



THE ADMINISTRATOR
WASHINGTON, D.C. 20460

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Dear Mr. Savage:

I am responding to your May 10, 2024, petition for reconsideration on behalf of the RMP Coalition, consisting of the National Association of Chemical Distributors (NACD), d/b/a Alliance for Chemical Distribution, the American Chemistry Council (ACC), the American Fuel & Petrochemical Manufacturers (AFPM), the American Petroleum Institute (API), the Chamber of Commerce of the United States of America, and the Society of Chemical Manufacturers & Affiliates (SOCMA) (collectively, the “petitioners”) regarding the U.S. Environmental Protection Agency’s (EPA) final rule titled “Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention” (“2024 Safer Communities final rule,” 89 Fed. Reg. 17622; March 11, 2024). The 2024 Safer Communities by Chemical Accident Prevention (Safer Communities) final rule revised the Risk Management Program (RMP) to further protect vulnerable communities from chemical accidents, especially those living near facilities in industry sectors with high accident rates. EPA included new safeguards such as requiring a safer technologies and alternatives analysis (STAA); implementation of safeguard measures in certain cases; advancing employee participation, training, and opportunities for employee decision-making in facility accident prevention; requiring third-party compliance audits; and enhancing the public availability of chemical hazard information, among other requirements.

Your petition alleged four primary objections to the 2024 Safer Communities final rule:

- A. The final rule includes new and extraordinarily burdensome STAA requirements, which were not available for comment and are unlawful.
- B. The final rule’s expanded information availability requirements compel disclosure of additional sensitive information without adequate justification.
- C. The final rule imposes additional, unnecessary employee participation provisions.
- D. The final rule adds two new provisions relating to monitoring equipment.

The petition alleges that each objection either arose after the period for public comment on the 2024 Safer Communities final rule or was impracticable to raise during that comment period. The petition also alleges that these objections are of central relevance to the outcome of the rule. The petition concludes that EPA must grant reconsideration pursuant to section 307(d)(7)(B) of the Clean Air Act (CAA) and stay the 2024 Safer Communities final rule.

After careful review of the objections raised in the petition for reconsideration, EPA denies the petition, as well as the request that the 2024 Safer Communities final rule be stayed. The petition fails to establish that the objections meet the criteria for mandatory reconsideration under section 307(d)(7)(B) of the CAA. Section 307(d)(7)(B) of the CAA requires EPA to convene a proceeding for reconsideration of a rule if a party raising an objection to the rule:

“ . . . can demonstrate to the Administrator that it was impracticable to raise such objection within [the public comment period] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.”

The requirement to convene a proceeding to reconsider a rule is, thus, based on the petitioner demonstrating to EPA both: (1) that it was impracticable to raise the objection during the comment period, or that the grounds for such objection arose after the comment period but within the time specified for judicial review (*i.e.*, within 60 days after publication of the final rulemaking notice in the Federal Register (FR), see CAA section 307(b)(1)); and (2) that the objection is of central relevance to the outcome of the rule.¹

The discussion below addresses each of the objections raised in the petition.

A. Petitioners Allege that New STAA Requirements in the Final Rule are Extraordinarily Burdensome and Unlawful

Petitioners' first objection is that the 2024 Safer Communities final rule includes new and extraordinarily burdensome STAA requirements, which were not available for comment and are unlawful. Petitioners allege that there were several procedural deficiencies in EPA's 2024 Safer Communities final rulemaking which prevented petitioners from being able to comment effectively on the provisions of the 2024 Safer Communities final rule. Petitioners provide seven arguments to support this objection, including petitioners' claim that:

- i. EPA did not provide adequate notice for petitioners to comment on the implementation mandate,
- ii. EPA did not provide a sufficient reasoned basis for imposing the costs of the implementation mandate on specific facilities,
- iii. The hierarchy of controls that facilities must implement is unclear,

¹ An objection is of “central relevance” to the outcome of a rule “if it provides substantial support for the argument that the regulation should be revised.” See *Coal. for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102, 125 (D.C. Cir. 2012) (internal citation and quotation omitted).

- iv. Stakeholders were not provided with the opportunity to comment on requirements of the implementation mandate that remain unclear,
- v. The definition of “practicable” imposed by the rule violates CAA section 112,
- vi. EPA does not have the authority to adopt the implementation mandate, and
- vii. Congressional authorization would be required to impose a mandate to adopt inherently safer technology/inherently safer design (IST/ISD).

EPA addresses each of these arguments below.

i. Petitioners allege that the Agency provided inadequate notice of the implementation mandate.

Petitioners argue that the Agency did not provide the opportunity for meaningful public comment on the STAA implementation mandate. Petitioners state, “although the Proposed Rule solicited comments on whether the Agency should require implementation of inherently safer technology/inherently safer design (‘IST/ISD’) and STAAs, the Agency did not specifically solicit comment on the relative benefits of implementing passive measures, active measures, or procedural measures. Most importantly, none of the particulars of the Final Rule’s implementation mandate or its extensive new regulatory language were available for the public to comment on or even consider.”

EPA finds that this claim does not satisfy the requirements of mandatory reconsideration under CAA section 307(d)(7)(B). The issue of implementation of IST/ISD and STAA was plainly raised for comment in the 2022 Safer Communities by Chemical Accident Prevention (“2022 Safer Communities”) proposed rule. (87 Fed. Reg. 53556, 53580, Aug. 31, 2022).² Specifically, the 2022 Safer Communities proposed rule stated, “EPA seeks comment on whether the Agency should require implementation of technically practicable IST/ISD and STAAs.” *Id.* While the 2022 Safer Communities proposed rule suggested reasons why an implementation requirement may not have been the preferred option, *id.*, it also outlined comments in favor of an implementation requirement received during the listening sessions conducted prior to the 2022 Safer Communities proposed rule. *Id.* at 53576-77. As stated in the 2022 Safer Communities proposed rule preamble, “During EPA’s 2021 listening sessions, approximately 245 commenters provided feedback on STAA. Many commenters, including individual commenters, professional associations, groups, labor organizations, an association of government agencies, and a Federal agency, supported EPA restoring the 2017 amendments rule³ requirement for facilities to assess safer technologies and substitute safer alternatives in their processes where feasible.” *Id.* at 53576. Other commenters provided feedback that the hierarchy of controls should be used to reduce hazards. *Id.* One commenter specifically pointed out that, “Although industry good practice guidance shows that

² This letter also refers to this rulemaking by the acronym “SCCAP” in quoted material.

³ “Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act”; 82 FR 4594, January 13, 2017. The 2017 amendments rule was prompted by E.O. 13650, “Improving Chemical Facility Safety and Security” (available at <https://obamawhitehouse.archives.gov/the-press-office/2013/08/01/executive-order-improving-chemical-facility-safety-and-security>), which directed EPA (and several other Federal agencies) to, among other things, modernize policies, regulations, and standards to enhance safety and security in chemical facilities. Requirements of the 2017 included provisions addressing STAA, third party audits, root-cause incident investigations, as well information disclosure to the public upon request and after accidental releases. Many of these provisions were retained, modified, rescinded, restored, or expanded by subsequent rulemakings in 2019 and in the 2022 Safer Communities rule. The 2017 amendments rule is available in the rulemaking docket at www.regulations.gov as item EPA-HQ-OEM-2015-0725-0635.

[inherently safer] technology is preferable and often the most effect of [sic – should be “effective”] safety precaution in the hierarchy of controls to prevent chemical incidents[,] it is not currently required by EPA's RMP regulation.” The transcripts outlining these arguments are in the public docket and were available for public review.⁴ In the 2022 Safer Communities proposed rule preamble, EPA discussed the hierarchy of controls as it was proposed in the 2017 amendments rule by proposing that the 2022 rule would “...expand upon these requirements by requiring the owners or operators to consider safer technology and alternative risk management measures that could eliminate or reduce risk from process hazards. In addition to engineering and administrative controls, owners and operators of facilities with Program 3 processes covered under this provision would have to consider the application of the following safer technology measures, in the following order: inherently safer technology (IST) or inherently safer design (ISD), passive safeguards, active safeguards, and procedural safeguards.” *Id.* at 53575.

EPA also proposed adding paragraph 40 CFR 68.67(c)(9)(i) “to specify that the analysis include, in the following order, IST or ISD, passive measures, active measures, and procedural measures. The owner or operator may evaluate a combination of risk management measures to reduce risk.” *Id.* at 53581. In response to the 2022 Safer Communities proposed rule’s comment solicitation on the issue of implementation, EPA received several public comments requesting that EPA require implementation of technically practicable IST/ISD and STAAs. Response to Comments (RTC) at 138 and 140.⁵ Based on these public comments, EPA finalized the provisions at § 68.67(c)(9) and § 68.67(h) of the regulation.

The 2024 Safer Communities final rule preamble explains the Agency’s position on the implementation mandate stating:

The Agency acknowledges that, prior to this final rule, EPA has not made implementation of any IST/ISD or any measure identified in a STAA either a preferred option at proposal or an adopted requirement in a final rule. Our prior rulemakings have discussed our policy view of the merits of requiring implementation. ... The 2017 amendments rule, the 2019 reconsideration rule, and the 2022 SCCAP proposed rule all had vigorous discussion of the merits of implementing STAA throughout the rulemaking process, and the 2022 SCCAP proposed rule solicited comment on whether implementation should be required. Therefore, sources were on notice that the decision was an open matter and any reliance that we would not adopt an implementation requirement in response to comments and data was not reasonable.

89 Fed. Reg. 17622, 17644 (March 11, 2024).

The 2024 Safer Communities final rule simply adopts a method of implementation consistent with the hierarchy of controls, while providing facilities with “the flexibility to assess and potentially implement IST, implement passive measures, or implement a combination of active and procedural measures to reduce risk associated with a process.” *Id.* at 17652. Both the potential for requiring implementation

⁴ See EPA-HQ-OLEM-2021-0312-0011, available at www.regulations.gov.

