



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA-HQ-TRI-2016-0390; FRL-5879-02-OCSPP]

RIN 2070-AK16

Addition of Natural Gas Processing Facilities to the Toxics Release Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is adding natural gas processing (NGP) facilities (also known as natural gas liquid extraction facilities) to the scope of the industrial sectors covered by the reporting requirements of the Emergency Planning and Community Right-to-Know Act (EPCRA), commonly known as the Toxics Release Inventory (TRI), and the Pollution Prevention Act (PPA). Adding these facilities will meaningfully increase the information available to the public on releases and other waste management of listed chemicals from the NGP sector and further the purposes of EPCRA.

DATES: This final rule is effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE *Federal Register*] and shall apply for the reporting year beginning January 1, 2022 (reports due July 1, 2023).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-TRI-2016-0390, is available at <http://www.regulations.gov> or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Please review the visitor instructions and additional information about the docket available at

<http://www.epa.gov/dockets>.

Due to the public health emergency, the EPA Docket Center (EPA/DC) and Reading Room are by appointment only. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Daniel R. Ruedy, Data Gathering and Analysis Division, Mail Code 7410M, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-7974; email address: ruedy.daniel@epa.gov.

For general information contact: The Emergency Planning and Community Right-to-Know Act Hotline; telephone numbers: toll free at (800) 424-9346 (select menu option 3) or (703) 348-5070 in the Washington, DC Area and International; or go to <https://www.epa.gov/home/epa-hotlines>.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

Entities potentially regulated by this action are those facilities that primarily engage in the recovery of liquid hydrocarbons from oil and gas field gases and which manufacture, process, or otherwise use chemicals listed at 40 CFR 372.65 and meet the reporting requirements of EPCRA section 313, 42 U.S.C. 11023, and PPA section 6607, 42 U.S.C. 13106. These facilities are categorized under Standard Industrial Classification (SIC) code 1321 and North American Industry Classification System (NAICS) code 211130. In response to OMB's revisions to the NAICS codes effective January 1, 2017, EPA amended 40 CFR part 372 to include the relevant 2017 NAICS codes for TRI reporting. EPA also modified the list of exceptions and limitations previously included in the CFR for the applicable NAICS codes for TRI reporting purposes.

If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

This action is taken under EPCRA sections 313(b) and 328, 42 U.S.C. 11023(b) and 11048. Specifically, EPCRA section 313(b)(1)(B), 42 U.S.C. 11023(b)(1)(B), states that the Agency may “add or delete Standard Industrial Codes for purposes of subparagraph (A), but only to the extent necessary to provide that each Standard Industrial Code is relevant to the purposes of this section.” In addition, Congress granted EPA broad rulemaking authority under EPCRA section 328, 28 U.S.C. 11048, which provides that the “Administrator may prescribe such regulations as may be necessary to carry out this chapter.”

C. What action is the Agency taking?

EPA is adding NGP facilities to the list of industry sectors subject to reporting under EPCRA section 313 and PPA section 6607. With this addition, NGP facilities will be subject to TRI reporting for the year beginning January 1, 2022, and required to file reports by July 1, 2023.

D. Why is the Agency taking this action?

EPA is adding this industry sector to the EPCRA section 313 list because doing so will meaningfully increase the information available to the public on releases and other waste management of listed chemicals from the NGP sector and further the purposes of EPCRA section 313. In total, there are approximately 1.4 million people living within three miles of at least one of the NGP facilities EPA identified. As detailed in Unit IV.C. of this notice, some NGP facilities are located in communities where there are potential Environmental Justice considerations.

This action also addresses a petition (Ref. 1) submitted to EPA via a letter dated October 24, 2012, from the Environmental Integrity Project (EIP), together with 16 other organizations, and later joined by two additional organizations (collectively, Petitioners) under section 553(e) of the Administrative Procedure Act (APA) that asked EPA to add the Oil and Gas Extraction industrial sector (SIC code 13) to the scope of industrial sectors covered by the reporting

requirements of the TRI. On October 22, 2015, EPA granted, in part, the petition insofar as it requested that EPA commence the rulemaking process to propose adding NGP facilities to the scope of TRI. EPA denied the remainder of the petition. The petition and related documents, including EPA's response, can be found in Docket ID No. EPA-HQ-TRI-2013-0281.

E. What are the incremental costs and benefits of this action?

EPA considered the incremental costs and benefits associated with this rulemaking. EPA estimates the total incremental costs to be approximately \$11,846,000 to \$18,044,000 in the first year and approximately \$5,641,000 to \$8,593,000 in the steady state. In addition, EPA performed a screening analysis on small entities and determined this rulemaking will not have a significant economic impact on a substantial number of small entities. A more detailed discussion is included in Unit IV.C.

F. Are there potentially disproportionate impacts for children health?

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

G. What are the environmental justice impacts?

This regulatory action changes reporting requirements for NGP facilities and does not have any direct impact on human health or the environment. However, for communities living near NGP facilities, there is the potential for new information about toxic chemical releases and waste management practices occurring in those communities to become available through the TRI reporting data. A more detailed discussion is included in Unit IV. C.

II. Background

As discussed in the proposed rule of January 6, 2017 (82 FR 1651) (FRL-9953-68) (Ref. 2), EPA proposed to add NGP facilities to the scope of the industrial sectors covered by the

reporting requirements of section 313 of EPCRA and section 6607 of the PPA. In the proposed rule, the Agency asserted that adding these facilities would meaningfully increase the information available to the public on releases and other waste management of listed chemicals from the NGP sector and further the purposes of EPCRA section 313. In the proposed rule, EPA estimated in 2017 that at least 282 NGP facilities in the U.S. would meet the TRI employee threshold (10 full-time employees or equivalent) and manufacture, process, or otherwise use (threshold activities) at least one TRI-listed chemical in excess of applicable threshold quantities. Collectively, NGP facilities in the U.S. manufacture, process, or otherwise use at least 21 different TRI-listed chemicals, including n-hexane, hydrogen sulfide, toluene, benzene, xylene, and methanol.

III. Response to Comments

Upon publication of the proposed rule, EPA initially provided a 60-day comment period. EPA then granted an additional 60 days to allow interested parties further time to prepare their comments (82 FR 12924) (FRL-9959-41). The public comment period for the proposed rule closed on May 6, 2017. EPA received 5,933 comments on the proposed rule.

