

The EPA Administrator, Michael S. Regan, signed the following notice on 06/07/2021, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's govinfo website (<https://www.govinfo.gov/app/collection/fr>) and on Regulations.gov (<https://www.regulations.gov>) in Docket No. EPA-HQ-OAR-2014-0471. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2014-0471; FRL-10024-24-OAR]

RIN 2060-AS26

Addition of 1-Bromopropane to Clean Air Act Section 112 HAP List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Having previously granted a public petition to add 1-bromopropane (1-BP) to the list of hazardous air pollutants (HAP) under the Clean Air Act (CAA), the U.S. Environmental Protection Agency (EPA) is soliciting information that will aid in addressing the impacts of the regulatory action. This is the first time that a substance will be added to the HAP list since the initial list was established by the 1990 CAA Amendments. The addition of 1-BP to the HAP list could have immediate regulatory compliance impacts to facilities that emit 1-BP. The EPA is soliciting data and information on 1-BP usage, emission controls, and costs to inform the process to address the implementation of the upcoming listing action and to ensure that the regulatory infrastructure is in place to effectively and efficiently control the emissions of 1-BP. The EPA is not soliciting comments on the decision that granted petitions to list 1-BP as a HAP and has not reopened that decision for comments.

DATES: *Comments.* Comments must be received on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OAR-2014-0471, 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-2014-0471 in the subject line of the message.
- Fax: (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2014-0471.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2014-0471, Mail Code 28221T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand Delivery or Courier (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004.
The Docket Center's hours of operation are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. EPA-HQ-OAR-2014-0471 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. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and

webform. We encourage the public to submit comments via <https://www.regulations.gov/> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For questions about this action, contact Susan Miller, Sector Policies and Programs Division (D205-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2443; fax number: (919) 541-4991; and email address: miller.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket. The EPA has a docket for this document and the future listing action under Docket ID No. EPA-HQ-OAR-2014-0471. This docket is the same docket used during the petition process. All documents in the docket are listed in 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.

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2014-0471. 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 any

information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted by mail 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>.

The EPA has temporarily suspended its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention, local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

Submitting CBI. Do not submit information containing CBI to the EPA through <https://www.regulations.gov/> or email. 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, mark the outside of the digital storage media as CBI and then 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 *Instructions* above. 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. 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. Send or deliver information identified as CBI only 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-2014-0471. Note that written comments containing CBI and submitted by mail may be delayed and no hand deliveries will be accepted.

Preamble acronyms and abbreviations. 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 (also known as n-propyl bromide or nPB)
APCD	air pollution control device
CAA	Clean Air Act
CBI	Confidential Business Information
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-to-Know Act
GACT	generally available control technology
HAP	hazardous air pollutant(s)
HAP list	list of HAP under authority of section 112 of the CAA
HSIA	Halogenated Solvents Industry Alliance
MACT	maximum achievable control technology
NESHAP	national emission standards for hazardous air pollutants
NYSDEC	New York State Department of Environmental Conservation
OCSP	Office of Chemical Safety and Pollution Prevention
OMB	Office of Management and Budget
PERC	perchloroethylene
PPA	Pollution Prevention Act
PTE	potential to emit
SBREFA	Small Business Regulatory Enforcement Fairness Act
TRI	Toxics Release Inventory
TSCA	Toxic Substances Control Act

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

I. General Information

This document is a prepublication version, signed by EPA Administrator, Michael S. Regan on 06/07/2021. We have taken steps to ensure the accuracy of this version, but it is not the official version.

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I. General Information

A. Will this upcoming action apply to me?

The upcoming action to add 1-BP to the CAA section 112 list of hazardous air pollutants (HAP list) may result in regulatory obligations that will apply to your facility if it emits 1-BP.

The types of regulatory compliance impacts will depend on several factors, including the amount of 1-BP used and the way that it is used (*e.g.*, as a solvent in a plastic parts coating operation as compared to as a solvent in a dry cleaning machine) and the amount of 1-BP and other HAP emitted by your facility. In some instances, permits for planned construction, reconstruction, or modification of emissions sources at your facility could also be affected. There may also be impacts for regulatory authorities, including state, local, and tribal authorities, who are delegated the authority to implement national emission standards for hazardous air pollutants (NESHAP) under delegation and title V programs.

