

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 372**

[OPPTS-400104; FRL-5379-3]

RIN 2070-AC71

**Addition of Facilities in Certain Industry Sectors; Toxic Chemical Release Reporting; Community Right-to-Know**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to add seven industry groups to the list of industry groups subject to the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). These industry groups are metal mining, coal mining, electric utilities, commercial hazardous waste treatment, chemicals and allied products-wholesale, petroleum bulk stations-wholesale, and solvent recovery services. EPA believes that the addition of these industry groups to EPCRA section 313 will significantly add to the public's right-to-know about releases and other waste management activities of toxic chemicals in their communities. EPA believes that these industry groups meet the criteria of EPCRA section 313(b)(1)(B). Reporting for these sectors will be required for the first full year following publication of the final rule.

**DATES:** Written comments on this proposed rule must be received on or before August 26, 1996.

**ADDRESSES:** Written comments should be submitted in triplicate to: OPPT Docket Clerk, TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-G099, 401 M St., SW., Washington, DC 20460.

Comments containing information claimed as confidential must be clearly marked as confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number for this proposal, OPPTS-400104 and the EPA contact for this proposal. Unit VII. of this preamble contains additional information on submitting comments containing information claimed as CBI.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS-400104. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be

filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit VII. of this document.

**FOR FURTHER INFORMATION CONTACT:** Tim Crawford at 202-260-1715, e-mail: crawford.tim@epamail.epa.gov or Brian Symmes at 202-260-9121, e-mail: symmes.brian@epamail.epa.gov for specific information regarding this proposed rule. For further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 800-553-7672.

**SUPPLEMENTARY INFORMATION:**

I. Introduction

A. *Regulated Entities*

Entities potentially regulated by this proposed action are those facilities within the industry groups being proposed for addition to the list of Standard Industrial Classification (SIC) codes which manufacture, process, or otherwise use chemicals listed at 40 CFR 372.65 and meet the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023 and section 6607 of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13106. Some of the potentially regulated categories and entities include:

Category	Examples of regulated entities
Industry; facilities that manufacture, process, or otherwise use certain chemicals.	Metal mining, Coal mining, Electric utilities, Commercial hazardous waste treatment, Chemicals and allied products-wholesale, Petroleum bulk stations-wholesale, Solvent recovery services, Manufacturing.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists the types of entities that EPA is now aware could potentially be regulated by this proposed action. Other types of entities not listed in the table could also be regulated. To determine whether your facility would be regulated by this action, you should carefully examine this proposal and the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations.

B. *Statutory Authority*

This proposed rule is issued under sections 313(b) and 328 of EPCRA, 42 U.S.C. 11023 *et seq.* EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499).

C. *Background*

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report source reduction and recycling data for such

chemicals, pursuant to section 6607 of the PPA, 42 U.S.C. 13106. Section 313(b)(1)(A) specifically applied these reporting requirements to owners and operators of facilities that have 10 or more full time employees and that are in Standard Industrial Classification (SIC) codes 20 through 39. EPCRA section 313(b) authorizes EPA to add facilities and industry groups to the EPCRA section 313 list. The purpose of this proposed rule is to expand the universe of industry groups that are subject to EPCRA section 313 and PPA section 6607.

## II. Preparation for Expansion of Section 313 Industry Groups

### A. General Background

In 1986, Congress enacted EPCRA to ensure that the presence, management, and routine and emergency releases of toxic chemicals in the United States were well understood. It was evident that there were facilities in the United States where toxic chemicals were manufactured, used and stored—but knowledge of this was undisclosed to emergency response teams, state and local governments, and perhaps most importantly, the citizens who lived and shared common neighborhoods with these facilities.

At the core of these new provisions was the concept of a facility-specific, chemical-based inventory. This inventory, termed the Toxics Release Inventory (TRI), created a national data base identifying facilities and their annual accidental and routine releases of toxic chemicals. Prior to EPCRA, this information was not readily available to the federal government, state governments, emergency preparedness teams or the general public, and often did not become available until *after* serious accidents occurred or until major impacts on human health and the environment were evident. This “after-the-fact” disclosure of information did little to help plan or prevent such serious health and environmental impacts.

EPCRA section 313 currently requires certain manufacturing facilities in SIC codes 20 through 39 to report annually on their releases, transfers, and other waste management practices for more than 600 listed toxic chemicals and chemical categories (hereafter “toxic chemicals”). Information on the release (including disposal), transfer, and other waste management activities of these chemicals, which is provided to EPA and States, is then made publicly available through a variety of means, including an annual report issued by EPA.

The data that EPA receives from these approximately 23,000 facilities have provided the public, industry, and all levels of government with critical information related to toxic chemical releases and transfers that occur within their communities and across the United States. These data have become an essential component of facility planning and community preparedness and response. Further, these data allow States, communities and the public to engage in an informed way in environmental decision making. The TRI data are a yardstick by which progress can be measured by industry

and local communities and governments. These data enable all interested parties to establish credible baselines, to set realistic goals for environmental progress, and to measure progress in meeting these goals over time.

Data about releases and other waste management activities of toxic chemicals at the community level were generally nonexistent prior to EPCRA. While permit data are generally cited as a public source of environmental data, they are often difficult to obtain, are not cross-media and present only a limited perspective on the facility's overall performance. While other sources of data are often cited as substitutes for TRI data, EPA is unaware of any other publicly available, nationwide data base that provides multi-media, facility-specific release and waste information to the public. With EPCRA, and the real gains in understanding it has produced, communities now know what a subset of industrial facilities in their area release or otherwise manage as waste for listed toxic chemicals.

EPCRA section 313 facility coverage is currently limited to facilities in the manufacturing sector, i.e., in SIC codes 20 through 39. These manufacturing facilities account for only a small portion of the toxic chemicals released or handled as waste in the United States. Facilities currently covered by EPCRA section 313 account for only 0.4 percent of the facilities in the United States (Ref. 14). In 1989, the Office of Technology Assessment estimated that the TRI represents 5 percent of toxic releases to the environment. Adding non-manufacturing industries to the EPCRA section 313 list of facilities will provide basic information to millions of Americans on releases and other waste management information on toxic chemicals from additional industrial facilities in their communities.

As discussed in detail in Unit III.A. of this preamble, Congress gave EPA clear authority to expand TRI, both in terms of the chemicals reported and the facilities required to report. The limited list of chemicals and facilities identified in the original legislation was meant as a starting point, or a core program. Congress recognized that the TRI program would need to evolve to meet the needs of a better informed public and to fill information gaps that would become apparent over time.

In implementing the expansion of the TRI program, EPA is pursuing the course set by Congress. The information EPA is seeking to provide the public through this proposal currently is largely unavailable. While many non-manufacturing facilities may be subject

to various reporting requirements at the Federal, State, and local levels, these reporting systems are not comparable to TRI. These systems, which were reviewed as part of the analysis for this proposal, have been found to be limited in scope, content, coverage, and accessibility compared to TRI. Many do not focus on the collection and dissemination of information but are used to support other regulatory activities, such as the issuance of permits. While other reporting systems may serve their statutorily mandated purposes, none provide accessible data on releases to all media from such a large number of facilities. Therefore, these existing data systems, which may serve other useful purposes, do not provide as useful information for communities on toxic chemicals as TRI does. Moreover, duplication between TRI data and data contained in other systems is minimal, data contained in those other systems often reflect permitted releases rather than actual releases, and these data may represent wastestream level data rather than the chemical-specific data that comprises TRI.

In a critical analysis of the TRI program, the Congressional General Accounting Office (GAO) in 1991 noted that EPA had not used its statutory authority to expand the types of facilities required to report under EPCRA section 313. GAO recognized that the value of the TRI program could be enhanced significantly by expanding the program's reporting requirements to cover industries outside the manufacturing sector, and noted that industry group expansion is supported by a variety of stakeholders. More discussion of the GAO's report, entitled *Toxic Chemicals: EPA's Toxic Release Inventory Is Useful But Can Be Improved* (hereafter GAO Report), can be found in Unit III.A. of this preamble (Ref. 2).

EPA has undertaken a number of actions to expand and enhance TRI. These actions include expanding the number of reportable toxic chemicals by adding 286 toxic chemicals and chemical categories to the EPCRA section 313 list in 1994. At the same time, EPA sought to reduce burden for facilities with low annual reportable amounts of toxic chemicals by establishing an alternate reporting threshold that allows facilities with 500 pounds or less of reportable releases and other wastes to file a certification statement instead of the standard TRI report, the Form R. Further, a new category of facilities was added to TRI on August 3, 1993 through Executive Order 12856, which requires Federal

facilities meeting threshold requirements to file annual TRI reports, regardless of SIC code.

EPA first announced its intention to consider the expansion of TRI to include additional industry groups at a public meeting held on May 29, 1992 (57 FR 19126). Today's proposal to expand the coverage of TRI to include additional industry groups has been undertaken in order to provide new and valuable information on toxic chemicals in the U.S. The proposed industry groups are responsible for substantial use, release and generation of EPCRA section 313 chemicals as waste, and are engaged in activities similar to or related to activities conducted at facilities within the manufacturing sector that currently reports. This action is proposed in order to more completely account for releases, transfers, and waste management in the U.S., and to provide the public, all levels of government, and the regulated community with information that will improve decision making, measurement of pollution, and the understanding of the environmental consequences of toxic chemical emissions.

On August 8, 1995, the President issued a directive to EPA for "continuation on an expedited basis of the public notice and comment rulemaking proceedings to consider whether, as appropriate and consistent with section 313(b) of EPCRA, 42 U.S.C. 11023(b), to add to the list of Standard Industrial Classification ("SIC") Code designations of 20 through 39 (as in effect on July 1, 1985)" (60 FR 41791). The President directed that EPA "complete the rulemaking process on an accelerated schedule." EPA is now proposing a number of carefully selected industry segments for coverage under EPCRA section 313. Although EPA may be "expediting" this activity, it is doing so only after lengthy deliberations and consultation with stakeholders.

EPA recognizes that expansion of TRI reporting to cover a broader range of facilities raises some communication issues that may not be presented by the original list of manufacturing facilities in SIC codes 20 through 39. For example, inclusion of certain waste management facilities as proposed could mean that a facility's primary business could equate to a reportable release. As discussed in Unit V.F.6. of this preamble, this could lead to the misperception that an uncontrolled release is taking place, when in reality the facility is legally and responsibly managing waste materials. This type of misperception is not a result intended or desired by EPA. Similarly, a concern

has been expressed by some that because waste management activities may involve transfers from one facility to another that the same material may appear more than once in the TRI data base. EPA believes that, since transfers and releases are tracked separately, this should not mislead the public, but seeks comment on the issue. As this rulemaking proceeds, EPA will be evaluating how it presents--including in its annual data release--and otherwise communicates the information reported by these new facilities. When considering this proposed rule, commenters are encouraged to address how best to communicate information from the new industries in a way that continues to serve the purposes of TRI without fostering misperceptions.

### B. Outreach

Prior to this proposed rulemaking, EPA engaged in a significant and comprehensive outreach effort. This outreach served to inform interested parties, including industries under consideration, state regulatory officials, environmental organizations, labor unions, community groups, and the public of EPA's intention to propose adding additional industry groups to the EPCRA section 313 list. The outreach effort also allowed EPA to gather additional information that assisted in the development of this proposed rulemaking. EPA has also received substantial public comment regarding the Agency's proposed action, and has considered these comments in its deliberations.

EPA recognized the need for comprehensive and thorough outreach regarding this proposal. Consequently, EPA held two public meetings prior to publication of this proposal. The first public meeting, announcing EPA's intentions, was held on May 29, 1992. The second was held on May 25, 1995. These meetings were announced in the Federal Register (57 FR 19126, May 4, 1992 and 60 FR 21190, May 1, 1995). The public meetings allowed interested parties, including representatives of the industries included in this proposal, to voice opinions and concerns regarding the facility expansion undertaking. EPA used these meetings as an opportunity to inform interested parties about the possibility of this proposed action and to make available information regarding its analysis for comment. Issues papers, summaries, statements submitted and additional public comments from these meetings, are included in the public docket supporting this rulemaking.

In addition, over the course of the past 5 years, EPA has used the regularly-held public meetings of the Forum on

State and Tribal Toxicities Action (FOSTTA), which represents state environmental agencies, and the National Advisory Council on Environmental Policy and Technology (NACEPT), which includes representatives from industry, environmental organizations, states, and academia, to discuss the expansion of the EPCRA section 313 industry group list. These groups have provided EPA with substantive input prior to this proposal for structuring its screening and analytical activities conducted in support of this proposal. EPA has recently held discussions with other state regulatory officials, in particular with the Interstate Mining Compact Commission (IMCC). These discussions have allowed EPA to understand more clearly state regulatory concerns regarding the addition of certain industry groups. With the publication of this proposal, EPA will be continuing the dialogue initiated in these meetings.

EPA also recognized that public meetings were not the sole means to engage in the substantive discussion of issues specific to the proposed industries. Therefore, EPA initiated a series of formal and informal meetings with industry representatives as well as with representatives of environmental, community and labor organizations. Although meetings with such groups have been held since 1992, EPA substantially increased this element of its outreach effort since 1994, and continued to do so until the publication of this proposal. The more formal of these meetings, referred to as "focus group meetings," involved representatives of various trade associations and companies from the various industry groups under consideration. These meetings primarily involved discussions with EPA officials regarding the expansion of EPCRA section 313 reporting requirements as well as issues specific to the industries under consideration. A "focus group meeting" was also held with environmental, labor and community organizations. EPA also used these meetings as an opportunity to share data and additional information collected as part of its expansion effort, and to solicit comment regarding the analytic approach used in the screening process (A description of the screening process is provided in Unit II.C. and II.D of this preamble). Summaries of these meetings and lists of participants are available in the public docket supporting this rulemaking.

EPA officials have also held meetings with industry representatives and others on a regular basis to discuss issues involved in this proposed rulemaking.

EPA has used these meetings as a means to keep interested parties closely informed of progress in developing this proposed action, and to gather information to assist the Agency in its activities. These meetings are documented in the public docket supporting this rulemaking.

EPA and other government officials have routinely discussed this proposed action in public speaking engagements before a variety of groups and organizations. Most notably, the President addressed community groups in Baltimore, Maryland on August 8, 1995, regarding the Administration's commitment to community right-to-know, including his directive to the Administrator of EPA and Heads of Executive Departments and Agencies to continue the expansion of the EPCRA section 313 industry group list. The President's statements concerning the expansion of the TRI program were widely reported and increased public awareness of EPA's efforts. Considerable media coverage, including detailed trade press stories, has provided many more individuals, businesses, and organizations with information regarding this proposed action.

Unfunded mandates that may be imposed on other government entities are of particular concern to the Agency, especially since issuance of Executive Order 12875 ("Enhancing the Intergovernmental Partnership") and the Unfunded Mandates Reform Act of 1995 (compliance with this Act is discussed in Unit XI.D. of this preamble). EPA has held discussions with a wide range of state and local officials regarding this proposal, particularly through FOSTTA as described above, and with representatives of publicly-owned and operated facilities. EPA will continue a constructive dialogue to ensure that unfunded mandates issues are fully understood, analyzed, and addressed.

EPA recognizes that particular concerns have been raised regarding the expansion of the EPCRA section 313 industry group list in so far as the reporting requirements may affect small businesses. Many trade associations and other industry organizations with which EPA has held discussions include small businesses as members or participants. These groups have represented the interests of some small businesses to EPA, and have helped to inform businesses about EPA's intentions. In addition, EPA has addressed forums such as the Small Business Roundtable regarding this proposed action, and has briefed officials of the Small Business Administration as well as EPA's Small Business Ombudsman and Regional Small Business Liaisons on this matter.

Activities specific to small businesses are documented in the public docket supporting this rulemaking.

A variety of materials have been made available to interested parties and the public regarding this proposed action. Widely distributed Agency publications have provided updates regarding the expansion of the TRI program. More specific materials, including analytical products developed as part of this effort, have been provided to industry groups and further disseminated at events such as annual meetings. EPA is also aware of and appreciates the many industry efforts to disseminate this information to members. Documentation of these publications and materials, to the extent available, is included in the public docket supporting this rulemaking.

EPA intends to continue its outreach efforts in regards to this proposed action. The Agency has found outreach to be beneficial to all parties and essential to sound public policy decisions. The Agency will be providing additional forums for public comment by holding two public meetings during the public comment period for this proposal.

#### *C. Development of Industry Group Candidates*

Prior to this proposed rulemaking, EPA conducted a screening process designed to identify the best candidate industry groups in order to focus on those industries potentially most relevant to further the purposes of EPCRA section 313. The purpose of the screening process was to focus the Agency's limited resources on those industries for which reporting would be most beneficial to community right-to-know. Provided below is a brief overview of the screening activities conducted by EPA prior to this rulemaking. For a more detailed discussion of the screening activities, refer to *Development of SIC Code Candidates: Screening Document*, available in the public docket for this rulemaking (Ref. 19).

EPA began the screening process by analyzing chemical waste information routinely reported by industries and collected in several existing EPA data systems. While the information reported in these data systems have some inconsistencies with the type of information collected on TRI, the data systems selected provided a reasonable method of comparing industries by chemicals and estimated volumes for industries regulated under each program (Ref. 5).

The initial screening activity ranked industries by the volume of EPCRA section 313 chemicals found in each

reporting system. Those 2-digit SIC codes that made up 99 percent of the matched EPCRA section 313 chemical release estimates for non-manufacturing facilities were selected from each reporting system. This list of 25 2-digit SIC codes was referred to as the "Tier I" list, and included the following Major Groups: Metal Mining; Coal Mining; Oil and Gas Exploration and Production; Non-metal Mining; Heavy Construction; Railroad Transportation; Motor Freight Transportation and Warehousing; Transportation by Air; Pipelines, Except Natural Gas; Transportation Services; Electric, Gas, and Sanitary Services; Wholesale Trade Durable Goods; Wholesale Trade Nondurable Goods; Automotive Dealers and Gasoline Service Stations; Business Services; Automotive Repair, Service, and Parking; Miscellaneous Repair and Service; Health Services; Educational Services; Engineering, Research, Management, and Related Services; Services not elsewhere classified; Administration of Environmental Quality and Housing Programs; Administration of Economic Services; National Security and International Affairs; and Nonclassifiable Establishments.

The Tier I list represents an extremely large number of diverse individual industries. EPA began compiling information useful in explaining what the industries in these Major Groups are and what activities they conduct with emphasis on those activities that may involve section 313 chemicals. This information was organized into documents for each 2-digit SIC code and are referred to as "industry profiles" (Refs. 6, 7, 8, 9, and 10).

The next step in the screening process involved a comparison between industry groups currently reporting under section 313 (manufacturing industries) and those under consideration, in terms of the types of activities they perform and the services they provide to the manufacturing sector. One of the primary objectives of expanding TRI coverage to additional industry groups is to fill in gaps associated with chemical management activities currently reported under EPCRA section 313. EPA determined that those industries that either supply or otherwise manage chemicals and related materials both to and from the point of manufacturing would further this objective. EPA categorized all 25 major industry groups in terms of their relation to manufacturing. This step in the screening process resulted in the following list of candidates: metal mining; coal mining; oil and gas exploration and production; non-metal

mining; motor freight transportation and warehousing; transportation by air; pipelines, except natural gas; electric, gas, and sanitary services; wholesale durable and non-durable goods; and business services.

Once this candidate list was developed, EPA engaged in further discussions with representatives of many of the industries on the list, as well as environmental and labor organizations, state environmental and regulatory representatives, and groups established to provide feedback on TRI initiatives. These discussions provided an opportunity to educate various industry groups about the TRI program, to obtain feedback on the information developed to characterize their industry, and to listen to concerns. A more detailed discussion of the outreach activities conducted as part of this rulemaking can be found in Unit II.B. of this preamble.