The Agency received 5,470 duplicate or significantly similar comments, leaving 463 unique comments received, of which 25 comments received were substantive and related to the proposal. Eleven of those comments were submitted by private citizens, one of which was submitted anonymously (Docket ID EPA-HQ-TRI-2016-0127, 0202, 0218, 0251, 0268, 0269, 0393, 0452, 0453, 0470, 0486). Three comments submitted by industry groups requested an extension to the original comment period (0023, 0024, 0025). Comments were submitted from the following public interest non-governmental organizations (NGOs): Environmental Action Center (EAC) (0343), Earthworks (0375), Environmental Integrity Project (EIP) (0334), Westmoreland Marcellus Citizens' Group (0435), and Western Governors' Association (0481). Comments were also received from the following industry groups: American Petroleum Institute (API) (0483), GPA Midstream (0475), Marcellus Shale Coalition (0474), MarkWest (0484), and

the Texas Pipeline Association (TPA) (0478). A comment received from Black Warrior Riverkeeper (0292) was not relevant to the proposed action.

Comments received from the public interest mass mail campaigns were supportive of the proposed rule. With the exception of Western Governors' Association, all comments received from private citizens and public interest NGOs were supportive of the proposed rule, although some provided recommendations to include more information in the final rule. Comments received from industry groups were not supportive of the rule. EPA's responses to all substantive comments relevant to the proposed rule are detailed in the remainder of this Unit.

A. Petition Not Authorized by Law

1. Comment:

Several commenters argued that the Petition that EIP submitted to EPA was not authorized by law and therefore should neither have been considered nor granted in part. Commenters stated that the statutory provisions for TRI-related petitions are in EPCRA, are only intended for changes to the chemical list, and do not allow the public to petition for changes to the list of industry sectors that are subject to TRI reporting requirements. One commenter stated that the Congressional implication, therefore, is that other types of petitions involving TRI are not allowed. Other commenters stated that the Agency failed to address many considerations that are relevant to the decision to add NGP facilities to the industry sector list for EPCRA section 313 TRI reporting.

2. EPA Response:

The Agency disagrees with the commenters' arguments that the Petition that EIP submitted to EPA was not authorized by law and should not have been granted in part. The Administrative Procedure Act (APA) governs the process by which federal agencies develop and issue regulations. The APA includes requirements for publishing notices of proposed and final rulemaking in the *Federal Register*, and it provides opportunities for the public to comment on notices of proposed rulemaking. Under the APA, federal agencies must give interested persons

the right to petition for the issuance, amendment, or repeal of a rule. 5 U.S.C. § 553(e).

Accordingly, EIP submitted the petition under the APA to request that EPA issue a rule to add oil and gas industry sectors to the scope of the TRI program. That EPCRA also provides citizens the opportunity to petition EPA for specific rulemaking actions, specifically to request that the Agency modify the list of chemicals applicable to TRI reporting requirements, does not supplant the general petition process that the APA provides. Rather, the specific EPCRA petition procedure provides a specific timeframe and requirements for petitions that request changes to the TRI list of covered chemicals.

EPCRA section 313(b)(1)(B), 42 U.S.C. 11023(b)(1)(B), states that EPA “may add or delete [SIC] Codes ... to the extent necessary to provide that each [SIC] code to which this section applies is relevant to the purposes of [the TRI].” In addition, Congress granted EPA broad rulemaking authority under EPCRA section 328, 28 U.S.C. 11048, to “prescribe such regulations as may be necessary to carry out this chapter.”

The addition of NGP facilities to the scope of the industrial sectors covered by the reporting requirements of EPCRA section 313 will meaningfully increase the information available to the public on releases and other waste management of listed chemicals from the NGP sector. Thus, addition of this industrial sector is relevant and necessary to carry out the purposes of the TRI.

B. Inadequate Notice

1. Comment:

Some commenters believed that there was a lack of time, both to submit comments on the proposed rule and to comply with the rule if finalized. These commenters argued that there was not sufficient time for them to adequately analyze all the supporting documents related to the proposed rule and that historically the Agency held extensive outreach prior to releasing any proposal to add additional sectors required to report to TRI. One commenter requested the EPA “allow sufficient lead time to comply with the rule” if finalized, recommending reports not be

due until at least 2019 (0475). One commenter stated that a consultation with states within which these facilities operate should have occurred to determine the necessity of adding NGP facilities to the TRI, considering the presence of state regulations.

2. EPA Response:

EPA provided adequate notice to all interested stakeholders, including the public, industry, and the States, regarding its proposal to add NGP facilities to the scope of TRI. On October 24, 2012, the EIP and sixteen other organizations submitted a Petition to EPA, requesting that the Agency add the Oil and Gas Extraction sector, SIC code 13, to the scope of sectors covered by TRI under section 313 of EPCRA. EPA published a *Federal Register* notice on January 3, 2014 (79 FR 393) (FRL-9904-82-OEI) acknowledging receipt of the petition from EIP and placing the Petition in the public docket. On February 25, 2014, API met with EPA to better understand EPA's intentions for the petition. The Agency also received comments submitted from industry trade groups in response to the EIP petition, which EPA made available in the public docket.

On October 22, 2015, EPA granted, in part, the petition insofar as it requested that EPA commence the rulemaking process to propose adding NGP facilities to the scope of TRI Ref. 3) and published its response in the public docket. On January 6, 2017, the Agency proposed to add NGP facilities to the scope of the industrial sectors covered by the reporting requirements of EPCRA section 313. The initial 60-day comment period was January 6 to March 7, 2017. In response to requests from multiple stakeholders, the Agency extended the comment period for an additional 60 days from March 7, 2017 to May 6, 2017. Therefore, there was sufficient notice for the proposal of adding NGP facilities to TRI. States also had sufficient time to comment and request consultation with the Agency. Further, TRI is a federal program designed to provide information to the public and decisionmakers across all governmental levels. TRI reporting requirements do not conflict with state regulation of NGP facilities; rather, they help inform such regulation.

EPA agrees that sufficient lead time should be provided to comply with the final rule, and has provided sufficient time in the rule finalized in this action. EPCRA 313(a) provides that reporting shall be submitted annually on or before July 1 and shall contain data reflecting waste management occurring during the preceding calendar year. Accordingly, this final rule is effective [INSERT DATE 30 DAYS FOLLOWING PUBLICATION IN THE *FEDERAL REGISTER*] and shall apply for the reporting year beginning January 1, 2022, such that the first reports are due July 1, 2023. This timeframe provides ample time for facilities to make reasonable estimates of releases and waste management quantities for chemicals that they manufacture, process, or otherwise use.

C. Scope of Addition too Narrow

1. Comment:

One commenter suggested that EPA expand the description of the proposed rule from mostly focusing on why it is adding NGP facilities to the scope of industries required to report under TRI, to also encompassing reasons for not requiring the rest of the Oil and Gas Extraction Industry sector to report under TRI. Another commenter asserted that the proposed rule did not sufficiently explain why it limits the scope of the addition to NGP facilities alone, and that while EPA explains that it will add NGP facilities to the list of TRI reporting industries, the Agency insufficiently explains what this limited scope means for chemical release data reporting and why the Agency decided on such a limited scope.

