The second round of public comment seeks comments from members of the public who oppose an exemption. As with the first round, commenters during the second round should present the full legal and evidentiary basis for their opposition. Finally, the third round of public comment will be limited to supporters of particular proposals and those who neither support nor oppose a proposal, who seek to reply to points made in the earlier rounds of comments. Reply comments should not raise new issues, but should instead be limited to addressing arguments and evidence presented by others during prior rounds.

B. Public Hearings

After the three rounds of comments are completed, the Copyright Office will hold virtual public hearings in spring 2024. The hearings will allow for participation by videoconference and will be streamed online. A separate notice providing details about the hearings and how to participate will be published in the **Federal Register** at a later date. The Office will identify specific items of inquiry to be addressed during the hearings.

C. Post-Hearing Questions

As with previous rulemakings, following the hearings, the Office may request additional information with respect to particular classes from rulemaking participants, to supply missing information for the record or otherwise resolve issues that it believes are material to particular exemptions. Such requests for information will take the form of a letter from the Office, will be addressed to individual parties involved in the proposal as to which more information is sought, and will provide a deadline for submission. Responding to such a request will be voluntary. After the receipt of all responses, the Office will post the questions and responses on the Office's website as part of the public record.

D. Ex Parte Communication

In the last two proceedings, in response to stakeholder requests, the Office provided written guidelines under which interested non-governmental participants could request informal communications with the Office during the post-hearing phase of the proceeding. In this proceeding, the Office will permit *ex parte* communications, but participating parties will be required to follow its regulations on *ex parte* communications, codified at 37 CFR 201.1(d) and 205.24.[185] In accordance with the regulations, and similar to the last two proceedings, no *ex parte* communications with the Office regarding this proceeding will be permitted prior to the post-hearing phase.

Dated: October 12, 2023,

Suzanne V. Wilson,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2023–22949 Filed 10–18–23; 8:45 am]

BILLING CODE 1410–30–P

[185] *See* 37 CFR 201.1(d), 205.24.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2022–0707; FRL–9603–01–OAR]

RIN 2060–AV65

Protection of Stratospheric Ozone: Updates Related to the Use of Ozone-Depleting Substances as Process Agents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to establish recordkeeping and reporting requirements for uses of ozone-depleting substances as process agents and to update definitions to reflect current practice. Codified recordkeeping and reporting requirements would provide clear and consistent notice each year of information EPA collects, aggregates, and reports as a party to the Montreal Protocol on Substances that Deplete the Ozone Layer; effectively monitor these narrow uses in a more routine and consistent manner under the Clean Air Act; and enhance understanding of emissions of substances harmful to the ozone layer.

DATES: Comments on this notice of proposed rulemaking must be received on or before December 4, 2023. Under the Paperwork Reduction Act (PRA), comments on the proposed information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before November 20, 2023. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Time on October 24, 2023. If a public hearing is held, it will take place on or before November 3, 2023 and further information will be provided at *https://www.epa.gov/ods-phaseout.*

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2022–0707, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or 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 further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

You may find the following suggestions helpful for preparing your comments: direct your comments to specific sections of this proposed rulemaking and note where your comments may apply to future separate actions where possible; explain your views as clearly as possible; describe any assumptions that you used; provide any technical information or data you used that support your views; provide specific examples to illustrate your concerns; offer alternatives; and, make sure to submit your comments by the comment period deadline. Please provide any published studies or raw data supporting your position. 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. EPA will generally not consider comments or comment contents located outside of the primary submission (*e.g.,* on the web, cloud, or other file sharing system).

EPA recognizes that given the nature of this proposed rulemaking, potentially affected entities may wish to submit Confidential Business Information (CBI) or other confidential information. CBI should not be submitted through *https://www.regulations.gov.* For submission of confidential comments or data, please work with the person listed in the **FOR FURTHER INFORMATION CONTACT** section. For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions,

and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: John Feather, U.S. Environmental Protection Agency, Stratospheric Protection Division, telephone number: 202–564–1230; or email address: *feather.john@epa.gov*. You may also visit EPA's website at *https://www.epa.gov/ozone-layer-protection* for further information.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' ''the Agency,'' or ''our'' is used, we mean EPA. Acronyms that are used in this rulemaking that may be helpful include:

ASME—American Society of Mechanical Engineers
CAA—Clean Air Act
CBI—confidential business information
CFC—chlorofluorocarbon
EPA—U.S. Environmental Protection Agency
FOIA—Freedom of Information Act
GHGRP—Greenhouse Gas Reporting Program
HCFC—hydrochlorofluorocarbon
ICR—Information Collection Request
NAICS—North American Industry Classification System
NARA—National Archives and Records Administration
ODP—ozone depletion potential
ODS—ozone-depleting substances
PRA—Paperwork Reduction Act
RFA—Regulatory Flexibility Act
SISNOSE—Significant Economic Impact on a Substantial Number of Small Entities
TRI—Toxics Release Inventory
UMRA—Unfunded Mandates Reform Act

Table of Contents

I. General Information

A. Does this proposed action apply to me?

You may be potentially affected by this proposal if you use ozone-depleting substances [1] (ODS) as process agents. Potentially affected categories, North American Industry Classification System (NAICS) codes, and examples of potentially affected entities include Industrial Gas Manufacturing (NAICS code 325120), Other Basic Inorganic Chemical Manufacturing (NAICS code 325180), and All Other Basic Organic Chemical Manufacturing (NAICS code 325199).

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this section could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency proposing?

This action is narrow in scope and proposes to codify recordkeeping and reporting requirements for a limited number of chemical manufacturing facilities and to make minor revisions to definitions under 40 CFR part 82. EPA annually collects process agent consumption and emissions information. The Agency is proposing to codify reporting requirements to collect this information, including a methodology to calculate emissions. EPA also proposes to add a definition of ''process agent'' and to revise definitions of ''plant'' and ''facility'' to better reflect current practice.

Included in the docket is a description of the procedures EPA is seeking comment on to implement the proposed emission reporting requirements (see the memorandum titled *Proposed Procedures for ODS Process Agent Emission Reporting* (EPA–HQ–OAR–2022–0707)). The remaining regulatory changes proposed in this action are included in this document.

C. What is EPA's authority for this proposed action?

Several sections of the Clean Air Act (CAA) provide authority for this proposed action. In particular, section 603 provides authority to establish monitoring and reporting requirements for controlled substances. EPA also relies on its authority under section 114 of the CAA, which authorizes the EPA Administrator to establish recordkeeping and reporting requirements in carrying out any provision of the CAA (with certain exceptions that do not apply here). Section 604 and 605 provide the authority to phase out the production and consumption of class I and II substances, to restrict the use of class I and II controlled substances, and to promulgate regulations associated with the production of class I and II substances. EPA's regulations implementing the production and consumption controls for class I and II substances, including provisions implementing exceptions to those controls, can be found at 40 CFR part 82, subpart A. Additional authority for electronic reporting, as required under provisions in 40 CFR 82.13(c) and 40 CFR 82.24(a)(1) comes from the Government Paperwork Elimination Act (44 U.S.C. 3504), which provides ''(1) for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and (2) for the use and acceptance of electronic signatures, when practicable.''