A greater level of specificity in the analysis was required to better identify which industry groups and activities were of greater importance in terms of their potential value to section 313 reporting. To refine the analysis, EPA developed data reported in the reporting data systems to the more specific 4-digit SIC code level. These data were incorporated into a ranking model that allowed the management of large volumes of information. For a more detailed discussion of the ranking model, see *Development of SIC Code Candidates: Screening Document* (Ref. 19).

The last stage in the screening process involved an overlay of regulatory definitions and developments, existing program guidance, and any exemptions pertinent to activities identified for the primary candidates. This stage of the analysis allowed EPA to evaluate the degree to which reporting would be expected to occur under EPCRA section 313 for these candidate industry groups. EPA used information developed for this analysis, along with input from specific industries in making further reductions in the list of candidate industry groups (Ref. 19).

As a result of this screening process, EPA eliminated SIC code 16, heavy construction; SIC code 40, railroad transportation; SIC code 42, motor freight, transportation, and warehousing; SIC code 45, air transportation SIC code 46, pipelines, except natural gas; SIC code 47, transportation services; SIC code 55, automotive dealers and gasoline service stations; SIC code 75, automotive repair, service, and parking; SIC code 80, health services; SIC code 82, educational services; and SIC code 87

engineering, research, management, and related services; SIC code 89, miscellaneous services; SIC code 95, administration of environmental quality and housing programs; SIC code 96, administration of economic services; SIC code 97, national security and international affairs; and SIC code 99, nonclassifiable establishments.

#### *D. Additional Considerations in Selecting Additional Industry Group Candidates*

In addition to the activities conducted as part of the screening process described above, EPA also excluded certain industry groups from consideration in this proposed action for a number of other reasons. Provided below is a brief discussion of those additional industry groups that were excluded after the application of the screening process.

1. *Impacts on intergovernmental entities.* EPA considered potential impacts on other governmental entities resulting from addition of certain industry groups. As a result of issues raised by this consideration, several industry groups were excluded from consideration for addition under EPCRA section 313 at this time, including Municipal Solid Waste Landfills (MSWLFs), Publicly-Owned-Treatment Works (POTWs), and water supply systems. Each of these industry groups are part of the Major Group SIC code 49, Electric Gas and Sanitary Services. Water systems are classified within SIC code 4941, POTWs are classified within SIC code 4952, and MSWLFs are classified within 4953. These facilities are primarily operated by local municipalities and regional governmental entities. Although each industry group may manage significant quantities of EPCRA section 313 listed toxic chemicals, the manner in which they manage these chemicals raises several cross-governmental issues EPA is continuing to address. As a result, EPA is not considering these industry groups at this time.

2. *Economic considerations.* EPA's economic analysis identified several industry groups that may be adversely affected at a substantially disproportionate high rate, if coverage under EPCRA section 313 was extended to include them. Petroleum and petroleum products wholesalers classified as SIC code 5172, farm supplies classified as SIC code 5191, and paints, varnishes, and supplies classified in SIC code 5198 may have a disproportionately large economic impact if EPCRA section 313 reporting requirements were extended to their industry (Ref. 20). Further, based on a

preliminary review, the projected value of reporting for these industry groups is questionable. EPA continues to refine this information and explore alternatives for these industry groups.

3. *Non-listed primary chemical association.* Two industries, non-metal mining classified in SIC code 14 and wholesale durable goods classified in SIC code 50, were excluded from further consideration for this action based on the belief that the majority of activities conducted by facilities operating in these industry groups are believed to involve materials that are not EPCRA section 313 listed chemicals.

4. *Standard facility unit.* One industry group, oil and gas extraction classified in SIC code 13, is believed to conduct significant management activities that involve EPCRA section 313 chemicals. EPA is deferring action to add this industry group at this time because of questions regarding how particular facilities should be identified. This industry group is unique in that it may have related activities located over significantly large geographic areas. While together these activities may involve the management of significant quantities of EPCRA section 313 chemicals in addition to requiring significant employee involvement, taken at the smallest unit (individual well), neither the employee nor the chemical thresholds are likely to be met. EPA will be addressing these issues in the future.

EPA may reconsider at a later date some or all of the industry groups which were excluded as a result of the considerations mentioned above. For more detail regarding EPA's exclusion of these industry groups, refer to *Additional Considerations in Selecting Industries for Addition to EPCRA Section 313* (Ref. 17).

For the industry groups outside of SIC codes 20 through 39 which are not part of today's proposal, EPA requests comment on adding any of these industry groups through a future rulemaking. Commenters should take into account the current limitations of EPCRA section 313 reporting requirements, i.e. exemptions and thresholds, in addressing whether these industries should be required to report under EPCRA section 313.

### III. EPCRA Section 313 Statutory Criteria

#### *A. Statutory Construction*

Recognizing that the American public has a right-to-know what is happening in the environment near their homes, schools, and business, Congress provided EPA with explicit statutory authority to expand the categories of

facilities required to report under EPCRA section 313. Section 313(b)(1)(A) applies section 313 to facilities that are in SIC codes 20 through 39. Section 313(b)(1)(B) states:

The Administrator may add or delete Standard Industrial Classification Codes for purposes of subparagraph (A), but only to the extent necessary to provide that each Standard Industrial Classification Code to which this section applies is relevant to the purposes of this section.

EPA believes that this provision grants the Agency broad discretion to add industry groups to the industries subject to the reporting requirements under EPCRA section 313. The Conference Report restates EPA's authority to add industry groups and provides additional guidance:

[EPA's] authority is limited, however, to adding SIC codes for facilities which, like facilities within the manufacturing sector SIC codes 20 through 39, manufacture, process or use toxic chemicals in a manner such that *reporting by these facilities is relevant to the purposes of this section* (emphasis added) (Ref. 13).

Thus, the statute directs EPA, when adding industry groups, to consider and be guided by the "purposes" of EPCRA section 313. While EPCRA section 313 does not explicitly identify the purposes of the section, the Conference Report makes clear that subsection (h) of section 313

Describes the intended uses of the toxic chemical release forms required to be submitted by this section and expresses the purposes of this section. The information collected under this section is intended to inform the general public and the communities surrounding covered facilities about releases of toxic chemicals, to assist in research, to aid in the development of regulations, guidelines, and standards, and for other similar purposes. (Conference Report at 299, Ref. 13)

Statements by Congress are consistent with this stated language. For example, Congressman Edgar, a principal architect of EPCRA, stated during debate on the Conference Report:

Congress recognizes a compelling need for more information about the Nation's exposure to toxic chemicals. Until now, the success of regulatory programs such as the Clean Air Act, the Resource Conservation and Recovery Act, and the Clean Water Act has been impossible to measure because no broad-based national information has been compiled to indicate increases or decreases in the amounts of toxic pollutants entering our environment. As a result, the reporting provisions in this legislation should be construed expansively to require the collection of the most information permitted under the statutory language. Any discretion to limit the amount of information reported should be exercised only for compelling

reasons. A second major principle of this program is to make information regarding toxic chemical exposure available to the public, particularly the local communities most affected. For too long, the public has been left in the dark about its exposure to toxic chemicals. Information that has been available under existing environmental statutes such as the Clean Water Act or the Clean Air Act, has been difficult to aggregate and interpret, which has made it difficult, if not impossible, for the public to gain an overall understanding of their toxic chemical exposure.

Consequently, the reporting requirements should be construed to allow the public the broadest possible access to toxic chemical information in formats that are straightforward and easy to understand. (H. Rep. 99-975, 99th Cong., 2nd Sess., p. 5313 (Oct. 7, 1986)).

Section 313(b) specifies the facilities covered by the toxic chemical release reporting requirement, but also provides the Administrator with the discretion to include additional facilities [either] by specifying additional SIC codes covered by this section—section 313(b)(1)(B) [...] Congress designated facilities in SIC codes 20-39 only as a starting point for this reporting requirement. The principal consideration is whether the addition would meet the objectives of this section to provide the public with a complete profile of toxic chemical releases. The fact that Congress applied the reporting requirement to those in the manufacturing sector should not be considered a limiting criteria in the Administrator's determination. (H. Rep. 99-975, 99th Cong., 2nd Sess., p. 5315 (Oct. 7, 1986)).

Other supporters of EPCRA's community right-to-know provisions echoed Congressman Edgar's view that broad dissemination of information concerning the presence of toxic chemicals in the community is a primary purpose of EPCRA section 313. See, for example, Senator Stafford's statements during debate on the Conference Report:

But the bill goes beyond concern about accidental releases of these toxic and hazardous chemicals. It also recognizes that the public has a right to be informed about routine releases of these chemicals to the air, and the water and the land (H. Rep. 99-975, 99th Cong., 2nd Sess., p. 5185 (Oct. 7, 1986)).

In implementing this section, the Administrator should keep in mind that its primary purpose is to inform the public about routine releases of toxic chemicals. The computer database [established by EPA] must be managed in such a way as to maximize its accessibility and utility to the public (H. Rep. 99-975, 99th Cong., 2nd Sess., p. 5186 (Oct. 7, 1986)).

EPA's reading of the Agency's broad statutory authority to add industry groups to the industries required to report under EPCRA section 313 is echoed in the GAO Report. This report, which represents a critical analysis of

the TRI program and provides recommendation on the direction of the program in keeping with Congressional intent, states that "EPCRA authorizes EPA to revise the chemical list and to require nonmanufacturers to report their emissions" (Ref. 2). This report further notes that many relevant industries currently are not required to report under EPCRA section 313:

Many industries outside the manufacturing sector that use substantial quantities of toxic chemicals annually are not currently required to report their emissions . . . . Because of these reporting exemptions, many persons whom we contacted during our review believed that the inventory's reporting requirements should be revised. We found strong support among government officials, states, reporting facilities, and environmental and public interest groups for expanding the programs reporting requirements to cover industries outside the manufacturing sector. Moreover, we found that 28 states and about half of all reporting facilities favored, for example, requiring reporting by hazardous waste treatment, storage, and disposal facilities (Ref. 2).

Because of this, GAO recommended that EPA expand the number of industries that report under EPCRA section 313:

We believe that to maximize the inventory's usefulness to policymakers and the public, the inventory data must be as comprehensive as possible, *with the data from additional emissions sources* and on additional toxic chemicals. The concerns EPA expressed should be carefully considered. However, these concerns should not override efforts to make the inventory more comprehensive—especially since policymakers and the public need the data to establish environmental priorities and to better measure progress in reducing pollution (Ref. 2).

Based on the Agency's reading of the statute, pertinent legislative history, and the GAO Report, EPA recognizes several purposes of the EPCRA section 313 program, as envisioned by Congress, including: (1) Providing a complete profile of toxic chemical releases and management; (2) compiling a broad-based national data base for determining the success of environmental regulations; and (3) ensuring that the public has easy access to these data on releases of toxic chemicals to the environment. EPA has considered these purposes when exercising its broad discretion to add particular industries to the EPCRA section 313 reporting program.

#### B. Interpretation of Statutory Criteria

As discussed in Unit III.A. of this preamble, the Conference Report on EPCRA section 313 provides guidance on EPA's authority to add industry

groups to those industry groups that, "like facilities within the manufacturing sector SIC codes 20 through 39, manufacture, process or use toxic chemicals in a manner such that reporting by these facilities is relevant to the purposes this section" (Conference Report, p. 5108). For purposes of this rulemaking, which is EPA's first use of section 313(b)(1)(B), EPA has identified three primary factors that the Agency considers as reasonable decision criteria for adding facilities in industry groups under EPCRA section 313(b)(1)(B). The three primary factors identified by EPA are the following: (1) Whether one or more toxic chemicals are reasonably anticipated to be present at facilities within the candidate industry group ("chemical" factor), (2) whether facilities within the candidate industry group manufacture, process, or otherwise use these toxic chemicals ("activity" factor), and (3) whether facilities within the candidate industry group could reasonably be anticipated to increase the information made available pursuant to EPCRA section 313, or otherwise further the purposes of EPCRA section 313 ("information" factor).

EPA believes that each of these three primary factors is important in adding industry groups (referenced by SIC code) to EPCRA section 313(b)(1) because each will help ensure that adding the industry groups will further the purposes of EPCRA section 313. Namely, each of these primary factors ensures that EPA will be able to provide the public with easy access to more complete information concerning toxic chemical releases and other waste management data. This more complete picture also will allow EPA, other Federal, state, and local governments, regulated entities, and the public to measure the success of regulatory and voluntary environmental initiatives. Therefore, EPA believes that these decision criteria are relevant to the purposes of the statute and are appropriate to use in making listing determinations pursuant to EPCRA section 313(b)(1)(B).

A general discussion of each primary factor is included below, and a more detailed discussion of how each primary factor was applied to each industry group proposed for listing can be found in Unit V. of this preamble. EPA is requesting comment on the use of these decision factors for the EPCRA section 313 program.

1. *Whether one or more listed toxic chemicals are reasonably anticipated to be present at facilities within the candidate industry group ("Chemical" Factor).* In addressing whether the

chemical factor is met, EPA will consider evidence indicating that facilities within an industry group are reasonably anticipated to have involvement with one or more EPCRA section 313 listed toxic chemicals as part of its routine operations. Association with section 313 listed toxic chemicals suggests that facilities within industry groups should be covered under EPCRA section 313, given the purpose of EPCRA section 313 is to provide information to the public about toxic chemicals in their communities.

2. *Whether facilities within the candidate industry group manufacture, process, or otherwise use EPCRA section 313 listed toxic chemicals ("Activity" Factor).* In addressing the "activity" factor, EPA will consider evidence indicating that facilities within the candidate industry group manufacture, process, or otherwise use one or more EPCRA section 313 listed toxic chemicals. This "activity" factor relates directly to the manner in which EPCRA section 313 listed chemicals are managed. To make this determination, EPA will use the EPCRA section 313 statutory definitions of manufacturing and processing. In addition, for purposes of determining whether facilities within a candidate SIC code otherwise use a toxic chemical, EPA will consult its regulatory definition and guidance for "otherwise use." For this rulemaking, EPA examined whether its current guidance on "otherwise use," which was developed for the manufacturing sector in SIC codes 20 through 39, is appropriate for facilities in industry groups outside SIC codes 20 through 39. Based on this review and other considerations, the Agency is planning to modify its interpretation of "otherwise use" to include disposal, stabilization, and treatment for destruction. See Unit IV. of this preamble for a more detailed discussion of "otherwise use."

3. *Whether facilities within the candidate industry group could reasonably be anticipated to increase the information made available pursuant to EPCRA section 313, or otherwise further the purposes of EPCRA section 313 ("Information" Factor).* In addressing the "information" factor, EPA will consider any information that bears on whether reporting by facilities within the candidate industry group could reasonably be anticipated to increase the information made available pursuant to EPCRA section 313, or otherwise further the purposes of EPCRA section 313. The information considered for any specific industry group will necessarily vary from industry group to industry group

based on the nature of the industry group and what relevant information is available. Under this factor, EPA may consider information relating to, but not limited to, one or more of the following topics: (1) Whether the addition of the candidate industry group will lead to reporting by facilities within that candidate industry group (e.g., whether facilities within the candidate industry group will conduct activities which exceed the reporting thresholds in section 313(f)); (2) whether facilities within the candidate industry group are likely to be subject to an existing statutory or regulatory exemption from the requirement to file a Form R; (3) whether submitted Form R reports from that industry group could be expected to contain release and waste management data; or (4) whether a significant portion of the facilities in the industry group would be expected to file a Toxic Chemical Release Inventory Certification Statement (see 59 FR 61488, November 30, 1994).

EPA believes that the above three primary factors may be addressed by evaluating data collected by EPA or other government agencies (e.g., National Institute of Occupational Safety and Health (NIOSH) and Occupational Safety and Health Administration (OSHA)), as well as information provided by facilities through case studies, surveys, or site visits; facility records or operation plans; information on materials in commerce; or common practices as found in the literature, such as trade journals and industry reports; or other available sources. Some of the pertinent EPA data systems include the Aerometric Information Retrieval System (AIRS, collected under the Clean Air Act), the Permit Compliance System (PCS, collected under the Clean Water Act), and the Biennial Report System (BRS, collected under the Resource Conservation and Recovery Act). While EPA cannot use these data to estimate likely TRI releases and other waste management volumes, EPA can and has used information from these and other sources, such as those listed above, to assist in identifying appropriate candidates. In the absence of any such data, EPA will rely on other relevant sources of data.

For example, during EPA's evaluation of the electric services industry group (SIC code 4911), 40 million pounds of releases or waste volumes were identified in BRS, 31 million pounds in AFS, and 15 million pounds in PCS. EPA does not believe that this information can be used to predict TRI data or that it is an adequate substitute for TRI data; however, EPA did use this

information to identify the electric services industry group as a candidate for inclusion in this proposed rule. See *Appendix B: Routinely Reported Information - Chemical Detail* (Ref. 8), for similar information on other candidate industry groups.

EPA recognizes that different industry groups may be regulated under different statutory and regulatory regimes. An industry may have very limited regulatory requirements that require their reporting of chemical uses and management practices, for example, and, therefore, this industry would not be represented in some data sources. This often leads to different amounts and types of information being available to the Agency from these sources. Thus, EPA recognizes that in some cases the available data from these sources may not reflect an industry's actual involvement with section 313 chemicals. For those industry groups for which such information is limited, EPA believes that it is appropriate to rely more heavily on sources of data other than regulatory sources. EPA requests comment on other sources of appropriate information.

#### IV. Clarification of Threshold Activities

##### A. Statutory Background

Only facilities that exceed certain chemical activity thresholds (and that meet the SIC code and employee threshold criteria) are required to report under EPCRA section 313. These thresholds are detailed in section 313(f)(1) of EPCRA:

The threshold amounts for purposes of reporting toxic chemicals under this section are as follows:

(A) With respect to a toxic chemical *used* at a facility, 10,000 pounds of the toxic chemical per year.

(B) With respect to a toxic chemical *manufactured or processed* at a facility--

\* \* \*

(iii) For the form required to be submitted on or before July 1, 1990, and for each form thereafter, 25,000 pounds of the toxic chemical per year. EPCRA 313(f)(1), (emphases added).

In addition to the reporting thresholds specifically listed in EPCRA section 313(f)(1), EPA has established an alternate threshold for facilities with low reportable releases and wastes under section 313(f)(2).

EPCRA section 313 defines "manufacture" and "process"; however, the statute does not specifically define "use" or "otherwise use." The only limitation Congress placed on what activities could be considered "use" are those chemical activities that are exempt from EPCRA section 313 reporting as provided in EPCRA section

327. These exempted activities relate to the "transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements including the transportation and distribution of natural gas."

Because the statutory language does not include a specific definition of "use," EPA has looked to other sources for guidance in formulating the Agency's interpretation of the term. The dictionary definitions of "use" are so encompassing that they can be argued to cover nearly any activity impacting a toxic chemical. For example, the Random House College Dictionary, Revised Edition (1982) includes a broad range of definitions of the term, including "to employ for some purpose," "to expend or consume in use," and "to consume entirely." Given the breadth in these definitions, EPA's interpretation of what might be "otherwise use" activities could capture a significant range of activities impacting a toxic chemical subject to the relevant purposes of EPCRA section 313. Thus to determine the appropriate scope of this definition, EPA has considered Congress' stated purposes for enacting EPCRA section 313 as found in the statutory language and the legislative history.

