP rules require respondents to develop and maintain records as part of demonstrating compliance with the rule. Under the visible emissions rule (49.124), a boiler that has COMS and utilizes the exception to the 20 percent opacity limit would keep opacity records (although there are believed to be no facilities doing so under this rule). The fugitive PM rule (49.126) requires respondents to annually survey their operations and document the results of the survey. If fugitive emissions are observed, the respondent is required to write a plan specifying the precautions they will take to prevent emission occurrence. The sulfur in fuel rule (49.130) requires respondents to obtain, record, and keep data on sulfur content of fuels used at the facility. Testing, monitoring, and recordkeeping may be required in permits issued under the non-Title V operating permits rule (49.139). In addition, households eligible for an exemption to the rule for curtailment of residential wood burning devices (49.141) need to complete a form confirming their exemption status and have the form available at their residence.

The reporting requirements associated with this ICR are contained in the delegation rule (49.122), general provisions rule (49.123), general open burning rule (49.131), the large open burning permit rule (49.132), the agricultural burning permit rule (49.133), the forestry/silvicultural burning rule (49.134), the registration rule (49.138), the non-Title V operating permits rule (49.139), the rule for small open burning annual permits (49.142), and permit by rule for small open burns (49.143). Section 49.122 requires Tribes to provide information to EPA to obtain partial authority to administer one or more of the Federal requirements included in the FIPs. Section 49.123 includes a provision allowing sources to request alternative means of testing, monitoring, recordkeeping, and reporting, whereby they would need to develop a request and provide information to EPA regarding the rationale for this request. Section 49.131 requires fire protection services to provide information to EPA or a delegated tribe to obtain permission for fire training. Sections 49.132, 49.133, 49.134, 49.142, and 49.143 require information to be submitted to EPA or a delegated tribe to obtain a burn permit. EPA developed forms for these burn permit applications. Section 49.138 requires owners or operators to register their air pollution sources with EPA. The information to be collected includes facility contact information, process data, emissions data, and information on control equipment. The initial registration was due to EPA in February 2007 and must be updated annually. Respondents must also report change of location, change of ownership, or closure of sources. EPA developed guidance and prepared forms for facilities to use in submitting information under the registration rule. Section 49.139 requires respondents that want to request a limit on their actual emissions or potential to emit, to submit an application for a federally-enforceable limit. EPA developed forms for facilities to use in submitting this information. As noted previously, one portion of the § 49.139 rule for an owner-requested limit has been superseded by the Federal NSR Program for Indian Country promulgated in July 2011, which provides a mechanism for the owner or operator of an air pollution source in Indian Country to obtain a limit on its potential to emit in order to become a synthetic minor source. Information to be collected is described in more detail in Section 4(b) below and uses of the information are described under Section 2(b) below.

**1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

These rules for Indian reservations in Idaho, Oregon, and Washington are intended to fill the gap in current regulations until such time as individual Tribes develop and implement approved TIPs. As of July 2021, only one tribe, the Swinomish, has an approved TIP in EPA Region 10. Furthermore, States generally lack the authority to regulate air quality in Indian country. These rules are intended to provide regulatory tools for use by Region 10 in implementing the CAA on Indian reservations to supplement the regulations already established by EPA, such as the PSD, National Emission Standards for Hazardous Air Pollutants (NESHAP), and New Source Performance Standards (NSPS) programs.

In Region 10, EPA is identifying the primary sources of air pollution emissions on Indian reservations and evaluating the CAA statutory authorities for EPA to regulate those sources. Information is needed to assist EPA in determining, in consultation with affected Indian Tribes, the activities and sources of air pollution that threaten air resources.

CAA section 301(a)(1) provides EPA a broad authority to prescribe regulations as necessary to implement the CAA.

CAA section 301(d)(4) has been interpreted by EPA as providing the Administrator discretionary authority for EPA to prepare FIP provisions as are appropriate to protect air quality and to promulgate other CAA programs in Indian reservation areas where a Tribe has not yet been approved for a CAA program.

CAA section 110(a)(2), which establishes requirements for SIPs, requires that an implementation plan provide authority for information collection and establishment of systems, methods, and procedures, among other things. EPA’s position is that it is not bound by the requirements established for States under section 110(a)(2) but will use those requirements to guide EPA in the preparation of Federal plans as may be appropriate to meet the requirements of the Act.

In addition, CAA section 114 authorizes the Administrator to require any owner or operator of an emission source to provide on a one-time, periodic, or continuous basis, information necessary to carry out the provisions of the Act.

EPA’s purpose for requesting this information is to protect the quality of the air resources for the Indian reservations in Idaho, Oregon and Washington, so as to promote the public health and welfare and the productive capacity of the populations therein.

These rules are intended to better enable the Agency to protect human health and welfare on the Indian reservations in the Northwest and to meet its trust responsibility to the Tribes. The FIPs also create opportunities for Tribes to partner with EPA in implementing these rules and enable Tribes to develop their capacity to manage air quality.

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

This information is being used for the following purposes:

* to maintain an accurate inventory of sources and emissions;
* to track emissions trends and changes, and identify potential air quality problems before they arise;
* to issue permits or approvals;
* to manage burning to reduce its effect on people’s health;
* to ensure appropriate records are available to verify compliance with the FIPs;
* to establish enforceable limits on emissions from sources located on Tribal lands that are unambiguous and enforceable as a practical matter;
* to provide credible evidence in compliance certifications and for establishing violations; and
* to enable EPA to require further air emission reductions if necessary to attain or maintain the NAAQS and to protect air quality from potential significant deterioration in a particular area.

The primary user of the information is EPA. Emissions and source data that are the subject of this request will be used by EPA Region 10 in carrying out its responsibility to directly implement the CAA throughout Indian reservations, including regulatory functions and program support. Activities such as source inspections, analysis of new or modified sources, and development and enforcement of limits on source emissions enable Region 10 to protect the air quality and human health on the Indian reservations of Idaho, Oregon, and Washington. The information will also enable EPA to provide accurate information to affected Indian Tribes about air quality matters on their reservations and facilitate EPA’s ability to consult with Tribes about actions EPA is planning or undertaking.

Collection of emissions and source data supports EPA’s activities. Information collected supports EPA in responding to requests from the public regarding air pollution emissions and sources under the Freedom of Information Act (FOIA).

EPA anticipates that these regulations as revised can serve as models for Tribes as they develop their own air quality programs and to support development of TIPs. In addition, the rules provide air pollution sources on-reservation with air quality control requirements and regulatory alternatives similar to those available to sources located off‑reservation.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

Currently, all facilities subject to registration requirements (under 49.138) can register and report information either through a paper application or through the FARR Online Reporting System (FORS). The FORS online database was implemented in 2016 to simplify the reporting process. The benefits of FORS include improved recordkeeping by allowing better and faster access to previous registrations, automated populating of each annual registration with existing, basic information about the facility, and decreasing the amount of time and resources necessary to report emissions in subsequent years following initial registration. In 2016, when FORS was introduced, 57% of facilities registered online. By 2020, 85% of facilities chose to register online, suggesting that facilities are experiencing benefits from utilizing the online system.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

Several sources of information have been reviewed to determine whether the information requested has already been gathered. Region 10 developed a data base of air pollution emission sources for Indian reservations. This effort included several visits to reservations in Region 10, reviews of State permit files, and discussions with Tribal representatives. EPA also maintains the National Emission Inventory data base which contains data on emission sources throughout the country. In addition, the Tribal Minor New Source Review rule required one-time registration of sources with emissions exceeding the minor NSR thresholds but below the major NSR thresholds and that are located on Reservations. None of the sources reviewed contain information with the level of detail requested in the FIP rules. For example, § 49.138 requests process information, facility plot plans, emissions data, facility contacts, control equipment information, locational information, industry classification, and the most recent fugitive PM survey/plan. This information is needed by EPA for the purposes described in Item 2 above.

**5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

EPA has critically reviewed the recordkeeping and reporting requirements associated with each rule and has reduced the information collection to data that are essential to both the respondent and EPA to ensure compliance with the requirements of each rule. In spite of efforts to minimize burden, potential impacts of the rules vary among small and large entities. Region 10 will focus on outreach and compliance assistance initially during rule implementation for the new or revised rules and use the Region’s toll-free phone number to make staff available to small entities to answer questions and provide assistance with rule interpretation, compliance, and information collection. Region 10 will also develop letters to potentially regulated sources, fact sheets, brochures, newsletters, guidance documents, and a website to help sources comply with the rules. EPA also continues to be available for one-on-one assistance by phone.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

One of the reporting requirements under this ICR is associated with § 49.138 Registration of Air Pollution Sources. This rule required an initial registration by February 2007 and annual re-registrations. Collection of emissions data at a frequency of less than 1 year would not allow EPA to conduct analyses in support of programs such as those mentioned under Item 2 above. The other reporting requirements are related to submitting information to obtain a permit or for Tribes to obtain the authority to administer one or more of the provisions of a FIP. This information is needed to issue each permit or to establish each delegation agreement in a timely manner. For small open burning permits, EPA did add two new rules that reduce the burden on landowners. The small open burning rule (49.142) replaces the need for permits for each open burn with annual permits for the Umatilla and Yakama Reservations. The permit by rule for small open burns (49.143) to be implemented on the Nez Perce Reservation allows for obtaining small open burning permits that apply to a property indefinitely until the owner changes. These rule changes will reduce the burden on landowners conducting small open burns on Reservations where these additional rules are implemented relative to the original FARR.