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

In addition to being available in the docket, an electronic copy of this action is available on the Internet. Following signature by the EPA Administrator, the EPA will post a copy of this action at <https://www.epa.gov/haps/initial-list-hazardous-air-pollutants-modifications#mods>. Following publication in the *Federal Register*, the EPA will post the *Federal Register* version of this document and key technical documents at this same website.

II. Background

A. What is the HAP list?

The HAP list, which can be found in CAA section 112(b)(1), is a list of organic and inorganic substances that Congress identified as HAP in the 1990 CAA Amendments. 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 particular 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. Modifications to the HAP list are codified in 40 CFR part 63, subpart C.

Section 112(c)(1) of the CAA directs the EPA to first identify and list source categories that emit HAP listed pursuant to CAA section 112(b). Then, under CAA section 112(e)(1), the EPA was to set “emission standards for categories and subcategories as expeditiously as practicable” but no later than the overall deadline of November 15, 2000. CAA section 112(e)(1)(e). The EPA sets emissions standards under CAA section 112(d) for those listed source categories based on sources being characterized as “major” or “area.”

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.” Standards promulgated under CAA section 112(d) are commonly referred to as NESHAP but are also frequently referred to as either maximum achievable control technology (MACT) standards or generally available control technology (GACT) standards. While MACT standards are required for major sources and certain categories of area sources, the CAA allows for the use of GACT standards for most categories of area sources rather than specifically requiring MACT.

B. What is 1-BP?

The compound 1-bromopropane, or 1-BP, is also known as n-propyl bromide or nPB (CAS No. 106-94-5). The compound is a brominated organic colorless liquid that is insoluble in water but soluble in ethanol and ether. 1-BP has been classified as a probable human carcinogen, neurotoxicant, and is associated with adverse reproductive effects. In addition, it can produce acute health effects in humans, such as dizziness and nausea.¹ The vapor pressure for 1-BP is 146 millimeters of mercury at 20 degrees Celsius. The vapor pressure for 1-BP is higher than the vapor pressures for perchloroethylene (PERC; CAS No. 127-18-4) and trichloroethylene (TCE;

¹ A more detailed discussion of the potential health impacts can be found in the June 18, 2020 (85 FR 36851) document granting the petitions to add 1-BP to the HAP list or in the risk evaluation of 1-BP conducted under the Toxic Substances Control Act (TSCA) and detailed in an August 12, 2020, *Federal Register* document (85 FR 48687). See also <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluation-1-bromopropane-1-bp>.

CAS No. 79-01-6), two chemicals for which 1-BP has frequently been used as a substitute in recent years. This has led to concerns that air emissions associated with 1-BP use could be higher than those caused by similar use of other solvents with lower vapor pressures.

While 1-BP is predominantly used as a solvent cleaner/degreaser, it also has numerous other uses, as reported in literature and by manufacturers, distributors, and end users of 1-BP. These other uses include, but are not limited to, dry cleaning, adhesives and adhesive accelerant, mold release agent, solvent in aerosol spray applications, and as an intermediate chemical in the manufacture of organic and inorganic chemical manufacturing including pharmaceuticals and agricultural products.

C. What is the petition process for the addition of a substance to the HAP list?

Section 112(b)(3)(A) of the CAA specifies that any person may petition the Administrator to modify the HAP list contained in CAA section 112(b)(1) by adding or deleting a substance. CAA section 112(b)(3)(B) sets out the substantive criteria for granting a petition. It calls for the Administrator to add a substance to the CAA section 112(b)(1) list, otherwise known as the HAP list, “upon a showing by the petitioner or on the Administrator's own determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects.”

After a petition is submitted to the EPA to modify the HAP list, the EPA conducts a completeness determination and then a technical review of the petition. During the completeness determination, a broad review determines whether all necessary data requirements for the petition are addressed. In addition, the EPA determines whether adequate data, analyses, and evaluations are included to meet the petition requirements. The EPA may request additional

information during this process. If a petition is determined to be complete, then the EPA places a notice of receipt of a complete petition in the *Federal Register*. That document announces a public comment period on the petition and starts the technical review phase. The technical review determines whether the petition has satisfied the necessary requirements and can support a decision to list or delist a HAP. All comments and data submitted during the public comment period are considered during the technical review.

