ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 355

[FRL–7554–9]

RIN 2050–AE43

Emergency Planning and Community Right-to-Know Act; Extremely Hazardous Substances List; Modification of Threshold Planning Quantity for Isophorone Diisocyanate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends the list of extremely hazardous substances (EHS) issued under the Emergency Planning and Community Right-to-Know Act (EPCRA) by changing the threshold planning quantity (TPQ) for isophorone diisocyanate (IPDI) from 100 pounds to 500 pounds.

DATES: This rule is effective October 8, 2003.

ADDRESSES: Copies of the documents relevant to this action (Docket No. SFUND–2002–0009) are available for public inspection during normal business hours from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays, at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/*. For questions on the applicability of provisions contained in 40 CFR part 355 or on the contents of this document, contact: Sicy Jacob, Chemical Emergency Preparedness and Prevention Office (5104A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460, Telephone: 202–564–8019; Fax: 202–564–8233; email: *jacob.sicy@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

A. Affected Entities

Entities that may be affected by this action are those facilities subject to 40 CFR part 355, Emergency Planning and Release Notification.

B. How Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. SFUND–2002–0009. You may also refer to Docket ID No. 300–PQ–R2 for any technical documents referenced in the preamble to this document. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The public docket does not include Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Superfund Docket is (202) 566–0276.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Outline

I. Introduction and Background

A. Statutory Authority

This final rule is issued under sections 302 and 328 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA).

B. Background

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 (''SARA''). Public Law 99–499 (1986). Title III of SARA established a program designed to require state and local planning and preparedness for spills or releases of hazardous substances and to provide the public and local governments with information concerning potential chemical hazards in their communities. This program is codified as the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11001–11050.

EPCRA required EPA to publish a list of Extremely Hazardous Substances (EHS) and to establish threshold planning quantities for each of these EHSs. Under EPCRA section 302, a facility which has present an EHS in excess of its threshold planning quantity (TPQ) must notify the State emergency response commission and local emergency planning committee as well as participate in local emergency planning activities.

The EHS list was established by EPA to identify chemical substances which could cause serious irreversible health effects from accidental releases (51 FR 13378). The EHS list and its TPQs are intended to help communities focus on the substances and facilities of the most immediate concern for emergency planning and response.

The TPQs are not absolute levels above which the EHS are dangerous and below which they pose no threat at all. The TPQs provide a starting point for identification of facilities to community response planners so that they can determine whether or not these facilities pose a potential problem in the event of an accidental release. EPA encourages communities to go beyond the EHS list when evaluating the hazards of facilities

in their community, in that facilities handling chemicals not on the EHS list could be as hazardous as those handling EHSs.

1. Regulatory Background

The EHS list and their TPQs are codified in 40 CFR part 355, appendices A & B. EPA's explanation for the methodologies used to determine whether to list a substance as an EHS and for deriving the TPQs is found in preambles to the **Federal Register** notices which promulgated these rules and in technical support documents in the rulemaking records. The relevant notices were published in the **Federal Register** on November 17, 1986 (51 FR 41570) and April 22, 1987 (52 FR 13378).

EPA first published the EHS list and TPQs along with the methodology for determining TPQ in the November 17, 1986 interim final rule. In the April 22, 1987 final rule, EPA made a number of revisions. Among other things, the April 1987 rule republished the EHS list, with the addition of four new chemicals and revised the methodology for determining some TPQs. EPA has since received several petitions to amend the EHS list.

2. Summary of October 1994 Proposed Rulemaking

In the October 12, 1994 (59 FR 51816) proposed rulemaking, EPA responded to seven petitions requesting action on substances listed as EHSs. Among these petitions, Hüls America Inc. petitioned EPA to delist isophorone diisocyanate (IPDI) (CAS No. 4098–71–9). EPA denied the petition to delist IPDI because it meets the criteria for an EHSs. However, in considering this petition, EPA noted that the TPQ had been determined based on a mistaken assumption that IPDI is a reactive solid at standard temperature, when in fact it is a liquid and not highly reactive. Accordingly, using the methodology for calculating TPQs for liquids, EPA proposed in 1994 to raise the TPQ for IPDI from 100 to 1,000 pounds, even though Hüls America did not request this change in their petition.