⁵ EPA. Response to Comments on the 2022 Proposed Rule (August 31, 2022; 87 FR 53556) Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention. The RTC is available in the rulemaking docket at www.regulations.gov as item EPA-HQ-OLEM-2022-0174-0583.

and the preferential order of STAA measures were available for comment in the 2022 Notice of Proposed Rulemaking (NPRM), especially when one considers the extent to which these issues have been prominent throughout the discussion of STAA. While the precise method for implementing STAA to be consistent with the hierarchy of controls had not been aired (that is, implementing at least one measure per stationary source every five years, with a preference for measures higher on the hierarchy when practicable, rather than implementing all practicable measures regardless of the hierarchy), petitioners cannot reasonably claim that it was impractical for them or other members of the public to raise an objection to this provision because they were unaware that EPA was considering an implementation mandate utilizing the hierarchy of controls. This claim thus fails to meet the criteria for mandatory reconsideration.

Additionally, what EPA ultimately adopted is substantially less burdensome than what commenters recommended, which was to implement all practicable alternatives that could eliminate risks of a catastrophic release. RTC at 287. In fact, a requirement to implement all practicable measures identified in STAA would have been much more costly and burdensome on facilities. EPA considered the impact of requiring implementation of every practicable measure on facilities and finalized the provision to require implementation of at least one passive measure, or an inherently safer technology or design, or a combination of active and procedural measures equivalent to or greater than the risk reduction of a passive measure in response to the concern regarding the burden the implementation mandate would impose on facilities. Objections raised by petitions do not provide substantial support for the argument that the regulation should be revised and are therefore not centrally relevant to the outcome of the 2024 Safer Communities final rule.

ii. Petitioners allege that EPA provides an insufficient basis for imposing the costs of the implementation mandate on specific facilities.

Petitioners argue that the Agency did not provide appropriate justification for imposing the implementation mandate on certain facilities, specifically as it relates to costs incurred. Petitioners state, “The implementation mandate applies to many types of RMP-regulated facilities: chemical, coal, or petroleum manufacturing facilities ‘located within one mile of another’ such facility; facilities with hydrofluoric acid alkylation (“HF”) covered processes; and chemical, coal, or petroleum manufacturing facilities with one RMP-reportable accident since the most recent PHA. But EPA fails to provide a sufficient reasoned basis for imposing massive costs on these specific facilities. Indeed, the Final Rule acknowledges that STAA implementation would account for more than half of the total cost of the RMP amendments – between \$169 million and \$205 million in annualized costs.”

The EPA finds that this claim does not satisfy the requirements of mandatory reconsideration under CAA section 307(d)(7)(B). First, petitioners could have raised an objection during the public comment period because EPA explained the basis for how it selected which facilities should be subject to the STAA provisions in the 2022 Safer Communities proposed rule (which were carried through to the final rule for implementation):

Multiple factors led EPA to propose focusing the STAA requirement on densely co-located petroleum refining and chemical manufacturing facilities (*i.e.*, facilities with processes in NAICS codes 324 and 325 that are within 1 mile of another facility in those NAICS codes). The distance of 1 mile represents the median distance of facilities with 324 and 325 NAICS processes that have

had accidents in the period from 2016 to 2020 to the nearest facility with a process in these NAICS in 324 or 325. Facilities in these NAICS codes experience more frequent accidental releases. In the period from 2016 to 2020, communities near densely co-located facilities in these NAICS codes have experienced more frequent accidents than communities near other facilities in these NAICS codes and have had more offsite impacts from releases than other communities have experienced...The proximity of densely co-located refining and chemical manufacturing facilities creates a greater risk of an accident at one facility impacting safety at the nearby facility, thereby increasing the potential for a release at the second facility (a “knock-on” release). Communities in areas with such densely co-located petroleum refining and chemical manufacturing facilities face overlapping vulnerability zones and heightened risk of being impacted by an accidental release relative to other communities. The heightened risk of community impacts presented by densely co-located refineries and chemical manufacturers make it reasonable for EPA to propose the 1 mile criterion for additional prevention measures such as STAA.

87 Fed. Reg. at 53577.

EPA thus determined that communities within one mile of multiple refineries and chemical manufacturers face an elevated risk of an accidental release impact simply as a function of the arithmetic. In other words, all other factors being equal, having two or more sources within one mile of each other doubles the likelihood of a nearby accident. This is especially true in the sectors the rule focuses on, the North American Industry Classification System (NAICS) codes of which experience a greater number of accidents than other sectors covered by the Safer Communities rule. While accidental releases, especially worst-case scenarios, are low probability/high consequence events, having two or more nearby facilities raises the odds of such an event for the community. The Safer Communities rule’s focus on facilities presenting this elevated risk to nearby communities is therefore reasonable and justified.

EPA also provided extensive discussion regarding the focus of more burdensome requirements on facilities with HF-covered processes in the 2022 Safer Communities proposed rule, including discussions of investigations of potentially catastrophic near-miss incidents at facilities using HF, such as the Husky Refinery in Superior, Wisconsin and Philadelphia Energy Solutions (PES) in Philadelphia, Pennsylvania.⁶

⁶ The release of HF from the PES facility identified in the 2022 Safer Communities proposed rule was caused by a ruptured pipe elbow at the refinery’s HF alkylation unit, allowing propane and HF vapor to escape and create a large vapor cloud around part of the unit. The vapor cloud ignited, causing a large fire and three explosions. Three fragments of a large vessel flew into the air with a 19-ton piece flying across the Schuylkill River and landing on its bank. Two other very large fragments landed on the refinery property. An estimated 5,239 pounds of HF were released during the incident, with 1,968 pounds contained with water spray within the unit and 3,271 pounds released into the atmosphere. A population of approximately 117,300 people lived within one mile of the PES refinery at the time of the incident. EPA identified several social costs of the incident in its final rule RIA, including worker injuries, costs to the city of Philadelphia and regional emergency responders, and the temporary closure of portions of Interstate 76 and Philadelphia’s Platt Bridge, among others. According to the facility’s most recent RMP submission prior to the incident, a worst-case scenario release of HF could have reached over 7 miles, potentially impacting a population of more than 1 million people and several public receptors, including major highways and railways in both Pennsylvania and New Jersey. Following the incident at PES, the Chemical Safety Board (CSB) issued recommendations to EPA to develop a program prioritizing and emphasizing inspections of HF alkylation units and that EPA revise the RMP program to require a safer technology and alternatives analysis of HF alkylation units to evaluate the practicability of inherently safer technologies. This incident, and others, justify EPA’s basis for imposing the

Id. at 53576 – 53577. The 2022 Safer Communities proposed rule stated, “EPA is proposing that all HF alkylation processes at petroleum refineries (NAICS 324) conduct a STAA review primarily due to the recent incidents...where HF was nearly released when there were explosions, fires, and other releases that could have triggered releases of HF.” *Id.* at 53576.

Further, under “Alternative Options” for STAA, EPA discussed requiring STAA for stationary sources in NAICS codes 324 and 325 as one of the options considered and provided an estimate of the number of facilities potentially impacted. *Id.* at 53579. As outlined in the proposal, an option EPA considered was requiring STAA for stationary sources in NAICS 324 and 325 that have had a reportable accident in the most recent five years, and the Agency invited comment on the options considered. *Id.* The 2022 Safer Communities proposed rule also highlighted that RMP facilities in NAICS 324 and 325 were responsible for a relatively large number of accidents, deaths, injuries and property damage, as well as facilities having two or more accidents. *Id.* at 53578. EPA explicitly stated, “Implementation of safer technology and alternatives by these facilities in the chemical manufacturing and petroleum refining sectors may prevent serious accidental releases in the future.” *Id.* EPA also included this subset of facilities under “Alternative Options” for STAA, stating “EPA considered applying STAA requirements to facilities in NAICS 324 and 325 with a reportable accident within the last five years.” *Id.* at 53579. The public was therefore on notice that facilities in NAICS 324 and 325 with previous accidents were being considered for STAA implementation. The petition recognizes that implementing STAA measures was raised for comment as a potential, non-preferred strengthening of the proposed primary option. Petition at 4. The 2024 Safer Communities final rule simply applies a more targeted, less burdensome implementation approach to facilities the 2022 Safer Communities proposed rule identified as meriting more focused prevention measures. EPA’s justification for imposing the implementation mandate on specific facilities was plainly raised for comment, and the expansion of the targeted facilities beyond densely collocated facilities in NAICS 324 and 325 and facilities in NAICS 324 with HF alkylation units was described among the potential alternatives with sufficient specificity to invite comment. Therefore, this claim fails to meet the criteria for mandatory reconsideration because it fails to provide information that was impracticable to raise during the period for public comment.

As it relates specifically to the cost of the implementation mandate, EPA’s basis for finalizing a rule that results in specific facilities incurring costs is described in both the preamble of the 2022 Safer Communities proposed rule and in the Safer Communities proposed rule regulatory impact analysis (proposed rule RIA) through EPA’s discussions of the benefits of the STAA provision.⁷ The proposed rule RIA and EPA’s explanation in the 2022 Safer Communities proposed rule preamble show that a singular focus on cost without discussing benefits is not reasonable. For example, the 2022 Safer Communities proposed rule specifies that the STAA provision was proposed to reduce the risk of serious accidental releases from facilities by requiring the examination of safer technology and designs that could be implemented in lieu of, or in addition to, current technologies. 87 Fed. Reg. at 53575 - 76. In describing the qualitative benefits of the STAA requirements, the proposed rule RIA states:

implementation mandate on facilities with covered HF processes. To view the CSB report for this incident, see EPA-HQ-OLEM-2022-0174-0524 available at www.regulations.gov.