2. EPA Response:

In its response to the EIP Petition, the Agency provided its rationale for proposing to add only NGP facilities from the Oil and Gas Extraction sector at that time. As detailed in EPA's rationale in the Petition Response (available at <https://www.regulations.gov/document/EPA-HQ-TRI-2013-0281-0047> in *regulations.gov*), considerations of the EPCRA statutory definition of "facility," as well as numerous other EPA activities addressing the oil and gas sector, warranted focusing this rulemaking on NGP facilities specifically.

D. Data used to evaluate NGP facilities

1. Comment:

Several comments from industry suggested that the data EPA evaluated to support the proposed addition of NGP facilities were used improperly and incorrectly identified the number of U.S. NGP facilities that may trigger TRI reporting requirements. For example, in Table 2.2 of EPA's economic analysis for the proposed rule (Ref. 4), EPA based its estimates of chemical forms TRI would receive on the number of facilities Canada's National Pollutant Release Inventory (NPRI), a program analogous to TRI, already covers that would be required to report (estimating that it would receive 242 forms from 31 reporting facilities with 10 or more full-time employees (FTEs) and reporting a TRI chemical, or 7.81 forms per facility). API contends that EPA should have included in its estimates those facilities with fewer than 10 FTEs, not reporting a TRI chemical, that would thus not report to TRI, (which would result in less than one form per facility). API contends that this shows the reporting would provide little benefit to further the purposes of EPCRA section 313.

2. EPA Response:

EPA analyzed data from multiple sources and used modeling techniques to identify the estimated universe of NGP facilities that could trigger TRI reporting requirements if EPA were to add NGP facilities to the scope of industrial sectors covered by TRI (Ref. 4). These data sources included the U.S. Energy Information Administration survey (EIA-757 survey), Canada's NPRI, EPA's Risk Management Plan (RMP) Program, and EPA's Greenhouse Gas Reporting Program (GHGRP). Based on these datasets, EPA estimated that NGP facilities in the U.S. collectively manufacture, process, or otherwise use more than 21 different TRI-listed chemicals. These chemicals include n-hexane, hydrogen sulfide, toluene, benzene, xylene, and methanol. Since the proposed rule, EPA updated its analysis and now estimates that between 321 and 489 NGP facilities in the U.S. would meet the TRI employee threshold (10 full-time employees or equivalent) and manufacture, process, or otherwise use at least one TRI-listed

chemical in excess of applicable threshold quantities (Ref. 5). Thus, because EPA is basing its estimates of facilities that would report to TRI only on the counts of NGP facilities with 10 or more full-time employees or equivalent and not the entire universe of NGP facilities in the U.S., EPA's estimated facility counts are commensurable with the 31 NPRI facilities and associated forms-per-facility ratios identified in the NPRI data. EPA's analysis clearly establishes that there are facilities within the candidate NGP industry group whose reporting can reasonably be anticipated to increase the information made available pursuant to EPCRA section 313, or otherwise further the purpose of EPCRA section 313. Furthermore, based upon information submitted to the NPRI and the 2017 EIA-757 survey of NGP facilities, as well as based on EPA's understanding of the sector, EPA expects that TRI reporting by U.S. NGP facilities will provide substantial release and waste management data.

E. Improper Use of Canada's NPRI Data by EPA to Evaluate NGP Facilities

1. Comment:

There were a few commenters who believed that EPA improperly used Canada's NPRI data to evaluate NGP facilities in the U.S. The commenters believe that EPA's use of the NPRI data overestimated the number of NGP facilities and number of TRI chemicals that would trigger thresholds to be reported under EPCRA section 313. One commenter expressed concern that EPA utilized NPRI data selectively by using it only to identify chemicals used in the NGP industry, but not to recognize from those same NPRI data that reported releases are almost exclusively to air, are therefore already reported to air emissions programs, and no releases to other media or other unique information would be reported to TRI (0334). Another commenter, though supportive of the rule, recommended EPA base its information factor conclusion on evidence from the actual facilities it would regulate rather than surrogate data from the NPRI.

2. EPA Response:

EPA disagrees that it improperly used Canada's NPRI data. The NPRI data provide information on what chemicals and associated quantities are universally used in the NGP

industry. EPA used the NPRI data alongside other domestic information sources (*e.g.*, EIA-757) to estimate what chemicals and associated quantities are likely used by NGP facilities in the U.S. As detailed in Unit III.G.2 of this notice, data reported to TRI include releases to media, including air, but also many other data elements—such as pollution prevention and other source reduction activities—not reported to air programs. That releases reported by Canadian NGP facilities to NPRI are predominantly to air does not render EPA’s inferences on chemical usage improper or unsound, nor does it have a bearing on the utility of air emissions data and associated information reported to TRI. As stated in Unit III.G.2 of this notice, TRI is a nationwide database that places data in a central, publicly accessible location. Further, TRI data provide unique benefits in that they are collected annually; they reflect chemical emissions to multimedia, including air, water, and land; and they encompass source reduction and other pollution practices. Simply put, TRI reporting involves more than reporting on releases to air, and increasing the TRI dataset to include reporting from NGP facilities would provide access to data not otherwise available from other programs, and in a format that is readily accessible and designed for public use.

F. Prior Decision to Not Include Additional Oil and Gas Industry Sectors

1. Comment:

One commenter expressed concern that EPA did not provide sufficient justification as to why the inclusion of NGP facilities under TRI should be revisited and why NGP facilities should ultimately be made subject to EPCRA section 313 reporting. Two other commenters, though in support of the rule, recommended that EPA reconsider its decision to limit the scope of the addition to processing facilities, and instead include extraction and mid-stream compressor facilities. Another commenter suggested that EPA include its rationale in the final rule for limiting the scope of the proposed addition to processing facilities.

2. EPA Response:

EPA disagrees that it has not provided sufficient justification for revisiting the inclusion

of NGP facilities under TRI. In its 1997 sector addition rulemaking, EPA considered the addition of the oil and gas industry group to TRI. At that time, EPA indicated that one consideration for not including the industry group was concern over how a “facility” would be defined for purposes of reporting in EPCRA section 313 (61 FR 33592) (FRL-5379-3). That issue, in addition to other questions, led EPA to not include, at the time, the oil and gas industry group as a whole.

However, EPA has since determined that NGP facilities are appropriate for addition to the scope of TRI. The triennial survey of NGP facilities by the EIA (EIA-757 survey) (Ref. 6), identifies 478 NGP facilities in the lower 48 states as of 2017. The continued growth of natural gas production since 2014 also provides justification for revisiting the inclusion of NGP facilities (Ref. 5). EPA estimated that over half of those facilities would annually meet TRI reporting thresholds and, if covered by the reporting requirements of TRI, be required to submit TRI information to EPA. The information likely to be obtained from these facilities is not readily available elsewhere.

