

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 302 and 355**

[SFUND-2003-0022; FRL-7980-2]

RIN 2050-AF02

**Administrative Reporting Exemption for Certain Air Releases of NO<sub>x</sub> (NO and NO<sub>2</sub>)****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** This notice of proposed rulemaking provides notice of, and requests comments, including any relevant data, on a proposed new administrative exemption from certain notification requirements under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and the Emergency Planning and Community Right-to-Know Act, also known as Title III of the Superfund Amendments and Reauthorization Act. The Agency also seeks public comment on human health risk assessment data or other relevant data that relates to this proposal. The proposed administrative reporting exemption pertains to releases of less than 1,000 pounds of nitrogen oxide and nitrogen dioxide (or collectively "NO<sub>x</sub>") to the air in 24 hours that is the result of combustion activities, unless such release is the result of an accident or malfunction. Notifications must still be made for accidents or malfunctions that result in the releases of NO<sub>x</sub> at the final RQ of 10 pounds or more per 24 hours. The administrative reporting exemption is protective of human health and the environment and consistent with the Agency's goal to reduce unnecessary reports considering that levels for which the Clean Air Act regulates NO<sub>x</sub> are considerably higher than 10 pounds. In addition, the Agency believes that the submission of these reports for the proposed exempted releases would not contribute significantly to the data that is already available through the permitting process to the government and the public. The Agency is also considering and seeking comment on two other options to address the high frequency of release notifications. Those options would involve more efficient use of Continuous Release reporting and a complete exemption from the notification requirements under CERCLA and EPCRA.

**DATES:** Comments must be received on or before December 5, 2005.**ADDRESSES:** Submit your comments, identified by Docket ID No. SFUND-2003-0022, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: [superfund.docket@epa.gov](mailto:superfund.docket@epa.gov).
- Fax: (202) 566-0224.
- Mail: Superfund Docket,

Environmental Protection Agency, Mailcode: 5202T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

- Hand Delivery: Superfund Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. SFUND-2003-0022. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA EDOCKET and the federal [regulations.gov](http://www.regulations.gov) Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the

comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Unit I.B. of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Superfund Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Superfund Docket is (202) 566-0276.

**FOR FURTHER INFORMATION CONTACT:** Lynn Beasley, Regulation and Policy Development Division, Office of Emergency Management, Office of Solid Waste and Emergency Response (5104A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-1965; fax number: (202) 564-2625; e-mail address: [beasley.lynn@epa.gov](mailto:beasley.lynn@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information**

*A. Does This Action Apply to Me?*

Type of entity	Examples of affected entities
Industry .....	Because this proposed rule is an administrative reporting exemption for releases of NO <sub>x</sub> to the air, application of this rule should result in a reduction to your reporting burden. This proposed rule may affect the following entities: persons in charge of vessels or facilities that may release nitrogen oxide (NO) or nitrogen dioxide (NO <sub>2</sub> ) or both (NO <sub>x</sub> ) to the air.
State, Local, or Tribal Governments .....	State and Tribal Emergency Response Commissions, and Local Emergency Planning Committees.
Federal Government .....	National Response Center and any Federal agency that may release NO <sub>x</sub> .

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the criteria in Section III.A of this proposed rule and the applicability criteria in § 302.6 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. What Should I Consider as I Prepare My Comments for EPA?*

In order to implement CERCLA and EPCRA more efficiently, while not presenting a threat to human health, welfare and the environment, EPA is considering granting an administrative exemption from the release notification requirements of CERCLA and EPCRA for certain releases of NO<sub>x</sub> under certain circumstances and which are less than 1,000 pounds per 24 hours. Based on historical information, it is in the Agency's best judgment that a federal response to such releases, other than those from an accident or malfunction, is unlikely. Through CAA permitting programs, the government and the public have information regarding releases of NO<sub>x</sub> at comparatively higher amounts than what is required by CERCLA and EPCRA reporting; however exempting releases that are not permitted from CERCLA and EPCRA notification requirements would create a gap in that information. EPA seeks data and other supporting information in order to determine whether requiring reports of NO<sub>x</sub> releases that are a result of combustion and below 1,000 pounds per 24 hours, serve a useful purpose.

In the alternative, and based on data and other information received pursuant to this proposed rule, the Agency may decide that it is more efficient and

appropriate to pursue other options to address the high frequency of NO<sub>x</sub> release notifications mentioned in the Summary section of this proposed rule and further explained in section D. below. The Agency seeks to effectively target those notifications to best achieve Federal and public information needs.

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Keep your comments relevant—Comments outside the specific parameters or scope of this rulemaking (see Section III.A., below) will be considered non-responsive to this request for comments and will not receive a response by the Agency in the final rulemaking package or the Response to Comments Document.
4. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
5. Describe any assumptions and provide any technical information and/or data that you used.
6. If you estimate potential costs, burdens or savings, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
7. Provide specific examples to illustrate your concerns, and suggest alternatives.
8. Explain your views as clearly as possible.
9. Make sure to submit your comments by the comment period deadline identified.