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

* **requiring respondents to report information to the agency more often than quarterly;**
* **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
* **requiring respondents to submit more than an original and two copies of any document;**
* **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
* **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
* **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
* **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
* **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

This ICR does not violate any of OMB’s guidelines for information collection. If respondents submit confidential business information, EPA handles this information in accordance with 40 CFR part 2 subpart B.

This ICR requires respondents to retain records for 5 years consistent with permitting requirements under 40 CFR 71.6(a)(3)(ii)(B) and 40 CFR 49.155(a)(4)(ii), which applies to a portion of the regulated sources under the FARR.

**8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

**Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

For any existing rule, section 3507(g) of the Paperwork Reduction Act limits how long a Director may take to approve a collection of information to 3 years. The ICR for the FIP rules was last updated in January 2021, and was submitted to OMB for review and approval, and published in the Federal Register on 8/13/2021 (86 FR 44708).

In November 2020, EPA contacted eight respondents to discuss the burden of the proposed information collection.These consultations were focused on collecting information about the burden associated with responding to the requirements of the original 2005 FARR rather than the latest version of the revised FARR. However, EPA feels that the information gathered remains relevant for estimating response burden. Most rules discussed during consultations have not undergone substantive changes since this information was collected and the estimated burdens are also useful for estimating burden for similar new permitting rules that have been added (49.142, 49.143).A list of the people we contacted and a summary of the consultations are below.

1. Sr. EHS Manager, Pace International
2. Environmental Specialist, CRH Americas Materials, Inc.
3. Farmer / agricultural burning
4. Wittman Farms / open burning
5. Environmental Manager, Stimson Lumber
6. Silgan Containers
7. Environmental Specialist, Williams (Pocatello Compressor Station)
8. Fire Marshall, Confederated Tribes of the Colville Reservation

**Section 49.122, Delegation.** In a previous survey**,** one Tribal staff person from the Coeur d’Alene Reservation estimated that it took 160 to 180 hours to apply for partial delegation of the FIPs. EPA anticipates future delegations will be more in line with this estimate rather than the previous larger estimate used in the original FARR. Thus, we adjusted the labor estimate for an average application for partial delegation under this rule downward to 180 hours based on this estimate. Like the Coeur d’Alene delegation, it is expected that new delegations will not include delegation of the burn permit rules since those rules only apply on the Nez Perce and Umatilla Reservations, which already have delegation.

**Section 49.124. Rule for limiting visible emissions**. None of the respondents have installed or operate COMS for the sole purpose of monitoring compliance with this rule.

**Section 49.126. Rule for limiting fugitive particulate matter emissions.** One 2013 and four 2010 respondent estimates to perform an initial survey and develop a fugitive emissions control plan ranged from 7 to 37 hours and estimates for conducting annual surveys and plan updates ranged from 0 to 16 hours. Four 2020 respondent estimates for conducting annual surveys and plan updates included two estimates of negligible cost, 6 hours, and 25 hours. Some of the respondent input was provided in monetary form and was converted into the number of hours.

**Section 49.130. Rule for limiting sulfur in fuels.** Three 2013 and two 2010 respondent estimates to collect and maintain fuel sulfur records ranged from 3 to 35 hours. Three 2020 respondent estimates ranged from negligible cost to 6 hours. We do not think the estimate of 35 hours represents the average source. Based on an increased knowledge of the source universe, and the more recent respondent estimations, we decreased the estimated number of hours per respondent.

**Section 49.132. Rule for large open burning permits.** In 2010, one respondent estimated that it took less than 20 minutes to complete and submit a permit. The respondent indicated that the required phone calls took less than 2 minutes per call. In 2020, one respondent estimated that it took 30 minutes to 1 hour to complete and submit a burn permit form. We used this information in our burden estimate.

**Section 49.133. Rule for agricultural burning permits.** In 2013, one respondent estimated that it took between 15 to 30 minutes to complete and submit a permit. The respondent indicated that the required phone calls took 2 minutes to complete. In 2020, one respondent estimated that it took about 5-8 minutes to complete and submit a permit and about 5 minutes to complete the required phone call. We estimate that an average of 2.5 burns are included on an agricultural burn permit, based on historical information provided by Nez Perce Tribal air staff. We used this information in our burden estimate.

**Section 49.134. Rule for forestry and silvicultural burning permits.** In 2013 one respondent estimated that it took 5 minutes to complete and submit a permit. The respondent indicated that the required phone calls took 5 minutes to complete. We used this information in our burden estimate. We received no new information in 2020.

**Section 49.138. Rule for the registration of air pollution sources and reporting of emissions.** Three 2013 and five 2010 respondent estimates ranged from 2.5 hours to 40 hours for annual registration. Four 2020 respondent estimates ranged from 6 hours to 40 hours for annual registration. We increased the number of recurring hours for simple sources based on the input from consultations. In a previous ICR renewal, we increased the number of recurring hours for moderately complex and Title V sources based on the input from consultations. This is lower than the average of the consultation input, but we think it is representative for the average source.

**Section 49.139. Rule for non-Title V operating permits.** Based on two respondents’ estimates of 92 and 300 hours to apply for a non-Title V permit, in 2013 we decreased the estimated number of hours for a new source permit application from 350 to 250 hours. Three 2010 respondents estimated 7, 0, and 500 hours for recordkeeping and reporting burden. In the 2010 ICR renewal, we increased the recurring labor hours based on this input. We do not believe the estimate of 500 hours is representative of the average source. In the 2020 ICR renewal, two respondents estimated 305 and 795 hours, respectively, to complete a non-title V permit revision. Some of the respondent input was provided in monetary form and was converted into the number of hours. EPA does not believe these estimates are representative of the average source. Based on knowledge of the source universe, and these estimations, EPA incorporated an estimated additional 100 hours per permit revision into the burden associated with this rule.

**General.** None of the respondents have installed or operate COMS or Continuous Emissions Monitoring Systems (CEMS) solely for the purpose of monitoring compliance with this rule, and all of the respondents indicated that they did not perform compliance tests solely for the purpose of compliance with this rule.

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

There were no payments or gifts provided to respondents under this information collection.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If the collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.**

Any information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to EPA’s policies set forth in Title 40, Chapter 1, Part 2, Subpart B--Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979). Furthermore, the type of information that is being collected by EPA is not expected to be considered confidential in most cases.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

This information collection does not ask any questions concerning sexual behavior or attitudes, religious beliefs, or other matters usually considered private.

**12. Provide estimates of the hour burden of the collection of information. The statement should:**

* **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
* **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
* **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included under ‘Annual Cost to Federal Government’.**

Entities potentially affected by this action include owners and operators of emission sources in all industry groups and tribal, federal, and local governments, located in the identified Indian reservations. Categories of entities potentially affected by this proposed information collection are summarized in Table 1 by the most recent (2017) North American Industry Classification System (NAICS) codes.

**Table 1. 2017 NAICS Codes for Entities Potentially Affected by this Information Collection**

|  |  |  |
| --- | --- | --- |
| Category | NAICS | Regulated entities |
| Industry | 11211 | Beef Cattle Ranching and Farming |
|  | 212313 | Crushed and Broken Granite Mining and Quarrying |
|  | 212319 | Other Crushed and Broken Stone Mining and Quarrying |
|  | 212321 | Construction Sand and Gravel Mining |
|  | 221210 | Natural Gas Distribution |
|  | 31142 | Fruit and Vegetable Canning, Pickling, and Drying |
|  | 311421 | Fruit and Vegetable Canning |
|  | 311710 | Seafood Product Preparation and Packaging |
|  | 311942 | Spice and Extract Manufacturing |
|  | 321113 | Sawmills |
|  | 321212 | Softwood Veneer and Plywood Manufacturing |
|  | 321219 | Reconstituted Wood Product Manufacturing |
|  | 321999 | All Other Miscellaneous Wood Product Manufacturing |
|  | 324121 | Asphalt Paving Mixture and Block Manufacturing |
|  | 325199 | All Other Basic Organic Chemical Manufacturing |
|  | 325320 | Pesticide and Other Agricultural Chemical Manufacturing |
|  | 326199 | All Other Plastics Product Manufacturing |
|  | 327320 | Ready-Mix Concrete Manufacturing |
|  | 332117 | Powder Metallurgy Part Manufacturing |
|  | 332431 | Metal Can Manufacturing |
|  | 332813 | Electroplating, Plating, Polishing, Anodizing, and Coloring |
|  | 332999 | All Other Miscellaneous Fabricated Metal Product Manufacturing |
|  | 337110 | Wood Kitchen Cabinet and Countertop Manufacturing |
|  | 424510 | Grain and Field Bean Merchant Wholesalers |
|  | 424710 | Petroleum Bulk Stations and Terminals |
|  | 447190 | Other Gasoline Stations |
|  | 454310 | Fuel Dealers |
|  | 486210 | Pipeline Transportation of Natural Gas |
|  | 488190 | Other Support Activities for Air Transportation |
|  | 721120 | Casino Hotels |
|  | 811121 | Automotive Body, Paint, and Interior Repair and Maintenance |
|  | 811191 | Automotive Oil Change and Lubrication Shops |
|  | 81121 | Electronic and Precision Equipment Repair and Maintenance |
| Federal government………… | 924110 | Administration of Air and Water Resources and Solid Waste Management Programs. |
| State/local/tribal  government | 924110 | Administration of Air and Water Resources and Solid Waste Management Programs |

**Data Items**

For each FIP rule for which there are reporting and/or recordkeeping requirements, the information to be collected and the estimated burden and cost associated with information collection is described below. Reporting and recordkeeping items are listed for each rule in Table 2.