As a result of EPA's action, Hüls America filed a lawsuit in federal court challenging EPA's denial of the delisting petition for IPDI. The Agency's decision not to delist IPDI was upheld by the United States Court of Appeals for the District of Columbia Circuit (DC Cir.) in *Hüls America* v. *Browner*, 83 F.3d 445 (1996). Accordingly, today's rulemaking does not address any issues regarding whether IPDI should be removed from the EHS list under EPCRA, but is limited solely to the appropriateness of the TPQ for IPDI.

II. EPA's Methodology for Establishing TPQs for Liquids

The TPQs developed for EHSs are based on a ranking of the EHSs according to their potential to become airborne and disperse and their toxicological properties, with adjustments based on chemical reactivity and other factors. The Immediately Dangerous to Life and Health (IDLH) level developed by the National Institute of Occupational Safety and Health (NIOSH), or an approximation of the IDLH based on animal toxicity data, is used as an index of toxicity while the physical state and volatility of the substance are used to derive an index of the chemical's potential to become airborne and disperse. These two indices are combined to produce an overall risk score or ''ranking factor'' defined as IDLH/V, where V is the index of potential to become airborne and disperse. TPQs are then assigned to groups of EHSs according to their relative ranking. The lowest rank (highest concern) is assigned low quantities and the highest rank (lowest concern) is assigned high quantities.

The index of potential to become airborne and disperse (V) is derived using the physical state of the substance and a measure of its volatility. For EHSs that are gases at ambient conditions and powdered solids with a particle size less than 100 micron, V is assumed to have a value of 1, indicating that in an accidental release, the chemical could easily become airborne and disperse. Solids in non-powdered form are assigned the highest TPQ meaning that chemicals in this physical state are not likely to become airborne and disperse.

For liquid EHSs, V is derived from the rate of volatilization expected from a spill of the liquid at its boiling point. The rate of volatilization is driven by the molecular weight of the substance and its boiling point temperature as in the following equation:

$$V = 1.6M^{0.67}/(T + 273)$$

where M is the molecular weight of the substance and T is the boiling temperature (°C). Note that for liquids with low boiling points (volatile liquids), V will approach 1 (more like a gas), while high boiling liquids have a V much less than 1.

The Agency could have evaluated the rate of volatilization from a spill of the liquid at ambient conditions rather than at the liquid's boiling point. Typically, to calculate the rate of volatilization of a liquid at ambient conditions, an ambient temperature must be chosen and the liquid's vapor pressure at that ambient temperature must be known. Chemical reference books often publish the vapor pressure for many common substances at 20 or 25 °C. However, some of the liquids on the EHS list either have a vapor pressure at a different temperature or they have no published vapor pressure. The Agency could have estimated or calculated vapor pressures for these substances but the accuracy of such estimates or calculations could be questioned. A more critical question is the choice of an appropriate ambient temperature. Ambient temperatures vary widely across the United States and an accidental release scenario could involve heat from, for example, a loss of reactor cooling or from a fire. The choice of an appropriate ambient temperature would be influenced by site-specific or release scenario specific factors. Since the Agency needed to apply a methodology uniformly to all liquid EHSs rather than chemical-by-chemical or site-by-site, the Agency therefore chose to evaluate the rate of volatilization using the substance's boiling point. All of the liquids on the EHS list have a published boiling point.

As noted above, once V is determined, the ''ranking factor'' is calculated from IDLH/V. If an IDLH value is not available, as is the case for most of the EHSs, EPA uses an IDLH equivalent value estimated from acute animal toxicity data. Data such as the lowest lethal airborne concentration (LC_{LO}), lethal airborne concentration for 50% of the test animals (LC_{50}), lowest lethal dose (LD_{LO}), or lethal dose for 50% of the test animals (LD_{50}) are used. NIOSH has indicated that the IDLH is most similar to the LC_{LO}; the other toxicity data needs to be adjusted and converted to an airborne dose comparable to an IDLH as follows: (1) Estimated IDLH = $LC_{50} \times 0.1$; (2) estimated IDLH = $LD_{50} \times 0.01$; and (3) estimated IDLH = $LD_{LO} \times 0.1$.