As discussed in Unit II.A. of this preamble, Congress wanted the reporting requirements of EPCRA section 313 to be applied broadly, and to provide the greatest amount of information to the public and federal, state, and local governments. In furtherance of this goal, Congress recognized that EPA may need to add chemicals and industry groups to the chemicals and industry groups originally listed in EPCRA section 313 to provide more complete chemical and facility profiles important to the local public and for local decision making. Moreover, Congress found information on chemical management activities relevant to the needs of local communities in requiring that reporting include, for example, information on waste streams and how they are handled. See, e.g., 42 U.S.C. 11023(g). Given the primary goal of providing information to the public on listed toxic chemicals present, released, and managed in communities, EPA does not believe that it is reasonable to conclude that Congress would intend any provision of EPCRA section 313 to be interpreted to significantly limit the information available to the public. Because interpreting the definition of "use" narrowly can have the unintended impact of limiting the amount and kind of information readily

available to local communities, EPA believes that the term "otherwise use" should be interpreted broadly. Consistent with this belief, EPA promulgated the broad definition of "otherwise use or use" in 40 CFR 372.3.

##### B. Regulatory Background

In 1988, to address the lack of a statutory definition, EPA promulgated a definition of "otherwise use" in the regulations implementing EPCRA section 313:

Otherwise use or use means any use of a toxic chemical that is not covered by the terms manufacture or process and includes use of a toxic chemical contained in a mixture or trade name product. Relabeling or redistributing a container of a toxic chemical where no repackaging of the toxic chemical occurs does not constitute use or processing of the toxic chemical (53 FR 4525, February 16, 1988).

However, in the preamble to the final rule, EPA distinguished its interpretation of "otherwise use" from "processing" by stating that "otherwise use" involves a non-incorporative activity.

EPA is interpreting otherwise using a [listed] toxic chemical to be activities that support, promote, or contribute to the facility's activities, where the chemical does not intentionally become part of a product distributed in commerce. (53 FR 4506.)

EPA also recognized that it was appropriate to place some limitations on those quantities of toxic chemicals that should be included in a facility's threshold calculations. These exemptions were based on review of comments and questions received on the proposed rule and in workshops held prior to the publication of the final rule. The following uses of chemicals are currently exempt from section 313 threshold determinations and from the EPCRA section 313 reporting requirements. (40 CFR 372.38; 53 FR 4528, February 16, 1988).

(1) Use as a structural component of the facility. This type of use refers to materials containing listed section 313 chemicals that may be present at a facility but that are not involved in the processes conducted by the facility for purposes of their chemical properties. An example of this type of case is use of copper in copper pipes. EPA believes this type of activity is an ancillary use of copper which would not add to the purposes served by providing information to the public.

(2) Use of products for routine janitorial or facility grounds maintenance. Examples include uses of janitorial cleaning supplies, fertilizers, and pesticides similar in type or concentration to consumer products.



EPA believes that these types of chemical uses are incidental to the function of the facility. While grounds maintenance may be seen as a contributing activity to the facility overall, it is not a necessary action that promotes the function or purpose of the facility.

(3) Personal uses by employees or other persons at the facility of foods, drugs, cosmetics, or other personal items containing toxic chemicals, including supplies of such products within the facility such as in a facility-operated cafeteria, store, or infirmary.

(4) Use of products containing toxic chemicals for the purpose of maintaining motor vehicles operated by the facility. For similar reasons provided for the janitorial and facility grounds maintenance exemption, the use of materials containing listed section 313 chemicals for the purpose of maintaining motor vehicles is believed by EPA to be an incidental chemical use relative to the overall function of facilities currently covered under section 313.

(5) Use of toxic chemicals present in process water as drawn from the environment or from municipal sources or toxic chemicals present in air used either as compressed air or as part of combustion. While air and water may be necessary ingredients in particular manufacturing or processing activities, EPA determined that the generally small quantities of listed section 313 chemicals that each may contain would not be reportable. EPA established this exemption both to reduce the burden on the reporting industry and to have industry focus on those quantities of toxic chemicals over which they exercise some control.

(6) Uses of articles. The inclusion of the article exemption was for the expressed purpose of exempting articles that contain listed toxic chemicals from threshold and reporting determinations. EPA determined that it is appropriate to exempt chemicals that are contained in articles as defined by a modification of the definition in the OSHA Hazard Communication Standard (HCS). The HCS places a condition on the use of things classified as articles such that when they are used they do not result in any section 313 listed chemical releases. EPA has further modified the OSHA HCS definition such that any use or processing of the articles that results in releases makes the activity ineligible for the exemption.

(7) Use of toxic chemicals in certain laboratory activities. This exemption allows the exclusion of amounts of chemicals from threshold calculations that are manufactured, processed or

otherwise used in laboratory activities conducted under the supervision of a technically qualified individual. This exemption was provided in part to be consistent with other sections of EPCRA, specifically sections 311 and 312, as well as the OSHA HCS. EPA limited this exemption to non-specialty chemical production laboratories and non-pilot plant scale operations. EPA expressed some concerns over the releases of chemicals from exempted laboratory activities in the final rule and stated that the Agency would review these types of facilities for potential future coverage.

At this time, EPA is not proposing a change to any of the exemptions listed above. EPA may, however, reconsider the application of these exemptions in the future. (For additional information on these exemptions contact the EPCRA Hotline at the telephone number or address listed in the FOR FURTHER INFORMATION CONTACT unit of this document.)

The exemptions promulgated by EPA to date are intended to exclude from threshold and reporting calculations those activities that are not principal to the primary function of the facility. The exemptions were provided to allow facilities to focus on those chemical management activities that support, promote, or significantly contribute to the primary purpose of the facility. EPA believes that these activities are ones over which the facility has primary control.

#### *C. Current "Otherwise Use" Interpretive Guidance*

EPCRA section 313 reporting guidance has been developed to assist covered facilities in complying with section 313. This reporting guidance has been provided to reporting facilities as responses to questions to EPA's EPCRA Hotline, as response to letters from subject facilities, and distribution of a "Question and Answer" document. For some reference to these other sources of information on "otherwise use" see the document *EPCRA Section 313 Otherwise Use Activities* (Ref. 21).

Given that the original section 313 facilities list was limited to those facilities which principally operate in the manufacturing sector, the reporting guidance was tailored to address the principal activities conducted by manufacturing facilities. In particular, facilities were instructed not to consider amounts of chemicals treated or disposed in calculating "otherwise use" reporting thresholds. Although current guidance instructs facilities to include the amounts of listed chemicals released during treatment or disposal in a

facility's release and waste management estimates (assuming that the facility exceeds a manufacture, process, or otherwise use threshold for the chemical elsewhere at the facility), current guidance instructs facilities not to include the amounts treated or disposed toward the "manufacture," "process," or "otherwise use" threshold.

Current guidance was not based on an evaluation of activities actually conducted by manufacturing facilities, but instead was conceived with the mind that the industrial classification system places facilities primarily engaged in waste treatment and disposal activities outside the manufacturing sector, and therefore, were not subject to the original EPCRA section 313 requirements.

#### *D. Proposed Changes to Interpretive Guidance*

As the focus of EPCRA section 313 expands to include industry groups whose primary activities are similar to or support manufacturing either as inputs (e.g., energy) or outputs (e.g., waste treatment), EPA reconsidered its interpretive guidance on otherwise use for facilities within SIC code 20 through 39, and facilities within the industry groups being proposed. EPA is concerned that, based on current guidance, the public may not have access to information relating to releases of toxic chemicals from facilities within SIC codes 20 through 39 that are receiving materials for the purposes of treatment for destruction, stabilization, or disposal. As a result, EPA believes that it is appropriate to develop guidance addressing this concern. Further, EPA believes it is appropriate to develop guidance that is consistent with the primary activities conducted by facilities within the candidate industry groups. Therefore, EPA is modifying its interpretation of activities considered "otherwise used" as it applies to activity thresholds under section 313 to include treatment for destruction, disposal, and waste stabilization (hereafter referred to as "stabilization") when the EPCRA section 313 facility engaged in these activities receives materials containing any chemical (not limited to EPCRA section 313 listed toxic chemicals) from one or more other facilities (regardless of whether the generating and receiving facilities have common ownership) for the purposes of further waste management activities.

EPA interprets waste stabilization consistent with the definition at 40 CFR 265.1081, except that for purposes of EPCRA section 313 the definition

should be interpreted to apply to any EPCRA section 313 listed toxic chemical or waste containing any EPCRA section 313 listed toxic chemical. A synonym for waste stabilization is waste solidification. EPA interprets "treatment for destruction" to mean the destruction of the toxic chemical such that the substance is no longer a toxic chemical subject to reporting under EPCRA section 313. Also, for purposes of the EPCRA section 313 "otherwise use" reporting threshold, disposal would include underground injection, placement in landfills/surface impoundments, land treatment, or other intentional land disposal. See "Toxic Chemical Release Inventory Reporting Instructions" (1995 version) at p. 35 for a list of activities to be reported under "Transfers Off-site for Purposes of Disposal."

The following are four examples of this revised interpretation.

*Example 1:* For example, a facility receives a material containing 22,000 pounds of chemical "A." Chemical "A" is an EPCRA section 313 listed toxic chemical. The facility treats for destruction chemical "A." Included among the various activities covered by EPA's revised interpretation of "otherwise use" is the "treatment for destruction" of a toxic chemical received by the facility from off-site. Because the facility received and treated for destruction chemical "A," the amount of chemical "A" treated for destruction would be included in the calculation of the amount of chemical "A" "otherwise used" at the facility. In this case, 22,000 pounds of chemical "A" would be considered "otherwise used." Thus, because the facility "otherwise used" chemical "A" above the 10,000 pound statutory threshold for "otherwise use," the facility would be required to report all releases of, and management activities involving, chemical "A."

*Example 2:* Assume now that the same facility, in treating for destruction chemical "A," manufactures 11,000 pounds of chemical "B." Chemical "B" is also an EPCRA section 313 listed toxic chemical. This manufacture of chemical "B" is below the "manufacturing" reporting threshold. However, the facility disposes of chemical "B" on-site. Included among the various activities covered by EPA's revised interpretation of "otherwise use" is the disposal of a toxic chemical that is produced from the management of a waste that is received by the facility. In this example, because the facility received from off-site a material containing a chemical that is treated for destruction (i.e., chemical "A") and

during that treatment produced and subsequently disposed of chemical "B," the disposal of chemical "B" under EPA's revised interpretation would be considered "otherwise used." Because the facility disposed of, or otherwise used, 11,000 pounds of chemical "B," the 10,000 pound statutory threshold for "otherwise use" is met. Thus, the facility would need to report all releases of, and management activity involving, chemical "B."

*Example 3:* As another example, a facility produces on-site a material containing 22,000 pounds of chemical "C." Chemical "C" is *not* an EPCRA section 313 listed toxic chemical. Also, chemical "C" was not manufactured as a result of managing a waste received from off-site. The facility treats for destruction chemical "C" and during treatment manufactures 11,000 pounds of chemical "D." Chemical "D" is an EPCRA section 313 listed toxic chemical. The facility subsequently disposes of chemical "D." In this example, although the facility disposes of chemical "D," the 11,000 pounds of chemical "D" is not considered "otherwise used" under EPA's revised interpretation because the material from which chemical "D" is produced (i.e., the material containing the 22,000 pounds of chemical "C") was not received by the facility from off-site. Thus, in disposing of chemical "D," the facility does not exceed the 10,000 pound statutory threshold for "otherwise use."

*Example 4:* However, based on Example 3, if chemical "C" were received from off-site or was created in waste management activities conducted on materials received from off-site, the disposal of chemical "D" would be considered an "otherwise use" activity involving chemical "D." Therefore, the disposal of the 11,000 pounds of chemical "D" would exceed the 10,000 pound statutory threshold for "otherwise use," and the facility would need to report all releases and management activities involving, chemical "D."

EPA requests comment on its revised interpretation as explained by these examples.

EPA believes that this modified interpretation of "otherwise use" better serves the purposes of providing communities with information that assists them in making decisions. EPA believes that these waste management activities represent activities that generate, use, and are the source of significant releases of listed toxic chemicals. Thus, EPA believes that current guidance, which allows amounts of listed chemicals that are

disposed, stabilized, or treated for destruction to be reported only when the chemical exceeds thresholds elsewhere at the facility, potentially excludes from reporting a large amount of listed chemicals managed at certain facilities.

In addition, this modification of the interpretation of "otherwise use" is consistent with EPA's approach for interpreting "manufacture." For example, EPA's regulatory definition of "manufacture" and current guidance includes as "manufacturing" the amount of a listed toxic chemical that is coincidentally manufactured during waste treatment or disposal by the facility (40 CFR 372.3). Therefore, the amounts of these chemicals must be counted toward the manufacturing threshold. Further, assuming that the manufacturing threshold is met under EPCRA section 313, the facility must report the amount of that manufactured chemical that is released or otherwise managed as waste. EPA believes that modifying the interpretation of "otherwise use" to include activities such as treatment for destruction, stabilization, and disposal makes that definition more consistent with EPA's guidance on calculating manufacturing thresholds. Finally, EPA believes that current guidance that omits amounts disposed, stabilized, or treated for destruction is inconsistent with the spirit of EPCRA when applied to the additional facilities proposed for listing in this action. Excluding such activities from the interpretation of "otherwise use" would prevent the dissemination of information deemed useful in serving the public's interest and the purposes of section 313.

Because EPA believes that most facilities in SIC codes 20 through 39 dispose or treat only waste that was already manufactured, processed, or otherwise used at their facility, the Agency does not believe that this change in guidance will affect the EPCRA section 313 reporting status of a significant number of facilities within the manufacturing sector. There is one category of facilities in the manufacturing sector that could be affected by this revised guidance. Specifically, it could affect those facilities in the manufacturing sector that receive wastes from other facilities and manage those wastes through treatment or disposal. Under the revised guidance, the quantity of EPCRA section 313 listed toxic chemicals that undergo these activities must be included in the "otherwise use" threshold, whereas currently such facilities are instructed to exclude from the "otherwise use" threshold determination the quantity of

the toxic chemical treated for destruction, stabilized, or disposed. EPA requests comment on its revised interpretation of "otherwise use." EPA also requests comment on the number of facilities within the manufacturing sector that would be affected by this revised interpretation.

An alternative to modifying the scope of "otherwise use" through reporting guidance is amending the regulatory definition of "otherwise use" or "use" consistent with this modified approach. As noted above, the current regulatory definition of "otherwise use" is very broad and covers EPA's revised interpretation. While EPA does not believe a change in the regulatory definition is necessary to clarify its interpretation, EPA is requesting comment on whether it should amend the regulatory text to make clear this revision. The regulatory definition would read as follows:

*Otherwise use or use* means any use of a toxic chemical that is not covered by the terms "manufacture" or "process", and includes treatment for destruction, stabilization (without subsequent distribution in commerce), disposal, and other use of a toxic chemical, including a toxic chemical contained in a mixture or trade name product. *Except that*

(1) Facilities engaged in treatment for destruction, stabilization, or disposal are not using a toxic chemical in these activities unless the facility receives materials from other facilities for purposes of further waste management activities.

(2) Relabeling or redistributing a container of a toxic chemical where no repackaging of the toxic chemical occurs does not constitute use of the toxic chemical.

EPA requests comment on whether the regulatory definition of "otherwise use" should be amended.

An alternative interpretation is including in the definition of "otherwise use" all disposal, treatment for destruction, and stabilization, regardless of whether the facility receives materials from off-site for the purposes of treatment for destruction, stabilization, or disposal. This alternative approach may affect those facilities that manufacture or process a listed chemical below the 25,000 pound threshold, but that treat or dispose of more than 10,000 pounds of that chemical; the disposal is the activity that would cause the facility to exceed the otherwise use threshold. The Agency requests comment on the number of facilities in this category that may be affected by this alternate approach for modifying EPA's guidance, and on whether this alternative interpretation and whether it would better serve the purposes of EPCRA section 313.

#### *E. Relationship Among Manufacture, Process, and Otherwise Use*

EPA believes that the revised interpretation and change in reporting guidance is consistent with the general focus of section 313 on the collection and dissemination of information relating to the activities involving toxic chemicals in a community. Further, EPA believes that toxic chemicals that are disposed, stabilized, or treated for destruction are more appropriately considered otherwise used, as opposed to manufactured or processed.

Under EPCRA section 313, "manufacture" means to produce, prepare, import, or compound a chemical listed under section 313, including coincidental production of a toxic chemical. Thus, disposal, stabilization, or treatment for destruction of a toxic chemical, whether or not it was produced at the facility, is not appropriately considered manufactured.

EPCRA section 313 defines "process" as "the preparation of a toxic chemical, after its manufacture, for distribution in commerce- (I) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such chemical, or (II) as part of any article containing the toxic chemical." Although the act of treatment of a chemical contained in a waste may closely relate to many of the activities described by the processing definition, the statute provides a limitation that the chemical be incorporated into a product that is further distributed in commerce. In a case where a facility receives a chemical that is contained in a "waste," and the facility recovers the chemical from the "waste" and distributes the chemical in commerce, EPA believes the facility is processing the chemical. In a case where a facility receives a waste containing a toxic chemical and disposes or treats for destruction the toxic chemical on-site, EPA does not believe the facility is processing the toxic chemical because the toxic chemical is not distributed in commerce. EPA requests comment on the relationship of "manufacture," "process," and EPA's revised interpretation of "otherwise use."

EPA requests comment on all aspects of the Agency's broadening of the concept of "otherwise use."

#### V. EPA's Technical Review

##### *A. Introduction*

Data on the candidate industry groups were reviewed for evidence indicating whether EPCRA section 313 listed toxic chemicals are present at facilities within

that industry group, whether facilities within that industry group manufacture, process, or otherwise use listed toxic chemicals, and whether listing facilities within that industry group could reasonably be anticipated to increase the available information on TRI.

For each industry group proposed for addition to EPCRA section 313 in this rulemaking, EPA conducted an extensive assessment. Only after this careful review was a final determination made as to whether to propose to list the industry group pursuant to EPCRA section 313(b)(1)(B). The information summarized below for each industry group describes the key data elements upon which EPA relied to determine that the addition of the facility sector is relevant to the purposes of EPCRA section 313 pursuant to section 313(b)(1)(B) criteria. A more extensive review of the existing data base for each industry group proposed for listing, which reflects the entire weight-of-the-evidence considered by EPA, is contained in the following support documents and in the record supporting this proposed rulemaking: "SIC Code Profile 10: Metal Mining" (Ref. 6); "SIC Code Profile 12: Coal Mining" (Ref. 7); "SIC Code Profile 49: Electric, Gas, and Sanitary Services" (Ref. 8); "SIC Code Profile 51: Wholesale Trade - Nondurable Goods" (Ref. 9); "SIC Code Profile 73: Business Services" (Ref. 10); and "Economic Analysis of the Proposed Rule to Add Certain Industries to EPCRA Section 313" (Ref. 20). These documents contain a complete list of the references that were used in support of these proposed additions. Each industry group is identified by facility sector name and SIC code.

EPA requests comment on the industry groups proposed for addition. In addition, EPA requests comment on any issues that may be specific to any of the individual industry groups.

##### *B. Chemicals and Allied Products - Wholesale*

EPA is proposing to require facilities operating in SIC code 5169, Wholesale Nondurable Goods—Chemicals and Allied Products, Not Elsewhere Classified (hereafter "Chemicals and Allied Products"), be subject to EPCRA section 313. Facilities within this industry group receive EPCRA section 313 chemicals in bulk, take possession of those chemicals and reformulate, introduce chemical additives, or repackage materials containing section 313 chemicals. These activities fall within the statutory definition of "process," and are currently being reported by facilities operating in the manufacturing sector.

1. *Description of industry.* Facilities operating in SIC code 5169, Wholesale Nondurable Goods—Chemicals and Allied Products, not elsewhere classified, consists of facilities engaged primarily in the consolidation of a variety of bulk chemicals and packaged products prior to their distribution to a variety of destinations including retailers, other wholesale facilities, and in some cases to manufacturing facilities for industrial use or for product formulation. Goods managed by facilities in the Chemicals and Allied Products industry group may include any of a number of EPCRA section 313 listed chemicals.

