

controls are in place preventing unacceptable exposure. The contaminated groundwater is being addressed under the facility's RCRA permit and authority, therefore CERCLA response is not warranted. Therefore, EPA is proposing to delete this Site from the NPL.

#### List of Subjects in 40 CFR Part 300

Environmental protection; Air pollution control; Chemicals; Hazardous waste, Hazardous substances; Intergovernmental relations; Penalties; Reporting and recordkeeping requirements; Superfund; Water pollution control; Water supply.

Dated: September 13, 2011.

**Gwendolyn Keyes Fleming,**

*Regional Administrator, Region 4.*

For the reasons set out in this document, 40 CFR part 300 is proposed to be amended as follows:

1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

2. Table 1 of Appendix B to Part 300 is amended by removing “Martin-Marietta, Sodyeco, Inc.,” “Charlotte, NC.”

[FR Doc. 2011–25107 Filed 9–29–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 372

[EPA–HQ–OEI–2011–0196; FRL–9472–5]

RIN 2025–AA31

#### Toxics Release Inventory (TRI) Reporting for Facilities Located in Indian Country and Clarification of Additional Opportunities Available to Tribal Governments Under the TRI Program

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

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to require TRI reporting facilities located in Indian country to report to the appropriate Tribal government for the relevant area instead of the State; and improve and clarify certain opportunities allowing Tribal governments to participate more fully in the TRI Program. In 1990, EPA finalized regulations in the **Federal Register** (FR) requiring facilities in Indian country to submit annual TRI reports to EPA and

the appropriate Tribal government. These amendments, however, were inadvertently omitted from the Code of Federal Regulations (CFR), and the relevant provisions were later overwritten by a subsequent final rule, thus resulting in the exclusion of the intended requirement from the CFR. EPA intends to correct that inadvertent result by proposing this rule. Further, because Tribal governmental structures may vary, EPA is proposing to update its terminology to refer to the principal elected official of the Tribe as the “Tribal chairperson or equivalent elected official.” EPA is also amending its definition of “State” for purposes of 40 CFR part 372 to no longer include Indian country, so as to avoid any confusing overlap in terminology with the proposed express discussion of facilities in Indian country. With regard to the procedures for EPA to modify the list of covered chemicals and TRI reporting facilities, EPA proposes to clarify the opportunities available to Tribal governments. In particular, EPA proposes to include within the relevant provision an opportunity for the Tribal Chairperson or equivalent elected official to request that EPA apply the TRI reporting requirements to a specific facility located within the Tribe’s Indian country. Secondly, EPA is proposing that the Tribal Chairperson or equivalent elected official may petition EPA to add or delete a particular chemical respectively to or from the list of chemicals covered by TRI. By increasing the participation and engagement of Tribal governments in the TRI program, EPA is helping to increase awareness of toxic releases within Tribal communities, thereby increasing the understanding of potential human health and ecological impacts from these hazardous chemicals.

**DATES:** Comments must be received on or before November 29, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2011–0196, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* [oei.docket@epa.gov](mailto:oei.docket@epa.gov).
- *Fax:* 202–566–0677
- *Mail:* Office of Environmental Information (OEI) Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave, NW., Washington, DC 20460. 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. EPA–HQ–OEI–2011–0196. 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.regulations.gov>, 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 <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an “anonymous access” system, 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 <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 the EPA Docket Center homepage: <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

**FOR FURTHER INFORMATION CONTACT:**  
 Louise Camalier, Environmental Analysis Division, Office of Environmental Information (2842T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566-0503; fax number: (202) 566-0677; e-mail address: [Camalier.louise@epa.gov](mailto:Camalier.louise@epa.gov), for specific information on this notice. For general information on EPRCA section 313,

contact the Emergency Planning and Community Right-to-Know Hotline, toll free at (800) 424-9346 or (703) 412-9810 in Virginia and Alaska or toll free, TDD (800) 553-7672, <http://www.epa.gov/epaoswer/hotline/>.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

You may be potentially affected by this action if you own or operate a

facility located in Indian country (18 U.S.C. 1151) with a toxic chemical(s) known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity, as referenced in 40 CFR 372.25, 372.27, or 372.28, at its covered facility described in § 372.22. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry .....	<p>Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*.</p> <p>* Exceptions and/or limitations exist for these NAICS codes.</p> <p>Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221119, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>) (correspond to SIC 4953, Refuse Systems).</p>
Federal Government.	Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Some of the entities listed in the table have exemptions and/or limitations regarding coverage, and other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations.