So, for each liquid, gas, and solid on the EHS list, EPA calculates the ranking factor as described above. Once all the chemicals are ranked, they are grouped by orders of magnitude of ranking factor and threshold quantities are assigned to these groups. The table below shows the ranking factor and the threshold quantities assigned to them. (Source: Threshold Planning Quantities Technical Support Document, April 7, 1987).

Ranking factor	Threshold quantity (lb)
$< 1 \times 10^{-3}$	1
$\geq 10^{-3}$ to $< 10^{-2}$	10
$\geq 10^{-2}$ to $< 10^{-1}$	100
$\geq 10^{-1}$ to <1	500
≥1 to <10	1,000 a
≥10	10,000

Since there was no IDLH value available for IPDI at the time the EHS list was developed (and there still is not one), EPA estimates the IDLH equivalent for IPDI by multiplying its LC_{50} of 0.12 mg/l over a 4-hour exposure period by 0.1. This results in an IDLH value of 0.012 mg/l. To calculate V, EPA uses the boiling point for IPDI of 350 degrees Centigrade and a molecular weight of 222 g/mole in the above equation to obtain 0.096. Then the index value is derived by dividing the level of concern (0.012) by the V factor (0.096) to obtain 0.13. Using the ranking factor value for IPDI, of 0.13, and the table above, the TPQ value should be 500 pounds.

III. Explanation of the Error in the October 1994 Proposed Rule

As part of the Agency's review of the petition to delist IPDI from the EHS list, EPA discovered that IPDI was mistakenly listed as a reactive solid, as opposed to a liquid. As a result, EPA recalculated IPDI's ranking factor using the equation listed in the previous section of this preamble and proposed in October 1994, to raise the TPQ from 100 to 1,000 pounds.

During the process of finalizing the rule, EPA reviewed all documents and memos related to the October 1994 proposed rule. During the review, EPA discovered that an error was made in reading the table of ranking factors and the corresponding threshold quantities. To be certain, EPA again reviewed IPDI's physical/chemical properties and re-calculated the ranking factor. The IDLH, V factor, and ranking factor were calculated correctly in the 1994 proposed rule, however, the Agency incorrectly identified the TPQ for IPDI; the proposal should have stated 500 pounds instead of 1,000 pounds. EPA is now finalizing the TPQ for IPDI to the correct value of 500 pounds.

On February 27, 2002, EPA sent a letter to Degussa Corporation (successor to ''Hüls America, Inc.'') informing them of the error and provided them an additional opportunity to submit comments. The letter explained the error made in the 1994 proposal and discussed the correct TPQ value. Degussa stated that they do not have any additional comments other than those submitted in response to the 1994 proposal. Accordingly, below, EPA responds to those comments filed by Hüls America in 1994.

IV. Response to Comments on the October 12, 1994 Proposed Rule

EPA received comments only from Hüls America. While Hüls America disagreed with EPA's decision to deny the petition to delete IPDI from the EHS list, the company acknowledged that the issue would be addressed in the litigation. Since the listing of the IPDI has been upheld by the court, this notice will not deal with that issue.

With respect to the TPQ for IPDI, Hüls America argues that the highest TPQ category of 10,000 pounds should be assigned. This is because IPDI is non-volatile and is toxic only at levels well above its saturated vapor concentration. Because EPA has not considered relative vapor pressure in calculating TPQs for such non-volatile compounds, the TPQs bear no relationship to the very low potential for compounds to disperse beyond a facility boundary. Therefore, IPDI, which has a very low vapor pressure is unlikely to present any risk at the fenceline in the event of a release. The commenter also disagreed with EPA's TPQ methodology, particularly with respect to EPA's assumption that dispersion is relatively similar from chemical to chemical. The commenter stated that the aerosol acute toxicity data do not support the need to set the TPQ for IPDI below 10,000 pounds. In fact, Hüls argues that because IPDI's toxicity was determined using an aerosol form of the chemical, the dispersability of IPDI for calculating the TPQ should be based on the aerosol form rather than on liquid volatility. The commenter also stated that IPDI is manufactured and processed in closed vessels which are not under pressure. So, there is less likelihood that accidents may occur.

