



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 13 2025

OFFICE OF THE
ADMINISTRATOR

The Honorable J. Kevin Stitt
Governor of the State of Oklahoma
Oklahoma State Capitol
2300 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

Re: State of Oklahoma Request Under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005

Dear Governor Stitt:

This letter constitutes the United States Environmental Protection Agency's ("EPA" or "Agency") final decision, after reconsideration, on the State of Oklahoma's ("State") July 22, 2020, request to administer the State's environmental regulatory programs in certain areas of Indian country under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users. Pub. Law. 109-59, 119 Stat. 1144, 1937 (August 10, 2005) ("SAFETEA"). On December 22, 2021, the EPA provided notice proposing to withdraw and reconsider the October 1, 2020, decision ("October 2020 Decision") approving the Governor of Oklahoma's July 22, 2020, request ("December 2021 Proposal"). To avoid any disruption in program implementation during the reconsideration process, the State's program authority as provided in the October 2020 Decision has remained in place and unaffected pending EPA's final action on the December 2021 Proposal. EPA received and has carefully considered comments submitted by the State, by Indian Tribes located in Oklahoma, and by the public and has now concluded its reconsideration of the October 2020 Decision. After reconsideration, EPA is, as explained below, hereby withdrawing the October 2020 Decision and simultaneously replacing it with a new approval of the State's request that has been updated in two respects.

First, based on input from the State, EPA is clarifying that, consistent with the State's intent as articulated in the State's letter of December 4, 2024, this decision excludes all classes of wells from the State's approved Underground Injection Control ("UIC") program under the Safe Drinking Water Act ("SDWA") in Osage County, Oklahoma.

Second, the decision includes a condition designed to promote State engagement with Tribes during the State's administration of programs under this decision. We anticipate that this condition will not prove unduly burdensome, will help ensure that views of the affected sovereign Tribes are appropriately incorporated into environmental decision making in their areas of Indian country, and

will thereby avoid unnecessary potential conflicts and improve environmental regulation in the covered areas.

By accompanying our withdrawal of the October 2020 Decision with a simultaneous revised approval of the State's request, EPA is ensuring that there is no gap in the State's program authority in the covered areas of Indian country. We look forward to working with the State's environmental agencies on program implementation as we all move forward together under the unique arrangement established by Section 10211(a) of SAFETEA.

I. Background

A. Environmental Program Implementation prior to *McGirt*

As described in the December 2021 Proposal, many of the regulatory programs under the federal environmental statutes administered by EPA may be implemented by states and eligible Indian Tribes in the first instance, with EPA retaining oversight authority. For these programs, states and Tribes submit program applications to EPA, and EPA approves the programs where they meet applicable statutory and regulatory programmatic requirements. EPA retains oversight authority over many specific state/Tribal implementing activities and over the continuing sufficiency of a state's/Tribe's regulatory program.

Typically, EPA excludes Indian country¹ from its approvals of state environmental regulatory programs. In some cases, however, federal statutes provide one or more states with relevant jurisdiction in Indian country. In such instances, states may include areas of Indian country in their applications to EPA for environmental regulatory program approval, and where the applicant state demonstrates that federal law provides the state with sufficient jurisdiction, EPA has approved states to administer programs in the specified areas of Indian country. Indian Tribes may also apply to EPA for eligibility to administer regulatory programs and for program approval under federal environmental statutes administered by EPA. Generally, approved Tribal environmental programs would apply to areas that qualify as Indian country. In the absence of an approved Tribal or state program, EPA is generally authorized to administer environmental regulatory programs in Indian country.

¹ Section 10211 of SAFETEA does not define the term "Indian country." However, "Indian country" is defined under federal law at 18 U.S.C. § 1151 to mean (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Although this definition is codified in the federal criminal code, it is also relevant for purposes of civil jurisdiction. *See, e.g., DeCoteau v. District County Court*, 420 U.S. 425, 427 n.2 (1975).

Generally, prior to October 1, 2020, EPA’s approvals of the State’s environmental regulatory programs did not include Indian country located in the State. Currently, the Pawnee Nation of Oklahoma (Pawnee Nation) and the Cherokee Nation are the only Tribes in Oklahoma approved by EPA for eligibility to administer any regulatory programs under a statute administered by EPA – Pawnee Nation for the Clean Water Act Section 303(c) water quality standards and Section 401 certification programs, and Cherokee Nation for the Toxic Substances Control Act lead abatement program.² Prior to October 1, 2020, EPA thus retained authority to directly implement most environmental regulatory programs in most of the Indian country located in Oklahoma.

B. *McGirt* and Subsequent Indian Reservation Adjudications

On June 9, 2020, the U.S. Supreme Court decided the case of *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). In that decision, the Supreme Court held that The Muscogee (Creek) Nation’s reservation in eastern Oklahoma had not been disestablished by Congress and remained Indian country under federal law. Prior to the *McGirt* decision, neither EPA nor the State had understood The Muscogee (Creek) Nation’s original reservation boundaries to remain intact, and based on that misunderstanding the State had, as a practical matter, implemented environmental regulatory programs in much of the area that was held by the Supreme Court to be Indian country. However, because the State’s programs were generally not approved to apply in Indian country, the State’s program implementation was no longer appropriate following the Supreme Court’s clarification regarding the Indian reservation status of the subject lands. Subsequent to the ruling in *McGirt*, several Oklahoma State court decisions have held that the reservations of other Tribes in Oklahoma had also never been disestablished and remained Indian country under federal law. In addition to The Muscogee (Creek) Nation, such Tribes currently include the Cherokee Nation, The Chickasaw Nation, The Choctaw Nation of Oklahoma, Miami Tribe of Oklahoma, Ottawa Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, Quapaw Nation, The Seminole Nation of Oklahoma, and Wyandotte Nation.³ Similar cases remain pending with

² The Pawnee Nation’s and Cherokee Nation’s eligibility to administer environmental programs is limited to these specific programs and covers only lands held in trust by the United States on behalf of the Tribes. EPA notes (as described further below) that Tribal trust lands, were, as a general matter, excluded from the State’s request for program authority under SAFETEA.

³ See, e.g., *Spears v. State*, 2021 OK CR 7, 485 P.3d 873, *cert. denied*, 142 S. Ct. 934 (2022) (Cherokee Nation Reservation); *Bosse v. State*, 2021 OK CR 30, 499 P.3d 771, *cert. denied*, 142 S. Ct. 1136 (2022) (Chickasaw Nation Reservation); *Sizemore v. State*, 2021 OK CR 6, 485 P.3d 867, *cert. denied*, 142 S. Ct. 935 (2022) (Choctaw Nation Reservation); *Grayson v. State*, 2021 OK CR 8, 485 P.3d 250, *cert. denied*, 142 S. Ct. 934 (2022) (Seminole Nation Reservation); *State v. Lawhorn*, 2021 OK CR 37, 499 P.3d 777 (Quapaw Nation Reservation); *State v. Brester*, 2023 OK CR 10, 531 P.3d 125 (2023) (Ottawa, Peoria and Miami Reservations); *State v. Fuller*, 2024 OK CR 4, 547 P.3d 149 (2024) (Wyandotte Reservation).

respect to additional Tribes, and additional areas may subsequently be adjudicated to retain reservation status under federal law.