**Table 2**

**Summary of Information Requested**

|  |  |  |
| --- | --- | --- |
| **FIP Rule**  **(40CFR Section)** | **Information Requested** | |
| **Reporting Items** | **Recordkeeping Items** |
| 49.122 Delegation | Tribes must submit a delegation request to EPA with required information to obtain authority to administer one or more provisions of the FIPs. | No recordkeeping items. |
| 49.123 General provisions | Sources that wish to request alternative means of compliance with testing, recordkeeping, or reporting requirements under the FARR must submit a request to EPA explaining the proposed alternative and rationale. | No recordkeeping items. |
| 49.124 Visible emissions | Owners of orchard heating devices requesting a 2-year extension to the 3-year timeframe for complying with the visible emissions limit need to apply to EPA for an extension, providing an explanation demonstrating that they are unable to identify a reasonably available alternative. | If a source has COMS and utilizes the exception to the 20% opacity limit, the source will keep opacity records. |
| 49.126 Fugitive particulate matter | No reporting items. | Affected facilities will annually survey the air pollution source, document the results of the survey, prepare a fugitive PM control plan, and update it on an annual basis. Construction and demolition contractors will prepare a fugitive PM control plan for each project. |
| 49.127 Woodwaste burners | The compliance dates for the reporting items are past. The proposed revisions clarify that this rule applies to Colville and Nez Perce trust lands. However, we are not aware of any woodwaste burners on these lands. | No recordkeeping items. |
| 49.130 Sulfur content of fuels | No reporting items. | Each respondent must maintain records of fuel purchases and the sulfur content of fuels used at the facility. |
| 49.131 Open burning | Local FPS must contact the Regional Administrator or a delegated tribe and provide information to obtain permission for open burning associated with fire training. Also need to include fireworks disposal fires, | No recordkeeping items. |
| 49.132 Large open burning permits | Respondent must contact the Regional Administrator or a delegated tribe and provide required information to obtain a large open burn permit. | No recordkeeping items. |
| 49.133 Agricultural burning permits | Respondent must contact the Regional Administrator or a delegated tribe and provide required information to obtain an agricultural burn permit. | No recordkeeping items. |
| 49.134 Forestry and silvicultural burning permits | Respondent must contact the Regional Administrator or a delegated tribe and provide required information to obtain a forestry/silvicultural burn permit. | No recordkeeping items. |
| 49.135 Emissions detrimental to public health or welfare | If required to get a permit under § 49.139, respondents must submit the information described under § 49.139. | If required to get a permit under § 49.139, respondents must keep records as described under § 49.139. |
| 49.138 Registration | Respondents must register and annually re-register air pollution sources via FORS within EPA’s CDX, at https://cdx.epa.gov/. Respondents must report change of location, change of ownership, or closure of sources. Include submittal of fugitive emissions survey and control plan. | No recordkeeping items other than those needed to support the reporting requirements of the rule. |
| 49.139 Non-Title V operating permits | Respondents, if they want to establish limits on their actual emissions or potential to emit, must submit an application for Federally-enforceable emission limits.1 If required by EPA, respondents must submit information necessary for EPA to establish the limit and issue the permit. Reporting to ensure compliance with the established limit may be required by the permit. | Testing, monitoring, and recordkeeping to ensure compliance with the established limit may be required by the permit. |
| 49.141 Rule for curtailment of residential wood burning devices for specific areas | No reporting items. | Any person whose residence qualifies for and is relying on an exemption to this rule must complete and sign an exemption form before using the wood burning device during a burn ban. |
| 49.142 Rule for small open burning annual permits | Respondent must contact the Regional Administrator or a delegated tribe and provide required information to obtain a burn permit for small open burning that the applicant expects to conduct during the calendar year. | No recordkeeping items. |
| 49.143 Permit by rule for small open burns | Respondent must contact the Regional Administrator or a delegated tribe and provide required information to obtain coverage under the permit by rule for small open burning to be conducted on the property. | No recordkeeping items. |

1 Superseded by the July 2011 Federal NSR Program for Indian Country, which provides a mechanism for the owner or operator of an air pollution source in Indian Country to obtain a synthetic minor permit.

**Section 49.122 - Partial delegation of administrative authority to a Tribe**. There are no recordkeeping requirements for § 49.122. Tribes that want the authority to administer one or more of the Federal requirements in a FIP must submit a request to EPA that identifies the specific provisions for which delegation is requested; identifies the Indian reservation for which delegation is requested; includes a statement by the Tribe’s legal counsel that the applicant is an Indian Tribe recognized by the Secretary of the Interior, a descriptive statement demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area and that it meets the requirements of 40 CFR 49.7(a)(2), and a description of the laws of the Indian Tribe that provide adequate authority to carry out the aspects of the provisions for which delegation is requested; and demonstrates that the Tribe has, or will have, the technical capability and adequate resources to carry out the aspects of the provisions for which delegation is requested. The delegation agreement sets forth the terms and conditions of the delegation, specifies the provisions that the Tribe will be authorized to administer, and is entered into by the Regional Administrator and the Tribe.

EPA expects there will typically be no more than one Tribe a year that requests delegation of these rules based on past experience, though the proposed revisions to the FARR will result in one-time costs associated with a new partial delegation agreement for the Yakama Reservation and revisions to the existing partial delegation agreements for three Reservations (Colville, Nez Perce, and Umatilla) due to changes in the additional rules that will apply on those reservations. As of July 2021, five Tribes have received delegation since the rule was finalized in 2005. Based on the experience with the five delegation agreements and consultations, we expect future delegations to require an average of 180 hours per delegation for new delegation agreements. We expect future delegations to require less time than the initial Tribes because they can use the existing requests and agreements as models. Additionally, the previous estimates were based on delegation for the burn permit rules, which are some of the most resource-intensive rules to administer. The burn permit rules currently only apply on two reservations (Nez Perce and Umatilla) and will be added on a third (Yakama), so Tribes other than those three will not be requesting delegation for the burn permit rules. Nez Perce and Umatilla already have delegation but will need to revise their delegation agreements due to the FARR revisions. These revisions are estimated to require 90 hours per delegation. Yakama will be implementing a new partial delegation, including multiple burn permit rules, which was estimated to require 360 hours. In addition, the Colville Reservation will need to revise their partial delegation agreement for other rules, which was also estimated to require 90 hours.

**Section 49.123 – General provisions**. There are no recordkeeping requirements for this section. Sources that would like to request alternative means of testing, recordkeeping, or reporting for rules under the FARR must provide a written request to EPA describing the requested alternative and rationale for EPA consideration.

There are no requirements for recordkeeping or reporting under this section. However, the proposed FARR revisions will add a provision allowing sources to request a modification to the testing, recordkeeping, and/or reporting requirements under the FARR. Sources that wish to make such a request will need to prepare a submission describing the requested alternative and providing a rationale. EPA has estimated that there will be an average of 1 request per year and that respondents will spend an average of 10 hours preparing these requests.

**Section 49.124 – Rule for limiting visible emissions**. There are no reporting requirements. The rule allows boilers with COMS to exceed the opacity limit during start-up, soot blowing, and grate cleaning for a single period of up to 15 consecutive minutes in any 8 consecutive hours. Facilities using this exception to the opacity standard must keep COMS records. For owners of orchard heating devices requesting a 2-year extension to the 3-year timeframe for complying with the visible emissions limit, they would need to apply to EPA for an extension, providing an explanation as to why they are unable to identify a reasonably available alternative.