II. Background

A. EPA's Phaseout of ODS

In 1987, the United States joined 23 other countries and the European Union to sign the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol) and the United States ratified the Montreal Protocol on April 21, 1988. This international treaty protects and restores the ozone layer by phasing out the production and consumption of certain ODS including chlorofluorocarbons (CFCs), halons, methyl bromide, and hydrochlorofluorocarbons (HCFCs). The

[1] For the purposes of this preamble, EPA uses ''ozone-depleting substance'' and ''controlled substance'' interchangeably. Both terms are intended to have the same meaning as ''controlled substance'' as defined in 40 CFR 82.3.

Protocol, which has been joined by all countries of the United Nations, and its parent treaty, the *Vienna Convention for the Protection of the Ozone Layer,* are the first international treaties to ever achieve this distinction. The Clean Air Act Amendments of 1990 (CAA or the Act) added Title VI on Stratospheric Ozone Protection. Under the CAA and EPA's regulations at 40 CFR part 82, controls are in place that restrict the production and consumption of ODS to implement the phaseout of these substances. Title VI establishes two classes of controlled ODS: class I and class II control substances. Class I controlled substances, *i.e.,* CFCs, halons, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbons, have a higher ozone depletion potential (ODP) and were phased out ahead of class II controlled substances. Class II controlled substances consist only of HCFCs that have lower ODPs than class I substances, and in many cases acted as transitional substitutes for many class I substances. While existing regulations allow for limited production and consumption of two HCFCs (HCFC–123 and HCFC–124) until 2030, all others have been phased out in the United States. For both class I and class II ODS, there are limited exceptions, such as the exclusion from the definition of ''production'' in 40 CFR 84.3 for controlled substances that are either manufactured and subsequently transformed, *i.e.,* for feedstock uses,[2] or destroyed by approved destruction technologies.[3]

B. ODS Used as Process Agents

Process agents are generally understood to be used to create an environment for another process to occur, without themselves being transformed or destroyed during said process. The process agent is not consumed in the reaction, though trace quantities of the process agent may remain in the final product. For the purposes of this rulemaking, EPA uses the terms ''controlled substance used as a process agent'', ''ODS process agent'', and ''process agent'' interchangeably. The Agency also uses the term ''consumed'' in this context to mean ''used up'' or transformed.

Process agents may be reused or recycled or may subsequently be used in transformation reactions or destroyed. While process agents are generally reused or recycled, additional process agents may need to be introduced to replenish losses due to transformation, destruction, emission, or being present in trace quantities in the chemical substance being manufactured. Emissions can be reduced through limiting process agent losses (*e.g.,* mitigate fugitive emissions or capture process agents for further use or destruction) and by directly abating process agent emissions. Technology resulting in zero-emission uses of process agents have increasingly been adopted over time as well.[4]

C. EPA's Treatment of ODS Process Agents

On August 4, 1998, EPA proposed certification requirements for class I controlled substances to be used as process agents (63 FR 41652). The Agency also proposed to interpret the definition of controlled substances in 40 CFR 82.3, to mean that ''production of controlled substances for use as a process agent is not included in the definition of controlled substances in the regulation.'' While EPA decided not to finalize the proposed certification requirements or interpretation that ODS used as process agents are not controlled substances, on July 18, 2003, EPA published a rule (68 FR 42883) which discussed that the Agency had determined a use of a class I controlled substance as a process agent to be exempt from restrictions on controlled substances. EPA recognizes that there are some legacy uses of ODS as process agents, in particular where substitutes or alternative processes may not be viable yet, and the Agency has continued to annually request, collect, and review information on these process agent uses. This is in line with decisions under the Montreal Protocol to allow the continued use of ODS as process agents under specified situations. The parties to the Montreal Protocol agreed in decision X/14 to except quantities of ODS produced or imported for use as process agents from the general requirements to phase out production and consumption of controlled ODS.[5] EPA prepares information derived from submissions to the Agency on process agent uses in the United States and submits this information to the Montreal Protocol's Ozone Secretariat on behalf of the United States, consistent with decisions taken by the parties to the Montreal Protocol.

III. Proposed Recordkeeping and Reporting Requirements

EPA proposes in this section to require one-time, annual, and situational reporting from entities that use ODS as process agents, add associated recordkeeping requirements, and determine how to treat the collected data. These requirements would ensure an initial understanding of the process agent uses, support efforts to monitor changes that occur over time, enable the Agency to anticipate future changes, and allow EPA to confirm relevant records as appropriate. Codified recordkeeping and reporting requirements would provide clear and consistent notice each year of the information EPA would collect in order to report information consistent with decisions taken by the parties to the Montreal Protocol. These requirements would also provide additional clarity to industry concerning how to treat and report ODS process agent uses. The Agency is proposing these reporting requirements for both class I and class II controlled substances that may be used as process agents. Consistent with existing requirements in 40 CFR 82.13(c) for class I controlled substances and 40 CFR 82.24(a)(1) for class II controlled substances for reports available for submission, these reports would be submitted electronically through the Central Data Exchange or, as proposed in this action, another format specified by EPA.

It is EPA's understanding that uses in the United States of ODS as process agents are primarily for purposes of maintaining legacy production processes at existing facilities which cannot feasibly transition to processes that do not use ODS as process agents. The United States is one of a few countries that continue to report use of controlled substances as process agents. The additional recordkeeping and reporting requirements proposed in this action also would support EPA's efforts to assess use of controlled substances as process agents, prepare and report associated information supporting continued need for excepted uses where appropriate, and ensure there is clarity and consistency in reporting on emissions of ODS used as process agents.

Requiring this reporting will allow EPA to effectively monitor these narrow process agent uses in a more routine and consistent manner under CAA section 603, and ensure the Agency is accurately documenting production and consumption of class I and II controlled

[2] EPA considers terms related to ''transformation'' and ''feedstock uses'' to be interchangeable for the purposes of this proposal.

[3] Approved destruction technologies are listed at 40 CFR 82.3 ''Destruction.''

[4] United Nations Environment Programme, Medical and Chemicals Technical Options Committee, 2022 Assessment Report. *https://ozone.unep.org/system/files/documents/MCTOC-Assessment-Report-2022.pdf.*

[5] *https://ozone.unep.org/treaties/montreal-protocol/meetings/tenth-meeting-parties/decisions/decision-x14-process-agents.*

substances consistent with the limits established under CAA sections 604 and 605.

