that these revisions are consistent with EPA's PSD and title V regulations and that approval of these revisions is consistent with the requirements of CAA section 110(l) and will not adversely impact air quality.

V. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference revisions to Wisconsin Administrative Code rules NR 405.02(22)(a)1. and NR 405.07(4)(a)20., as published in the Wisconsin Register #631 on July 31, 2008, effective August 1, 2008, discussed in section IV of this preamble. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 22, 2022.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2022–26017 Filed 11–30–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2022–0481; FRL–9630–01–OAR]

RIN 2060–AV78

New Source Performance Standards Review for Secondary Lead Smelters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing amendments to the Standards of Performance for secondary lead smelters per the Agency's periodic review of the new source performance standards required by the Clean Air Act (CAA). In this action, we are proposing updates to the current New Source Performance Standards (NSPS) for secondary lead smelters and proposing a new NSPS subpart that applies to affected sources constructed, reconstructed, or modified after the date of this proposed rule. For the current NSPS subpart, we are proposing to revise the definitions of blast furnace, reverberatory furnace, and pot furnace to more closely align with the equipment definitions used in the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for secondary lead smelting. We are also proposing requirements for periodic performance tests for particulate matter (PM) and incorporating revised monitoring, recordkeeping, and reporting requirements, including electronic reporting of performance tests, to be more consistent with the NESHAP. For the new subpart, we are proposing updated PM and opacity emissions limits for blast, reverberatory, and pot furnaces that reflect the performance achieved by the best system for emissions reductions (BSER). In the new subpart, we are proposing PM and opacity emissions limits that apply at all times, including during periods of startup, shutdown, and malfunction (SSM), and proposing initial and periodic PM and opacity performance testing and the same equipment definitions, recordkeeping, and reporting requirements proposed for current NSPS subpart.

DATES:

Comments. Comments must be received on or before January 17, 2023. Comments on the information collection provisions submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) are best assured of consideration by OMB if OMB receives a copy of your comments on or before January 3, 2023.

Public Hearing. If anyone contacts us requesting a public hearing on or before December 6, 2022, we will hold a virtual hearing. Please refer to the **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2022–0481, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–

2022–0481 in the subject line of the message.

- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2022–0481.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2022–0481, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* 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. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tonisha Dawson, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–1454; fax number: (919) 541–4991; and email address: *dawson.tonisha@epa.gov.*

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing.

To request a virtual public hearing, contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* If requested, the virtual hearing will be held on December 16, 2022. The hearing will convene at 11:00 a.m. Eastern Time (ET) and will conclude at 5:00 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details at *https://www.epa.gov/stationary-sources-air-pollution/secondary-lead-smelters-new-source-performance-standards-nsps.*

If a public hearing is requested, the EPA will begin pre-registering speakers for the hearing no later than 1 business day after a request has been received. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/stationary-sources-air-pollution/secondary-lead-smelters-new-source-performance-standards-nsps* or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* The last day to pre-register to speak at the hearing will be December 13, 2022. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: *https://www.epa.gov/stationary-sources-air-pollution/secondary-lead-smelters-new-source-performance-standards-nsps.*

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

Each commenter will have 4 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to *dawson.tonisha@epa.gov.* The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

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

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

If you require the services of a translator or a special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by December 8, 2022. The EPA may not be able to arrange accommodations without advanced notice.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2022–0481. All documents in the docket are listed in the *Regulations.gov* index. Although listed in the index, 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.

Written Comments. Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2022–0481, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed in the *Submitting CBI* section of this document.

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). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI or multimedia submissions; and general guidance on making effective comments.

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.

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/.* Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital

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

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the Office of Air Quality Planning and Standards (OAQPS) CBI Office at the email address *oaqpscbi@epa.gov,* and as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2022–0481. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

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

ABR Association of Battery Recyclers
ANSI American National Standards Institute
ASTM ASTM International
BSER best system of emission reduction
CAA Clean Air Act
CBI Confidential Business Information
CDC Centers for Disease Control and Prevention
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
DCOT digital camera opacity technique
EIA economic impact analysis
EJ environmental justice
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
ET Eastern Time
FR Federal Register
FTP file transfer protocol
gr/dscf grains per dry standard cubic feet
IBR incorporate by reference
ICR information collection request
JPEG joint photographic experts group
mg/dscm milligram per dry standard cubic meter
NAICS North American Industry Classification System
NEI National Emissions Inventory
NESHAP national emission standards for hazardous air pollutants
NSPS new source performance standards
NTTAA National Technology Transfer and Advancement
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PBI Proprietary Business Information
PDF portable document format
PM particulate matter
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
RIA regulatory impact analysis
RIN Regulatory Information Number
RTR risk and technology review
SOP standard operating procedures
SSM startup, shutdown and malfunctions
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code
VCS voluntary consensus standard
WESP wet electrostatic precipitator

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

I. General Information

A. Does this action apply to me?

The source category that is the subject of this proposal is comprised of the secondary lead smelters regulated under CAA section 111 New Source Performance Standards. The North American Industry Classification System (NAICS) code for the source category is 331492. The NAICS code serves as a guide for readers outlining the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to affected facilities that begin construction, reconstruction, or modification after the date of publication of the proposed standards in the **Federal Register**. Federal, state, local and tribal government entities would not be affected by this action.

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 proposed action at *https://www.epa.gov/stationary-sources-air-pollution/secondary-lead-smelters-new-source-performance-standards-nsps.* Following

publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website.

A memorandum showing the edits that would be necessary to incorporate the changes to 40 CFR part 60, subparts L and La, proposed in this action is available in the docket (Docket ID No. EPA–HQ–OAR–2022–0481). Following signature by the EPA Administrator, the EPA also will post a copy of these documents to *https://www.epa.gov/stationary-sources-air-pollution/secondary-lead-smelters-new-source-performance-standards-nsps.*

II. Background

A. What is the statutory authority for this action?

The EPA's authority for this proposed rule is CAA section 111, which governs the establishment of standards of performance for stationary sources. Section 111(b)(1)(A) of the CAA requires the EPA Administrator to list categories of stationary sources that in the Administrator's judgment cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. The EPA must then issue performance standards for new (and modified or reconstructed) sources in each source category pursuant to CAA section 111(b)(1)(B). These standards are referred to as new source performance standards, or NSPS. The EPA has the authority to define the scope of the source categories, determine the pollutants for which standards should be developed, set the emission level of the standards, and distinguish among classes, types, and sizes within categories in establishing the standards.

CAA section 111(b)(1)(B) requires the EPA to ''at least every 8 years review and, if appropriate, revise'' new source performance standards. However, the Administrator need not review any such standard if the ''Administrator determines that such review is not appropriate in light of readily available information on the efficacy'' of the standard. When conducting a review of an existing performance standard, the EPA has the discretion and authority to add emission limits for pollutants or emission sources not currently regulated for that source category.

In setting or revising a performance standard, CAA section 111(a)(1) provides that performance standards are to reflect ''the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.'' The term ''standard of performance'' in CAA section 111(a)(1) makes clear that the EPA is to determine both BSER for the regulated sources in the source category and the degree of emission limitation achievable through application of the BSER. The EPA must then, under CAA section 111(b)(1)(B), promulgate standards of performance for new sources that reflect that level of stringency. CAA section 111(b)(5) precludes the EPA from prescribing a particular technological system that must be used to comply with a standard of performance. Rather, sources can select any measure or combination of measures that will achieve the standard.

Pursuant to the definition of new source in CAA section 111(a)(2), standards of performance apply to facilities that begin construction, reconstruction, or modification after the date of publication of the proposed standards in the **Federal Register**. Under CAA section 111(a)(4), ''modification'' means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted. Changes to an existing facility that do not result in an increase in emissions are not considered modifications. Under the provisions in 40 CFR 60.15, reconstruction means the replacement of components of an existing facility such that: (1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and (2) it is technologically and economically feasible to meet the applicable standards. Pursuant to CAA section 111(b)(1)(B), the standards of performance or revisions thereof shall become effective upon promulgation.

