(b) Affected ADs

None.

(c) Applicability

This AD applies to MHI RJ Aviation ULC (Type Certificate previously held by Bombardier, Inc.) airplanes, certificated in any category, identified in paragraphs (c)(1) through (3) of this AD.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) and CL–600–2C11 (Regional Jet Series 550) airplanes, serial numbers (S/N) 10001 through 10348 inclusive.

(2) Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, S/N 15001 through 15499 inclusive.

(3) Model CL–600–2E25 (Regional Jet Series 1000) airplanes, S/N 19001 through 19064 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code: 25, Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by a report of a passenger seat Y-belt (lap-belt) re-installed in the wrong orientation, due to an incorrect maintenance manual. The FAA is issuing this AD to detect and address Y-belts that are incorrectly installed. The unsafe condition, if not addressed, could result in passenger injury due to head impact, on the front monument during an emergency landing.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Within 24 months after the effective date of this AD, inspect each Y-belt for correct installation and damage and, if any incorrect installation or damage is found, within 24 months after the effective date of this AD, do all applicable corrective actions, in accordance with paragraph B, ''Procedure,'' of the Accomplishment Instructions of MHI RJ Service Bulletin 670BA–25–135, Revision B, dated November 25, 2022. For this AD, damage includes dents or misshapen hooks that attach the belt to the seat.

Note 1 to paragraph (g): Y-belts are also known as lap belts.

(h) Exceptions to Service Information

Where paragraph B, ''Procedure,'' of the Accomplishment Instructions of MHI RJ Service Bulletin 670BA–25–135, Revision B, dated November 25, 2022, specifies to ''refer to AMM'' replace those words with ''in accordance with AMM.''

(i) Maintenance Task Prohibition

As of the effective date of this AD, it is prohibited to use MHI RJ Aviation ULC Aircraft Maintenance Manual (AMM) task 25–21–04–400–801, revision 69 or earlier.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the service information identified in paragraph (j)(1) or (2) of this AD, provided the actions were done using MHI RJ AMM Revision 70, dated May 25, 2022, or Revision 71, dated December 16, 2022.

(1) MHI RJ Service Bulletin 670BA–25–135, dated June 1, 2022.

(2) MHI RJ Service Bulletin 670BA–25–135, Revision A, dated August 30, 2022.

(k) Additional AD Provisions

The following provisions also apply to this AD.

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Manager of the International Validation Branch, mail it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (l)(2) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or Transport Canada or MHI RJ Aviation ULC's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(l) Additional Information

(1) Refer to Transport Canada AD CF–2023–10, dated February 17, 2023, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1823.

(2) For more information about this AD, contact Fatin Saumik, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7300; email: *9-avs-nyaco-cos@faa.gov.*

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(3) and (4) of this AD.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) MHI RJ Service Bulletin 670BA–25–135, Revision B, dated November 25, 2022.

(ii) [Reserved]

(3) For MHI RJ Aviation ULC service information identified in this AD, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email *thd.crj@mhirj.com;* website *mhirj.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on September 7, 2023.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–19673 Filed 9–12–23; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2022–0441; FRL–8673–02–OAR]

RIN 2060–AV47

Regulatory Requirements for New HAP Additions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to amend the General Provisions for National Emission Standards for Hazardous Air Pollutants (NESHAP) to address applicability and compliance issues resulting from the addition of a compound to the list of hazardous air pollutants (HAP) under the Clean Air Act (CAA). This action focuses on issues related to newly applicable standards for sources that become major sources solely from the addition of a compound to the CAA HAP list. This action also includes a discussion of the impacts of a newly listed HAP on the federal operating permit program.

DATES:

Comments: Comments must be received on or before November 13, 2023.

Public hearing: If anyone contacts us requesting a public hearing on or before September 18, 2023, we will hold a virtual public hearing. See **SUPPLEMENTARY INFORMATION** for

information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2022–0441, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2022–0441 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2022–0441.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2022–0441, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery/Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact U.S. EPA, Attn: Susan Miller, Mail Drop: D205–02, 109 T.W. Alexander Drive, P.O. Box 12055, RTP, North Carolina 27711; telephone number: (919) 541–2443; email address: *miller.susan@epa.gov.* For additional information, see *https://www.epa.gov/stationary-sources-air-pollution/infrastructure-new-hap-additions.*

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing. To request a virtual public hearing, contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* If requested, the virtual hearing will be held on October 4, 2023. The hearing will convene at 11:00 a.m. Eastern Time (ET) and will conclude at 3:00 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details at *https://www.epa.gov/stationary-sources-air-pollution/infrastructure-new-hap-additions.*

If a public hearing is requested, the EPA will begin pre-registering speakers for the hearing no later than 1 business day after a request has been received. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/stationary-sources-air-pollution/infrastructure-new-hap-additions* or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* The last day to pre-register to speak at the hearing will be September 25, 2023. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers at: *https://www.epa.gov/stationary-sources-air-pollution/infrastructure-new-hap-additions.*

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 4 minutes to provide oral testimony. The EPA encourages commenters to submit the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/stationary-sources-air-pollution/infrastructure-new-hap-additions.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or a special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by September 20, 2023. The EPA may not be able to arrange accommodations without advanced notice.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2022–0441. All documents in the docket are listed in *https://www.regulations.gov/.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2022–0441. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to *https://www.regulations.gov* any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment

that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/.* Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in the *Instructions* section of this document. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address *oaqpscbi@epa.gov,* and as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2018–0747. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Preamble acronyms and abbreviations. Throughout this document the use of ''we,'' ''us,'' or ''our'' is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

1-BP 1-bromopropane
ANPRM advanced notice of proposed rulemaking
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
EPA Environmental Protection Agency
HAP hazardous air pollutant(s)
MACT maximum achievable control technology
MSDL Major Source Due to Listing
NESHAP national emission standards for hazardous air pollutants
OMB Office of Management and Budget
PRA Paperwork Reduction Act
PTE potential to emit
UMRA Unfunded Mandates Reform Act

Organization of this document. The information in this preamble is organized as follows below.

I. General Information

A. What action is the Agency taking?

Section 112(b) of the CAA established a list of 189 hazardous air pollutants (HAP). This provision of the CAA also provides the EPA with the authority to modify the list. In response to a petition to the Administrator to list 1-bromopropane or 1-BP (also known as n-propyl bromide (nPB)), the EPA, for the first time, added a new HAP to the CAA section 112(b) HAP list (HAP list) on January 5, 2022. Based on this new addition to the HAP list, the EPA determined that there are several regulatory implications and issues that must be addressed to fully integrate a newly listed HAP into the existing CAA section 112 program. This rule, when finalized, will address the immediate regulatory effects of adding a pollutant to the HAP list. This proposal addresses three specific issues that we identified. The first issue is whether already promulgated National Emission Standards for Hazardous Air Pollutants (NESHAP) would apply to a newly listed HAP. For example, for a NESHAP with a limit for total HAP, owners or operators of sources that emit the newly listed HAP and are subject to the limit need to understand whether they must include the emissions of the newly listed HAP to determine whether the source meets that limit. The second issue is the consideration of the permitting implications for facilities that become major sources under CAA section 112 solely due to the addition of a new pollutant to the HAP list (hereinafter Major Source Due to Listing or ''MSDL'' facilities). The third issue for a MSDL facility that triggers the applicability of a major source NESHAP is the determination of the applicable

emission standards (in particular, whether the source is subject to the standards for new sources or existing sources) and the compliance deadlines for those newly applicable NESHAP requirements.

The EPA is not proposing any changes to the part 70 regulations to address the addition of a new pollutant to the CAA section 112 HAP list as the current program appropriately covers these issues. However, after reviewing the existing NESHAP regulations, the EPA intends to clarify the applicability of previously promulgated NESHAP when the EPA adds a new pollutant to the HAP list by revising 40 CFR 63.64, subpart C. In addition, the EPA is proposing initial notifications, several alternatives to address applicable emission standards and compliance deadlines for MSDL facilities by revising 40 CFR, subpart A.

This proposed rulemaking addresses the immediate compliance obligations for the regulated community following the addition of a new HAP. This is only one part of the overall program to incorporate a new HAP into the CAA section 112 regulatory framework. Future actions within individual NESHAP will address rule-specific issues, including identification of the sources that emit the new HAP; promulgation of standards, as warranted, that include the new HAP by either revising existing NESHAP standards or establishing new standards, as necessary; and identification of engagement and outreach needs with affected communities and other entities.

The actions we are taking regarding section II. are pursuant to our authority under CAA section 112. We consider the regulatory provisions we are proposing under 40 CFR part 63, subpart A to be severable from the regulatory provisions being proposed under 40 CFR part 63, subpart C, as these are two separate regulatory requirements, each of which would operate independently from the other, when finalized.