⁷ EPA. Regulatory Impact Analysis for NPRM “Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention,” published at 87 Fed. Reg 53556 (August 31, 2022). The Safer Communities proposed rule RIA is available in the rulemaking docket at www.regulations.gov as item EPA-HQ-OLEM-2022-0174-0586.

[t]he STAA should result in identification of potential process changes that, if implemented, result in owners or operators using less hazardous substances, minimizing the amount of regulated substances present in a process, moderating process conditions, or reducing process complexity. Such changes help reduce the prevalence of higher risk processes and thereby prevent accidents by either eliminating the possibility of an accidental release entirely, by making a process more fault-tolerant, such that a minor process upset, or equipment malfunction is less likely to result in a serious accidental release, and by making releases that may occur, less severe.

Proposed rule RIA at 56. As further discussed in the proposed rule RIA, the accident prevention benefits of the proposed rule with the STAA provision were anticipated to:

...include reductions in the numbers of fatalities and injuries both onsite and offsite and residents evacuated or otherwise inconvenienced by sheltering in place; reductions in the damage caused to property onsite and offsite of the facility including damages to product, equipment, and buildings; reductions in damages to the environment and ecosystems; and reductions in resources diverted to extinguish fires and clean-up affected areas.

Proposed rule RIA at 53. These potential benefits of accident reduction detailed in the RIA are also discussed in the 2022 Safer Communities proposed rule preamble and thus were available for public comment. 87 Fed. Reg. at 53561-62. Specifically, Table 3 in the 2022 Safer Communities proposed rule preamble summarizes the types of damages from accidents that can be monetized, while Table 4 presents the non-monetized social benefits of accident reduction. *Id.* Non-monetized benefits discussed in Table 4 are significant. The final rule RIA⁸ discusses studies in the record that corroborate the magnitude of one type of benefit identified in Table 4, reduced property value impacts.

Further, EPA discussed in the proposal its belief that sources would adopt ISTs and other measures identified in a STAA when such measures were “practicable technically and economically and when the risk reduction is significant even in the absence of a mandate.” *Id.* at 53580. In so doing, the Agency solicited comment on whether sources should implement technically practicable IST/ISD and STAAs. *Id.* EPA also discussed that “an owner or operator may choose to not implement a safer technology or design identified on account of its cost” and proposed that “the evaluation of practicability be first based on technological, environmental, legal, and social factors, with economic considerations evaluated last.” *Id.* at 53581. Therefore, the NPRM identified the cost of implementing STAA measures as important to EPA’s thinking and practicable STAAs as being the ones the Agency thought most likely to be implemented. While the precise option ultimately adopted was not discussed in the NPRM with a specific cost estimate, the NPRM put the public on notice that cost and practicability would be factors in our ultimate decision on implementation. It should also be noted that the 2024 Safer Communities final rule also allows for consideration of whether a STAA measure is cost-prohibitive when assessing its practicability. RTC at 97.

⁸ EPA. Regulatory Impact Analysis for “Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention,” published at 89 Fed. Reg 17622 (March 11, 2024). The Safer Communities final rule RIA is available in the rulemaking docket at www.regulations.gov as item EPA-HQ-OLEM-2022-0174-0587.

Additionally, in the Safer Communities proposed rule RIA, EPA provided the cost of “reference” STAA projects in order to inform the estimated costs associated with the STAA practicability assessment. Proposed rule RIA at 36 – 38. The reference projects relied on in the proposed rule RIA were based in part on public comments received on the 2017 amendments rule RIA, including public comments from the American Water Works Association (AWWA) and AFPM. In the 2022 Safer Communities proposed rule, public commenters had the opportunity to assess the reasonableness of these reference STAA projects. However, no public comments provided input on the costs of the reference STAA projects. The reference STAA project costs included in the proposed rule RIA, along with additional reference projects identified by EPA for the 2024 Safer Communities final rule RIA, were ultimately used to calculate the STAA implementation costs in the Safer Communities final rule RIA.

Members of the public, including members of the RMP Coalition, recognized that costs would factor into EPA’s ultimate decision on STAA implementation. *See e.g.*, Comment from the NACD, EPA-HQ-OLEM-2022-0174-0234. In fact, EPA received several public comments in response to the 2022 Safer Communities proposed rule concerning costs for implementing STAA measures. RTC at 141 - 142. EPA responded to these concerns in the RTC document for the 2024 Safer Communities final rule, stating in part, “In response to comments concerning costs for implementing STAA measures, EPA believes there is an overemphasis on initial costs leading to less consideration of safer, reliable methods to reduce process risks. CCPS’ 2019, ‘Guidelines for Inherently Safer Chemical Processes, A Life Cycle Approach,’ discusses the tradeoff of initial and operating costs of implementing different STAA measures. CCPS indicates that while inherently safer and passive measures do tend to have higher initial capital costs, operating costs are usually lower than those for the other measures. For active measures as compared to inherently safer and passive measures, reliability is typically lower, and complexity is greater. Operating costs are also actually likely to be the greatest for active solutions. While procedural measures are most often tempting solutions due to their initial very low capital cost and typically lower complexity, they are often also the least reliable and should be considered only after other solutions have been explored.” *Id.* at 142 - 143.

EPA therefore finds that the petitioners’ claim does not satisfy the requirements of mandatory reconsideration under CAA section 307(d)(7)(B) because the STAA implementation cost issue was raised by the NPRM.

Second, petitioners’ objections that EPA failed to provide a sufficient reasoned basis for imposing significant costs on specific facilities also do not warrant mandatory reconsideration under CAA section 307(d)(7)(B) because the objection is not of central relevance to the outcome of the 2024 Safer Communities final rule—*i.e.*, the objection does not provide substantial support for the argument that the regulation should be revised. As mentioned previously, as it relates to accidental releases, especially worst-case scenarios, a singular focus on costs alone, without discussing the benefits of STAA implementation, is not reasonable.

In order to provide further justification that EPA’s final STAA implementation requirements were reasonable and justified, results from two studies published in 2023 were discussed in the Safer Communities final rule RIA.⁹ While these studies may have been published after the 2022 Safer

⁹ See EPA-HQ-OLEM-2022-0174-0587 available at www.regulations.gov.

Communities proposed rule, they corroborate EPA's argument in the 2022 Safer Communities proposed rule that benefits that were not monetized in the 2022 Safer Communities proposed rule could be substantial and support the reasonableness of the rule. The studies corroborate EPA's position in the 2022 Safer Communities proposed rule on which EPA sought comment, which is that preventing RMP facility accidents has an impact on residential property values.^{10,11} Specifically, the final rule RIA stated:

Two recent hedonic property value analyses have examined the impact of RMP facility accidents on residential property values (Guignet et al. 2023a, b). Using a difference in differences estimation approach, Guignet et al. (2023b) studied nationwide data on RMP facility accidents and residential transactions between 2004 and 2019 that occurred within 5.75 km (3.57 miles) of an accident. The analysis found that accidents with only onsite impacts reduced nearby property values between zero and two percent. However, accidents with impacts that occurred offsite, including fatalities, hospitalizations, people in need of medical treatment, evacuations, sheltering in place events, and/or property and environmental damage, reduced home values by two to three percent. The lower values persisted for about 10 to 12 years on average. The paper estimates an average loss of \$5,350 per home in 2021 year values. Aggregating across the communities near the 661 facilities that experienced an offsite impact accident in their data, Guignet et al. (2023b) calculate a total \$39.5 billion loss.

In the second paper, Guignet et al. (2023a) analyzed RMP facilities and accidents in a smaller geographic area – the three states of Michigan, Ohio, and Pennsylvania – from 2004 through 2014. The analysis used alternative difference-in-differences and triple differences approaches that allowed comparison between homes before and after an accident, near an accident versus farther away, and homes near facilities with an accident versus near facilities with no accidents. The study concluded that accidents with offsite impacts caused a five to eight percent decrease in home values within 5 km (3.1 miles) of a facility accident. Both studies concluded that nearby homeowners experienced significant losses following an accident with offsite impacts. Thus, provisions that reduce the risks and expected magnitudes of such accidents will protect nearby property values. Guignet et al. (2023a) found that homes located near facilities regardless of whether an accident has occurred are already valued significantly lower than homes farther away. Accidents can further depress property values and exacerbate disparities in home values. This is an important distributional concern considering that residential property is a key source of wealth to many households.

Final Rule RIA at 88 - 89.

Elsewhere, the final rule RIA discussed productivity losses at firms that have experienced an accident. Such losses are a separate additive category in relation to declines in *offsite* property values. The Final Rule RIA stated:

¹⁰Guignet, Dennis, Robin R. Jenkins, James Belke, and Henry Mason. 2023a. The property value impacts of industrial chemical accidents. *Journal of Environmental Economics and Management*. 120 (2023) 102839.

¹¹ Guignet, Dennis, Robin R. Jenkins, Christoph Nolte, and James Belke. 2023b. The External Costs of industrial Chemical Accidents: A Nationwide Property Value Study. *Journal of Housing Economics*. 62 (2023) 101954.

As for productivity losses, a Marsh 2016 report observed that business interruption insurance claims in the energy sector were typically 2 to 3 times a facility's property loss value.¹² Applying such a multiplier to the annual average onsite property damages [to facilities] of \$455 million over the 5-year period of 2016 to 2020 from RMP-related accidents included in this analysis, the annual average productivity losses would be \$909 million (using a factor of 2) to \$1.364 billion (using a factor of 3).

Final Rule RIA at 92.