Facilities in Indian country would no longer be required to report to the States, although States would still receive this information once it is available to the public. Tribes with facilities located in their Indian country would receive the facility reports under this proposal. This would represent a change for facilities, States, and Tribes.

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. How should I submit CBI to the agency?*

Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or

CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

**II. Introduction**

Since the beginning of the TRI Program in 1986, facilities that meet TRI reporting requirements have been required to submit annual TRI reports to EPA and the State in which they are located. In 1990, EPA finalized regulations in the **Federal Register** (FR) requiring facilities in Indian country to submit annual TRI reports to EPA and the appropriate Tribal government (55 FR 30632). EPA's rationale supporting those regulations was fully explained in the relevant preambles to the proposed and final rules. *Id.*; 45 FR 12992. These amendments, however, were inadvertently omitted from the CFR and later overwritten by a subsequent final rule and left out of the CFR. To correct this inadvertent omission, EPA intends

to include these provisions in the CFR, in 40 CFR 372.30(a), to require each facility located in Indian country to submit its annual TRI reports to the appropriate Tribe, rather than to the State in which the facility is geographically located. The requirement for the facility to report to EPA would remain the same.

To further encourage Tribal engagement and participation in the TRI program, EPA also proposes to make explicitly clear in the regulations certain additional opportunities for governments of federally-recognized Tribes. The first opportunity would allow the Tribal Chairperson or equivalent elected official to request that EPA apply the TRI reporting requirements to a specific facility located within the Tribe's Indian country, under the authority of EPCRA Section 313(b)(2). The second opportunity would allow the Tribal Chairperson or equivalent elected official to petition EPA to add or delete a particular chemical respectively to or from the list of chemicals covered by TRI, under the authority of EPCRA Section 313(e)(2). EPA proposes to treat these request and petitioning opportunities as EPA currently treats those for Governors of States under EPCRA Sections 313(b)(2) and (e)(2). After EPA has received a formal request

from a Tribe, EPA would make its final decision on the facility addition based on the criteria outlined in EPCRA Section 313(b)(2). EPA may also act on its own motion to add a facility without anyone requesting action. Opportunities for the public to participate in the TRI program consist of the right to petition the EPA to add or delete a particular chemical or chemicals to the TRI list of hazardous chemicals for toxics release reporting.

### III. Background Information

#### A. What does this document do and what action does this document affect?

This document primarily proposes to fulfill the goals of the July 26, 1990, action (55 FR 30632), which required facilities located in Indian country to report to the appropriate Tribal government and the EPA, instead of to the State and EPA. This amendment, however, was inadvertently omitted from the CFR and later overwritten by a subsequent final rule. Therefore, EPA is proposing to update 40 CFR 372.30(a) to reflect the purpose of the 1990 amendment. Secondly, to supplement this action, this document also clarifies existing TRI reporting regulations and guidance to further enable Tribal governments to participate more fully in the TRI Program.

Under today's proposal for 40 CFR 372.30(a), an owner or operator of a TRI facility in Indian country would have to submit (to the extent applicable) EPA's Form R, Form A, and Form R Schedule 1 to the official designated by the Tribal Chairperson or equivalent elected official of the relevant Tribe, as well as to EPA. The form(s) would no longer have to be submitted to the State in which the facility is geographically located. Under this proposal, facilities would select/provide the name of the federally-recognized Tribe as part of the *State* data field in the *Address* block on the TRI forms. To accommodate this, EPA would make changes to the description of this data field on the TRI form. In addition, EPA would modify the instructions that accompany the forms in the annual TRI Reporting Forms & Instructions document accessible from the TRI Web site.