EPA disagrees with Hüls' assertion that it did not consider relative vapor pressure and that the TPQs for non-volatile compounds such as IPDI bear no relationship to the very low potential for these compounds to disperse beyond a facility boundary as a result of a spill or release. In general, non-volatile liquid chemicals have relatively low vapor pressure and relatively high boiling points. These substances are not as likely as volatile liquids to disperse beyond a facility boundary. As described above, EPA uses the liquid boiling point to calculate a V factor which is used as a relative measure of the ability of the substance to become airborne and disperse downwind. Non-volatile substances with high boiling points will give a small V factor which generates a larger ranking factor than volatile substances with a large V factor. The V factor is likely to be the same using either the substance's boiling point or ambient vapor pressure. The larger the ranking factor, the greater the TPQ. Therefore, a large TPQ would reflect a relative inability of a substance to travel off-site.

EPA believes that boiling point is a reflection of relative vapor pressure since non-volatile liquids have a low vapor pressure and a correspondingly high boiling point while volatile liquids have a high vapor pressure and a correspondingly low boiling point. Of the 183 liquid chemicals on the EHS list, only 18 chemicals have less than or the same vapor pressure as IPDI, and only 17 chemicals have higher or the same boiling point as IPDI. Therefore, when compared to the other chemicals on the EHS list, the ability of IPDI to disperse is relatively the same when considering either vapor pressure (as the petitioner requests) or boiling point (as the methodology now considers). For this reason, changing the methodology from boiling point to vapor pressure will not likely have a significant impact on IPDI's rank in comparison to other chemicals and consequently, its TPQ. While both of these factors demonstrate that IPDI under standard temperatures and pressures is less likely to disperse (relative to the other liquids on the EHS list), its TPQ is based on its boiling point and its acute toxicity (not by boiling point or toxicity alone) like other listed liquids.

EPA also disagrees that its TPQ methodology is improper, particularly with respect to the assumption that dispersion is relatively similar from chemical to chemical. EPA recognizes that once airborne, fine powders, aerosols, mists, or dense or lighter than air vapor clouds or gases may disperse differently from one another, depending on the density and concentration of the substance in the air, the air temperature, humidity, and other chemical- and dispersion-specific factors. A rigorous analysis of the unique dispersion characteristics could be conducted for each listed EHS substance. However, such an analysis is highly influenced by site-specific factors such as meteorology, terrain, and the accidental release scenario. Since the Agency does not have site-specific data for all sites potentially handling the EHS substances and a methodology for determination of the TPQ needs to be uniformly applied, the Agency assumed, that for purposes of a relative ranking, that the airborne dispersion of particles and vapors will likely be similar across the range of

listed gases, liquids and solids that become airborne.

EPA also notes that it does not use only dispersion potential or only toxicity to determine the TPQ. Instead, the method that EPA chose to establish TPQs for substances on the EHS list uses a combination of the toxicity of the chemical and the potential for these compounds to disperse beyond the facility boundary. Further, EPA did not assign TPQs based on any particular accident scenario or any specific handling situation. Instead, EPA chose to rank the chemicals against each other to get a relative idea of the potential accidental release significance or hazard associated with that chemical; a chemical with a ''low'' rank is more hazardous than one with a ''high'' rank (''hazard'' being a combination of toxicity and dispersion potential). EPA chose not to rank only by toxicity because a highly toxic chemical such as IPDI (a non-volatile substance) would be assigned a very low TPQ while a slightly less toxic but volatile substance would be assigned a greater TPQ.

Hüls also argues that because IPDI's toxicity was determined using an aerosol form of the chemical, the dispersion factor portion of the TPQ should consider the aerosol form rather than liquid volatilization based on boiling point. The Agency disagrees with this comment. Substances were added to the EHS list if dermal, oral, or inhalation toxicity test results meet certain toxicity criteria. While it is likely that toxic gases are listed because of inhalation toxicity, liquids and solids could be listed not only because of inhalation toxicity but also dermal or oral toxicity. In an accidental release scenario, hazardous chemicals could be dispersed in many ways generating human exposure, potentially via all three pathways (*e.g.* via inhalation, oral or dermal exposure). Consequently, for purposes of determining the TPQ, the Agency chose to focus on the substance's physical state to determine the likely route of exposure that might result from an accidental release rather than the state of the substance used for toxicity testing. In other words, gases and liquids would become airborne due to volatilization while solids become airborne due to the force of an event such as an explosion. Certainly, liquids could become airborne as a result of an explosion generating an exposure not only to vapor but to aerosols that would be generated by the force of that explosion. If the Agency had used this approach to determine dispersability, all liquid substances would essentially have the same dispersion potential and would be ranked by their toxicity. In this case, the TPQ for IPDI would end up being very low due to its high acute toxicity level in comparison to other liquids. EPA notes that Hüls' comment does not suggest a way to determine a relative ranking using an aerosol form, but simply argues that there is no basis for a TPQ of anything less than the maximum of 10,000 pounds. In fact, there is no basis for a TPQ of 10,000 pounds while there is ample toxicity data to suggest a much lower TPQ.