*C. What Is the Statutory Authority for This Rulemaking?*

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act

of 1986, gives the Federal Government broad authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. The term "hazardous substance" is defined in section 101(14) of CERCLA primarily by reference to other Federal environmental statutes. Section 102 of CERCLA gives the U.S. Environmental Protection Agency (EPA) authority to designate additional hazardous substances. Currently there are 764 CERCLA hazardous substances,<sup>1</sup> exclusive of Radionuclides, F-, K-, and Unlisted Characteristic Hazardous Wastes.

Under CERCLA section 103(a), the person in charge of a vessel or facility from which a CERCLA hazardous substance has been released in a quantity that equals or exceeds its reportable quantity (RQ) must immediately notify the National Response Center (NRC) of the release. A release is reportable if an RQ or more is released within a 24-hour period (see 40 CFR 302.6). This reporting requirement, among other things, serves as a trigger for informing the government of a release so that Federal personnel can evaluate the need for a Federal removal or remedial action and undertake any necessary action in a timely fashion.

On March 19, 1998, the Agency issued a final rule (63 FR 13459) that broadened existing reporting exemptions for releases of naturally occurring radionuclides. The Agency relied on CERCLA sections 102(a), 103, and 115 (the general rulemaking authority under CERCLA) as authority to issue regulations governing section 103 reporting requirements, as well as administrative reporting exemptions. These exemptions were granted for releases of hazardous substances which pose little or no risk or to which a Federal response is infeasible or inappropriate (63 FR 13461).

In addition to the reporting requirements established pursuant to CERCLA section 103, section 304 of the Emergency Planning and Community

<sup>1</sup> This total includes P- and U- wastes.

Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11001 *et seq.*, requires the owner or operator of certain facilities to immediately report releases of CERCLA hazardous substances or any extremely hazardous substances to State and local authorities (*see* 40 CFR 355.40). Any proposed burden reduction measure that applies to CERCLA section 103 notification requirements would also apply to EPCRA section 304 notification requirements. In part, EPCRA's reporting requirement is designed to effectuate a statutory purpose of informing communities and the public generally about releases from nearby facilities. Notification is to be given to the community emergency coordinator for each local emergency planning committee (LEPC) for any area likely to be affected by the release, and the State emergency response commission (SERC) of any State likely to be affected by the release. Through this notification, State and local officials can assess whether a response to the release is appropriate, regardless of whether the Federal Government intends to respond. EPCRA section 304 notification requirements apply only to releases that have the

potential for off-site exposure and that are from facilities that produce, use, or store a "hazardous chemical," as defined by regulations promulgated under the Occupational Safety and Health Act of 1970 (29 CFR 1910.1200(c)) and by section 311 of EPCRA.

*D. Which NO<sub>x</sub> Releases Are Proposed for Administrative Exemption From the Reporting Requirements?*

EPA proposes to administratively exempt certain releases of NO and NO<sub>2</sub> to air from the reporting requirements of CERCLA and EPCRA, established in 40 CFR 302.6 and 40 CFR 355.40, respectively, that are the result of combustion activities, of less than 1,000 pounds per 24 hours and not the result of an accident or other malfunction. Notifications must still be made for accidents or malfunctions that result in the releases of NO<sub>x</sub> at the final RQ of 10 pounds or more per 24 hours.

Currently, the reportable quantity (RQ) for both NO and NO<sub>2</sub> is 10 pounds in any 24 hour period. This RQ is easily met by those facilities that release NO<sub>x</sub><sup>2</sup> to the air. This is especially true when

the facility processes include combustion activities. For example, an 80 million BTU/hr natural gas boiler will exceed the RQ for NO<sub>x</sub> after 2.5 hours of operation. A 120 million BTU/hr coal boiler will exceed the RQ for NO<sub>2</sub> in less than 3 hours of operation and the RQ for NO in less than 2 hours of operation. Small engines also trigger the 10 pound threshold—an 18 horsepower engine running 24 hours will exceed the RQ for NO<sub>x</sub> and a 100 horsepower engine will exceed the RQ for NO<sub>x</sub> in five hours. Even turning on bakery ovens could trigger the RQ for NO<sub>x</sub> when turned on for daily operations.<sup>3</sup>

The notification data provided in the two tables below is from the National Response Center. Summary Table 1 contains data from the Emergency Release Notification System (ERNS)<sup>4</sup> for the notification of episodic releases of oil and hazardous substances. Summary Table 2 contains data from the Continuous Release—Emergency Release Notification System (CR-ERNS)<sup>5</sup> for the continuous release reporting requirement.