As described in the petition response (Ref. 3), when the three factors that EPA considered in the 1997 TRI sector addition (Ref. 7) are applied to NGP facilities, the chemical factor and activity factor are met by most NGP facilities—many TRI-listed chemicals are regularly manufactured, processed, or otherwise used at these facilities. With respect to the information factor (*i.e.*, the third factor), the addition of NGP facilities to TRI would meaningfully increase the information available to the public and further the purposes of EPCRA section 313. As stated in Unit III.B.1 of this notice, using information from Canada’s NPRI, a program analogous to TRI and which covers NGP facilities, EPA estimates that NGP facilities in the U.S. collectively manufacture, process, or otherwise use more than 21 different TRI-listed chemicals. These chemicals include n-hexane, hydrogen sulfide, toluene, benzene, xylene, and methanol. In contrast, related facilities, such as extraction or compressor facilities, are not likely to meet the TRI full-time employee or activity thresholds, as EPA concluded in the 1997 TRI sector addition

(Ref. 7).

Because TRI coverage of NGP facilities would meet the chemical, activity, and information factors, and based on the number of NGP facilities that would be required to report to TRI, the Agency has provided adequate rationale for their addition to TRI.

G. The Addition the Rule Proposes is Not Relevant to the Purposes of TRI

1. Comment:

Some commenters stated that the proposed rule would provide redundant data, and it is unnecessary to include NGP facilities on TRI because other regulatory programs already collect these data. Commenters assert that much of these data are already in the public domain and that NGP facilities already report spills and releases, track waste disposal activities, and obtain air permits and report deviations from permit conditions. In addition, commenters expressed that the focus of TRI is to increase the level of publicly available information to help communities plan for response actions in the event of a release. Commenters also expressed that NGP facilities “do not pose the same level of risk as other facilities that Congress and EPA have deemed significant enough to include in the TRI” (0478) as well as that hazardous air pollutants (HAPs) are already covered under the National Emission Standards for Hazardous Air Pollutants (NESHAP), which minimize risk of accidental releases. One commenter further expressed concern that NGP facility release data reported to TRI could be misunderstood or mischaracterized by the public, in that most NGP facility releases are authorized by permits (*e.g.*, Clean Air Act permitting) and thus are planned and controlled.

2. EPA Response:

EPA disagrees that the data reporting that the rule would require is not relevant to the purposes of TRI. TRI’s central focus is to provide information to federal, state, and local governments and the public, including citizens of communities surrounding covered facilities; to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in

the development of appropriate regulations, guidelines, and standards; and for other similar purposes. Further, though planning for an emergency response action is not a primary focus of TRI, information collected under TRI do help inform decision-making related to potential risk concerns. Moreover, the addition of NGP facilities would meaningfully increase the information available to the public on releases and other waste management of listed chemicals from the NGP sector and further the purposes of EPCRA section 313. Further, TRI is a nationwide database that places data in a central, publicly accessible location, and TRI data are uniform and commensurable, better enabling meaningful comparisons, analyses, and trend determinations.

The Agency is aware that the public may misunderstand or misrepresent TRI data. Misuse or misinterpretation of information does not mean that the basis for collecting the information is invalid. EPA finds that the appropriate solution to this issue for TRI is education and outreach, rather than a decision not to include an otherwise eligible industry group on TRI. However, any potential for misconstruing TRI data is not unique to NGP facilities or the data they would submit. Further, EPA finds the activities and processes NGP facilities conduct are analogous to those of the Petroleum Refineries sector (NAICS 324110), which is a covered sector under TRI. Thus, including NGP facilities would provide information to TRI similar to what facilities in the petroleum refineries sector already provide. EPA provides a “Factors to Consider When Using Toxics Release Inventory Data” document to help stakeholders understand how to use TRI appropriately (accessible at https://www.epa.gov/sites/production/files/2019-03/documents/factors_to_consider_march_2019.pdf). EPA is amenable to recommendations on how to further improve stakeholders’ ability to make use of TRI data.

H. NGP Facilities are Currently Regulated by Law (Federal and State)

1. Comment:

Some commenters referred to existing federal and state regulations, among them EPA’s National Emissions Inventory (NEI) program, which already impose compliance obligations on

NGP facilities, as sufficient and a reason for EPA to withdraw the proposed rule.

2. EPA Response:

The Agency disagrees. Although EPA's NEI program also collects and publishes air emissions data pertaining to NGP facilities, TRI reporting by these facilities would offer key benefits the NEI does not provide. First, the NEI is limited to air emissions, whereas TRI requires disclosure of releases to air, land, and water, as well as waste management and pollution prevention information. Second, the NEI is published on a triennial basis, whereas TRI data are collected and published annually. Third, the different purposes of the two programs drive different uses of the data they collect. TRI was developed to provide the public with information about the disposition of toxic chemicals in their communities, whereas the NEI was developed to collect data to support air modeling and risk assessments at the national level.

Further, any generation or collection of overlapping data by TRI is not unique to NGP facilities. As stated in its information collection request (ICR) (Ref. 8), EPA anticipates some overlap of TRI and other programs, and notes that section 313(g)(2) of EPCRA specifies that respondents may use readily available data collected pursuant to other provisions of law to complete the EPCRA section 313 reports.

Finally, information required by these other statutes may not provide readily accessible multi-media release and transfer, inventory, or pollution prevention data with the same scope, level of detail, chemical coverage, and frequency of collection as data currently included in TRI. As described in Unit III.G.2, given TRI's community-right-to-know foundations, TRI data are designed to be especially accessible and easy to use, and the systems that offer them to the public over the Web provide numerous analysis, download, and visualization tools. Thus, the rule provides benefits that other regulations and programs do not.

I. NGP Reporting Imposes Significant Burdens on the Regulated Community and EPA

Underestimates these Burdens

1. Comment:

Some commenters stated that EPA's proposed rule underestimates the costs of compliance, the burden and related cost of reporting for NGP facilities, and associated cost of collecting economic data. Commenters also suggested that EPA does not take into account the full operational activities of NGP facilities and that the burden analysis that EPA conducted only considers cost to prepare and submit forms; the analysis does not account for costs associated with tracking and analysis of chemicals activity that do not reach reporting thresholds but nonetheless must be tracked as part of determining TRI reporting applicability. One commenter pointed to the 44 pages of guidance that EPA has published on the subject of threshold calculations alone as evidence of ambiguity and resultant baseline burden imposed on facilities to merely determine their reporting obligation. Another commenter suggested EPA reduce the scope of the final rule to focus only on the approximately 21 chemicals used by NGP facilities and not require reporting from NGP facilities on other TRI chemicals.