Also under today's proposal, EPA proposes to clarify request and petitioning rights available to Tribal governments. A Tribe would have the opportunity to request EPA to require TRI reporting by a facility in the Indian country of that Tribe. Tribes would also have the opportunity to petition for the addition or deletion of a chemical, which would apply to all facilities that manufacture (including import),

process, or otherwise use the particular chemical. The statute—at sections 313(b)(2) and 313(d)—expressly authorizes the Administrator to apply TRI reporting requirements to particular facilities and to add or delete chemicals to or from the list of chemicals subject to TRI reporting. The statute provides opportunities for Governors of States to request that particular facilities be subject to TRI reporting or that specific chemicals be added to or deleted from the TRI reporting list (EPCRA Section 313(b)(2), (e)(2)). Similar to the process for Governors, after EPA has received a formal request from a Tribe, EPA would make its final decision on the facility addition based on the criteria outlined in EPCRA Section 313(b)(2). EPA may also act on its own motion to add a facility without anyone requesting action. EPA believes that these same opportunities are appropriately available to Tribal governments under the statute and EPA proposes to interpret these provisions so that the Tribal Chairperson or equivalent elected official may make similar requests to EPA. Ultimately, it is EPA that determines whether TRI reporting requirements will apply to a particular facility or whether a specific chemical will be added to, or deleted from, the TRI chemicals list.

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

EPA proposes this rule under sections 313, 328, and 329 of EPCRA, 42 U.S.C. 11023, 11048 and 11049.

EPCRA Section 313(a) requires that the TRI reporting form be submitted to EPA and the official(s) of the State designated by the Governor. Section 329 defines "State" to mean "any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction." The statute has no separate definition of, or explicit reference to, Indian Tribes or Indian country. As EPA has explained previously, however, Congress clearly intended the statute's protections to apply to all persons nationwide, including in Indian country. *See, e.g.*, 55 FR 30632, 30641–30642 (July 26, 1990); 54 FR 12992, 13000–13002 (March 29, 1989). In the context of a facility located in Indian country, EPA interprets section 313(a) as requiring reporting to EPA and the official designated by the Tribal Chairperson or equivalent elected official for the relevant area of Indian country. As discussed in EPA's prior notices, the

statutory language, the legislative history, and principles of Federal law relating to Indian Tribes and Indian country support the application of EPCRA in Indian country and EPA's reasonable interpretation of section 313(a) requirements. *Id.*

This reasonable interpretation of the statute is reinforced by the broad grant of rulemaking authority from Congress to EPA under EPCRA. Section 328 provides that the "Administrator may prescribe such regulations as may be necessary to carry out this chapter." 42 U.S.C. 11048.

For purposes of regulatory clarity, EPA has proposed that the reporting requirements for a facility in Indian country be discussed expressly in part 372. Part 372 already contains a definition of Indian country at 40 CFR 372.3. To avoid any confusing overlap, EPA has proposed to remove Indian country from the definition of "State" as that term is used in part 372.

EPA also expressly interprets section 313(b)(2) and (e)(2) in the context of Indian Tribes. In the case of a facility located in Indian country, EPA interprets section 313(b)(2) as allowing requests by a Tribal Chairperson or equivalent elected official that EPA apply TRI reporting requirements to a facility located in the requesting Tribe's Indian country. EPA also interprets section 313(e)(2) as allowing petitions by a Tribal Chairperson or equivalent elected official requesting that EPA add or delete a chemical to or from the list of chemicals subject to TRI reporting. EPA's interpretation of each of these provisions flows from the same reasoning and authority as discussed above for section 313(a). EPA also notes that in all cases it is EPA, not a Tribe or State, that makes the final determination whether a facility or chemical should be subject to the TRI program.

EPA believes that each of these Tribal roles will enhance Tribal participation in the TRI program and the availability of relevant information to communities within Indian country consistent with statutory authorities and requirements. EPA notes that pursuant to EPA's 1990 rulemaking cited above, federally-recognized Indian Tribes already participate in other important elements of implementation of EPCRA in Indian country. Today's proposed rulemaking would, among other things, rectify the inadvertent omission from the CFR of Tribal roles in the TRI program.