The 2024 Safer Communities final rule estimated the baseline annual cost of accidents at RMP facilities as \$540 million. This value was calculated without accounting for the estimated impacts on property values provided by the two Guignet studies.¹³ 89 Fed. Reg. at 17624 n.1. Instead, EPA relied on these studies to corroborate a point made in the proposal, which was that the potential benefits of the rule are significant, and may well outweigh its estimated costs. 87 Fed. Reg. at 57562. EPA relied on the corroborating studies that supported the same prevention benefits described in the 2022 Safer Communities proposed rule and proposed rule RIA as part of its reasoned basis for requiring implementation of measures identified through a STAA (*See e.g.*, Final rule RIA at 78 and 81). Costs of STAA projects were adequately noticed, potential benefits identified for comment, facilities for focused accidental release highlighted for comment, and implementation discussed as an option. The cost issue raised in the petition only partially addresses factors EPA considered in determining the reasonableness of the 2024 Safer Communities final rule. Therefore, after reviewing petitioners' claim, EPA does not believe that the burden of the 2024 Safer Communities final rule's cost alone provides substantial support for the rule to be revised, and therefore, the claim is not of central relevance to the outcome of its final rule decision.

iii. Petitioners allege that the hierarchy of measures that facilities must implement is unclear.

Petitioners claim that the requirements of the implementation mandate are "arbitrary and unjustified." Petitioners also allege that the process for implementing the hierarchy of controls is not clear. Petitioners state, "How this hierarchy will work in practice, however, is far from clear. Suppose a facility's STAA identifies a passive measure that is extremely costly and provides only moderate risk reduction. The Final Rule's implementation mandate could be read to require a facility to adopt that costly passive measure before adopting a far less costly procedural measure that is nearly equivalent in risk reduction. This could occur so long as the passive measure was 'practicable' under the Final Rule and therefore preferred."

EPA disagrees that this information was not available for public comment for the 2024 Safer Communities final rule because the 2022 Safer Communities proposed rule preamble included a discussion of the hierarchy of controls which is consistent with EPA's final rule provisions. In the 2022

¹² Marsh JLT Specialty, "The 100 Largest Losses 1974-2015: Large property damage losses in the hydrocarbon industry," 24th Edition, March 2016. Accessed from <https://www.marsh.com/uk/industries/energy-and-power/insights/100-largest-losses.html>. Marsh provides estimates of large property damage losses in the hydrocarbon industry and in a few cases, business loss costs. See EPA-HQ-OLEM-2022-0174-0497 available at www.regulations.gov.

¹³ Similarly, the 2024 Safer Communities final rule estimate of \$540 million baseline annual accident costs did not account for facility productivity losses.

Safer Communities proposed rule, EPA explicitly proposed expanding upon the existing requirement for facilities with Program 3 processes to address hazards using engineering and administrative controls by addressing inherent safety. The 2022 Safer Communities proposed rule states, “Program 3 processes covered under this provision would have to consider the application of the following safer technology measures, in the following order: inherently safer technology (IST) or inherently safer design (ISD), passive safeguards, active safeguards, and procedural safeguards.” 87 Fed. Reg. 53575. EPA’s intent for the 2024 Safer Communities final rule was to apply and rely on the hierarchy of controls in the STAA provision as outlined in the 2022 Safer Communities proposed rule.¹⁴

The 2022 Safer Communities proposed rule included a practicability assessment, in addition to the STAA evaluation, and included a definition of “practicability” that made clear the allowable factors to consider in assessing which measures to implement at a facility. In the 2022 Safer Communities proposed rule, EPA said “EPA is also proposing to include a more comprehensive practicability assessment, in addition to the STAA evaluation requirements as part of the PHA. As part of this analysis, owners and operators would be required to identify, evaluate, and document the practicability of implementing inherent safety measures, including documenting the practicability of publicly available safer alternatives.” 87 Fed. Reg. 53575. The 2022 Safer Communities proposed rule made clear that economic considerations were a valid component to be considered in choosing which measures to implement. Specifically, the proposed rule defined “practicability” as “the capability of being successfully accomplished within a reasonable time, accounting for environmental, legal, social, technological and economic factors. Environmental factors would include consideration of potential transferred risks for new risk reduction measures.” 87 Fed. Reg. at 53608. The 2022 Safer Communities proposed rule clarified that “[a]lthough an owner or operator may choose not to implement a safer technology or design identified on account of its cost, EPA is proposing that the evaluation of practicability be first based on technological, environmental, legal, and social factors, with economic considerations evaluated last.” 87 Fed. Reg. at 53581.

EPA received several public comments in response to the 2022 Safer Communities proposed rule regarding the implementation of inherently safer technologies. RTC at 141 - 142. In response to these comments, EPA clarified that the rule “allows a source to adopt layering active and procedural measures to achieve the equivalent risk reduction a passive measure would achieve and does not adopt a requirement for an IST/ISD at each hazard point. The Agency retains substantial flexibility for owners and operators to select among passive measures they deem appropriate for their stationary sources.” *Id.* The 2024 Safer Communities final rule states that facility owners and operators will have flexibility to “assess and potentially implement IST, implement passive measures, or implement a combination of active and procedural measures to reduce risk associated with a process.” 89 Fed. Reg. at 17652. Additionally, in the 2024 Safer Communities final rule, EPA retained the definition of “practicability” as proposed without revision and specified that “EPA believes that it is appropriate for a

¹⁴ Additionally, inherent in the common understanding of a hierarchy of controls is a preference for higher-ranked control options. *See, e.g.*, CCPS. 2009, *Inherently Safer Chemical Processes: A Life Cycle Approach*, 2nd ed., American Institute of Chemical Engineers, CCPS New York, Wiley; 87 Fed. Reg. at 53575; 81 Fed. Reg. at 13663; 82 Fed. Reg. at 4638; EPA Response to Comments on the 2016 Proposed Rule Amending EPA’s Risk Management Program Regulations (March 14, 2016; 81 FR 13637), at 113 - 114 and 141. Petitioners’ objection to the clarity of the hierarchy of controls in the 2024 Safer Communities final rule does not provide substantial support for the argument that the regulation should be revised, and therefore is also not of central relevance to the 2024 Safer Communities final rule.

facility to consider the five practicability factors (i.e., economic, environmental, legal, social and technological) for evaluating the appropriateness of implementing for potential IST measures because some IST can involve significant costs or involve impacts that go beyond the facility.” 89 Fed. Reg. at 17650. Therefore, given that EPA explained the hierarchy of controls in the 2022 Safer Communities proposed rule and allowable factors to consider when choosing which measures to implement, subject to public comment, and EPA addressed it in the RTC and preamble to the 2024 Safer Communities final rule, EPA finds that it was not impracticable to have raised objections about implementing practicable measures consistently with the hierarchy of controls during the comment period.¹⁵ Therefore, these claims do not satisfy the requirements of mandatory reconsideration under CAA section 307(d)(7)(B).

iv. Petitioners allege that the Agency did not resolve many additional aspects of the implementation mandate that are unclear, because stakeholders did not have the chance to comment.

Petitioners claim that the requirements of the implementation mandate are unclear because they were not raised for public comment. Petitioners argue that the 2024 Safer Communities final rule “appears to assume that a facility does not already have existing passive measures” and does not address how the implementation mandate applies to facilities with multiple process hazard analyses (PHAs). Petitioners argue that if existing passive measures are already in place, “the Final Rule would be requiring additional, perhaps duplicative or redundant measures for an already safe process.” EPA disagrees with this claim. The 2022 Safer Communities proposed rule preamble acknowledged that then-current PHA requirements include some aspects of the hierarchy of controls analysis. EPA also noted the discussion in the 2017 amendments proposed rule, which pointed out that an evaluation of engineering and administrative controls has been required at Program 3 facilities since 1996, leaving implementation up to the owner or operator. 87 Fed. Reg. at 53575. EPA received several comments in opposition to the proposed STAA provisions, including comments from Petitioners that “Analysis of passive measures, active measures, and procedural measures already occurs as part of the PHA.”¹⁶ In response to these and other comments, EPA acknowledged in the RTC that the requirement to assess control of hazards has been a PHA requirement since the inception of the rule. RTC at 90. EPA acknowledged that “some passive (or equivalent) safeguards to control hazards are likely already in place.” *Id.* Further, EPA responded that “Facilities that have already implemented passive measures or an equivalent level of risk reduction should document their implementation in their next PHA, determine whether there is additional information that should be considered in their STAA, and

¹⁵ The issue raised by petitioners poses a hypothetical of an extremely costly but practicable passive measure that provides moderate risk reduction and whether it would have to be implemented under the rule when a set of less costly active and procedural measures identified in the STAA would provide nearly equivalent risk reduction at a much lower cost. In this hypothetical, the petition conjectures a scenario in which the costs do not render the passive measure project impracticable (the rule allows for consideration of cost when assessing practicability). By describing the alternate project as “nearly equivalent” rather than equivalent, the hypothetical assumes the alternate project provides demonstrably inferior risk reduction (the rule does not require strictly quantified risk estimations, so “nearly equivalent” concedes the alternative provides inferior risk reduction that is apparent). The rule provides the owner or operator the flexibility to choose one among the practicable passive measures at the stationary source rather than forcing implementation of every practicable measure, so in order for the source to be compelled to choose among only the two options in the hypothetical, there would have to be no other practicable risk-reducing passive measures at the stationary source. Assuming all the conditions are met for the hypothetical, then the rule does require the selection of the demonstrably superior risk-reducing measure that is not cost prohibitive and otherwise is practicable.

¹⁶ See EPA-HQ-OLEM-2022-0174-0233, available at www.regulations.gov.

continue to consider additional passive (or equivalent) measures during subsequent PHA re-validation cycles.” *Id.* This response was reiterated in the 2024 Safer Communities final rule preamble. 89 Fed. Reg. at 17652.