C. Oklahoma's SAFETEA Request and EPA's October 2020 Decision

On July 22, 2020, the State submitted a letter to EPA requesting approval under Section 10211(a) of SAFETEA to administer in certain areas of Indian country the State's environmental regulatory programs that were previously approved by EPA outside of Indian country. Section 10211(a) of SAFETEA applies only to Oklahoma and provides:

SEC. 10211. ENVIRONMENTAL PROGRAMS.

(a) OKLAHOMA.—Notwithstanding any other provision of law, if the Administrator of the Environmental Protection Agency (referred to in this section as the "Administrator") determines that a regulatory program submitted by the State of Oklahoma for approval by the Administrator under a law administered by the Administrator meets applicable requirements of the law, and the Administrator approves the State to administer the State program under the law with respect to areas in the State that are not Indian country, on request of the State, the Administrator shall approve the State to administer the State program in the areas of the State that are in Indian country, without any further demonstration of authority by the State.

Pub. Law 109-59, 119 Stat. 1144, 1937.

The State's request under SAFETEA described the scope of Indian country areas that were intended by the State to be included within its requested program authority and expressly identified categories of Indian country that the State intended to exclude from its request. The State's request was not limited to any specific Tribe(s). Thus, the State's request included areas of Indian country within the formal reservations of all Tribes in Oklahoma – *i.e.*, all Tribes with formal reservations that, pursuant or subsequent to the ruling in *McGirt*, have been or will be adjudicated to remain intact. EPA's understanding is that the State's request was essentially intended to extend approval of the State's environmental regulatory programs into those areas of Indian country where, prior to *McGirt*, the State had, as a practical matter, implemented its programs; EPA's October 2020 Decision approved the geographic scope of the State's program authority as requested by the State.

Following receipt of the State's request, EPA convened expedited Tribal consultation meetings from August 25, 2020, to September 14, 2020. During and following those meetings EPA received numerous comments from Tribes opposing the State's request. Among other things, Tribal commenters expressed concerns regarding the impact of any approval of the State's request on Tribal sovereign interests in their Indian country lands, questioned the sufficiency of the State's prior administration of environmental regulatory programs in the affected areas of Indian country, and urged EPA to conduct

additional review of the State's programs and consider appropriate oversight of those programs to address Tribal interests prior to any approval of the State's request under SAFETEA. Tribal commenters also expressed concern that the length of the Tribal consultation period (three weeks for 38 Tribes in Oklahoma and a wide range of covered environmental regulatory programs) was inadequate to allow for meaningful engagement regarding impacts of the State's request on Tribes.

On October 1, 2020, EPA's then-Administrator Andrew R. Wheeler approved the State's request. EPA's October 2020 Decision detailed the Agency's rationale at that time, as well as the programmatic and geographic scope of the approval. Among other things, EPA noted that the October 2020 Decision deviated from the geographic scope of the State's programs as administered prior to *McGirt* by approving the State to administer its SDWA UIC program (other than for Class II wells) in Osage County, whereas prior to *McGirt*, EPA had administered all classes of UIC wells in Osage County. The October 2020 Decision is the subject of a pending challenge in federal court. (*Pawnee Nation of Oklahoma v. Regan*, No. 20-9635 (10th Cir.)).

D. Reconsideration of the October 2020 Decision and Additional Tribal Consultation

On January 20, 2021, President Biden issued Executive Order 13990 entitled "Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." 86 Fed. Reg. 7037 (Jan. 25, 2021). In relevant part, the Executive Order provided that agencies must review regulations, orders, guidance documents, and other similar actions adopted over the prior four years to determine whether they conflict with the national objectives stated therein. In accordance with the Executive Order and in response to input from Oklahoma Tribal Nations, EPA reviewed the Agency's October 2020 Decision and, consistent with the President's Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships (January 26, 2021), on June 30, 2021, the Administrator invited consultation with Indian Tribes in Oklahoma regarding the October 2020 Decision. Tribal consultation was intended to help EPA better understand the concerns expressed by Tribes regarding the decision and to consider appropriate measures to mitigate any adverse impacts on Tribes. EPA conducted consultation with Tribes from July 15 to October 31, 2021. During this period, EPA held two open consultation calls with Oklahoma Tribal Nations, with eighteen Tribes participating. In addition, EPA leadership held individual consultations with eight Tribes and received written comments from five Tribes.

On December 22, 2021, EPA provided notice proposing to withdraw and reconsider the Agency's October 2020 Decision ("December 2021 Proposal"). EPA provided interested parties and the public an opportunity to comment on the December 2021 Proposal and conducted consultation with Indian Tribes (in January 2022 and again in 2024) to ensure that the Agency's decision making was appropriately informed by Tribal views. To avoid any disruption in program implementation during the reconsideration process, the State's program authority as provided in the October 2020 Decision has remained in place and unaffected pending EPA's final action on the December 2021 Proposal.

After the December 2021 Proposal, among other things, Tribes continued to express concerns regarding the State's existing administration of environmental regulatory programs in the covered areas of Indian country and the effects of State regulation on Tribal sovereign interests. Some Tribes questioned the adequacy of the October 2020 Decision under the terms of the applicable SAFETEA provision. Many Tribes expressed interest in opportunities for engagement with the State during program implementation to help ensure appropriate coordination and consideration of Tribal interests.

EPA has attempted to keep the State generally apprised of developments during the reconsideration process and directly reengaged with the State beginning in October 2024. EPA received comments from the State, by letter dated January 31, 2022, during the public comment period and also received a second letter from the State responding to EPA on two discrete issues on December 4, 2024. EPA has carefully considered comments submitted by the State, by Indian Tribes located in Oklahoma, and by the public. As stated above, the Agency has now completed its reconsideration process and is taking final action in connection with the December 2021 Proposal.

II. Withdrawal of October 2020 Decision

Having reviewed all input received, for the reasons described herein EPA hereby finalizes withdrawal of the October 2020 Decision (and, as described in Section III below, replaces it with a new decision approving the State's request subject to the condition described in Section VI below).