EPA is not aware of any boilers that have installed COMS, and we do not expect any boilers to install COMS for the purpose of this rule; therefore, our burden estimate for reporting and recordkeeping for this rule is limited to owners of orchard heating devices requesting an extension. Orchards currently using orchard heaters that would exceed the visible emissions limit will incur costs associated with changing from their current orchard heating devices to cleaner alternatives, but there are no recordkeeping or reporting requirements associated with making this change. These sources would not be required to meet the standards until three years after the promulgation of the rule. In future years, it is assumed that orchards would need to switch their frost prevention to alternative technologies. This change would result in capital costs associated with the purchase of wind machines, propane heaters, or other means of frost prevention, but would result in large net savings in fuel and labor costs such that the overall costs would fall substantially for a typical orchard. Owners of orchard heating devices that cannot comply with the opacity limit and that feel alternative frost prevention devices that are capable of complying with the limit are not reasonable available may apply to the Regional Administrator for an extension of the three-year deadline. If the Regional Administrator finds that there are no reasonable available complying alternatives, then a two-year extension of the deadline may be granted. There is no limit to the number of extensions that may be granted by the Regional Administrator. EPA estimated that 5 sources will submit requests for a two-year extension prior to the end of the three-year timeline for compliance, requiring 1 hour per request.

**Section 49.126 – Rule for limiting fugitive particulate matter emissions**. There are no reporting requirements under this rule, though the proposed FARR revisions incorporate a requirement for inclusion of the fugitive PM control plan as part of the annual submission under the registration rule (49.138). The recordkeeping requirements involve documenting surveys and preparation of a fugitive PM control plan. Industrial sources will perform annual surveys of the air pollution source, document the results of the survey (including the date and time of the survey and identification of any sources of fugitive emissions found), prepare and update (as needed) a fugitive PM control plan. New sources are required to perform a survey and develop a fugitive PM control plan within 30 days after commencing operation. Each source must maintain records for 5 years that document the surveys and the reasonable precautions that were taken to prevent fugitive PM emissions. For construction and demolition contractors, a control plan needs to be prepared for each project.

There are industrial sources and construction and demolition contractors operating on Tribal lands affected by the rule. We estimate that this rule applies to a total of 56 industrial sources based on an evaluation of the number and types of sources in our inventory. Existing sources are required to do an annual survey and update their fugitive PM control plans as necessary. Affected industrial sources were divided into two tiers based on the likely number of fugitive PM sources – simple (one source or multiple common sources) and moderately complex (multiple different sources). Based on our inventory and knowledge of these sources, we estimate that 43 sources are simple, and 13 sources are moderately complex. Based on consultation input, we have kept the simple sources estimate at 2 hours to complete the annual survey, and we have increased the moderately complex source estimate to 10 hours to complete the annual survey and update their fugitive PM control plan.

We estimate that one newly constructed/modified source would need to comply with this rule each year. This source would have to comply with the initial requirements of reading the rule, doing the initial survey, developing a fugitive PM control plan, and submitting the initial survey and PM control plan to EPA with the initial registration, which we estimate to take 6 hours (assuming the newly constructed/modified sources is a simple source).

In addition to affected industrial sources, construction and demolition contractors are required to prepare a fugitive PM control plan for each project before they begin construction (6 hours each). Based on EPA experience, we estimate 41 projects per year will be subject to this rule.

**Section 49.127 – Rule for woodwaste burners**. There are no recordkeeping requirements. The rule required owners or operators of woodwaste burners to submit a plan to shut down and dismantle the woodwaste burner to EPA by December 5, 2005. The woodwaste burners were required to be shut down and dismantled no later than June 7, 2007, and the sources were required to notify EPA that the woodwaste burner was shut down and dismantled. All of these dates are past. For any sources on Colville or Nez Perce trust lands, the rule will be effective on the date of this rulemaking and, as such, any woodwaste burners that are located on such lands will be required to dismantle within 2 years from the effective date of this rulemaking. However, we are not aware of any woodwaste burners on these lands. Thus, we estimate there is no burden associated with this section.

**Section 49.130 – Rule for limiting sulfur in fuels**. There are no reporting requirements. The recordkeeping requirements are to document the sulfur content of fuels used at the facility. If it is not currently being documented, the sulfur content data can be requested from the fuel distributor. Records of fuel purchases and fuel sulfur content must be kept for 5 years from date of purchase.

We estimate that this rule applies to 139 sources based on the industrial sources that have registered under § 49.138 and estimate that there will be two new sources per year based on past experience. Each of these sources must maintain records of the sulfur content of fuels used at the facility. Based on respondent input, we estimate that these activities will take 6 hours per source annually. Newly constructed sources would have to read the rule and begin maintaining records, which we estimate to take 10 hours. If fuel suppliers are unable to provide documentation verifying the fuel sulfur content, then respondents will need to sample and test the fuel to ensure it meets the fuel sulfur content requirements. However, to EPA's knowledge, fuel sulfur content data are readily available from all distributors. EPA is not aware of any source that has had to sample their fuel. Thus, we assume that no sources will need to perform tests of fuel sulfur content to verify compliance. A coal- and solid fuel-fired source may apply to the Regional Administrator for a waiver of the recordkeeping provisions of this rule or for approval of an alternative fuel sampling program. However, it is assumed that these requests will be uncommon. As of December 2020, no sources have applied for the waiver.

**Section 49.131 – General rule for open burning**. There are no recordkeeping requirements for rule 49.131. Local Fire Protection Services (FPS) are required to contact and provide information to the Regional Administrator to gain permission for open outdoor fires associated with fire training. In addition, Tribes are required to request permission for outdoor fires used for the disposal of fireworks by Tribal governments. The information needed by the Regional Administrator or delegated tribal authority for both activities includes location, date and time of activity, a description of the activity (e.g., what will be burned), and safety precautions.

In the 2015 ICR renewal, we decreased the number of requests for permission to perform open burning for firefighting training to 3 per year. For each request, we estimate the process takes 3 hours for contacting the Regional Administrator and gathering information to support the request. People may also request permission from the Regional Administrator to conduct an open burn to dispose of fireworks and associated packaging materials. As of July 2021, EPA has not received such a request and expects these requests will be rare.

**Section 49.132 – Rule for large open burning permits**. There are no recordkeeping requirements for rule 49.132. Respondents are required to contact and provide information to the Regional Administrator or delegated tribal authority to obtain a large open burning permit. The information needed by the Regional Administrator or delegated authority includes location, date and time of activity, and a description of the activity including materials to be burned and safety precautions. The proposed revisions add a requirement that applications for large open burns include a description of the burning method or methods to be used, the amount of material to be burned with each method, and the means of ignition.

Respondents include anyone who wishes to conduct an open burn on the Nez Perce, Umatilla, or Yakama Reservations. Region 10 estimates that a total of 59 open burning permits will be requested per year on the Nez Perce, Umatilla, and Yakama Reservations based on historical information and prior ICR estimates. Labor costs are estimated for each respondent to submit the required information to obtain a burn permit (30 minutes per permit).

**Section 49.133 – Rule for agricultural burning permits**. There are no recordkeeping requirements for rule 49.133. Respondents are required to contact and provide information to the Regional Administrator to obtain an agricultural burn permit. The information needed by the Regional Administrator or delegated authority includes location, date and time of activity, and a description of the activity including materials and quantity to be burned, burning method(s), and safety precautions.

Respondents include anyone who wishes to conduct an agricultural burn on the Nez Perce, Umatilla or Yakama Reservations. Region 10 estimates that a total of 295 agricultural burning permits will be requested per year on the Nez Perce, Umatilla, and Yakama Reservations based on historical information and prior ICR estimates. Labor costs are estimated for each respondent to submit the required information and make necessary calls to obtain a burn permit (27 minutes per permit).

**Section 49.134 – Rule for forestry and silvicultural burning permits**. There are no recordkeeping requirements for rule 49.134. Respondents are required to contact and provide information to the Regional Administrator to obtain a forestry burn permit. The information needed by the Regional Administrator or delegated authority includes location, date and time of activity, and a description of the activity including materials and quantity to be burned, burning method(s), and safety precautions.

Respondents include any owner of forested land who wishes to conduct a forestry or silvicultural burn on the Nez Perce or Umatilla Reservations. Region 10 estimates that a total of 20 forestry/silvicultural burning permits will be requested per year between the Nez Perce and Umatilla Reservations based on historical information and prior ICR estimates. Labor costs are estimated for each respondent to submit the required information and make necessary calls to obtain a burn permit (36 minutes per permit).

**Section 49.135 – Rule for emissions detrimental to public health or welfare.** This section is implemented through other parts of the rule, primarily by issuing an EPA-required permit under § 49.139. There are no recordkeeping or reporting items required directly by this section, however, if a permit is required through § 49.139, there may be reporting and recordkeeping associated with the permit.

Section 49.135 could potentially be applied to any facility, although, based on Region 10’s experience with air pollution issues on reservations, we believe it is unlikely that the Region would need to apply the rule to more than one facility in any given year (as of July 2021, EPA has never utilized this rule). If EPA does determine that additional controls are needed under this rule, the controls would be implemented through other parts of the FIPs - by issuing an EPA-required permit under § 49.139. Thus, the estimated burden for § 49.135 is covered under the estimated burden for § 49.139.