2. *Summary of evaluation.* Based on EPA's evaluation of this industry, the Agency believes that reformulation and repackaging activities conducted by facilities in the Chemicals and Allied Products industry group routinely involve the manufacture, processing, or otherwise use of EPCRA section 313 chemicals and that the facilities within this industry group are likely to report information relevant to the purposes of EPCRA section 313. The present determination is consistent with current reporting guidance, and the application of existing thresholds and exemptions under EPCRA section 313. The Agency anticipates reporting of releases and other waste management information from facilities operating in SIC code 5169.

3. *Chemicals associated with the Chemicals and Allied Products industry group.* Facilities classified in the Chemicals and Allied Products industry group, are involved in the wholesale distribution and management of a variety of chemicals from such industrial chemical categories as alkalines and chlorine, industrial gases, specialty cleaning and sanitation preparations, noncorrosive products and materials, and industrial salts and polishes. Included within these industrial chemical categories are such specific EPCRA section 313 chemicals as chlorine, sodium cyanide, formaldehyde, and methyl ethyl ketone to name a few (Refs. 1 and 3). EPA's analysis has identified several EPCRA section 313 listed toxic chemicals that are commonly managed by facilities operating in the Chemicals and Allied Products industry group (Ref. 20). Based on this finding, EPA believes that a strong indication exists that those facilities classified in the Chemicals and Allied Products industry group are involved with EPCRA section 313 listed toxic chemicals on a routine basis.

4. *Manufacture, process, or otherwise use activities involving EPCRA section 313 chemicals.* Some of the facilities

within the Chemicals and Allied Products industry group are involved in the preparation of EPCRA section 313 listed toxic chemicals, or mixtures containing EPCRA section 313 listed toxic chemicals, after their manufacture, for distribution in commerce. The type of preparation activities conducted by facilities classified in the Chemicals and Allied Products industry group include reformulation and or repackaging prior to being distributed.

For example, a facility may purchase and distribute organic chemicals, which are mostly liquids and many of which may be EPCRA section 313 listed toxic chemicals. The chemicals are transferred into various size containers for resale. In addition to any material losses during the transfer, some toxic chemical wastes may be generated as pumps and hoses are flushed. As another example, a facility may routinely blend chemicals (many of which may be EPCRA section 313 listed toxic chemicals) to formulate, for example, lacquer thinner for autobody shops. Some facilities may routinely handle 27 or more EPCRA section 313 listed toxic chemicals.

EPA believes that these types of preparation activities of EPCRA section 313 listed toxic chemicals clearly fit within the statutory definition of process and would constitute a reportable activity under EPCRA section 313. EPA believes that those facilities whose management of EPCRA section 313 chemicals is limited to the receipt and distribution of products containing EPCRA section 313 listed toxic chemicals without the products being reformulated or repackaged would not be required to submit Form R reports for these chemicals because these activities do not meet the definition of manufacture, process, or otherwise use. Also, EPA does not believe that the limited act of storage of a chemical constitutes a reportable activity under EPCRA section 313.

5. *Types of information anticipated.* Based on EPA's analysis, releases and other waste management information resulting from the reformulation and repackaging of EPCRA section 313 chemicals and products containing section 313 chemicals are anticipated. Reports are expected for formaldehyde, methyl ethyl ketone, and methanol. As discussed below, facilities in this industry group engage in many of the same activities as facilities in SIC codes 20 through 39. Therefore, it is reasonable to believe that these similar activities would result in similar types of release and waste management information. For example, while releases can and do occur from accidents, inadequate storage procedures, or damages during

transport, EPA is not proposing the inclusion of this industry based solely on these activities (Ref. 3).

Based on data required by the Massachusetts Toxic Use Reduction Act, which requests similar information to that required under EPCRA section 313, evidence suggests that facilities operating within the Chemicals and Allied Products industry group will report on a number of EPCRA section 313 chemicals (Ref. 3). Based on these data, it appears that these facilities will report primarily on releases to air of volatile compounds likely originating from reformulation and repackaging activities. Based on the Massachusetts data, 8 facilities reported a primary SIC code of 5169 and submitted a total of 50 reports that were also EPCRA section 313 chemicals. These 8 facilities reported an average of 6.25 reports per facility as compared to the average number of reports for currently listed manufacturing facilities of 3.7. The total releases reported were approximately 75,450 pounds for 17 listed chemicals. The median facility release to air was approximately 3,180 pounds of listed toxic chemicals (Ref. 3).

EPA estimates that reporting under EPCRA section 313 from this industry may result in 8,354 Form R reports and 2,785 Toxic Chemical Release Certification Statements annually submitted by 782 facilities. This number of facilities estimated to report represents 9 percent of all industries facilities within this industry group.

6. *Reporting considerations.* Some facilities, which are primarily classified as manufacturers (SIC codes 20 through 39) but that also warehouse and distribute their products, are currently reporting release and waste management information associated with these activities that are similar to those conducted by facilities whose primary classification is in SIC code 5169. EPA believes that facilities operating in the Chemicals and Allied Products industry group (SIC code 5169) that are engaged in the manufacture, process, or otherwise use of EPCRA section 313 listed toxic chemicals above reporting thresholds should also be required to inform the public about releases and other waste management activities of EPCRA section 313 listed toxic chemicals.

EPA estimates the potential costs for reporting for the first year by this industry group to be \$51.5 million and \$33.5 million in subsequent years.

7. *Conclusion.* For the reasons identified above, EPA believes that facilities in the Chemicals and Allied Products industry group in SIC code 5169 satisfy the requirements of EPCRA

section 313(b)(1)(B) because EPA believes that reporting for this industry group is relevant for the purposes of EPCRA section 313. Accordingly, EPA proposes to add this industry group to the list of industry groups required to report pursuant to EPCRA section 313 and the PPA section 6607.

#### *C. Petroleum Bulk Stations and Terminals - Wholesale*

EPA is proposing to require petroleum bulk stations and terminals in SIC code 5171 to report under EPCRA section 313. This industry group includes facilities that receive petroleum products and petroleum additives that contain EPCRA section 313 chemicals, take possession of those chemicals and reformulate the products and/or repackage those petroleum products prior to their distribution in commerce.

1. *Description of industry.* The petroleum industry maintains many bulk stations and terminals that manage a variety of refined petroleum products. The types of petroleum products managed by these facilities include crude oil, motor gasoline, diesel, heating fuel, aviation jet fuel, asphalt, and liquid petroleum hydrocarbons. The primary functions of these facilities include storage, mixing, blending, distribution, and sale of refined petroleum products (Ref. 9).

2. *Summary of evaluation.* Based on EPA's evaluation of this industry, the Agency believes that the mixing, blending, repackaging, and preparation activities conducted by facilities in the petroleum bulk stations and terminals industry routinely involve the manufacture, process, or otherwise use of EPCRA section 313 listed toxic chemicals and that facilities within this industry group are likely to report information relevant to the purposes of EPCRA section 313. The present determination is consistent with current reporting guidance, and the application of existing thresholds and exemptions under EPCRA section 313. EPA anticipates reporting of releases and other waste management information from facilities in this industry group.

3. *Chemicals associated with the industry.* Bulk petroleum terminals principally manage refined petroleum products prior to their distribution in commerce. The types of petroleum products managed by bulk terminals are likely to include one or more EPCRA section 313 chemicals. Based on EPA's analysis, EPCRA section 313 listed toxic chemicals in gasoline managed by bulk terminals that are likely to be present include benzene, cyclohexane, ethyl benzene, toluene, 1,2,4-trimethylbenzene, and xylene. Section

313 chemicals present in crude oil, No. 2 fuel oil, diesel and No. 6 fuel oil include benzene, phenanthrene, and benz(a)anthracene (Refs. 9 and 20).

4. *Manufacture, process, or otherwise use activities involving EPCRA section 313 chemicals.* Bulk petroleum terminals serve as an intermediate point in the commerce cycle of the petroleum industry. Based on EPA's analysis, facilities operating in SIC 5171 take possession of refined petroleum products and perform mixing, blending, and reformulation activities prior to their distribution in commerce. EPA believes that the mixing, blending, and reformulation activities, of petroleum products containing EPCRA section 313 listed toxic chemicals, prior to their distribution in commerce clearly fits within the EPCRA section 313 statutory definition of processing.

Facilities in this industry group may also introduce petroleum additives in order to reformulate the product prior to distribution. This activity involves the intentional incorporation of an EPCRA section 313 listed toxic chemical into a product prior to distribution. Thus, EPA believes that this activity constitutes processing of an EPCRA section 313 listed toxic chemical as defined by the statutory definition. In addition, EPCRA section 313 chemicals may be otherwise used during normal facility maintenance activities (excluding exempt routine janitorial or facilities grounds maintenance activities) (Ref. 9).

5. *Type of information anticipated.* Storage, mixing, blending, and product transfer are among the activities during which significant releases of EPCRA section 313 chemicals are likely to occur at bulk terminal facilities. These releases are likely to be in the form of fugitive air emissions, tank sludges, or spills into surface water, groundwater, or land of section 313 chemicals contained in petroleum products. EPA anticipates information on these and other waste management practices for chemicals such as, cyclohexane, ethyl benzene, toluene, 1,2,4-trimethylbenzene, xylene, phenanthrene, and benz(a)anthracene (Ref. 20). While storage tanks at bulk terminals are generally equipped with internal floating roofs and other features designed to reduce loss of volatile components, losses of some section 313 chemicals resulting from tank breathing still occur. Based on EPA's analysis, a small bulk terminal manages on average an annual throughput of 36.5 million gallons, and is estimated to process petroleum products in sufficient quantities to exceed the EPCRA section 313(f) reporting thresholds for all EPCRA section 313 listed toxic

chemicals that are components of gasoline, No. 2 fuel oil/diesel, No. 6 fuel oil, and crude oil. In addition, EPA estimates that some bulk terminals will also exceed the EPCRA section 313(f) reporting thresholds for EPCRA section 313 listed toxic chemicals contained in petroleum additives (Ref. 20).

EPA estimates that reporting under EPCRA section 313 from this industry may result in 12,394 Form R reports annually submitted by 3,842 facilities. This number of facilities estimated to report represents 34 percent of all facilities identified within this industry group.

6. *Reporting considerations.* Based on EPA's analysis, many of the activities conducted by petroleum bulk stations and terminals meet the definition of manufacture, process, or otherwise use. EPA believes that current interpretations of manufacture, process, or otherwise use will apply directly to facilities operating in this industry segment with minimal inconsistencies.

EPA estimates the potential costs for reporting for the first year by this industry group to be \$69.3 million and \$40.7 million in subsequent years.

7. *Conclusions.* For the reasons identified above, EPA believes that facilities in the SIC code 5171 petroleum bulk stations and terminals satisfy the requirements of EPCRA section 313(b)(1)(B) because EPA believes that reporting for this industry group is relevant for the purposes of EPCRA section 313. Accordingly, EPA proposes to add this industry group to the list of industry groups required to report pursuant to EPCRA section 313 and the PPA section 6607.

#### *D. Electric Utilities*

EPA is proposing to require coal and oil-fired electric utility plants in SIC code 49 to report under EPCRA section 313. These facilities are classified in SIC code 4911 Electric Services, SIC code 4931 Electric and Other Services Combined, and SIC code 4939 Combination Utilities, Not Elsewhere Classified. EPA is requesting comment on whether to add SIC code 4960 Steam and Air Conditioning Supply. Although information is limited on this industry group, EPA expects the activities conducted by this industry group to be similar to those conducted in SIC codes 4911, 4931, and 4939.

Due to the fact that nuclear, hydroelectric, gas and other non coal/oil-fired electric generating stations do not use fuel containing EPCRA section 313 listed toxic chemicals, EPA is proposing to add only those facilities within this industry group which combust fuels containing EPCRA

section 313 listed toxic chemicals. While EPA recognizes that non coal/oil-fired electric generating stations may otherwise use EPCRA section 313 chemicals in maintenance, cleaning, and purifying operations, and that information on releases and other waste management data from these activities may have some value, these support activities are not the primary function of the facility. EPA also recognizes that generating facilities may switch fuels as part of normal operations, including switching between natural gas and other fossil fuels. Natural gas does not contain EPCRA section 313 listed toxic chemicals above *de minimis* concentrations, and EPA would not expect reporting to result from the combustion of natural gas. However, any facility which combusts coal or oil in whatever percentage of its fuel use, and whether for primary or back-up generation, would become a covered facility for purposes of EPCRA section 313, and be required to make a compliance determination. Thus, EPA has chosen, as a matter of prioritizing, to propose the addition of only coal and oil-fired plants at this time.

1. *Description of industry.* The electric services industry includes facilities which generate electricity with different fuels: fossil fuels (i.e., coal, oil and natural gas); gas turbines; internal combustion turbines; nuclear; hydroelectric; and other sources including geothermal, wind, and solar. The combination electric services industry includes electric generating facilities that receive 50 to 95 percent of their revenues from electricity sales. Both industries generate electricity primarily through the combustion of fossil fuels (Ref. 8).

2. *Summary of evaluation.* Based on EPA's evaluation of this industry, the Agency believes that electric generation routinely involves the manufacture, process, or otherwise use of EPCRA section 313 listed toxic chemicals and that the facilities within SIC code 49 which generate electricity by combusting coal and oil are likely to report information relevant to the purposes of EPCRA section 313. The present determination is consistent with current reporting guidance, and the application of existing thresholds and exemptions under EPCRA section 313. The Agency anticipates reporting of releases and other waste management information from facilities within this industry group.

3. *Chemicals associated with electric utilities.* A variety of chemicals are associated with electricity generation. Coal and oil used to generate electricity may include EPCRA section 313 listed

toxic chemicals as constituents. Among the EPCRA section 313 listed toxic chemicals which may be found in coal and oil are polycyclic aromatic compounds, chlorine, benzene, toluene, ethylbenzene, manganese, xylene, nickel, biphenyl, and naphthalene. Also, the following EPCRA section 313 metals and their compounds may be found in coal and oil: beryllium, cadmium, selenium, antimony, arsenic, copper, lead, barium, chromium, vanadium, zinc, and mercury and their compounds. In addition, other EPCRA section 313 listed toxic chemicals may be present in maintenance, cleaning, and purification operations. These may include copper compounds, hydrazine, zinc compounds, hydrochloric and sulfuric acid (aerosols), brominated compounds, formic acid, ammonia, thiourea, methylene chloride, and ethylene glycol (Ref. 20).

4. *Manufacture, process or otherwise use activities involving EPCRA section 313 chemicals.* While differing in some important respects, all conventional steam electric generating stations rely on the same basic process. Fuel is ignited and burned within a boiler chamber composed of thousands of feet of water-filled tubes. The heat of combustion heats the water in the boiler tubes, creating high temperature and high pressure steam. The steam passes through turbines causing the turbine blades to rotate. A shaft connected to the turbine blades drives electric generators, yielding electric power. In this fashion, the chemical energy of the coal or oil is converted to heat energy through combustion, then to mechanical energy in the turbines, and finally to electrical energy in the generators. Transmission lines, substations, and switching stations channel generated electricity to various end users. A range of maintenance, cleaning, and purifying operations are also conducted (Ref. 8).

Electric services and combination electric utilities manufacture or otherwise use a variety of EPCRA section 313 listed toxic chemicals, as part of the combustion process and as part of maintenance, cleaning, and purification operations. The combustion of coal creates certain EPCRA section 313 listed toxic chemicals, including formaldehyde, hydrogen chloride, hydrochloric acid (aerosol), primary sulfates (including sulfuric acid aerosol), hydrogen fluoride, hydrofluoric acid, and the following metals and their compounds, arsenic, beryllium, cadmium, chromium, copper, lead, mercury, manganese, and nickel. Similarly, the combustion of fuel oil manufactures sulfuric acid aerosols, formaldehyde, and the following metals

and their compounds, arsenic, beryllium, cadmium, chromium, copper, lead, mercury, manganese, nickel, and zinc. Since the inception of the program, EPA has interpreted "manufacture" to include coincidental production of a listed toxic chemical. Coincidental manufacture is the generation of a listed toxic chemical as a byproduct or impurity (53 FR 4504, February 16, 1988). In the combustion of coal and oil, metal compounds may be produced from either the parent metal or a metal compound contained in the coal or oil. This may or may not involve a change of valence state. A change in valence state results in the manufacture of a metal compound. Metal compounds which are produced in the combustion process are considered "manufactured" for purposes of EPCRA section 313. The *de minimis* concentration exemption does not apply to coincidental manufacture (see 53 FR 4504, February 16, 1988; see also Refs. 8 and 2). Thus, all quantities of the metal compound manufactured in the combustion process must be compared to the "manufacture" threshold.

Constituents of coal and oil fuels are otherwise used in the combustion process, including the EPCRA section 313 chemicals listed in the above section, since they are combusted as part of the fuel. Metal compounds may be manufactured by the oxidation of metals and metal compounds contained in the fuel. In addition, a variety of chemicals also listed in the above section are otherwise used in maintenance, cleaning, and purifying operations. For example, several EPCRA section 313 listed toxic chemicals are otherwise used in corrosion control such as copper compounds, hydrazine, and zinc compounds, with data from cooling tower waste blowdown streams of coal-fired boilers indicating that copper and zinc compounds may be used in large quantities (Refs. 8 and 20). In addition, brominated compounds, ammonia, hydrochloric acid or chlorine may be used to treat intake water. Further, the water-side or steam-side of the boiler (including the boiler tubes, superheater, and condenser) requires occasional cleaning. Formic acid, and thiourea may all be used, along with large volumes of abrasives. Ethylene glycol is also otherwise used in generating station chillers and in some instances is applied to coal to prevent coal piles from freezing (Refs. 8 and 20).

5. *Types of information anticipated.* EPA recognizes that fuel composition may vary, and that the quantity and chemical composition of the wastes produced from cleaning and maintenance operations is dependent on

plant-specific factors such as plant size, type of equipment used and age of equipment. Based on EPA's evaluation of this industry, the Agency believes that most section 313 chemicals present in coal and oil fuels that are combusted in these facilities are present in concentrations below *de minimis* levels. EPA anticipates limited reporting resulting from the use of EPCRA section 313 chemicals in combustion of coal. EPCRA section 313 listed toxic chemicals that are components of No. 2 fuel oil above the *de minimis* concentration limit that would be reported as used in combustion include biphenyl, naphthalene, and members of the polycyclic aromatic compounds category. EPCRA section 313 listed toxic chemicals in No. 6 fuel oil above the *de minimis* concentration limit that would be reported as used in combustion include members of the polycyclic aromatic compounds category. EPA also anticipates reportable quantities of EPCRA section 313 listed toxic chemicals to be manufactured during combustion processes involving coal and oil. These include many of the metal compounds such as cadmium, chromium, and zinc compounds. Further, EPA believes that some EPCRA section 313 chemicals that are routinely manufactured or otherwise used at coal/oil-fired electric utility plants are not exempt under current EPCRA section 313 exemptions.

EPCRA section 313 chemicals, which EPA has preliminarily identified, that are manufactured or otherwise used above *de minimis* concentrations in reportable activities include sulfuric and hydrochloric acid aerosols, hydrofluoric acid, formaldehyde, chlorine, bromine, ethylene glycol, hydrazine, and copper. Based on EPA's evaluation of this industry, EPA anticipates reporting on releases and other waste management information relevant to the purposes of EPCRA section 313. This type of routine information regarding EPCRA section 313 chemicals is not publicly-available. Indications exist that routine releases occur at these facilities. This assessment is based on the identification of reported releases of EPCRA section 313 chemicals in other EPA data systems. EPA also believes that quantities of wastes containing EPCRA section 313 listed toxic chemicals are generated and may result in reporting of waste management information. Therefore, EPA reasonably anticipates that facilities in this industry may report information relevant to the purposes of EPCRA section 313 on releases and other waste management information.