SUMMARY TABLE 1.—NO<sub>x</sub> (REPORTED AS NO<sub>x</sub>, NO, NO<sub>2</sub>) RELEASE NOTIFICATIONS (TO AIR)—ERNS NOTIFICATIONS

Year	Total number NO <sub>x</sub> notifications	Reported unknown amt	Less than 10 pounds	10–99 pounds	100–999 pounds	1000–5000 pounds	Above 5000 pounds	Percent of total reports
1994	99	36	6	33	20	4		.3
1995	214	139	8	48	16	3		.6
1996	209	119	3	66	15	6		.7
1997	245	131	2	86	22	4		.8
1998	370	164	17	131	48	7	3	1.2
1999	661	285	18	235	76	44	3	2.2
2000	1103	252	11	518	254	43	25	3.4
2001	1905	513	42	1034	257	53	6	5.5
2002	2425	466	29	1379	462	73	16	7.5
2003	2774	488	144	1562	504	63	13	8.6
2004	3064	576	95	1708	568	103	14	9.0

In the recent years, 2001–2004, a significant number of NO<sub>x</sub> release reports to ERNS occur below 1,000 pounds. See Summary Table 1, above. However, this data may not accurately

reflect actual NO<sub>x</sub> releases based on several factors, including the apparent misunderstanding by industry in general of the requirement to report NO<sub>x</sub> releases and the Agency's exercise

of enforcement discretion for the release of NO<sub>x</sub> that has been in effect since 2000.<sup>6</sup>

<sup>2</sup> For this proposed rule, we use the shorthand convention NO<sub>x</sub> to refer to both NO and NO<sub>2</sub> either collectively or as individual hazardous substances.

<sup>3</sup> These examples were submitted to the Agency during the comment period for the *Guidance on the CERCLA Section 101A(10)(H) Federally Permitted Release Definition for Certain Air Emissions* (67 FR 18899, April 17, 2002) discussed further in the

Background section of this preamble. A sample of the letters received related to NO<sub>x</sub> and its 10 pound RQ are provided in the Docket (SFUND–2003–0022) for this rule. All of the letters received pursuant to the Guidance can be found in that Docket (GE–G–1999–029).

<sup>4</sup> This data collection activity is approved under OMB No. 2050–0046. EPA Form Number 1049.10.

<sup>5</sup> This data collection activity is approved under OMB No. 2050–0086. EPA Form Number 1445.06.

<sup>6</sup> The enforcement discretion memorandum that reaches this conclusion, as well as those memoranda that extend the enforcement discretion, is provided in the Docket for this rule.

SUMMARY TABLE 2.—NO<sub>x</sub> (REPORTED AS NO<sub>x</sub>, NO, NO<sub>2</sub>) RELEASE NOTIFICATIONS (TO AIR)—CR—ERNS INITIAL REPORTS

Year	Total number NO <sub>x</sub> notifications	Reported as unknown amt	Less than 10 pounds	10–99 pounds	100–999	1000–5000 pounds	Above 5000 pounds	Percent of total reports
1994	29							.09
1995	42							.1
1996	31							.1
1997	47							.2
1998	248							.8
1999	264				1	1		.9
2000	770	401	5	170	125	34	35	2.4
2001	120	14	3	32	40	16	15	.3
2002	209	82	1	22	27	28	49	.6
2003	68	24	2	15	10	10	7	.2
2004	16	1	0	3	8	2	2	.04

Prior to December 1999, the National Response Center did not record the amount of hazardous substance released for the initial continuous release reports. That information would be captured later in written reports to the EPA Regional offices and the State and local planning committees. The data in Summary Table 2 is also subject to the caveat described above, regarding industry’s misunderstanding to notify

and the Agency’s exercise of enforcement discretion. CERCLA 101(10)(H) defines a “federally permitted release,” to include, “any emission into the air subject to a permit or control regulation under section 111 [42 U.S.C.A. 7411], section 112 [42 U.S.C.A. 7412], Title I part C [42 U.S.C.A. 7470 *et seq.*], Title I part D [42 U.S.C.A. 7501 *et seq.*], or State implementation plans submitted in accordance with section 110 of the

Clean Air Act [42 U.S.C.A. 7410] (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated, or approved under these sections, \* \* \*” The following table is a summary of the CAA provisions identified in CERCLA 101(10)(H) that briefly describes how NO<sub>x</sub> emissions are controlled through the CAA.

What it does	Control NO <sub>x</sub> ?	Additional information
<b>CAA § 111</b>		
New Source Performance Standards—EPA to evaluate and control emissions from new stationary sources in areas that meet and do meet National Ambient Air Quality Standards for criteria pollutants (incl. NO <sub>x</sub> ). Developed and promulgated separately for various categories of sources.	NSPS controlling NO <sub>x</sub> promulgated for: ..... —municipal waste combustors ..... —hospital, medical, infectious waste incinerators. —fossil fuel-fired steam generators ..... —electric utility steam generating units ..... —industrial, commercial, institutional steam generating units. —stationary gas turbines .....	NSPS include exemptions based on source size or capacity. NSPS are developed based on the degree of emission limitation achievable through application of the best technological system, taking into consideration cost, health impacts, and energy requirements. Waivers may be granted to extend compliance schedules or allow the use of alternative control technologies.
<b>CAA § 112</b>		
Requires the evaluation and control of emissions of hazardous air pollutants (HAPs). Control of HAP emissions is achieved through National Emission Standards for HAPs or NESHAPs.	NO <sub>x</sub> is not a HAP, but NO <sub>x</sub> emissions may be incidentally reduced through co-control of some HAP source categories (MACT—maximum achievable control technology).	NESHAPs set emission limits, equipment standards, and/or work practice standards for categories of stationary sources
<b>CAA Title I Part C</b>		
PSD—Prevention of Significant Deterioration requirements may apply to a single source or multiple sources within a facility, if the source: —belongs to one of 28 listed source categories and has the potential to emit 100TPY or more of NO <sub>x</sub> (or other listed pollutants). —is any new major source (>250TPY) of NO <sub>x</sub> —is subject of a planned modification that would increase NO <sub>x</sub> emissions by at least 40TPY.	PSD requirements affect construction or modification of large NO <sub>x</sub> sources in NAAQS attainment areas. Affected sources must use the best available control technology.  Emissions subject to PSD requirements must be controlled with best available control technology.	NO <sub>x</sub> PSD requirements apply everywhere since NO <sub>2</sub> NAAQS has been attained everywhere.