#### C. What is an Indian Tribe, and what kind of land is Indian country?

As defined at 40 CFR 372.3, "Indian Tribe" refers to those Tribes that are

“federally-recognized by the Secretary of the Interior.” The Secretary of the Interior maintains a list of federally-recognized Indian Tribes, which is published periodically in the **Federal Register**. As also set forth at 40 CFR 372.3, “Indian country” means Indian country as defined in 18 U.S.C. 1151, which defines Indian country as: all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

*D. What is a Tribe’s responsibility under this rule?*

Under this proposed rule and per the intent of the 1990 regulation, a Tribe’s only responsibility would be to receive any TRI reports submitted by facilities located within its Indian country.

*E. How would Tribes receive reports from facilities?*

Under this proposed rule, Tribes may define how they would like to receive reports from TRI facilities. If a Tribe provides no specific guidance as to receipt, owners and operators of TRI facilities would mail TRI reports to the appropriate Tribal government representative. Tribes would be requested by EPA to provide a mailing address and contact name to be published on the TRI Web site, so that facilities in Indian country would know where to send their TRI reports. If no specific contact is provided, EPA would use the Tribal Council or Tribal Environmental Department as the default contact. As described further below, Tribal governments could also choose to provide electronic options for report submittal.

*F. How would the proposal affect TRI reporting facilities and the States or Tribes to which they would report?*

1. Submission of TRI Reports to Tribal Governments

As described above, under the proposal the owner or operator of a facility located in Indian country would have to submit their TRI reports to the relevant Tribal government in lieu of the State government. The requirement to submit the report to EPA would remain

unchanged. In many cases, this means the owner or operator would mail a copy of the TRI report to the specific Tribal government representative. As noted, Tribal governments may also choose to allow for electronic submittal of TRI reports. If a Tribal government becomes a member of the Internet-based TRI Data Exchange, then the owner or operator of a facility could meet its dual EPA/Tribal reporting requirements by submitting its TRI report to EPA via TRI Made Easy (TRI–ME) Web, a Web-based application that allows facilities to submit a paperless report. EPA would then automatically transmit the report to the appropriate Tribe (instead of the State) via the TRI Data Exchange.

If the facility is located in the Indian country of a Tribe that does not become a member of the TRI Data Exchange, then the facility would be required to submit a TRI report to EPA and also separately to the appropriate Tribe. The approach described above is the same as for EPA and States for those facilities not located in Indian country.

2. Requests by Tribal Governments for EPA To Add Specific Facilities to TRI

Under this proposed rule, a Tribe would have the opportunity to request that EPA require that a currently non-covered facility located in its Indian country report the facility’s releases and other waste management to TRI. Under the statute, it is EPA that applies TRI reporting requirements to particular facilities (EPCRA Section 313(b)(2)). Section 313(b)(2) also provides an opportunity for Governors of States to request that EPA apply TRI requirements to facilities in their areas. The addition of certain facilities that would otherwise not be covered by TRI helps to aid communities and leaders to comprehensively assess chemical releases to their local environment. EPA proposes to interpret this provision to provide a similar opportunity for the Tribal Chairperson or equivalent elected official to request that EPA apply TRI reporting requirements to particular facilities located in the Tribe’s Indian country. This opportunity for Tribes to request that EPA add a facility located in its Indian country can address situations where a Tribal government becomes aware of a facility that manufactures (including imports), processes, or otherwise uses a TRI chemical yet does not meet the full criteria to trigger reporting. This opportunity to add the facility may help the Tribe better understand chemical risks within their Indian country.

This would be an opportunity and not a requirement, which means that the Tribal Chairperson or equivalent elected

official would not be required to request the addition of a facility; however, he or she may do so, for instance, if there is a concern about toxic releases coming from that facility. After EPA has received a formal request from a Tribe, EPA would make its final decision on the facility addition based on the criteria outlined in EPCRA Section 313(b)(2). EPA may also act on its own motion to add a facility without anyone requesting action.