B. Does this action apply to me?

Categories of entities potentially affected by this proposed action include sources that emit a pollutant that is added to the HAP list. As discussed in more detail in section IV. of this preamble the addition of a pollutant to the HAP list can, for those sources who emit that pollutant, change the source's potential to emit (PTE) such that an area source may become a major source. This change to major source status has regulatory implications that may include CAA operating permitting obligations and applicability of one or more major source NESHAP. This proposed rule addresses these situations.

C. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 112 and 301 of the CAA, as amended (42 U.S.C. 7401 *et seq.*). CAA section 112(a) provides ''Definitions'' applicable to CAA section 112. A major source of HAP is defined under CAA section 112(a) as any ''stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.'' Stationary sources of HAP that are not major sources are defined as ''area sources.'' Section 112(b)(3)(A) of the CAA allows any person to petition the EPA to modify the CAA section 112(b)(1) list of HAP by adding or deleting a substance.[1] Section 112(d) of the CAA establishes the process for establishing national emissions standards for HAP, commonly referred to as NESHAP but also frequently referred to as either maximum achievable control technology (MACT) standards or generally available control technology (GACT) standards. Section 112(i) of the CAA provides the schedule for compliance with emission standards. Collectively, these statutory provisions and the NESHAP General Provisions codified in 40 CFR part 63, subpart A, provide the framework for establishing emission standards and compliance timing for HAP regulation. These statutory provisions also provide the authority for the EPA to establish requirements to address the immediate regulatory effects when a pollutant is added to the HAP list.

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

In addition to being available in the docket (Docket ID No. EPA–HQ–OAR–2022–0441), an electronic copy of this proposal is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/infrastructure-new-hap-additions.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key documents at this same website. In addition, a copy of the redline/strikeout version of the regulatory language showing the possible edits needed to incorporate the proposed changes to 40 CFR part 63, subparts A and C is included in the docket for this action (Docket EPA–HQ–OAR–2022–0441). Following signature by the Administrator, the EPA also will post a copy of this document to *https://www.epa.gov/stationary-sources-air-pollution/infrastructure-new-hap-additions.*

II. Basis for the Proposed Action

In the 1990 CAA Amendments, Congress established a list of HAP. These HAP are associated with a wide variety of adverse health effects, including, but not limited to cancer, neurological effects, reproductive effects, and developmental effects. The health effects associated with various HAP differ depending upon the toxicity of the individual HAP and the circumstances of exposure, such as the amount of chemical present, the length of time a person is exposed and the stage of life at which the person is exposed. Prior to the 1990 CAA Amendments, the EPA was required to list HAP for regulation under a risk- and health-based approach, which called for a conclusion that a HAP could ''cause or contribute to, an increase in mortality, an increase in serious irreversible, or incapacitating reversible illness.'' CAA section 112(a)(1), Public Law 91–604, 84 Stat. 1676, 1685 (1970). This approach proved unsatisfactory in achieving the goal of improved public health. In the 1990 CAA Amendments, Congress dispensed with this provision, listed 189 HAP in CAA section 112(b)(1) for regulation under CAA section 112(d), and provided for modifications of the HAP list either by petition or on the Administrator's determination under CAA sections 112(b)(3)(A) and (B).

As relevant here, in CAA section 112(b)(3), Congress provided that any person may petition the Administrator to modify the list of HAP by adding or deleting a pollutant. On January 5, 2022, the EPA published a final rule that added 1–BP to the CAA HAP list, with an effective date of February 4, 2022 (87 FR 393). This addition came as a result of the EPA's determination that the petition we received requesting that we list 1–BP as a HAP provided adequate data to support that 1–BP is an air pollutant and that emissions, ambient concentrations, bioaccumulation or

[1] *La. Envtl. Action Network* v. *Envtl. Prot. Agency,* 955 F.3d 1088, 1098 (D.C. Cir. 2020) (''the Act[] specifie[s] processes for adding to or subtracting from the statutory list of hazardous air pollutants, and its direction to EPA [is] to act within 18 months on a petition to modify the list. 42 U.S.C. 7412(b)(3)(A).'')

deposition of 1–BP are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects. Before publishing the final rule, EPA published a draft notice of its rationale for granting the petition.[2] (*American Forest and Paper Ass'n* v. *E.P.A,* 294 F.3d 113, 117 n.3 (D.C. Cir. 2002) (''Section 112(b) does not contemplate a formal rulemaking and is not among the sections enumerated in section 307(d)(1) (although other subsections of section 112 are included there).''). This was the first time that a HAP was added to the HAP list that Congress created in 1990. While this was the first action to add a HAP to the list, the EPA is preparing for additional future listings. These listings could come from public petitions, as allowed by CAA section 112(b)(3), through action taken by the Administrator under CAA section 112(b)(2) of the CAA, or through actions or directives from Congress.

Prior to listing 1–BP as a HAP, the EPA evaluated whether any regulatory changes were warranted to the NESHAP program to ensure the effective and efficient implementation of any requirements stemming from the addition of a new pollutant to the HAP list. As part of this review, the EPA published an advanced notice of proposed rulemaking (ANPRM) on June 11, 2021, that sought information about potential NESHAP regulatory requirements resulting from the listing of the first new HAP, 1–BP, as well as other potential implications of the listing of any future HAP (86 FR 31225).

Based on the EPA's review and the public comments received on the ANPRM, the EPA determined that there are several regulatory impacts that could ensue when a pollutant is added to the HAP list. As described in this document, the EPA considered each of these impacts. In some cases, the existing regulatory provisions were sufficient to ensure effective and efficient implementation of the newly listed HAP. In other cases, the EPA determined that the regulations did not adequately address the issues that arise when a pollutant is added to the HAP list. Therefore, for those instances, the EPA is proposing in this action regulatory language to ensure the effective and efficient implementation of a newly listed HAP. The EPA requests comments on whether additional changes are needed to fully and clearly implement provisions related to a new HAP listing.

[2] 82 FR 2354 at 2356 (January 9, 2017).

A. What changes are we proposing?

The EPA evaluated several potential issues related to listing a new HAP. We reviewed whether a new HAP listing has any impact on NESHAP promulgated before the new HAP was added to the list. As discussed below, the EPA concluded that the statute does not support a new HAP being regulated by such a NESHAP unless and until the EPA first evaluates the specific HAP for regulation under CAA section 112 and promulgates standards that include the new HAP. In this action, the EPA is proposing language to be added to 40 CFR part 63, subpart C to clarify this conclusion.

Another question that arose was the period of time allowed for a source to include the newly listed HAP in the source's PTE calculation. Based on the existing language in CAA section 112 and the NESHAP General Provisions (40 CFR part 63, subpart A), the EPA determined that a source must include the new HAP in the source's PTE calculation on the effective date of the listing of the new HAP. This requires including the new HAP in the evaluation of whether the facility is a major source of HAP, or an area source based on the source's PTE calculation.

The addition of the emissions of a newly listed HAP in the calculations of the PTE for a facility could change the facility status from an area source to a major source per the major and area source definitions in CAA section 112. If this occurs, the MSDL facility will face new permitting requirements. In addition, the MSDL facility will need to evaluate whether, due to its major source status, any of its existing emission units are subject to one or more NESHAP that are applicable to emission units located at major sources. For example, in addition to evaluating the NESHAP applicable to the specific industry, the MSDL facility will need to evaluate for purposes of applicability NESHAP that regulate multiple industrial sections such as NESHAP for industrial boilers or reciprocating engines. If applicable NESHAP are identified, the facility would need to evaluate the requirements within each applicable NESHAP and determine compliance requirements. Based on the rationale discussed in section IV.D., this action proposes regulatory language to the NESHAP General Provisions to clarify both the applicability and compliance timelines of newly triggered NESHAP requirements for MSDL facilities.

The EPA also evaluated whether there should be any notification requirements for facilities that emit a newly listed HAP, including requirements for the facility to notify nearby communities. As discussed in section II.B., a facility already operating under a title V operating permit that triggers applicability of any new NESHAP requirements as it becomes a major source (*i.e.,* MSDL) may need to apply to modify its permit to include such new applicable NESHAP requirements in their permit. MSDL facilities seeking an operating permit for the first time would need to modify or submit a permit application that addresses all applicable requirements consistent with the permitting authority's program. See 40 CFR 70.3(c)(1) and 70.2. A facility that becomes newly subject to a major source NESHAP would also need to submit the initial notification required by the specific applicable NESHAP. This action proposes that initial notifications under 40 CFR part 63, subpart A require some minimal additional information from sources becoming major due to the inclusion of a newly listed HAP in emission calculations.