2. EPA Response:

As detailed in Unit III.F.2 of this notice, according to a triennial survey of NGP facilities by the EIA (EIA-757 survey), described further in the economic analysis EPA prepared for this rulemaking (Ref. 4), there were 517 NGP facilities in the lower 48 states as of 2012. Since the proposed rule, an updated EIA survey estimated there were 478 such facilities as of 2017 (Ref. 5). EPA estimates that more than half of these facilities would annually meet TRI reporting thresholds for one or more of 21 different TRI-listed chemicals and, if covered by the reporting requirements of TRI, would be required to submit TRI information to EPA. The information likely to be obtained from these facilities is not readily available elsewhere.

EPA disagrees that it has underestimated burden by failing to account for activities ancillary to Form R or A submittal, such as rule familiarization (*i.e.*, staff at a facility that is reporting under EPCRA section 313 for the first time must read the reporting package and become familiar with the reporting requirements, which includes the time needed to review instructions, and the time needed to train personnel to respond to a collection of information),

reporter compliance determination, or non-reporter compliance determination (*i.e.*, those eligible facilities that will complete compliance determination but will not file a Form R or Form A). As described in the economic analysis of the proposed addition (Ref. 30) and included in the docket for the proposed rule, the new methodology used to estimate reporting burden in the proposed rule— Ratio-Based Burden Methodology (RBBM)— is a restructured and simplified formulation of the previously employed methodology; OMB approved this new methodology, which was published on April 28, 2011 (Ref. 35). When estimating reporting burden using RBBM, the Nominal Form R unit burden is the base number and Form A unit burden is set at 61.5% of that value. These unit burdens reflect burden associated with form activities including rule familiarization, reporter compliance determination, calculations and form completion, and recordkeeping. In addition to Form R and Form A burden, total TRI Program burden is captured by adding non-form burden—associated with supplier notification, non-reporter compliance determination, and petitions—to form burden.

EPA disagrees with TPA’s assertion that quantity of guidance on a subject is indicative of that subject’s complexity and resulting burden that this rule would place on NGP facilities to assess their reporting obligations and prepare and submit reports. The 44 pages of guidance on threshold calculations to which TPA refers is a compendium of questions EPA has received over time from facilities across all TRI-covered industry sectors. It is not reasonable to suggest that a single NGP facility or all NGP facilities in aggregate would encounter a comparable quantity, or even a substantive portion, of those unique scenarios that all facilities in all covered industry sectors have identified in the TRI program’s 35 years of existence where detailed guidance was provided. Further, EPA disagrees with TPA’s suggestions that the Agency’s offering of an “advanced concepts” training course and a threshold screening tool demonstrate the complexity of reporting. That some facilities have dealt with complexities does not lead to the conclusion that all facilities will face complexities. Indeed, TPA fails to identify any specific complexity that NGP facilities would face, whether shared by all covered facilities or specifically by NGP

facilities due to this sector's unique activity characteristics.

Where reporting requirements for NGP facilities overlap with other state and federal laws, as several commenters have identified, the Agency finds that because facilities already collect data and have mechanisms in place to do so, any additional burden increment from reporting to TRI on such overlapping requirements will be minimal. Finally, EPA disagrees that NGP facilities otherwise subject to reporting should be restricted to only report on the 21 TRI-listed chemicals EPA has identified as associated with the NGP industry. As described at 42 USC 11023(a) and (b)(1)(A) and (B), EPA has authority to require reporting from covered facilities on all TRI-listed chemicals. While EPA has identified 21 TRI-listed chemicals associated with the NGP industry, the burden of determining what other TRI-listed chemicals or chemical categories is not associated with a specific facility is minimal. Requiring NGP facilities to report to TRI on chemicals and chemical categories in addition to the 21 that EPA has associated with the NGP industry is consistent with furthering the purposes of EPCRA section 313.

J. Applicability of Executive Order 13771

1. Comment:

Some commenters (0483, 0474, 0478) suggested that EPA consider EO 13771 (Reducing Regulation and Controlling Regulatory Costs), which they claim specifies that any new regulation should impose zero incremental costs and that EPA identify two existing regulations to be eliminated to offset any potential incremental costs of a new regulation. Commenters believe that, in contravention of EO 13771, the proposed rule creates undue burden with limited benefit and is incompatible with the objective of energy independence and economic growth. API also stated that in EPA's response to the EIP petition on October 22, 2015, the Agency wrote that NGP facilities are already subject to a wide range of multi-media requirements, suggesting that the existence of these requirements bolsters its position that this action is in contravention of EO 13771.

2. EPA Response:

Executive Order 13771 of January 30, 2017 was revoked on January 20, 2021. Thus, EPA finds that comments referencing EO 13771 are moot. EPA has delineated its response to concerns of undue and unwarranted burden in Unit III.C.4. of this notice.

Confusion for facilities in determining TRI applicability

K. Definition of “Facility” is Flawed and Confusing for Industry

1. Comment:

Some commenters believed that the statutory definition of “facility,” as applied to NGP facilities in the context of this rule, is flawed and creates confusion among industry and significant burden in understanding TRI reporting requirements. One commenter stated that the unique definitions of facility under other (non-TRI) statutes and programs used by EPA in its TRI estimations inflated the actual number of NGP facilities that may need to report if the rule were finalized and NGP were added as a covered industry sector under TRI. One commenter stated that the definition of facility results in coverage of small and insignificant sources of emissions and contends that the occasional inclusion of remote non-NGP operations in reporting to TRI is an unintended consequence that goes beyond Congressional intent. Commenters further cite previously identified issues with how to apply the definition of “facility” to the entire Oil and Gas Industrial Sector as mentioned in the 1996 proposed rule (finalized in 1997), when EPA deferred adding the oil and gas extraction industry group “because of questions regarding how particular facilities should be identified,” (61 FR 33588) (FRL-5379-3), and assert that these questions apply to the proposed NGP rule as well. On the other hand, some commenters felt that EPA should interpret the facility definition more “broadly” to capture a collectively large source of potential environmental contamination from the Oil and Gas Industrial Sector more broadly.

2. EPA Response:

EPCRA section 329(4) defines the term “*facility*” to mean “all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites

and which are owned or operated by the same *person* (or by any *person* which controls, is controlled by, or under common control with, such *person*)....” 42 USC 11049(4). See also, 40 CFR 372.3, which reflects the statutory definition and provides that a facility may contain more than one establishment, which the term establishment being defined as an economic unit, generally at a single physical location, where business is conducted or where services or industrial operations are performed. EPA disagrees that its application of the statutory definition of “facility” to the NGP facilities that are the subject of this rule is flawed. This rule does not add the entire Oil and Gas Industrial Sector to the TRI, and thus the “questions regarding how particular facilities should be identified” (61 FR 33588) (FRL-5379-3) at play in the 1996 proposed and 1997 final rule are not at play here. As EPA explained at pages 5-6 of its response to the EIP Petition, available at <https://www.regulations.gov/document/EPA-HQ-TRI-2013-0281-0047>, “[u]nlike the remainder of this industrial sector ..., natural gas processing plants readily meet the statutory definition of ‘facility’ at EPCRA section 329(4), 42 U.S.C. 11049(4).”