EPA estimates that reporting under EPCRA section 313 from this industry may result in 4,175 Form R reports and 1,392 Toxic Chemical Release Certification Statements annually submitted by 974 facilities. This number of facilities estimated to report represents 31 percent of all facilities identified within this industry group.

6. *Reporting considerations.* Based on EPA's understanding of this industry, facilities possess a wide range of knowledge regarding the EPCRA section 313 chemicals involved in their activities. While coal/oil-fired facilities in SIC Code 4911 are clearly identified as coal/oil-fired facilities and thus would be subject to this proposed action, facilities in SIC codes 4931 and 4939 may also engage in combustion of waste to generate electricity. Any facility in these SIC codes which generates electricity through coal or oil combustion in any proportion would be subject to reporting requirements and must determine if reporting thresholds are exceeded. Facilities in SIC code 4911 engaged in electricity generation using gas, nuclear, hydroelectric electric or other sources such as solar and wind, are not subject to these reporting requirements.

EPA estimates the potential costs for reporting for the first year by this industry group to be \$26.6 million and \$16.6 million in subsequent years.

7. *Conclusions.* For the reasons identified above, EPA believes that facilities in the electric utilities industry in SIC codes 4911, 4931, 4939 satisfy the requirements of EPCRA section 313(b)(1)(B) because EPA believes that reporting for this industry group is relevant for the purposes of EPCRA section 313. Accordingly, EPA proposes to add this industry group to the list of industry groups required to report pursuant to EPCRA section 313 and the PPA section 6607.

#### *E. Mining*

1. *Exemption of extraction activities.* Mining facilities conduct two primary operations: extraction and beneficiation. Both operations may occur within the same facility. While EPA believes that activities associated with beneficiation include EPCRA section 313 reportable activities and will result in reports relevant to the purposes of EPCRA section 313, it has not reached a similar conclusion regarding extraction activities, particularly in regards to coal extraction. EPA interprets "extraction" for purposes of EPCRA section 313 to mean the physical removal or exposure of ore, coal, minerals, waste rock, or overburden prior to beneficiation, and encompasses all extraction-related

activities prior to beneficiation. Included within these extraction activities is removal of spoil. "Spoil" is a non-technical term that refers to dirt removed from a mine site. While the term "spoil" apparently has different connotations from mine to mine, it is, in essence, considered a part of overburden. The typical extraction sequence includes the removal of any unconsolidated overburden followed by drilling, blasting, and mucking the broken ore and waste rock material. Extraction does not include beneficiation, coal preparation, mineral processing, *in situ* leaching or any further activities.

As a result of EPA's evaluation of coal mining, the Agency believes, based on currently available data, that facilities in this industry which conduct extraction-only activities would not conduct EPCRA section 313 reportable activities and are unlikely to submit reporting information. EPA bases this conclusion on its belief that EPCRA section 313 chemicals are not present above *de minimis* concentration levels during coal extraction, and the use of EPCRA section 313 chemicals in coal extraction activities in concentrations above *de minimis* is unlikely to occur.

Beneficiation, or preparation, of coal, does however involve the use of EPCRA section 313 chemicals, and the Agency believes that reporting resulting from coal preparation activities is likely. Reporting requirements for coal mining facilities where no further processing occurs is likely to result in an unnecessary imposition of burden which would provide no additional EPCRA section 313 information. Therefore, EPA is proposing to exclude extraction activities, as defined above, conducted in SIC code 12 in all EPCRA section 313 reporting requirements. Facilities engaged in the extraction of coal only would not be required to make compliance determinations and report releases and other waste management information associated with these extraction activities. Facilities engaged in both extraction of coal and coal preparation would be required to perform compliance determinations, and, to the extent then necessary, report releases and other waste management information associated with coal preparation and any other activities outside of extraction that are conducted on-site. Facilities classified in SIC code 12 which engage in preparation only, and do not engage in any extraction on-site would also be required to perform compliance determinations and report on releases and other waste management activities. This exemption

would apply only to extraction as defined above, and not to beneficiation or any other activities conducted at facilities in this industry. Further, this exemption is proposed to apply only to extraction activities in SIC code 12, and not activities that occur in SIC code 10 metal mining. EPA is requesting comment on this exemption of extraction activities conducted in SIC code 12 from the EPCRA section 313 reporting requirements.

EPA is also requesting comment regarding whether this exemption should be applied to metal mining extraction as well. Data and information concerning EPCRA section 313 chemical activity in metal mining extraction activities are limited. EPA believes that metal mining extraction and coal mining extraction are similar types of operations, and that the use of EPCRA section 313 chemicals in concentrations above *de minimis* during extraction is also unlikely in both industries. Specifically, EPA does not have information indicating that typical overburden would contain EPCRA section 313 chemicals in concentrations above *de minimis* levels. Further, based on EPA's understanding of metal mining operations at this time, EPA would not expect these operations to have a great deal of knowledge regarding the constituents present in overburden. During the comment period, EPA may receive information confirming or refuting this understanding. If, as EPA suspects, overburden does not typically contain EPCRA section 313 chemicals above *de minimis* concentrations, there would be little or no reporting associated with the removal of overburden. In the event EPA extends the coal extraction exemption to metal mining, the issue of "spoil," or reporting on overburden, becomes moot.

On the other hand, the composition of extracted material is different in metal mining and coal mining. EPA believes that EPCRA section 313 chemicals are often present above *de minimis* concentrations in metal ore.

Consequently, these facilities, which typically also conduct beneficiation on site, may have EPCRA section 313 chemicals present in reportable volumes during extraction as well as during beneficiation. EPA is requesting comment on whether the exemption of extraction activities, including removal of overburden, should also be applied to metal mining extraction in SIC code 10.

2. *Metal mining.* EPA is proposing to require facilities engaged in metal mining to report under EPCRA section 313. This proposed requirement is limited to facilities in SIC Code 10 (Metal Mining) except SIC Code 1081

Metal Mining Services. Facilities in SIC code 1081 do not conduct reportable activities; activities performed by firms in SIC code 1081 primarily consist of contracted services for mining operations in the other SIC codes.

a. *Description of industry.* The metal mining industry includes facilities engaged primarily in exploring for metallic minerals, developing mines, and ore mining. Metal bearing ores are valued chiefly for the metals they contain, which are recovered for use as such, or as constituents of alloys, chemicals, pigments, or other products. This industry also includes all ore dressing and beneficiating operations, whether performed at mills operated in conjunction with the mines served, or at mills, such as custom mills, operated separately. These include mills which crush, grind, wash, dry, sinter, calcine, or leach ore, or perform gravity separation or flotation operations (Refs. 4 and 6). EPA's Office of Solid Waste has produced a series of *Technical Resource Documents* on extraction and beneficiation of ores and minerals. These documents have been included in the public docket for reference.

Although this SIC code includes all metal ore mining, the scope of mining industries with a significant domestic presence is concentrated in iron, copper, lead, zinc, gold, and silver. Metals generated from U.S. mining operations are used domestically in a wide range of manufactured products, including automobiles, electrical and industrial equipment, jewelry, and photographic materials (Ref. 16).

b. *Summary of evaluation.* Based on EPA's evaluation of this industry, the Agency believes that beneficiation activities routinely involve the manufacturing, processing or otherwise use of EPCRA section 313 chemicals and that the facilities within this SIC code are likely to report information relevant to the purposes of EPCRA section 313. The present determination is consistent with current reporting guidance, and the application of existing thresholds and exemptions under EPCRA section 313. The Agency anticipates reporting of releases and other waste management information from facilities.

c. *Chemicals associated with metal mining.* A wide variety of chemicals are found at mining facilities in SIC code 10. Various EPCRA section 313 listed metals and metal compounds are found in the ores that are mined and beneficiated. The nature of the ore that is mined by a particular facility is extremely site specific. Further, although relatively standardized processes are used to recover the target

metal(s) from ores at various types of mines, the chemicals used in these recovery processes by specific facilities (both in type and quantity) are strongly influenced by the nature of the ore and of the recovery process used.

Based on EPA's evaluation of this industry, it believes that the EPCRA section 313 chemicals associated with the metal mining industry which may be expected to be reported under this proposed action include constituents of ore such as copper, antimony, silver, lead, zinc, cadmium, mercury, chromium, manganese, and nickel and their compounds; flotation reagents such as cyanide compounds, copper sulfate, and zinc sulfate; agglomeration agents such as chlorine; elution acids such as nitric acid; electrowinning agents such as cyanide compounds and lead nitrate; and beneficiation agents such as cyanide compounds (Refs. 6, 16, 18, and 20).

d. *Manufacture, process or otherwise use activities involving EPCRA section 313 chemicals.* Metal mining includes extraction and beneficiation steps during the preparation of a specific metal concentrate. Extraction involves the removal or exposure of the ore from surface and underground deposits prior to beneficiation. The typical extraction sequence includes the removal of any unconsolidated overburden followed by drilling, blasting, and mucking the broken ore and waste rock material.

Beneficiation is the preparation of a specific metal concentrate. The purpose of beneficiation is to concentrate the sought after metal in the ore by separating the values from the other materials in the ore (Ref. 6). The most common beneficiation methods include gravity concentration, milling and floating, leaching, dump leaching, and magnetic separation (Refs. 6 and 16). EPA interprets "ore beneficiation" for purposes of EPCRA section 313 to mean the preparation of ores to regulate the size of the product, to remove unwanted constituents, or to improve the quality, purity, or grade of a desired product. (Ref. 16) Under regulations drafted pursuant to the Resource Conservation and Recovery Act (RCRA, 40 CFR 261.4), beneficiation is restricted to the following activities: crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting; autoclaving, and/or chlorination in preparation for leaching; gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap,



dump, vat, tank, and in situ leaching. (40 CFR 261.4) EPA's interpretation of "beneficiation" for EPCRA section 313 purposes should be read consistent with the RCRA definition and guidance.

Beneficiation of ore is, in essence, the preparation of the constituents of the ore. In many mining operations, such as lead, silver, and copper, the primary metal is a constituent of the ore (i.e. lead, silver, and copper) and is a toxic chemical. There may be other constituents of the ore that are also toxic chemicals. Because beneficiation of the ore is preparation of the constituents, any beneficiation of ore containing toxic chemicals is also preparation of all of the toxic chemical constituents. If the preparation of the toxic chemical constituent is for distribution in commerce, the toxic chemical is "processed" for purposes of EPCRA section 313.

In addition, other EPCRA section 313 chemicals may be otherwise used during the beneficiation operations. For example, cyanide leaching, using solutions of sodium and potassium cyanides as leaching agents, to extract gold from gold ore, represents an otherwise use of EPCRA section 313 chemicals.

*e. Types of information anticipated.* EPA recognizes that the nature of the ore mined and the preparation of its constituents is site-specific and therefore variable.

EPA's evaluation of this industry indicates that facilities routinely handle large volumes of EPCRA section 313 chemicals and that there is reason to believe that routine releases occur based on data in existing EPA data systems. For example, releases to air of toxic chemicals including arsenic, antimony, lead, and copper were reported in EPA's AIRS-AFS data base. EPA reasonably anticipates, therefore, that facilities in this industry may report information on releases and other waste management consistent with the purpose of EPCRA section 313. As a result, information on the presence, management, and releases of toxic chemicals will be available to interested communities, governments, and individuals, that was previously unavailable to the public.

EPA estimates that reporting under EPCRA section 313 from this industry may result in 1,176 Form R reports annually by 328 facilities. This number of facilities estimated to report represents 31 percent of all facilities identified within this industry group.

*f. Reporting considerations.* Because the activities in this industry, particularly beneficiating, are similar to processing activities performed in currently covered facilities, no new

guidance is required to enable facilities in this industry to comply with EPCRA section 313 reporting requirements.

EPA estimates the potential costs for reporting for the first year by this industry group to be \$6.5 million and \$3.8 million in subsequent years.

*g. Conclusions.* For the reasons identified above, EPA believes that facilities in the metal mining industry in SIC code 10 except SIC code 1018 satisfy the requirements of EPCRA section 313(b)(1)(B) because EPA believes that reporting for this industry group is relevant for the purposes of EPCRA section 313. Accordingly, EPA proposes to add this industry group to the list of industry groups required to report pursuant to EPCRA section 313 and the PPA section 6607.

*3. Coal mining.* EPA is proposing to require establishments engaged in coal mining to report under EPCRA section 313. This proposed requirement is limited to establishments in SIC code 12 Coal Mining except SIC code 1241 Coal Mining Services. EPA does not believe that SIC code 1241 includes facilities which conduct reportable activities or routinely handle large volumes of EPCRA section 313 chemicals.

*a. Description of industry.* The coal mining industry includes establishments primarily engaged in producing bituminous coal, anthracite, and lignite. Included are mining operations and preparation plants (also known as cleaning plants and washeries), whether or not such plants are operated in conjunction with mine sites (Ref. 7). Coal is extracted from surface and underground mines; production from surface mines is increasing as production from underground mines decreases. The sequence of steps in coal production is similar to metal mining and includes extraction and beneficiation. Facilities in these SIC codes may manufacture, process, or otherwise use EPCRA section 313 chemicals when conducting blasting activities; extraction of coal and impurities; and preparation activities, including cleaning to reduce ash and sulfur content, washing, crushing, screening, and loading (Ref. 20).

*b. Summary of evaluation.* Based on EPA's evaluation of this industry, the Agency believes that beneficiation and processing operations performed in coal preparation plants routinely involve manufacturing, processing, or the otherwise use of EPCRA section 313 chemicals and that the facilities within this SIC code are likely to report information relevant to the purposes of EPCRA section 313. The present determination is consistent with current reporting guidance, and the application

of existing thresholds and exemptions under EPCRA section 313. The Agency anticipates reporting of releases and other waste management information from facilities in this industry.

*c. Chemicals associated with coal mining.* There are three sources of EPCRA section 313 chemicals in SIC code 12: (1) EPCRA section 313 chemicals that are commonly found in coal; (2) EPCRA section 313 chemicals that are subsequently used during the coal preparation process; and (3) EPCRA section 313 chemicals incidental to coal production, e.g., explosives, acid mine drainage. Metals and minerals present in coal may include antimony, arsenic, barium, cadmium, chromium, copper, lead, manganese, mercury, nickel, selenium, silver, vanadium (fume or dust), and zinc (fume or dust) and their compounds. Chemicals used during coal preparation may include tetrachloroethylene, 1,1,1-trichloroethane, phenanthrene, dichlorodifluoromethane, xylene, and ethylene glycol. Chemicals incidental to coal production include ammonium nitrate and fuel oil, used for explosives. Fuel oil may contain EPCRA section 313 chemicals as constituents.

Based on EPA's evaluation of this industry, the Agency believes that the EPCRA section 313 chemicals associated with coal mining which may be expected to be reported under this proposed action are primarily associated with coal preparation plants and would include tetrachloroethylene, 1,1,1-trichloroethane, phenanthrene, dichlorodifluoromethane, xylene, and ethylene glycol (Ref. 20).

*d. Manufacture, process, or otherwise use activities involving EPCRA section 313 chemicals.* Coal beneficiation, also known as coal preparation, is the process of upgrading raw coal using physical methods to improve the energy value and remove impurities such as pyrite and non-coal mineral material. It is intended to produce a standardized product and reduce ash and sulfur content. The extent of upgrading is determined by the intended end use and compliance with emission standards (Ref. 7). Coal is crushed and slurried with water at coal preparation plants to separate organics from inorganic impurities. The inorganic impurities are denser than the combustible, organic fraction of the coal, and the density difference is used to separate the inorganic fractions using cyclones and dense-medium tanks. Flotation tanks are also used to remove pyrite from finely ground coal. The coal-water slurry is introduced into a series of flotation cells spragged with air from below. Alcohols are used to create a froth, and kerosene

or diesel fuel is added to collect the coal into the froth, leaving the pyrite behind. At the completion of the cleaning steps, the coal is dried using hot gases from a coal burning furnace.

While the possibility exists that the coincidental manufacture of EPCRA section 313 chemicals may occur as a result of chemical reactions during either extraction or beneficiation operations, EPA has not identified instances where this occurs routinely. EPA, as part of its evaluation of this industry, has not determined that processing, as defined in EPCRA section 313, routinely occurs for EPCRA section 313 listed toxic chemicals above *de minimis* concentrations. However, EPA has identified routine activities involving EPCRA section 313 toxic chemicals. Beneficiation of coal routinely involves the otherwise use of EPCRA section 313 chemicals to aid in separating coal from impurities during coal preparation processes. The use of these chemicals during the beneficiation, or preparation, activities described above constitute the otherwise use of chemicals. EPA believes, based on its evaluation, that these activities will be the primary source of EPCRA section 313 information from these facilities.

*e. Types of information anticipated.* Based on EPA's evaluation of this industry, the Agency believes that coal mining facilities routinely handle large volumes of EPCRA section 313 chemicals and that there is reason to believe that routine releases occur based on data in existing EPA data systems. For example, routine releases to air were reported in EPA's Aerometric Information Retrieval System (AIRS) Facility Subsystem (AFS) of ethylene glycol and dichlorodifluoromethane for facilities in SIC code 12 (Ref. 18). EPA reasonably anticipates, therefore, that facilities in this industry will report information on releases and other waste management activities of EPCRA section 313 chemicals such as tetrachloroethylene, xylene, and ethylene glycol. As a result, information on the presence, management and releases of toxic chemicals will be available to interested communities, governments, and individuals, that was previously unavailable to the public.

EPA estimates that reporting under EPCRA section 313 from this industry may result in 642 Form R reports annually submitted by 321 facilities. This number of facilities estimated to report represents 10 percent of all facilities identified within this industry group.

*f. Reporting considerations.* Because the activities conducted by facilities

within this industry sector, particularly coal preparation or beneficiation, are similar to manufacturing, processing, and otherwise use activities performed in currently covered facilities, no new guidance is required to enable facilities in this industry to comply with EPCRA section 313 reporting. There may be activities other than those discussed here that should be examined by a reporting facility for reporting purposes. For example, although coal contains EPCRA section 313 constituents, EPA believes that these constituents generally exist in concentrations below *de minimis* levels, and therefore may be exempt from reporting as the constituents are further processed with the coal. However, in the event that coal preparation plants process a product other than coal, for further distribution in commerce, and that product contains EPCRA section 313 chemicals above *de minimis* concentrations, the facility may need to file a Form R for that chemical.

EPA estimates the potential costs for reporting for the first year by this industry group to be \$5.4 million and \$2.5 million in subsequent years.

*g. Conclusion.* For the reasons identified above, EPA believes that facilities in the coal mining industry in SIC code 12 except SIC code 1241 satisfy the requirements of EPCRA section 313(b)(1)(B). Accordingly, EPA proposes to add this industry group to the list of industry groups required to report pursuant to EPCRA section 313 and the PPA section 6607.

#### *F. RCRA Subtitle C Hazardous Waste Facilities*

EPA is proposing to require facilities regulated under RCRA Subtitle C that are classified in SIC code 4953 to report under EPCRA section 313.

*1. Description.* Facilities operating in SIC code 4953 that are regulated under RCRA subtitle C (the primary federal law addressing hazardous waste management), are engaged primarily in the collection, transportation, treatment for destruction, stabilization, and/or disposal of RCRA subtitle C hazardous waste. These facilities include incinerators, underground injection facilities, waste treatment plants, landfills, and other facilities designed for the treatment for destruction, stabilization, and disposal of hazardous waste.