B. Are there any concurrent changes to Title V Programs in this action?

Section 502(d)(l) of the CAA, 42 U.S.C. paragraph 766la(d)(1), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA and the EPA's implementing regulations at 40 CFR part 70 (hereinafter ''title V''). All major stationary sources of air pollution and certain other non-major sources are required to apply for and operate in accordance with title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable implementation plan. 42 U.S.C. paragraphs 7661a(a), 7661b.

When a pollutant is added to the HAP list, sources that have the potential to emit the new HAP must include the HAP in calculating the source's potential to emit beginning on the effective date of the listing of the new HAP. The inclusion of a new HAP in the source's PTE can result in a change in classification of the source from area source to major source. A source whose classification changes solely due to the addition of a HAP to the HAP list (*i.e.,* MSDL) will need to determine what, if any, future permitting action must be taken.

Since MSDL facilities are, by definition, not major HAP sources before the HAP listing action, they would be operating as a non-major HAP

source under a permit or other authorization. As a non-major (*e.g.,* area, synthetic area) HAP source, the facility may have a source specific permit, but could also be operating under a general permit or registration permit. Those MSDL facilities that wish to retain their non-major status will need to consider the newly listed HAP when they seek to reduce their PTE HAP and (unless they opt to become true area for HAP) will need to request enforceable permit terms sufficient to reduce the facility's PTE to below HAP major source levels (*i.e.,* 10 tons of any single HAP and 25 tons of all HAP). Facilities should coordinate all changes in classification with their permitting authority.

If an MSDL facility does not elect to reduce its HAP emissions or PTE to maintain its area source status, as a major source it would be subject to the obligation to obtain a title V operating permit. Under the title V operating permit program, the regulations provide that ''[a] timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.'' 40 CFR 70.5(a)(1)(i). Because permitting authorities can establish more stringent deadlines than 12 months, MSDL facilities should check with their appropriate title V permitting authority to determine when a timely part 70 application is required.

The EPA is not proposing changes to the title V program or regulations; however, some state, local, and tribal title V programs may need to initiate a conforming program revision to update their implementing regulations, *e.g.,* to include newly listed HAP in their HAP definition if their current regulations do not include newly listed HAP. The EPA encourages state, local, and tribal programs to evaluate whether any regulatory changes are needed to their rules to implement newly listed HAP under their approved program and those programs should consult with their respective EPA regional permitting contact for the program if they have questions. State, local, and tribal programs must keep the EPA apprised of regulatory changes they believe are needed to their approved part 70. 40 CFR 70.4(i). The EPA has determined that the current regulations for state programs (*i.e.,* 40 CFR part 70) and the implementing regulations for federal operating permits (40 CFR part 71) do not need to be revised concurrently with this action because these regulations address permitting requirements in agreement with title V of the CAA, including permitting prompted when new HAP are listed. In particular, 40 CFR 70.3 and 70.2, require that a state program must provide for permitting of, among other major sources, a ''major source under section 112 of the Act'' including those with potential to emit a HAP or multiple HAP ''which has been listed pursuant to section 112(b) of the Act'' above major source thresholds. States and some tribes implement title V permitting under their EPA approved programs for sources in their jurisdictions. For sources subject to the federal operating permits program implemented by the EPA, 40 CFR part 71 includes similar applicability provisions (see *e.g.,* 40 CFR 71.3 and 71.2) inclusive of major sources due to listing and other provisions required for implementing permitting requirements for covered sources. The EPA requests comments on the determination that no edits are required to the title V program for this purpose.

C. What is our rationale for the proposed changes?

This section presents the EPA's proposed rationale for the proposed changes to the NESHAP General Provisions (40 CFR part 63, subpart A) and our proposed conclusions regarding key issues and questions related to listing of new HAP. The issues and questions, along with our proposed conclusions and rationale, are discussed individually below.

1. Are newly listed HAP regulated under NESHAP promulgated before the effective date of the listing?

In the June 11, 2021, ANPRM addressing the addition of 1–BP to the HAP list, the EPA raised the question of whether an existing NESHAP should apply to a newly listed HAP on the effective date of the HAP listing. The ANPRM solicited data and comments on the potential regulatory impacts of the addition of a HAP to the HAP list.[3]

Because this was the first time the EPA was adding a pollutant to the HAP list, the ANPRM discussed several potential issues that could result from the addition of a pollutant to the CAA section 112 HAP list. One question the EPA raised in the ANPRM was whether a newly listed HAP is regulated under any NESHAP that is in existence on the effective date of the newly listed HAP. In the ANPRM, the EPA more fully discussed this question and provided an example of numeric limits in coating rules that are often based on a limitation on the amount of organic HAP per unit. The example was whether the addition of new pollutant to the HAP list could require counting emissions of the new HAP in compliance calculations for many NESHAP for coating operations. This is because in most instances these coatings NESHAP typically define HAP by a direct reference to the HAP list published in the 1990 CAA and as modified pursuant to section 112(b). We noted that any modifications to the HAP list are included in 40 CFR part 63, subpart C. In the ANPRM, the EPA requested comment on whether a newly listed HAP should be regulated under previously existing NESHAP.

On January 5, 2022, the EPA published a final rule that added 1–BP to the HAP list (87 FR 393). Based on our consideration of the comments on the ANPRM and the EPA's own review of statutory requirements, the EPA concluded that a newly listed HAP is not regulated under existing NESHAP and stated that the final rule would ''have no direct immediate impacts under 40 CFR part 63 on emissions of 1–BP.'' [4]

The conclusion that existing NESHAP do not regulate a newly listed HAP is consistent with CAA section 112. First, CAA section 112(e)(4) states that ''no action of the Administrator adding a pollutant to the list under subsection (b) or listing a source category or subcategory under subsection 112(c) shall be a final agency action subject to judicial review, except that any such action may be reviewed under such section 7607 [section 307] of this title when the Administrator issues emission standards for such pollutant or category.'' This language, by establishing two distinct steps, supports the EPA's conclusion that previously promulgated NESHAP do not regulate newly listed HAP.[5] Rather it is only after the EPA establishes new standards or revises previous standards to include the newly listed HAP (for instance, adding a newly listed organic HAP to a standard that covers total organic HAP) that the listing of a new HAP is subject to review.

Second, having listed the new HAP using the process in CAA section 112(b), CAA section 112(d) sets out prescriptive procedures for establishing emissions standards for major sources. These statutory procedures include that a

[3] 86 FR 31225.

[4] 87 FR 395.

[5] See also *Util. Air Regul. Grp.* v. *E.P.A.,* No. 01–1074, 2001 WL 936363, at *1 (D.C. Cir. July 26, 2001)(dismissing challenge to listing of coal- and oil-fired electric utility steam generating units as a source category under Section 112(c) for lack of jurisdiction). ''Section 112(e)(4) of the Clean Air Act provides that judicial review of the listing of a source category under section 112(c) of the Act is not available until after emission standards are issued. See 42 U.S.C. 7412(e)(4).''

standard must be established for each HAP—a process that cannot occur until the EPA gathers sufficient information about which sources emit the HAP and the emission rate of the HAP.[6] Moreover, CAA section 112(d) requires that the MACT floor be based on the emission level actually achieved by the best performing sources.[7] As part of the MACT determination, we must also evaluate whether options more stringent than the floor are justified under the statute. This task thus requires not only the emissions information of the new HAP from sources, but a review of information related to the potential emission controls and systems of controls that are, or could be, employed to reduce the emissions of the newly listed HAP. Because the EPA did not consider a pollutant that was not a HAP at the time it established existing NESHAP, the statutory process for establishing a standard for the new HAP has not been followed; therefore, the conclusion that existing NESHAP do not regulate a newly listed HAP is consistent with the statute.

In summary, the conclusion that a newly listed HAP is not regulated by any standards promulgated prior to the HAP being listed is consistent with this statutorily required and well-ordered process whereby under CAA section 112(b) the EPA lists a new HAP; CAA section 112(d) requires the EPA to gather information (*e.g.,* inventories and ranking of best performers) sufficient to establish new or revised standards for the newly listed HAP; and CAA section 112(e) allows for review of the listing when the new or revised emission standards is finalized.

The EPA is requesting comment on whether regulatory text should be included in either the NESHAP General Provisions, 40 CFR part 63, subpart A or in part 63, subpart C, where new HAP are listed, to make it clear that a new HAP is not regulated by a previously promulgated NESHAP until the NESHAP is reviewed and the inclusion of the new HAP is fully evaluated for regulation. A redline/strike out version of proposed regulatory language for the preferred options is included in the docket for this action.