D. What has happened to date on the listing of 1-BP?

The Halogenated Solvents Industry Alliance (HSIA) and New York State Department of Environmental Conservation (NYSDEC) submitted petitions to add 1-BP to the CAA section 112(b)(1) HAP list on October 28, 2010, and November 24, 2011, respectively. After requesting and receiving additional information from the petitioners, the EPA published a document in the *Federal Register* on February 6, 2015 (80 FR 6676), that the 1-BP petitions were complete and requested public comments for consideration during the technical review phase. Following our thorough review of the petitions, relevant scientific studies, and comments received, we concluded that 1-BP was reasonably anticipated to cause adverse effects to human health based on the evidence of the carcinogenicity and toxicity of 1-BP and that petitioners' assessments of potential ambient concentrations of 1-BP likely to result at a facility's fence line under normal operating conditions were reasonable. On January 9, 2017, the EPA issued a *Federal Register* document of its draft rationale for granting petitions to add 1-BP to the HAP list (82 FR 2354).

On June 18, 2020, the EPA issued a final *Federal Register* document granting the petitions to add 1-BP to the CAA section 112(b) HAP list (85 FR 36851). This was the first occasion where the EPA has granted a petition to add a substance to the CAA section 112(b)

HAP list that Congress created in 1990. By granting these petitions, the EPA is now obligated by CAA section 112 (b)(3) to add 1-BP to the list of HAP. In section IV of the final document granting the petitions, the EPA explained that a second step to list 1-BP was warranted and would entail publishing a *Federal Register* document that would formally add 1-BP to the CAA section 112(b)(1) HAP list. 85 FR 36854. The EPA also explained that there would be a need to take further regulatory actions as a result of the listing decision. 85 FR 36854 and 36855.

On August 17, 2020, California Communities Against Toxics, Sierra Club and Gasp filed a petition for judicial review of the agency's decision to grant petitions that did not list 1-BP as a HAP under CAA section 112(b)(1). *California Communities Against Toxics v. EPA*, Case No. 20-1311 (D.C. Circuit). The State of New York is an intervenor on behalf of petitioners. This case is currently being held in abeyance pending review by the new administration and motions to govern further proceedings are due on June 7, 2021.

E. What other actions has the EPA taken on 1-BP?

The EPA evaluated 1-BP under the amended Toxic Substances Control Act (TSCA) and completed the final risk evaluation in August 2020. The final risk evaluation identified unreasonable risks to workers, occupational non-users, consumers, and bystanders from 1-BP exposure. The EPA did not find unreasonable risks to the environment or the general population from the evaluated uses of this chemical. The next step in the process required by TSCA is addressing these risks through risk management in formal rulemaking. The EPA has begun the process of developing ways to address the unreasonable risks identified and has up to one year to propose and take public comments on any risk management actions. (See

https://www.epa.gov/sites/production/files/2020-08/documents/risk_evaluation_for_1-

[bromopropane_n-propyl_bromide.pdf](https://www.epa.gov/sites/production/files/2020-08/documents/risk_evaluation_for_1-bromopropane_n-propyl_bromide.pdf))

F. What is the purpose of this ANPRM?

The EPA has made the determination that 1-BP is an air pollutant that should be added to the HAP list and therefore expects to list 1-BP as required by CAA section 112(b)(3). Once added to the HAP list, 1-BP will become subject to regulation under CAA section 112. (EPA has a “clear statutory obligation to set emission standards for each listed HAP.” *National Lime Association* 233 F-3d 634). There is no specific period for promulgating standards for newly listed HAPs under CAA section 112(b)(1). As previously noted, CAA section 112(e)(1)(E) calls for EPA to promulgate MACT for all source categories on the CAA § 112(c)(1) source category list within ten years of listing or by November 15, 2000. EPA has promulgated standards for all currently listed source categories; however, some standards have been remanded to the Agency.

While the addition of a new HAP to the HAP list can be accomplished with a relatively simple revision to 40 CFR part 63, subpart C, the effective incorporation of this new HAP into an existing program is more complex. The NESHAP program under CAA section 112 is decades old and numerous regulations exist that could be impacted by the addition of a new HAP. In order to effectively regulate 1-BP when listed, the EPA needs additional information on the uses of 1-BP, and compliance issues, such as source categories that could be subject to immediate compliance with existing requirements. This information will enable the EPA to better ensure that the regulatory infrastructure is in place to clearly explain obligations that might arise immediately for some source categories without further action by the EPA as well as to establish any new regulations needed to effectively control the emissions of this new HAP.