EPA also disagrees with the recommendation to apply the facility definition more “broadly” as part of this addition, such that geographically discrete oil and gas operations under common ownership should constitute a single facility under EPCRA. This comment to apply the “facility” definition more “broadly,” like the EIP petition, references *Sierra Club, Inc. v. Tyson Foods, Inc.*, 299 F. Supp. 2d 693 (W.D. Ky. 2003), where discrete chicken houses spaced 50 to 60 feet apart, under common ownership, were considered a single facility under EPCRA. As detailed in its petition response, EPA finds the average physical distances separating oil and gas operations far exceed those at issue in *Sierra Club, Inc. v. Tyson Foods, Inc.* However, there will be situations where distances between sites will warrant such sites being considered one facility for TRI-reporting purposes. As an example, in scenarios where sites that would otherwise be contiguous or adjacent are separated by a right of way, such sites are considered one facility for Section 313 reporting purposes. Further, as indicated in the proposed rule, contiguous or adjacent sites with a common owner or operator can result in such sites being included in the reporting

required by an NGP facility, though these contiguous or adjacent sites would otherwise not trigger reporting had they been geographically distant from the TRI-covered NGP facility. In light of the statutory definition of “facility,” which specifically provides that such adjacent or contiguous facilities under common ownership are a single facility, the Agency disagrees that inclusion of such facilities in reporting to TRI is contrary to Congressional intent.

Although it is true that RMP and GHGRP have unique definitions of “facility,” which differ from EPCRA and may cause EPA’s estimates of NGP facilities to be higher or lower than those that would ultimately report to TRI, EPA finds that data from these programs are appropriate for modeling the universe of NGP facilities in the U.S. that would report to TRI as a range—the lower bound estimate of which is 321 facilities—as well as estimating burden and determining if the addition would increase information made available pursuant to EPCRA section 313.

L. Confusion for Facilities in Determining TRI Applicability

1. Comment:

One commenter recommended that EPA clarify issues related to how facilities determine their NAICS classification by referencing the 2012 NAICS in the proposal, as significant changes were made to six of the NAICS sectors in 2017.

2. EPA Response:

TRI requires facilities to determine their own NAICS code(s), based on their on-site activities and by conducting NAICS keyword and 2- to 6-digit searches on the U.S. Census Bureau website. Further, facilities may include multiple establishments that may have different NAICS codes as distinct and separate economic units. For TRI reporting, these facilities determine which economic activity contributes the majority or plurality of the facility’s revenue. If the total value added of the products produced, shipped, or services provided at establishments with covered NAICS codes is greater than 50 percent of the value added of the entire facility’s products and services, the entire facility meets the NAICS code criterion. If an establishment

with a covered NAICS code has a value added of services or products shipped or produced that is greater than any other establishment within the facility (40 CFR 372.22(b)(3)), the facility also meets the NAICS code criterion. A final rule was published in the *Federal Register* on December 26, 2017 (82 FR 60906) (FRL-9970-02) to adopt 2017 NAICS codes for reporting year (RY) 2017 and subsequent reporting years. Accordingly, this final rule adds the portion of the industry sector categorized under NAICS 211130 to the scope of TRI requirements. Qualifiers for NAICS codes are common in TRI reporting requirements.

M. Naturally Occurring Argument

1. Comment:

One commenter claimed that prior case law (the comment cited *Barrick Goldstrike Mines, Inc. v. Whitman*, 26 F. Supp. 2d 28, 41 (D.D.C. 2003), and *Nat'l Min. Ass'n v. Browner*, 2001 WL 1886840, No. CIV. A. 97 N 2665, at *6 (D. Colo. 2001)) “established (1) that under EPCRA section 313, the term ‘manufacture’ of TRI chemicals is limited to the creation of the TRI chemical or compound as a result of human or industrial activities, and naturally occurring TRI chemicals and compounds originally present in a raw material feedstock will not be considered as ‘manufactured’ within the meaning of EPCRA section 313 and (2) the corollary that activities involving unaltered naturally occurring chemicals and compounds cannot be considered as ‘processing’ within the meaning of EPCRA section 313 as the activity of ‘processing’ requires the predicate of the EPCRA section 313 ‘manufacture’ of the TRI chemical.” (0482) This commenter contends that activities involving naturally occurring chemicals and compounds cannot be considered for manufacturing and processing thresholds. Based on this contention, the commenter asserts that EPA has overestimated the number of chemicals and facilities expected to trigger thresholds and thus provided a flawed rationale for the rule.

2. EPA Response:

EPA disagrees with the commenters’ interpretation of cited case law. The courts did not

determine that manufacture is limited to the creation of the TRI chemical; the courts instead held that preparation of a listed chemical can only be considered “processing,” per the EPCRA definition, where the chemical has already been “manufactured” by some other activity. Further, it was noted that manufacture includes activities such as preparation. When natural gas is extracted from the Earth, it may contain chemical components other than methane. During and after extraction, the natural gas and its components undergo various separation and preparation activities. When it reaches an NGP facility, the natural gas is no longer the naturally-occurring, raw material it was at the time of extraction; it has already undergone preparation activities prior to and upon arriving at the NGP facility. The NGP facility then continues preparing and processing the natural gas—separating certain impurities and other components, among other activities—and distributes into commerce the methane gas and certain other products. EPA finds these activities constitute “processing” within the meaning of EPCRA section 313(b)(1)(C)(ii) and 40 CFR 372.3, and align with longstanding interpretations of the processing threshold activity, such as facilities that primarily recover sulfur from natural gas (originally added by Congress when enacting the statute), and the Petroleum Refineries sector, which are already covered under TRI.

IV. Summary of Final Rule

A. Scope of Addition

In this action, EPA is adding NGP facilities to the list of facilities subject to EPCRA section 313 reporting requirements.