2. When must a newly listed HAP be included in emission estimates and what are the potential regulatory implications?

While the emissions of a newly listed HAP are not regulated by NESHAP promulgated before the HAP was listed, the pollutant listed becomes a HAP on the effective date of the listing. On and after the effective date of the listing of a new HAP, it must be included in calculating the facility's actual emissions and PTE for the purposes of determining whether a facility is a major source or area source under Part 63.[8] This is because, under CAA section 112(a)(1) a major source is ''any stationary source or group of stationary sources . . . that emits or has the potential to emit considering controls, in the aggregate, 10 tpy or more of *any* hazardous air pollutant or 25 tpy or more of *any* combination of hazardous air pollutants.''[9] (Emphasis added)

The inclusion of a new HAP could change a facility's status from an area source to a major source of HAP. If the sole reason for a facility's status change from area to major is the inclusion of the newly listed HAP, the facility would be considered a ''major source due to listing'' or ''MSDL'' facility. For the reasons discussed below MSDL facilities, as a result of becoming major on the effective date of the listing of a new HAP, would become subject to any applicable standards covering HAP other than the newly listed HAP in existing major source NESHAP. The EPA specifically requests comments and data on whether, as a result of the listing of a new HAP, there are other sources that are directly impacted by the listing of a new HAP.

a. Permitting Impacts for Sources and Programs

All major sources must operate in agreement with a title V operating permit. Consequently, upon listing of a new HAP, MSDL facilities will need to determine what, if any, future permitting action such as application for an initial title V operating permit or permit revision or an application for other type of permit must be taken. For example, a source with an individual PTE limit for HAP, issued in a minor source permit, would have to ensure the supporting data and calculations of actual HAP emissions used to verify the PTE limit account for newly listed HAP emissions. Any required permitting action depends on the individual situation as governed by the permitting authority rules; thus, sources are advised to coordinate these actions with the permitting authority with jurisdiction for the source. Facilities that wish to operate as area sources of HAP and avoid applicability of major source NESHAP requirements could do so at any time and must obtain legally and practically enforceable PTE HAP restrictions below major source levels available under their permitting authority programs. This does not include true area sources, which do not need enforceable PTE limits.

However, if the MSDL facility does not wish to pursue non-major source status, as a major source of HAP they will be subject to the title V operating permit program. Under the title V operating permit program regulations ''A timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.'' 70.5(a)(1)(i). Because permitting authorities can establish different deadlines, MSDL facilities should check with their appropriate title V permitting authority to determine exactly when a timely Part 70 application is required.

The title V regulations are inclusive of all listed HAP; however, some state, local, and tribal title V programs may need to initiate a conforming program revision to update their implementing regulations, *e.g.,* to include newly listed HAP in their HAP definition if their current regulations do not include newly listed HAP. The EPA encourages state, local, and tribal programs to evaluate whether any regulatory changes are needed to their rules to implement newly listed HAP under their approved program and those programs should consult with their respective regional permitting contact for the program if they have questions. State, local, and tribal programs must keep the EPA apprised of regulatory changes they believe are needed to their approved part 70 program. 40 CFR 70.4(i).

Also, the EPA is aware that some permitting authority programs for limiting PTE for categories of similar sources such as general permits, permits by rule, source registrations currently in use for limiting PTE HAP may not be authorized for newly listed HAP and may need revisions. The EPA encourages permitting authorities to

[6] *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579 (D.C. Cir. 2016) (''EPA's pollutant-by-pollutant approach [to standard setting] is a reasonable interpretation and application of the statute;''); *National Lime Association* v. *EPA,* 233 F. 3d 625, 634 (D.C. Cir. 2000). (EPA must set standards under section 112(d) for each listed HAP. EPA has a ''clear statutory obligation to set emissions standards for each listed HAP.'').

[7] *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d at 86 (''EPA may not deviate from section 7413(d)(3)'s requirement that floors reflect what the best performers actually achieve by claiming that floors must be achievable by all sources using MACT technology.'').

[8] 40 CFR 63.2.

[9] ''In the context of the CAA, 'any' has an expansive meaning that is, 'one or some indiscriminately of whatever kind.' '' *New York* v. *EPA,* 443 F.3d 880, 885 (D.C. Cir. 2006)(citations omitted).

review their programs for issuing PTE limits for HAP sources and ensure they have adequate regulatory authority as needed to implement legally and practicably enforceable PTE limits that include newly listed HAP.

b. Part 63 NESHAP

All sources that become MSDL facilities will need to evaluate whether any major source NESHAP apply to their operations. In some cases, there may be a transition from an area source NESHAP to a major source NESHAP for the same source category. For example, an MSDL facility may have been subject to the Boiler NESHAP for area sources prior to becoming an MSDL facility but would now become subject to the Boiler NESHAP for major sources.

In addition to a larger number of potentially applicable rules, NESHAP for major sources tend to be more comprehensive than most area source NESHAP, covering more pollutants and emission sources and are generally at least as stringent as area source requirements due to differing requirements under the CAA.[10] The EPA recognizes that there are some unique questions that arise for MSDL facilities when considering the application of a NESHAP that was developed before the MSDL facility became a major source. Two main questions that the EPA evaluated are: (1) what standards apply to MSDL facilities (whether new source or existing source standards apply to MSDL facilities)? and (2) what compliance time should be provided for the MSDL facilities?

1. What standards apply to MSDL facilities?

Section 112 of the CAA and its implementing regulations distinguish between ''new source'' and ''existing source'' for the purpose of both the stringency of the emission standard and the time allowed for compliance with applicable standards. Specifically, CAA section 112(a)(4) defines a new source as a source that commenced construction or reconstruction after the Administrator first proposes regulations under section 112, while CAA section 112(a)(10) defines an existing source as any stationary source other than a new source. The EPA has also explained that the phrase ''first proposes'' in CAA section 112(a)(4) is somewhat ambiguous such that it could be viewed as referring to different dates in different circumstances. For example, it could be read as the first time the Agency proposes any standards for a source category, the first time the Agency proposes standards under a particular rulemaking record for a source category, or the first time the Agency proposes a particular standard.[11] The determination of whether the standard that applies to a particular source is for ''new'' or ''existing'' sources is also important to determining the compliance deadline.

Current rules also address cases where, after the initial promulgation of a NESHAP, an area source makes the decision to increase its emissions such that it becomes a major source. Language is included in the NESHAP General Provisions at 40 CFR 63.6(b)(7) and (c)(5), as well as in many individual NESHAP, to address the consequences of this decision made by an individual facility. In this situation, the EPA has determined that the designation of ''new source'' and ''existing source'' should remain defined by the dates given in each individual NESHAP and that does not change when a source reclassifies from area to major source.[12]

However, the NESHAP General Provisions do not address the unique situation that arises when a new HAP is listed and an area source becomes a major source solely due to the addition of a new HAP when calculating the source's PTE (*i.e.,* MSDL facilities).[13] In this action, the EPA is requesting comment on whether to amend the NESHAP General Provisions to specifically address this issue. In addressing this issue, the EPA has considered two alternatives: (1) as done with non-MSDL major sources facilities, determine whether an affected source was new or existing based on each specific NESHAP for MSDL facilities, or (2) designate all affected sources for newly applicable NESHAP at an MSDL facility to be existing affected sources. While the EPA is proposing the second option, *i.e.,* all MSDL facilities should be considered existing sources, both alternatives are discussed below.

Under the first alternative, an MSDL facility would continue to refer to each individual NESHAP and compare the date of construction of an affected source to the date an individual NESHAP was proposed. Under this approach, the determination of ''existing source'' and ''new source'' would be the same regardless of when a facility became major and regardless of how a facility became major (*i.e.,* through their own action or through an EPA action of HAP listing). If the EPA were to finalize this alternative, no changes would be made to 40 CFR part 63, subpart A, § 63.1 (Applicability). However, the EPA could provide a clarifying statement in the current regulatory text with respect to MSDL facilities. The EPA requests comments on whether such clarifying statements would be necessary or helpful.

The EPA has some concerns about the potential impacts for MSDL facilities that would be considered new sources under this first alternative. These concerns center around (1) the lack of notice provided to the MSDL that it is becoming subject to major source requirements, and (2) the action that created the major source requirement was solely from the addition of a new HAP.