This ANPRM solicits information to identify and evaluate the regulatory impacts, such as changes in the applicability of existing regulations or changes in how sources comply with existing requirements that would be expected to result from the upcoming action to add 1-BP to

the HAP list. The EPA intends to review these regulatory compliance impacts that could potentially include impacts on numerous small businesses that may not even be aware of any new requirements and associated impacts and determine if further regulatory action is required to address them. Regulatory impacts will likely depend on several factors, including the amount of 1-BP used and the process involved (*e.g.*, as a cleaning agent in a solvent cleaner versus as a spray gun cleaning solvent at an aerospace coating operation), and the total amount of HAP emitted by a particular facility.

The EPA is not soliciting comments on the June 18, 2020 grant of petitions to list 1-BP as a HAP, including the technical bases for the grant, and therefore, has not reopened that decision for comments. EPA intends to treat any comments on the decision to grant petitions to list as beyond the scope of this action/proceeding. Further, the EPA currently plans to develop, propose, and promulgate revisions to the General Provisions of 40 CFR part 63 that will build the regulatory infrastructure to provide clarity regarding changes in the applicability of and compliance with existing NESHAP when a pollutant is added to the HAP list. The EPA will be developing the revisions to address the addition of both 1-BP and any subsequent HAP(s) under CAA section 112(b). The EPA also plans to consider whether additional revisions to other subparts regulating specific source categories are warranted to account for the inclusion of a new HAP. While current plans are to revise the General Provisions, the EPA may consider and propose alternative approaches for providing the regulatory infrastructure to ensure the effective regulation of 1-BP.

The EPA has determined that issuance of this ANPRM is the most efficient means for information collection such as on the types and sizes of sources of 1-BP, as well as to identify other issues for consideration, including whether additional source categories must be added to

regulate 1-BP. The EPA expects that this document would allow for participation in the data gathering process by a large and diverse group of stakeholders that includes potentially impacted facilities, small businesses, and state, local, or tribal governments.

III. Future Impacts of Listing

A. Profile of 1-BP

1. Production, Usage, and Emissions Control

Having a complete profile of current 1-BP usage and emission control would assist in the EPA's analysis of the impact of listing 1-BP as a HAP to better inform development of regulations and public outreach. However, until recently, usage and emission records for 1-BP have been difficult to obtain due to the lack of publicly available data. In 2015, 1-BP was added to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 and section 6607 of the Pollution Prevention Act (PPA) of 1990. The addition of 1-BP to the EPCRA section 313 list of toxic chemicals (frequently referred to as the Toxics Release Inventory (TRI)) became effective beginning January 1, 2016, for TRI reporting year 2016 and beyond. For more information on TRI reporting criteria, see <https://www.epa.gov/toxics-release-inventory-tri-program/basics-tri-reporting>.

In its petition to add 1-BP to the HAP list, the HSIA estimated the annual global production of 1-BP in 2007 to be 20,000 to 30,000 metric tons and estimated the use of 1-BP as a solvent in the U.S. to be growing at a rate of 15 to 20 percent per year. During the petition process, Enviro Tech International (ETI) commented on the HSIA's estimates and presented its own data on the use of 1-BP in the U.S., such as in the precision cleaning industry sector, the dry cleaning industrial sector, and the adhesive, coatings, and inks sector. According to ETI, in the

U.S., approximately 4,080 short tons (3,701 metric tons) of 1-BP were used within these three sectors in 2014. In 2015, the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) Chemical Data Reporting (CDR) database estimated U.S. production and imports of 1-BP to be 26 million pounds (11,793 metric tons). The EPA requests information on U.S. production, usage, and import projections for 1-BP.

2. Emissions Profile - Data Needs

In order to assess the impacts of adding 1-BP to the HAP list, the EPA needs additional information on the location and use of 1-BP. The EPA is requesting information on the usage of 1-BP in all industries to broaden our understanding of regulatory impacts that could arise subsequent to the addition of 1-BP to the HAP list. Specifically, we solicit comment and information on the following areas: (1) The types of applications or processes that employ 1-BP (*e.g.*, chemical production, spray coating, solvent cleaner/degreaser); (2) the amount of 1-BP used in specific applications; (3) whether 1-BP is used in a separate process from other HAP or is used in combination with other HAP; (4) the types of facilities where 1-BP is used; (5) whether the facility using 1-BP is classified as a large or small business²; (6) any available information on the reasons for the selection of 1-BP (*e.g.*, particular effectiveness, replacement