Petitioners claim that the 2024 Safer Communities final rule is not clear in addressing how facilities that conduct multiple PHAs are to comply with the implementation requirement. Petitioners argue that “the rule is unclear as to whether a mitigation measure is required every five years (a PHA cycle), or whether the new regulation requires a mitigation measure every time a PHA is conducted at a covered source. Likewise, if mitigation measures are required because a process unit had a reportable event, the Final Rule does not specify whether the mitigation measure must be implemented at that same process unit.” EPA sought comment on whether the Agency should require implementation of technically practicable IST/ISD and STAAs in addition to the requirement to include evaluation of STAA as a part of the PHA in the 2022 Safer Communities proposed rule preamble. 87 Fed. Reg. at 53580. In the proposed changes to 40 CFR 68.67 described in the 2022 Safer Communities proposed rule preamble, EPA provided that “[t]he PHA must be updated and revalidated at least every 5 years in accordance with paragraph 40 CFR 68.67(f).” 87 Fed. Reg. 53581. This paragraph requires that the PHA shall be updated and revalidated at least every five years after the initial PHA, which is to be performed on processes covered by Part 68. The 2022 Safer Communities proposed rule also provided compliance dates for the proposed STAA provisions, with the compliance date being three years after the effective date of the 2024 Safer Communities final rule (May 10, 2024), which is consistent with the last sentence of CAA section 112(r)(7)(B)(i). In the 2024 Safer Communities final rule preamble, EPA provided guidance on the compliance date for the STAA evaluation and IST/ISD practicability assessment, as well as the STAA safeguard implementation provision. 89 Fed. Reg. at 17681. EPA also asserted that “implementation (of at least one passive measure, or an inherently safer measure, or an inherently safer technology or design, or a combination of active and procedural measures equivalent to or greater than the risk reduction of a passive measure) is required each PHA cycle.” *Id.* “Each PHA cycle” is not the same as “each PHA.” The reference is to the five-year PHA cycle. Only one STAA measure needs to be undertaken at the stationary source each cycle regardless of how many PHAs are performed over the five-year period.

Since the implementation mandate was proposed as an alternate option in the NPRM, sources were on notice, and could have raised issues related to facilities with multiple processes requiring PHAs in the period for public comment. Therefore, petitioners’ claims do not meet the requirement for mandatory reconsideration.

v. Petitioners allege that the final rule imposes a definition of which measures are “practicable” that violates CAA section 112.

Petitioners claim that the 2024 Safer Communities final rule imposes a definition of which measures are “practicable” that violates CAA section 112. Petitioners argue that by stating, “a claim that implementation is not practicable shall not be based solely on evidence of reduced profits or increased costs,” the Agency is going back on its stance that “cost is a valid consideration for practicability.” Petitioners state that “the term ‘practicable’ inherently includes at least some consideration of whether a course of action is financially ‘feasible’ or economically justified.” EPA disagrees with petitioners’ claim that EPA is reversing its position on what is “practicable.” In the 2022 Safer Communities proposed rule, EPA acknowledged cost and economics would be part of a facility’s decision to adopt a

safer technology. 87 Fed. Reg. at 53580. EPA also discussed that what is “practicable” may change over time due to changes in cost and technology. *Id* at 53581. In stating that owners or operators should not rely *solely* on evidence of reduced profits or increased costs to determine practicability, EPA has maintained its stance that cost is a valid consideration. The 2022 Safer Communities proposed rule preamble stated, “EPA is proposing to define the term ‘practicability’ as the capability of being successfully accomplished within a reasonable time, accounting for technological, environmental, legal, social, and economic factors.” 87 Fed. Reg. at 53581. This definition did not change in the 2024 Safer Communities final rule. Moreover, the 2024 Safer Communities final rule preamble states “to the extent that particular measures are cost-prohibitive, the rule allows for that to be a factor in assessing whether a measure is practicable.” 89 Fed. Reg. at 17649.

The petition further argues that EPA has not met the standard of *FCC v. Fox Televisions Stations, Inc.*, 556 U.S. 502, 515 (2009), which requires an Agency to have “good reasons” to change the status quo of an adopted rule that the Agency has concluded is beneficial. EPA disagrees, as the Agency has maintained in the 2024 Safer Communities final rule that facilities may consider cost when determining whether the implementation of IST/ISD is “practicable.” In the RTC, EPA clarified its position, stating:

The relevant statutory phrase describing EPA’s authority to regulate under CAA section 112(r)(7)(B)(i), authorizes ‘reasonable regulations . . . to provide, to the greatest extent practicable,’¹⁷ for the prevention and detection of and response to accidental releases of substances listed in 40 CFR 68.130. EPA interprets the term ‘practicable’ in this context to include concepts such as cost-effectiveness of the regulatory and implementation approach, as well as the availability of relevant technical expertise and resources to the implementing and enforcement agencies and the owners and operators who must comply with the rule.

RTC at 305. Petitioners’ claims do not meet the mandatory reconsideration criteria because the definition of practicability was plainly raised for public comment in the 2022 Safer Communities proposed rule.

vi. Petitioners allege that EPA lacks the authority to mandate adoption of IST/ISD.

¹⁷ The petition cites the language of CAA section 112(r)(7)(B)(i) as a limitation on the meaning of “practicable” in that the regulatory terms must be reasonable as well, and claims the rule is unreasonable because it “effectively prohibits facilities from conducting a common-sense assessment of whether a given measure is cost justified.” Petition at 6. As noted above, the rule allows for rejecting measures that are cost-prohibitive and recognizes that “practicable” includes the concept of “cost-effectiveness.” EPA acknowledged that the rule must be both “reasonable” and “practicable” at all points in the rulemaking. *See, e.g.*, 89 Fed. Reg. at 17632-33 (discussion of how the final rule gives effect to both terms). The petition attempts to bolster its argument about economic considerations by citing to language from elsewhere in CAA section 112, specifically with a selective quote from CAA section 112(h)(2)(B): “Section 112 expressly contemplates that something could be ‘not practicable due to . . . economic limitations.’” The quoted provision addresses when a work practice or non-numeric emission limitation is allowed under another program under section 112, the National Emissions Standards for Hazardous Air Pollutants (NESHAP). The NESHAP program and the CAA section 112(r) program regulate different types of pollutants and different emissions. *Compare* CAA section 112(a) (definitions for section 112 “except for subsection (r)”) *with* CAA section 112(r)(2) (definitions applicable to section 112(r)); CAA section 112(b) (hazardous air pollutant list for NESHAPs) *with* CAA section 112(r)(3) & (4) (authority for RMP list at 40 CFR 68.130). While both the NESHAP program and the RMP program are in section 112, the programs are distinct. That the NESHAP provisions may use a term one way does not establish how it should apply to the RMP rule. We also note that the ellipsis in the quote above omits “technical and.” Thus, were section 112(h)(2)(B) relevant to the authority under section 112(r)(7)(B)(i), it suggests that a matter must be both technically and economically infeasible, and not be simply not justified on costs.

vii. Petitioners allege that the authority to mandate adoption of IST/ISD for all processes presents a major question that would require clear congressional authorization.

EPA is addressing the two related objections, vi and vii., together. Petitioners argue that EPA does not have the authority to mandate the adoption of IST/ISD. Petitioners make several claims regarding EPA's authority to adopt the implementation mandate, including:

- "EPA claimed its authority to adopt the implementation mandate based on a legal rationale that appears nowhere in the Proposed Rule."
- "Subparagraph (B) of Section 112(r)(7) covers only 'the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control' accidental releases. Nothing in that language suggests that EPA may require facilities to mothball existing technologies and adopt wholly new technologies or processes... subparagraph (A) is plainly aimed at 'design . . . requirements' for *new* processes; it cannot be fairly read to permit EPA to require that all facilities' existing processes be thrown out based on new process designs."
- "The authority to impose a mandate to adopt IST/ISD for all processes, however, presents a 'major question' that would require 'clear congressional authorization'."
- "Congress's 'consistent judgment' against empowering EPA to mandate STAA undercuts the Agency's claim to congressional authorization."

These claims do not meet the mandatory reconsideration criteria under section 307(d)(7)(B) because they fail to provide information that was impracticable to raise during the public comment period. As described in previous sections, EPA clearly raised the implementation mandate for public comment in the 2022 Safer Communities proposed rule (87 Fed. Reg. 53580). To accompany those final provisions, EPA also outlined Congress's grant of authority to EPA in order to establish chemical accident prevention rules under subparagraphs (A) and (B) of CAA section 112(r)(7) (87 Fed. Reg. 53563 – 53564). Generally, the 2022 Safer Communities proposed rule explains that the Agency used the same CAA section 112(r)(7) authority to issue the Safer Communities proposed rule that it used when issuing the 1996 RMP rule (61 FR 31668; June 20, 1996), the 2017 amendments rule (82 FR 4594; January 13, 2017), and the 2019 reconsideration rule (84 FR 69834; December 19, 2019).¹⁸ *See id.* at 53564. Specifically, STAA, which includes IST/ISD, is identified in the Safer Communities proposal as a prevention program authorized by CAA 112(r)(7)(B)(i) as one of several measures used to address prevention and detection of accidental releases. *Id.* EPA also cited to CAA section 112(r)(7)(A) for authority for STAA. *See id.* n.13. Therefore, EPA's claim of authority for the STAA provisions was apparent in the 2022 Safer Communities proposed rule, and the petitioners, as part of the public, could have raised their concerns about EPA's lack of authority during the comment period.