*2. Summary of evaluation.* EPA has determined that facilities regulated under RCRA subtitle C that are classified in SIC code 4953 conduct activities that routinely involve the management of EPCRA section 313 chemicals. Based on EPA's revised interpretation of activities considered as

otherwise use as discussed in Unit IV. of this preamble, EPA believes that facilities regulated under RCRA Subtitle C that are classified in SIC code 4953 manage as waste a substantial volume of EPCRA section 313 chemicals. Under the revised otherwise use interpretation articulated in Unit IV. of this preamble, amounts of section 313 chemicals treated for destruction, stabilization, or disposal would be considered otherwise use for purposes of threshold determinations and the amounts released or managed as a waste would be subject to reporting under EPCRA section 313, provided that the appropriate EPCRA section 313(f) threshold is met.

*3. Chemicals associated with the industry.* Facilities regulated under RCRA subtitle C that are classified in SIC code 4953 manage an extremely large number and quantity of EPCRA section 313 chemicals. The EPCRA section 313 list of toxic chemicals includes 195 specifically listed chemicals that are also regulated as hazardous waste under RCRA (40 CFR 261.33(e) and 40 CFR 261.33(f)). The EPCRA section 313 list of toxic chemicals also contains two chemical categories that are also regulated under the RCRA program. Therefore, the number of EPCRA section 313 chemicals that may be managed and potentially reported by facilities within this industry group is rather large.

*4. Manufacture, process, or otherwise use activities involving EPCRA section 313 chemicals.* Facilities regulated under RCRA subtitle C that are within SIC code 4953 receive waste containing section 313 chemicals for the purposes of storage, treatment for destruction, stabilization, and disposal. These facilities manage a substantial amount of EPCRA section 313 chemicals contained in waste. While these activities result in the generation of and in limited cases may include the use of EPCRA section 313 chemicals, the vast majority of section 313 chemicals managed by these facilities are in the amounts managed as waste.

As stated in Unit IV. of this preamble, EPA is modifying its interpretation of "otherwise use" to include the treatment for destruction, stabilization, or disposal of EPCRA section 313 chemicals. Given this interpretation, most of the activities conducted by facilities regulated under RCRA subtitle C that are in SIC code 4953 will be considered otherwise use. In addition, some EPCRA section 313 listed toxic chemicals may be coincidentally manufactured in the treatment of hazardous waste streams (Ref. 20).

Some EPCRA section 313 listed toxic chemicals that may be manufactured, processed, or otherwise used by facilities in this industry group include: hydrochloric acid, hydrofluoric acid and sulfuric acid (aerosol), which may be coincidentally manufactured during some treatment for destruction activities; chlorine, which is used in some treatment operations (Ref. 20); and numerous other chemicals otherwise used under EPA's revised interpretation, such as chlorobenzene, dichlorobenzene, formaldehyde, and metals (e.g., lead) and their compounds.

5. *Types of information anticipated.* Congress created EPCRA section 313 to provide a unique function—to make multimedia information on releases of toxic chemicals and other waste management activities readily available to communities. Although at that time, existing statutes provided some information, sponsors of EPCRA section 313 recognized that existing information did not serve the need of providing publicly available information on releases and other waste management activities of toxic chemicals in a consistent and comprehensive format for all media.

EPA and the states currently collect much of [the information to be collected by the section], and a number of states and cities have instituted similar inventories... However, many states and the EPA do not have so-called multimedia inventories. The information may be scattered in air files, water files and on RCRA manifest forms...but not pulled together in one place to provide a complete and usable picture of total environmental exposure. (Senator Lautenberg, Ref. 11).

Similarly, the sponsors also recognized that industries that were the initial focus of EPCRA section 313 (i.e., facilities in SIC codes 20 through 39) were already subject to extensive regulations, but determined that these industries should be included in those initially subject to EPCRA section 313 reporting.

With respect to the contents of the toxic release inventory form, estimates of releases into each environmental medium must be provided. This shall include any releases into the air, water, as well as releases from waste treatment and storage facilities. This should include all releases of toxic chemicals in surface waters whether or not such releases are pursuant to Clean Water Act permits. Similarly, all toxic chemicals dumped into and disposal facilities must be reported whether or not such facilities are regulated under the Resource Conservation and Recovery Act. (Congressman Edgar, Congressional Record, p. 15316-15317 October 8, 1986)

While EPA recognizes that facilities regulated under RCRA subtitle C are

subject to considerable regulation, EPA believes that requiring these facilities to report under EPCRA section 313 does not constitute a significant overlap with other regulations. Although the permitting process makes some chemical management information on a facility-specific basis available to the public, the type of information collected from facilities regulated under RCRA subtitle C is typically at the waste stream level and not at the constituent-specific level. This is very different from the type of information collected under EPCRA section 313. The information collected under EPCRA section 313 is chemical-specific and in contrast to RCRA data is designed to be used by the public.

EPA has been encouraged to consider the addition of waste treatment and disposal facilities to EPCRA section 313 since the initial passage of the statute. Comments received on the proposed rule (53 FR 4504) to implement EPCRA section 313 reporting included strong support for the addition of the commercial waste treatment industry. Given the purpose of EPCRA section 313 (providing the public with information on toxic chemicals), EPA believes it is appropriate to expand the focus of the TRI program to include information from facilities that treat for destruction, stabilize, and/or dispose of toxic chemicals. Certainly, facilities regulated under RCRA subtitle C are locations where substantial quantities of concentrated toxic chemicals are collected, and treated for destruction, stabilized, and/or disposed. As discussed above, Congress intended that the information provided by EPCRA section 313 reporting would include releases from waste treatment and disposal facilities regardless of whether these releases were permitted or not. Therefore, it is EPA's belief that the inclusion of RCRA subtitle C facilities operating within SIC code 4953 under EPCRA section 313 reporting requirements is appropriate and will add significantly to the information that is available on how and where toxic chemical wastes are released and managed.

As stated above, facilities regulated under RCRA subtitle C that are within SIC code 4953 manage a large number of EPCRA section 313 chemicals, often in large quantities. The types of treatment activities and concentrations of chemicals in waste received will greatly affect the types and amounts of section 313 chemicals released or managed as a waste from any particular facility. As a whole, EPA anticipates that facilities operating in this industry group will contribute more release and

management information on a per facility basis than any other industry group currently reporting or being proposed for addition by this rulemaking.

EPA estimates that reporting under EPCRA section 313 from this industry may result in 6,637 Form R reports and 74 Toxic Chemical Release Certification Statements annually by 164 facilities. This number of facilities estimated to report represents 100 percent of all facilities identified within this industry group.

6. *Reporting consideration.* EPA's revised interpretation of "otherwise use" can significantly impact the information reported by facilities within this industry group. See Unit IV.D. of this preamble for reporting examples.

EPA estimates the potential costs for reporting for the first year by this industry group to be \$31.2 million and \$21.5 million in subsequent years.

The Agency believes it is important to provide the public with TRI information from the hazardous waste management industry. However, the Agency recognizes that facilities in this industry present specific issues with regard to reporting under EPCRA section 313. Placement of a toxic chemical into a RCRA hazardous waste landfill is reported as a release under EPCRA section 313, even though disposal of hazardous waste in that landfill is a permissible waste management activity under RCRA. Through its outreach efforts in developing this proposal, EPA discussed the hazardous waste management industry's concerns with the differing perceptions of the term "release." Although RCRA does not define the term "release," some may perceive that term, when used in the RCRA context, to indicate failure of the hazardous waste management unit, such as a landfill. For TRI purposes, EPCRA section 329 defines "release" to mean "spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical." Disposal includes underground injection, placement in landfills/surface impoundments, land treatment, or other intentional land disposal. (See "Toxic Chemical Release Inventory Reporting Instructions" (1995 version) at p. 35 for a list of activities to be reported under "Transfers Off-site for Purposes of Disposal.")

The Agency is mindful of the concern that TRI release information involving

hazardous waste management activities not be misleading. For example, the public should not construe a release into a landfill reported under EPCRA section 313 to mean that a landfill has failed. In developing the final rule, EPA will consider approaches to assist the public in understanding the proper meaning of reporting data from the hazardous waste management industry. EPA requests comment on approaches to address this concern.

Although facilities that receive hazardous waste are provided with information on the constituents of that hazardous waste, these facilities may be provided with limited information on EPCRA section 313 listed chemicals and the exact quantities of those constituents. EPA requests comment on the quantity of constituents, difficulty and costs of reporting, and ways to aid facilities in reporting under EPCRA section 313, in the least burdensome manner, on those constituents that are EPCRA section 313 listed toxic chemicals.

**7. Conclusion.** For the reasons identified above, EPA believes that those RCRA subtitle C facilities in SIC code 4953 satisfy the requirements of EPCRA section 313(b)(1)(B) because EPA believes that reporting for this industry sector is relevant for the purposes of EPCRA section 313. Accordingly, EPA proposes to add this industry group to the list of industry groups required to report pursuant to EPCRA section 313 and the PPA section 6607.

#### G. Solvent Recovery Services

EPA is proposing to require facilities engaged in solvent recovery operations to report under EPCRA section 313. These facilities are classified in SIC code 7389 Business Services, not elsewhere classified, that are primarily engaged in solvent recovery activities.

**1. Description of the industry.** Solvent recovery is the act of removing contaminants and reconditioning a previously used industrial solvent to a form suitable for reuse. Solvent recovery is a beneficial activity that ultimately reduces wastes and the demand for raw materials. However, the activities used to recover solvents may result in significant releases and other waste management activities involving EPCRA section 313 chemicals.

Many facilities are engaged in solvent recovery, in part due to the widespread use of solvents, the value of the material, and the technologies available. Most facilities conducting solvent recovery operations are primarily engaged in other activities, making the number of facilities primarily engaged

in solvent recovery relatively few. Many facilities identified as operating within the manufacturing sector conduct solvent recovery operations and may currently report under EPCRA section 313 those releases and waste management activities that result from their solvent recovery operations (Ref. 20).

**2. Summary of evaluation.** Based on EPA's evaluation of facilities primarily engaged in solvent recovery operations, the Agency believes their associated activities routinely involve the manufacturing, processing, or otherwise use of EPCRA section 313 listed toxic chemicals. This determination is consistent with current reporting guidance and the application of existing exemptions under EPCRA section 313. EPA anticipates reporting of releases and other waste management information from facilities primarily engaged in solvent recovery operations.

**3. Chemicals associated with the industry.** Solvents appropriate for recovery include alcohols, aliphatics, aromatics, chlorinated hydrocarbons, chlorofluorocarbons, ketones, and other flammable and non-flammable compounds. Many solvents commonly recovered are also EPCRA section 313 listed toxic chemicals and include carbon tetrachloride, chloroform, methanol, methyl ethyl ketone, methylene chloride, perchloroethylene, toluene and xylene. Industrial uses of solvents typically result in the introduction of chemical contaminants such as pigments, ink, resin, oil, grease, metals and dirt. A number of processes are used to separate contaminants to recover the economically beneficial solvent. These include distillation, stripping, thin-film evaporation and extraction. The type of process applied is generally dependent on the solvent and type of contamination (Ref. 10).

**4. Manufacture, process, or otherwise use activities involving EPCRA section 313 chemicals.** The recovery of an EPCRA section 313 listed toxic chemical from a mixture for further distribution or commercial use is processing of that chemical. This is the primary function of most solvent recovery businesses.

The type of separation method(s) applied by some facilities may also involve the otherwise use of EPCRA section 313 listed toxic chemicals. Under current EPCRA section 313 guidance, the use of a chemical to react with another chemical constitutes a use (provided the first chemical does not become incorporated and distributed in commerce). In addition, some of the contaminants contained in a spent solvent mixture may also include EPCRA section 313 chemicals. The

disposal of a listed toxic chemical removed from the spent solvent is the otherwise use of that toxic chemical under the revised interpretation articulated in this rulemaking (see Unit IV. of this preamble).

**5. Types of information anticipated.** Based on the type of process used, various releases of solvent, contaminant, and chemicals used to aid in the recovery of the solvent may occur. Releases can include: light ends or vapors from process units or solvent holding tanks, heavy ends or still bottoms and sludge, and oil from various other process units. Other wastes such as descaling solutions and caustic streams are generated during routine maintenance and feed stock switch over operations. Some of these wastes generated may contain section 313 chemicals and are generated or are used in quantities large enough that reporting may result. Some of these chemicals are carbon tetrachloride, perchloroethylene, and xylene. While EPA's proposed broader interpretation of "otherwise use" may capture the disposal of spent toxic chemicals, based on EPA's analysis, contaminants removed from spent solvent mixtures are not likely to be present in quantities that would exceed reporting thresholds, and subsequently no reports are expected on these chemicals (Ref. 20). In addition, based on EPA's analysis, the process of recovering spent solvents is considered to be most economical when performed on a larger scale, and therefore, it is estimated that all operations primarily engaged in solvent recovery will process enough of one or more of the EPCRA section 313 chemicals identified in Unit V.G.3. of this preamble to exceed reporting thresholds (Ref. 10).

EPA estimates that reporting under EPCRA section 313 from this industry may result in 85 Form R reports annually submitted by 17 facilities. This number of facilities estimated to report represents 43 percent of all facilities identified within this industry group.

**6. Reporting consideration.** While EPA wishes to encourage alternatives to disposal such as recycling, the Agency believes that the releases and waste management information resulting from facilities primarily involved in solvent recovery operations should be made publicly available. EPA believes that the activities conducted by facilities primarily engaged in solvent recovery are very similar if not identical to solvent recovery activities conducted by currently reporting facilities and that statutory reporting definitions, as well as reporting guidance, will directly apply to these operations.

EPA estimates potential costs for reporting for the first year by this industry group to be \$0.4 million and \$0.3 million in subsequent years.

7. *Conclusions.* For the reasons identified above, EPA believes that facilities that are primarily engaged in solvent recovery operations in SIC code 7389 satisfy the requirements of EPCRA section 313 (b)(1)(B) because EPA believes that reporting for this industry group is relevant for the purposes of EPCRA section 313. Accordingly, EPA proposes to add this industry group to the list of industry groups required to report pursuant to EPCRA section 313 and the PPA section 6607.

#### VI. Request for Public Comment

EPA requests comment on any aspect of this proposal. In particular, EPA requests specific comment as detailed in the following paragraphs.

EPA requests comment on the information considered for each of the industry groups proposed for addition in Unit V. of this preamble. In addition, EPA requests comment on any issues that may be specific to any of the individual industry groups.

EPA is requesting comment on the use of the criteria used in today's proposal for listing decisions for the EPCRA section 313 program.

EPA requests comment on the sufficiency of the evidence and any additional information for each of the industry groups proposed for addition. In addition, EPA requests comment on any issues that may be specific to any of the individual industry groups.

EPA requests comment on the exemption for extraction activities under the coal mining industry sector. EPA is also requesting comment regarding whether this exemption should be applied to metal mining extraction as well.

EPA is requesting comment on requiring reporting from those facilities in SIC code 4953 that have interim status under RCRA subtitle C.

EPA is requesting comment on whether to add SIC code 4960 Steam and Air Conditioning Supply. Although information is limited on this industry group, EPA expects the activities conducted by this industry group to be similar to those conducted in SIC codes 4911, 4931, and 4939.

The Agency is mindful of the concern that TRI release information involving hazardous waste management activities not be misleading. For example, the public should not construe a release into a landfill reported under EPCRA section 313 to mean that a landfill has failed. In developing the final rule, EPA will consider approaches to assist the

public in understanding the proper meaning of reporting data from the hazardous waste management industry. EPA requests comment on approaches to address this concern.

Although facilities that receives hazardous waste are provided with information on the constituents of that hazardous waste, these facilities may be provided with limited information on the exact quantities of those constituents. EPA requests comment on ways to aid facilities in reporting under EPCRA section 313, in the least burdensome manner, on those constituents that are EPCRA section 313 listed toxic chemicals.

EPA requests comment on the alternatives to reduce impacts on small facilities in SIC code 5169 and facilities regulated under RCRA subtitle C that are classified within SIC code 4953. EPA requests comment on whether any of the alternatives presented in this proposed rule would accomplish the stated objective of EPCRA section 313 while minimizing significant impact on small entities.

For the industry groups outside of SIC codes 20 through 39 which are not part of today's proposal, EPA requests comment on adding any of these industry groups through a future rulemaking. Commenters should take into account the current limitations of EPCRA section 313 reporting requirements, i.e., exemptions and thresholds, in addressing whether these industries should be required to report under EPCRA section 313.

EPA requests comment on all aspects of the Agency's broadening of the concept of "otherwise use." Specifically, EPA requests comment on (1) the Agency's proposed modification of the reporting guidance for "otherwise use," (2) whether the regulatory definition of "otherwise use" should be amended, (3) the Agency's alternate approach to modifying the reporting guidance for "otherwise use;" and (4) the number of facilities in SIC codes 20 through 39 that may be affected by EPA's alternate approach to modifying the reporting guidance for "otherwise use."

EPA requests comment on its revised interpretation as explained by these examples, and by the additional examples described in the document entitled *Interpretive Guidance for Revised Interpretation of Otherwise Use*. This document is in the public docket.

EPA requests comment on whether the treatment for destruction, stabilization, and disposal fit within the statutory definition of "process."

Comments should be submitted to the address listed under the ADDRESSES

section. All comments must be received on or before August 26, 1996.

#### VII. Rulemaking Record

A record has been established for this rulemaking under docket number "OPPTS-400104" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:  
ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

#### VIII. Public Meeting

EPA will hold two 1-day public meetings, one in San Francisco, CA and one in Washington, DC, to discuss the issues presented above. The tentative agenda for this public meeting will include a discussion of the issues presented in Unit VII. of this preamble. Specific information on these public meetings are contained in a notice of public meeting published elsewhere in this issue of the Federal Register.

#### IX. Economic Analysis

EPA has prepared an economic analysis of the impact of this action, which is contained in a document entitled *Economic Analysis of the Proposed Rule to Add Certain Industries to EPCRA Section 313* (Ref. 20). This document is available in the public docket for this rulemaking. The analysis assesses the costs, benefits, and associated impacts of the rule, including potential effects on small business and the environmental justice implications

of the rule. The major findings of the analysis are briefly summarized here.

#### A. Market Failure

Federal regulations are used to correct significant market failures. Markets will fail to achieve socially efficient outcomes when differences exist between market values and social values. Two of the causes of market failure are externalities and information asymmetries. In the case of negative externalities, the actions of one economic entity impose costs on parties that are "external" to the market transaction. For example, entities may release toxic chemicals without accounting for the consequences to other parties, such as the surrounding community. The market may also fail to efficiently allocate resources in cases where consumers lack information. Where information is insufficient regarding toxic releases, individuals' choices regarding where to live and work may not be the same as if they had more complete information. Since firms ordinarily have a disincentive to provide complete information on their releases of toxic chemicals, the market fails to allocate society's resources in the most efficient manner. This proposed rule is intended to correct the market failure created by the lack of information available to the public about the releases and transfers of toxic chemicals in their communities, and to help address the externality created when choices regarding toxic chemical releases and transfers have not fully considered external effects.

Through requiring the provision of data on toxic chemical releases and waste management practices, TRI overcomes firms' disincentive to provide information on their toxic chemical releases. TRI serves to inform the public of the toxic chemical releases in their communities. Individuals can then make choices that better optimize their well-being. Some choices made by a more informed public, including consumers, corporate lenders, and communities, may effectively lead firms to internalize into their business decisions at least some of the costs to society of their releases. In addition, by identifying hot spots, setting priorities and monitoring trends, TRI data can also be used to make more informed decisions regarding the design of more efficient regulations and voluntary programs, which moves society towards an optimal allocation of resources.

If EPA were to take no action, i.e., not add industries to TRI, the market failure (and the associated social costs) resulting from the lack of information on releases and waste management

practices would continue. EPA believes that adding the proposed industry groups to the EPCRA section 313 list of facilities will improve the scope of multi-media data on releases and transfers of toxic chemicals. This, in turn, will provide information to communities, empower communities to play a meaningful role in environmental decision-making, improve the quality of environmental decision-making by government officials, and provide useful information to facilities themselves. EPA believes that this is a sound rationale for proposing the addition of industry groups to the EPCRA section 313 list.