² The Small Business Regulatory Enforcement Fairness Act (SBREFA), signed into law on March 29, 1996, is an amendment to the Regulatory Flexibility Act (RFA) of 1980 and adopts the Small Business Act's definition of "small entity" as defined in 5 U.S.C. section 601, 15 U.S.C. section 632, and Small Business Administration regulations. This includes small businesses (typically 500 or 750 employees including all parent and subsidiary employees), small governmental jurisdictions (population of less than 50,000), and small organizations (*e.g.*, not-for-profit organizations) that are not dominant in their field. The definition of a "small business" is determined by a business's North American Industry Classification System code and annual receipts or number of employees. <https://www.govinfo.gov/content/pkg/PLAW-104publ121/pdf/PLAW-104publ121.pdf>.

for HAP); (7) whether the processes are controlled or uncontrolled for 1-BP or HAP emissions and, if controlled, what types of control devices or practices are utilized; and (8) any other information that the respondent believes is important to consider.

The EPA is also interested in information from facilities that are currently using and controlling the emissions of 1-BP. The EPA believes that the same controls used to control other volatile HAP would be equally effective in controlling 1-BP. The EPA is interested in whether industry agrees with this assertion or if data are available to refute this position. The EPA is also aware that the previous *Federal Register* documents discussing the petitions to add 1-BP to the HAP list may have caused many facilities to evaluate the potential to replace the use of 1-BP in their operations. The EPA is interested in examples from industry of the steps taken to evaluate alternatives for 1-BP and whether replacements were successfully completed. Please also provide information on any impediments to successful control or replacement of 1-BP.

The information will aid in identifying the specific 1-BP use scenarios across NESHAP source categories so that the Agency is able to fully consider and address the direct and immediate impacts of listing 1-BP in the upcoming action. The information will also assist the EPA in addressing possible applicability and compliance questions going forward, including questions or concerns raised about the potential impact on small businesses, children, tribes, and environmental justice communities. By minimizing uncertainty in compliance requirements, identifying any barriers to compliance, and ensuring that the EPA has a more complete inventory of emission sources, the EPA can better assure that the intended emission reductions required by the NESHAP are understood and that those emission reductions are expeditiously attained. However, data are required to support the analyses of impacts to these groups.

B. Possible Regulatory Impacts of Listing Action-Data Needs

Once added to the HAP list, 1-BP will become subject to regulation under CAA section 112 and as explained below, some sources' regulatory obligations may change at that point. In granting the petitions to list 1-BP, the EPA explained that a second step to the process was accordingly warranted that would entail publishing a *Federal Register* document adding 1-BP to the CAA section 112(b)(1) HAP list. 85 FR 36854. The EPA further explained its belief at that time that most source categories emitting 1-BP would not become subject to emissions standards addressing the compound until the EPA amends or promulgates new standards for specific source categories. Although the Agency still considers this to be the case for many of the source categories regulated under CAA section 112, the EPA has since determined that the requirements of certain NESHAP could apply immediately to facilities using 1-BP. As explained below, the requirements of these NESHAP apply broadly to all HAP, and the listing of 1-BP could affect the compliance obligations of sources subject to these requirements. In addition, for some sources, the addition of a new HAP could change the calculation of whether the source is a major source and the concomitant regulatory obligations. The EPA has determined that additional rulemaking is warranted to clarify or establish how quickly regulated sources impacted by the change in the HAP list must adapt to ensure compliance with existing regulations.

The following sections describe potential impacts that could occur once 1-BP is listed as a HAP. Some of these impacts could occur immediately with the listing of 1-BP, while other impacts may require additional EPA action to address compliance and implementation issues.

1. Potential Impacts on Major Source Facilities

The EPA reviewed applicability provisions for more than 40 current NESHAP to identify potential impacts from the listing of 1-BP as a HAP. The focus of the EPA review was on those NESHAP that regulate solvents used for cleaning or for applying adhesives or surface coatings, which are identified as the main uses of 1-BP. Most surface coating rules specify both numeric limits and work practice requirements to ensure the control of HAP used in these kinds of operations. Our preliminary findings indicate that for several NESHAP, the listing of 1-BP could impact compliance requirements of the NESHAP without changes to existing rule language.