**Section 49.138 – Rule for the registration of air pollution sources and reporting of emissions**. Reporting requirements: Owners or operators of sources subject to the rule were required to register their air pollution sources by February 2007 with the Regional Administrator. Annual re-registration is required by February 15 of each year to update the registration for any changes from the previous year. If no changes have occurred, the owner or operator may reaffirm to the Regional Administrator the correctness and status of previous information via the FARR Online Reporting System (FORS) within EPA’s Central Data Exchange (CDX), at <https://cdx.epa.gov/>. The owner or operator of an air pollution source must report relocation of the source to the Regional Administrator in writing at least 30 days prior to the relocation of the source within an Indian reservation, or when relocating off of or on to an Indian reservation. The owner or operator must also report change of ownership of the source to the Regional Administrator in writing within 90 days after the change in ownership is effective. In addition, except for regular seasonal closures, the owner or operator is required to report the closure of the source within 90 days of the cessation of operations.

Data items needed in the initial registration and annual re-registration are:

* name of the air pollution source and nature of the business;
* street address, email address, and telephone number of the air pollution source;
* name, mailing address, email address, and telephone number of the owner;
* name, mailing address, email address, and telephone number of the operator, if different from the owner;
* name, mailing address, email address, and telephone number of the local individual responsible for compliance with this section;
* name, mailing address, and email address of the individual authorized to receive requests for data and information;
* a description of the production processes, air pollution control equipment, and a related flow chart;
* identification of emission units and air pollutant-generating activities;
* a plot plan showing the location of all emission units and air pollutant-generating activities. The plot plan must also show the property lines of the air pollution source, the height above grade of each emission release point, and the distance and direction to the nearest residential or commercial property;
* type and quantity of fuels, including the sulfur content of fuels, used on a daily, annual, and maximum hourly basis;
* type and quantity of raw materials used or final product produced on a daily, annual, and maximum hourly basis;
* typical operating schedule, including number of hours per day, number of days per week, and number of weeks per year;
* estimates (including all calculations for the estimates) of total actual emissions from the air pollution source for the following air pollutants: PM, PM10, PM2.5, sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), volatile organic compounds (VOC), lead (Pb) and lead compounds, ammonia (NH3), fluorides (gaseous and particulate), sulfuric acid mist (H2SO4), hydrogen sulfide (H2S), total reduced sulfur (TRS), and reduced sulfur compounds;
* estimated efficiency of air pollution control equipment under present or anticipated operating conditions;
* Global Positioning System (GPS) coordinates taken at the front entrance of the registered facility;
* the North American Industry Classification System (NAICS) code for the registered facility;
* a copy of the most recent fugitive particulate matter survey and current fugitive particulate matter plan as required under Section 49.126;
* any other information specifically requested by the Regional Administrator; and
* certification by the owner or operator as to the truth, accuracy, and completeness of the information.

There are no recordkeeping requirements other than those needed to support the reporting requirements shown above.

Existing sources affected by this rule must annually re-register each year. As of January 2020, 118 sources have registered. Based on an updated assessment of the existing sources that have or will register in 2021, EPA estimates that there are currently 126 existing sources subject to this rule. In addition, EPA estimates that 4 newly constructed sources per year and 30 newly subject sources located on trust lands would need to comply with this rule each year. Based on EPA knowledge of the sources, the sources were divided into two tiers for this rule: a simple facility tier (e.g., facilities with one source); and a moderately complex tier (multiple sources, more complex processes, Title V sources). For re-registrations, some sources in each tier will not change their facility/emissions and will be able to rely on their initial registration information (no modifications) and simply reaffirm via FORS within EPA’s CDX, at <https://cdx.epa.gov/> that the information previously furnished to the Regional Administrator is still correct. Other sources will have changes in their emissions and will have to provide the new estimates (modifications). For simple sources, we estimate that 123 sources will have no modifications and will take 6 hours to re-register and 5 sources will have some modifications and will take 10 hours to re-register. For moderately complex sources, we estimate that 26 sources will have no modifications and will take 14 hours to re-register and 2 sources will have some modifications and will take 20 hours to re-register. Some sources will need to do an administrative modification, notifying EPA of a change of location, change of ownership, or closure of a source. These administrative modifications could be made by simple facilities or moderately complex facilities. We assume that 8 sources each year will need to do an administrative modification and that it will take 2 hours each to prepare the administrative modification.

The 4 newly constructed sources each year will need to read the rule and complete initial registration within 90 days after beginning operation. The 30 newly subject sources will need to read the rule and complete initial registration within 6 months after the effective date of the FARR rule revisions. EPA assumes that there will be 23 new simple sources and that they will need 12 hours to read the rule and complete initial registration. EPA also assumes that there will be 7 new moderately complex sources and that they will need 41 hours to read the rule and complete initial registration. In addition, EPA estimates that there will be an average of 56 sources completing fugitive PM emissions plans under 49.126 that will now need to submit their plans (prepared under 49.126) as part of their annual registration submission under the proposed revisions to the FARR. It was estimated that preparation of the report for submission and inclusion within the registration information would add about 0.3 hours (18 minutes) of reporting time for those sources.

**Section 49.139 – Rule for non-Title V operating permits**. Reporting requirements: The § 49.139 rule currently specifies that owners or operators of sources may voluntarily apply for a non-Title V operating permit to obtain a Federally-enforceable limit on their actual emissions so that the source is below major source thresholds and can avoid certain other Federal requirement(s). Section 49.139 specifies the following data items for an application for an owner-requested non-Title V permit:

* name of the air pollution source and nature of the business;
* street address, email address, and telephone number of the air pollution source;
* name, mailing address, email address, and telephone number of the owner or operator;
* name, mailing address, email address, and telephone number of the local individual responsible for compliance with this section;
* name, mailing address, email address, and telephone number of the individual authorized to receive requests for data and information;
* for each air pollutant and for all emissions units and air pollutant-generating activities to be covered by a limitation:
  + the proposed limitation and a description of its effect on actual emissions or the potential to emit;
    - Proposed limitations may include, but are not limited to, emissions limitations, production limits, operational restrictions, fuel or raw material specifications, and/or requirements for installation and operation of emission controls. Proposed limitations must have a reasonable short averaging period, taking into consideration the operation of the air pollution source and the methods to be used for demonstrating compliance.
  + proposed testing, monitoring, recordkeeping, and reporting requirements to be used to demonstrate and assure compliance with the proposed limitation;
  + a description of the production processes and a related flow chart;
  + identification of emission units and air pollutant-generating activities;
  + type and quantity of fuels and/or raw materials used;
  + description and estimated efficiency of air pollution control equipment under present or anticipated operating conditions;
  + estimates of the current actual emissions and current potential to emit, including all calculations for the estimates;
  + estimates of the allowable emissions that would result from compliance with the proposed limitation, including all calculations for the estimates;
  + any other information specifically requested by the Regional Administrator; and
  + certification by the owner or operator as to the truth, accuracy, and completeness of the information.

As noted previously, EPA promulgated the Federal NSR Program for Indian Country in July 2011, which provides a mechanism for the owner or operator of an air pollution source in Indian Country to obtain a limit on its potential to emit. These nationwide rules supersede the provisions in § 49.139 rule for an owner-requested synthetic minor permit and § 49.139 is being revised to remove the duplicative provisions.

Sources may be required to get a non-Title V operating permit if EPA determines additional requirements are needed to ensure implementation plan requirements are met or that the NAAQS or PSD increments are met. Data items needed for an EPA-required non-Title V permit include any information that the Regional Administrator determines is necessary to establish such requirements.

Testing, monitoring, recordkeeping, and reporting requirements to ensure compliance with the established limit may be required by the permit.

As noted previously, EPA promulgated the Federal NSR Program for Indian Country in July 2011, which provides a mechanism for the owner or operator of an air pollution source in Indian Country to obtain a synthetic minor permit. These nationwide rules supersede some provisions in the § 49.139 rule for an owner-requested limit. Consequently, EPA does not expect any additional sources to voluntarily apply for a non-Title V operating permit under the § 49.139 rule. However, those sources already issued owner-requested non-Title V permits are allowed to continue to operate under their issued non-Title V permits and will need to perform the monitoring, recordkeeping and reporting required by the permit as well as periodic revisions. For a variety of reasons, some of the issued non-Title V permits were terminated and are no longer effective. There are currently 12 non-Title V permits that are still in effect. EPA estimates that the sources with a permit will spend 50 hours each per year performing the monitoring and recordkeeping required by the permit. It is also estimated that each year up to two sources will spend an additional 100 hours revising an existing non-title V operating permit.