A. Consideration Regarding Inclusion of State-Tribal Engagement Condition

EPA has reconsidered and is now revising our prior interpretation that Section 10211(a) of SAFETEA provides no discretion for the Agency to include in its approval a reasonable condition designed to promote efficient and effective coordination among sovereign entities with geographically overlapping environmental responsibilities in the affected areas. EPA is mindful of the statute's mandatory direction to approve a proper request by the State to extend the State's environmental regulatory programs into areas of Indian country, and EPA has done so here (see below at Section III). The Agency does not, however, interpret this requirement to foreclose the inclusion of a reasonable condition that is consistent with approval of the State's requested program authority in Indian country – *i.e.*, a condition that provides an appropriate process to ensure consideration of Tribal sovereign input in regulatory decision making in their areas of Indian country. The statute does not preclude such a condition, and EPA finds that providing a structured opportunity for State-Tribal engagement and Tribal input into the State's regulatory decision making is appropriate to help ensure that the same Tribal information is available to the State as would be available to EPA were the EPA directly administering programs in the areas of Indian country covered by this decision.

Such a condition is also supported by reasoning stated by the D.C. Circuit, the only court to have considered any aspect of the applicable SAFETEA authority. *See Oklahoma Department of Environmental Quality v. EPA*, 740 F.3d 185, 190 (D.C. Cir. 2014) (recognizing that EPA might interpret

SAFETEA to permit attachment of conditions to the State's program approval). Although the D.C. Circuit's consideration of SAFETEA arose in the context of its analysis of threshold questions of standing, the court clearly contemplates the Agency's discretion to include reasonable conditions in a decision under SAFETEA. The court's consideration of this issue was raised to EPA during the Agency's consultation with Indian Tribes prior to the October 2020 Decision. However, EPA did not address the court's recognition of EPA's discretion to consider potential conditions or otherwise respond to Tribal comments pointing the Agency to that aspect of the decision.

EPA views the condition described below as particularly relevant and reasonable in the situation presented here, where Oklahoma is broadly authorized to administer environmental regulatory programs across wide areas of multiple Tribes' reservations. In these circumstances, the State is replacing EPA as the front-line regulator and the authority to implement these programs necessarily transfers from EPA to the State in the covered areas of the Tribes' Indian country. The condition EPA is including in this decision is designed to establish a similar consultative relationship between the State and Tribes as exists between EPA and the Tribes and is narrowly tailored to provide procedural opportunities for Tribal input without disturbing the State's ultimate regulatory decision-making authority.

B. The Need for Additional Tribal Consultation on EPA's SAFETEA Decision

EPA also recognizes that the abbreviated period the Agency offered in 2020 for consultation with affected Tribes in Oklahoma did not provide a sufficient opportunity for meaningful engagement and consideration of Tribal views, including Tribal views relating to a potential intergovernmental coordination process given the significance and broad scope of the decision. The circumstances surrounding Section 10211 of SAFETEA are atypical, and the authority provided therein to the State significantly alters the ordinary apportionment of environmental regulatory decision making and implementation in Indian country throughout the State of Oklahoma for purposes of programs under the statutes administered by EPA. As described above, EPA typically excludes Indian country from its approvals of state programs and thereby generally sets such areas aside for Tribal and federal program administration. EPA is aware of no federal statutory scheme similar to Section 10211(a) of SAFETEA that so summarily alters this arrangement across a full spectrum of regulatory programs without any explanation of congressional purpose or guidance to the administering federal agency in the statutory text or history. Based on our review of the October 2020 Decision, the Agency should have provided additional consideration to the unique circumstances presented by the SAFETEA provision and the State's request and should have allowed sufficient time for meaningful engagement with affected Tribes and consideration of mechanisms to promote coordination among the multiple sovereigns with interests in the administration of programs in the covered areas of Indian country.

Section 10211(a) of SAFETEA does not prescribe any particular process for EPA action on a request by the State; thus the Agency maintains discretion to develop an appropriate means to process and act on such a request. EPA finds that it would have been appropriate for the Agency to provide additional

time to ensure meaningful Tribal involvement and to develop protocols to promote coordination among the affected sovereigns and thereby minimize the potential for conflicts that could impede regulatory program administration in the covered areas. EPA's review of the four years of implementing the October 2020 Decision and completion of the reconsideration process have provided an opportunity to correct these deficiencies and improve EPA's decision making to the benefit of all affected entities. Withdrawal of the October 2020 Decision and replacement with a new, better-informed decision culminates these processes.

C. Correction Regarding UIC Program in Osage County

As noted above, the October 2020 Decision approved the State to administer its UIC program (other than for Class II wells) in Osage County, Oklahoma. EPA noted at the time that this aspect of the approval exceeded the geographic scope of the State's UIC program as administered prior to *McGirt*. Prior to that decision, EPA had directly administered all classes of UIC permitting in Osage County. The State has clarified that EPA misunderstood its intent on this point. As the State has explained, it intended to exclude the UIC program in Osage County from its request for program authority in order to maintain – without expansion or restriction – the scope of that program as administered prior to the *McGirt* case. See Letter from Governor J. Kevin Stitt to EPA Administrator Michael S. Regan (December 4, 2024). Based on this clarification, EPA is withdrawing and revising the October 2020 Decision to match the intended scope of the State's request.

D. Ensuring Continuity of Environmental Program Administration

The State expressed in its comments on the December 2021 Proposal that reconsideration of the prior decision should not disrupt the State's program administration in the covered areas of Indian country. EPA shares this concern. As noted above, and as expressly described in the December 2021 Proposal, the State's program authority has remained in place and was unaffected during the reconsideration process. Further, by simultaneously issuing a new decision approving the State's request, EPA is ensuring that there will be no gap in program coverage and that the State, regulated community, and Tribes can rely on a continuity of program administration in the affected areas of Indian country.

III. Approval of the State's Request Under Section 10211(a) of SAFETEA

By this letter, EPA is also issuing a new decision approving the State's environmental regulatory program authority in the areas of Indian country requested by the State. As described below, the new elements of this decision are: 1) to exclude all classes of wells – as opposed to only Class II wells – in Osage County, Oklahoma from the State's approved SDWA UIC program authority, as requested by the State; and 2) to add a reasonable condition to help ensure that the views of affected Tribes will be considered in the State's program administration in Indian country. EPA also describes below certain program oversight commitments on the part of the Agency to further promote strong partnerships among the State, Tribes, and EPA as programs are administered by the State in Indian country.

The Agency believes the basic outcome approving extension of the State's EPA-approved environmental regulatory programs into the requested areas of Indian country is consistent with the authority and requirements of SAFETEA. Although the Agency typically excludes Indian country from our approvals of state environmental regulatory programs, there are rare circumstances where a federal statute expressly provides for state program administration in Indian country. On its face, Section 10211(a) of SAFETEA provides for such program administration on the part of Oklahoma and requires that EPA approve a request from the State where the statute's elements are met – *i.e.*, where the request addresses (1) any regulatory program, (2) submitted by Oklahoma for approval by EPA under a law administered by EPA, where EPA has (3) determined that the program meets applicable requirements of the law, and (4) approved the program with respect to areas in the State that are not Indian country, and (5) the State requests to administer the program in areas of the State that are in Indian country. Because these circumstances are present here, EPA is approving the State's request and, as described in Section VI below, is including within this approval a condition to promote meaningful intergovernmental engagement with Tribes during the State's program administration.