As an example, the numeric limits in coating rules are often based on a limitation on the amount of organic HAP per unit, which often results in facilities reducing the HAP content of their coatings in order to comply with the limits. In many instances, the term coating is defined to include adhesives and solvent cleaning used in the coating process or ancillary operations. The addition of 1-BP to the HAP list could immediately impact compliance calculations for many NESHAP for coating operations because these rules often define HAP by a direct reference to the HAP list published (and modified) under CAA section 112(b) and codified in 40 CFR part 63, subpart C. When 1-BP is listed as a HAP, in order to maintain compliance with the applicable limits, affected sources using 1-BP that are subject to numeric limits such as these would likely need to re-assess compliance with the numeric emission limits in the source category rule. This may extend to facilities that purposely selected to use 1-BP as part of their compliance strategy because it was not a HAP at the time the facilities reformulated their coatings. Further, since the compliance dates for most NESHAP are long past, there may be some question as to the reasonable time allowance that would be appropriate for sources to

include 1-BP in their compliance demonstrations. See section III.C below for our discussion on compliance timing as it relates to listing of 1-BP as a HAP.

The EPA requests comments and information on actual uses of 1-BP and detailed information on any experiences facilities have had in any evaluations of 1-BP and its potential control or replacement. The EPA is also interested in examples of issues that might need to be resolved in the future for sources to achieve compliance with existing standards. This may include the evaluation of existing air pollution control devices (APCDs) or the need for the addition of APCDs. A facility may also opt to consider elimination or reduction of 1-BP use in a covered emission unit. The EPA requests comments on whether there are additional factors that impact evaluations of compliance strategies to include 1-BP, such as whether the facility is already complying with the NESHAP for other HAP. The EPA is also interested in examples of where the addition of 1-BP to the HAP list will subject previously unregulated emissions units to a current NESHAP, as well as when the addition would impact units already being controlled to meet a NESHAP.

Further, several source category rules also include work practice requirements that require the use of “low HAP” or “no HAP” products for either cleaning or adhesive activities. Typically, in such rules, “no HAP” is defined as containing less than 1 percent total HAP by weight. The EPA believes that there are instances where 1-BP is currently being used to meet these requirements. Once 1-BP is listed as a HAP, affected sources might need to employ alternatives to 1-BP to meet these low-HAP or no HAP requirements. The EPA requests comments on available alternatives for 1-BP and any impediments to the replacement of 1-BP, such as revisions to process specifications or other standard operating procedures.

Several NESHAP have requirements that apply to emission sources that are defined to be “in HAP service” or “using HAP based materials.” These requirements include work practices, such as covers on all storage containers and transport equipment, requirements for closed-loop systems, and in some cases leak detection and repair requirements. Further, some rules regulate halogen emissions from specific process units but define halogen to include only a subset of halogens (*e.g.*, chlorine and fluorine, or just fluorine). The EPA requests comments on specific examples of regulations with requirements such as these that could be impacted by the addition of 1-BP to the HAP list.

2. Potential Impacts on Area Source Facilities

Once listed, any facility using 1-BP that is currently an area source of HAP would need to determine its HAP potential to emit (PTE) based on calculations that include 1-BP. The facility would then need to evaluate whether its updated PTE would make the facility a major source as defined in CAA sections 112(a)(1) and (2) and 40 CFR 63.3. The EPA has information from TRI that suggests that several sources could become major HAP sources when considering their current 1-BP emissions.

An existing source that would begin operating as a major HAP source would need to evaluate the applicability of specific NESHAP that would now apply. This could include source categories that have requirements applicable to the 1-BP emission sources or could include general source categories, such as industrial boilers. For example, by becoming a major source, a facility could become subject to both a surface coating NESHAP and the NESHAP for emergency generators. The facility would need to determine and implement their compliance strategy for each applicable NESHAP. If a facility does not already have a title V operating permit, they would need to apply for one consistent with the deadlines in applicable 40 CFR part

70 program rules. A facility that already has a title V operating permit, such as a facility that is already a major source for criteria pollutants, may need revisions to their existing operating permit to include major source NESHAP applicable requirements and/or any additional state implementation plan/state permitting requirements. The EPA solicits comments on the steps that a facility would need to take if the facility is transitioning from an area source to a major source of HAP due to the addition of 1-BP. The EPA asks for details on required facility actions for developing and implementing any new NESHAP compliance requirements, as well as any additional permitting required for the facility. The EPA is interested in whether the area-to-major facilities face additional burdens not faced by those facilities that are already major HAP sources, such as a need to install control equipment for compliance with NESHAP standards.