What it does	Control NO <sub>x</sub> ?	Additional information
<b>CAA Title I Part D</b>		
Nonattainment NSR requirements for new major sources and major modifications. —applies primarily to new sources in ozone nonattainment areas. —based on 10–100TPY of NO <sub>x</sub> for major sources.	Emission control requirements are based on the lowest achievable emission reduction—more stringent than BACT.  Must also offset emission increases.	Because Part D applies to sources in nonattainment areas, compliance and reporting requirements are more stringent than those for PSD sources. Also applies in the Ozone Transport Region; may apply in some PM nonattainment areas where NO <sub>x</sub> is a PM precursor. Waivers may be granted in certain ozone nonattainment areas.
<b>CAA §110</b>		
Requires each state to submit to EPA a SIP that provides for attainment, maintenance, and enforcement of the NAAQS within the state.	SIPs must be at least as stringent as federal requirements. Vary widely because ambient air quality issues vary from state to state, and from region to region within a state. For example, NO <sub>x</sub> -emitting sources in metropolitan or heavily industrialized areas generally face more stringent requirements than in rural areas that are not classified as sensitive air quality regions.	SIPs must be updated to incorporate newly promulgated state or federal rules. SIP requirements must be incorporated into Title V permits, including PSD/NSR. NO <sub>x</sub> RACT is required in certain ozone nonattainment areas and in the Ozone Transport Region. SIPs must prevent significant contribution to nonattainment in downwind states.

There are several CAA programs that affect NO<sub>x</sub> emissions that have been developed since Congress defined federally permitted releases under CERCLA. The new programs include direct control of NO<sub>x</sub> emissions from stationary and mobile sources, and co-control of NO<sub>x</sub> emissions by requirements for sulfur dioxide, ozone, and particulate matter emissions. Congress did not amend CERCLA 101(10)(H) to include the new programs.

## II. Background

On December 21, 1999, EPA published interim guidance on the federally permitted release exemption to section 103 of CERCLA and section 304 of EPCRA (64 FR 71614). The interim guidance discussed EPA's interpretation of the federally permitted release exemption as it applies to some air emissions and solicited public comment. The public comment period closed after several extensions on April 10, 2000. The Agency received many comments on the interim guidance, including specific questions regarding EPA's interpretation of the federally permitted release exemption as it applies to NO<sub>x</sub> releases.<sup>7</sup> NO<sub>x</sub> releases to air are somewhat unique in that, in most cases, federally enforceable permits (including State issued through delegated programs) are not issued to facilities that release NO<sub>x</sub> below a certain threshold. NO<sub>x</sub> emissions from these sources are minimal and may not pose a hazard to health or the environment. In its final Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions (67 FR 18899, April 17, 2002), EPA responded to the concern that many small facilities do not have federally enforceable permits by stating in that **Federal Register** notice that it recognized, "that certain uncontrolled air emissions of nitrogen

oxide (NO) and nitrogen dioxide (NO<sub>2</sub>) equal to or greater than the ten pound RQ may rarely require a government response." (67 FR 18904). When the Agency published that final Guidance, it also extended and expanded an on-going enforcement discretion (Appendix B to that Notice) with regard to owners, operators or persons in charge to include, for failure to report air releases of NO and NO<sub>2</sub> that would otherwise trigger a reporting obligation under CERCLA section 103 and EPCRA section 304, unless such releases are the result of an accident or malfunction. (67 FR 18904). The Agency intends to continue to exercise its enforcement discretion until EPA completes action on this rulemaking.<sup>8</sup>

## III. Summary of Today's Action

### A. What Is the Scope of Today's Proposed Rule?

Today's proposed rule is limited to addressing the level of reporting associated with NO<sub>x</sub>. Specifically, the Agency is considering, either an administrative exemption from CERCLA and EPCRA reporting requirements found in 40 CFR 302.6 and 40 CFR 355.40, respectively, for the release of less than 1,000 pounds per 24 hours of NO<sub>x</sub> to air that is the result of combustion activities, or other alternatives described in section D.

below. The Agency will consider comments from the public as to whether such releases of NO<sub>x</sub> to air resulting from combustion activities are appropriate for this limited administrative reporting exemption or alternative resolution. Any exemption or alternative resolution would not apply to releases of NO<sub>x</sub> that are the result of an accident or malfunction<sup>9</sup> of equipment. In addition the Agency is not considering an exemption for the release of any other hazardous substance in this proposed rule. Comments regarding other hazardous substances will not be considered relevant to this proposed rule.