#### B. Existing Reporting Requirements

The Toxics Release Inventory includes multimedia data on releases, transfers and pollution prevention activities for over 600 toxic chemicals. While there are no national data bases that are comparable to the whole of TRI, several data sources exist that contain media-specific data on releases and transfers. Sources maintained by EPA include the AIRS Facility Subsystem (AFS) of the Aerometric Information Retrieval System (AIRS), which tracks air emissions from industrial plants; the Permit Compliance System (PCS), which tracks permit compliance and enforcement status of facilities regulated by the National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act; and the Biennial Reporting System (BRS), maintained by the Office of Solid Waste and Emergency Response (OSWER). Other sources include the chemical inventory data collected under section 312 of EPCRA and Clean Air Act Title V operating permits.

TRI data cannot be replicated using these alternative sources. Even if information from these data bases could be combined to form an analog of the data contained in TRI, none of these sources provides release and transfer or pollution prevention data that could replace the data reported on TRI. In addition, these other data collections differ in the information collected, the chemical and facility coverage, the various thresholds and reporting frequencies, and how the data are reported. The definitional consistency provided by TRI creates important advantages over any emissions data system that might be assembled from non-TRI sources. These other data sources perform the functions for which they were designed, but they were not intended to serve the same purposes as TRI. For all these reasons, EPA has concluded that while there may be some degree of overlap between the reporting

required under EPCRA section 313 and PPA section 6607 and that required under other statutes, these reporting requirements do not duplicate or conflict with each other.

#### C. Regulatory Alternatives

EPA evaluated a number of options in the course of developing this proposed rule. The options were created by varying the scope of the expansion (i.e., choosing alternative industry groups) and modifying selected structural elements of the program (i.e., modifying the guidance for otherwise use, changing the *de minimis* exemption for certain industries under consideration, etc.). This analysis was based on the options under consideration before the completion of the screening process described in Unit II.C. and II.D. of this preamble. The following alternatives summarize the scope of EPA's analysis.

##### Alternative I.A

Comprehensive industry coverage. Includes the following industries at the 2-digit SIC code level: mining; transportation; electric, sanitary and gas services; and wholesale trade. Also includes solvent recovery services. Maintains current interpretation of otherwise use.

##### Alternative I.B

Same industries as Alternative I.A, but with revised interpretation of otherwise use.

##### Alternative II.A

Limited industry coverage, with a mix of 2-digit and 4-digit SIC codes. Includes the following industries: metal mining; coal mining; electric services, electric and other services combined; combination utilities; commercial hazardous waste treatment; storage and disposal facilities that are RCRA subtitle C facilities; chemical and allied products - wholesale; and petroleum bulk stations and terminals - wholesale. Also includes solvent recovery services. Maintains current interpretation of otherwise use.

##### Alternative II.B

Same industries as Alternative II.A, but with revised interpretation of otherwise use.

##### Alternative III.A:

Modified limited industry coverage. A mix of 2-digit and 4-digit SIC codes, with certain exemptions and limitations. Includes the following industries: metal mining, excluding mining services; coal mining, excluding mining services and extraction activities; coal- and oil-fired electric utilities; commercial hazardous waste treatment, storage and disposal facilities that are RCRA subtitle C facilities; chemical and allied products - wholesale; petroleum bulk stations and

terminals - wholesale; and solvent recovery services. Maintains current interpretation of otherwise use.

#### *Alternative III.B*

Same industries as Alternative III.A, but with revised interpretation of otherwise use. This is the proposed alternative.

#### *Alternative IV.A*

Same industries as Alternative I.A, but with limited reporting from mines. The threshold determination for those toxic chemicals being extracted or mined would be required only for the primary product distributed in commerce.

#### *Alternative IV.B*

Same industries as Alternative I.A, but with expanded reporting from mines. Mining and extraction of ore would be interpreted as manufacturing, not processing, so that the *de minimis* exemption would not apply to other constituents in the ore.

#### *Alternative V*

Same industries as Regulatory Alternative I.A, but with expanded reporting from electric utilities. The *de minimis* exemption would not be applied to constituents of fuels at electric utilities.

Table I in Unit XI of this preamble provides a summary of the number of facilities estimated to submit reports under EPCRA section 313, the number of reports they are anticipated to submit, and the associated costs under each regulatory alternative. Costs are lower after the first year because facilities will be familiar with the reporting requirements, and many will be able to update or modify information reported on the previous year's report instead of originating data for the first time. See Unit XI.C. of this preamble for more information on costs for different compliance tasks under EPCRA section 313.

In proposing this rule, EPA has sought to balance the right of the public to know about releases and other generation of toxic chemicals as waste in their neighborhoods and the benefits provided by the expanded knowledge with the costs which the rule will impose on industry, including the impact on small entities.

#### *D. Proposed Alternative*

Table II in Unit XI of this preamble displays the results by industry for the proposed option (which is Alternative III.B in Unit IX.C.). EPA estimates that a total of 6,400 facilities will submit 38,000 reports, which include both Form Rs and Toxic Chemical Release Inventory Certification Statements (see 59 FR 61488, November 30, 1994). Total incremental compliance costs are also

presented in Table II by industry sector. As shown, aggregated costs in the first year are estimated to be \$191 million; in subsequent years they are estimated to be \$118 million per year.

EPA's quantitative analysis does not include the effect on facilities in SIC codes 20 through 39 of changing the guidance for otherwise use to include disposal, stabilization, and treatment for destruction. As indicated in Unit IV.D. of this preamble, EPA does not believe that this change in guidance will affect the EPCRA section 313 reporting status of a significant number of facilities in the manufacturing sector. Facilities in the manufacturing sector may be affected if they receive wastes from other facilities, manage these wastes through treatment or disposal and do not manufacture, process or otherwise use the chemicals under current definitions, or do so below the reporting threshold. The Agency is requesting comment on the extent to which the revised interpretation may affect facilities that currently report on TRI.

EPA will incur additional costs for adding new industry groups under EPCRA section 313. These costs include developing policy and guidance for the new industries, providing outreach and training, processing the reports that are submitted, disseminating the resulting information and performing compliance and enforcement audits. The total costs to EPA are estimated to be \$2.7 million per year.

#### *E. Associated Requirements*

There are various state and federal requirements that are triggered by other statutes and regulations when a facility files a report under EPCRA section 313. The associated requirements include state taxes and fees, state pollution prevention planning requirements, and special requirements for certain NPDES storm water permits. While these associated requirements are discussed in the economic analysis, they are not costs of the proposed rule, and are not treated as such in the analysis.

Sixteen states have fees, taxes or pollution prevention requirements associated with the requirement to file a Form R. EPA's economic analysis includes a conservative estimate that the proposed rule could result in total payments of \$1 million to \$8 million per year in fees and taxes by affected facilities. It is important to note that these fees and taxes do not necessarily equate with social costs, since payments that do not result in the consumption of a resource (e.g., labor) are transfer payments and do not represent costs to society. Insufficient information was available to classify the fee payments as

either social costs or transfer payments. Nor did EPA attempt to estimate the benefits of these fees and taxes (which are used in some states to fund technical assistance programs and grants, and which may also result in a more efficient allocation of resources in and of themselves by working as economic incentives to reduce emissions).

Although the state fees, taxes and pollution prevention planning requirements are associated with EPCRA section 313 reporting, they are not required by this rulemaking. EPA has not included the costs or benefits of associated state requirements along with the costs and benefits of the rule, because it is inappropriate to do so. States which have these requirements may wish to assess the benefits and costs of applying them to new industries.

EPA has also established associated requirements for some facilities applying for certain storm water permits under the NPDES program. These NPDES storm water permit requirements are based on the coverage of EPCRA section 313 at the time the permits were issued. The NPDES requirements do not apply to industries or chemicals that are added to the EPCRA section 313 list until the time of permit renewal (which occurs every 5 years), and may not apply in subsequent permits, depending on the Agency's decisions at the time those permits are issued.

EPA has not estimated the aggregate costs of the associated requirements for new facilities. It would also be inappropriate to making a listing determination under EPCRA section 313 on the basis of these NPDES requirements. There will be no impact at the current time, because there will be no changes to the NPDES requirements while the current permits are in effect. Moreover, the costs and benefits of the special requirements are best considered when the NPDES storm water permits are reissued, and a decision can be made on whether they should be applied in subsequent permits.

#### *F. Benefits*

In enacting EPCRA and PPA, Congress recognized the significant benefits of providing information on toxic chemical releases. TRI has proven to be one of the most powerful forces in empowering the federal government, state governments, industry, environmental groups and the general public to fully participate in an informed dialogue about the environmental impacts of toxic chemicals in the United States. TRI's publicly available data base provides

quantitative information on toxic chemical releases, transfers, recycling, and treatment. With the collection of this information starting in 1987 came the ability for the public, government, and the regulated community to understand the magnitude of chemical emissions in the United States, and to assess the need to reduce these releases and transfers. TRI enables all interested parties to establish credible baselines, to set realistic goals for environmental progress over time, and to measure progress in meeting these goals over time. The TRI system has become a neutral yardstick by which progress can be measured by all stakeholders.

The proposed rule to expand the number and type of reporting facilities subject to TRI is intended to build upon the past success of the program. The information reported to TRI increases knowledge of the levels of toxic chemicals released to the environment and the pathways of exposure, improving scientific understanding of the health and environmental risks of toxic chemicals; allows the public to make informed decisions on where to work and live; enhances the ability of corporate leaders and purchasers to more accurately gauge a facility's potential environmental liabilities; provides reporting facilities with information on unregulated emissions that can be used to save money as well as reduce emissions; and assists federal, state, and local authorities in making better decisions on acceptable levels of toxics in communities.

There are two types of benefits associated with TRI reporting — direct and follow-on. The first type of benefit is direct, the pure value of information on releases, transfers and other waste management practices. It is expected that this rulemaking will generate benefits by providing the public with access to information that otherwise would not be available to them. The direct benefits of the rule itself include improvements in access, understanding, awareness and decision-making related to the provision and distribution of information.

The second types of benefit derive from changes in behavior that result from the information reported to TRI. The changes in behavior, including reductions in the releases and changes in the waste management practices for toxic chemicals, yield health and environmental benefits. These changes in behavior come at some cost to industry, and the net benefits of the follow-on activities are the difference between the benefits of decreased chemical releases and transfers and the costs of the actions needed to achieve

the decrease. These follow-on activities, however, are not required by the rule.

Because the current state of knowledge about the economics of information is not highly developed, EPA has not attempted to monetize the pure information benefits of adding new industry groups to the list of industries required to report to TRI. Furthermore, because of the inherent uncertainty in the chain of events, EPA has also not attempted to predict the changes in behavior that result from the information, or the resultant net benefits (i.e., the difference between benefits and costs). EPA does not believe that there are adequate methodologies to make reasonable monetary estimates of either type of benefits.

Rather, EPA assessed the potential for the proposed rule to generate benefits comparable to those generated by the currently reporting industries by seeking data on certain characteristics of releases and other waste management activities, specifically air release data, which could be compared among the various sectors currently subject to, and proposed for, addition to EPCRA section 313.

EPA analyzed release data collected under authority of the Clean Air Act and maintained in the Aerometric Information Retrieval System (AIRS). The analysis compared estimated air releases of toxic chemicals from manufacturing facilities (currently subject to TRI reporting) to those from facilities proposed for addition to EPCRA section 313. While limitations in the data set and methodology did not permit estimates of potential TRI releases to be developed, the analysis clearly indicated that substantial volumes of TRI chemical releases will be captured by expanding the coverage to include the additional industry groups being proposed. EPA believes this evidence supports its preliminary determination that the industry groups proposed for addition are likely to generate useful information as part of the TRI program. The experience of the past seven years shows that reporting on TRI by manufacturing facilities has produced real gains in understanding about exposure to toxic chemicals. EPA believes that reporting by the industry groups being proposed for addition will yield similar benefits.

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## XI. Regulatory Assessment Requirements

### A. Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this is a "significant regulatory action" because the proposed action is likely to have an annual effect of \$100 million or more. This action was submitted to OMB for review, and any comments or changes made during that review have been documented in the public record.

### B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency must consider whether a regulatory action will have a significant adverse economic impact on a substantial number of small entities. Section 605(b) requires the Agency to either certify that a proposed regulatory action will not have such an impact or prepare an initial regulatory flexibility analysis. EPA has prepared an Initial Regulatory Flexibility Analysis (IRFA), which is included as part of the economic analysis for the proposed rule (Ref. 20). The IRFA is summarized below.

1. *Methodology*. In preparing the IRFA for this proposal, EPA has defined small business as any firm having 10 to 49 employees, instead of using the Small Business Administration's (SBA's) definition of 500 employees or less. Under the Regulatory Flexibility Act (RFA), agencies have been authorized to develop and apply alternative definitions of small business where appropriate and after providing the

public with notice of and an opportunity to comment on the alternative, in consultation with the SBA. For TRI purposes, EPA adopted the alternative definition of 10-to-49 employees in proposing and promulgating the original TRI reporting rule in 1987-88 (see 52 FR 21166, 53 FR 4523 and accompanying regulatory impact analyses).

For today's proposal, EPA has applied the 10-to-49 employee definition to maintain consistency in IRFA analyses across TRI rulemakings. Nonetheless, the economic analysis prepared for the proposal also includes alternative definitions of small entities, consistent with the definition used by the Small Business Administration (SBA). Economic impacts on small entities were calculated assuming that all TRI reports are Form Rs (and not Toxic Chemical Release Inventory Certification Statements), which yields a conservative estimate of costs (i.e., it is likely to overestimate the true impacts). Impacts were calculated in both the first year of reporting and in subsequent years.

The Agency estimates that of the 6,400 facilities potentially affected by the proposed rule, no more than 72 percent are small entities. Thus, approximately 4,600 of the 6,400 facilities potentially affected may need to file at least one report. However, approximately 15,000 small entities in the industry groups being proposed would not have to file a report because they are expected to have less than 10 full-time employees, and thus would be exempt from the requirement to file a report. The overwhelming majority of these entities are small businesses as defined above (10 to 49 employees). A small number of small entities are utilities owned by small governmental jurisdictions. For purposes of this analysis, EPA has considered small entities by industry sector, including governmentally-owned utilities together with private utilities.

To assess the potential impacts on these small entities of expanding the TRI program to additional industry groups, EPA first conducted a preliminary screening analysis. The screening analysis used compliance costs as a percentage of annual company sales to measure potential impacts. This methodology was based on the premise that the cost impact percentage is a good measure of a firm's ability to afford the costs attributable to a regulatory change. For purposes of screening small entity impacts, comparing compliance costs to revenues provides a reasonable first-order indication of the magnitude of the regulatory burden relative to a

commonly available measure of a company's business volume. Where regulatory costs represent a very small fraction of a typical firm's revenue (for example, less than 1 percent), the financial impacts of the regulation are expected to be minimal. EPA is currently in the process of considering how to define the RFA statutory terms "significant impact" and "substantial number." Until EPA determines how best to define those terms, the Agency has decided for this proposal to prepare an initial regulatory flexibility analysis if compliance costs for a substantial number of small entities would be greater than 1 percent of sales.

Detailed analyses of certain SIC codes were conducted when the screening analysis indicated the proposed rule would cross the analytical thresholds stated above for potentially affected industry groups. The methodology for each respective detailed analysis was tailored to reflect the unique characteristics of each industry group examined.

Based on the screening analysis, and where appropriate on more detailed analyses, EPA identified one group for which an initial regulatory flexibility analysis would be justified, the chemical wholesaling industry (SIC code 5169 - Chemicals Allied Products). Because there are sufficient uncertainties regarding the impacts on another industry, RCRA subtitle C hazardous waste facilities in SIC code 4953, EPA is also requesting comment on the magnitude and incidence of the impacts on this industry and the need for and appropriateness of adopting regulatory alternatives like those described for SIC code 5169. For all other potentially affected industry groups, EPA found the likely impact of the proposed rule either would be compliance costs less than 1 percent of sales or may not affect a substantial number of small entities, or both.

Today's action describes the reporting and recordkeeping requirements associated with the proposal. The professional skills needed to comply with those requirements are the same as those required to comply with current TRI reporting requirements. Those skills were described in the regulatory flexibility analyses for the 1988 TRI reporting rule and today's proposal.

2. *SIC code 5169*. Because facilities in SIC code 5169 are chemical wholesalers, they handle large numbers of chemicals, including toxic chemicals listed under EPCRA section 313. Facilities in this industry are expected to report primarily due to mixing, blending, reformulating and repackaging of EPCRA section 313 chemicals. EPA

estimates that about 10 percent of chemical wholesalers will be required to submit reports and that reporting facilities will file between 1 and 27 reports each. The actual number of reports per facility will be distributed throughout this range. Based on the revenue data for typical facilities, impacts above 1 percent are predicted for facilities reporting the high number of reports in the first year, and for small businesses reporting the high number of reports in subsequent years. However, EPA believes that relatively few businesses in this industry will file the high number of reports. The compliance costs associated with EPCRA section 313 reporting could have a potentially significant impact on the smaller and less financially solvent companies in this industry. The majority of companies, however, will not have to submit the maximum number of reports, and will face lower costs.

### 3. *Alternatives to reduce impacts on small businesses in SIC code 5169.*

Because of the potential for significant impacts on a substantial number of facilities in SIC code 5169, EPA's economic analysis includes a number of alternatives to reduce the impact on small businesses in this industry. While the Agency could have elected not to propose the addition of SIC code 5169, thereby avoiding any small business impacts from this proposed rule to facilities in that group, the Agency has chosen to include the industry group in the proposal. EPA believes that reporting from this industry group will result in a significant amount of new toxic chemical release information to the public, particularly to communities in which these facilities are located. Moreover, the activities of this industry—handling chemicals—and its involvement with TRI chemicals are very similar to those of the manufacturing universe already subject to TRI reporting.

The alternatives EPA analyzed to reduce the impact on small businesses are described below.

*Alternative 1.* Expand eligibility for the alternate threshold (59 FR 61488, November 30, 1994) for facilities in SIC code 5169 by increasing the annual reportable amount from 500 pounds and raising the alternate manufacture, process and otherwise use threshold from 1 million pounds. Some small facilities in SIC 5169 with large numbers of reports may still incur significant impacts to determine their eligibility for the alternate threshold. EPCRA section 313(f)(2) requires that any revision to the current reporting thresholds continue to capture a substantial majority of total releases of

each listed chemical or chemical category. Because these facilities have not reported under TRI in the past, the Agency may not have sufficient information about releases (both types of chemicals and release levels) with which to justify expanding the alternate threshold eligibility for this industry group. In addition, because of the type of information submitted on the Toxic Chemical Release Certification Statement, the resulting data would be of more limited utility than the data that would otherwise be reported on Form R.

*Alternative 2.* Allow facilities in SIC code 5169 an additional year before they must begin reporting. EPA would use this time to perform intensive outreach, training and technical assistance to industry. This alternative would result in the loss of 1 year's worth of data, in return for a relatively modest reduction in reporting burden.

*Alternative 3.* Require facilities in SIC code 5169 to report only on air releases and off-site transfers. State data indicate that these two routes account for nearly all of the releases and transfers from facilities in SIC code 5169. Adopting this option would mean forfeiting some information that is reported pursuant to EPCRA section 313 and all additional information reported pursuant to the PPA section 6607. This option, therefore, appears to be inconsistent with the existing authorities and requirements under EPCRA section 313 and PPA section 6607. Further, to the extent that facilities in this industry actually report only air releases and off-site transfers under the current requirements, EPA has overestimated both compliance costs and small business impacts in the standard analysis.