B. What is this source category and what are the current NSPS requirements?

Secondary lead smelters produce lead and lead alloys from lead-bearing scrap material. Lead is used to make various construction, medical, industrial, and consumer products such as batteries, glass, x-ray protection gear, and various fillers. The secondary lead smelting process consists of (1) pre-processing of lead bearing materials, (2) melting lead metal and reducing lead compounds to lead metal in the smelting furnace, and (3) refining and alloying the lead to customer specifications.

At secondary lead smelting facilities, blast and reverberatory furnaces are used in the smelting processes, and pot furnaces are used in the refining process. The processes vent PM emissions from blast and reverberatory furnaces through ductwork to control devices. Emissions of PM also occur at various points during the smelting process, such as during charging and tapping of furnaces and refining processes. Based on the NESHAP requirements, the process fugitive emissions require hooding or negative-pressure enclosures to capture PM emissions before they can be routed to control devices. Entrainment of dry materials in ambient air due to material processing, vehicle traffic, wind erosion from storage piles, and other activities can also be a source of PM emissions. Secondary lead smelting facilities use a variety of control devices (*e.g.,* baghouses, gas scrubbers), often in combination, to reduce PM and opacity emissions from process vent and process fugitive sources. Facilities use suppression techniques (*e.g.,* washing roadways, wetting storage piles) and negative-pressure enclosures to reduce PM emissions from fugitive dust sources.

The EPA proposed the original NSPS (subpart L) for the secondary lead smelting source category (40 CFR part 60, subpart L) on June 11, 1973 (38 FR 15406) and promulgated the NSPS on March 8, 1974 (39 FR 9308). The NSPS for secondary lead smelting as promulgated in 1974 regulates PM emissions from blast and reverberatory furnaces and also specifies limits for visible emissions (opacity) for blast and reverberatory furnaces and for pot (refining) furnaces. The EPA amended subpart L on October 10, 1975, to remove a provision providing that the failure to meet the NSPS emissions limits due to the presence of uncombined water in the stack gases was not considered a violation.

Subpart L specifies that owners or operators of affected facilities must limit PM emissions from blast and reverberatory furnaces to not more than 50 milligrams per dry standard cubic meter (mg/dscm) or 0.022 grains per dry standard cubic feet (gr/dscf). Subpart L also specifies that visible emissions must not exceed 20 percent opacity from blast or reverberatory furnaces and 10 percent opacity from pot furnaces.

Currently, there are 11 secondary lead smelting facilities in the United States. Each facility operates furnaces that are subject to the PM and opacity limits specified in subpart L.

C. What data and information were used to support this action?

To support this action, the EPA created the list of existing secondary lead smelting facilities by updating the facility list developed to support the 2012 NESHAP for secondary lead smelting (40 CFR part 63, subpart X) with information obtained from the National Emissions Inventory (NEI), Earthjustice, and the Association of Battery Recyclers (ABR). To determine the control measures currently used to control emissions from blast, reverberatory, and pot furnaces in the industry, the EPA obtained facility operating permits issued by state regulatory agencies which contained information regarding process equipment, control devices, and applicable regulatory emissions limits. The EPA also obtained reports of performance tests conducted to demonstrate compliance with NESHAP subpart X from the EPA's WebFIRE and from state regulatory agencies. Although the target pollutant of the test reports was lead, the pollutant regulated under NESHAP subpart X, some of the reports also provided PM emissions and opacity data for blast, reverberatory, and pot furnaces. The facility operating permits, test reports, and a memorandum summarizing the available PM emissions and opacity data are available in the public docket for this action (Docket ID No. EPA–HQ–OAR–2022–0481).

D. How does the EPA perform the NSPS review?

As noted in section II.A of this preamble, CAA section 111 requires the EPA, at least every 8 years, to review and, if appropriate revise the standards of performance applicable to new, modified, and reconstructed sources. If the EPA revises the standards of performance, they must reflect the degree of emission limitation achievable through the application of the BSER taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements. CAA section 111(a)(1).

In reviewing an NSPS to determine whether it is ''appropriate'' to revise the standards of performance, the EPA evaluates the statutory factors, which may include consideration of the following information:

- Expected growth for the source category, including how many new facilities, reconstructions, and modifications may trigger NSPS in the future.
- Pollution control measures, including advances in control technologies, process operations, design or efficiency improvements, or other systems of emission reduction, that are ''adequately demonstrated'' in the regulated industry.
- Available information from the implementation and enforcement of current requirements indicating that emission limitations and percent reductions beyond those required by the current standards are achieved in practice.
- Costs (including capital and annual costs) associated with implementation of the available pollution control measures.
- The amount of emission reductions achievable through application of such pollution control measures.
- Any non-air quality health and environmental impact and energy requirements associated with those control measures.

In evaluating whether the cost of a particular system of emission reduction is reasonable, the EPA considers various costs associated with the particular air pollution control measure or a level of control, including capital costs and operating costs, and the emission reductions that the control measure or particular level of control can achieve. The Agency considers these costs in the context of the industry's overall capital expenditures and revenues. The Agency also considers cost-effectiveness analysis as a useful metric and a means of evaluating whether a given control achieves emission reduction at a reasonable cost. A cost-effectiveness analysis allows comparisons of relative costs and outcomes (effects) of two or more options. In general, cost-effectiveness is a measure of the outcomes produced by resources spent. In the context of air pollution control options, cost-effectiveness typically refers to the annualized cost of implementing an air pollution control option divided by the amount of pollutant reductions realized annually.

After the EPA evaluates the statutory factors, the EPA compares the various systems of emission reductions and determines which system is ''best'' and therefore represents the BSER. The EPA then establishes a standard of performance that reflects the degree of emission limitation achievable through the implementation of the BSER. In doing this analysis, the EPA can determine whether subcategorization is appropriate based on classes, types, and sizes of sources and may identify a different BSER and establish different performance standards for each subcategory. The result of the analysis and BSER determination leads to standards of performance that apply to facilities that begin construction, reconstruction, or modification after the date of publication of the proposed standards in the **Federal Register**. Because the new source performance standards reflect the best system of emission reduction under conditions of proper operation and maintenance, in doing its review, the EPA also evaluates and determines the proper testing, monitoring, recordkeeping and reporting requirements needed to ensure compliance with the emission standards.

See section II.C of this preamble for information on the specific data sources that were reviewed as part of this action.

III. What actions are we proposing?

A. NSPS Review and Proposed Revisions

In this action, the EPA is proposing to amend existing NSPS subpart L to:

- Clarify the applicability dates.
- Update the definitions of blast, reverberatory and pot furnaces to be more consistent with the NESHAP (40 CFR part 63, subpart X).
- Require initial and periodic compliance tests for PM emissions consistent with the NESHAP (40 CFR part 63, subpart X).
- Require monitoring, recordkeeping, and reporting requirements consistent with the NESHAP (40 CFR part 63, subpart X).
- Require submission of electronic performance test reports.

We solicit comment on the amendments to the existing NSPS subpart L as described in the subsequent sections.

The EPA is also proposing to establish a new subpart (40 CFR part 60, subpart La) that applies to affected sources that begin construction, reconstruction, or modification after December 1, 2022. In subpart La, EPA is proposing that the following emission standards apply at all times, including periods of SSM:

- Limit PM emissions from blast and reverberatory furnaces to 10 mg/dscm.
- Limit PM emissions from pot furnaces to 3 mg/dscm.
- Limit opacity of blast, reverberatory, and pot furnace emissions to 0 percent.

For subpart La, the EPA is proposing the same definitions, PM testing, monitoring, recordkeeping, and reporting requirements as proposed for subpart L. In addition, we are proposing initial and periodic opacity testing for subpart La.

1. Applicability

For 40 CFR part 60, subpart L, the EPA is proposing to amend 40 CFR 60.120 (Applicability and designation of affected facility) to clarify that subpart L applies to affected sources that commence construction or modification after June 11, 1973, but before December 1, 2022. For subpart La, the EPA is proposing to add 40 CFR 60.120a (Applicability and designation of affected facility) to specify that 40 CFR part 60, subpart La, applies to affected sources that commence construction, reconstruction, or modification after December 1, 2022.