A newly listed pollutant becomes a HAP on the effective date of the listing. As defined, a MSDL facility becomes a major source solely due to the EPA action to add a new HAP to the HAP list. This accounting is required because under CAA section 112(a)(1), a facility must include ''*any* hazardous air pollutant'' in calculating the potential to emit for the purposes of determining whether it is a major source under this section of the Act. Thus, on and after the effective date of the listing of a new HAP, a facility must include such HAP in the actual emissions and potential to emit calculations.[14] Within each major source of HAP (defined at the facility level) there could be one or more affected sources, and where there are more than one affected source each one could be either a new or an existing source. Section 112(a)(4) of the CAA defines a new source as a source that commenced construction or reconstruction after the Administrator first proposes regulations under this section, while CAA section 112(a)(10) defines an existing source as any stationary source other than a new source. As previously noted above, ''first proposes'' could be read to mean the first time the Agency proposes any

[10] In particular, CAA section 112(d)(5) allows the EPA to set standards for area source categories based on ''generally available control technology or management practices,'' which may be less stringent than the standards required for major sources under sections 112(d) or 112(f).

[11] See for example, National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants (78 FR 10006, 10025; February 12, 2013).

[12] See 85 FR 73854, 73867 (Nov. 19, 2020) (Revisions to 40 CFR part 63, subpart A to address the issue of compliance issues for sources that make the decision to increase their potential to emit and reclassify from area source status to major source status).

[13] In 1994 EPA first promulgated the NESHAP General Provisions, which are codified in 40 CFR part 63, subpart A, and which provide the general framework for establishing emission standards and compliance timing for HAP regulations (59 FR 12408; March 16, 1994).

[14] CAA sections 112(a)(1); 40 CFR 63.2.

standards for a source category, the first time the Agency proposes standards under a particular rulemaking record for a source category, or the first time the Agency proposes a particular standard.[15] Here, the EPA's listing of a new HAP is not the proposal of standards under relevant statutory provisions, and as previously explained, existing NESHAP do not regulate a newly listed HAP. It also bears note that there is no specific period for promulgating standards for newly listed HAPs, under CAA section 112(b)(1). Additionally, the CAA distinction between new and existing sources is reasonably understood to be predicated on some basic principles, including that a new source can potentially be held to more stringent compliance requirements than existing ones. In some cases, new source requirements are based on the ability of these sources to design processes to accommodate air pollution control systems.[16] The facility choosing to construct or reconstruct a new affected source can consider the applicable standards and other requirements in making both the technical and economic decisions that surround the evaluation to construct or not construct the emissions unit. Legislative history from the 1990 CAA Amendments also suggests that ''the test of section 112(a)(4) as to whether a source is commencing construction or reconstruction is physical and economic, rather than emissions related.'' S. Rep. No. 229, 101st Cong. 1st Sess. 1989, 1990 U.S.C.C.A.N. at 3385, 1989 WL 236970.[17]

In contrast, a MSDL facility is newly subject to standards that were published long before the HAP listing action that resulted in the facility exceeding the major source threshold. But when the facility was being constructed as an area source, the source had no reason to contemplate the applicability of major source NESHAP.[18] As discussed above, notice of the requirements at the time that the facility is constructed or reconstructed is a key distinction between ''new'' and ''existing'' emission standards under CAA section 112 and the NESHAP regulations. This is because CAA section 112(a)(4) defines a new source as a source that commenced construction or reconstruction after the Administrator proposes regulations for the applicable source category. The notice of a proposed major source NESHAP allows a source to consider the proposed standard when considering the design of or constructing a potentially new affected emissions unit. Having this notice allows the source to alter the design to eliminate the emissions of the regulated HAP or alter the design of the emissions unit to ensure that when the emission unit commences operation it can meet the ''new'' source limit. This is because a MSDL facility that was already operating when the EPA lists a new HAP is not aware at the time of construction or reconstruction that it would subsequently be subject to a major source NESHAP, since no standard applied at that time. Therefore, it could be more appropriate to treat such source as an existing source.

Moreover, a listing action is not subject to the robust public notice and comment requirements provided in CAA section 307(d).[19] The EPA acknowledges that the Agency could provide some degree of public notice before a new HAP is listed, with one or more documents in the **Federal Register** because ''in most instances, even where there is no statutory requirement to take comment, the EPA solicits public comment on actions it is contemplating.'' [20] But these documents would typically address the substantive requirements for listing a substance as a HAP and would likely provide little or no information on sources that would be impacted by the listing decision.[21] Additionally, such notices would also have been published years after a facility constructed or reconstructed their affected source at an area source facility. Further, where the Agency lists a HAP in response to a petition, the Agency would be unable to impose compliance obligations for that HAP considering that not all affected sources were involved in the listing action and as such would be precluded from challenging the listing decision as specified by section 112(e)(4) until the Agency promulgates standards for the newly listed HAP.[22]

Further, not only is a MSDL facility not able to plan accordingly to meet the ''new'' source standard, but there is also a possibility that the source, already in operation, cannot, as a technological matter, comply with the standard for new sources. For example, during the development of the NESHAP for Polyvinyl Chloride and Copolymers Production, the EPA acknowledged that due to the stringency difference between the new source and existing source standards that it might not be technically possible for an existing source to meet the new source standard. In the final rule the EPA modified the definition of existing source to ensure that existing sources were not subject to the new source standard, which was impossible for them to meet. See 77 FR 22848 (April 17, 2002).

Finally, unlike the situation where an area source becomes a major source (by increasing its HAP emissions or potential to emit), a MSDL facility becomes a major source due to EPA's listing of a new HAP. As also previously explained, a MSDL facility has no direct notice as to the applicability of the major source NESHAP and more importantly as to the applicability of any ''new'' source standard for major

[15] See for example, National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants (78 FR 10006, 10025; February 12, 2013).

[16] For new sources, ''the maximum degree of reduction in emissions that is deemed achievable . . . shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source.'' CAA section 112(d)(3).

[17] ''It does not require increases in emissions or changes in the operation of previously existing facilities to be triggered. Since there is no threshold of emissions increase, it is not possible for an existing source adding new facilities to avoid being considered new by 'netting out' or reducing so that the increase is below some threshold of significance.'' *Id.*

[18] EPA also notes that the definition of a new affected source is made within each emission standard. When making the determination as to whether a new or revised emission limit warrants the re-designation of the new affected source date, the EPA must consider several factors.

[19] *American Forest and Paper Ass'n* v. *EPA,* 294 F.3d 113, 117 n.3 (D.C. Cir. 2002) (''CAA section 307(d)(9), however, by its terms applies only to 'rulemakings' pursuant to the CAA sections enumerated in section 307(d)(1), 42 U.S.C. 7607(d)(1). Section 112(b) does not contemplate a formal rulemaking and is not among the sections enumerated in section 307(d)(1) (although other subsections of section 112 are included there.'').

[20] 68 FR 28198, June 4, 1996.

[21] CAA section 112(b)(3)(A) requires the Administrator to either grant or deny a petition within 18 months of the receipt of a complete petition by publishing a written explanation of the reasons for the Administrator's decision. See for example 82 FR 2354, January 9, 2017 (draft notice of the rationale for granting petitions to add n-propyl bromide to the HAP list); *La. Envtl. Action Network* v. *Envtl. Prot. Agency,* 955 F.3d 1088, 1098 (D.C. Cir. 2020) (''the Act[ ] specifie[s] processes for adding to or subtracting from the statutory list of hazardous air pollutants, and its direction to EPA [is] to act within 18 months on a petition to modify the list. 42 U.S.C. 7412(b)(3)(A).'')

[22] ''Section 112(e)(4) of the Clean Air Act provides that judicial review of the listing of a source category under section 112(c) of the Act is not available until after emission standards are issued. See 42 U.S.C. 7412(e)(4). This court therefore lacks jurisdiction at this time to review the determination of the Environmental Protection Agency (''EPA'') that regulation of coal- and oil-fired electric utility steam generating units is appropriate and necessary, and that such units should be listed as a source category under section 112(c).'' See *Util. Air Regul. Grp.* v. *E.P.A.,* No. 01–1074, 2001 WL 936363, at *1 (D.C. Cir. July 26, 2001). See also, *Conference Group, LLC* v. *Federal Communications Commission,* 720 F.3d 957 (D.C. Cir. 2013). (Nonparty to adjudication lacks standing to challenge merits of adjudication). But see *Teva Pharma.* v. *Sebelius,* 595 F.3d 1303 (D.C. Cir. 2010) (Allowing challenge where there was imminent harm or injury from Agency decision).

sources as contemplated under CAA section 112(a)(4). Therefore, the MSDL facility cannot develop plans to comply with the standard to which it was not subject before it becomes applicable and could potentially be in non-compliance immediately upon the effective date of the listing of the new HAP in the absence of any changes proposed in this action. This would mean that some rules, while not applicable to the facility when the rule was proposed, now apply due to the EPA listing action and through no action of the facility. Moreover, it is not the promulgation of emissions standards under relevant statutory provisions and precedent for the newly listed HAP that has resulted in a status change. Rather, it is the HAP listing itself. This would mean that some rules, while not applicable to the facility when the rule was proposed, now apply due to the EPA listing action and through no action of the facility.