*Alternative 4.* Expand the range reporting option for facilities in SIC code 5169 beyond the current 1,000 pound limit to a higher level such as 2,000, 5,000 or 10,000 pounds. Adopting this alternative would reduce the precision of the data in return for a relatively modest reduction in reporting burden.

*Alternative 5.* Require facilities in SIC code 5169 to report on their throughput for each chemical and on the types of processes and equipment being used. EPA would then combine this information with emission factors to develop release and transfer estimates. This alternative would reduce the reporting burden, because facilities in this industry are presumed to track their throughput and could readily identify the activities and types of equipment used. However, the resulting release data would be of reduced utility to the public, because they would be based on

average emission factors and would not be specific to an individual facility. Finally, this option appears to be inconsistent with the existing authorities and requirements under EPCRA section 313 and PPA section 6607.

*Alternative 6.* Exempt small businesses in SIC 5169 from reporting. The overwhelming majority of businesses in this industry are small; however, it is anticipated that a significant portion of reported releases would be from small businesses. Adopting this option could lead to substantial gaps in information, especially at the community level. Furthermore, only those small firms submitting a large number of reports may face significant impacts. By contrast, this alternative would substantially reduce the amount of information available without targeting the relief to those particular facilities facing high impacts (i.e., those submitting a large number of reports).

EPA is seeking comment on the alternatives to reduce impacts on small facilities in SIC code 5169. EPA requests comment on whether any of the alternatives would accomplish the stated objective of EPCRA section 313 while minimizing a potential economic impact on small entities.

4. *RCRA Subtitle C Facilities in SIC Code 4953.* The screening analysis indicated that TRI reporting by facilities in SIC code 4953 may impose a compliance costs of more than one percent of sales on some small facilities in this SIC code if EPA revises the guidance on otherwise use to include disposal, stabilization, and treatment for destruction. EPA is not highly confident of the accuracy of the estimated number of reports per facility if the guidance on otherwise use is revised, and believes that the current figure is an overestimate. Consequently, the actual number of reports submitted by facilities in SIC code 4953 and the costs to prepare and submit them may be considerably lower than estimated by the screening analysis. Furthermore, relatively few of the facilities in this industry group are small businesses according to the definition EPA has used to develop this analysis (i.e., less than 50 employees). Recognizing this uncertainty, EPA is particularly interested in comments and data related to these issues. EPA will consider alternatives, similar to those considered for SIC code 5169, if there is sufficient reason to believe that requiring RCRA subtitle C facilities to report on TRI would impose a significant burden on a substantial number of small entities. EPA seeks comment on this issue.

5. *Conclusions.* EPA has determined that this regulatory action may impose an adverse impact on small entities in SIC code 5169 (Chemicals and Allied Products Wholesale). EPA currently has insufficient information to determine the impact on affected RCRA subtitle C facilities in SIC code 4953 that are small entities. This action would not be expected to have a significant impact on a substantial number of small entities in the remainder of the industries being proposed. Information relating to this determination has been provided to the Chief Counsel for Advocacy of the Small Business Administration, and is included in the docket for this rulemaking. Any comments regarding the economic impacts that this proposed regulatory action may impose on small entities should be submitted to the Agency at the address listed above.

#### *C. Paperwork Reduction Act*

The information collection requirements in this proposed rule, as well as Form R have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document that covers the burden associated with today's proposal has been prepared by EPA (ICR No. 1784.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., S.W.; Washington, DC 20460, by calling (202) 260-2740, or electronically by sending an e-mail message to "farmer.sandy@epamail.epa.gov." If necessary, EPA may be augmenting the docket with additional information.

This information would be collected from industrial facilities in local communities in order to provide basic information to those communities and the general public, as well as the regulated community and all levels of government, on releases and other waste management practices involving listed toxic chemicals. Collection of this data would further EPA's goal of enhancing community right-to-know. Provision of this information would be mandatory, pursuant to EPCRA section 313 (42 U.S.C. 11023) and PPA section 6607 (42 U.S.C. 13106). Regulations codifying the EPCRA section 313 reporting requirements can be found at 40 CFR part 372. Respondents may designate the specific chemical identity of a substance as a trade secret, pursuant to EPCRA section 322 (42 U.S.C. 11042). Regulations codifying the trade secret provisions can be found at 40 CFR part 350. Currently, approximately 23,000 facilities report on TRI.

EPA's economic analysis includes burden and cost estimates for specific compliance tasks under EPCRA section 313 (Ref. 20). Such tasks include rule familiarization, completion of Form Rs and Toxic Chemical Release Inventory Certification Statements and recordkeeping. Total burden and cost can be calculated by combining these estimates with the number of affected facilities and reports predicted. The five component tasks are described below. The ICR submitted to OMB provides burden and cost estimates for those facilities proposed for addition in today's proposed rule.

#### 1. *Compliance determination.*

Facilities must determine whether they meet the criteria for section 313 reporting. Costs attributed to making this determination result from time required to become familiar with the definitions, exemptions, and threshold requirements under the TRI program, to review the list of EPCRA section 313 chemicals, and to conduct preliminary threshold determinations in order to determine if the facility would be required to report. These costs are also applied to facilities that would not be required to report, but that would incur some cost to ascertain that fact. Thus, the number of facilities undertaking compliance determination activities exceeds the number of reporting facilities.

2. *Rule familiarization.* Facilities that would be reporting under section 313 for the first time must read the reporting package and become familiar with the reporting requirements. This would involve reading the instructions to the Toxic Chemical Release Inventory Reporting Form R, and may also involve other activities such as consulting EPA guidance documents. Costs for rule familiarization would only be incurred in the first year after a facility becomes subject to reporting, since in subsequent years the staff would be familiar with the requirements that apply to their facility.

3. *Calculations and report completion.* Facilities that determine they must report under section 313 would incur costs to retrieve, process, review, and transcribe information to complete Form R. Facilities qualifying for the alternate reporting threshold may file a Toxic Chemical Release Inventory Certification Statement, a streamlined form containing limited informational requirements, which is estimated to require less burden and cost to complete than Form R. Report completion costs would be somewhat higher in the first year of reporting, relative to subsequent years. In many instances the process in subsequent years would consist of

updating data and modifying the information reported on the previous year's report, rather than originating or retrieving data for the first time.

4. *Recordkeeping.* Following completion of the appropriate report, additional labor costs are incurred for record keeping, which would allow a facility to use past information in making calculations in subsequent years.

Table III lists the estimated average burden and cost for each of the tasks in the first year of reporting. Table IV describes the average burden and costs in subsequent years. Economies of scale for facilities filing multiple reports have not been estimated. The time estimates used by EPA are average values. As with any average, some facilities will be above the average and others will be below it. EPA recognizes that large, complex facilities may require more than the average time to comply. However, there are many other facilities subject to the rule that are not large or complex. These facilities will often have a simpler compliance process. EPA believes that its time estimates represent reasonable averages.

For Form R, the industry reporting burden for collecting this information (including recordkeeping) is estimated to average 74 hours per report in the first year, at a cost of \$4,587. In subsequent years, the burden is estimated to average 52.1 hours per report at a cost of \$3,023. For a Toxic Chemical Release Inventory Certification Statement, the burden is estimated to average 49.4 hours per report in the first year at a cost of \$3,101. In subsequent years, the burden is estimated to average 34.6 hours per report at a cost of \$2,160.

These estimates include the time needed to review instruction; search existing data sources; gather and maintain the data needed; complete and review the collection of information; and transmit or otherwise disclose the information. The actual burden to a specific facility may deviate from this estimate depending on the complexity of the facility's operations and the profile of the releases at the facility.

The proposed rule would result in an estimated 6,428 additional respondents submitting an estimated total of an additional 33,463 Form Rs and 4,251 Toxic Chemical Release Inventory Certification Statements. This results in a total hour burden of 3.1 million hours in the first year and 1.9 million hours in subsequent years, at a total cost of \$191 million in the first year and \$119 million in subsequent years.

Burden means the total time, effort, or financial resources expended by persons

to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the EPA at the address provided above, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Please remember to include the ICR number in any correspondence.

The collection of information and other requirements under section 313 of EPCRA and section 6607 of the PPA on the Form R are covered under OMB approval number 2070-0093, which was issued on May 14, 1992. Although this approval normally would have expired on November 30, 1992, it remains in effect until further Agency action pursuant to the 1993 Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, Pub. L. 102-389, signed October 6, 1992, which states that:

Notwithstanding the Paperwork Reduction Act of 1980 or any requirements thereunder the Environmental Protection Agency Toxic Chemical Release Inventory TRI Form R and instructions, revised 1991 version issued May 19, 1992, and related requirements (OMB No. 2070-0093), shall be effective for reporting under section 6607 of the Pollution Prevention Act of 1990 (Public Law 101-508) and section 313 of the Superfund Amendments and Reauthorization Act of 1990 (Public Law 99-499) until such time as revisions are promulgated pursuant to law.

Facilities subject to this proposed rule also would be eligible to submit a certification statement under the Toxic Release Inventory Certification Statement. The Office of Management and Budget (OMB) has approved the information collection requirements for the Toxic Release Inventory Certification Statement under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2070-0143 (EPA ICR No. 1704).

These ICR approvals for currently reporting facilities remains in effect until further Agency action.

#### *D. Unfunded Mandates Reform Act and Executive Order 12875 Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA must generally prepare a written statement, including a cost-benefit analysis for proposed and final rules with "Federal mandates" that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternatives that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why the alternative was not adopted. Before EPA establishes any regulatory requirements that significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input into the development of the regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule is likely to contain a Federal mandate that may result in expenditures of \$100 million or more for the private sector in any 1 year. EPA has prepared, under section 202 of the UMRA, a written statement, entitled "Unfunded Mandates Reform Act Statement on Federal Mandate Imposed by the Expansion of the Toxic Release Inventory to Include Certain Non-Manufacturing Industries." This document is available in the docket for this rulemaking.

EPA is proposing this rule under sections 313 and 328 of EPCRA. EPA estimates that private expenditures will exceed the threshold of \$100 million in all years and that public expenditures will fall well below the threshold for all years. EPA prepared an economic impact analysis of the proposal, entitled *Economic Analysis of the Proposed Rule to Add Certain Industries to EPCRA Section 313*, in which it considered several regulatory alternatives (Ref. 20). EPA estimates that the costs of the proposed rule will be \$190 million in the first year and \$118 million in subsequent years. Of this, only \$8 million in the first year and \$5 million in subsequent years is expected to consist of costs to state, local, or tribal governments. These cost estimates are based on the anticipated reporting from publicly-owned electric utilities that are coal- or oil-fired.

EPA estimates that the proposed regulation is highly unlikely to have any measurable effect on the national economy, nor is it expected to have disproportionate budgetary effects on a particular segment of the private sector. EPA has not identified any sources that are available from either EPA or other Federal Agencies to pay for State, local, or tribal government costs, nor has it identified any EPA or Federal resources specifically intended to carry out the intergovernmental mandate.

Section 203 of UMRA provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall develop a small government agency plan. Because costs to the public sector are estimated to be considerably below \$100 million in any year, EPA finds no significant impacts on small governments; nor is the proposed rule expected to uniquely affect them.

Because this proposed rule does not contain a significant Federal intergovernmental mandate, the UMRA section 204 requirements are not triggered. The Agency, however, has sought interaction with state and local officials of the type contemplated by

section 204 of UMRA and Executive Order 12875, "Enhancing the Intergovernmental Partnership." EPA has conducted outreach to organizations representing these entities, and will continue a constructive dialogue to ensure that pertinent issues are addressed.

*E. Executive Order 12898*

Pursuant to Executive Order 12898 (59 FR 7629, February 11, 1994), entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, the Agency has considered environmental justice-related issues with regard to the potential impacts of this proposed action on the environmental and health conditions in low-income populations and minority populations.

In keeping with Executive Order 12898, as part of its analysis in support

of this proposed expansion of the TRI program to include new industry groups, EPA has examined the distribution patterns of public information on toxic chemical releases and transfers (which may have substantial environmental impacts on surrounding communities). The Agency believes that the Environmental Justice Analysis described below is an important part of its overall environmental justice strategy, and is in keeping with the spirit of the Executive Order. The Agency interprets its responsibilities under the Order as they would apply to this rulemaking activity to include exploring the distribution of information benefits, in demographic terms, of the expansion.

To assess the implications of the rulemaking on environmental justice, the Agency examined demographic characteristics for populations residing

in jurisdictions (counties or zip codes) where facilities in the proposed industries are located. The analysis is included as part of the economic analysis for the proposal (Ref. 20). The analysis found that households with annual incomes less than \$15,000 and minority and urban populations are slightly over-represented in communities containing facilities in the proposed industry groups. The TRI expansion would also result in persons in a large number of communities receiving TRI information about facilities in their vicinity for the first time. By adding the proposed industry groups, EPA will be creating informational benefits for certain subpopulations that previously did not receive TRI information on releases and transfers of toxic chemicals in their communities.

Table 1.—Summary of Regulatory Alternatives

Regulatory Alternative	Annual		Industry Costs (\$ million per year)	
	Number of Reporting Facilities	Number of Reports	First Year	Subsequent Year
I.A Comprehensive industries, current otherwise use interpretation .....	49,174	110,217	793	349
I.B Comprehensive industries, revised otherwise use interpretation .....	52,378	249,063	1,437	794
II.A Limited industries, current otherwise use interpretation ....	8,354	37,077	176	116
II.B Limited industries, revised otherwise use interpretation ...	8,385	43,637	206	137
III.A Proposed industries, current otherwise use interpretation	6,397	31,154	149	98
III.B Proposed industries, revised otherwise use interpretation	6,428	37,714	191	119
IV.A Comprehensive industries, current otherwise use interpretation, limited mining reporting .....	49,127	109,695	791	347
IV.B Comprehensive industries, current otherwise use interpretation, expanded mining reporting .....	50,602	120,905	846	383
V. Comprehensive industries, current otherwise use interpretation, expanded electric utility reporting .....	49,174	116,833	821	368

Table 2.—Summary of Reporting for Proposed Industries

Industry	Number of Facilities in Industry	Number of Reporting Facilities	Percent of Facilities in Industry Reporting	Annual Number of Reports	Industry Costs (\$ million per year)	
					First Year	Subsequent Years
Metal Mining .....	1,060	328	31%	1,176	6.5	3.8
Coal Mining .....	3,312	321	10%	642	5.4	2.5
Electric Utilities .....	3,213	974	30%	5,567	26.6	16.6
Hazardous Waste Treatment Disposal Facilities ...	164	164	100%	6,711	31.2	21.5
Chemicals & Allied Products Wholesale .....	9,014	782	9%	11,139	51.5	33.5
Petroleum Bulk Stations & Terminals Wholesale	10,292	3,842	37%	12,394	69.3	40.7
Solvent Recovery Services .....	40	17	43%	85	0.4	0.3
Total .....	28,021	6,428	23%	37,714	191.1	118.8

Table 3.—First Year Burden and Cost

Activity	Average Time (hours)			Average Cost
	Managerial	Technical	Clerical	
Rule Familiarization .....	12.0	22.5	0.0	\$2,243 per facility
Compliance Determination .....	4.0	12.0	0.0	\$1,010 per facility
Form R Calculations and Completion	20.9	45.2	2.9	\$4,330 per report
Certification Calculations and Completion.	16.5	27.7	2.2	\$2,947 per report
Recordkeeping (Form R) .....	0.0	4.0	1.0	\$257 per report
Recordkeeping (Certification) .....	0.0	2.4	0.6	\$154 per report

Table 4.—Subsequent Year Burden and Costs

Activity	Average Time (hours)			Average Cost
	Managerial	Technical	Clerical	
Compliance Determination .....	1.0	3.0	0.0	\$252 per facility
Form R Calculations and Completion .....	14.3	30.8	2.0	\$2,946 per report
Certification Calculations and Completion .....	11.2	18.9	1.5	\$2,006 per report
Recordkeeping (Form R) .....	0.0	4.0	1.0	\$257 per report
Recordkeeping (Certification) .....	0.0	2.4	0.6	\$154 per report

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic Chemicals.

Dated: June 21, 1996.

Carol M. Browner,  
Administrator.

Therefore, it is proposed that 40 CFR part 372 be amended to read as follows:

**PART 372—[AMENDED]**

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

Authority: 42 U.S.C. 11013 and 11028.

2. In § 372.3, by alphabetically adding the following definitions to read as follows:

**§ 372.3 Definitions.**

\* \* \* \* \*

*Extraction* means the physical removal or exposure of ore, coal, minerals, waste rock, or overburden prior to beneficiation, and encompasses all extraction-related activities prior to beneficiation. Extraction does not include beneficiation, coal preparation, mineral processing, *in situ* leaching or any further activities.

\* \* \* \* \*

*Treatment for destruction* means the destruction of the toxic chemical such that the substance is no longer a toxic chemical subject to reporting under EPCRA section 313.

3. In § 372.22, by revising paragraph (b) to read as follows:

**§ 372.22 Covered facilities for toxic chemical release reporting.**

\* \* \* \* \*

(a) \* \* \*

(b) The facility is in Standard Industrial Classification major group codes 10 (except 1081), 12 (except 1241), and 20 through 39 and industry codes 4911 (limited to facilities that combust coal and/or oil), 4931 (limited

to facilities that combust coal and/or oil), 4939 (limited to facilities that combust coal and/or oil), 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 *et seq.*), 5169, 5171, and 7389 (limited to facilities primarily engaged in solvents recovery services on a contract fee basis) (as in effect on January 1, 1987) by virtue of the fact that it meets one of the following criteria:

(1) The facility is an establishment with primary SIC major group codes 10 (except 1081), 12 (except 1241), and 20 through 39 and industry codes 4911 (limited to facilities that combust coal and/or oil), 4931 (limited to facilities that combust coal and/or oil), 4939 (limited to facilities that combust coal and/or oil), 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 *et seq.*), 5169, 5171, and 7389 (limited to facilities primarily engaged in solvents recovery services on a contract fee basis).

(2) The facility is a multi-establishment complex where all establishments have major codes 10 (except 1081), 12 (except 1241), and 20 through 39 and industry codes 4911 (limited to facilities that combust coal and/or oil), 4931 (limited to facilities that combust coal and/or oil), 4939 (limited to facilities that combust coal and/or oil), 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 *et seq.*), 5169, 5171, and 7389 (limited to facilities primarily engaged in solvent recovery services on a contract fee basis).

(3) The facility is a multi-establishment complex in which one of the following is true:

(i) The sum of the value of products shipped and/or produced from those establishments that have a primary major code 10 (except 1081), 12 (except 1241), and 20 through 39 and industry

codes 4911 (limited to facilities that combust coal and/or oil), 4931 (limited to facilities that combust coal and/or oil), 4939 (limited to facilities that combust coal and/or oil), 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 *et seq.*), 5169, 5171, and 7389 (limited to facilities primarily engaged in solvent recovery services on a contract fee basis) is greater than 50 percent of the total value of all products shipped and/or produced from all establishments at the facility.

(ii) One establishment having primary major codes 10 (except 1081), 12 (except 1241), and 20 through 39 and industry codes 4911 (limited to facilities that combust coal and/or oil), 4931 (limited to facilities that combust coal and/or oil), 4939 (limited to facilities that combust coal and/or oil), 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 *et seq.*), 5169, 5171, and 7389 (limited to facilities primarily engaged in solvent recovery services on a contract fee basis) contributes more in terms of value of products shipped and/or produced than any other establishment within the facility.

\* \* \* \* \*

4. In § 372.38, by adding paragraph (g) to read as follows:

**§ 372.38 Exemptions**

\* \* \* \* \*

(g) *Coal extraction activities.* If a toxic chemical is manufactured, processed, or otherwise used in extraction in SIC code 12, a person is not required to consider the quantity so manufactured, processed, or otherwise used when determining whether an applicable threshold has been met under § 372.25 or 372.27, or determining the amounts to be reported under § 372.30.

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