2. Definitions

In this action, the EPA is proposing to incorporate the definitions shown in Table 1 of this preamble into 40 CFR 60.121 (Definitions) of existing 40 CFR part 60, subpart L, and 40 CFR 60.121a (Definitions) of the proposed 40 CFR part 60, subpart La. These proposed definitions are intended to improve the clarity of the NSPS subparts and reduce potential confusion among industry and regulatory agencies by aligning the descriptions of the affected sources that would be regulated by 40 CFR part 60, subparts L and La, to be more consistent with the definitions within 40 CFR part 63, subpart X, but still with some slight differences (*e.g.,* minimum temperatures) that we think are appropriate, as shown in Table 1. These proposed changes do not affect the applicability of existing subpart L.

TABLE 1—PROCESS EQUIPMENT DEFINITIONS PROPOSED FOR SUBPART L AND LA

Equipment	Current	NESHAP subpart X	Proposed for subpart L and La
Blast furnace ..	Any furnace used to recover metal from slag.	A smelting furnace consisting of a vertical cylinder atop a crucible, into which lead-bearing charge materials are introduced at the top of the furnace and combustion air is introduced through tuyeres at the bottom of the cylinder, and that uses coke as a fuel source and that is operated at such a temperature in the combustion zone (greater than 980 Celsius) that lead compounds are chemically reduced to elemental lead metal.	A smelting furnace consisting of a vertical cylinder atop a crucible, into which lead-bearing charge materials are introduced at the top of the furnace and combustion air is introduced through tuyeres at the bottom of the cylinder, and that lead compounds are chemically reduced to elemental lead metal.
Reverberatory furnace.	Includes the following types of reverberatory furnaces: stationary, rotating, rocking, and tilting.	A refractory-lined furnace that uses one or more flames to heat the walls and roof of the furnace and lead-bearing scrap to such a temperature (greater than 980 Celsius) that lead compounds are chemically reduced to elemental lead metal.	A refractory-lined furnace that uses one or more flames to heat the walls and roof of the furnace and lead-bearing scrap such that lead compounds are chemically reduced to elemental lead metal. Reverberatory furnaces include the following types: stationary, rotating, rocking, and tilting.
Pot furnace	Not defined	Refining kettle means an open-top vessel that is constructed of cast iron or steel and is indirectly heated from below and contains molten lead for the purpose of refining and alloying the lead. Included are pot furnaces, receiving kettles, and holding kettles.	Pot furnace is a type of refining kettle, which is an open-top vessel constructed of cast iron or steel and is indirectly heated from below and contains molten lead for the purpose of refining and alloying the lead.

The EPA solicits comment on the proposed revisions to the process equipment definitions for subparts L and proposed process equipment definitions to be included in subpart La.

3. PM Standards of Performance

In developing NSPS subpart L, the EPA identified the types of controls used and the corresponding PM and opacity levels of blast, reverberatory, and pot furnace emissions at secondary lead smelting facilities (that were considered well controlled at the time) as described in the 1973 background document titled, *Group II—New Source Performance Standards,* which is available in the docket of this proposed rule. Table 2 presents the BSER the EPA identified for blast, reverberatory, and pot furnaces in 1973.

TABLE 2—BSER FOR 1975 NSPS SUBPART L

Emissions source	Control technology
Blast furnace ..	Afterburner and Venturi scrubber—or—Fabric filter.
Reverberatory furnace.	Venturi scrubber—or—Fabric filter.
Pot furnace	Venturi scrubber—or—Fabric filter.

Based on the PM emissions and opacity data available at that time, the EPA established in subpart L, the following emissions limits for blast and reverberatory furnaces:

- 50 milligrams per dry standard cubic meter, mg/dscm (0.022 grains per dry standard cubic feet, gr/dscf).
- 20 percent opacity.

When the EPA finalized subpart L, PM emissions data were not available for pot furnaces; therefore, the EPA did not establish a PM limit. However, sufficient data were available to establish an opacity limit of 10 percent for pot furnaces in subpart L.

As specified in section II.D of this preamble, CAA section 111 requires the EPA to review the BSER for the source category and determine whether it is appropriate to revise the standards of performance, including consideration of available information indicating that emission limitations and percent reductions beyond those required by the current standards are achieved in practice. In making this determination for the secondary lead smelting source category, the EPA considered the following information:

- Types of demonstrated control measures for reducing PM emissions and opacity from blast, reverberatory, and pot furnaces.
- Available test data showing the levels of PM emissions and opacity currently achieved for blast, reverberatory, and pot furnaces.
- Costs of implementing the PM and opacity controls.

We solicit comment on the BSER analysis and the proposed standards of

performance as explained in the subsequent sections.

a. PM and Opacity Control Measures

For our BSER review, to determine the types of control measures currently used in the secondary lead industry to reduce PM emissions and opacity from blast, reverberatory, and pot furnaces, the EPA obtained and reviewed operating permits issued by state regulatory agencies for each secondary lead smelting facility in the United States. The EPA's permit review identified that secondary lead smelting facilities continue to use filtration (*i.e.,* fabric filters or baghouses), scrubbers, and afterburners to reduce PM emissions and opacity from blast furnaces, and filtration and scrubbers to reduce PM emissions and opacity from reverberatory furnaces. For pot furnaces, the permit review identified the continued use of baghouses and scrubbers to reduce opacity from furnace emissions. Three facilities also use wet electrostatic precipitators (WESPs) to control furnace PM emissions and opacity (two facilities control a combined gas stream of reverberatory and pot furnace emissions using a WESP, and one facility controls pot furnace emissions using a WESP). The memorandum documenting the EPA's review of facility operating permits titled *CAA Section 111(b)(1)(B) Review Memorandum for Secondary Lead Smelters* can be found in the docket for the proposed rulemaking (Docket ID No. EPA–HQ–OAR–2022–0481). The EPA seeks comment regarding the findings of our permit review.

b. Available PM and Opacity Data

To determine the current level of PM emissions and opacity reduction achieved for blast, reverberatory, and pot furnaces, the EPA reviewed facility performance test data obtained from WebFIRE, the EPA's repository of performance test reports, and from state regulatory agencies. The memorandum documenting the available PM and opacity data titled *Particulate Matter and Opacity Emissions Test Data Memorandum for Secondary Lead Smelters* is available in the docket for the proposed rulemaking (Docket ID No. EPA–HQ–OAR–2022–0481). The EPA's review of the available PM and opacity data identified that, since promulgation of NSPS subpart L in 1974, technologies for reducing PM emissions and opacity from blast, reverberatory, and pot furnaces have improved dramatically (*e.g.,* due to improved bag materials, replacement of older baghouses). The 2011 proposal preamble for NESHAP subpart X (76 FR 29059) also noted the improved performance of particulate control devices.

For blast and reverberatory furnaces, the PM emissions data available to the EPA consist of 42 test run-level data points obtained using EPA Method 5 (the same test method specified in 40 CFR part 60, subpart L) from three facilities, with average values ranging from 0.34 to 9.53 mg PM/dscm. For pot furnaces, the PM emissions data available to the EPA consist of 27 test run-level data points obtained using EPA Method 5 from three facilities, with average values ranging from 0.46 to 1.77 mg PM/dscm. The available opacity data for blast and reverberatory furnaces consist of nine test-run level data points from one facility, and the available opacity data for pot furnaces consist of six test-run level data points from two facilities. All the available data show that opacity from blast, reverberatory, and pot furnace emissions is zero percent.

The EPA seeks comment regarding the available PM and opacity data for blast, reverberatory, and pot furnaces and the findings of our data review.

c. Costs of PM and Opacity Control Measures

As part of the EPA's BSER review, we consider the costs associated with the technologies and measures identified as potential BSER options. Based on the finding of our data review described above, the control technologies and levels of PM emissions and opacity the EPA identified in our BSER review for blast, reverberatory, and pot furnaces emissions reflect the reductions achieved by the control devices installed to comply with the standards for particulate lead specified in NESHAP subpart X. Therefore, we do not expect additional emission control costs attributable to the NSPS associated with the use of filtration (*i.e.,* fabric filters or baghouses), scrubbers, and afterburners to reduce PM emissions and opacity from blast furnaces, and filtration and scrubbers to reduce PM emissions and opacity from reverberatory furnaces, and the use of baghouses and scrubbers to reduce opacity from pot furnace emissions, as the affected sources would install these air pollution control devices to meet the lead limits specified in NESHAP subpart X regardless of the requirements in the NSPS.