IV. Geographic Scope of Approval

EPA is making one change to the geographic scope of the October 2020 Decision. As explained above, the State has clarified that it did not intend to request SDWA UIC program authority in Osage County. EPA is thus revising the geographic scope of the State's UIC program as approved by the October 2020 Decision to exclude Osage County, Oklahoma for all classes of wells, as opposed to only Class II wells.⁴ Otherwise, the geographic scope of this decision is identical to that of the October 2020 Decision. The State requested authority over Indian country throughout the State, but expressly excluded three categories of land over which the State had generally not administered regulatory programs prior to *McGirt*.⁵ Therefore, consistent with the State's request, EPA's approval applies to Indian country

⁴ As described in the October 2020 Decision, EPA had identified two instances where the decision deviated from the geographic scope of the State's programs as implemented prior to *McGirt*. The first was extension of the State's non-Class II UIC program into Osage County. That discrepancy is now being revised in today's decision. Second, consistent with the D.C. Circuit's decision in *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014), the State's Clean Air Act State Implementation Plan ("SIP") applies on non-reservation areas of Indian country – most notably, Indian allotments – in the State. Prior to *McGirt*, the State had thus implemented its SIP on Indian allotments, including allotments that are now understood (per the Supreme Court's decision) to be located within the exterior boundaries of an Indian reservation. To the extent an allotment is located on an Indian reservation, it would be excluded from the D.C. Circuit's holding that SIPs apply on non-reservation areas of Indian country. The State's July 2020 request excludes Indian allotments, and thus does not request extension of Oklahoma's SIP onto such reservation allotments.

⁵ Section 10211(a) of SAFETEA does not specify any required minimum geographic area of Indian country to be included in a request from Oklahoma. EPA interprets the provision as providing sufficient flexibility for the State

throughout the State, with the exception of and excluding all Indian country lands, including right-of-way running through the same, that:

(A) Qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. § 1151(c);

(B) Are held in trust by the United States on behalf of an individual Indian or Tribe; or

(C) Are owned in fee by a Tribe, if the Tribe –

(i) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party; and

(ii) never allotted the land to a member or citizen of the Tribe.

As noted above, EPA recognizes that the precise geographic areas covered by this decision may evolve to the extent additional reservations located within Oklahoma are adjudicated to remain intact. Because this approval applies to categories of Indian country, as opposed to specified parcels, the approval will automatically cover any areas of Indian country – other than the excluded categories – subsequently determined to exist in the State. Nothing in this decision is intended to change or address Tribal authority under Tribal law in the covered areas where Tribes are acting outside the scope of a program under a statute administered by EPA.

V. Programmatic Scope of Approval

EPA is making one change to the programmatic scope of the October 2020 Decision. As explained above, the State has clarified that it did not intend to request SDWA UIC program authority in Osage County. EPA is thus revising the programmatic scope of the State's UIC program as approved by the October 2020 Decision to exclude all classes of wells, as opposed to only Class II wells – in Osage County, Oklahoma. Otherwise, the programmatic scope of this decision is identical to that of the October 2020 Decision. The State's July 2020 letter requests approval under SAFETEA with regard to all of the State's existing EPA-approved environmental regulatory programs⁶ that are administered by the Oklahoma Department of Environmental Quality, the Oklahoma Department of Agriculture, Food and

to exclude certain areas of Indian country from its request and to mandate EPA approval of such a limited request so long as the basic criteria of the statute are met.

⁶ Section 10211(a) of SAFETEA addresses only "regulatory program[s]" administered under federal environmental laws. The provision does not address funding provided under EPA grant programs. The provision also does not address any exercise of State regulatory authority outside the scope of a program approved by EPA under a federal environmental statute administered by EPA.

Forestry, the Oklahoma Water Resources Board,⁷ the Oklahoma Corporation Commission, and the Oklahoma Department of Labor. Consistent with the State's request, EPA is approving the State under SAFETEA to administer all environmental regulatory programs approved by EPA to apply outside of Indian country, including, but not limited to, the environmental regulatory programs identified in Appendix B to this decision. Each of the programs covered by this approval has been submitted to EPA – *i.e.*, they involve a submission by the State for EPA's consideration under a law administered by EPA – and approved by EPA as meeting applicable requirements of federal environmental law outside of Indian country. These programs thus satisfy the necessary criteria of SAFETEA Section 10211(a). To the extent EPA's prior approvals of these State programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by this approval under SAFETEA. Because each of the programs identified in Appendix B is now approved to include the requested areas of Indian country, any future revisions or amendments to these identified programs will similarly extend to the covered areas of Indian country without any further need for additional requests under SAFETEA.⁸

VI. Condition on the Approval

As described above, during reconsideration of the October 2020 Decision, EPA conducted extensive consultation with Indian Tribes. Although Tribes raised numerous issues considered by EPA, one consistent theme was that EPA should establish a process for the State to engage directly with Tribes and provide opportunities for input as a condition to approving the State to administer environmental programs within Indian country. EPA agrees that such a condition will promote the efficient and effective administration of environmental regulatory programs within the affected areas of Indian country. Therefore, as a condition of this approval, the State is required to follow the Tribal engagement process set forth below in Section VI.B with regard to the Tribes described below in Section VI.C.

A. Purpose and Background of the Tribal Engagement Process

As described above, the State's request to extend the reach of its environmental regulatory programs into certain areas of Indian country, and EPA's approval of that request under the terms of Section 10211(a) of SAFETEA, fundamentally alters the sovereign relationship of the affected Tribes to the

⁷ EPA notes that as of November 2022, the State transferred administration of Clean Water Act Water Quality Standards from the Oklahoma Water Resources Board to the Oklahoma Department of Environmental Quality.

⁸ However, should the State apply to EPA in the future for approval of any program that has not been previously approved outside of Indian country, the State would also need to submit a request under SAFETEA to the extent the State wishes to administer that program in any area of Indian country. This is consistent with the language of Section 10211(a), which contemplates that a request from Oklahoma to administer a program in Indian country will relate to a regulatory program that has already been submitted to EPA and approved by EPA to apply outside of Indian country.

front-line regulator in broad areas of their Indian country land base. In the absence of the State's request and EPA's approval, EPA would generally directly administer environmental regulatory programs under federal law in the covered areas of Indian country. As a federal agency, EPA has a sovereign government-to-government relationship with the Tribes which has important longstanding attributes under federal law and policy. As a critical element of that relationship, EPA routinely consults with federally recognized Tribes on Agency actions or decisions that affect Tribes and considers Tribal views prior to undertaking regulatory activity in Indian country, and in other areas where Agency actions or decisions may affect Tribes.