EPA’s consultation with Tribes consisted of two consultation calls (February 7 and 28 of 2011), and during these calls EPA facilitated discussion and collected comments from Tribes in response to the actions proposed in this rule. Furthermore, EPA officiated two additional webinars for representatives from the National Tribal Air Association (NTAA) on March 17 and 30 of 2011, as well as hosting an electronic discussion forum (or “blog”) to collect electronic feedback from interested parties. Material summarizing these meetings and the blog can be accessed from the docket for this proposed rule (Docket ID No. EPA–HQ–OEI–2011–0196).

During the Agency’s consultation with Tribes, EPA received several positive comments about this proposed clarification to the request rights for Tribes to add a facility to the TRI. As EPA has heard in consultation, however, Tribes may be concerned about such facilities that are not in Indian country but are located nearby, where releases of those chemicals may inevitably reach and affect Indian country lands and communities. Although the opportunity expressly provided by the statute to request the addition of a facility under EPCRA 313 only extends to a facility located in the relevant State and, under this proposed rule, Indian country, EPA would consider any concerns and information about facilities outside of the State or Indian country in the exercise of EPA’s discretionary authority, including concerns and information brought to EPA’s attention by a Tribal chairperson or equivalent elected official, and/or similarly, Governors of States. This possibility is especially relevant in situations where a facility releases chemicals into or near a Territory boundary or interstate community, yet it is not located within that Governor’s or Tribal Chairperson or equivalent elected official’s jurisdiction. While there is no 180-day time limit as there is for chemical petitions, and while this proposed rule does not address these general request opportunities which are already in existence, EPA, as a matter of administrative policy, would give such requests from Tribal governments (as

well as Governors of States) appropriate priority and consideration.

The impact on owners and operators of facilities that EPA includes within the TRI reporting program pursuant to the authority of EPCRA Section 313(b)(2) is that they would be required to report to EPA and the relevant Tribe (for facilities located in Indian country) or State (for facilities outside of Indian country) under TRI. The impact from this opportunity on citizens around the requested facility would be access to additional information on chemicals being managed at the facility if EPA adds the facility.

### 3. Petitions by Tribal Governments for EPA To Add or Delete Specific Chemicals to TRI List

Under this proposed rule, Tribes would have the same opportunity as Governors of States to petition EPA to require that a chemical be added to or removed from the TRI list of toxic chemicals. Ultimately, it is EPA that determines whether the chemical will be added to, or deleted from, the TRI list. If EPA adds a chemical to the list, such action would affect all facilities releasing the particular substance, regardless of a facility's location inside or outside of the petitioning Tribe's Indian country. This type of provision already applies in the context of petitions by Governors of States (EPCRA Section 313(e)(2)). Therefore, EPA proposes to interpret the statute to provide similar opportunities to the Tribal Chairperson or equivalent elected official. This would be an opportunity and not a requirement. In other words, the Tribal Chairperson or equivalent elected official would not be required to petition EPA to modify the list of substances managed by TRI; however, he or she may do so, for instance, if there is a concern about toxic releases of that substance.

If EPA receives a petition from a Tribe that requests the addition of a particular chemical, EPA would have 180 days to respond with either the initiation of a rulemaking to add the chemical to the list or an explanation of why the petition does not meet the requirements to add a chemical to the list. The petition would need to be based on the criteria provided in subparagraph (A), (B), or (C) of EPCRA Section 313(d)(2). As a matter of administrative policy, EPA places a high priority on petitions from Tribes to add a chemical. However, if EPA does not respond within 180 days of receipt of a Tribe's petition to add a chemical, the chemical would be added to the list pursuant to EPCRA Section 313(e)(2).

Within 180 days of receipt of a Tribe's petition to delete a chemical based on the criteria provided in subparagraph (A), (B), or (C) of EPCRA Section 313(d)(2), EPA would either initiate a rulemaking to delete the chemical or explain why EPA denied the petition. Unlike the analogous process for petitions to add a chemical, however, the chemical would not be deleted within 180 days if EPA failed to respond.

During the Agency's consultation with Tribes, EPA received several positive comments about this proposed clarification to the petition rights for Tribes to add a chemical to the TRI reporting list. For more information, the materials summarizing these meetings and the blog can be accessed from the docket for this proposed rule (Docket ID No. EPA-HQ-OEI-2011-0196).