EPA also estimates that few additional sources will be required by EPA to get a non-Title V operating permit. In the years since the FIP rules were first implemented, EPA has not required an operating permit under this rule. However, there may be future cases where a facility would be required to have a non-Title V operating permit. For the purposes of estimating the burden and cost of this rule, EPA estimated that there would be up to one new non-Title V operating permit over the next three years. EPA estimates that the new source will spend 250 hours working on development of the new non-Title V permit. In addition, there may be capital and operating and maintenance costs associated with additional pollution control equipment for this new source. However, given the high degree of uncertainty regarding the potential need for new capital equipment and lack of information on the specific equipment, if anything, that would need to be added to control a particular emissions source for a future non-Title V permit holder, those potential costs have not been quantified.

The source-requested non-Title V permits contain limits on a source’s potential to emit or actual emissions that would enable the source to avoid other Federal regulatory programs, such as:

* PSD, which requires air quality impact demonstrations including modeling and monitoring, use of Best Available Control Technology and attendant capital and O&M costs for pollution controls, and significant application requirements;
* NESHAP, which requires use of Maximum Achievable Control Technology, and recordkeeping and reporting requirements;
* Title V, the Federal Operating Permits Program, which has recordkeeping, reporting, and annual fee payment requirements; and,
* NSPS, where sources may use operating permits to reduce the stringency of rules that apply to them.

Therefore, those sources requesting a non-Title V permit limiting a source’s potential to emit or actual emissions would have been able to avoid other, likely more significant, burdens and costs.

**Section 49.141 – Rule for curtailment of residential wood burning devices for specific areas**. There are no reporting requirements under this rule. Any person whose residence qualifies for and is relying on an exemption to this rule must complete and sign an exemption form before using the wood burning device during a burn ban. This signed form is valid for five years from the date of signature or until the residence no longer qualifies for an exemption, whichever occurs first.

Respondents include any owners of residential wood burning devices on the Nez Perce, Colville or Yakama Reservations that will qualify for an exemption for the use of their woodstoves and will complete the required exemption form. Based on data on the number of households located on impacted Reservations, the distribution of different sources of energy for heating, and the proportion of households with income less than 150 percent of the poverty level, Region 10 estimates that 914 households will complete an exemption form. One-time labor costs are estimated for each respondent to complete and sign the required form (18 minutes per exemption form). In addition to the information collection related costs for these households, there are additional households that would incur non-ICR related costs associated with switching fuels during burn bans.

**Section 49.142 – Rule for small open burning annual permits**. The respondent will need to contact the Regional Administrator or delegated tribal authority and provide information in order to gain permission for an annual burning permit. The information needed by the Regional Administrator or delegated authority includes contact information of the property owner and lessee, if applicable, of the property on which the proposed open burning will occur; contact information of the person conducting the proposed open burning if different from the owner or lessee; and a description of the measures that will be taken to prevent escaped burns, including but not limited to the availability of water. Prior to igniting a burn, the person conducting the burn must check whether the Regional Administrator or delegated tribal authority is allowing burning for the area on that day and if so, for what hours, and must complete the burning within the designated time period.

Respondents include any property owner or lessee who wishes to conduct small open burns on the Umatilla or Yakama Reservations and applies for an annual permit. Region 10 estimates that 1,200 respondents per year will complete small open burning annual permits. Labor costs are estimated for each respondent to submit the required information to obtain a burn permit (30 minutes per permit).

**Section 49.143 – Permit by rule for small open burns**. The respondent will need to contact the Regional Administrator or delegated tribal authority and provide information in order to gain coverage under the open burning permit by rule for their property. The information needed by the Regional Administrator or delegated authority includes the location of the property upon which the proposed open burning will occur; contact information of the property owner and lessee, if applicable, of the property on which the proposed open burning will occur; and a description of the measures that will be taken to prevent escaped burns, including but not limited to the availability of water. Approval of coverage remains valid for the property for as long as it remains under the control of the owner and lessee, if applicable, who submitted the application for the approval of coverage, unless the coverage is revoked by the Regional Administrator. Prior to igniting a burn, the person conducting the burn must check whether the Regional Administrator or delegated tribal authority is allowing burning for the area on that day and if so, for what hours, and must complete the burning within the designated time period.

Respondents include any property owner or lessee on the Nez Perce Reservation who wishes to conduct small open burns on their property and applies for a permit. Region 10 estimates that there will be 1,000 respondents that will complete a one-time permit application and that there will be another 100 new applications per year associated with changes in property ownership or lessees, necessitating a new permit for open burns on the property. Labor costs are estimated for each respondent to submit the required information to obtain a burn permit (30 minutes per permit).

Based on the assumptions described above the estimated average annual number of respondents and the respondent burden (labor hours) for complying with the information collection-related requirements of each rule and the total annual respondent burden for all FIP rules are summarized in Table 3.

**Table 3**

**Average Annual Aggregate Respondent Burden for the Region 10 Tribal FIP**

|  |  |  |  |
| --- | --- | --- | --- |
| **Rule** | **Title** | **Respondents** | **Hours** |
| Section 49.122 | Delegation | 2.3 | 390 |
| Section 49.123 | General provisions | 1 | 10 |
| Section 49.124 | Visible emissions | 1.7 | 1.7 |
| Section 49.126 | Fugitive particulate matter | 98 | 468 |
| Section 49.127 | Woodwaste burners | 0 | 0 |
| Section 49.130 | Sulfur content of fuels | 141 | 854 |
| Section 49.131 | Open burning | 3 | 9 |
| Section 49.132 | Large open burning permits | 59 | 29.5 |
| Section 49.133 | Agricultural burning permits | 295 | 132.8 |
| Section 49.134 | Forestry and silvicultural burning permits | 20 | 12 |
| Section 49.135 | Emissions detrimental to public health or welfare | 0 | 0 |
| Section 49.138 | Registration of air pollution sources and reporting of emissions | 160 | 1,489.5 |
| Section 49.139 | Non-Title V operating permits | 12.3 | 883.3 |
| Section 49.141 | Rule for curtailment of residential wood burning devices for specific areas | 304.7 | 91.4 |
| Section 49.142 | Rule for small open burning annual permits | 1200 | 600 |
| Section 49.143 | Permit by rule for small open burns | 433.3 | 383.3 |
| **Totals** |  | **2,731.3** | **5,354.5** |

Note: Numbers may not add exactly due to rounding. Number of respondents and hours shown are average values estimated over the first three years after the effective date of this rulemaking.

Table 4 breaks the annual respondent burden into reporting and recordkeeping hours.

**Table 4**

**Average Annual Aggregate Respondent Burden for Reporting and Recordkeeping**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Rule** | **Title** | **Reporting** | **Recordkeeping** | **Total Hours** |
| Section 49.122 | Delegation | 390 | 0 | 390 |
| Section 49.123 | General provisions | 10 | 0 | 10 |
| Section 49.124 | Visible emissions | 1.7 | 0 | 1.7 |
| Section 49.126 | Fugitive particulate matter | 0 | 468 | 468 |
| Section 49.127 | Woodwaste burners | 0 | 0 | 0 |
| Section 49.130 | Sulfur content of fuels | 0 | 854 | 854 |
| Section 49.131 | Open burning | 9 | 0 | 9 |
| Section 49.132~~A~~ | Large open burning permits | 29.5 | 0 | 29.5 |
| Section 49.133 | Agricultural burning permits | 132.8 | 0 | 132.8 |
| Section 49.134 | Forestry and silvicultural burning permits | 12 | 0 | 12 |
| Section 49.135 | Emissions detrimental to public health or welfare | 0 | 0 | 0 |
| Section 49.138 | Registration of air pollution sources and reporting of emissions | 1,489.5 | 0 | 1,489.5 |
| Section 49.139 | Non-Title V operating permits | 533.3 | 350 | 883.3 |
| Section 49.141 | Rule for curtailment of residential wood burning devices for specific areas | 0 | 91.4 | 91.4 |
| Section 49.142 | Rule for small open burning annual permits | 600 | 0 | 600 |
| Section 49.143 | Permit by rule for small open burns | 383.3 | 0 | 383.3 |
| **Totals** |  | **3,591.1** | **1,763.4** | **5,354.5** |

Note: Numbers may not add exactly due to rounding. Values shown are average values estimated over the first three years after the effective date of this rulemaking.

The respondent costs for complying with the information collection-related requirements of each FIP rule and the total annual respondent costs for all FIP rules are summarized in Table 5.

For the purposes of generating cost estimates for each of the rules, EPA assumed that there will be no capital costs associated with reporting or recordkeeping requirements incurred under any of these rules. EPA does not anticipate facilities would add monitoring, recordkeeping or reporting equipment as a result of these rules. The 2020 and prior source consultations and EPA’s experience with implementing the rules provide further support for this assumption. Since EPA is unaware of any monitoring, recordkeeping or reporting equipment installed to comply with the information collection-related requirements of these rules, EPA did not estimate operation and maintenance (O&M) costs for this ICR. To the extent that a facility requests or EPA requires a facility to obtain a non-Title V operating permit, it is possible that they may incur capital and O&M costs for adding necessary pollution control equipment. However, given the high degree of uncertainty regarding whether there would be any new non-Title V permits and, if so, which pollutant(s) would need to be required with what equipment, those potential costs were not quantified.