A. One-Time Report

EPA proposes that any facility that uses a controlled substance as a process agent must submit a one-time report within 120 days of publication of the final rule, or within 120 days of the date that a facility first uses a controlled substance as a process agent, whichever is later. These one-time reports would be required regardless of whether an entity has provided this information to EPA previously. We propose that this one-time report include information concerning the process agent being used; a mass balance describing where, how, and how much of the controlled substance is used and emitted; if relevant, where, how, and how much of the controlled substance is transformed, destroyed, or otherwise captured; data on how much controlled substance was used in the last year and what it was used to produce (*e.g.,* another chemical or product); air emissions from stack point sources, fugitive sources, and total air emissions; actions taken or under evaluation to phase out use of ODS as a process agent (*e.g.,* by transitioning to a non-ozone depleting alternative); actions taken or under evaluation to minimize process agent use or emissions; and the location of the facility using the process agent. Such information would establish a baseline set of information from which EPA can monitor potential changes over time.

For total, fugitive, and stack point air emissions, EPA is proposing to require that entities using controlled substances as process agents report emissions using a methodology similar to the emissions reporting requirements found at 40 CFR part 98, subpart L (40 CFR 98.120 through 98.128). EPA is proposing that acceptable testing methods for measuring process vent emissions of controlled substances would include EPA Method 18 in appendix A–1 to 40 CFR part 60, EPA Method 320 in appendix A to 40 CFR part 63, EPA 430–R–10–003, ASTM D6348–03 (Reapproved 2020), or other analytical methods validated using EPA Method 301 at 40 CFR part 63, appendix A. The regulations at 40 CFR part 98, subpart L, include ''some other scientifically sound validation protocol'' as an acceptable alternative method to measure emissions, but EPA is not proposing to include that in the regulations created through this rulemaking due to potential lack of consistency in reporting emissions in the limited set of remaining process agent applications. However, EPA Method 301 provides a process to validate and approve other analytical methods as appropriate. The Agency expects that the approaches to determining fluorinated GHG emissions from process vents (continuous or batch) and equipment leaks for fluorinated gas production would also be applicable to the process agent applications and their associated industry sectors.[6] EPA is proposing that the units of measure for determining emissions and the method to calculate emissions would be in kilograms of controlled substance emitted. EPA has included a memo describing these proposed emission reporting procedures in the docket for this rulemaking.

EPA requests comment on whether there are distinctions between controlled substance emissions, process agent applications, or industry sectors that would require specific adjustments from the proposed generally applicable requirements, and if so, what those adjustments may be. The Agency also requests comment on whether there are potential gaps in the proposed approaches to determining emissions from process agent applications and whether alternative approaches, such as a mass balance method as described in appendix A to 40 CFR part 98, subpart L, may be suitable in those particular cases. EPA also requests comment on the advantages and disadvantages of specifying one testing method instead of several options (*e.g.,* EPA Method 18 as the analytical method and EPA Method 21 monitoring procedures for leak detection). EPA seeks comment on whether finalizing the use of one method, instead of multiple methods, would improve the consistency of emissions data reported across the facilities using ODS as process agents.

EPA considered whether to require that entities report emissions information consistent with the approach used by the Toxics Release Inventory (TRI) at 40 CFR part 372, but is proposing to use an approach similar to the Greenhouse Gas Reporting Program (GHGRP)'s 40 CFR part 98, subpart L, instead. Under 40 CFR 372.85(b)(14)(i), these requirements include an estimate of total releases of: (1) Fugitive or non-point air emissions, (2) stack or point air emissions, (3) discharges to receiving streams or water bodies including an indication of the percent of releases due to stormwater, (4) underground injection on site, and (5) releases to land on site. Based on a review of available data, we expect all facilities that would be subject to this rule already report this information annually or that this information would be reasonably available. TRI emissions data are aggregated by chemical across an entire facility; therefore, these data do not by themselves allow EPA to determine particular product or production-line contributions. For example, currently available TRI data would not differentiate between process agent emissions from use in a process agent application and emissions from production or transformation of that same ODS or other unrelated processes at the same facility. The list of chemicals reported under TRI also does not include all ODS. Notably, at least one of the ODS process agents used in the United States, bromochloromethane, is not reported under TRI. A requirement that entities specifically report process agent emissions consistent with the approach used by TRI would be intended to ensure that EPA can fully account for the emissions of all process agents attributable to all process agent applications from each subject facility and distinguish those emissions from ODS emissions associated with other uses.

However, the Agency has concerns with applying the general TRI reporting requirements to this limited set of ODS process agent pollutants, industry sectors, and types of operations for the purposes of this action. The TRI requirements are designed to apply to a wide variety of pollutants and sectors and require facilities to report emissions using their best available information, although the source of such information or any calculations are not prescribed. TRI requires facilities to report and record information concerning emissions and the basis of estimate used. For example, to estimate emissions an entity may use engineering judgment or emissions factors, depending on that facility's available information. The facility reports the quantity of emissions and the basis of the estimate used (*e.g.,* published emissions factor, mass balance calculation) and maintains documentation of supporting calculations. However, the facility does not report which emissions factor was used. The potential for varying emission estimation methodologies between reporting entities complicates the Agency's ability to assess and ensure data quality for these particular process agent applications. While some may

[6] Uses of controlled substances as process agents in the United States include elimination of nitrogen trichloride in chlor-alkali production, recovery of chlorine by tail gas absorption from chlor-alkali production, production of synthetic fiber sheet, bromination of a styrenic polymer, and production of high modulus polyethylene fiber, among others globally.

argue using the TRI approach is less burdensome given nearly all ODS process agent users are reporting under TRI already, EPA is concerned these requirements would not provide the consistency and validation necessary for the Agency's needs in preparing and reporting information to the Ozone Secretariat consistent with the decisions the parties have taken. It also makes it difficult to compare emission rates across facilities.

In contrast, 40 CFR part 98, subpart L, prescribes specific methodologies for estimating vent-specific emissions and includes associated recordkeeping and reporting requirements that would support EPA's efforts to validate the reported information. For example, each process vent with significant emissions must use the process-vent-specific emission factor method, which requires emission tests with process activity parameters measured for either each operating scenario or the operating scenario with the largest overall emissions. All emissions test data and procedures used in developing emission factors must be documented. Process vents with less emissions may use the process-vent-specific emission calculation factor method, which prescribes certain procedures to calculate emissions for each operating scenario but does not require testing. All data, assumptions, and procedures used in the calculations or engineering assessment must be documented. In both cases the reported information follows specified methodologies and EPA may assess detailed recorded information if there are questions or concerns about the reported data. For these reasons, EPA sees the proposed approach in this rule as better suited for monitoring process agent emissions.

EPA requests comment on this assessment. In particular, EPA requests comment on why it would be appropriate to apply the TRI reporting requirements to the narrow set of process agent pollutants, industry sectors, and types of operations and on how EPA may ensure a complete and consistent set of reports and record. The Agency also requests comment on whether there are advantages or disadvantages of such requirements as compared to a methodology similar to those found at 40 CFR part 98, subpart L, and what those may be. EPA also requests comment on potential challenges in implementing these emissions estimates for emissions of ODS from process agent applications.