As demonstrated through longstanding efforts to establish and refine effective and enduring intergovernmental relationships, EPA's coordination and consultation with Indian Tribes honors and strengthens the Agency's government-to-government relationship with Tribes, ensures meaningful and timely opportunities for Tribal input, and promotes sound and well-informed Agency decision making for the protection of human health and the environment. Notwithstanding EPA's approval of the State's request under SAFETEA, the special EPA/Tribal relationship will continue to exist and will continue to inform EPA's oversight of the State's programs as administered in Indian country, and EPA will continue to consult with affected Tribes as part of that oversight.

However, because EPA will no longer be the front-line regulatory authority for the covered programs in the affected areas of Indian country, important and wide-ranging areas of environmental decision making will transfer to the State and will no longer fall within the scope of the EPA Consultation Policy. In these circumstances, program administration can be impacted by the loss of a regular, institutionalized process for cooperation and coordination among relevant interested sovereigns with unique knowledge, experiences, and priorities and with geographically overlapping responsibilities under their respective authorities for the protection of lands, resources, and communities in the covered areas. Although it is not possible to recreate the unique federal/Tribal government-to-government relationship at the State/Tribal level, EPA believes it is appropriate to establish a basic coordination process as part of this approval to reasonably approximate the Tribal engagement that would occur were EPA to remain the front-line regulator. During the consultation process conducted in connection with the December 2021 Proposal, EPA received input from several Tribes requesting that EPA include an appropriate process for State-Tribal engagement as a condition of any approval of the State's SAFETEA request. Among other things, some Tribes provided specific engagement protocols for EPA's consideration. EPA has determined that the protocols provided by Tribes, with some adjustments to help ensure functionality and reduce burden, serve to provide a process for the State to engage directly with Tribes and provide opportunities for Tribal input as Oklahoma exercises the authorities granted by this SAFETEA approval. Notably, as set forth in Section VI.D below, the protocols provide an opportunity for the State to modify the Tribal engagement process through separate written agreement(s) with one or more of the Tribes described in Section VI.C below.

By including this condition, the substitution of the State as the front-line regulator will not disturb the important opportunities for meaningful Tribal input and will ensure that the unique information and

views of the Tribes are appropriately obtained and considered as the State administers its regulatory programs. The goal of this process is to promote more effective program administration and minimize potential disputes in the covered areas of Indian country. The condition is intended to provide an orderly and accountable process for State-Tribal engagement with clear protocols and expectations to the benefit of all involved parties.

The condition included in this decision is also fundamentally consistent with key principles underlying the various programs that regulatory decisions should provide opportunities for participation, and be appropriately informed, by the affected communities and neighboring states, which can include Indian Tribes. The State noted in its comments on the December 2021 Proposal that it already conducts meaningful engagement with Tribal partners. The condition included in this decision is therefore consistent with existing efforts by the State and will serve to formalize such opportunities for Tribal engagement within the context of the State's approved program authority in the covered areas of Indian country. The condition does not disturb the State's fundamental authority and approval by EPA to administer environmental regulatory programs in the requested areas of Indian country. It merely adds an appropriate process to the State's program administration to support the State's existing efforts to engage with affected Tribes and to substitute for Tribal consultation that would have occurred where EPA is the front-line regulator in Indian country.

B. Required Tribal Engagement Protocols

As part of this approval, the State is required to follow the Tribal engagement protocols set forth in Appendix A to this decision ("Tribal Engagement Protocols"). As described above, this process blends and, as appropriate, adjusts procedures recommended by certain Tribes in their consultation comments to EPA. Notably, the Tribal Engagement Protocols expressly provide an opportunity for the State and Tribes to tailor the engagement procedures to their specific interests and needs through separate agreement(s). As stated in the Tribal Engagement Protocols, and as described in Section VI.D below:

These procedures will not apply with regard to any Tribe(s) where the State and such Tribe(s) enter into a written agreement establishing separate procedures for coordination between the State and such Tribe(s) regarding the State's administration of the regulatory program(s) covered by the SAFETEA decision.

Accordingly, the State has the ability to modify the procedures contained in the Tribal Engagement Protocols upon agreement with one or more of the covered Tribes.

While the State has informed EPA through its comments on the December 2021 Proposal that it already conducts meaningful engagement with its Tribal partners, EPA recognizes that additional time may be needed for the State to incorporate the specific procedures of the Tribal Engagement Protocols into the ordinary administration of its environmental regulatory programs as approved under this

SAFETEA decision. The condition requiring the Tribal Engagement Protocols will thus not take effect until 120 days from the date of this SAFETEA decision. EPA believes a 120-day window will provide sufficient time for the State to supplement its existing Tribal outreach procedures to account for the Tribal Engagement Protocols and will also provide an opportunity for the State and Tribe(s) to develop separate coordination agreements, if they so choose. EPA notes that the 120-day window is not a deadline for development of any such separate agreements, and encourages the State and Tribes to develop their own tailored coordination agreements to replace the Tribal Engagement Protocols at any time.

C. Covered Tribes

This approval decision directly applies to certain Indian country lands of those Tribes whose reservations remain intact under the holding and (as applied in later cases) the reasoning of *McGirt*.⁹ As noted above, Tribes whose reservations have been adjudicated to remain intact currently include Cherokee Nation, The Chickasaw Nation, The Choctaw Nation of Oklahoma, Miami Tribe of Oklahoma, The Muscogee (Creek) Nation, Ottawa Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, Quapaw Nation, The Seminole Nation of Oklahoma, and Wyandotte Nation. The Tribal Engagement Protocols in Appendix A apply to these Tribes, as well as to the Pawnee Nation. It is also possible that the reservations of additional Tribes remain intact. Such reservations could, for instance, be the subject of future adjudications or other proceedings or findings establishing their current status as intact reservations. In that event, the relevant categories of such Tribes' lands would automatically fall within the scope of the State's program authority consistent with the State's request and today's decision. The Tribal Engagement Protocols in Appendix A will also apply to such Tribes. Together, the Tribes described in this section constitute the Tribes covered by the condition set forth above on the State's program approval under SAFETEA ("Covered Tribes").