These concerns lead the EPA to also favor the alternative option where all newly impacted affected sources at MSDL facilities would be treated as existing sources.

Under this preferred option, the EPA would treat affected sources at MSDL facilities as existing affected sources because affected sources at MSDL facilities that might otherwise be considered ''new'' under a NESHAP-specific evaluation are not new sources as contemplated under CAA section 112(a)(4) in the circumstance where the source becomes a major source due to EPA's listing of a new HAP. First, the increase in the facilities' emissions or potential to emit that caused the facility to become a major source was caused solely by an EPA action to list a HAP and not based on any action by the facility to change its method of operation, add new equipment, or change any material throughput. Second, the facility was already operating the affected sources when the EPA's listing action, which is not the promulgation of emissions standards under relevant statutory provisions and precedent, resulted in a status change.[23] When considering the construction for these sources, the facility may have evaluated applicable requirements that would apply to them as a non-major source. Third, these sources were not afforded advance notice to tailor construction plans to meet the new source requirements for major sources, but instead would be required to develop a compliance strategy on already-constructed emission sources.

In conclusion, the EPA has considered both options discussed above and is proposing that all affected facilities at MSDL facilities that become subject to major source requirements solely due to the listing of a new HAP should be considered existing sources. Under this option, regulatory language would be added to 40 CFR part 63, subpart A, § 63.1(c) applicability requirements and a definition of MSDL would be added to § 63.2. The EPA requests comments on all aspects of both alternatives presented above, as well as on the proposed selection of treating all MSDL facilities as existing sources. All significant comments received on issues related to effects of HAP listing on MSDL facilities during the public comment period will be considered.

2. When does an MSDL facility have to be in compliance with new requirements?

When an MSDL facility triggers existing source NESHAP requirements under our proposed approach described in section II.C.3., there is an additional question of the appropriate compliance date. Because the NESHAP of concern have already been promulgated, typically many years in the past, it is likely that most of the compliance dates will have passed for both existing and new affected sources. The EPA understands that a past compliance date would indicate that a facility would need to be in compliance on the day the NESHAP is triggered; in this case, the day the HAP listing is effective. The EPA does not view this outcome as necessarily the most practical conclusion flowing from the overall intent and reading of CAA section 112 as well as rulemakings that implement CAA section 112. As this outcome can create significant, immediate compliance issues for facilities that have already been constructed, the EPA evaluated several options for establishing compliance dates for MSDL facilities.

The General Provisions, 40 CFR part 63, subpart A, include requirements for facilities that increase their emissions (or potential to emit) to major source levels. The provision in 40 CFR 63.6 (b)(7) provides that new affected sources must comply with all requirements of a standard at start-up of the source.[24] On the other hand, for existing sources, the provision in 40 CFR 63.6(c)(5) provides that a facility has the amount of time listed in a specific NESHAP for sources increasing emissions to major or ''equivalent to the compliance period specified in the relevant standard for existing sources in existence at the time the standard becomes effective.'' [25] Several NESHAP include the provisions mentioned in 40 CFR 63.6(c)(5) for when an area source becomes a major source. Most, but not all, of these provisions tend to treat new sources very differently from existing sources, by providing time to come into compliance for existing affected sources that become major sources, but typically requiring immediate compliance for new sources that become major sources.

The EPA reviewed these provisions for potential applicability to MSDL facility compliance times. The EPA determined that the current language in 40 CFR 63.6(b)(7), 63.6(c)(5) and the area- to- major language in individual NESHAP were not developed with MSDL facilities in mind and are therefore not applicable to MSDL facilities. Therefore, the EPA is proposing that the NESHAP General Provisions at 40 CFR 63.6(d) be revised to address the compliance timing for MSDL facilities. As individual NESHAP are reviewed, the EPA can assess whether additional provisions addressing MSDL facilities are warranted. Any NESHAP-specific MSDL provision would supersede provisions promulgated in the General Provisions.

The EPA is considering four possible approaches for establishing compliance schedules for MSDL facilities that trigger major source NESHAP: (a) Maintain the compliance deadlines in individual NESHAP, even past dates, and require all facilities to work with their regulatory authority to come into compliance; (b) Establish a compliance deadline consistent with time provided to existing sources under the applicable individual NESHAP; (c) Provide a single compliance timeline for MSDL facilities that have become subject to major source requirements, regardless of the times provided in the individual NESHAP; and (d) Provide compliance

[23] Emissions standards ''mean[s] a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter.'' CAA section 302(k).

[24] For new affected sources, CAA section 112(i) provides that compliance with standards promulgated under CAA section 112(d)(2) and (3) is on the effective date of the NESHAP or upon startup, whichever is later.

[25] For existing sources, CAA section 112(i)(3) provides there shall be compliance ''as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard. . . .'' (''Section 112(i)(3)'s 3-year maximum compliance period applies generally to any emission standard . . . promulgated under [section 112].'' *Association of Battery Recyclers* v. *EPA,* 716 F.3d 667, 672 (D.C. Cir. 2013) (brackets in original)).

deadlines based on the types of emission limitations or requirements.

Each of these options is discussed in more detail below. While the EPA is proposing to provide compliance deadlines based on the types of emission limitations or requirements (option d in this list), the EPA requests comments on each of the following options and may select any of these options in the final rule, depending on comments received and the EPA's final analyses.

a. Maintain Compliance Schedules in Individual NESHAP

Under this alternative, the EPA would make no changes to the NESHAP General Provisions (40 CFR part 63, subpart A) and would instead allow compliance dates in the individual NESHAP to remain the applicable compliance dates. Under this approach an MSDL facility would likely be out of compliance with any major source NESHAP that applies on the effective date of the listing of a new HAP. This is because the majority of major source NESHAP have compliance dates that pre-date the effective date of the newly listed HAP.

This approach would likely lead to the earliest requirements for emission reductions by MSDL facilities, as they may alter their operations or work practices to either minimize emissions or work with their regulatory authority to address their non-compliance status. Emission reduction will not include direct emission control requirements for the newly listed HAP, as the EPA must first promulgate standards for such HAP. It would, however, result in emissions reductions of other regulated HAP as the facility complies with the applicable NESHAP. As previously discussed, above, this approach is predicated on the assumption that facilities are aware of the EPA actions that may impact their CAA compliance status since pre-notice is provided by the EPA's prior **Federal Register** documents on potential listings.[26]

b. Provide a Timeline Equivalent to the Time Provided for Initial Compliance

Under this alternative, the EPA is considering whether the compliance time provided to MSDL sources for a specific NESHAP should be equivalent to the initial time provided to existing affected sources in that NESHAP. This approach would acknowledge the source category-specific evaluation of appropriate compliance time for the specific rule.

The EPA reviewed numerous existing NESHAP and determined that the majority of NESHAP provided three years for existing sources to come into compliance with the standards. The specific justifications for allowing three years for existing sources to comply varied from NESHAP to NESHAP but were all predicated on a determination that three years was as expeditious as possible for those facilities.

This option would call for the EPA to include in the NESHAP General Provisions regulatory language similar to existing language at 40 CFR 63.6(c)(5). The regulatory language in the NESHAP General Provisions would provide MSDL facilities a ''period of time to comply with the relevant emission standard that is equivalent to the compliance period specified in the relevant standard for existing sources'' and would apply in the absence of any MSDL-specific language in individual NESHAP.''

It should be noted that, at present, there are no MSDL-specific provisions in any individual NESHAP. Language currently in the General Provisions and NESHAP refers only to area sources that become major sources through a facility's own action that causes an increase in emissions or in their potential to emit. If no MSDL-specific language is included in a specific NESHAP, then the time provided by the new MSDL language in the General Provision will dictate the requirements.

As discussed in section II.C.3. (What Standards Apply to MSDL Facilities?), the EPA is proposing to define all affected sources at MSDL facilities as existing affected sources for the purposes of determining the applicable emission standards. If the EPA were to instead promulgate the option that would require some sources to meet the new source emission limits, the EPA is still proposing to provide time for all MSDL facilities to come into compliance under this option. In this proposal, the EPA is considering whether providing some amount of compliance time—as typically done for existing sources—is appropriate for all MSDL sources. Specifically, under this option, all MSDL sources (including new sources) would be provided a time period equivalent to the time period provided to existing affected sources in the specific NESHAP.