### B. What Is EPA's Rationale for This Administrative Reporting Exemption?

As described in the background section of this proposed rule, the Agency published final federally permitted release guidance on April 17, 2002. During the period for public comment on the Agency's interim guidance (December 21, 1999 through April 10, 2000), EPA received numerous comments<sup>10</sup> that the ten pound NO<sub>x</sub> RQ could result in a large number of notifications triggered by very small releases which could overburden the CERCLA notification system and impede the government's ability to

<sup>7</sup> Some of those comment letters received are available in the Docket (SFUND–2003–0022) for this rule. All comments are available in the Docket for the Interim Guidance (EG–G–1999–029).

<sup>8</sup> A copy of the **Federal Register** notice and Memoranda from the AA OECA to Regional Councils which addresses the on-going enforcement discretion is included in the Docket (SFUND–2003–0022) to today's proposed rule.

<sup>9</sup> See 40 CFR 60.2 Definitions and 40 CFR 63.2 Definitions for Clean Air Act regulatory definition of *malfunction*.

<sup>10</sup> See Docket EG–G–1999–029 for complete record of comment letters or SFUND–2003–0022 for a sample of comment letters relevant to this proposed rule.

focus its resources on more serious releases.

When evaluated solely in conjunction with Clean Air Act (CAA) permitting programs that include sources that have the potential to emit up to 250 tons per year (CAA Title I, Part C, see table above) of NO<sub>x</sub>, the Agency believes it is appropriate to promulgate an administrative reporting exemption for NO<sub>x</sub> releases to air that are the result of combustion, and result in releases less than 1,000 pounds per 24 hours, considering that the likelihood of a Federal response to the release of NO<sub>x</sub> below this level is highly unlikely<sup>11</sup> and that these releases are sources for which reporting may serve no useful purpose under either CERCLA or EPCRA. In fact, in selecting an exemption level of 1,000 pounds per 24 hour period, the Agency notes that this level is below the level at which permits are required under the CAA for NO<sub>x</sub>, such that it appears "infeasible" that any response would be undertaken. However, the Agency requests comment on whether a higher level, 5,000 pounds per 24 hour period or lower level, 100 pounds, is appropriate. In submitting comments on a different level, we request that commenters provide what an appropriate level might be, as well as the justification for that level.

Some commenters have suggested<sup>12</sup> raising the RQ to 100 pounds, 1000 pounds or 5000 pounds. Under this approach, the Agency would need to revise the methodology for establishing the RQ for NO<sub>x</sub>, which would likely take a number of years to develop and promulgate through rulemaking. We believe that an administrative reporting exemption would likely provide the same outcome in less time.

EPA is interested in data that may relate to the usefulness of the notifications under CERCLA that would result from maintaining the 10 pound reportable quantity without any exemption. In addition, the Agency also requests comment as to whether reporting under EPCRA should be maintained. If those commenting believe that such reporting should be maintained, they should describe why and particularly what purposes this reporting would serve.

Today's proposed exemptions are from CERCLA section 103 and EPCRA section 304 reporting requirements only; they will have no bearing on CERCLA

liability or any other applicable reporting requirements under other laws.

### *C. How Is This Proposed Administrative Reporting Exemption Consistent With EPA's Mission To Protect Human Health and the Environment?*

The administrative reporting exemption proposed in today's rulemaking would not prevent EPA from carrying out its mission to protect human health and the environment. First, we are not aware that any of the NO<sub>x</sub> release notifications that were previously submitted has resulted in a response action being taken, unless it was a result of an accident or malfunction. Thus, such submissions particularly those at levels below 1,000 pounds per 24 hours, have not furthered the protection of human health and the environment. As a result of today's proposal industry and the Federal Government would be better able to focus their resources. As an example, in the Summary Tables which provide data on the number of NO<sub>x</sub> release notifications submitted between 1994 and 2004, we estimate that the private sector and Federal Government spent about 3.7 man-months<sup>13</sup> to prepare and process these notifications.

This proposal would also result in no longer requiring the submission of such notifications below 1,000 pounds per 24 hours to the State Emergency Response Commissions and Local Emergency Planning Committees as required by EPCRA. EPCRA serves the purposes of community information and emergency planning and prevention, as well as emergency response. Release notification can assist in emergency response planning and preparedness regardless of whether there is any Federal, State or local emergency response to the release. By removing this reporting exemption under EPCRA, it would also allow the state and local planning committees to better focus their resources. See also discussion under, III.B. What is EPA's Rationale for this Administrative Reporting Exemption.

Nevertheless, the Agency seeks information related to the level of risk associated with such releases, the appropriateness and feasibility of a Federal response, and the usefulness of the reports to Federal, State and local governments, as well as the public at

large and communities near facilities that emit NO<sub>x</sub>.