In our BSER evaluation, the EPA also considered the application of a WESP on the exhaust of a fabric filter (or similarly effective PM control device). The application of a WESP would be an additional control beyond the controls needed to comply with NESHAP subpart X. The memorandum documenting the EPA's consideration of additional controls (*Evaluation of Control Costs for Secondary Lead Smelting Facilities*) can be found in the docket for the proposed rulemaking (Docket ID No. EPA–HQ–OAR–2022–0481). The EPA evaluated the capital and annual costs of installing a WESP on the exhaust of a fabric filter (or similarly effective PM control device) for a typical new, modified, or reconstructed facility using the cost algorithms developed to support NESHAP subpart X and the exhaust flow rates for blast, reverberatory, and pot furnaces contained in facility test reports. The capital cost associated with the addition of a WESP was approximately $7.4 million and would achieve an incremental PM emissions reduction of 2.7 tons per year (based on 95-percent PM reduction efficiency). The total annual cost was approximately $1.4 million, resulting in a cost-effectiveness of approximately $528,000 per ton of PM.

Based on our BSER evaluation, considering the costs and PM emissions reductions, the EPA proposes to determine that the cost-effectiveness of requiring a WESP, in addition to the controls installed to comply with NESHAP subpart X, would be well above the level of cost-effectiveness that the EPA has historically accepted for PM control options. For example, the EPA rejected a control option for PM in the 2008 Coal Preparation NSPS that had a cost-effectiveness of approximately $91,400 per ton (73 FR 22904). In the technical document titled *Draft Cost Impacts of the Revised NESHAP for the Secondary Lead Smelting Source Category,* which is associated with the 2012 Risk and Technology Review (RTR) for NESHAP subpart X, the EPA concluded that the costs for a WESP were high (cost-effectiveness of $4,000,000/ton of lead reduced) and did not propose requirements for the installation of the WESP under the ample margin of safety analysis (76 FR 29058). Based on section 12.11 (Secondary Lead Processing) of EPA's Compilation of Air Emissions Factors (AP–42), lead emissions from blast, reverberatory, and pot furnaces comprise approximately 23, 26, and 40 percent of the PM emissions, respectively. Assuming a conversion factor of 0.23 tons of lead/ton of PM, the equivalent cost-effectiveness of the WESP in terms of PM reduction would be approximately $920,000/ton of PM in this case.

We request comment on the control cost analysis and the EPA's conclusions

regarding cost effectiveness of control options.

d. Determination of the BSER and Proposed Standards of Performance

Based on the EPA's permit review and assessment of control costs, the EPA proposes to identify that the BSER for PM emissions and opacity from new, modified, or reconstructed blast furnaces is an afterburner followed by efficient particulate controls (*e.g.,* fabric filter that may be installed in series with a HEPA filter and/or a venturi scrubber). Because the proposed BSER controls are currently being used in the secondary lead industry to comply with NSPS subpart L and NESHAP subpart X emissions standards for blast furnaces, we believe that their use has been adequately demonstrated. Also, because facilities with new, modified, or reconstructed blast furnaces would install these types of controls to comply with NESHAP subpart X, we do not expect that there will be any capital or annual costs, or any non-air quality health, environmental, or energy impacts associated with the BSER proposed for blast furnaces for purposes of NSPS subpart La.

For new, modified, or reconstructed reverberatory and pot furnaces, the EPA proposes to determine that the BSER for PM and opacity is efficient particulate controls (*e.g.,* fabric filter that may be installed in series with a HEPA filter, venturi scrubber and/or a WESP). The use of these types of controls has been adequately demonstrated because they are also currently being used in the secondary lead industry to comply with NSPS subpart L and NESHAP subpart X. Also, because facilities with new, modified, or reconstructed reverberatory and pot furnaces would install these types of controls to comply with the lead standards in NESHAP subpart X, we do not expect that there will be any additional capital or annual costs, or any non-air quality health, environmental, or energy impacts associated with the BSER proposed for reverberatory and pot furnaces for purposes of subpart La.

Based on the available data above, the EPA is proposing in 40 CFR part 60, subpart La, that the standard of performance for blast and reverberatory furnaces that reflects BSER is a reduction in the current NSPS PM emissions limit of 50 mg PM/dscm or less, to 10 mg PM/dscm or less. For the standard of performance for pot furnaces, the EPA is proposing in subpart La to establish a PM emissions limit of 3 mg/dscm or less. The available data also demonstrates that the BSER for opacity results in the absence of visible emissions from the blast, reverberatory, and pot furnace exhaust. Consequently, the EPA is proposing that the standard of performance for opacity from blast, reverberatory, and pot furnaces emissions is 0 percent.

The EPA solicits comment regarding our BSER analysis and resulting conclusions regarding the proposed standards of performance for PM and opacity for subparts La.

B. Proposal of NSPS Subpart La Without Startup, Shutdown, Malfunctions Exemptions

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and (h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some section 112 standard apply continuously. Consistent with *Sierra Club* v. *EPA,* we are proposing standards in this rule that apply at all times. The NSPS general provisions in 40 CFR 60.11(c) currently exclude opacity requirements during periods of startup, shutdown, and malfunction and the provision in 40 CFR 60.8(c) contains an exemption from non-opacity standards. We are proposing in 40 CFR part 60, subpart La, specific requirements at section 40 CFR 60.122a(d) that override the general provisions for SSM provisions. We are proposing that all standards in 40 CFR part 60, subpart La, apply at all times.

The EPA has attempted to ensure that the general provisions we are proposing to override are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether we have successfully done so.

In proposing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained in this section of the preamble, has not proposed alternate standards for those periods.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead, they are, by definition, sudden, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment. (40 CFR 60.2). The EPA interprets CAA section 111 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 111 standards. Nothing in CAA section 111 or in case law requires that the EPA consider malfunctions when determining what standards of performance reflect the degree of emission limitation achievable through ''the application of the best system of emission reduction'' that the EPA determines is adequately demonstrated. While the EPA accounts for variability in setting emissions standards, nothing in section 111 requires the Agency to consider malfunctions as part of that analysis. The EPA is not required to treat a malfunction in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a ''normal or usual manner,'' and no statutory language compels EPA to consider such events in setting section 111 standards of performance. The EPA's approach to malfunctions in the analogous circumstances (setting ''achievable'' standards under section 112) has been upheld as reasonable by the D.C. Circuit in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016).

C. Testing and Monitoring Requirements

As part of an ongoing effort to improve compliance with federal air emission regulations, the EPA reviewed the testing and monitoring requirements of subpart L to determine whether additional requirements were needed to ensure compliance with the emissions limits proposed in subpart La, which reflects the BSER under conditions of proper operation and maintenance.

Currently, subpart L (40 CFR 60.123) requires initial performance testing using EPA Method 5 (Determination of Particulate Matter Emissions from Stationary Sources) to demonstrate compliance with the PM emissions limit for blast and reverberatory furnaces, and EPA Method 9 (Visual Opacity) to demonstrate compliance with the opacity limits for blast, reverberatory, and pot furnaces. Subpart L does not specify any monitoring requirements.