EPA reiterated in the 2024 Safer Communities final rule preamble that both subparagraphs (A) and (B) authorize requiring implementation of safer technologies. 89 Fed. Reg. 17644. The 2024 Safer Communities final rule also pointed to the preambles of the 2017 amendments rule, the 2019 reconsideration rule, and the 2022 Safer Communities proposed rules which "all had vigorous discussion of the merits of implementing STAA throughout the rulemaking process." *Id.* On that point, the 2024 Safer Communities final rule states, "Our prior rulemakings have discussed our policy view of the merits of requiring implementation. Our prior decisions have not questioned what we view to be

¹⁸ The 2019 reconsideration rule is available in the rulemaking docket at www.regulations.gov as item EPA-HQ-OEM-2015-0725-2002.

clear on the face of the statute: that the CAA authorizes EPA to require implementation of IST/ISD and other STAA measures.” *Id.* Therefore, if the commenters wanted additional justification beyond what was properly provided in our 2022 Safer Communities proposal, they could have also referred to the additional justifications in the previous rulemaking EPA cited. For example, the final rule preamble for the 2017 amendments rule, which EPA referred to in the 2022 Safer Communities proposal, states:

Both subparagraphs (A) and (B) of CAA section 112(r)(7) authorize STAA and IST in particular. EPA cited all of paragraph (7) as authority for “[e]ach of the portions of the Risk Management Program rule we propose to modify.” 81 FR 13646, March 14, 2016. [Footnote 63: We note that our more extensive discussion of authority for the RMP rule provided in the 1993 proposal focused on CAA 112(r)(7)(B)(i) and (ii), 58 FR 54191–93 (October 20, 1993), ...] The authority section for 40 CFR part 68 references CAA section 112(r) and is not limited to particular paragraphs and subparagraphs. ... [W]e also view that our authority to require STAA assessments or an IST review is consistent with subparagraph (B). Under subparagraph (B), EPA has broad authority to develop “reasonable regulations . . . for the prevention of accidental releases.”

The 2017 amendments rule, as referenced in the 2022 Safer Communities proposal, further indicated that support for IST can be found in both the Conference Report accompanying the 1990 CAA Amendments and the Senate Report explaining the provisions of the Senate bill. Specifically, the 2017 preamble stated:

In discussing the “Hazard Assessments” required by section 112(r)(7)(B), the Conference Report specifies that such assessments “shall include . . . a review of the efficacy of various release prevention and control measures, including process changes or substitution of materials.” [Footnote omitted] Conference Report at 340–41. The STAA analysis is such a review. [Footnote omitted] The Senate Report identifies as “release prevention measures” many of the techniques that are now known as IST—substitution of less hazardous materials, reduction in the severity of the conditions of processing and complexity of the process, and decreasing volumes of chemicals in storage. [Footnote omitted] Senate Report at 242.

82 Fed. Reg. 4594, 4630–4631 (Jan. 13, 2017). EPA therefore finds that its statutory authority for the STAA provisions were sufficiently outlined for public comment not only in 2022 Safer Communities proposal itself, but also taken in tandem with cross references to other RMP rule preambles EPA cited to in the proposal.

Further, EPA received public comments in response to the 2022 Safer Communities proposed rule’s explanation of authority to require STAA, including public comments from members of the RMP Coalition. RTC at 94. EPA provided an extensive response in the RTC, mirroring similar discussions included in EPA’s prior rulemakings discussed above, stating:

The Agency disagrees with the comments that the CAA does not authorize the STAA provisions of this final rule. Both paragraphs (A) and (B) of CAA section 112(r)(7) authorize STAA and IST in particular. EPA cited all of section 112(r)(7) as authority for “[e]ach of the portions of the Risk Management Program rule we propose to modify” (81 FR 13646; March 14, 2016). The authority

section for 40 CFR part 68 references CAA section 112(r) and is not limited to particular paragraphs. The proposed rule also noted that paragraph 112(r)(7)(A) had been invoked in the rulemaking petition on IST and is an express grant of authority for regulation of design and operations. The statute explicitly provides the Administrator with the authority to promulgate “design, equipment, work practice, and operational requirements’ in CAA section 112(r)(7)(A), as well as requirements for ‘preventing accidental releases of regulated substances, including safety precautions and maintenance” in CAA section 112(r)(7)(B)(ii)(II). The regulation promulgated in this final rule simply imposes standards on continuing safe operations and equipment. Furthermore, the regulations required by CAA section 112(r)(7)(B)(i), “shall cover the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control” accidental releases of regulated substances as appropriate (emphasis added). Terms such as “use” and “operation” necessarily allow EPA to address ongoing activities and not simply the pre-construction phase, and “replacement” of “equipment” to “control” releases authorizes EPA to require upgrades to release prevention measure such as practicable passive control measures...the Conference Report and the Senate Report provide ample support for requiring implementation of process and control measures to lessen the likelihood and impact of accidental releases.

Therefore, EPA provided sufficient notice that the Agency contemplated action under any authority under CAA section 112(r)(7). Nevertheless, EPA also views its authority to require STAA assessments or an IST review, or implementation of safeguards to reduce risk as being consistent with paragraph 112(r)(7)(B). Under paragraph (B)(i), EPA has authority to develop ‘reasonable regulations . . . for the prevention of accidental releases.’ The reduction in severity of conditions in a process plainly impacts the accidental release conditions and thus the modeling called for in section 112(r)(7)(B)(ii)(I). Moreover, section 112(r)(7)(B)(ii)(II) specifically mentions that prevention programs in risk management plans shall provide for ‘safety precautions;’ STAA measures are a type of safety precaution. Finally, as noted in the preamble, the Conference Report for the 1990 CAAA and the Senate Report both demonstrate that Congress intended the regulations to prioritize STAA as a prevention measure.

Id. at 94 – 95.

EPA therefore finds that the petitioners’ claim regarding its authority to require IST/ISD does not satisfy the requirements of mandatory reconsideration under CAA section 307(d)(7)(B) because EPA’s authority to require STAA implementation was raised in the NPRM.

Finally, EPA notes that the issue of an IST/ISD mandate is premature, and thus, so is petitioners concern of an IST/ISD mandate being a “major question.” The rule does not *mandate* IST/ISD at all, not even on new processes that the petition acknowledges fits within “design” regulation under CAA 112(r)(7)(A). Petition at 6. Rather, the rule *allows for the adoption* of an IST/ISD in lieu of a passive measure. 40 CFR 68.67(h). Therefore, the petition is not actually arguing that the 2024 Safer Communities final rule requirements (implementation of a practicable passive measure or its equivalent, or an active measure if there is no practicable passive measure, or a procedural measure if there is no practicable active measure) is beyond EPA’s authority under CAA section 112(r)(7). While the petition conjectures massive costs associated with a hypothetical rule that contains an IST/ISD mandate in order to raise the prospect of a “major question” (an issue that could have been raised in comments), EPA’s approach to

CAA section 112(r)(7) has weighed the burden of potential regulations with their benefits and has refrained from claiming authority to impose disproportionate burdens.

Concluding Remarks on STAA

EPA maintains that the STAA provisions required by the 2024 Safer Communities final rule should decrease the accident risks posed by facilities that meet the three conditions for the STAA practicability and implementation requirements. These provisions help address recommendations made by the CSB to EPA as a result of accidents that have occurred at RMP facilities over the last several years.¹⁹ One recent recommendation was to “update the Risk Management Program (RMP) rule by expanding the requirements of 40 CFR Part 68 to include an evaluation of the need for remote isolation devices for major process equipment that can be remotely activated from a safe location or automatically activated during a release.”²⁰ The CSB study identified numerous incidents that resulted in heightened consequences following an accidental release due to the lack of effective remote isolation equipment. CSB stated, “These incidents resulted in serious injuries, fatalities, environmental contamination, and severe damage to facilities.” CSB 2024. EPA maintains that this type of evaluation reflects ongoing developments in the field, therefore remote isolation equipment typically would be assessed and potentially implemented when STAAs are performed periodically as required by the rule. See 40 CFR 68.67(c)(9) (analysis) and 67.68(h)(implementation). The new requirements are designed to eliminate or reduce risk from process hazards, such as hazards mitigated by the use of remote isolation devices.

In sum, the issues of a requirement to perform a STAA and, for a subgroup, to document a practicability analysis and to implement a practicable measure identified in the STAA were no mystery for the RMP Coalition nor were the members deprived of a meaningful opportunity to comment on these issues. Critical terms associated with STAA, including IST, passive measures, and practicability have stayed

¹⁹ For example, the 2019 explosion and fire at the TPC Group (TPC) in Port Neches, Texas reported the largest number of persons ever evacuated (50,000 people) as a result of an RMP-reportable incident. The accident also caused \$153 million in offsite property damage, according to the CSB incident investigation report, available at www.regulations.gov as item EPA-HQ-OLEM-2022-0174-0552. This facility was highlighted as an example in the preamble to the 2024 Safer Communities final rule (89 Fed. Reg. at 17634), as it had not been recently inspected and was not prioritized for an inspection, since TPC had no recent prior RMP accidental releases and was not otherwise due for inspection under EPA’s routine oversight plan. Additionally, CSB issued recommendations to EPA in the wake of the Tesoro Anacortes Refinery fatal explosion and fire in 2010 advising EPA to require the documented use of inherently safer systems analysis and the hierarchy of controls to the greatest extent feasible when facilities are establishing safeguards for identified process hazards and develop related guidance. The CSB investigation report is available at https://www.csb.gov/assets/1/7/tesoro_anacortes_2014-may-01.pdf. More recently, the Honeywell International Fluorine Products facility in Geismar, Louisiana has experienced a number RMP-reportable accidents involving both HF and chlorine. On October 21, 2021, a Honeywell employee died after being exposed to HF. On January 23, 2023, an incident at the Geismar facility resulted in an explosion and release of approximately 870 pounds of HF and 1,700 pounds of chlorine, leading to closure of nearby highways, workers sheltering in place at the facility, and \$4 million in estimated property damage. The CSB investigation update as of July 2024 is available at https://www.csb.gov/assets/1/6/honeywell_geismar_investigation_update_-_final_2024.07.10.pdf. On June 7, 2024, a contract maintenance worker was exposed to HF at the facility and seriously injured. The CSB news report on these recent incidents is available at <https://www.csb.gov/us-chemical-safety-board-launches-investigation-into-another-release-of-toxic-hydrofluoric-acid-at-honeywell-facility-in-geismar-louisiana/>. As a NAICS 325 facility, Honeywell Geismar would have become subject the STAA practicability and implementation requirements after its initial accident. Thus, for over a decade, the need for such regulation has been clear. The STAA provisions in the 2024 Safer Communities final rule could help to improve chemical process safety by preventing similar accidents.