EPA acknowledges that releases of IPDI, and any other chemical on the EHS list, will not always result in an off-site consequence. However, since the requirement under EPCRA section 302 is for facilities to be included in the local preparedness efforts, the level of effort necessary for the facility to comply with section 302 is up to local planners. It is not possible for EPA to determine how all of the chemicals on the EHS list will behave during all potential processing and accidental release scenarios (including the chemical being involved in a building fire or explosion). EPA agrees that test data may be obtained by exposing the chemical to extreme conditions, however, these results would demonstrate that IPDI can be toxic under certain circumstances at relatively low concentration levels. TPQs including that for IPDI, are set based on toxicity and ability to disperse, relative to the other chemicals on the EHS list. While EPA takes toxicity and the chemical's ability to be dispersed into account in determining the TPQ, EPA believes the actual threat of off-site consequences posed by the actual processing conditions at the facility is best determined at the local level. If it is extremely unlikely that chemicals at a specific facility could cause off-site impacts, the local community may request little effort from the facility. Site specific factors (including whether the chemical is processed under high pressures and temperatures) can be discussed at this level.

The petitioner has also argued that since IPDI is manufactured and processed in closed vessels which are not under pressure, there is virtually no likelihood that it would disperse beyond the site of release. EPA disagrees. Even if Hüls' America does manufacture or process in closed vessels which are not under pressure, there may be some end users of this chemical that may use it for other manufacturing processes which may be at high pressure or temperature or the closed vessels could be exposed to fire. EPA is not saying that the TPQ that is now being set for IPDI (500 pounds) or any quantity for that matter, will definitely travel off-site and cause major consequences. As EPA stated in the April 1987 final rule and the technical support documents supporting that rule, TPQs are for reporting purposes only, in other words, to provide information to local planning committees to focus their emergency planning and response efforts.

It is important to note that the Agency considered other methods for the development of the threshold planning quantities. After considerable analysis and review of public comments on the proposed rule, the Agency chose to develop the TPQs using a relative ranking method that considers the toxicity and the chemical's ability to become airborne. The other methods had more limitations than this approach. The first method considered involved predicting a specific quantity for each chemical that, if accidentally released, would result in significant acute health effects at a fixed distance from the release site. However, this approach is affected greatly by site-specific factors, such as the potential release scenario, weather and dispersion conditions, and processing conditions. Therefore, the Agency decided not to adopt this approach. Another method that the Agency considered was to assign categories of threshold planning quantities to groups of chemicals ranked by their toxicity. As noted above, those chemicals that are highly toxic (such as IPDI) and relatively non-volatile could be assigned a very low TPQ while a slightly less toxic but volatile substance would be assigned a greater TPQ. Since this does not seem appropriate from an emergency planning and preparedness perspective, the Agency rejected this approach. One last method considered was to assign a default quantity of 2 pounds for each EHS. If the Agency did not take any action to assign a TPQ for an EHS, the statutory threshold of 2 pounds would have been effective. Of these four methods, the Agency believes that the relative ranking method using the toxicity of the chemical, its molecular weight and boiling point to rank and assign a threshold planning quantity, was the most appropriate. For a more detailed explanation of each of these methods, see the November 17, 1986 interim final rule, the April 22, 1987 final rule, and the technical support documents.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency

must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. This action affects only one chemical and in fact, reduces the burden on those facilities that handle IPDI in small quantities.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This final rule will relieve burden for some facilities that handle IPDI in small quantities. Currently, the threshold planning quantity for IPDI is 100 pounds. It is now being raised to 500 pounds. Therefore, we conclude that this action does not impose any new information collection burden, rather, it will relieve some burden.