**Table 5**

**Annual Respondent Cost for the Region 10 Tribal FIP**

|  |  |  |  |
| --- | --- | --- | --- |
| **Rule** | **Title** | **Respondents** | **Cost ($)** |
| Section 49.122 | Delegation | 2.3 | $33,668 |
| Section 49.123 | General provisions | 1 | $802 |
| Section 49.124 | Visible emissions | 1.7 | $153 |
| Section 49.126 | Fugitive particulate matter | 98 | $37,510 |
| Section 49.127 | Woodwaste burners | 0 | $0 |
| Section 49.130 | Sulfur content of fuels | 141 | $68,448 |
| Section 49.131 | Open burning | 3 | $721 |
| Section 49.132 | Large open burning permits | 59 | $2,364 |
| Section 49.133 | Agricultural burning permits | 295 | $10,640 |
| Section 49.134 | Forestry and silvicultural burning permits | 20 | $962 |
| Section 49.135 | Emissions detrimental to public health or welfare | 0 | $0 |
| Section 49.138 | Registration of air pollution sources and reporting of emissions | 160 | $121,534 |
| Section 49.139 | Non-Title V operating permits | 12.3 | $71,755 |
| Section 49.141 | Rule for curtailment of residential wood burning devices for specific areas | 304.7 | $8,374 |
| Section 49.142 | Rule for small open burning annual permits | 1200 | $48,090 |
| Section 49.143 | Permit by rule for small open burns | 433.3 | $19,278 |
| **Totals** |  | **2,731.3** | **$424,300** |

Note: Numbers may not add exactly due to rounding. Values shown are average values estimated over the first three years after the effective date of this rulemaking.

**Estimating Labor Costs**

This ICR employs wage rates based on March 2021 wage data from the Bureau of Labor Statistics (BLS, 2021), which is the most recent available at the time this supporting statement was prepared. Table 6 displays the calculation of the loaded (e.g., including overhead) industry wage rate for affected source activities. Based on this calculation, the loaded wage rate used to calculate affected source costs is $80.15 per hour. Details on the costing methods and assumptions are given below.

**Table 6**

**Determination of 2021 Industry Wage Rates**1

|  |
| --- |
| Professional staff @ $58.04/hr1 $58.19  Management support @ $70.86/hr1 $73.12 +  Allocation Factor: 0.0912  x 0.091  $6.65  Office / administrative support @ $28.9/hr1 $29.29 +  Allocation factor: 0.1253 x 0.125  $3.66  \_\_\_\_\_\_\_\_\_  Composite Wage Rate of Staff  associated Management / Clerical support $68.50  +  General Overhead @ 17 percent of Wage Rate $11.65  \_\_\_\_\_\_\_\_\_  **Total Composite Hourly Wage Rate $80.15**  1 Wage Rates (including benefits) based on the most recent release of Employment Cost Trends from the Bureau of Labor Statistics, March 2021. Available from <http://stats.bls.gov/news.release/ecec.t02.htm>  2 Represents a manager overseeing a staff of 10 technicians and one support person, e.g., a manager to staff ratio of 1:11, or 1/11 or 0.091  3 Represents one administrative support person assisting 7 professional staff and a manager, e.g., a support person to professional staff and manager ratio of 1:8, or 1/8 or 0.125 |

**13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).**

* **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
* **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
* **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

There is no additional cost burden to respondents anticipated beyond the hour burden for reporting and recordkeeping estimated above. EPA does not anticipate any facilities would add monitoring, recordkeeping or reporting equipment because of these rules. The 2020 and prior source consultations and EPA’s experience with implementing the rules provide further support for this assumption. Since EPA is unaware of any monitoring, recordkeeping or reporting equipment installed to comply with the information collection-related requirements of these rules, EPA assumed that there will be no capital costs associated with reporting or recordkeeping requirements incurred under any of these rules. In addition, because no capital costs associated with this information collection are anticipated, EPA did not estimate operation and maintenance (O&M) costs for this ICR.

To the extent that a facility requests or EPA requires a facility to obtain a non-Title V operating permit, it is possible that they may incur capital and O&M costs for adding necessary pollution control equipment. However, given the high degree of uncertainty regarding whether there would be any new non-Title V permits and, if so, which pollutant(s) would need to be required with what equipment, those potential costs were not quantified,

**14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.**

Table 7 provides a summary of the EPA (and delegated Tribes) activities associated with the collection of information for each rule.

**Table 7**

**Summary of EPA (and Delegated Tribes) Activities**

|  |  |
| --- | --- |
| **FIP Rule** | **Agency Action** |
| 49.122 Partial delegation | Answer respondent questions, review delegation request, work with Tribe in developing delegation agreement, consult with appropriate governmental entities, publish a notice in the Federal Register and in local newspapers, informing the public of any delegation agreement. |
| 49.123 General provisions | Answer respondent questions, review requests for utilization of alternative means of testing, recordkeeping, or reporting for compliance with the FARR. |
| 49.124 Visible emissions | Answer respondent questions, review requests for extension. |
| 49.126 Fugitive particulate matter | Answer respondent questions, review fugitive PM surveys and plans submitted to EPA. |
| 49.127 Woodwaste burners | None. Compliance dates are past. |
| 49.130 Sulfur content of fuels | Answer respondent questions, review records during compliance inspections |
| 49.131 Open burning | Answer respondent questions, grant permission for firefighter training and fireworks disposal, and store information on FPS/Tribal government requests. |
| 49.132 Large open burning permits | Answer respondent questions, review information submitted by respondents, issue permits, authorize the burn activity on the day of the proposed burn for the appropriate date and time and store information on open burn requests. |
| 49.133 Agricultural burning permits | Answer respondent questions, review information submitted by respondents, issue permits, authorize the burn activity on the day of the proposed burn for the appropriate date and time and store information on agricultural burn requests. |
| 49.134 Forestry and silvicultural burning permits | Answer respondent questions, review information submitted by respondents, issue permits, authorize the burn activity on the day of the proposed burn for the appropriate date and time and store information on forestry/silvicultural burn requests. |
| 49.135 Emissions detrimental | Determine that an air pollution source is causing or contributing to a violation of any NAAQS or is presenting an imminent and substantial endangerment to public health or welfare or the environment; require the source to obtain a non-Title V operating permit under § 49.139. |
| 49.138 Registration | Answer respondent questions, operate online registration system, audit or review data submissions, record or enter data submissions, analyze requests for confidentiality and provide appropriate protection, reformat and distribute the data, and store the data. |
| 49.139 Non-Title V operating permits | Answer respondent questions, audit or review data submissions, analyze requests for confidentiality and provide appropriate protection, store the data, conduct technical analysis, issue the permit, and perform public notice. |
| 49.141 Rule for curtailment of residential wood burning devices | Answer respondent questions. Review exemption forms, as needed. |
| 49.142 Rule for small open burning annual permits | Answer respondent questions, review information submitted by respondents and issue permits. Determine each day if it is a burn day or a no burn day and make that determination publicly available. |
| 49.143 Permit by rule for small open burns | Answer respondent questions, review information submitted by respondents, and authorize coverage. Determine each day if it is a burn day or a no burn day and make that determination publicly available. |

A summary of the collection schedule for all reporting items is provided in Table 8 below.

**Table 8**

**Information Collection Schedule**

|  |  |  |
| --- | --- | --- |
| **FIP Rule**  **(40 CFR Section)** | **Data Item** | **Due Date** |
| 49.122 | Delegation request | n/a |
| 49.123 | Request for alternative means of testing, recordkeeping, and/or reporting | n/a |
| 49.124 | Request for extension for orchard heating device compliance with emissions limit | n/a |
| 49.126 | No reporting requirements. | n/a |
| 49.127 | Shut-down plan. | December 5, 2005 for existing facilities at the time the original FARR was implemented; within 2 years of the effective date of this rulemaking for newly covered sources |
| 49.130 | No reporting requirements. | n/a |
| 49.131 | FPS request for training burn or Tribal request for burn for fireworks disposal | Before date of requested burn |
| 49.132 | Large open burn permit application. | At least 1 business day prior to the requested burn |
| 49.133 | Agricultural burn permit application. | At least 1 business day prior to the requested burn |
| 49.134 | Forestry and silvicultural burn permit application. | At least 1 business day prior to the requested burn |
| 49.135 | Permit application. | n/a |
| 49.138 | Initial registration for new sources  Initial registration for a source located on the Cowlitz Indian Reservation, Snoqualmie Indian Reservation, or lands held in trust for the Samish Indian Nation  Initial registration for a source located on land that is taken into trust and becomes part of covered Tribal lands after the date of this rulemaking  Annual re-registration for all sources  Relocation report  Change of ownership report  Closure report | Within 90 days of beginning operation for new sources  Within 6 months after the effective date of this rulemaking  Within 6 months after the date that the land is taken into trust  February 15th of each year  30 days prior to relocation  Within 90 days after change in ownership is effective  Within 90 days after the cessation of all operations |
| 49.139 | Permit application | n/a |

|  |  |  |
| --- | --- | --- |
| **FIP Rule**  **(40 CFR Section)** | **Data Item** | **Due Date** |
| 49.141 | Exemption form | Before using the wood burning device during a Stage 1 or Stage 2 burn ban |
| 49.142 | Small open burning annual permit application | Before date of conducting small open burn each calendar year |
| 49.143 | Permit application | Before date of conducting initial small open burn on property |

EPA’s average annual burden and costs that relate to this collection are summarized in Table 9. Region 10 estimates that 6.77 full-time equivalents (FTE) will be needed to carry out EPA information collection responsibilities for the revised FIP rules. This includes work carried out by EPA staff, delegated tribes (implementing the FIPs on behalf of EPA), and Senior Environmental Employment (SEE) employees. An hourly rate of $67.89 was used to estimate costs. Table 10 shows the calculation of this hourly rate. Table 7 provides a summary of the EPA (and delegated tribes) activities associated with the collection of information for each rule.