²⁰ CSB 2024. CSB Safety Study: Remote Isolation of Process Equipment. 2024. July 25. <https://www.csb.gov/csb-safety-study-remote-isolation-of-process-equipment/>.

consistent throughout the 2024 Safer Communities rulemaking, while the implementation of practicable ISTs as well as safer technologies identified through STAA has been an issue for comment not only in the 2022 Safer Communities proposed rule but throughout multiple rounds of substantive public comment (*E.g.*, listening sessions for the Safer Communities rule, the 2016 RMP amendments rule proposal (81 Fed. Reg. 13638, 13662-70 (March 14, 2016), the Supplemental Notice for the original RMP rule (60 Fed. Reg. 13526, 13534-35 (March 13, 1995)). As noted above, members of the RMP Coalition such as NACD and AFPM provided some of the cost information relied on in the economic analyses for the rule and members commented on the legal authority issues in this petition. Both ACC and API submitted comments to EPA on the proposed rule that cited to reports by the National Academy of Science, Engineering, and Medicine, the U.S. Department of Homeland Security and the State of New Jersey. These reports discuss at length a variety of costs, benefits, technical, operational and societal considerations relevant to analyzing STAA and IST/ISD.²¹ The Petition fails to acknowledge that most of its members provided comments on the issues raised in the Petition, supporting the conclusion that it was not impracticable to raise the objections to the 2024 Safer Communities rule during the comment period.

B. Petitioners Allege that the Final Rule’s Expanded Information Availability Requirements Improperly Compel Disclosure of Additional Sensitive Information Without Adequate Justification

i. Petitioners allege that EPA inexplicably expanded both the universe of those who could request sensitive information and facilities’ disclosure obligations in the final rule.

Petitioners argue that the updated provisions in the 2024 Safer Communities final rule regarding the availability of information to the public are “arbitrary and capricious.” Petitioners claim EPA expanded the pool of individuals who could request information, as well as the types of information that can be requested by members of the public, without providing an adequate rationale or justification.

Petitioners make several claims regarding the updated information availability requirements, including:

- “EPA inexplicably expanded the universe of those who could request this sensitive information to include individuals ‘*working, or spending significant time within 6 miles*’ of the facility.”
- “The expansion of the disclosure requirements to anyone who ‘spends significant time’ near a facility unreasonably resurrects the safety and national security concerns that led EPA to rescind these disclosure obligations in 2019.”
- “...anyone—whether they work for a public interest group or an international terrorist organization—could claim to ‘spen[d] significant time’ near a facility, thereby obligating the facility to disclose sensitive hazard information.”

As explained below, EPA finds that these claims do not require mandatory reconsideration. The CAA requires the Administrator to grant reconsideration when a petitioner raises an objection to the final rule that was impracticable to raise during the comment period or arose after the comment period but within 60 days of publication of the final rule and is of central relevance to the final rule (CAA

²¹ See EPA-HQ-OLEM-2022-0174-0215 and EPA-HQ-OLEM-2022-0174-0233 available at www.regulations.gov.

307(d)(7)(B)). To deny a petition for reconsideration, EPA need not address the claim that the objection to the final rule provision is arbitrary and capricious (and potentially centrally relevant) if the information availability requirements of the final rule were adequately raised for comment by the proposed rule.

In the 2022 Safer Communities proposed rule preamble, EPA discussed restoring the information availability provisions of the 2017 amendments rule. 87 Fed. Reg. at 53599. The 2017 information availability provision was open to the “public,” not just residents, and the 2022 Safer Communities proposed rule used the terms “public” and “community members,” in addition to those living within 6 miles of a facility, to describe individuals who would be able to request information under this provision. *Id.* In the 2024 Safer Communities final rule, EPA provided clarity to those proposed provisions by conforming the regulatory text to what was described in the 2022 Safer Communities proposed rule. The 2024 Safer Communities final rule preamble therefore specified that “members of the public residing, working, or spending significant time in a 6-mile radius from the fenceline of the facility are able to submit information requests to a source.” 89 Fed. Reg. at 17672. The 2024 Safer Communities final rule provision was thus a logical outgrowth of the 2022 Safer Communities proposed rule.

The 2022 Safer Communities proposed rule preamble also discussed the security concerns identified in the 2019 reconsideration rule as it relates to a Department of Justice (DOJ) report, “Assessment of the Increased Risk of Terrorist or Other Criminal Activity Associated with Posting Off-Site Consequence Analysis Information on the Internet,” and explained the goal of the 2022 proposed provision to “increase information availability to communities [in a manner] that balances information availability to communities with the previously identified security concerns.” 87 Fed. Reg. at 53600. By limiting information availability to the public residing, working, or spending significant time within six miles of a stationary source, EPA also addressed the security concerns raised by DOJ’s report regarding “widespread anonymous access to ... consolidated information.” *Id.* EPA received several comments regarding security concerns about the proposed information availability requirements, including comments from members of the RMP Coalition. *See, e.g.,* Comment from NACD, EPA-HQ-OLEM-2022-0174-0234; Comment from AFPM, EPA-HQ-OLEM-2022-0174-0268; Comment from API, EPA-HQ-OLEM-2022-0174-0233; Comment from U.S. Chamber of Commerce et al., EPA-HQ-OLEM-2022-0174-0272.²² In the RTC, EPA addressed these concerns and stated, “EPA worked closely with Federal partners, including the DHS and the Federal Bureau of Investigation (FBI), to develop information availability requirements that strike a balance between security concerns and the need for sharing chemical hazard information with the public.” RTC at 263. In the 2024 Safer Communities final rule preamble, EPA repeated this statement and added that “EPA believes that the finalized approach is consistent with existing requirements to secure sensitive information.” 89 Fed. Reg. at 17674.

All final rule provisions were explicitly proposed by EPA and were thus available for public comment via EPA’s 2022 Safer Communities proposed rule. In fact, members of the RMP Coalition submitted comments on the proposed information availability requirements. Therefore, EPA finds that these claims fail to meet the mandatory reconsideration criteria of being impracticable to raise during the comment period or arising after the comment period.

²² All comments available at www.regulations.gov.

ii. Petitioners allege that the final rule tries to shift responsibility for addressing safety and national security concerns to facilities.

Petitioners claim that the 2024 Safer Communities final rule places responsibility on facilities to ensure individuals requesting information meet the “presence within 6-miles” requirement without providing adequate guidance for how this should be accomplished. Petitioners also claim that the requirement to “maintain a record of the members of the public requesting chemical hazard information for five years” (89 Fed. Reg. at 17692) was not included in the 2022 Safer Communities proposed rule or justified in the 2024 Safer Communities final rule.

EPA finds that these claims do not satisfy the requirements of mandatory reconsideration under CAA section 307(d)(7)(B). The issues of who could request chemical hazard information and the facility’s involvement in the distribution of this information to requestors were raised for comment in the 2022 Safer Communities proposed rule, and EPA received public comments on these issues. Specifically, EPA proposed “to allow the public to request specific chemical hazard information if they reside within 6 miles of a facility... the 6-mile restriction would allow access to information for the vast majority of the public that are within worst case scenario impact zones. Having received such a request, the facility would be required to provide certain chemical hazard information and access to community emergency preparedness information. This proposal is similar to the 2017 amendments rule, with the added modification that information be restricted to those persons within 6 miles of the facility.” 87 Fed. Reg. at 53599. The 2022 Safer Communities proposed rule preamble also states, “Allowing all community members demonstrating residence within 6 miles of the facility to request this information would ensure information availability in areas without [Local Emergency Planning Committees or Tribal Emergency Planning Committees] LEPCs/TEPCs.” 87 Fed. Reg. at 53601. As described in the previous section, the inclusion of those working or spending significant time within six miles of a facility in addition to just “residing” is a logical outgrowth of the 2022 Safer Communities proposed rule. EPA’s 2022 Safer Communities proposed rule thus gave adequate notice of its intent to provide chemical hazard information to members of the public within six miles of a facility.

Additionally, EPA sought comment on the six-mile limitation for requesting chemical hazard information. Specifically, the NPRM raised the issue of facilities needing to provide information to local requesters and needing to give “instructions for how to request the information” 87 Fed. Reg. at 53601. Inherent in soliciting comment on facilities needing to provide instructions on how to request information and on being required to provide information is a solicitation of comment on how to evaluate requests, as evidenced by the series of comments on the issue of determining whether requesters are in fact from the area. EPA also received several public comments in response to the 2022 Safer Communities proposed rule raising concerns regarding how the identity of requestors will be verified. RTC at 271 - 272. In response to these public comments, EPA finalized requirements for sources to provide instructions for how to request information, including verification of presence within six miles of the facility. Despite Petitioners arguments to the contrary, EPA did provide guidance for how this should be accomplished in the RTC by stating, “EPA expects facility owners and operators to notify the public that information is available in a variety of ways, such as using free or low-cost internet platforms, and social media tools that are designed for sharing information with the public. EPA also expects verification of the population within the 6-mile radius to be carried out through many methods, such as asking a member of the public to provide a utility bill for verification of residence, pay stub for verification of employment, or specific documentation to verify significant time spent within

the 6-mile radius. EPA encourages the facility owner or operator to coordinate information distribution and verification requirements with the LEPC or local emergency response officials to determine the best way to reach public stakeholders.” RTC at 273.

EPA further clarified, “The final rule leaves substantial flexibility for facilities to design a process for obtaining verification and keeping records of requestors that allows for facilities to have a suitable, minimally burdensome process for themselves and the community. The final rule allows for a straightforward process that does not hinder the right of the public to access this information, allows facilities to be aware who has their information, and permits oversight by implementing agencies.” RTC at 272. EPA thus provided guidance on how facilities are to ensure individuals requesting information meet the “presence within 6-miles” requirement.