D. Separate State-Tribal Coordination Agreements

As previously stated, the condition included in this decision is intended to ensure a general baseline of opportunity for the Covered Tribes to provide meaningful input into the State's regulatory activity in their areas. EPA recognizes, however, that the most effective means for State and Tribal sovereigns to interact would generally be through their own coordination agreements and protocols tailored to their specific interests and priorities. Therefore, as noted in the Tribal Engagement Protocols, in lieu of the condition set forth above, the State and one or more of the Covered Tribes may enter into their own State-Tribal agreement addressing how they will communicate and coordinate on the State's actions

⁹ As described above (see Section IV), the State's request under SAFETEA generally covers geographic areas that were not understood by the State and EPA to be Indian country prior to the Supreme Court's decision in *McGirt* and generally excludes areas that had previously been understood to constitute Indian country.

under this approval. The details of such agreements would be for the State and Tribe(s) to negotiate.¹⁰ Once the agreement is signed, the State would be relieved of compliance with the condition set forth above with regard to the signatory Tribe(s) for as long as the agreement is in effect. EPA strongly supports the development of such State-Tribal agreements and stands ready to assist the parties as appropriate.

VII. EPA Oversight

To further promote strong partnerships among the State, Tribes, and EPA as programs are administered by the State in Indian country, EPA also intends to bring a Tribal focus to its oversight of Oklahoma's programs as administered in Indian country to help ensure consideration of Tribal input and ongoing transparent dialogue among the parties. EPA oversight of state programs generally involves a number of interactions, including scheduled reviews of state programs, reviews of specific regulatory actions such as draft state permits, and consideration of compliance and enforcement issues.

EPA will continue to conduct reviews of the State's environmental regulatory programs. EPA also plans, in the ordinary course of permit reviews: 1) to review comments submitted by Tribes on draft or proposed State permits as well as State responses, and/or 2) where requested by Tribes, to review draft State permits or other actions, consult with Tribes as appropriate regarding their concerns, and work with the State to help ensure Tribal concerns are considered and appropriately addressed. For concerns identified by Tribes related to enforcement of the State's programs or to a specific facility or event, EPA plans to engage with Tribes and work with the State to help ensure that Tribal concerns are considered and appropriately addressed. Further, where EPA is conducting facility inspections in Indian country, and upon request of a Tribe, EPA may permit Tribal representatives to accompany EPA inspectors if the representative has appropriate federal credentials or, if uncredentialed, with the facility's permission. Consistent with EPA practice, EPA will also endeavor to provide notifications to Tribes of planned EPA inspections in Indian country. Finally, EPA will engage with Tribes on a regular recurring basis to assess the State's administration of programs under the SAFETEA authority and to identify Tribal priorities and concerns relating to program implementation or enforcement.¹¹ Each of these oversight activities will be conducted consistent with EPA's established oversight authorities under the various federal environmental laws administered by the Agency.

¹⁰ SAFETEA Section 10211(b) includes separate requirements relating to Tribal environmental regulation under EPA's statutes in Indian country in Oklahoma, and calls for State/Tribal cooperative agreements. The State and Covered Tribes may also benefit by establishing procedures regarding negotiation of such SAFETEA cooperative agreements.

¹¹ EPA also recognizes that some Tribes in Oklahoma may be interested in seeking eligibility to administer approved regulatory programs of their own under EPA's statutes. EPA intends to work with interested Tribes to help them develop complete TAS applications and to assist, as appropriate, with development of cooperative agreements required by SAFETEA Section 10211(b).

VIII. Conclusion

Consistent with the authority and requirements of Section 10211(a) of SAFETEA, EPA withdraws the October 2020 Decision and approves, subject to the consultation condition set forth herein, the State of Oklahoma's July 22, 2020, request to administer the environmental regulatory programs described in this decision in the specified areas of Indian country. EPA looks forward to working cooperatively with the State and Tribes to promote ongoing, transparent dialogue and appropriate consideration of all parties' interests as the State administers programs in the covered areas of Indian country.

Thank you again for your letter. If you have further questions, you are welcome to contact me, or your staff may contact Jack Bowles, Director of the Office of Intergovernmental Relations, at bowles.jack@epa.gov or 202-564-3657.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane Nishida". The signature is fluid and cursive, with a large initial "J" and "N".

Jane Nishida
Acting Administrator

ENCLOSURES:

1. Appendix A – Tribal Engagement Protocols
2. Appendix B – List of Covered Programs

Appendix A – Tribal Engagement Protocols

The State shall implement the following procedures in connection with all regulatory programs covered by the decision under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 (“SAFETEA”) to which these procedures are appended. These procedures are designed to help formalize and establish a minimum set of procedures and expectations for the State’s approach to engagement with Covered Tribes to ensure that the Tribes’ input and environmental priorities are considered in the State’s decision-making processes.

These procedures will not apply with regard to any Tribe(s) where the State and such Tribe(s) enter into a written agreement establishing separate procedures for coordination between the State and such Tribe(s) regarding the State’s administration of the regulatory program(s) covered by the SAFETEA decision.

Section I - Final Agency Actions

The procedures in Sections I.A, I.B, I.C, and III shall apply to all final agency actions by the State under the program(s) covered by the SAFETEA decision - including promulgation of regulations, issuance of permits, licenses or other approvals, establishment of standards, or other final agency action.

A. Notice to Affected Tribe(s)

- 1) As early as practicable in the action development process, the State must send a written notice to any Covered Tribe(s) (see Section III.A below) whose Indian country will be subject to, is the site of, or is within 50 miles of the site of the final agency action, inviting the affected Tribe(s) to confer with the State regarding the action. Any Covered Tribe(s) entitled to notice under these procedures are referred to as “affected Tribe(s).”
- 2) The notice must be provided early enough so that conferral under Section I.B can reasonably be expected to be completed while meeting any statutory or regulatory timing requirements or deadlines applicable to the final agency action in question. The notice must identify any such statutory or regulatory deadlines so that the affected Tribe(s) can seek to structure their conferral to comport with those deadlines.
- 3) The notice must be sent to the tribal leader and head of the environmental department of each affected Tribe.
- 4) The notice must provide a full, clear, accurate and non-technical description of the action with relevant maps and timelines, a summary description of the agency’s process for making a decision (including any statutory or regulatory timing requirements or deadlines),

and a contact at the State agency responsible for the action.

- 5) The notice must expressly request a response from the affected Tribe(s) indicating if they wish to confer and/or provide written views or objections to the action and provide at least 30 days for tribal response.

