

FCX's U.S. operations accounted for approximately 70 percent of the total production of U.S. refined copper in 2024. All the anodes manufactured at the Miami Smelter are refined at the El Paso, Texas facility. The vertical integration of FCX's operations allows it to retain the overwhelming majority of its copper production domestically and minimize the amount of copper concentrates that must be exported for smelting and, if necessary, refining.

C. The Copper Rule and subsequent developments

After concluding its periodic residual risk and technology review ("RTR") for the NESHAP for major source Primary Copper Smelters, and its technology review for the Primary Copper Smelting area source NESHAP, the EPA issued a notice of proposed rulemaking,⁵ followed later by a supplemental notice of proposed rulemaking.⁶ During the rulemaking process, FMMI provided robust comments and technical analyses in response to those notices, as well as responses to follow-on information requests from the Agency. FMMI's comments highlighted, among other things, problems with the EPA's residual risk analysis, the feasibility and cost effectiveness of certain numerical emission limits, and the workability of certain proposed work practice standards. The EPA issued the Copper Rule on May 13, 2024.⁷

Following promulgation of the Copper Rule, FMMI determined—as a result of early-stage engineering studies undertaken as part of FMMI's efforts to implement the final rule—that certain aspects of the Rule would make compliance extremely difficult to achieve, and potentially even cost prohibitive from the standpoint of maintaining economically viable smelter operations.

FMMI submitted to the EPA a petition for reconsideration of the Copper Rule on July 12, 2024. To date, and to FMMI's present knowledge, the EPA has not formally acted upon FMMI's petition for reconsideration, aside from the EPA's March 12 press release announcing the Agency's intent to reconsider the Copper Rule, among other NESHAP rules. On the same day it submitted the petition for reconsideration, FMMI also filed a petition for review of the Copper Rule in the U.S. Court of Appeals for the District of Columbia Circuit. FMMI's petition for review was consolidated with that filed by the San Carlos Apache Tribe and Sierra Club. *See San Carlos Apache Tribe, et al. v. EPA, et al.*, No. 24-1241 (D.C. Cir.) (consolidated with No. 24-1245). On October 24, 2024, the parties filed a joint motion to hold the matter in abeyance pending the EPA's resolution of the petitions for reconsideration. The motion was granted on November 4, 2024. In a joint status report filed with the court on February 3, 2025, the EPA represented that it is continuing to consider the petitions for reconsideration before it.

⁵ 87 Fed. Reg. 1616 (Jan. 11, 2022).

⁶ 88 Fed. Reg. 47415 (July 24, 2023).

⁷ 89 Fed. Reg. 41648 (May 13, 2024).