In this action, the EPA is proposing that facilities subject to 40 CFR part 60, subparts L and La, conduct periodic PM testing of blast, reverberatory, and pot furnace emissions. The EPA is also proposing under 40 CFR part 60, subpart La, periodic testing of opacity from blast, reverberatory, and pot furnace emissions. We evaluated whether or not periodic opacity testing should be proposed for the legacy subpart L. Given the requirements in

NESHAP subpart X (*e.g.,* full enclosure with negative pressure and continuous differential pressure monitoring to ensure negative pressure is maintained at all times, along with stringent emissions limits for lead from all vents), we expect opacity from all existing furnaces are probably very low or zero. Therefore, any periodic opacity testing using EPA Method 9 under subpart L would result in new costs of $2,344 per facility (assuming semi-annual training and certification for facility staff and conduct of the periodic Method 9 evaluations) but yield little benefit. Therefore, the EPA is not proposing a requirement for periodic opacity testing in subpart L. However, for subpart La we are proposing periodic testing for the absence of visible emissions using EPA Method 22 (to demonstrate that opacity is zero percent), which results in an additional one-time training cost for facility personnel of $1,277 ($426 per facility). Nevertheless, the EPA solicits comment as to whether the legacy subpart L should include periodic opacity requirements and if so, why, and how frequent those readings should be.

The proposed amendments would allow facilities to request less frequent periodic PM testing from 12 months to 24 months, if the previous periodic compliance test demonstrates that PM emissions are 50 percent or less of the proposed emissions limit (*e.g.,* PM emissions from blast and reverberatory furnaces of 25 mg/dscm or less for facilities subject to 40 CFR part 60, subpart L). The EPA believes that the proposed requirements for periodic testing ensure that the PM controls are meeting the NSPS limits over time, and the proposed testing frequency would align 40 CFR part 60, subparts L and La, with the NESHAP (40 CFR part 60, subpart X), which requires initial and periodic testing for lead.

To reduce the testing burden on facilities, the EPA is also proposing alternatives to EPA Method 5 for measuring filterable PM and EPA Method 9 for determining opacity (visual emissions). In this action, the EPA is proposing to allow facilities to determine the PM emissions by gravimetric analysis of the particulate filter used in the sampling train of either EPA Method 12 (Determination of Inorganic Lead Emissions from Stationary Sources) or EPA Method 29 (Determination of Metals Emissions from Stationary Sources). Because both EPA Methods 12 and 29 capture PM on a sampling train filter that is subsequently analyzed to determine lead concentration, facilities can conduct an additional gravimetric analysis of the EPA Method 12 or EPA Method 29 filter to determine PM emissions from blast, reverberatory, and pot furnaces, rather than performing separate tests using EPA Method 5. For determining opacity, the EPA is proposing in subpart La to allow the use of ASTM International (ASTM) D7520–16 (Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere) as an alternative to EPA Method 9. Because the proposed opacity limit for blast, reverberatory, and pot furnaces is zero percent, rather than a specific percent opacity, the EPA is proposing in subpart La the use of EPA Method 22 (Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares) for determining the absence of visual emissions (*i.e.,* zero percent opacity) in addition to allowing use of Method 9 or the digital camera opacity technology (*i.e.,* ASTM D7520–16).

To estimate the costs associated with the proposed periodic PM testing requirements for subpart L, the EPA assumed that two of the 11 existing secondary lead smelting facilities would undergo reconstruction over the 3-year reporting period and thus would become subject to new subpart La. The EPA assumed that each of the remaining nine facilities currently subject to subpart L would determine the PM emissions from blast, reverberatory, and pot furnaces (one test for each type of furnace) by weighing the particulate filter of the EPA Method 12 or 29 sampling trains as part of the periodic performance tests for particulate lead required by NESHAP subpart X. The incremental cost of conducting the additional gravimetric analysis of the particulate filter prior to subsequent analysis under EPA Methods 12 or 29 is approximately $300 per test per facility. Assuming three stacks are tested at each facility, we estimate that the total costs for periodic PM testing will be $900 per facility, or a total of $8,100 for the source category (nine facilities). Therefore, the estimated total PM testing costs associated with proposed amendments to subpart L are approximately $0 for the initial year and $8,100 for each subsequent year for PM testing ($900 per year per facility).

To estimate the costs associated with the proposed testing requirements for subpart La, the EPA assumed two reconstructed sources and one new source (*i.e.,* three facilities) will become subject to proposed subpart La over the next three-year period. The incremental cost for measuring PM as part of the initial and periodic performance tests required by proposed subpart La (in conjunction with conducting the initial and periodic performance tests required under NESHAP subpart X) is approximately $300 per test per facility. Assuming 3 stacks are tested at each facility, the total estimated cost are $900 per facility per year for periodic PM tests. The approximate cost for the one-time training of facility personnel in the use of EPA Method 22 is approximately $426 per facility. Therefore, estimated total initial cost is $1,326 per facility, and the total PM and opacity testing costs associated with proposed subpart La (assuming 3 facilities are affected) are approximately $3,978 for the initial year and $2,700 for each subsequent year ($900 per year per facility). The public docket for this proposed action (Docket ID No. EPA–HQ–OAR–2022–0481) contains the OMB burden estimate, which presents the calculations and assumptions the EPA used to estimate the costs of the proposed testing requirements for subparts L and La.

In this action, the EPA is proposing to add 40 CFR 60.124 (Monitoring requirements) to subpart L and subpart La to include some of the monitoring requirements specified in 40 CFR 63.548(a) through (i) (Monitoring requirements) of the NESHAP (40 CFR part 63, subpart X), including development of a standard operating procedures (SOP) manual for control devices used to reduce PM and opacity emissions. The EPA believes that having consistent monitoring requirements between the NSPS and NESHAP will reduce the monitoring burden on affected facilities. We estimate these additions to monitoring requirements in the subparts L and La will result in very minimal additional costs, if any, because we expect all facilities already have SOPs and implement the other monitoring requirements to comply with the NESHAP. The EPA solicits comment regarding the assumptions used to estimate the proposed monitoring burden of subparts L and La.

D. Notification, Recordkeeping and Reporting Requirements

In this action, the EPA is proposing to add the notification, recordkeeping and reporting requirements found in the proposed 40 CFR 60.125 and 60.125a (Notification, recordkeeping, and reporting requirements) to NSPS subparts L and La, respectively. The proposed requirements clarify that facilities must comply with the notification and recordkeeping requirements specified in 40 CFR 60.7 and the reporting requirements specified in 40 CFR 60.19. The proposed requirements in subparts L and La incorporate the recordkeeping

requirements from NESHAP subpart X specified in 40 CFR 63.550(b); (c)(1) through (4); (c)(11) and (12); (e)(4) through (7); and (e)(13). The EPA is also proposing that owners and operators of secondary lead smelters subject to the current and new NSPS at 40 CFR part 60, subparts L and La, submit electronic copies of required performance test reports through the EPA's Central Data Exchange (CDX) and Compliance and Emissions Data Reporting Interface (CEDRI). A description of the electronic data submission process is provided in the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in the docket for this action. The proposed rules require that performance test results collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the ERT website [1] at the time of the test be submitted in the format generated through the use of the ERT or an electronic file consistent with the xml schema on the ERT website, and other performance test results be submitted in portable document format (PDF) using the attachment module of the ERT.

Additionally, the EPA has identified two broad circumstances in which electronic reporting extensions may be provided. These circumstances are (1) Outages of the EPA's CDX or CEDRI which preclude an owner or operator from accessing the system and submitting required reports, and (2) *force majeure* events, which are defined as events that will be or have been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevent an owner or operator from complying with the requirement to submit a report electronically. Examples of *force majeure* events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility. The EPA is providing these potential extensions to protect owners and operators from noncompliance in cases where they cannot successfully submit a report by the reporting deadline for reasons outside of their control. In both circumstances, the decision to accept the claim of needing additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible.

[1] *https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert.*

The electronic submittal of the reports addressed in this proposed rulemaking will: increase the usefulness of the data contained in those reports; keep up with current trends in data availability and transparency; further assist in the protection of public health and the environment; improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of the EPA and delegated state, local, tribal, and territorial air agencies to assess and determine compliance; and ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. Moreover, electronic reporting is consistent with the EPA's plan [2] to implement Executive Order 13563 and is in keeping with the EPA's agency-wide policy [3] developed in response to the White House's Digital Government Strategy.[4] For more information on the benefits of electronic reporting, see the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* referenced earlier in this section.

Finally, the EPA believes that aligning the recordkeeping and reporting requirements of the NSPS and NESHAP reduces the burden on facilities.