B. Annual Report and Significant Process Changes

As part of a continuing effort to monitor potential changes over time, EPA proposes to require that each entity with a facility that uses a controlled substance as a process agent must submit for each applicable facility an annual report by February 14 of each year concerning process agent uses for the previous calendar year (*i.e.,* January 1 through December 31). This date coincides with the existing fourth quarter and annual deadlines for existing ODS reporting requirements, including all quarterly importer and producer reports and the annual reports under 40 CFR 82.13(m) for second party transformation and destruction of class I controlled substances. If there are facilities that employ more than one process agent use, the facility would need to report data individually for each process that uses an ODS process agent. We propose that these annual reports include information concerning process agent sourcing, amounts reused, recycled, transformed. and destroyed, and inventory over the previous calendar year; air emissions from stack point sources, fugitive sources, and total air emissions; and a description of emission reduction actions currently in use, planned, or currently under evaluation since the last one-time or annual report. This information will help enable the Agency to develop an annual report regarding uses of process agents in the United States and to effectively monitor production and consumption of ODS used for process agents consistent with domestic requirements.

EPA also proposes to require that each facility with a significant process change, including an increase in the quantity of the final output manufactured using an ODS process agent, submit a report specifying changes at least 180 days prior to implementing the change. We propose that this prior notification requirement apply to any process changes anticipated to result in increases by the next annual report of greater than 20 percent of the amount of controlled substance initially introduced for or emitted during use as a process agent by a facility, as compared to the corresponding data in the previous calendar year. EPA understands that facility operations change over time, and the Agency can monitor such changes through the annual reporting mechanism. However, there is potential for significant changes in facility operations over a short period which can have significant impacts on the environment, conformance with domestic regulatory requirements, and our commitment to international agreements. Annual reports represent a delayed view into past actions and may not provide sufficient lead time for an appropriate response. This notification requirement would provide EPA the opportunity to assess potential implications in advance of a change at the facility.

C. Recordkeeping

As described below in this section, entities are obligated under existing requirements to record information in accordance with 40 CFR 82.13 and 82.24, including information concerning ODS used as process agents. In this action EPA proposes to add recordkeeping requirements specifically for uses of ODS as process agents. Under 40 CFR 82.13(d), entities must retain the records and copies of reports required for at least three years. The Agency currently requires in 40 CFR 82.13 and 82.24 that entities, including producers and importers, record information that applies to controlled substances in general, including those used as process agents, but the current regulations do not require that controlled substances intended for process agent use be differentiated from the wider uses. Similar to how EPA requires differentiating recordkeeping requirements in 40 CFR 82.13 and 82.24 by whether the controlled substances were intended for use in processes resulting in their transformation or destruction, EPA proposes to also require that entities using process agents record information that documents what would be reported to the Agency, which includes information concerning sourcing, production, and reuse, recycling, transformation, and destruction for ODS intended to be used for process agent applications.

Specifically, the Agency is proposing to add requirements that companies that use process agents maintain: dated records of the quantity of each process agent produced at each facility; records identifying the producer or importer of process agents received; copies of invoices or receipts documenting the sale or other transfer of ownership of process agents; dated records identifying the quantity of each product manufactured within each facility by using process agents; dated records of the quantity of process agent spills or releases greater than or equal to 100 pounds; dated records of information used to calculate emissions; dated records of the quantity of process agents which are subsequently transformed or destroyed; and a copy of the

transformation or destruction verification in the case that a process agent is subsequently sold or distributed to another entity for transformation or destruction. This additional information would provide further distinctions of information already required to be recorded.

IV. How does EPA propose to treat ODS process agent data collected under this action?

EPA has reviewed the data elements that are proposed to be reported under this rule. This proposal identifies certain information categories that must be submitted to the Agency that will be subject to disclosure to the public without further notice because the information has been determined to be either ''emission data'' under 40 CFR 2.301(a), or EPA has found that the information does not meet the standard for confidential treatment under Exemption 4 of the Freedom of Information Act (FOIA). The Agency is also proposing to identify certain other categories of information that may be entitled to confidential treatment. For information not addressed in this rulemaking, the Agency will apply the 40 CFR part 2 process for establishing case-by-case confidentiality determinations. The emission data and confidentiality determinations in this proposed action are intended to encourage consistency, compliance with EPA's general ODS phaseout, and to meet the United States' reporting commitments under the Montreal Protocol. Establishing these determinations through this rulemaking will provide predictability for both information requesters and submitters.

A. Background on Determinations of Whether Information Is Entitled to Treatment as Confidential Information

1. Confidential Treatment of Reported Information

Regulated entities that must submit information to EPA frequently claim that some or all of that information is entitled to confidential treatment and therefore exempt from disclosure under Exemption 4 of the FOIA. Exemption 4 exempts from disclosure ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.'' In order for information to meet the requirements of Exemption 4, EPA must find that the information is either: (1) A trade secret, or (2) commercial or financial information that is: (a) obtained from a person, and (b) privileged or confidential.

Generally, when EPA has information that the Agency intends to disclose publicly that is covered by a claim of confidentiality under FOIA Exemption 4, EPA has a process to make case-by-case or class determinations under 40 CFR part 2 to evaluate whether such information qualifies for confidential treatment under the exemption. In this action, EPA is proposing to make categorical emission data and confidentiality determinations in advance through this notice and comment rulemaking for some information that would be submitted to EPA under the proposed requirements. If EPA finalizes these determinations, that information would be subject to disclosure to the public without further notice.

The U.S. Supreme Court decision in *Food Marketing Institute* v. *Argus Leader Media,* 139 S. Ct. 2356 (2019) (*Argus Leader*) addresses the meaning of ''confidential'' within the context of FOIA Exemption 4. The Court held that ''[a]t least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4.'' The Court identified two conditions ''that might be required for information communicated to another to be considered confidential.'' Under the first condition, ''information communicated to another remains confidential whenever it is customarily kept private, or at least closely held, by the person imparting it.'' The second condition provides that ''information might be considered confidential only if the party receiving it provides some assurance that it will remain secret.'' The Court found the first condition necessary for information to be considered confidential within the meaning of Exemption 4, but did not address whether the second condition must also be met.

Following the issuance of the Court's opinion in *Argus Leader,* the U.S. Department of Justice issued guidance concerning the confidentiality prong of Exemption 4, articulating ''the newly defined contours of Exemption 4'' post-*Argus Leader*. Where the Government provides an express or implied indication to the submitter prior to or at the time the information is submitted to the Government that the Government would publicly disclose the information, then the submitter generally cannot reasonably expect confidentiality of the information upon submission, and the information is not entitled to confidential treatment under Exemption 4. In this rule, EPA is proposing to clearly assert that certain information is not confidential and would be disclosed publicly, if it is determined to not be entitled to confidential treatment in the final version of this rule. This assertion aligns with the Supreme Court's decision and the subsequent guidance that the government's assurances that a submission will be treated as not confidential should dictate the expectations of submitters. If EPA were to finalize these determinations, submitters are on notice before they submit any information that EPA has determined by the identified data elements discussed below, as well as in the addendum provided in the docket for this action, will not be entitled to confidential treatment upon submission and may be released by the Agency without further notice. As a result, submitters will not have a reasonable expectation that the information will be treated as confidential; rather, they should have the expectation that the information will be disclosed.