Area sources would also need to determine whether any of the NESHAP for area sources apply to their operations. For example, area sources that are subject to a NESHAP might be required to use a non-HAP product or comply with specific work practices. If the facility currently uses 1-BP to meet the non-HAP product requirements, the facility may need to either replace 1-BP with another non-HAP product or switch to the work practice alternatives in the rule. The EPA solicits examples of area source rules that may apply to area sources using 1-BP. In addition to the above requests, the EPA welcomes comments on other compliance issues or concerns that could arise from the inclusion of 1-BP on the HAP list.

C. Information Needed to Assist in Evaluating Compliance Timing and Potential New Source Categories

As previously explained, this is the first occasion on which the EPA is granting a petition to add a substance to the HAP list that Congress established in the 1990 CAA Amendments. As

also previously explained, the addition of 1-BP to the HAP list will raise compliance questions such as the timing of incorporating a new HAP into ongoing compliance demonstration requirements for NESHAP that are already in effect. The EPA is requesting comments to inform the decision on how to best incorporate a new HAP into compliance demonstrations.

The EPA requests comments on whether all sources subject to a NESHAP at the time of a new HAP listing need the same amount of time to review and update their obligations under a NESHAP and develop and implement a compliance strategy. Alternatively, the EPA could consider providing a different compliance timeline for sources that are already meeting the standard for other HAP at the time 1-BP is added as opposed to a facility that is newly subject to the specific NESHAP.

The EPA also requests comments on whether there are different considerations that should be taken into account for sources subject to standards for “existing sources” versus standards for “new sources.” This is because for emission standards, limitations, or regulations under CAA section 112, new sources are typically required under CAA 112(i)(1) to be in compliance “upon start up” or by the effective date of a promulgated rule. Existing sources, on the other hand, are allowed up to 3 years after the effective date of a promulgated rule to comply under CAA section 112(i)(3). When a pollutant is added to the HAP list, however, there could be established, operating sources already complying with the applicable requirements for either new affected sources or existing affected sources. The EPA is seeking information and data that will help the EPA to determine the appropriate compliance timeframe for these sources. Specifically, we request information and examples on whether affected sources subject to new or existing requirements could face different burdens to identify and implement a compliance strategy.

As stated previously, the EPA is considering whether changes to the General Provisions of 40 CFR part 63 would be the best approach to provide clarification or extension to compliance schedules for incorporating 1-BP into existing NESHAP. Under this approach, the EPA could modify 40 CFR 63.6 to provide a consistent compliance timeline for all sources impacted by the addition of any new HAP, rather than addressing only 1-BP. For example, the EPA could provide a 1-year compliance period for all facilities impacted by the addition of a new HAP. Alternatively, the EPA could provide a schedule that is based on the individual source category rule. For example, the General Provisions could be revised to require that compliance demonstration that includes a newly listed HAP must be provided in the first complete semi-annual reporting period that follows the addition of a new HAP.

Instead of revising the General Provisions, the EPA may determine that individual evaluations of the time needed are warranted for each NESHAP with known or likely 1-BP use; the EPA could then make individual decisions for each NESHAP and incorporate the compliance timeline in each rule. The EPA requests comments on the relative benefits of a NESHAP case-by-case approach as opposed to a consistent timeline for all NESHAP. We request comments and information on any alternative schedules and factors that should be considered.

In its review, the EPA has identified several NESHAP that control total HAP or volatile HAP. As mentioned above, several of these NESHAP define HAP as all compounds in the CAA HAP list, while others regulate a subset of the HAP list. We request comments on whether the time to develop and implement control strategies for rules that immediately include 1-BP differ from those categories with a category-specific HAP list. The EPA requests comments on alternatives for incorporating 1-BP into rules with source category-specific HAP lists.

The EPA is also seeking information to support its determination as to whether the Agency should establish new source categories and what those source categories would be to ensure effective and appropriate regulation of 1-BP. As discussed in the EPA decision to grant the petition to list 1-BP, an example of a new source category could be one that would cover 1-BP emissions from dry cleaning operations. 85 FR 36854. The current NESHAP for Dry Cleaning Facilities (40 CFR part 63, subpart M) establishes requirements only for PERC. The EPA will need to evaluate whether this subpart, which includes regulation of both area and major sources of HAP, should be expanded to include dry cleaning sources using 1-BP or whether regulation would better be accomplished by listing a new source category and then establishing MACT (or GACT) for these 1-BP sources independent of 40 CFR part 63, subpart M. It is also possible that no new regulation of dry-cleaning operations will be necessary to address 1-BP. There have been numerous reports that the use of 1-BP in dry cleaning is being eliminated by the industry. The EPA requests information on whether there is any ongoing use of 1-BP in dry cleaning, as well as information on the size and types of dry-cleaning facilities that continue to rely on 1-BP as their cleaning solvent.