This rule will not provide a significant amount of burden reduction, however, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR Part 355 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0092, (EPA ICR No. 1395.05). Copies of the ICR document(s) may be obtained from Susan Auby, by mail at U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, by email at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. Include the ICR and /or OMB number in any correspondence.

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.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business that is defined by the Small Business Administration by category of business using North American Industrial Classification System (NAICS) and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action will relieve some small entities handling IDPI in small quantities.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The revised threshold for IDPI, which will raise it from 100 pounds to 500 pounds, may relieve many small entities that handle this chemical in small amounts from the reporting requirement. We have therefore concluded that this rule will relieve regulatory burden for affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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 the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the 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 alternative 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 why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the 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 in the development of EPA 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 rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule will provide burden relief, and doesn't impose additional costs to State, local, or tribal governments, or to the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The rule will provide burden relief to regulated entities.

E. Executive Order 13132: Federalism

Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule does not impose a substantial economic burden on state and local governments, nor would it restrict state and local governments from establishing other more stringent, regulations. Thus, Executive Order 13132 does not apply to this rule.

The purpose of this rule is to correct the TPQ for IPDI based on EPA's existing methodology. This rule relieves some burden on the local governments in preparing emergency response plans since fewer facilities may be now subject to reporting this chemical. This action does not prevent any state governments from enforcing more stringent standards for this chemical.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop ''an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effect on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

The purpose of this rule is to correct the TPQ for IPDI based on EPA's existing methodology. This rule relieves some burden on tribal governments in preparing emergency response plans since fewer facilities may be now subject to reporting this chemical. This action does not prevent tribal governments from enforcing more stringent standards for this chemical.

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

The Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to Executive Order 13045 because (a) it is not an economically significant regulatory action as defined by Executive Order 12866 and (b) the environmental health or safety risks addressed by this action do not have a disproportionate effect on children.

EPA is not modifying its methodology for establishing threshold planning quantities. The Agency is correcting the TPQ for IPDI based on its existing methodology. Therefore, this action does not have a disproportionate effect on children. As previously described, the TPQ drives a reporting requirement; such reporting provides chemical hazard information for emergency preparedness and planning. Raising the TPQ for IPDI may result in less overall reporting information for IPDI. However, in the context of all information collected, IPDI information will be properly scaled to other hazards that may be present in a community allowing a community to properly focus its emergency preparedness and planning efforts as needed. Therefore, this action does not have a disproportionate effect on children.

H. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule does not involve technical standards. EPA is establishing the correct TPQ for IPDI using existing methodologies. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. In today's action, the Agency is correcting the TPQ for IPDI based on its existing methodology, thereby providing burden relief to those facilities that handle IPDI in small quantities. EPA is not changing its methodology for establishing threshold planning quantities. Any local effects must be considered on a case-by-case basis at local communities. State and local officials will continue to get information on this chemical from facilities, but can better focus on chemicals that are more hazardous. Therefore, this particular action will not have any impact on any minority or low-income populations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective October 8, 2003.

List of Subjects in 40 CFR Part 355

Environmental Protection, Air pollution control, Chemicals, Hazardous substances, Reporting and recordkeeping requirements, Superfund.

Dated: September 2, 2003.

Marianne Lamont Horinko,

Acting Administrator.

■ For the reasons set out in the preamble, part 355 of title 40 of the Code of Federal Regulations is amended as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

■ 1. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11004, and 11048.

Appendix A—[Amended]

■ 2. In Appendix A the table is amended by revising the entry for CAS No. ''4098–71–9'' (chemical name—Isophorone Diisocyanate) to read as follows:

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
* *	* * *		*	*
4098–71–9	Isophorone Diisocyanate.		100	500
* *	* * *		*	*

■ 3. In Appendix B the table is amended by revising the entry for CAS No. ''4098—71–9'' (chemical name—isophorone diisocyanate) to read as follows:

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[CAS No. Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
* *	* * *		*	*
4098–71–9	Isophorone Diisocyanate.		100	500
* *	* * *		*	*

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