As described further below, EPA is proposing to make categorical confidentiality determinations as some of the proposed data elements that would be submitted to EPA contain information that is not entitled to confidential treatment because either: it is not the type of information that submitters customarily keep private or closely held; it is already publicly available; or it is discernible information that is self-evident or readily observable through reverse engineering by a third party.

2. Emissions Data Under Section 114 of the CAA

The CAA states that ''[a]ny records, reports or information obtained under [section 114] shall be available to the public.'' [7] Thus, the CAA begins with a presumption that the information submitted to EPA will be available to be disclosed to the public. It then provides a narrow exception to that presumption for information that ''would divulge methods or processes entitled to protection as trade secrets.'' The CAA then narrows this exception further by excluding ''emission data'' from the category of information eligible for confidential treatment. While the CAA does not define ''emission data,'' EPA has done so by regulation at 40 CFR 2.301(a)(2)(i). EPA releases, on occasion, some of the information submitted under CAA section 114 to parties outside of the Agency of its own volition, through responses to requests

[7] CAA section 114(c); 42 U.S.C. 7414(c).

submitted under the FOIA,[8] or through civil litigation. As noted in the prior section, generally, when we have information that we intend to disclose publicly that is covered by a claim of confidentiality under FOIA Exemption 4, EPA has a process to make case-by-case or class determinations under 40 CFR part 2. This process includes evaluation whether such information is or is not emission data, and whether it otherwise qualifies for confidential treatment under FOIA Exemption 4.

The regulations at 40 CFR 2.301 define emission data to include the following:

(A) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;

(B) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source); and

(C) A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

In this proposal, we are applying the regulatory definition of ''emission data'' in 40 CFR 2.301(a)(2)(i) to propose that certain categories of source certification and compliance information are not entitled to confidential treatment because they qualify as emissions data. If EPA finalizes these determinations, that information would be subject to disclosure to the public without further notice. As relevant to this proposal, a ''source'' for purposes of the definition in 40 CFR 2.301 is generally the equipment covered by a proposed regulatory requirement, such as process equipment in a plant or facility and any related emission units. EPA's broad general definitions of emissions data also exclude certain information related to products still in the research and development phase or products not yet on the market except for limited purposes. Thus, for example, 40 CFR 2.301(a)(2)(ii) excludes information related to ''any product, method, device, or installation (or any component thereof) designed and intended to be marketed or used commercially but not yet so marketed or used.'' This specific exclusion from the definition of emissions data is limited in time. EPA does not believe data related to this exclusion are implicated in this proposed rulemaking because these data generally relate to equipment that EPA understands are primarily for purposes of maintaining legacy production processes at existing facilities.

B. Data Elements Proposed To Be Reported to EPA Under This Action

Consistent with EPA's commitment to transparency in program implementation, EPA has reviewed the data reporting elements proposed in this action to see if information under the umbrella of those data elements could be considered entitled to confidential treatment. EPA is proposing to treat certain data elements as not entitled to confidential treatment. Later in this section, EPA outlines individual data elements and proposes whether they will be handled as confidential, not confidential or undetermined, as well as whether they are emission data and are therefore releasable. There may be additional reasons not to release individual data elements determined to not be entitled to confidential treatment, for example if it is personally identifiable information (PII). EPA proposes to make confidentiality determinations and treat data concerning process agent uses similarly to the process under the HFC Phasedown Program as codified in 40 CFR 84.31(k). Some data may be released in different contexts, including to the general public to encourage transparency, to ensure compliance with EPA's general ODS phaseout, and to meet the United States' reporting commitments under the Montreal Protocol. Emission data, including data used as inputs to emissions equations, would generally be releasable under CAA section 114(c), which provides that emission data shall be available to the public. ''Inputs to emission equations'' refers to data necessary to determine the identity, amount, frequency, or concentration of the emission emitted by the reporting facilities. Inputs to emission equations include equipment parameters, measured data, supporting calculations, and other rationale used to calculate reported emission quantities. Some aggregated data would also be released to the Ozone Secretariat in line with past practices and existing commitments, which could include a list of the specific ODS used as process agents and the applications those specific ODS are used in, the levels of emissions from those uses in metric tons and ODP-weighted metric tons, and the specific containment technologies used to minimize emissions of controlled substances. EPA also intends to release the aggregate consumption of ODS used in process agents in metric tons and ODP-weighted metric tons. Finally, EPA would include production, import, export, and destruction of ODS used as process agents by chemical in data reported to the Montreal Protocol's Ozone Secretariat as part of the United States' annual report submitted under Article 7 of the treaty. At this time, this aggregated data would comprise data from three or more entities. Release of this information documents U.S. conformance with commitments under an international agreement, so even if the number of entities with process agent uses decreases in future, EPA is still proposing to determine that process agent data reported by the United States in accordance with commitments under the Montreal Protocol would not be confidential.

Some of the data elements EPA is proposing to collect may be similar to or the same as those required to be reported under the existing requirements associated with the GHGRP, particularly for entities subject to 40 CFR part 98, subpart L. The regulatory reporting requirements are separate and the Agency is not proposing any changes to 40 CFR part 98 in this rulemaking. To the extent relevant, data elements submitted in accordance with requirements established through this rulemaking and determined to not be confidential under 40 CFR part 82, subpart A, would not be provided confidential treatment regardless of whether they have previously been determined to be confidential under the GHGRP.

Specifically, EPA proposes that the identity of byproducts manufactured in the process agent application; contact information for facilities that use controlled substances as process agents; emission data, including reported emission factors and the proposed ODS process agent monitoring plan; and technologies currently being used and actions taken to minimize use or emissions of controlled substances used as process agents would also not be considered confidential. The Agency proposes to determine the following information concerning ODS process agents as confidential: process agent sourcing; internal facility processes such as the quantity of process agent use, recycling and reuse, products, and

[8] 5 U.S.C. 552.

byproducts; and emission reduction technologies and actions planned or currently under evaluation. As noted previously, the Agency expects to release aggregated data to the Ozone Secretariat, including ODS process agent information concerning process agent applications currently used in the United States, consumption, emissions, and emission reduction technologies and actions undertaken. Further, EPA would begin reporting emissions data in metric tons instead of ODP-weighted metric tons.

In addition, EPA proposes to revise provisions in 40 CFR 82.14(a), 82.13(c) for class I controlled substances, and 82.24(a)(1) for class II controlled substances to specify that there may be future ways to submit reports electronically. Under current requirements, reports available for submission must be submitted electronically through the Central Data Exchange. In this action the Agency proposes to extend these requirements to allow the use of another electronic format specified by EPA. This revision is intended to provide flexibility in the event that the Agency designates a successor system to the Central Data Exchange for reporting requirements under the ODS phaseout in 40 CFR part 82, subpart A, and would align with similar provisions for the HFC Phasedown Program in 40 CFR 84.31(a)(2).