In addition to source category additions based on current NESHAP source categories, the EPA may also conclude, based on information provided through comment on this document and our own evaluation, that additional categories of major sources or area sources are warranted. The EPA requests comments and data on 1-BP uses that may not be included in any current NESHAP but that might warrant consideration for listing under CAA section 112(c).

IV. Additional Requests for Data and Comments

A. Additional Requests

In addition to the comments requested elsewhere in this document, the EPA is requesting any and all information that will enable Agency action as it relates to adding 1-BP to the HAP list as well as on the following specific areas:

1. The EPA is requesting comment and information to help assess the potential impact of the upcoming listing action on small businesses. This includes requesting information on the number of small businesses potentially impacted by this listing action; the source categories that contain these entities; any unique or disproportionate burden that these small businesses may face; and any suggestions for addressing the specific impacts on these sources.
2. The EPA requests comments and information on: the potential impact of this action on permitting requirements including ongoing preconstruction or renewal applications; any need to change state, local, or tribal programs to address this first-time listing of a new HAP; any potential changes to general permits that may be needed; and any other issues that the EPA should consider as the addition of 1-BP to the HAP list progresses. The EPA requests examples of ongoing permitting activities that could be impacted.
3. The EPA requests comments and data on any end- or intermediate-uses of 1-BP we have not addressed in this ANPRM. As previously noted, once 1-BP is listed as a HAP, it will potentially be regulated in all applications. Early identification of specific compliance issues will enable the EPA to more proactively address these issues.
4. The EPA has not yet determined whether any of the potential actions associated with addressing the impacts of the listing of 1-BP will have a significant impact on a

substantial number of small entities, which would require that we conduct a formal Small Business Advocacy Review panel under SBREFA. We request comments and information on impacts that should be included in our evaluations from the concurrent regulatory requirements that occur with the upcoming listing of 1-BP. The EPA is also requesting suggestions for additional outreach opportunities to ensure that small businesses are aware of the upcoming listing action and its potential impact on their operations.

5. The EPA is requesting comments on whether there are any additional impacts or factors, including health outcomes and susceptible subpopulations, that should be considered as they relate to any disproportionate impact on children, tribes, and environmental justice communities.
6. In order to better assess the cost and economic impacts of the upcoming listing action, the EPA is soliciting comments on all compliance-related costs created by the addition of 1-BP to the HAP list. Compliance costs could include engineering controls, costs to meet work practice requirements, as well as testing, recordkeeping, and reporting costs of complying with current NESHAP.
7. As noted above, there is another ongoing EPA regulatory effort for 1-BP being conducted by the EPA under TSCA. We are aware that those actions have the potential to impact some of the same facilities, potentially including the same small businesses, as will be affected by the addition of 1-BP to the CAA HAP list. The EPA requests comments on additional measures that might be considered to ensure that the impacts from these two distinct programs (TSCA and CAA) are understood by the regulated community and to ensure that unnecessary compliance burden is mitigated to the extent possible.

B. Types of Data and Comment Not Requested at This Time

While the EPA is seeking comment and information on all aspects of the impact of the addition of 1-BP to the HAP list, as discussed elsewhere in this document, the EPA is not seeking comments on the justification for the listing as the decision to grant the petition to list 1-BP has been made. Those issues were fully considered and addressed in the technical review that the Agency conducted for purposes of granting the petitions to add 1-BP to the HAP list. 82 FR 2354, 2358 through 62. Therefore, comments on the justification for listing would be considered as beyond the scope of this action.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, titled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this is a “significant regulatory action.” Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. Because this action does not propose or impose any requirements and instead seeks comments and suggestions for the Agency to consider in possibly developing a subsequent proposed rule, the various statutes and Executive Orders that normally apply to rulemaking do not apply in this case. When the EPA develops the rulemaking, the EPA will address the applicable statutes and Executive Orders.

Michael S. Regan,
Administrator.