As discussed below, this is not the option that the EPA is proposing because we believe the final option in this list best balances the EPA's desire to obtain emission reductions as soon as practicable, but also allow time required for a facility to effectively and efficiently come into compliance with potentially multiple requirements; however, the EPA requests comments and supporting information on this option.

c. Provide a Single Timeline for all NESHAP Newly Triggered for MSDL Facilities

Under this alternative, the EPA is considering whether a single compliance schedule should be provided for any new requirements at an MSDL facility when a new HAP is listed. As discussed above, the EPA conducted a review of current NESHAP and determined that the predominant compliance time provided to any impacted existing affected source is 3 years after a rule is promulgated. Based on this review, the EPA is considering whether to provide up to three years for all MSDL facilities to come into compliance with all newly applicable requirements.

The EPA could consider a set deadline that is less than three years. In many instances, the EPA considered the availability of resources in assessing the amount of time needed to comply with a NESHAP. These resources could include the lack of enough vendors to supply the expected air pollution control devices in less than three years. The EPA does not expect that a significant number of sources that would draw on the same resources (*e.g.,* the same air pollution control vendor) will become MSDL sources and solicits comment on whether this assumption is reasonable. To the extent that up to three years was provided in a specific NESHAP to account for the resource drain, it could be reasonable to consider a different set time period under this requirement for MSDL affected sources.

The EPA is aware that an MSDL facility has the potential to trigger more than one NESHAP and associated requirements, and these different NESHAP could provide for different compliance time periods. The EPA is considering whether providing a single date would enable a facility to develop a comprehensive strategy to comply with all newly applicable major source NESHAP requirements. A single date would also provide absolute clarity to all stakeholders as to when compliance was required, regardless of the NESHAP subpart that becomes applicable to them. Under this option, the EPA could select the longest time period allowed in the various regulations (*i.e.,* 3 years after promulgation date), the shortest time period (*i.e.,* immediate compliance required for new sources), or some time in between. The EPA requests

[26] CAA section 112(b)(3)(A) merely calls for the Administrator to either grant or deny a petition within 18 months of the receipt of a complete petition by publishing a written explanation of the reasons for the Administrator's decision.

comments on the potential for any of these time periods.

The EPA recognizes that this option would allow some facilities more time than was allowed under the original NESHAP. However, this option recognizes that a facility may need to develop a compliance strategy for multiple NESHAP that may involve different types of compliance requirements. For example, a facility may need to design, order, install and activate an air pollution control device to comply with one NESHAP, and may need to implement operational changes, or work practice requirements, for a different NESHAP. Providing the facility with the ability to strategize their overall compliance approach might be significantly more efficient than requiring separate dates for simultaneously triggered requirements.

This is not the option we are proposing in this document. While this approach may be reasonable when considering a facility could have multiple new requirements, the EPA believes that the chosen option best balances a reasonable time for facilities and the need to not unnecessarily delay the implementation of certain practices or technologies that would more quickly reduce emissions and associated risks. However, the EPA requests comments on this option, including whether it should be the selected option and whether a different compliance timeframe should be selected, *e.g.,* within 2 years or within 18 months under this option. In addition, we ask for comment on whether the EPA, if it were to promulgate this option, should include additional conditions. For example, the EPA could provide an overall compliance timeframe of ''no later than 3 years,'' but require that a MSDL facility demonstrate that any compliance date after 2 years would have to be justified to and approved by the Administrator (or delegated authority), unless compliance for a specific requirement required the installation of equipment, such as air pollution control devices.

If the EPA were to finalize regulatory text that included some MSDL facilities being required to meet new source requirements, the EPA might still provide that all facilities be provided with the identical time allowance for compliance. The EPA solicits comments on this conclusion, as well as comments on alternatives that should be considered.

d. Provide Compliance Deadlines Based on the Types of Emission Limitations or Requirements

As discussed above, the majority of existing NESHAP have provided the 3 years to comply, as allowed under CAA section 112(i)(3)(A). However, the EPA also has a long-standing history of providing shorter periods to ensure that the compliance requirements are consistent with statutory requirements. These shorter compliance periods are based, in part, on the type of emission standard. Where the emission standard is a work practice or does not require installation of add-on emission control device, the EPA has, consistent with CAA section 112(i)(3)(A) that requires compliance ''as expeditiously as practicable,'' required compliance in less than 3 years. For example, in establishing the 1995 NESHAP for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, the EPA stated, ''The EPA believes that the 1-year timeframe for decorative chromium electroplaters is sufficient because, based on the EPA's survey data, 80 percent of existing sources already use fume suppressants and very few will need to install add-on air pollution control devices.'' (60 FR 4948; January 25, 1995). In the 1994 NESHAP for Magnetic Tape Manufacturing Operations, the EPA provided 2 years to comply unless a new control device was needed. (December 15, 1994). In the 2004 Iron and Steel NESHAP the EPA required existing iron and steel foundries to comply with the scrap selection and inspection program within 1 year of the effective date of the final rule because no controls were required, and emission reductions would be achieved as expeditiously as practicable (69 FR 21906; April 22, 2004).

Based on the EPA's history of establishing compliance deadlines for existing sources based on the type of emission standard, the EPA is proposing that the compliance deadline for MSDL facilities should be based on the type of emission standard applicable to the facility. For example, if the applicable emission standard requires the installation of add-on controls the compliance deadline would be longer (*e.g.,* a 2-year compliance deadline starting from the date the source becomes major due to the listing of a new HAP) as compared with an emission standard that does not require the addition of controls (*e.g.,* 1 year from the date the source becomes major due to listing of a new HAP if the emission standard is a work practice). The EPA is requesting comment on the appropriate compliance deadline (*e.g.,* from 0 up to 3 years) depending on the type of emission standard. The EPA acknowledges that the CAA allows title V permitting authorities to grant sources, on a case-by-case basis, extensions to the compliance time of up to 1 year if such time is needed for the installation of controls. See CAA section 112(i)(4)(i)(A). Permitting authorities are already familiar with, and in many cases have experience with, applying the 1-year extension authority under CAA section 112(i)(4)(A) as the provision applies to all NESHAP. This option will remain available to MSDL facilities.

In addition to the long-standing compliance deadline differentiation based on the type of emission standard, the EPA believes that establishing shorter compliance deadlines for MSDL facilities is reasonable because some of the reasons for providing the full 3 years for existing sources under initial NESHAP will not exist for MSDL facilities. For example, during the development of the NESHAP for the Industrial, Commercial, and Institutional Boilers and Process Heaters, commenters expressed concern about the compliance deadline for existing sources stating that a ''large number of sources that will be competing for the needed resources and materials from engineering consultants, permitting authorities, equipment vendors, construction contractors, financial institutions, and other critical suppliers.'' (78 FR 7138; January 31, 2013). The EPA does not expect the number of MSDL facilities following the listing of a new HAP to be similar to the overall number of facilities subject to a NESHAP on its initial promulgation and therefore the resource availability concerns are not expected.

Another factor that supported providing the full 3-year compliance deadline for initial NESHAP was the learning curve associated with implementing standards or installing new controls to an existing process. In contrast, MSDL facilities, by definition, only deal with facilities triggering already existing NESHAP and some of these NESHAP were promulgated over 20 years ago. Therefore, the industry and equipment vendors have already experienced, dealt with, and solved many of the initial application issues associated with applying a NESHAP standard to a source category for the first time. The years of experience gained at applying standards and installing controls within a source category should reduce the time needed to apply the same technology today at MSDL facilities.

The EPA is proposing to provide compliance deadlines based on the types of emission limitations or requirements for MSDL facilities because it provides the optimum balance between acknowledging that some time is needed to develop and implement control strategies for newly applicable NESHAP requirements and the desire to not unnecessarily delay compliance and the resulting emission reductions. The EPA requests comments on the use of this approach and specifically the proposed compliance deadlines of 2 years for facilities that install add-on controls and 1 year for all other standards. The EPA is clarifying that no compliance deadline extension will be provided for NESHAP that have identical requirements for area and major sources, because these facilities would already be complying with the NESHAP before becoming an MSDL facility.

The EPA recognizes that under any of the last three options, there could be situations where there is a possible temporal gap in regulatory coverage for MSDL facilities that were, prior to their MSDL status, subject to an area source NESHAP. For example, a facility that was subject to area source NESHAP prior to their MSDL status might not be subject to any emissions standard during a compliance deadline extension allowed for the newly applicable major source NESHAP.