V. Proposed Definitions

EPA also proposes to add a definition of ''process agent'' and revise two definitions to better reflect current EPA and international practices. EPA proposes to define ''process agent'' in 40 CFR part 82 similarly to the existing definition in 40 CFR part 84, with the key difference being that 40 CFR part 82 addresses ODS controlled substances and 40 CFR part 84 addresses HFC regulated substances. EPA is proposing in this action to define the term ''process agent'' for the purposes of 40 CFR part 82 as ''the use of a controlled substance to form the environment for a chemical reaction or inhibiting an unintended chemical reaction (*e.g.,* use as a solvent, catalyst, or stabilizer) where the controlled substance is not consumed in the reaction, but is removed or recycled back into the process and where no more than trace quantities remain in the final product. A feedstock, in contrast, is entirely consumed during the reaction.'' We expect this definition will provide greater clarity of what is considered process agent use. In 40 CFR 82.3, the Agency defines ''facility'' to mean ''any process equipment (*e.g.,* reactor, distillation column) used to convert raw materials or feedstock chemicals into controlled substances or consume controlled substances in the production of other chemicals'' and ''plant'' to mean ''one or more facilities at the same location owned by or under common control of the same person.'' These definitions are inverted from how they would typically be understood and applied. EPA proposes to switch the two definitions, such that a plant is a subset of a facility, similar to how 40 CFR part 84 considers a production line to be one component of a facility. The definition of ''plant'' in 40 CFR part 82 would be similar to the definition of ''production line'' in 40 CFR part 84, and definitions of ''facility'' would accordingly correspond. We do not expect this to result in any material impacts, but this revision may increase clarity and consistency.

VI. Costs and Benefits

The proposed recordkeeping and reporting requirements concerning uses of ODS as process agents are intended in general to codify existing practices and do not represent substantive additional effort on the part of affected entities. EPA is aware of six potentially affected entities, and expects that these entities are already able to meet most of the proposed requirements under existing practices. The reported information would support U.S. efforts to more easily report information consistent with Montreal Protocol decisions and to better understand potential implications of uses of ODS as process agents under the CAA.

EPA expects that entities that would be affected by this action are already subject to recordkeeping and reporting requirements under 40 CFR part 82 and that the requirements proposed in this action would not result in significant increased burden. In 40 CFR 82.13 and 82.24 the Agency currently requires producers of controlled substance to record and report related information, including requirements in 40 CFR 82.13(f)(2)(vii) and 82.24(b)(2)(vi) to maintain records of any controlled substance used as a feedstock, destroyed in the manufacture of another substance, used in the manufacture of any other substance, or introduced into the production process of the same controlled substance. EPA also requires additional documentation and reporting concerning uses of ODS in processes that result in their transformation or destruction. The Agency understands that subject entities have already reported similar information to EPA concerning uses of ODS as a process agent in the past on a voluntary basis, report similar information concerning production of ODS and feedstock uses, and already have available process knowledge and experience necessary to meet the recordkeeping and reporting requirements proposed in this action. EPA also believes that codified requirements will reduce potential uncertainty about EPA's recordkeeping and reporting expectations.

EPA expects that this action will result in costs for each subject entity to prepare an initial one-time report, submit annual reports and notifications of significant changes as warranted, and recordkeeping. However, with regards to the annual reports, the Agency already solicits information from the affected entities via annual requests. Therefore, any associated change in burden would be limited relative to current practice. The Agency conservatively estimates these requirements to result in costs of approximately $13,000 per facility for the first year, with the higher costs due to initial preparation of the one-time report, and $1,000 per facility in following years for continued compliance with the other recordkeeping and reporting requirements. As noted in section II.B. of this preamble, we do not anticipate the establishment of new processes or facilities using ODS as process agents, but request comment on that assumption.

The Agency estimates that the proposal to require an emissions reporting methodology similar to 40 CFR part 98, subpart L, would result in additional costs of approximately $190,000 per facility in the first year due to initial planning and additional sampling, analysis, monitoring and calculations. EPA estimates compliance costs of approximately $17,000 in subsequent years for continued sampling, analysis, monitoring, and calculations. The total estimated costs for all requirements are approximately $1.8 million in the first year and $160,000 annually in subsequent years. The costs are discussed in a draft technical support document and the supporting statement for the information collection request (ICR).

VII. Statutory and Executive Order Review

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was

therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA. The ICR document that EPA prepared has been assigned EPA ICR number 1432.39. You can find a copy of the ICR in the docket for this proposed rule, and it is briefly summarized here.

EPA is proposing requirements for both one-time, annual, and situational reporting and for recordkeeping to support international agreements concerning the use of controlled substances as process agents, and to provide relevant information to EPA concerning implications of these uses and emissions. Recordkeeping, one-time reports, and annual reporting requirements are consistent with the existing importer and producer reporting requirements in 40 CFR 82.13 for class I controlled substances and 40 CFR 82.24 for class II controlled substances. These requirements are also consistent with existing practice of these facilities providing similar information concerning these uses of controlled substances as process agents to EPA on a voluntary basis. The ICR addresses the incremental changes to the existing reporting and recordkeeping programs that are approved under OMB control number 2060–0170.

Respondents/affected entities: Respondents and affected entities that use controlled substances as process agents.

Respondent's obligation to respond: Mandatory—sections 603(b) and 114 of the CAA.

Estimated number of respondents: 6.

Frequency of response: One-time, annual, and as needed.

Total estimated burden: 5,883 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $719,593 (per year), including $28,245 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to EPA using the docket identified at the beginning of this proposed rule. EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. OMB must receive comments no later than November 20, 2023.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities because none of the identified affected entities are small entities.

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. While this action creates an enforceable duty on the private sector, the cost does not exceed $100 million or more.

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 National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have Tribal implications as specified in Executive Order 13175. EPA is not aware of Tribal businesses engaged in activities that would be directly affected by this action. Based on the Agency's assessments, as discussed in section VI of this preamble, EPA also does not believe that potential effects, even if direct, would be substantial. Accordingly, this action will not have substantial direct effects on Tribal governments, 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 this action. The Agency periodically updates Tribal officials on air regulations through the monthly meetings of the National Tribal Air Association.

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

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

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

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 (59 FR 7629, February 16, 1994) 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 human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or Indigenous peoples) and low-income populations.

EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples because it does not impact emissions from subject facilities. This regulatory action proposes recordkeeping and reporting requirements that do not impact human health or the environment, but provide additional insight into the uses and emissions of ODS used as process agents.

List of Subjects in 40 CFR Part 82

Environmental protection, Chemicals, Emissions, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. Amend § 82.3 by revising the definitions for ''Facility'' and ''Plant'' and adding the definition ''Process agent'' in alphabetical order to read as follows:

§ 82.3 Definitions for class I and class II controlled substances.

* * * * *

Facility means one or more plants at the same location owned by or under common control of the same person.

* * * * *

Plant means any process equipment (*e.g.,* reactor, distillation column) used to convert raw materials or feedstock chemicals into controlled substances or consume controlled substances in the production of other chemicals.