### *D. What Alternative Options Is EPA Considering To Address the CERCLA Section 103 and EPCRA Section 304 Reporting Requirements of Certain Unpermitted Releases of NO<sub>x</sub> to Air?*

EPA is also seeking data or additional information to help us consider the appropriateness of alternative options to address the CERCLA section 103 and EPCRA section 304 Reporting Requirements of Certain Unpermitted Releases of NO<sub>x</sub> to the air. Those options include; (a) more efficient use of Continuous Release reporting, and (b) extending the administrative reporting exemption to include all releases of NO<sub>x</sub> from combustion sources that are not the result of an accident or malfunction.

(a) Continuous Release reporting refers to the provisions under CERCLA section 103(f)(2) which allows the qualified exemption of notification requirements under CERCLA section 103 (a) and (b) for any release of a hazardous substance which is a continuous release, stable in quantity and rate.<sup>14</sup> The Agency published a final rule on July 24, 1990 (55 FR 30165) that amended 40 CFR by adding § 302.8 and part 355. Section 302.8 sets forth the notification requirements for continuous release reporting under CERCLA. Part 355 identifies the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) as the recipients of the continuous release reports as set forth under EPCRA and indicates that continuous releases are otherwise exempt from SARA Title III section 304 emergency response notification.

A continuous release is a release that occurs without interruption or abatement or that is routine, anticipated, and intermittent and incidental to normal operations or treatment processes. There are four steps in the continuous release notification process: (1) Initial telephone notification (to the

<sup>14</sup> CERCLA section 103(f)(2)—No notification shall be required under subsection (a) or (b) of this section for any release of a hazardous substance, \* \* \* (2) which is a continuous release, stable in quantity and rate, and is (A) from a facility for which notification has been given under subsection (c) of this section, or (B) a release of which notification has been given under subsections (a) and (b) of this section for a period sufficient to establish the continuity, quantity, and regularity of such release: *Provided*, That notification in accordance with subsections (a) and (b) of this paragraph shall be given for releases subject to this paragraph annually, or at such time as there is any statistically significant increase in the quantity of any hazardous substance or constituent thereof released, above that previously reported or occurring.

<sup>11</sup> An RQ merely establishes a trigger for informing the government of a release so that, among other things, the appropriate government personnel can evaluate the need for a response action and can undertake any necessary response action in a timely fashion.

<sup>12</sup> Available in the Docket (SFUND-2003-0022).

<sup>13</sup> This estimate was calculated using the burden hours described in the Information Collection Requests 1049.10 and 1445.06 and the total notifications received by the NRC for ERNS and CR-ERNS. Summary calculations are available in the Docket (SFUND-2003-0022) for further review.

NRC, SERC, and LEPC); (2) initial written notifications to the appropriate EPA Regional Office (within 30 days of the initial telephone notification); (3) follow-up written reports; and (4) change notifications. Details on the information required are found in 40 CFR 302.8. A general description of the information required follows. For more detailed information concerning continuous release reporting requirements, see U.S. EPA, Reporting Requirements for Continuous Releases of Hazardous Substances: A Guide for Facilities and Vessels on Compliance," Office of Emergency and Remedial Response, OSWER Directive 9360.7-01, October 1990. This publication is available at: <http://www.epa.gov/superfund/resources/release/faciliti.htm> a copy is also available in the Docket.

The person in charge is required to provide the following information in the initial telephone notification:

- Statement that this is an initial telephone notification of a continuous release;
- Name and location of the facility or vessel responsible for the release; and
- Name and identity of each hazardous substance released.

The initial written notification must include the following types of information:

- General information on the facility or vessel, and the area surrounding the facility or vessel; and
- Source information, including the identity of each release source, the names and quantities of the hazardous substances released from each source, the basis for stating that the release qualifies as continuous and stable in quantity and rate, the environmental medium affected by the release, the normal range of the release from the source, and the frequency of the release from each source.

The information required in the written follow-up report is identical to that required in the initial written notification, but it is based on release data gathered over the year (*i.e.*, during the period since the submission of the initial written report). If there are any changes in a continuous release, the EPA Regional Office must be notified. If there is a change in the source or composition of a continuous release, the release is considered a "new" release.

The Agency believes the definition of "continuous" may be sufficiently broad so as to cover many of the NO<sub>x</sub> situations in a manner that would be consistent with the fundamental purpose of CERCLA section 103(a) reporting requirements, which is to alert government response officials to releases that require immediate

evaluation to determine whether a field response may be necessary. See also, 55 FR 30169, July 24, 1990. However, as described above, we question whether such notifications for releases of NO<sub>x</sub> below 1,000 pounds per 24 hours need to be submitted. Nevertheless, the Agency solicits comment on whether this approach—require that NO<sub>x</sub> release notifications be covered under the continuous release reporting scheme—is appropriate and should be adopted. In submitting such comments, please describe any changes you believe should be made to the existing procedures, if any, and if so, why.