As for petitioners’ claim that the recordkeeping requirement was not included in the 2022 Safer Communities proposed rule or justified in the 2024 final rule, EPA notes that recordkeeping is already required by the rule, as demonstrated by 40 CFR 68.200.²³ In other words, even if the final rule had not included the specific five year retention requirement within 40 CFR 68.210(h), owners and operators of stationary sources would have nonetheless been subject to a five-year recordkeeping provision from the requirements of 40 CFR 68.200. In response to a public commenter asking whether facilities would be required to keep records of people requesting information under the information availability provisions during the period for public comment,²⁴ EPA asserted that owners or operators are required to maintain a record of members of the public requesting information. RTC at 272. However, even within that recordkeeping requirement, the RTC further clarified that “[t]he final rule leaves substantial flexibility for facilities to design a process for obtaining verification and keeping records of requestors that allows for facilities to have a suitable, minimally burdensome process for themselves and the community.” *Id.* The final requirement to keep a record of those requesting information was therefore a logical outgrowth of what was proposed in the 2022 Safer Communities proposed rule. Additionally, the petitioner’s objection to this provision is not centrally relevant to the rule. While the placement of 40 CFR 68.210(h) is arguably more convenient for a reader of the regulation, due to the requirements of 40 CFR 68.200, the petitioner’s obligation to retain records for five years is the same regardless of 40 CFR 68.210(h).

EPA therefore finds that these claims do not satisfy the criteria for mandatory reconsideration under CAA section 307(d)(7)(B) because the issue of which community members within 6-miles of a facility may request information from the facility was raised for comment, as was the process for requesting that information (that is, how to request and how, inherently, to determine the validity of the request). The extent of public comment on these issues demonstrates the public was sufficiently on notice of the issues, showing that they were not impracticable to raise during the period for public comment. Additionally, not only is the Agency’s clarification of how facilities are to verify and keep records of requestors a logical outgrowth of the issues highlighted in our proposal, but also the objection to 40 CFR 68.210(h) is not centrally relevant to the outcome of the final rule because the requirement to keep records for five years is in accordance with the RMP rule’s general recordkeeping requirements in

²³ 40 CFR 68.200: “The owner or operator shall maintain records supporting the implementation of this part at the stationary source for five years, unless otherwise provided in subpart D of this part.”

²⁴ See EPA-HQ-OLEM-2022-0174-0220 available at www.regulations.gov.

40 CFR 68.200. Therefore, the objection to the five year recordkeeping provision does not provide substantial support for the argument that the regulation should be revised.

C. Petitioners Allege that the Final Rule Imposes Unnecessary Employee Participation Provisions

i. Petitioners allege that the final rule includes multiple, unexplained new requirements for employee participation in both Program 2 and Program 3 prevention programs.

Petitioners allege that some of the requirements for employee participation were not subject to notice and comment, that the new provisions are unexplained, and that they are not appropriate, or cost justified. Petitioners specifically point to the requirements for “annual written or electronic notices to employees, additional training, additional methods for reporting unaddressed hazards, recordkeeping of such reports, and the ability to report unaddressed hazards either to the facility or EPA itself.”

EPA finds that the public had adequate notice in the proposal of the revisions made in the 2024 Safer Communities final rule because the changes made in the 2024 Safer Communities final rule are minor clarifications or reduction in scope from the 2022 Safer Communities proposed rule. In the 2022 SCAAP proposed rule, EPA proposed to require a “process to allow employees and their representatives to anonymously report unaddressed hazards. . .” 87 Fed. Reg. at 53612. In addition to the proposed approach, EPA solicited comment in the 2022 Safer Communities proposed rule regarding “[r]elevant sources that have provided useful guidance in making risk decisions” and “[w]hether owners and operators should distribute an annual written or electronic notice to employees that employee participation plans and other RMP information is readily accessible upon request and provide training for those plans and how to access the information.” 87 Fed. Reg. at 53558.

Commenters, including members of the RMP Coalition, provided input in response to the 2022 Safer Communities proposed rule on the implementation of the proposed employee participation provision. *See, e.g.*, Comment from the API, EPA-HQ-OLEM-2022-0174-0233; Comment from NACD, EPA-HQ-OLEM-2022-0174-0234.²⁵ As EPA explained in the 2024 Safer Communities final rule, the modifications made to the provisions regarding written or electronic notice and training clarify that workers should be properly informed of RMP information to prevent misinformed employees from reporting noncompliance, addressing a concern raised by NACD. EPA also addressed the methods for reporting noncompliance in the 2024 Safer Communities final rule preamble, stating, “To clarify EPA’s intent in the proposal, EPA is specifically defining in this final rule that the process developed to report noncompliance must detail how to report to the owner or operator and/or EPA.” 89 Fed. Reg. at 17665. Clarification of these proposed provisions on which EPA already solicited comment does not require mandatory reconsideration. The provisions of the 2024 Safer Communities final rule identified by the petition for reconsideration were a part of EPA’s proposal and thus available for the public to comment on. Therefore, it was not impractical to raise these issues, nor did they arise after the comment period. Thus, the petition does not meet the criteria of CAA 307(d)(7)(B), and EPA denies reconsideration on the employee participation provisions raised in the petition.

²⁵ All comments available at www.regulations.gov.

D. Petitioners Allege that the Final Rule Adds Two New Provisions Relating to Monitoring Equipment

Petitioners claim that the 2024 Safer Communities final rule imposes two entirely new requirements relating to monitoring equipment, which did not appear in the 2022 Safer Communities proposed rule and are not the “product of reasoned decision-making.” EPA addresses each of the petitioners’ claims related to monitoring equipment below.

i. First requirement: Monitoring equipment associated with prevention and detection of accidental releases are required to have standby or backup power.

Petitioners allege that the 2024 Safer Communities final rule imposes two requirements that were not raised for notice and comment. Petitioners allege that the requirement to “ensure monitoring equipment associated with prevention and detection of accidental releases from covered processes has standby or backup power to provide continuous operation” was an “entirely new requirement” imposed by the 2024 Safer Communities final rule. Additionally, petitioners stated that the phrase “associated with” is “incredibly vague and likely to sweep in far more equipment than necessary.” However, EPA did seek comment on this new provision in the 2022 Safer Communities proposed rule. Specifically, EPA stated, “While EPA is not requiring implementation of standby or emergency power for the entirety of an RMP process, EPA is proposing to require air pollution control or monitoring equipment associated with prevention and detection of accidental releases from RMP-regulated processes to have standby or backup power to ensure compliance with the intent of the rule. EPA seeks comment and data on this proposed provision, particularly on any potential safety issues associated with it.” 87 Fed. Reg. at 53571. Furthermore, members of the RMP Coalition provided comment on this proposed provision. *See e.g.*, Comment from SOCMA, EPA-HQ-OLEM-2022-0174.²⁶ This provision was plainly raised for comment and petitioners had the opportunity to, and in fact did, comment on the proposed changes, including concerns regarding monitoring equipment “associated with” preventing releases. Therefore, this claim does not meet the criteria for mandatory reconsideration.

ii. Second requirement: Operating procedures must document when monitoring equipment is removed due to safety concerns from imminent natural hazards.

Petitioners allege that the requirement to document “when monitoring equipment associated with prevention and detection of accidental releases from covered processes is removed due to safety concerns from imminent natural hazards” was also not raised for comment. However, in the 2022 Safer Communities proposed rule preamble, EPA noted that “air monitoring and control equipment is often removed from service before natural disasters to potentially prevent damage” and sought comment on the proposed requirement to have standby or backup power and “any potential safety issues associated with it.” 87 Fed. Reg. at 53571. EPA received several public comments in response to the 2022 Safer Communities proposed rule regarding air monitoring equipment and backup power. A couple of commenters stated that there was no support for EPA’s concern that facilities will use extreme weather events as a reason to remove air monitoring and control equipment. RTC at 65. Other commenters believed this was a valid concern, and some called for EPA to enforce penalties to deter companies from turning off their monitoring equipment. *Id.* Based on these public comments, EPA modified the

²⁶ Comment available at www.regulations.gov.

proposed provisions in the 2024 Safer Communities final rule to clarify that there may be some instances where a shutdown of monitoring equipment would be appropriate and allowed, with proper recordkeeping and disclosure.

EPA's 2024 Safer Communities final rule preamble states:

In response to comments regarding facilities' removal of air monitoring equipment, EPA notes that the final rule is revising 40 CFR 68.52(b)(9) and 68.69(a)(4) to require documentation of the removal of monitoring equipment for accidental releases during disasters in facility operating procedures. In doing so, the Agency addresses the concern that the threat of extreme weather events has, and will continue to be, used by some owners or operators to justify disabling equipment designed to monitor and detect chemical releases of RMP-regulated substances at their facility (87 FR 53571). To prevent accidental releases, RMP owners or operators are required to develop a program that includes monitoring for such releases. EPA does not believe all natural disasters should be treated as an exception to this requirement. However, EPA understands that, in some situations, such as hurricane winds, there is a potential for damage to, or by, monitoring equipment if not secured and allows a source to shut down monitoring equipment in such cases provided that an explanation is included in its RMP.

89 Fed. Reg. at 17640.

The Agency's provision in the 2024 Safer Communities final rule outlining how facilities should document removal of monitoring equipment when appropriate was thus a logical outgrowth of the 2022 Safer Communities proposed rule and the associated issues on which EPA explicitly sought comment. EPA clarifying its proposed provisions in the final rule does not meet the criteria for mandatory reconsideration.

Conclusion

For all of the reasons discussed above, EPA concludes that this petition relating to the 2024 "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention" final rule fails to identify any information or circumstances that warrant mandatory reconsideration under section 307(d)(7)(B) of the CAA. Accordingly, the petition is denied, as well as the request that the 2024 Safer Communities final rule be stayed. I appreciate your comments and interest in this matter.

Sincerely yours,



Michael S. Regan