E. Compliance Dates

Pursuant to CAA section 111(b)(1)(B), the effective date of the final rule requirements in 40 CFR part 60, subparts L and La, will be the promulgation date of this action. Affected sources that commence construction, or reconstruction, or modification after June 11, 1973, but before December 1, 2022, must comply with all requirements of 40 CFR part 60, subpart L, no later than May 30, 2023. Affected sources that commence construction, reconstruction, or modification after December 1, 2022 must comply with all requirements of 40 CFR part 60, subpart La, no later than the effective date of the final rule or upon startup, whichever is later.

[2] EPA's Final Plan for Periodic Retrospective Reviews, August 2011. Available at: *https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154.*

[3] E-Reporting Policy Statement for EPA Regulations, September 2013. Available at: *https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf.*

[4] Digital Government: Building a 21st Century Platform to Better Serve the American People, May 2012. Available at: *https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html.*

IV. Summary of Cost, Environmental, and Economic Impacts

In determining the BSER, the CAA section 111(a)(1) requires the EPA to consider potential emission control approaches, accounting for the estimated costs as well as impacts on energy, solid waste, and other effects. The impacts in this section are expressed as incremental differences between the impacts of emission units complying with the proposed 40 CFR part 60, subparts L and La, and the baseline requirements (NSPS subpart L or NESHAP subpart X). The impacts are presented for emission units at secondary lead smelting facilities that commence construction, reconstruction, or modification over the 3-year period following proposal of the amendments of 40 CFR part 60, subparts L and La.

To determine the incremental impacts of the proposed amendments to 40 CFR part 60, subpart L, the EPA assumed that nine facilities would be subject to subpart L over the 3-year reporting period (*i.e.,* two of the 11 facilities currently subject to the existing NSPS would undergo reconstruction). To determine the incremental impacts of the proposed 40 CFR part 60, subpart La, the EPA projected the number of new, modified, or reconstructed emission units that would become subject to regulation during the 3-year period after proposal of the subpart. Based on a modest growth forecast of 2.4 percent over the next 5 years and the decrease in the number of facilities over the last decade, the EPA conservatively projects that one new affected facility will be constructed over the next 3 years. The EPA also assumes that two existing facilities will undergo reconstruction of a blast, reverberatory or pot furnace over the 3-year period covered by the burden estimate.

A. What are the air quality impacts?

The proposed amendments to 40 CFR part 60, subpart La, would:

- Reduce the PM emissions limit for blast and reverberatory furnaces from 50 to 10 mg/dscm.
- Establish PM emissions limits for pot furnaces of 3 mg/dscm.
- Lower the opacity limit for blast and reverberatory furnaces from 20 percent to 0 percent.
- Lower the opacity limit for pot furnaces from 10 percent to 0 percent.

New or reconstructed blast, reverberatory, and pot furnaces will also be subject to the NESHAP (40 CFR part 63, subpart X) requirements for new sources, while modified blast, reverberatory, and pot furnaces will also be subject to the NESHAP requirements for existing sources. NESHAP subpart X regulates particulate lead emissions from process vent, process fugitive, and fugitive dust sources. The emissions capture systems and control devices that are already required by the NESHAP to comply with the lead limits for blast, reverberatory, and pot furnaces will also control PM emissions for the NSPS. Therefore, the proposed 40 CFR part 60, subpart La, will not result in actual reductions of PM emissions. However, codifying the lower PM and opacity limits in the proposed 40 CFR part 60, subpart La, will significantly reduce the PM and opacity allowable emissions affected sources that commence construction, reconstruction, or modification after December 1, 2022.

B. What are the secondary impacts?

Indirect or secondary air emissions impacts result from the increased energy usage associated with the operation of control devices (*e.g.,* increased secondary emissions of criteria pollutants from electricity generating power plants). As part of our evaluation of the BSER, we considered whether the proposed standards of performance would result in any secondary air emissions impacts. The EPA does not expect that facilities will need any additional control devices or other equipment to meet the proposed NSPS requirements beyond those that would already be needed to comply with the NESHAP. Therefore, the EPA does not attribute any secondary impacts to the proposed 40 CFR part 60, subpart La.

C. What are the cost impacts?

For 40 CFR part 60, subparts L and La, the EPA is proposing that facilities conduct periodic performance tests to measure PM emissions from blast, reverberatory, and pot furnaces using EPA Method 5 (Determination of Particulate Matter Emissions from Stationary Sources). The NESHAP (40 CFR part 63, subpart X) also requires periodic tests for lead using EPA Method 12 (Determination of Inorganic Lead Emissions from Stationary Sources) or EPA Method 29 (Metal Emissions from Stationary Sources). Because both of the NESHAP test methods capture PM on a sampling train filter that is subsequently analyzed to determine lead concentration, facilities can conduct an additional gravimetric analysis of the EPA Method 12 or EPA Method 29 filter to determine PM emissions from blast, reverberatory, and pot furnaces, rather than performing separate tests using EPA Method 5. The EPA estimates that the additional gravimetric analysis of the EPA Method 12 or EPA Method 29 particulate filter costs approximately $300 per test per year. To estimate the total cost associated with the proposed periodic PM performance tests under 40 CFR part 60, subparts L and La, the EPA assumed that each respondent under the respective subparts would conduct three PM tests per year (one for each furnace type). See section IV.C for more details on cost estimates.

For 40 CFR part 60, subpart La, the EPA is also proposing that facilities periodically determine the opacity of blast, reverberatory, and pot furnace emissions. For subpart La, the EPA is proposing that facilities conduct initial and periodic tests using EPA Method 9 or EPA Method 22 (Visible Determination of Fugitive Emissions) to determine the absence of opacity in blast, reverberatory, and pot furnace emissions. To estimate the cost of the initial and periodic opacity tests for subpart La, the EPA assumed that facilities would use EPA Method 22, rather than EPA Method 9, because EPA Method 22 is sufficient for determining the absence of opacity (*i.e.,* the proposed opacity limit of zero percent). The EPA assumed that facilities would train facility personnel to implement EPA Method 22 (at a one-time cost of $426 per facility), but not incur additional capital costs.

For 40 CFR part 60, subpart L, the total incremental cost for the periodic PM testing over the 3-year period is $24,300 (*i.e.,* three tests each year at $300 per test for nine respondents). For 40 CFR part 60, subpart La, the total incremental cost for PM testing over the 3-year period is $8,100 (*i.e.,* three tests each year at $300 per test for three respondents) and the total incremental cost for opacity testing is $1,277 for EPA Method 22 training (*i.e.,* one-time cost of $426 for three respondents). The total incremental cost for emissions testing for the two reconstructed sources and one new source projected over the 3-year period is $8,526.

The EPA did not estimate cost impacts for the proposed monitoring requirements in 40 CFR part 60, subparts L and La, because this action proposes to allow subject facilities to comply with these subparts by complying with the applicable monitoring requirements for new sources specified in the NESHAP (40 CFR part 63, subpart X). Therefore, there is no additional monitoring burden.

D. What are the economic impacts?

Economic impact analyses focus on changes in market prices and output levels. If changes in market prices and output levels from complying with the rule in the primary markets are significant enough, impacts in other markets may also be examined. Both the magnitude of costs associated with the proposed requirements and the distribution of these costs among affected facilities can have a role in determining how the market will change in response to a regulatory requirement.

Based on the estimates for PM emissions and opacity testing described in sections III.C and IV.C of this preamble, and the recordkeeping and reporting requirements described in section VI.B of this preamble, we estimate that the total cost for emissions testing, reporting, and recordkeeping for subpart L for the nine existing sources projected over the 3-year period is $80,000. The average annual cost per facility is approximately $3,000. The nine facilities subject to this rule are owned by six different parent companies with an annual average revenue of $3.4 billion in 2021. The economic impact associated with this cost as an annual cost per sales, for the average parent company in the industry, is less than 0.0001 percent and is not expected to result in a significant market impact, regardless of whether it is fully passed on to the consumer or fully absorbed by the affected firms.