* * * * *

Process agent means the use of a controlled substance to form the environment for a chemical reaction or inhibiting an unintended chemical reaction (*e.g.,* use as a solvent, catalyst, or stabilizer) where the controlled substance is not consumed in the reaction, but is removed or recycled back into the process and where no more than trace quantities remain in the final product. A feedstock, in contrast, is consumed during the reaction.

* * * * *

■ 3. Amend § 82.13 by:

■ a. In paragraph (c), adding ''or another format specified by EPA'' after the words ''Central Data Exchange''; and

■ b. Adding paragraph (ee).

The addition reads as follows:

§ 82.13 Recordkeeping and reporting requirements for class I controlled substances.

* * * * *

(ee) *Process agents.* Any entity that uses a class I controlled substance as a process agent must comply with the following recordkeeping and reporting requirements for each facility that uses a class I controlled substance as a process agent:

(1) *Reporting—one-time report:* By [date 120 days after publication of a final rule in the **Federal Register**], or within 120 days of the date that an entity first uses a class I controlled substance as a process agent, whichever is later, any entity that uses a class I controlled substance as a process agent must submit to the Administrator a report containing the following information for each use of a class I controlled substance as a process agent:

(i) The name and address of each facility and plant, and each responsible person's name, email address, and phone number;

(ii) The name, purpose, and final product manufactured of each process agent application that uses a class I controlled substance;

(iii) The start-up date of each facility and plant that uses a class I controlled substance as a process agent;

(iv) For each facility, the names and amounts of each product and byproduct manufactured in the process agent application during the previous control period, including amounts destroyed or used as a feedstock;

(v) For each facility, the total air, fugitive air, and stack point air emissions of class I controlled substances used as a process agent during the previous control period;

(vi) For each facility, a description of technologies currently being used and actions taken or currently under evaluation to minimize use or emissions of class I controlled substances used as process agents (including estimated emissions reductions associated with each); and

(vii) For each facility, a description that includes details of the percentages of class I controlled substances used as a process agent and retained within the process agent application, recovered after the process agent application, and emitted or entrained in the final product.

(2) *Annual reports:* Any entity that uses a class I controlled substance as a process agent must provide by February 14 of each year an annual report for the previous control period containing the following information for each use of the class I controlled substance as a process agent:

(i) For each facility, contact information including email address and phone number for a primary and alternate contact person;

(ii) For each facility, the name and amount of each class I controlled substance initially introduced into the process agent application for use as a process agent, specified independently for paragraphs (ee)(2)(ii)(A) through (G) of this section by whether the class I controlled substance was:

(A) Obtained as virgin;

(B) Obtained as used;

(C) Produced by the entity;

(D) Purchased from a U.S. producer;

(E) Imported;

(F) Reclaimed by the entity from a different use; and

(G) Reclaimed by another entity;

(iii) For each facility, the name and amount of each class I controlled substance used as a process agent and reused or recycled by the entity for continued use in the same process agent application at the same facility;

(iv) For each facility, the name and amount of each class I controlled substance used as a process agent that was ultimately:

(A) Transformed;

(B) Reused or recycled for use in a different process agent application; or

(C) Destroyed by approved destruction technologies;

(v) For each facility, the total air, fugitive air, and stack point air emissions of each class I controlled substance used as a process agent;

(vi) For each facility, the names and amounts of each product and byproduct manufactured in the process agent application during the previous control period, including amounts destroyed or used as a feedstock;

(vii) For each facility, a description of emission reduction actions for class I controlled substances used as a process agent taken since the last one-time or annual report, planned, or currently under evaluation; and

(viii) For each facility, any significant process agent application changes anticipated to result in increases for the next annual report of greater than 20 percent of the amount of class I controlled substance initially introduced for or emitted during use as a process agent by an entity, as compared to the previous control period, must be specified in a report submitted to EPA at least 180 days prior to implementing the change.

(3) *Recordkeeping:* Every person who uses a class I controlled substance as a process agent during a control period must maintain the following records, as applicable:

(i) Dated records of the quantity of each class I controlled substance produced at each facility for use as a process agent;

(ii) Records identifying the producer or importer of the class I controlled substance received at each facility for use as a process agent by the person;

(iii) For each facility, copies of the invoices or receipts documenting the sale or other transfer of ownership of

each class I controlled substance for use as a process agent to the person;

(iv) Dated records identifying the quantity of each product manufactured within each facility by using a class I controlled substance as a process agent;

(v) For each facility, records of the date and the estimated quantity of any spill or release of each class I controlled substance used as a process agent that equals or exceeds 100 pounds;

(vi) For each facility, a description of the methodology used to measure and calculate emissions, and dated records of equipment parameters, measured data, supporting calculations, and other rationale used to validate reported emission quantities;

(vii) For each facility, dated records of the quantity of each class I controlled substance used as a process agent which is subsequently transformed or destroyed;

(viii) In the case where class I controlled substances used as a process agent were ultimately transformed by an entity other the entity which last used the class I controlled substances as a process agent, a copy of the Internal Revenue Service Certificate showing that the purchaser or recipient of the controlled substance, in the United States or in another country that is a Party, certifies the intent to transform the controlled substance, or sell the controlled substance for transformation; and

(ix) In the case where class I controlled substances used as a process agent were ultimately destroyed by an entity other the entity which last used the class I controlled substances as a process agent, a copy of the destruction verification (as in paragraph (k) of this section), showing that the purchaser or recipient of a controlled substance, in the United States or in another country that is a Party, certifies the intent to destroy the controlled substance, or sell the controlled substance for destruction.

(4) Reports are no longer required for process agent use in the year after an entity notifies the Administrator that they have permanently ceased use of all process agents, but the entity must continue to comply with all applicable recordkeeping requirements.

§ 82.14 [Amended]

■ 4. Amend § 82.14, in paragraph (a), by adding ''or another format specified by EPA'' after the words ''Central Data Exchange.''

■ 5. Amend § 82.24 by:

■ a. In paragraph (a)(1), adding ''or another format specified by EPA'' after the words ''Central Data Exchange''; and

■ b. Adding paragraph (g).

The addition reads as follows:

§ 82.24 Recordkeeping and reporting requirements for class II controlled substances.

* * * * *

(g) *Process agents.* Any entity that uses a class II controlled substance as a process agent must comply with the following recordkeeping and reporting requirements for each facility that uses a class II controlled substance as a process agent:

(1) *Reporting—one-time report:* By [date 120 days after publication of a final rule in the **Federal Register**], or within 120 days of the date that an entity first uses a class II controlled substance as a process agent, whichever is later, any entity that uses a class II controlled substance as a process agent must submit to the Administrator a report containing the following information for each use of a class II controlled substance as a process agent:

(i) The name and address of each facility and plant, and each responsible person's name, email address, and phone number;

(ii) The name, purpose, and final product manufactured of each process agent application that uses a class II controlled substance;

(iii) The start-up date of each facility and plant that uses a class II controlled substance as a process agent;

(iv) For each facility, the names and amounts of each product and byproduct manufactured in the process agent application during the previous control period, including amounts destroyed or used as a feedstock;

(v) For each facility, the total air, fugitive air, and stack point air emissions of class II controlled substances used as a process agent during the previous control period;

(vi) For each facility, a description of technologies currently being used and actions taken or currently under evaluation to minimize use or emissions of class II controlled substances used as process agents (including estimated emissions reductions associated with each); and

(vii) For each facility, a description that includes details of the percentages of class II controlled substances used as a process agent and retained within the process agent application, recovered after the process agent application, and emitted or entrained in the final product.