Further, any person may petition EPA to add or delete a chemical based on certain grounds specified under EPCRA Section 313(e)(1). However, if EPA receives a petition by a private citizen to add a chemical and EPA fails to respond within 180 days, the chemical would not necessarily be added. This result distinguishes citizen petitions to add a chemical from petitions to add a chemical by a Governor of a State or, as clarified under this proposed rule, the Tribal Chairperson or equivalent elected official (compare EPCRA Section 313(e)(1) with EPCRA Section 313(e)(2)).

If EPA adds a chemical(s) to the TRI list (through its own initiative under Section 313(d) or in response to a petition), the impact on owners and operators of facilities with the toxic chemical(s) in question would be that they would be required to evaluate the TRI reporting requirements with the new chemical and, if appropriate, based on those requirements, report under TRI to EPA and the relevant State or, if located in Indian country, the relevant or appropriate Tribe. The impact from this action by EPA on Tribes, States, and the general public would be that they would have access to information on new toxic chemicals being managed at facilities across the nation. The potential impact from this action on industry consists of the cost of compliance for facilities that would have to report for a particular chemical that was added.

### IV. References

EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OEI-2011-0196. The public docket includes information considered by EPA in developing this action, which is electronically or

physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are electronically or physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not electronically or physically located in the docket, please consult the person listed in the above **FOR FURTHER INFORMATION CONTACT** section.

### V. Statutory and Executive Order reviews associated with this action?

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

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under EOs 12866 and 13563 (76 FR 3821, January 21, 2011).

### *B. Paperwork Reduction Act*

This proposed rule does not contain any new information collection requirements that require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* Currently, the facilities subject to the reporting requirements under EPCRA 313 and PPA 6607 may use (to the extent applicable) the EPA Toxic Chemical Release Inventory Form R (EPA Form 9350-1), the EPA Toxic Chemical Release Inventory Form A (EPA Form 9350-2), and the EPA Toxic Chemical Release Inventory Form R Schedule 1 (EPA Form 9350-3) for dioxin and dioxin-like compounds. The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical

identity of a substance as a trade secret pursuant to EPCRA section 322 42 U.S.C. 11042: 40 CFR part 350.

OMB has approved the reporting burden associated with the EPCRA Section 313 reporting requirements under OMB Control number 2070-0093 (EPA Information Collection Request (ICR) No. 1363.15); OMB control number 2070-0143 (EPA ICR No. 1704.09); and OMB Control 2070-0078 (EPA ICR No. 1428). As provided in 5 CFR 1320.5(b) and 1320.6(a), 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 relevant to EPA's regulations are listed in 40 CFR part 9, 48 CFR chapter 15, and displayed on the information collection instruments (e.g., forms, instructions).

EPA estimates the incremental burden for facilities located in Indian country to send their reports to the Tribe instead of the State to average, in the first year, approximately \$26.71 per facility for the 51 facilities located in Indian country. EPA estimates an incremental burden of \$18.14 for the remaining 20,746 TRI reporters. Thus, the total first year incremental cost associated with the rule is estimated at \$377,695 based on 6,934 total burden hours. In subsequent years, there is no incremental reporting burden, given that the burden created by the rule is limited to rule familiarization and compliance determination in which facilities will only engage in the first year. These estimates include the time needed to become familiar with the new requirement (rule familiarization) and to determine whether the facility is located in Indian country (compliance determination). The actual burden on any facility may be different from this estimate depending on how much time it takes individual facilities to complete these activities. Upon promulgation of a final rule, the Agency may determine that the existing burden estimates in the ICR need to be amended in order to account for an increase in burden associated with the final action. If so, the Agency will submit an information collection worksheet (ICW) to OMB requesting that the total burden in the ICR be amended, as appropriate.

The Agency would appreciate any comments or information that could be used to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (2) evaluate the reasonableness of the Agency's estimate of the incremental burden associated

with the proposed rule, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Please submit your comments within 60 days as specified at the beginning of this proposal.