(b) The option of extending the administrative reporting exemption to include NO<sub>x</sub> releases from all combustion sources, excluding accidents and malfunctions. The Agency will review any data submitted during the public comment to determine if extending the administrative reporting exemption for NO<sub>x</sub> under certain conditions is appropriate. Commenters wishing to support an extension of the administrative reporting exemption beyond the proposed amount of less than 1,000 pounds per 24 hours will need to submit a human health and ecological risk assessment to support extending the administrative reporting exemption to include all NO<sub>x</sub> releases from all combustion sources. Guidance on conducting a human health and ecological risk assessment can be found at [http://www.epa.gov/oswer/riskassessment/superfund\\_toxicity.htm](http://www.epa.gov/oswer/riskassessment/superfund_toxicity.htm). The risk assessment should include all current complete site-specific exposure pathways for all affected media, future land use potential, potential exposure pathways, and toxicity information. The Agency is particularly interested in data on reasonably maximum exposed individual for NO<sub>x</sub> and the level of interest in the release notifications by the state and local planning commissions.

#### IV. Statutory and Regulatory 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 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.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

##### B. Paperwork Reduction Act

The information collection requirements in this proposed rule 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.* The Information Collection Request (ICR) documents prepared by EPA have been assigned EPA ICR numbers 1049.10 and 1445.06.

EPA ICR number 1049.10 covers collection requirements for the notification of episodic release of oil and hazardous substances. EPA ICR number 1445.06 covers collection requirements for the continuous release reporting requirement. Both of these information collections are affected by this proposed rule. However, this proposed rule represents a reduction in the burden for both industry and the government.

The information collected for the episodic release of oil and hazardous substances is required by section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, and section 311 of the Clean Water Act (CWA), as amended. The hazardous substance and oil release information collected pursuant to CERCLA section 103(a) and CWA section 311 has a variety of different uses. Federal response authorities, such as EPA and the United States Coast Guard On-Scene Coordinators (OSCs), use the information to evaluate the environmental and human health risks attributable to a reported release and to determine if a Federal response action is necessary to mitigate or prevent any

adverse effects associated with the release. The information provided is public information; however, the name of the person who makes the notification is not available to the public.

The information collected for the continuous release reporting requirement is required by section 103(f)(2) of CERCLA. CERCLA section 103(f)(2) provides relief from the notification requirements of CERCLA section 103(a) for hazardous substances releases that are "continuous," "stable in quantity and rate," and for which notification has been given under CERCLA section 103(a) "for a period sufficient to establish the continuity, quantity, and regularity" of the release. The information collection and management requirements of the continuous release reporting regulations are necessary to determine if a response action is needed to control or mitigate any potential adverse effects associated with a reported hazardous substance release. The information provided is public information.

The estimated projected cost and hour burden represents those attributable to NO and NO<sub>2</sub> releases to air that are less than 1,000 pounds per 24 hours. The Adjusted Information Collection Requests for 1049.10 and 1445.06 are available in the Docket for this rule. In order to specifically highlight the impact of the proposed administrative reporting exemption, the current Information Collection Requests were adjusted rather than completely revised. The adjusted Information Collection Requests include tables that show projected cost and burden as if the releases were not required to be reported. Within the documents, the new tables immediately follow the original tables and are clearly identified.

With respect to the information collected for the episodic release of oil and all hazardous substances (1049.10), the Agency estimates for industry an annual overall reduction of cost from \$6,279,539 to \$5,932,993 a reduction of \$346,546 with a corresponding reduction in the hour burden from 98,736 to 93,287 a reduction of 5,449 hours. This represents a reduction in the likely number of respondents from 24,082 to 22,753 a reduction of 1,329 reportable releases. For the purpose of this burden analysis, each reportable release equals one respondent.

With respect to the information collected for the continuous release reporting regulation (1445.06) for all hazardous substances, the Agency estimates for industry an annual overall reduction of cost from \$10,101,032 to \$10,070,423 a reduction of \$30,609 with

a corresponding reduction in the hour burden from 284,154 to 283,285 a reduction of 869 hours. This represents a reduction in the likely number of respondents from 3,145 to 3,009 a reduction of 136 respondents.

Together, the Agency estimates for industry an annual overall reduction of cost from \$16,380,571 to \$16,003,416 an overall reduction of \$377,155 with a corresponding reduction in the hour burden from 382,890 to 376,572 a reduction of 6,318 hours. This represents an overall reduction in the likely number of respondents from 27,227 to 25,762 a reduction of 1,465 respondents.

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 in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes these ICRs, under Docket ID number SFUND-2003-0022. Submit any comments related to the ICRs for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 4, 2005, a comment to OMB is best assured of having its full effect if OMB receives it by November 3, 2005. The final rule will respond to

any OMB or public comments on the information collection requirements contained in this proposal.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations 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 proposed rule on small entities, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. 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 small entities subject to the rule.