(2) *Annual reports:* Any entity that uses a class II controlled substance as a process agent must provide by February 14 of each year an annual report for the previous control period containing the following information for each use of the class II controlled substance as a process agent:

(i) For each facility, contact information including email address and phone number for a primary and alternate contact person;

(ii) For each facility, the name and amount of each class II controlled substance initially introduced into the process agent application for use as a process agent, specified independently for paragraphs (g)(2)(ii)(A) through (G) of this section by whether the class II controlled substance was:

(A) Obtained as virgin;

(B) Obtained as used;

(C) Produced by the entity;

(D) Purchased from a U.S. producer;

(E) Imported;

(F) Reclaimed by the entity from a different use; and

(G) Reclaimed by another entity;

(iii) For each facility, the name and amount of each class II controlled substance used as a process agent and reused or recycled by the entity for continued use in the same process agent application at the same facility;

(iv) For each facility, the name and amount of each class II controlled substance used as a process agent that was ultimately:

(A) Transformed;

(B) Reused or recycled for use in a different process agent application; or

(C) Destroyed by approved destruction technologies;

(v) For each facility, the total air, fugitive air, and stack point air emissions of each class II controlled substance used as a process agent;

(vi) For each facility, the names and amounts of each product and byproduct manufactured in the process agent application during the previous control period, including amounts destroyed or used as a feedstock;

(vii) For each facility, a description of emission reduction actions for class II controlled substances used as a process agent taken since the last one-time or annual report, planned, or currently under evaluation; and

(viii) For each facility, any significant process agent application changes anticipated to result in increases for the next annual report of greater than 20 percent of the amount of class II controlled substance initially introduced for or emitted during use as a process agent by an entity, as compared to the previous control period, must be specified in a report submitted to EPA at least 180 days prior to implementing the change.

(3) *Recordkeeping:* Every person who uses a class II controlled substance as a process agent during a control period must maintain the following records, as applicable:

(i) Dated records of the quantity of each class II controlled substance

produced at each facility for use as a process agent;

(ii) Records identifying the producer or importer of the class II controlled substance received at each facility for use as a process agent by the person;

(iii) For each facility, copies of the invoices or receipts documenting the sale or other transfer of ownership of each class II controlled substance for use as a process agent to the person;

(iv) Dated records identifying the quantity of each product manufactured within each facility by using a class II controlled substance as a process agent;

(v) For each facility, records of the date and the estimated quantity of any spill or release of each class II controlled substance used as a process agent that equals or exceeds 100 pounds;

(vi) For each facility, a description of the methodology used to measure and calculate emissions, and dated records of equipment parameters, measured data, supporting calculations, and other rationale used to validate reported emission quantities;

(vii) For each facility, dated records of the quantity of each class II controlled substance used as a process agent which is subsequently transformed or destroyed;

(viii) In the case where class II controlled substances used as a process agent were ultimately transformed by an entity other the entity which last used the class II controlled substances as a process agent, a copy of the person's transformation verification as provided under paragraph (e)(3) of this section; and

(ix) In the case where class II controlled substances used as a process agent were ultimately destroyed by an entity other the entity which last used the class II controlled substances as a process agent, a copy of the person's destruction verification, as provided under paragraph (e)(5) of this section.

(4) Reports are no longer required for process agent use in the year after an entity notifies the Administrator that they have permanently ceased use of all process agents, but the entity must continue to comply with all applicable recordkeeping requirements.

■ 6. Add § 82.25 to read as follows:

§ 82.25 Treatment of data submitted under this subpart.

(a) Sections 2.201 through 2.215 and 2.301 of this chapter do not apply to data submitted under this subpart that EPA has determined through rulemaking to be either of the following:

(1) Emission data, as defined in § 2.301(a)(2) of this chapter, determined in accordance with section 114(c) and 307(d) of the Clean Air Act; or

(2) Data not otherwise entitled to confidential treatment.

(b) Except as otherwise provided in paragraph (d) of this section, §§ 2.201 through 2.208 and 2.301(c) and (d) of this chapter do not apply to data submitted under this part that EPA has determined through rulemaking to be entitled to confidential treatment. EPA shall treat that information as confidential in accordance with the provisions of § 2.211 of this chapter, subject to paragraph (d) of this section and § 2.209 of this chapter.

(c) Upon receiving a request under 5 U.S.C. 552 for data submitted under this part that EPA has determined through rulemaking to be entitled to confidential treatment, the relevant Agency official shall furnish the requestor a notice that the information has been determined to be entitled to confidential treatment and that the request is therefore denied. The notice shall include or cite to the appropriate EPA determination.

(d) A determination made through rulemaking that information submitted under this part is entitled to confidential treatment shall continue in effect unless, subsequent to the confidentiality determination through rulemaking, EPA takes one of the following actions:

(1) EPA determines through a subsequent rulemaking that the information is emission data or data not otherwise entitled to confidential treatment; or

(2) The Office of General Counsel issues a final determination, based on the requirements of 5 U.S.C. 552(b)(4), stating that the information is no longer entitled to confidential treatment because of change in the applicable law or newly discovered or changed facts. Prior to making such final determination, EPA shall afford the business an opportunity to submit comments on pertinent issues in the manner described by §§ 2.204(e) and 2.205(b) of this chapter. If, after consideration of any timely comments submitted by the business, the Office of General Counsel makes a revised final determination that the information is not entitled to confidential treatment, the relevant agency official will notify the business in accordance with the procedures described in § 2.205(f)(2) of this chapter.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 231013–0247]

RIN 0648–BL70

Magnuson-Stevens Act Provisions; Prohibition of Commercial Fishing in the Northeast Canyons and Seamounts Marine National Monument

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This action proposes regulations for the Northeast Canyons and Seamounts Marine National Monument (the Monument). This action is necessary to conform U.S. fishing regulations consistent with Presidential Proclamations 9496 and 10287, which prohibited commercial fishing in the Northeast Canyons and Seamounts Marine National Monument and directed the Secretaries of Commerce and Interior to promulgate regulations necessary for the proper care and management of the Northeast Canyons and Seamounts Marine National Monument. The measures herein are intended to define the boundary coordinates of the Monument area and reflect the prohibition on commercial fishing in the Magnuson-Stevens Act regulations.

DATES: Comments must be received on or before November 20, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0093, by the following method:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0093 in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information