In addition, the cost analysis assumed that facilities subject to proposed 40 CFR part 60, subpart La, would conduct initial and periodic tests for PM emissions and opacity, but would not need to install control devices to meet the proposed PM and opacity emissions limits because the new, modified, or reconstructed facility would install the same types of controls already necessary to comply with NESHAP subpart X. The EPA also assumed that facilities subject to proposed subpart La would not incur monitoring costs attributed to the new NSPS.

The EPA views the testing costs to be upper-bound estimates on the potential compliance costs of the proposed 40 CFR part 60, subpart La. Even under the upper bound cost assumptions described above, the EPA expects the potential economic impacts of this proposed action will be small.

As required by the Regulatory Flexibility Act (RFA), we performed an analysis to determine if any small entities might be disproportionately impacted by the proposed requirements. Based on this analysis, we conclude that the estimated costs for the proposed rule

will not have a significant economic impact on a substantial number of small entities. Details of this analysis are presented in Section VI.C of this preamble and in the memorandum *Economic Impact Analysis for the Proposed New Source Performance Standards (NSPS) for Secondary Lead Smelters* available in the docket of this action.

E. What are the benefits?

The proposed revisions to 40 CFR part 60, subpart L, and the newly proposed subpart La would provide needed clarifications for regulated sources, improve the practical enforceability of the rules and enhance compliance and enforcement. The EPA expects that implementing the proposed amendments to 40 CFR part 60, subparts L and La, will help ensure that control systems used to reduce PM and opacity emissions from blast, reverberatory, and pot furnaces are properly operated and maintained over time.

Additionally, the proposed amendments to require electronic reporting of emissions test results in 40 CFR part 60, subparts L and La, will ultimately reduce the burden on regulated facilities, delegated air agencies, and the EPA, and also improve access to data, minimizes data reporting errors, and eliminate paper waste and redundancies.

F. What analysis of environmental justice did we conduct?

Consistent with the EPA's commitment to integrating environmental justice in the Agency's actions, and following the directives set forth in multiple Executive orders, the Agency has conducted an analysis of the demographic groups living near existing secondary lead smelting facilities. Executive Order 12898 directs the EPA to identify the populations of concern who are most likely to experience unequal burdens from environmental harms; specifically, minority populations (*i.e.,* people of color), low-income populations, and indigenous peoples (59 FR 7629; February 16, 1994). Additionally, Executive Order 13985 is intended to advance racial equity and support underserved communities through Federal Government actions (86 FR 7009; January 20, 2021). The EPA defines environmental justice as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' In recognizing that people of color and low-income populations often bear an unequal burden of environmental harms and risks, the EPA continues to consider ways of protecting them from adverse public health and environmental effects of air pollution.

This action proposes standards of performance for new, modified, and reconstructed sources that commence construction after the rule is proposed. The locations of the construction of new secondary lead smelters are not known. In addition, it is not known which of the existing secondary lead smelters will be modified or reconstructed in the future, if at all. Therefore, the demographic analysis was conducted for the 11 existing secondary lead smelters as a characterization of the demographics in areas where these facilities are currently located.

To examine the potential for any EJ issues that might be associated with the source category, we performed a demographic analysis. This demographic analysis is an assessment of individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the existing facilities. The EPA then compared the data from this analysis to the national average for each of the demographic groups.

The results of the demographic analysis (see Table 3) indicate that, for populations within 5 km of the 11 secondary lead smelters, the percent Hispanic or Latino population is higher than the national average (38 percent versus 19 percent). The percentages of ''other and multiracial population'' and people living in linguistic isolation within the same geographic area are higher than the national average (12 percent versus 8 percent and 8 percent versus 5 percent, respectively). The percentage of the population over 25 without a high school diploma is higher than the national average (19 percent versus 12 percent), while the percentage of the population living below the poverty line is similar to the national average.

The results of the analysis of populations within 50 km of the 11 secondary lead smelters are similar to the 5 km analysis, with the Hispanic or Latino population and ''other and multiracial population'' both above the national average.

A summary of the demographic assessment performed for the secondary lead smelters is included as Table 3. The methodology and the results of the demographic analysis are presented in a technical report, ''Analysis of Demographic Factors for Populations Living Near Secondary Lead Smelting Source Category Operations,'' available in the docket for this action (Docket ID No. EPA–HQ–OAR–2022–0481).

TABLE 3—DEMOGRAPHIC ASSESSMENT FOR SECONDARY LEAD SMELTERS [3]

Demographic group	Nationwide [1]	Population within 50 km of 11 existing facilities	Population within 5 km of 11 existing facilities
Total Population	328,016,242	23,353,293	403,240
Race and Ethnicity by Percent			
White	60%	48%	37%
African American	12%	9%	14%
Native American	0.7%	0.2%	0.1%
Hispanic or Latino (includes white and nonwhite) [2]	19%	30%	38%
Other and Multiracial	8%	13%	12%
Income by Percent			
Below Poverty Level	13%	13%	14%

TABLE 3—DEMOGRAPHIC ASSESSMENT FOR SECONDARY LEAD SMELTERS [3]—Continued

Demographic group	Nationwide [1]	Population within 50 km of 11 existing facilities	Population within 5 km of 11 existing facilities
Above Poverty Level	87%	87%	86%
Education by Percent			
Over 25 and without a High School Diploma	12%	15%	19%
Over 25 and with a High School Diploma	88%	85%	81%
Linguistically Isolated by Percent			
Linguistically Isolated	5%	8%	8%

Notes:

1. The nationwide population count and all demographic percentages are based on the Census' 2015–2019 American Community Survey five-year block group averages and include Puerto Rico. Demographic percentages based on different averages may differ. The total population counts within 5 km and 50 km of all facilities are based on the 2010 Decennial Census block populations.

2. To avoid double counting, the ''Hispanic or Latino'' category is treated as a distinct demographic category for these analyses. A person is identified as one of five racial/ethnic categories above: White, African American, Native American, Other and Multiracial, or Hispanic/Latino. A person who identifies as Hispanic or Latino is counted as Hispanic/Latino for this analysis, regardless of what race this person may have also identified as in the Census.

3. This action proposes standards of performance for new, modified, and reconstructed sources that commence construction after the rule is proposed. Therefore, the locations of the construction of new Secondary Lead Smelters are not known. In addition, it is not known which of the existing Secondary Lead Smelters will be modified or reconstructed in the future. Therefore, the demographic analysis was conducted for the 11 existing Secondary Lead Smelters as a characterization of the demographics in areas where these facilities are now located.

The EPA expects that the Standards of Performance for Secondary Lead Smelters Constructed after December 1, 2022 will ensure compliance with the PM and opacity emissions limits (which also apply during periods of startup, shutdown, and malfunctions) via initial and periodic emissions testing. Proposed subpart La will also codify the improvements in PM control technologies that have occurred in the industry since promulgation of the current NSPS subpart L. Therefore, there would be a positive, beneficial effect for populations in proximity to any future affected sources, which in this source category have tended to disproportionately include minority, low-income and indigenous communities.

V. Incorporation by Reference

The EPA proposes to amend the 40 CFR 60.17 to incorporate by reference the following voluntary consensus standards (VCS):

- ASTM D7520–16, ''Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere'' describes procedures to determine the opacity of a plume, using digital imagery and associated hardware and software, where opacity is caused by PM emitted from a stationary point source in the outdoor ambient environment. The opacity of emissions is determined by the application of a digital camera opacity technique (DCOT) that consists of a digital still camera, analysis software, and the output function's content to obtain and interpret digital images to determine and report plume opacity.

The ASTM D7520–16 document is available from ASTM at *https://www.astm.org* or l100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, telephone number: (610) 832–9500, fax number: (610) 832–9555 at *service@astm.org.*

VI. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for 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 updated Information Collection Request (ICR) document that the EPA prepared for subpart L has been assigned EPA ICR number 1128.13, and the new ICR prepared for proposed subpart La has been assigned EPA ICR number 2729.01. You can find copies of the ICRs in the docket for this rule, and it is briefly summarized here.

The EPA is proposing amendments to the existing NSPS (40 CFR part 60, subpart L) that require:

- updated process equipment definitions;
- periodic testing for PM emissions;
- incorporation of monitoring, recordkeeping, and reporting requirements that are consistent with NESHAP subpart X; and
- electronic reporting of performance tests.