This rulemaking will relieve regulatory burden because we propose to eliminate the reporting requirement for certain releases of NO<sub>x</sub> to the air. We expect the net reporting and record keeping burden associated with reporting releases of NO<sub>x</sub> under CERCLA section 103 and EPCRA section 304 to decrease. This reduction in burden will be realized mostly by small businesses because larger businesses usually operate under federal permits and therefore qualify for the "federally

permitted release" exemption for reporting under CERCLA. 40 CFR 302.6. We have therefore concluded that today's proposed rule will relieve regulatory burden for all affected small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### *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.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II or the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector; promulgation of this rule will result in

a burden reduction in the receipt of notifications of the release of NO<sub>x</sub>. EPA has determined that this rule does not include a Federal mandate that may result in expenditures of \$100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any one year. This is because this proposed rule imposes no enforceable duty on any State, local, or tribal governments. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding \$100 million. Thus, today's proposed rule is not subject to the requirements of Sections 202 and 205 of UMRA.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "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 proposed 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. There are no State and local government bodies that incur direct compliance costs by this rulemaking. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

#### *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 9, 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." This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments, nor would it impose substantial direct compliance costs on them. Thus, Executive Order 13175 does not apply to this rule.

#### *G. Executive Order 13045: Protection of Children From Environmental Risks and 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 "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.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This proposed 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 and Advancement Act of 1995*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

#### List of Subjects

##### 40 CFR Part 302

Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal.

##### 40 CFR Part 355

Air pollution control, Chemical accident prevention, Chemical emergency preparedness, Chemicals, Community emergency response plan, Community right-to-know, Contingency planning, Disaster assistance, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous substances, Intergovernmental relations, Natural resources, Penalties, Reportable quantity, Reporting and recordkeeping requirements, Superfund Amendments and Reauthorization Act, Threshold planning quantity.

Dated: September 27, 2005.

**Stephen L. Johnson,**  
Administrator.

For the reasons set out in the preamble, it is proposed to amend title 40, chapter I of the Code of Federal Regulations as follows:

#### **PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION**

1. The authority citation for part 302 continues to read as follows:

**Authority:** 42 U.S.C. 9602, 9603, 9604; 33 U.S.C. 1321 and 1361.

2. Section 302.6 is amended by adding paragraph (e) to read as follows:

##### **§ 302.6 Notification requirements.**

\* \* \* \* \*

(e) The following releases are exempt from the notification requirements of this section:

(1) Releases in amounts less than 1,000 pounds per 24 hours of nitrogen oxide to the air which are the result of combustion and not the result of an accident or malfunction of equipment.

(2) Releases in amounts less than 1,000 pounds per 24 hours of nitrogen dioxide to the air which are the result of combustion and not the result of an accident or malfunction of equipment.

#### **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.

2. Section 355.40 is amended by adding paragraph (a)(2)(vii) to read as follows:

##### **§ 355.40 Emergency release notification.**

(a) \* \* \*

(2) \* \* \*

(vii) Any release in amounts less than 1,000 pounds per 24 hours of nitrogen oxide or nitrogen dioxide to the air that is the result of combustion and not the result of an accident or malfunction of equipment.

\* \* \* \* \*

[FR Doc. 05-19872 Filed 10-3-05; 8:45 am]

**BILLING CODE 6560-50-P**

#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 372**

[TRI-2005-0073; FRL-7532-8]

RIN 2025-AA14

#### **Toxics Release Inventory Burden Reduction Proposed Rule**

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

**ACTION:** Proposed rule.

**SUMMARY:** Under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), the Environmental Protection Agency (EPA) proposes to revise certain requirements for the Toxics Release Inventory (TRI). The purpose of these revisions is to reduce reporting burden associated with the TRI reporting requirements while continuing to provide valuable information to the public that fulfills the purposes of the TRI program. "Burden" is the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. The Agency will continue to provide valuable information to the

public pursuant to section 313 of EPCRA and section 6607 of the Pollution Prevention Act (PPA) regarding toxic chemical releases and other waste management activities.

If adopted, today's proposed action would increase eligibility for the Form A Certification Statement for non-Persistent Bioaccumulative and Toxic (PBT) chemicals by raising the eligibility threshold to 5000 pounds for the "annual reportable amount" of a toxic chemical. It would also, for the first time, allow limited use of Form A for PBT chemicals where total releases are zero and the PBT annual reportable amount does not exceed 500 pounds. Dioxin and dioxin-like compounds are excluded from consideration for expanded Form A eligibility. Today's proposal applies to the reporting of individual chemicals and is not intended to apply automatically to all reports that a facility may be required to file.

For non-PBTs under the current regulations, the annual reportable amount is the combined total quantity released at the facility, treated at the facility, recovered at the facility as a result of recycle operations, combusted for the purpose of energy recovery at the facility, and amounts transferred from the facility to off-site locations for the purpose of recycling, energy recovery, treatment, and/or disposal. This combined total corresponds to the quantity of the toxic chemical in production—related waste, i.e., the sum of Sections 8.1 through and including Section 8.7 of the Form R. Today's proposal would define a PBT annual reportable amount that would also include amounts managed and reported under Section 8.8 of the Form R. Greater detail on how reporters can qualify for increased Form A eligibility is provided later in today's proposal under Section III.

**DATES:** Comments, identified by the Docket ID No. TRI-2005-0073, must be received on or before December 5, 2005.

**ADDRESSES:** Submit your comments, identified by Docket ID No. TRI-2005-0073, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: [oei.docket@epa.gov](mailto:oei.docket@epa.gov)
- Fax: 202-566-0741.
- Mail: Office of Environmental Information (OEI) Docket,