B. Conferral with Affected Tribe(s)

- 1) If an affected Tribe responds to the State notice within 30 days or any longer period set forth in the State notice and indicates that the Tribe wishes to confer with the State regarding the action, the State shall offer to meet with the Tribe to discuss the action.
 - a) The State shall ensure that official(s) with sufficient knowledge of the action are present at all meeting(s) to provide meaningful information to the Tribe and address the Tribe's questions. Such meeting(s) may be in-person, virtual or by phone, as appropriate.
 - b) In addition to meeting with the affected Tribe(s), the State shall provide sufficient documentary information for the Tribe(s) to make an informed decision about the action, including maps, technical data, and other explanatory or supporting information as requested by the Tribe. If such data is provided after the first conferral meeting, the State will hold additional meeting(s) no later than 15 days after receipt of such data by the Tribe or as mutually agreed upon by the State and Tribe, if requested by the Tribe.
 - c) Within 30 days of the later of 1) the initial State/Tribal meeting, 2) the receipt by the Tribe of any information requested under Section I.B.1.b, or 3) any subsequent meeting under Section I.B.1.b, the Tribe will provide any information and views it wishes the State to consider regarding the action. Such information and views must be submitted in writing, at which point the conferral process under Section I.B shall be complete.
- 2) Meaningful conferral under Section 1.B shall require that efforts are aimed at achieving consensus between the State and the affected Tribe(s).
- 3) The State shall make reasonable efforts to ensure that applicable statutory and regulatory deadlines do not limit meaningful conferral efforts.
- 4) Subject to Sections III.C and III.D (General Provisions), if affected Tribe(s) respond to the notice in Section I.A by indicating that they wish to confer, no final action will be taken by the State until conferral with affected Tribe(s) under Section I.B is complete.

C. Reporting

- 1) Within 10 business days of finalizing an action subject to the procedures in Section I.A above, the State must provide a written description of the tribal engagement process to the affected Tribe(s).
- 2) The description must include:
 - a) A signed statement(s) of non-opposition to the action obtained from the affected Tribe(s);
 - b) A description of any concerns raised by affected Tribe(s) and how the State addressed those concerns; or
 - c) A signed certification that notice was provided pursuant to Section I.A and that no response was provided by any affected Tribe.
- 3) The State will provide a yearly report to the EPA, Region 6 Regional Administrator that will include information indicating the number of notifications provided to affected Tribes under Section I.A and the number of conferrals conducted with affected Tribes under Section I.B. The State will also identify any final agency actions where the State provided a written description of the engagement process to affected Tribe(s) under Section I.C.2.b. The State will provide a copy of the report to all Covered Tribes at the same time the State provides a copy to EPA.

Section II - Civil Compliance Assurance and Enforcement

The procedures in Section II shall apply to civil compliance assurance and enforcement activities undertaken by the State under each of the programs covered by the SAFETEA decision. The procedures in this Section must be implemented consistent with, and do not alter, limit, or supersede, any applicable laws, regulations, or any limitations on sharing enforcement sensitive or confidential information, or any restrictions on communications with outside parties.

A. Civil Inspection Planning and Priority Setting

- 1) **Notice to Covered Tribes**
 - a) As early as practicable in the annual civil inspection planning and priority setting process undertaken consistent with applicable EPA Compliance Monitoring Strategies, the State must send a notice letter to the tribal leaders and heads of the environmental departments of all Covered Tribes informing them of the commencement of the planning process and inviting each Covered Tribe to provide views on the State's planning and priority setting as relevant to areas of, or within 50 miles of, their Indian country.

- b) Such notice must identify the program(s) under consideration in the State's inspection planning and priority setting process and a contact at the State agency(ies) responsible for each program.
- c) Such notice must expressly request a response from the Covered Tribes indicating if they wish to confer and/or provide written views and must provide at least 30 days for tribal response.

2) Conferral with Covered Tribes

- a) If a Covered Tribe responds to the State notice within 30 days or any longer period set forth in the State notice and indicates that the Tribe wishes to confer with the State regarding the State's inspection planning and priority setting, the State shall offer to meet with the Tribe.
 - i) The State shall ensure that official(s) with sufficient knowledge of the State's enforcement programs and the inspection planning and priority setting process are present at the meeting to provide meaningful information to the Tribe, address the Tribe's questions, and receive tribal input. Such meeting may be in-person, virtual or by phone, as appropriate.
 - ii) Within 30 days of the State/Tribal meeting, the Tribe will provide any information and views it wishes the State to consider regarding State's inspection planning and priority setting for the program(s) at issue. Such information and views must be submitted in writing, at which point the conferral process under Section II.A.2 shall be complete.

3) Reporting

Within 30 days of completing its annual inspection planning process and priority setting subject to procedures in Section II.A, the State must provide to any Covered Tribe that participated in the conferral process and/or provided written views a written description of how the State incorporated tribal views into the State's annual inspection plan.

B. Civil Compliance Assurance and Enforcement Activities

1) Notice to Covered Tribe(s)

- a) Where the State conducts an on-site civil inspection at a facility located on, or within 50 miles of, the Indian country of a Covered Tribe, the State must, within 15 days of finalizing the inspection report, send a copy of the final inspection report to the tribal leader and

head of the environmental department of such Tribe, and invite the Tribe to confer with the State on its findings.

- b) Such notice must expressly request a response from the Tribe indicating if the Tribe wishes to confer and/or provide written views and must provide at least 15 days for tribal response.

2) Conferral with Covered Tribe(s)

- a) If a Covered Tribe responds to the State notice within 15 days or any longer period set forth in the State notice and indicates that the Tribe wishes to confer with the State regarding the final inspection report, the State shall offer to meet with the Tribe.
 - i) The State shall ensure that official(s) with sufficient knowledge of the inspection report's findings are present at the meeting to provide meaningful information to the Tribe and address the Tribe's questions. Such meeting may be in-person, virtual or by phone, as appropriate.
 - ii) Within 30 days of the State/Tribal meeting, the Tribe will provide any information and views it wishes the State to consider regarding the final inspection report. Such information and views must be submitted in writing, at which point the conferral process under Section II.B.2 shall be complete.

3) Post-Inspection Communication

Where the State conducts a civil enforcement response at a facility for which a final inspection report was provided to a Covered Tribe under Section II.B.1 and conferral occurred under Section II.B.2 and/or the Tribe provided written views, at a Tribe's request and subject to applicable limitations on sharing enforcement sensitive or confidential information and to any limitations on communications with third parties as described above in Section II, the State will provide the Tribe with timely publicly available information about the State's response. This could include, for example, inspection sampling results, final orders, filed complaints, or final settlement agreements or consent decrees.

C. Civil Enforcement Referrals by Covered Tribes

1) Conferral with Covered Tribes

- a) Where a tribal leader or head of the environmental department of a Covered Tribe provides to the director of a State program a written notice identifying with specificity a potential civil violation of a requirement under a program covered by this SAFETEA decision

occurring on, or within 50 miles of, such Tribe's Indian country, the State must, within 15 days of receipt, respond to signatory of such notice in writing by offering to meet with the Tribe to discuss the Tribe's concerns regarding the potential violation.