The EPA is taking comment on what standard should or can apply during this period if a compliance deadline extension is provided. For example, one option the EPA is considering is whether a MSDL facility might be required, either by their existing permit or by a requirement added to this rulemaking, to continue to comply with any pre-existing areas source NESHAP until they are in compliance with newly applicable major source NESHAP. This gap-filling approach would prevent any inadvertent increase in emissions that could occur during this compliance extension period.

The EPA also requests comment and specific examples of how this would occur and whether existing area source operating permits would remain enforceable until a new major source permit is issued.

3. Are there any new notification requirements?

The EPA evaluated whether any additional data should be required from facilities when a new HAP is listed. Without any changes, there are two notifications that would be required under existing NESHAP requirements. First, any MSDL facility that requires a title V operating permit would need to apply for the permit within 12 months of becoming subject to the operating permit requirement. This application would likely be required to include substantive data about the newly listed HAP, including a description of the emission sources, the quantity of emissions, and whether any other requirements were triggered by becoming a major source. Presumably this would include the identification of any major source NESHAP that is now applicable to the facility. As with other title V operating permit requirements, the EPA is not proposing to make any changes to the existing language.

Second, an MSDL facility that triggers one or more major source NESHAP would become subject to the requirement to submit an initial notification under each newly applicable NESHAP. These requirements are specified in each NESHAP and in the General Provisions to part 63, including the details of the information that must be included and where the notification must be sent. Typically, these notifications are required within 180 days of becoming subject to a NESHAP, so would be required before the facility is required to submit a title V operating permit application, if also required. A permit application would typically be allowed to serve as the initial notification, if it is submitted within the timeframe required by the NESHAP and includes all of the information required by the specific rule. In the absence of requirements listed in a specific NESHAP, the initial notification content requirements are dictated by the provision in 40 CFR 63.9(b). The EPA reviewed the contents of the initial notification requirements under 40 CFR 63.9(b) and determined that the content for MSDL notifications should be virtually identical to other notifications but to provide clarity it warrants a required indication that the facility is submitting the notification because it is an MSDL facility.

To provide this clarity, the EPA is proposing that MSDL facilities include in their notification a statement that the facility is a major source due to HAP listing (MSDL) if the sole reason that the facility became major and triggered NESHAP applicability is the addition of a new HAP to 40 CFR subpart C, § 63.64. A red-lined copy of the General Provisions, including the proposed notification amendments for MSDL facilities is included in the docket for review. See OAR–HQ–OAR–2022–0441.

The EPA also considered whether additional information should be required from other facilities that emit a newly listed HAP but are already subject to major source NESHAP requirements and are not required to submit either of the above documents when a new HAP is listed. Additional information on HAP usage, HAP emissions, potential controls, and other inventory information could aid in the EPA's development of the best strategy for regulating a new HAP. However, this benefit needs to be weighed against the potential burden for developing and submitting this information from facilities that emit the newly listed HAP, especially as the facilities could include small businesses. The EPA solicits comments on whether additional notifications should be required for facilities that emit a newly listed HAP but are not triggered to submit an initial notification upon the listing. For example, this proposal solicits comment on whether a notification should be required from any facility that emits the newly listed HAP over some *de minimis* level. The EPA also asks whether additional public notification requirements should be included to provide better communication of public health risks by facilities that emit a newly listed HAP or if other mechanisms already exist, or will exist, to serve this function. If notice is required, we request comment on how best to establish a *de minimis* level, if one is recommended, and the basis for the proposed level.

III. Solicitation of Additional Comments

In addition to soliciting comments on the topics discussed earlier in this document, including the applicability of existing source MACT requirements for MSDLs and the compliance time allowed for MSDLs, the EPA additionally requests comments and information on the following questions.

A. Regulatory Changes

The EPA has developed a redline-strikeout version of sections of 40 CFR part 63, subparts A and C, that would be revised under the proposed changes listed in this document. The draft regulatory language for the recommended options is included for review in the docket for this rule. See EPA Docket EPA–HQ–OAR–2022–0441. The EPA is requesting comments on this language.

B. Early Input on Future EPA Action to Integrate Newly Listed HAP Into the CAA Section 112 Program

While the focus of this proposed rulemaking is on the immediate impacts to MSDL facilities, the EPA acknowledges that there are other steps

that must be taken to fully address a newly listed HAP under CAA section 112 regulatory framework. Foremost among these steps is the regulation and the resulting reduction in emissions of a newly listed HAP. However, as discussed above, existing NESHAP do not regulate the newly listed HAP unless and until the NESHAP is revised and an emission standard is established following the requirements of CAA section 112(d).

This proposed rulemaking addresses only one part of the overall program to incorporate a new HAP into CAA section 112 regulatory framework. Future steps that are not addressed in this rulemaking would likely include addressing issues such as how best to develop an accurate emissions inventory for the new HAP, identify the sources that emit the new HAP, and either revising existing NESHAP standards or establishing new standards, as necessary, to incorporate and thereby reduce the emissions of the new HAP.

The EPA is seeking comments on how best to obtain information about which sources and source categories emit a newly listed HAP, how much these facilities emit, how best to inform the populations surrounding these facilities that the facilities that emit a newly listed HAP, and how to incorporate meaningful engagement with affected communities in future actions.

The EPA seeks comment on how to best provide outreach to entities that could be subject to requirements as an MSDL facility because of an addition to the HAP list.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866, as amended by Executive Order 14094. Any changes made in response to reviewer recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA.

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Specifically, this action proposes a regulatory requirement addressing requirements for when a new HAP is added to the CAA section 112 HAP list; any burden from the addition of a new HAP is rightfully considered under the individual NESHAP that is triggered and not under the actions in this document.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. This action does not impose any requirements on facilities or other parties.

This action proposes amendments to General Provisions that provide requirements for when a new HAP is added to the CAA section 112 HAP list.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It would not impose substantial direct compliance costs on tribal governments that have designated facilities located in their area of Indian country. This action also will not have substantial direct costs or impacts on the relationship between the Federal government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not a ''significant energy action'' because it will not have a significant adverse effect on the supply, distribution or use of energy. Specifically, this action proposes amendments to General Provisions to provide requirements for when a new HAP is added to the CAA section 112 HAP list.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

Executive Order 12898 establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the U.S. This rule would not increase the level of environmental protection for all affected populations, and it also will not have any disproportionately high and adverse health or environmental effects on any population, including any minority, or low-income population. Specifically, this action proposes amendments to NESHAP General Provisions to provide requirements for when a new HAP is added to the CAA section 112 HAP list. These proposed changes would aid in the implementation of updated and new

NESHAP that will occur after a new HAP has been listed.

Michael S. Regan,

Administrator.

[FR Doc. 2023–19674 Filed 9–12–23; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2023–0073; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BG35

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Quitobaquito Tryonia and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Quitobaquito tryonia (*Tryonia quitobaquitae*), a springsnail species from Arizona, as an endangered species under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the Quitobaquito tryonia. After a review of the best available scientific and commercial information, we find that listing the species is warranted. We also propose to designate critical habitat for the Quitobaquito tryonia under the Act. In total, approximately 6,095 square feet (566 square meters) across 2 subunits in Pima County, Arizona, fall within the boundaries of the proposed critical habitat designation. We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for Quitobaquito tryonia. If we finalize this rule as proposed, it would extend the Act's protections to this species and its designated critical habitat.

DATES: We will accept comments received or postmarked on or before November 13, 2023. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by October 30, 2023.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R2–ES–2023–0073, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R2–ES–2023–0073, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: Supporting materials, such as the species status assessment report, are available on the Service's website at *https://www.fws.gov/office/arizona-ecological-services,* at *https://www.regulations.gov* at Docket No. FWS–R2–ES–2023–0073, or both. For the proposed critical habitat designation, the coordinates or plot points or both from which the map is generated are included in the decision file for this critical habitat designation and are available at *https://www.regulations.gov* at Docket No. FWS–R2–ES–2023–0073 and on the Service's website at *https://www.fws.gov/office/arizona-ecological-services.*

FOR FURTHER INFORMATION CONTACT: Heather Whitlaw, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 9828 North 31st Ave #C3, Phoenix, AZ 85051–2517; telephone 602–242–0210. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the Quitobaquito tryonia meets the definition of an endangered species; therefore, we are proposing to list it as such and proposing a designation of its critical habitat. Both listing a species as an endangered or threatened species and making a critical habitat determination can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. We propose to list the Quitobaquito tryonia as an endangered species under the Act, and we propose the designation of critical habitat for the species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that Quitobaquito tryonia is endangered due to the following threats: decline in spring flow resulting from groundwater pumping and ongoing drought; effects of climate change; and spring modification.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary), to the maximum extent prudent and determinable, to designate critical habitat concurrent with listing. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any