The EPA is also proposing a new subpart (40 CFR part 60, subpart La) for new, modified or reconstructed facilities that start up after this proposal that:

- updates definitions to be consistent with the NESHAP subpart X;
- establishes a tighter PM limit (10 mg/dscm) for blast and reverberatory furnaces;
- establishes a new PM limit (3 mg/dscm) for pot furnaces;
- establishes a tighter opacity limit (0%) for blast, reverberatory, and pot furnaces;
- removes the exemptions for periods of SSM;
- requires initial and periodic testing for PM and opacity emissions;
- incorporates monitoring, recordkeeping, and reporting requirements that are consistent with the NESHAP (40 CFR part 63, subpart X); and
- requires electronic reporting of performance tests.

Respondents/affected entities: Secondary Lead Smelting Facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subparts L and La)

Estimated number of respondents: Nine for subpart L (EPA ICR number

1128.13) and three for subpart La (EPA ICR number 2729.01).

Frequency of response: Annually.

Total estimated burden: 228 hours (per year) for subpart L (EPA ICR number 1128.13) and 130 hours (per year) for subpart La (EPA ICR number 2729.01). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $26,477 (per year), includes $5,400 annualized capital or operation & maintenance costs for subpart L (EPA ICR number 1128.13) and $14,728 (per year), includes $2,700 annualized capital or operation & maintenance costs for subpart La (EPA ICR number 2729.01).

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 the 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 the EPA using the docket identified at the beginning of this rule. The 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 *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 January 3, 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. The small entities subject to the requirements of this action are small businesses classified under NAICS 331492 (Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum)) with 750 or fewer employees (including its subsidiaries and affiliates). The Agency has determined that four of the 11 facilities (36 percent of the facilities) are classified as small businesses and may experience an impact of 0.18 percent of revenues based on the maximum costs-to-sales ratio and an annual revenue of $2.8 million in 2021. Details of this analysis are presented in the memorandum *Economic Impact Analysis for the Proposed New Source Performance Standards (NSPS) for Secondary Lead Smelters* available in the docket of this action. Based on this analysis, we conclude that the estimated costs for the proposed rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

This proposed 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. This proposal is not expected to impact state, local, or tribal governments and there are no nationwide annualized costs of this proposed rule for affected industrial sources. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule will not apply to such governments and will not impose any obligations upon them.

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 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. This proposed rule imposes requirements on owners and operators of secondary lead smelting facilities and not tribal governments. The EPA does not know of any secondary lead smelting facilities owned or operated by Indian tribal governments. However, if there are any, the effect of this proposed rule on communities of tribal governments would not be unique or disproportionate to the effect on other communities. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 22, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

This action involves technical standards. The EPA proposes to use EPA Method 5 (Determination of Particulate Matter emissions from Stationary Sources) to measure filterable PM and EPA Method 9 (Visual Determination of the Opacity of Emissions from Stationary Sources) to determine visible emissions from blast and reverberatory process vents and process fugitive emissions. Therefore, the EPA conducted searches for the Secondary Lead NSPS through the Enhanced National Standards Systems Network Database managed by the American National Standards Institute (ANSI). We also contacted voluntary consensus standards (VCS) organizations and accessed and searched their databases.

We conducted searches for EPA Methods 1, 1A, 2, 2A, 2B, 2C, 2D, 2F, 2G, 2H, 3, 3A, 3c, 4, 5, 9, 12, 22, and 29 of 40 CFR part 60, appendix A. During the EPA's VCS search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's reference method, the EPA reviewed it as a potential equivalent method. We reviewed all potential

standards to determine the practicality of the VCS for this rule. This review requires significant method validation data that meet the requirements of EPA Method 301 for accepting alternative methods or scientific, engineering, and policy equivalence to procedures in the EPA reference methods. The EPA may reconsider determinations of impracticality when additional information is available for a particular VCS. No applicable VCS was identified for EPA Method 22.

In this proposed action, the EPA is incorporating by reference the VCS ASTM D7520–16, Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere, as an acceptable alternative to EPA Method 9 with the following caveats:

- During the certification procedure for the digital camera opacity technique (DCOT) outlined in Section 9.2 of ASTM D7520–16, the facility or the DCOT vendor must present the plumes in front of various backgrounds of color and contrast representing conditions anticipated during field use such as blue sky, trees, and mixed backgrounds (clouds or a sparse tree stand).
- The facility must also have standard operating procedures in place including daily or other frequency quality checks to ensure the equipment is within manufacturing specifications as outlined in Section 8.1 of ASTM D7520–16.
- The facility must follow the recordkeeping procedures outlined in 40 CFR 63.10(b)(1) for the DCOT certification, compliance report, data sheets, and all raw unaltered joint photographic experts group (JPEG) files used for opacity and certification determination.
- The facility or the DCOT vendor must have a minimum of four independent technology users apply the software to determine the visible opacity of the 300 certification plumes. For each set of 25 plumes, the user may not exceed 15-percent opacity of anyone reading and the average error must not exceed 7.5-percent opacity.
- This approval does not provide or imply a certification or validation of any vendor's hardware or software. The onus to maintain and verify the certification or training of the DCOT camera, software, and operator in accordance with ASTM D7520–16 is on the facility, DCOT operator, and DCOT vendor. This method describes procedures to determine the opacity of a plume, using digital imagery and associated hardware and software, where opacity is caused by PM emitted from a stationary point source in the outdoor ambient environment. The opacity of emissions is determined by the application of a DCOT that consists of a digital still camera, analysis software, and the output function's content to obtain and interpret digital images to determine and report plume opacity. The ASTM D7520–16 document is available from ASTM at *https://www.astm.org* or l100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, telephone number: (610) 832–9500, fax number: (610) 8329555 at *service@astm.org.*

The EPA is finalizing the use of the guidance document, Fabric Filter Bag Leak Detection Guidance, EPA–454/R–98–015, Office of Air Quality Planning and Standards (OAQPS), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, September 1997. This document provides guidance on the use of triboelectric monitors as fabric filter bag leak detectors. The document includes fabric filter and monitoring system descriptions; guidance on monitor selection, installation, setup, adjustment, and operation; and quality assurance procedures. The document is available at *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=2000D5T6.PDF.*

Additional information for the VCS search and determinations can be found in the docket for this proposed action (Docket ID No. EPA–HQ–OAR–2022–0481).

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in section IV.F of this preamble. All relevant documents are available in the docket for this action (Docket ID No. EPA–HQ–OAR–2022–0481).

The assessment of populations in close proximity of secondary lead smelters shows some demographic groups that are higher than the national average, however, we determined that the human health impacts are not disproportionate for these groups because this action proposes changes to the standards that will increase protection for communities. The EPA determined that the standards should be revised to reflect cost-effective developments in practices, process, or controls and BSER. The proposed changes will provide additional health protection for all populations, including communities already overburdened by pollution, which are often minority, low-income, and indigenous communities. The proposed changes will have beneficial effects on air quality and public health for populations exposed to emissions from facilities in the source category. Further, this rulemaking complements other actions already taken by the EPA to reduce emissions and improve health outcomes for overburdened and underserved communities.

Michael Regan,

Administrator.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2022–0066; FF09E22000 FXES1113090FEDR 223]

RIN 1018–BF51

Endangered and Threatened Wildlife and Plants; Removing Island Bedstraw and Santa Cruz Island Dudleya From the List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft post-delisting monitoring plans.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove island bedstraw (*Galium buxifolium*) and Santa Cruz Island dudleya (*Dudleya nesiotica*) from the Federal List of Endangered and Threatened Plants on the basis of recovery. Both of these native plant species occur in the Channel Islands National Park off the coast of California. This proposed rule is based on our review of the best available scientific and commercial data, which indicates that the threats to island bedstraw and Santa Cruz Island dudleya have been eliminated or reduced to the point that these species have recovered and no longer meet the definition of an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). We request information and comments from the public regarding this proposed rule and the draft post-delisting monitoring plans for island bedstraw and Santa Cruz Island dudleya.

DATES: We will accept comments received or postmarked on or before