- b) The State shall ensure that official(s) with sufficient knowledge of the program(s) under which the potential violations occurred are present at any meeting with the Covered Tribe. Such meeting may be in-person, virtual or by phone, as appropriate.
- 2) If the State conducts a civil inspection or civil enforcement response at the subject facility, the State shall follow the procedures of Section II.B.
 - 3) If the State resolves the matter at the subject facility in a manner that does not result in a civil inspection or civil enforcement response that would trigger the procedures of Section II.B, then the State must provide timely publicly available information to the Covered Tribe explaining how the matter is being, or was, addressed subject to applicable limitations on sharing enforcement sensitive or confidential information and to any limitations on communications with third parties as described above in Section II.

Section III - General Provisions

- A. For purposes of these conditions, "Covered Tribes" or "Covered Indian Tribes" currently refers to: Cherokee Nation, The Chickasaw Nation, The Choctaw Nation of Oklahoma, Miami Tribe of Oklahoma, The Muscogee (Creek) Nation, Ottawa Tribe of Oklahoma, Pawnee Nation of Oklahoma, Peoria Tribe of Indians of Oklahoma, Quapaw Nation, The Seminole Nation of Oklahoma, and Wyandotte Nation. Covered Tribes shall also include any additional Tribes whose reservations are, in the future, adjudicated to remain intact.
- B. For purposes of these conditions, "Indian Country" has the same meaning as under 18 U.S.C. § 1151.
- C. These conditions must be implemented consistent with, and do not alter, limit, or supersede any statutory or regulatory requirements (including any timing requirements or deadlines) applicable to the final agency action taken by the State.
- D. These conditions do not alter, limit, or supersede the State's authority to proceed expeditiously in emergency circumstances. Where the State does not fully comply with these conditions due to an emergency circumstance, the State must, as soon as practicable, provide written notice to any affected Tribe(s) stating that emergency circumstances required action, stating under what legal authority the action was taken, describing the action taken by the State, and explaining why the situation prevented full compliance with tribal notification and conferral procedures. For purposes of this condition, an "emergency circumstance" is one presenting an imminent threat of

significant harm to human health, safety or the environment that necessitates action within the time period that would otherwise be needed to conduct the tribal notification and conferral procedures of these conditions.

- E. Nothing in these procedures shall be interpreted to affect or alter existing regulatory, enforcement, or other legal authorities of the Covered Tribes.

Appendix B – List of Covered Programs¹²

Resource Conservation Recovery Act:

- Subtitle C hazardous waste program (42 U.S.C. § 6921, *et seq.*; 40 C.F.R. Part 272, Subpart LL)
- Subtitle D permit program (42 U.S.C. § 6941, *et seq.*; 40 C.F.R. Parts 239 and 258)
- Coal Combustion Residual State Program (42 U.S.C. § 6945(d); 40 C.F.R. Part 257, Subpart D)
- Subtitle I Underground Storage Tank Program (42 U.S.C. § 6991, *et seq.*; 40 C.F.R. § 282.86)

Clean Air Act:

- State Implementation Plan (42 U.S.C. § 7410; 40 C.F.R. Part 52, Subpart LL - 40 C.F.R. § 52.1920 - 52.1960)
- Standards of Performance for New Stationary Sources (42 U.S.C. § 7411(b) and (c), 7429; 40 C.F.R. Part 60)
- National Emission Standards for Hazardous Air Pollutants (42 U.S.C. § 7412; 40 C.F.R. Part 61, Subpart A-40 C.F.R. § 61.04(b)(38) and § 61.04(c)(6)(iv))
- Approval and Promulgation of State Plans for Designated Facilities and Pollutants (42 U.S.C. § 7411(d) and 7429; 40 C.F.R. Part 62, Subpart LL - 40 C.F.R. § 62.9100 - 62.9191)
- National Emission Standards for Hazardous Air Pollutants, Delegation Status for Part 63 Standards-State of Oklahoma (42 U.S.C. § 7412; 40 C.F.R. Part 63, Subpart A – 40 C.F.R. § 63.99(a)(37))

¹² As stated in the October 2020 Decision, EPA has reorganized the list of regulatory programs included in Oklahoma's July 2020 letter to track the statutes administered by EPA, avoid unnecessary references and duplication, and reference relevant statutory and regulatory provisions that reflect the requested programs. Consistent with the State's request to include all regulatory programs approved by EPA outside of Indian country (and the statement that the list of programs included in the July 2020 letter was non-exclusive), EPA has included certain regulatory programs that were not separately identified in the State's July 2020 letter. Because Section 10211(a) of SAFETEA applies only to regulatory programs, EPA has not included any references to environmental grant authorities under EPA statutes or regulations that were included in the State's July 2020 letter.

- State Operating Permits Program (42 U.S.C. § 7661a(d) - 7661f; 40 C.F.R. Part 70, Appendix A, Oklahoma)
- Ambient Air Monitoring Reference and Equivalent Methods and Ambient Air Quality Surveillance, 42 U.S.C. § 7601(a), 7619 (40 C.F.R. Parts 53 and 58)

Clean Water Act:

- Pretreatment (33 U.S.C. § 1317; 40 C.F.R. Parts 129 and 403)
- National Pollutant Discharge Elimination System Programs authorized for Oklahoma Department of Environmental Quality and Oklahoma Department of Agriculture, Food, and Forestry (33 U.S.C. § 1342; 40 C.F.R. Parts 122-125)
- Disposal of Biosolids and Sewage Sludge (33 U.S.C. § 1345; 40 C.F.R. Part 503)
- Water Quality Standards and Implementation plans (33 U.S.C. § 1313; 40 C.F.R. Parts 130 and 131)

Safe Drinking Water Act:

- Underground Injection Control (UIC) Program (excluding Osage County, Oklahoma) for Classes I, II, III, IV and V wells, (42 U.S.C. § 300h-300h-8; 40 C.F.R. § 147.1850 and 1851)
- Public Drinking Water System Program (42 U.S.C. § 300f, *et seq.*; 40 C.F.R. Part 143-149)

Federal Insecticide, Fungicide, and Rodenticide Act:

- State Pesticides Certification and Training Plan (7 U.S.C. § 136j; 40 C.F.R. Part 171)
- Experimental Use Permits (7 U.S.C. § 136c; 40 C.F.R. Part 172)
- Delegated State Enforcement and Training (7 U.S.C. § 136u)
- Enforcement Primacy (7 U.S.C. § 136w-i)
- Public Health, Quarantine, and Crisis Exemptions (7 U.S.C. § 136p; 40 C.F.R. Part 166)
- Special Local Needs Registrations (7 U.S.C. § 136v; 40 C.F.R. Part 162)

Toxic Substances Control Act:

- Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities ("Lead-Based Paint Program") (15 U.S.C. § 2682; 40 C.F.R. Part 745)
- Lead-Based Paint Renovation, Repair and Painting, and Pre-Renovation Education Activities in Target Housing and Child Occupied Facilities (15 U.S.C. § 2684; 40 C.F.R. Part 745)
- Asbestos in Schools (15 U.S.C. § 2643; 40 C.F.R. Part 763)