**Table 9**

**EPA Average Annual Burden and Costs**

|  |  |  |
| --- | --- | --- |
| **Total Hours** | **$/Hour** | **Annual EPA Cost** |
| **6.77 FTE = 14,082 hours** | **$67.89** | **$956,000** |
|  |  | |
|  | **Associated Task** | |
| 0.45 | Registration, including online registration system | |
| 0.70 | Misc. approvals & oversight related to reporting & recordkeeping | |
| 0.50 | Non-Title V operating permits | |
| 4.82 | Burn Permit Programs | |
| 0.20 | Database development | |
| 0.10 | Delegations | |
| **6.77** | **TOTAL** | |

**Table 10**

**Determination of 2021 Federal Salary Rates**1

**and Total Hourly Cost**

Wage rate of Permit Staff, GS 11 Step 52 $38.59

Wage rate of Supervisory Staff, GS 13 Step 52 $55.00 +

Factor: 0.0913 x 0.091

$5.00

Wage rate of Support Staff, GS 6 Step 52  $23.46 +

Factor: 0.0914 x 0.091 $2.14

Annual Applicable Salary of Permit,

Supervisor and Support Staff $45.72

+

Benefits (36.45 percent of salary)5 $16.67

+

General Overhead (12 percent of salary)5 $5.49

**Total Hourly Cost** **$67.89**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1 The salary levels shown for the positions indicated are assumed to represent the average of the combined salaries

for EPA, Tribal and SEE program staff allocated to the respective position classification.

2 U.S. Office of Personnel Management. “Salary Table 2021-SEA”, General Schedule incorporating locality pay.

<https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/SEA.pdf>. Labor rates

incorporate the 2.6% General Schedule increase and a locality payment of 27.02% for the locality pay area of Seattle-

Tacoma, WA.

3 Based on an administrator managing a staff of 10 technicians and one support staff person, i.e., a 1/11 ratio,

where: 1/11 = 0.091

4 Based on one support staff person assisting 10 technicians and one manager, i.e., a 1/11 ratio = 0.091

5 OMB Circular A-76. “Figure C1 - Table of Standard A-76 Costing Factors”; and OMB Circular

No. A-76 Revised, May 29, 2003, reflecting OMB Memorandum M-07-02. Applicable to FY 07.

<http://www.whitehouse.gov/omb/circulars/index.html>.

In OMB Circular A-76, Figure C1:

- The term Benefits is identified as “Civilian Position Full Fringe Benefit Cost Factor”; and

- The term General Overhead is identified as “Overhead Factor.”

Bottom Line Burden Hours and Cost Tables

The total estimated annual burden hours and cost for respondents and for EPA are summarized in Table 11.

**Table 11**

**Total Estimated Annual Burden and Cost Summary**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Number of**  **Respondents1** | **Total Annual Burden Hours2** | **Average Annual Burden per Source (Hours)** | **Total Annual Cost** | **Average Annual Cost Per Source** |
| Respondents | 2,731.3 | 5,354.5 | 1.96 | $424,300 | $155 |
| EPA | n/a | 14,082 | n/a | $956,000 | n/a |

1 Includes the average total number of entities affected by each rule annually over the next three years. Some facilities may be affected by more than one rule.

2 Total annual burden hours include hours for existing sources to comply with the recurring requirements of the FIPs and hours for expected new sources to comply with the initial requirements of the FIPs. This estimate of reporting and recordkeeping burden does not include expected costs of replacing orchard heaters with alternative frost prevention technologies after three years (these costs are estimated to be net savings for an average orchard) under the visible emissions rule (49.124), the estimated costs of households purchasing more expensive certified heating devices rather than older, uncertified devices (49.140), or the expected costs of fuel switching under the woodstove curtailment rule (49.141) because those costs are not associated with required reporting or recordkeeping activities.

**15. Explain the reasons for any program changes or adjustments reported on the burden worksheet (in hour or cost burden.)**

The total annual respondent burden estimate for this rule is 5,354.5 hours compared to the previously approved estimate of 3,601, an increase of 1,753.5 hours. The increase in the burden estimate for this collection is based on a combination of the addition of sources on the Cowlitz and Snoqualmie Reservations and lands held in trust for the Samish Indian Nation as well as lands held in trust for all other Tribes covered by the FARR, incorporation of new additional rules, application of existing additional rules 49.132 and 49.133 on the Yakama Nation Reservation, input from source consultations on typical burden, and information learned about the source universe through implementing the rules. Some components of the burden estimate decreased and some increased, resulting overall in an estimate that is about 49 percent higher than the previous estimate. The average annual number of responses estimated for the revised FARR is 2,731.3 compared to the previous estimate of 2,052, an increase of 679.3 responses. These changes also provide greater benefits by applying these environmental programs on 2 new formal Reservations as well as lands held in trust for all other Tribes covered by the FARR.

**16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

Information collection for reporting requirements will be performed by written responses on EPA forms or through telephone contact with the respondent. EPA developed forms for §§ 49.132 (Rule for general open burning permits), 49.133 (Rule for agricultural burning permits), 49.134 (Rule for forestry and silvicultural burning permits), 49.138 (Rule for the registration of air pollution sources and the reporting of emissions), and 49.139 (Rule for non-title V operating permits). For § 49.138 (Rule for the registration of air pollution sources and the reporting of emissions) EPA now provides an online option to submit all registration information and reports on forms provided by the Regional Administrator via FORS within EPA’s CDX, at <https://cdx.epa.gov/>, which can be found in form #5800-057. There are no required forms for delegation requests or delegation agreements under § 49.122 (Rule for partial delegation of administrative authority to a Tribe); however, there are model requests and model agreements available for Tribes as references. EPA also developed guidance and instructions to help in filling out the forms for §§ 49.138 and 49.139. EPA staff or a delegated Tribe will review each permit application, registration, or report to assure data completeness and accuracy. EPA has developed an internal database to manage the data collected through § 49.138 (Rule for the registration of air pollution sources and the reporting of emissions). Region 10 will review the efficiency of using electronic reporting systems (e.g., via the Internet) to facilitate the transfer of this information. Information that has not been deemed confidential may be accessed by the public following a written request to the Regional Administrator.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

We are not seeking approval to not display the expiration date for OMB approval of the information collection.

**18.Explain each exception to the topics of the certification statement identified in “Certification for Paperwork Reduction Act Submissions.”**

Burden Statement:

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.081.96 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID Number EPA-R10-OAR-2020-0361724, which is available for online viewing at www.regulations.gov. This site can be used to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select “search,” then key in the Docket ID Number identified above. Also, you can send comments to the EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Please include the EPA Docket ID Number EPA-R10-OAR-2020-0724361 and OMB Control Number 2060-NEW in any correspondence.

1. These rules were promulgated only on reservations where EPA, in consultation with the Tribes, determined they are appropriate. There are five reservations for which EPA has determined that at least one of the rules is appropriate. EPA promulgated seven of these additional rules for the Nez Perce Reservation (49.127, 49.128, 49.132, 49.133, 49.134, 49.141, and 49.143), four additional rules for the Confederated Tribes of the Umatilla Reservation (49.132, 49.133, 49.134, and 49.142), four additional rules for the Yakama Nation Reservation (49.132, 49.133, 49.141, and 49.142), three additional rules for the Confederated Tribes of the Colville Reservation (49.127, 49.128, and 49.141) and one additional rule for the Coeur D’Alene Reservation (49.128). [↑](#footnote-ref-3)
2. 40 CFR part 71, 40 CFR 52.21, 40 CFR 49.151 - 40 CFR 49.173, 40 CFR 49.139 [↑](#footnote-ref-4)