The proposed rule contained information on EPA’s review of the natural gas liquid extraction sector and these specific NGP facilities (Ref. 2). NGP facilities are stationary surface facilities that receive gas from a gathering system that collects raw natural gas from many nearby wells and prepares the gas for delivery to the NGP facilities. These NGP facilities further process the natural gas (composed primarily of methane) to industrial or pipeline specifications and extract heavier liquid hydrocarbons from the prepared field natural gas. During this process,

natural gas liquids (NGLs) (*i.e.*, hydrocarbons heavier than methane) and contaminants (*e.g.*, hydrogen sulfide, carbon dioxide, and nitrogen) are separated from the natural gas stream, resulting in processed, pipeline-quality natural gas. NGLs are fractionated on-site into isolated streams (*e.g.*, ethane, propane, butanes, natural gasoline) or shipped off-site for subsequent fractionation or other processing. Hydrogen sulfide is often either disposed through underground injection or reacted into sulfuric acid or elemental sulfur, while carbon dioxide and nitrogen may be emitted to the atmosphere. The processed pipeline-quality natural gas is then transferred to consumers via intra- and inter-state pipeline networks. NGLs are primarily used as feedstocks by petrochemical manufacturers or refineries. SIC 1321 (Natural Gas Liquids) and NAICS 211130 (Natural Gas Liquid Extraction) comprise establishments that recover liquid hydrocarbons from oil and gas field gases (see discussion in Unit I.A. of this notice). NAICS 211130 includes facilities that recover sulfur from natural gas—such facilities already report TRI data to EPA because they are in SIC 2819 (Industrial Inorganic Chemicals, Not Otherwise Classified), which is a manufacturing sector covered by TRI. Current regulations only require NAICS 211130 facilities that recover sulfur from natural gas to report TRI data (*i.e.*, facilities in SIC 2819). Specifically, 40 CFR 372.23(b), which covers NAICS codes that correspond to SIC codes 20 through 39, lists NAICS 211130 but states: “Limited to facilities that recover sulfur from natural gas and previously classified under SIC 2819, Industrial Inorganic chemicals, Not Elsewhere Classified.” By adding SIC 1321 to the scope of industry sectors covered by TRI and including SIC 1321 into the qualifier for the NAICS 211130 listing, EPA is expanding TRI coverage to include all NGP facilities that meet TRI-reporting thresholds.

This rule does not add to TRI coverage of natural gas field facilities that only recover condensate from a stream of natural gas, lease separation facilities that separate condensate from natural gas, or natural gas pipeline compressor stations that supply energy to move gas through transmission or distribution lines into storage. Additional examples of operations that this rule does not add to TRI coverage include Joule-Thompson valves, dew point depression valves, and

isolated or standalone Joule-Thompson skids. The industrial operations described in this paragraph often occur at or close to extraction sites and are typically classified under NAICS codes other than 211130 (e.g., NAICS 221210 (Distribution of Natural Gas)), and thus are not within the scope of the NAICS code addition. However, the term “facility” is defined by EPCRA section 329(4) as all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person) 42 U.S.C. 11049(4). Accordingly, operations described in this paragraph could be part of a single “facility” with TRI reporting and recordkeeping requirements if they are contiguous or adjacent to “buildings, equipment, structures, and other stationary items” with a common owner or operator that are in a covered TRI industrial sector.

B. Why do some natural gas processing facilities already submit TRI reporting forms to EPA?

Some NGP facilities are already subject to TRI reporting requirements because NGP facilities that recover sulfur from natural gas are part of a manufacturing sector that was originally subjected to reporting to TRI by Congress. Specifically, the scope of TRI sectors subject to reporting includes SIC code 2819 (Industrial Inorganic Chemicals, Not Elsewhere Classified), which was one of the manufacturing sectors in SIC 20–39 originally required to report to TRI by Congress. SIC code 2819 crosswalks to several manufacturing sector NAICS codes, including 211130 (Natural Gas Extraction), but only to the extent that it includes facilities that engage in sulfur recovery from natural gas.

Thus, when EPA began to use NAICS codes for TRI reporting purposes, the Agency listed NAICS 211112 (for 2002, 2007 and 2012 NAICS) with a qualifier to limit TRI coverage of the sector to facilities that fit SIC code 2819. The 2017 NAICS for Natural Gas Extraction was updated to NAICS 211130. See 40 CFR 372.23(b) (211130—Natural Gas Extraction): “Limited to facilities that recover sulfur from natural gas (previously classified under SIC 2819, Industrial Inorganic chemicals, NEC (recovering sulfur from natural gas)).”

C. What are the environmental justice impacts of the final rule?

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes the federal executive policy on environmental justice (EJ). Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make EJ part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S. Executive Order 14008 (86 FR 19, February 1, 2021) reiterated a commitment to securing EJ and, among other provisions, directed agencies to make achieving EJ a part of their missions by developing programs, policies, and activities to address the cumulative impacts of environmental, health, and climate-related issues in disadvantaged communities.

This regulatory action changes reporting requirements for NGP facilities and does not have any direct impact on human health or the environment. However, for communities living near NGP facilities, there is the potential for new information about toxic chemical releases and waste management practices occurring in those communities to become available through the TRI reporting data.

To better understand how many people live near these facilities and the demographics of those communities, EPA used the EJSCREEN environmental justice screening and mapping tool (Ref. 10) to aggregate information about their populations and demographics. EJSCREEN uses information about the population living in each Census block group contained within a user-defined radius to estimate the total population and related demographic indicator information. In past screening experience, EPA has found it helpful to establish a suggested starting point for the purpose of identifying geographic areas that may warrant further EJ consideration, analysis, or outreach. For early applications of EJSCREEN, EPA identified the 80th percentile filter as that initial starting point. See Technical Information about EJSCREEN at <https://www.epa.gov/ejscreen/technical-information-about-ejscreen> for more information (Ref. 11).

Latitude and longitude information was available for all but seven facilities included in the upper bound estimate of the universe of affected NGP facilities, enabling EPA to make use of EJSREEN for 482 of the affected NGP facilities. Using EJSREEN, EPA summarized population demographics using a one- and three-mile radius around each facility to identify and understand EJ impacts in communities and help identify a community's potential vulnerability to environmental and health concerns.

In total, there are approximately 1.4 million people living within three miles of at least one of the 482 NGP facilities identified. Demographic information about the number of these facilities exceeding the 80th national percentile value is included below. Some NGP facilities are located in communities where there are potential EJ considerations. For example, 41 NGP facilities are located in a three-mile radius of communities where the low-income indicator exceeds the 80th percentile. Note that potential EJ impacts in communities can be different when considered at distances other than the one- or three-mile radii considered in the analysis provided below.

Table 1: Demographic Information Based on One and Three-Mile Radii Around NGP Facilities Using EJSREEN Data

Demographic Indicator	Description	Facilities Exceeding 80th Percentile			
		One-mile Radius		Three-mile Radius	
		Number	Percent (out of 482)	Number	Percent (out of 482)
Low Income	The percent of individuals in households where the household income is less than or equal to twice the federal "poverty level."	42	8.7%	41	8.5%
People of Color	The percent of individuals who list their racial status as a race other than white alone and/or list their ethnicity as Hispanic or Latino.	20	4.1%	31	6.4%
Less than High School Education	The percent of people age 25 or older whose education is short of a high school diploma.	87	18.0%	134	27.8%
Linguistic Isolation	The percent of people living in a household in	34	7.1%	67	14.0%

	which all members age 14 years and over speak a non-English language and also speak English less than "very well" (have difficulty with English).				
Demographic Index	Average of the Low Income and People of Color indicators.	23	4.8%	32	6.6%

It is important to note that one of the TRI program’s primary goals is to engage in outreach to promote sustainability, inform community-based environmental decision-making, and work toward environmental justice with the goal of achieving environmental protections for all communities. To meet this goal, the TRI program: Builds awareness of TRI resources through focused communications; Promotes discussion and collaboration among data users through webinars and conferences; Assists individual users and communities with analyses and interpretation; Engages with community and academic stakeholders to enhance understanding and use of data; and Develops tailored resources for supporting environmental justice and tribal research.

V. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under FOR FURTHER INFORMATION CONTACT.

1. Environmental Integrity Project, Chesapeake Climate Action Network, CitizenShale, Clean Air Council, Clean Water Action, Delaware Riverkeeper Network, Earthworks, Elected Officials to Protect New York, Environmental Advocates of New York, Lower Susquehanna Riverkeeper, Natural Resources Defense Council, OMB Watch, PennEnvironment, Powder River Basin Resource Council, San Juan Citizens Council, Sierra Club, Texas Campaign for the

Environment. Petition to Add the Oil and Gas Extraction Industry, Standard Industrial Code 13, to the List of Facilities Required to Report under the Toxics Release Inventory. October 24, 2012.

2. EPA. Proposed Rule; Addition of Natural Gas Processing Facilities to the Toxics Release Inventory (TRI). *Federal Register*. 82 FR 1651, January 6, 2017 (FRL-9953-68).

3. USEPA. Formal Response to October 24, 2012, Petition to Add the Oil and Gas Extraction Industry, Standard Industrial Classification Code 13, to the List of Facilities Required to Report under Section 313 of the Emergency Planning and Community Right-to-Know Act. October 22, 2015.

4. USEPA, OPPT. Economic Analysis of the Proposed Addition of Natural Gas Processing Facilities to the Toxics Release Inventory. August 11, 2016.

5. USEPA, OPPT. Addendum to the Economic Analysis of the Proposed Addition of Natural Gas Processing Facilities to the Toxics Release Inventory; Applicable to the Final Rule. November 2021.

6. US Energy Information Administration (EIA). 757 Natural Gas Processing Plant Survey. 2017. <https://www.eia.gov/survey/#eia-757>.

7. USEPA. Final Rule; Addition of Facilities in Certain Industry Sectors; Revised Interpretation of Otherwise Use; Toxic Release Inventory Reporting; Community Right-to-Know. *Federal Register*. 62 FR 23834. May 1, 1997. (FRL-5578-3).

8. USEPA, OPPT. Supporting Statement for an Information Collection Request (ICR) Under the Paperwork Reduction Act (PRA). Final Rule ICR; Addition of Natural Gas Processing Facilities to the Toxics Release Inventory (TRI). EPA ICR No. 2560.01; OMB Control No. 2070-[NEW]. November 2016.

9. USEPA, OPPT. TRI Regulatory Development Branch: Revising TRI Burden to Ratio-Based Methodology. <https://www.epa.gov/sites/default/files/documents/136321RatioBasedMethodology.pdf>.

10. USEPA. EPA's Environmental Justice Screening and Mapping Tool (Version 2020).
<https://ejscreen.epa.gov/mapper>.

11. USEPA. EJSCREEN Environmental Justice Mapping and Screening Tool;
EJSCREEN Technical Documentation. September 2019.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at
<http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document that EPA prepared is assigned EPA ICR No. 2560.01 and OMB Control No.:2070-[NEW] (Ref.8). You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

Currently, the facilities subject to the reporting requirements under EPCRA section 313 and PPA section 6607 may use either EPA Toxic Chemicals Release Inventory Form R (EPA Form 1B9350-1), or EPA Toxic Chemicals Release Inventory Form A (EPA Form 1B9350-2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the

total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322 (42 U.S.C. 11042) and 40 CFR part 350. OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control number 2070-0212 (EPA Information Collection Request (ICR) No. 2613.05) and those related to trade secret designations under OMB Control 2050-0078 (EPA ICR No. 1428.11). As such, this ICR is intended to amend the existing ICR to include the following additional details:

Respondents/affected entities: NGP facilities.

Respondent's obligation to respond: Mandatory (EPCRA section 313).

Estimated number of respondents: 321 to 489.

Frequency of response: Annual.

Total estimated burden: 181,000 to 276,000 burden hours in the first year and approximately 86,000 to 131,000 burden hours in the steady state. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: approximately \$11,846,000 to \$18,044,000 in the first year and approximately \$5,641,000 to \$8,593,000 in the steady state.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the *Federal Register* and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are NGP facilities. The Agency determined in its original economic analysis that the 282-444 facilities estimated to be impacted by this action are linked to 76-90 parent entities, of which 32-41 qualify as small businesses as defined by the RFA, all of which are estimated to incur an annualized cost impact of less than 1%. Details of this analysis are presented in the EPA economic analysis (Ref. 4). As the fundamentals of that analysis apply here as well, the final rule is not expected to significantly impact a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will not impose substantial direct compliance costs on Indian Tribal Governments. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997), as applying only

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

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards. As such, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

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

In accordance with Executive Order 12898 (59 FR 7629, February 16, 1994) and Executive Order 14008 (86 FR 7619, January 27, 2021), EPA finds that this action will not result in disproportionately high and adverse human health, environmental, climate-related, or other cumulative impacts on disadvantaged communities. As discussed in more detail in Unit IV.C., EPA used the EJSCREEN environmental justice screening and mapping tool to better understand how many people live near these facilities and the demographics of those communities. The information collected through TRI reporting will serve to inform communities living near NGP facilities, and there is the potential for new information about toxic chemical releases and waste management practices occurring in those communities to become available through the TRI reporting data.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.*, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 372

Environmental protection, community right-to-know, reporting and recordkeeping requirements, and toxic chemicals.

Dated: November 18, 2021.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR part 372 as follows:

PART 372—TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT-TO-KNOW

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

2. Amend § 372.23 by:

a. Adding numerically an entry for “1321” to the table in paragraph (a);

b. Adding numerically an entry for “211130—Natural Gas Extraction” to the table in paragraph (c).

The additions read as follows:

§ 372.23 SIC and NAICS codes to which this Part applies.

(a) * * *

Major group or industry code	Exceptions and/or limitations
* * * * *	
1321.	
* * * * *	

* * * * *

(c) * * *

Subsector code or industry code	Exceptions and/or limitations
211130—Natural Gas Extraction	Limited to facilities classified under SIC 1321, Natural Gas Liquids
* * * * *	

[FR Doc. 2021-25646 Filed: 11/23/2021 8:45 am; Publication Date: 11/24/2021]