*C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The 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 business that is classified as a "small business" by the Small Business Administration 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. All of the 3,185 potentially affected small entities have cost impacts of less than 1% in the first year of the rulemaking. Note that facilities do not incur reporting burden or costs in subsequent years of the rulemaking. No small entities are projected to have a cost impact of 1% or greater. Of the 3,185 estimated cost impacts, there is a maximum impact of approximately 0.13% and a median impact of approximately 0.002%. A more detailed analysis of the impacts on small entities is located in EPA's economic analysis support document, *Economic Analysis of the Proposed Toxics Release Inventory (TRI) Reporting Rule for Facilities Located in Indian Country*, located in the docket.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a

substantial number of 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 (UMRA)*

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. EPA's economic analysis indicates that the total cost of this rule is estimated to be \$377,695 in the first year of reporting, and \$0 in subsequent years. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not subject to the EPCRA section 313 reporting requirements.

*E. Executive Order 13132 (Federalism)*

This action 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 action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13132 does not apply to this action.

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 action from State and local officials.

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

This action does have some Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities; however, it does have Tribal implications in the way that the Agency is proposing a change in the current way toxic chemical reporting information is transmitted and received. EPA organized and provided a formal consultation with Tribes to discuss the

proposed actions that may have the potential to affect one or more Tribes or areas of interest to Tribes. Two consultation calls occurred on February 7 and 28 of 2011, and during these calls EPA facilitated discussion and collected comments from Tribes in response to the actions proposed in this rule. During the Agency's consultation with Tribes, EPA received several positive comments about this proposed clarification to the request rights for Tribes to add a facility to the TRI, as well as the petitioning rights to add or delete a chemical. Furthermore, EPA officiated two additional Webinars for representatives from the National Tribal Air Association (NTAA) on March 17 and 30 of 2011, as well as hosting a blog to collect electronic feedback from interested parties. Additionally, in the spirit of EO 13175, and consistent with EPA policy to promote communications between EPA and Indian Tribal governments, EPA specifically solicits additional comment on this proposed action from Tribal officials.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

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. 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.

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

EO 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule provides opportunities to request the addition of additional chemicals to the EPCRA section 313 reporting requirements. By adding chemicals to the list of toxic chemicals subject to reporting under section 313 of EPCRA, EPA would be providing communities across the United States (including minority populations and low-income populations) with access to data which they may use to seek lower exposures and consequently, reductions in chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. Therefore, the informational benefits of the proposed rule will have a positive impact on the human health and environmental impacts of minority populations, low-income populations, and children.

**List of Subjects in 40 CFR Part 372**

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Tribes, and Indian country.

Dated: September 21, 2011.

**Lisa P. Jackson,**  
Administrator.

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

**PART 372—[AMENDED]**

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

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

2. In § 372.3, the definition of "Chief Executive Officer of the tribe" is removed, the definition of "State" is revised, and the definition "Tribal Chairperson or equivalent elected official" is added in alphabetical order to read as follows:

**§ 372.3 Definitions.**

*State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

\* \* \* \* \*

*Tribal Chairperson or equivalent elected official* means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the Tribe.

\* \* \* \* \*

3. Add § 372.20 to subpart B to read as follows:

**§ 372.20 Process for modifying covered chemicals and facilities.**

(a) *Request to add a facility to the TRI list of covered facilities.*

(1) The Administrator, on his own motion or at the request of a Governor of a State (with regard to facilities located in that State) or a Tribal Chairperson or equivalent elected official (with regard to facilities located in the Indian country of that Tribe), may apply the requirements of section 313 of Title III to the owners and operators of any particular facility that manufactures, processes, or otherwise uses a toxic chemical listed under subsection (c) of section 313 of Title III if the Administrator determines that such action is warranted on the basis of toxicity of the toxic chemical, proximity to other facilities that release the toxic chemical or to population centers, the history of releases of such chemical at such facility, or such other factors as the Administrator deems appropriate.

(b) *Petition to add or delete a chemical from TRI list of covered chemicals.*

(1) *In general.* Any person may petition the Administrator to add or



delete a chemical to or from the list described in subsection (c) of section 313 of Title III on the basis of the criteria in subparagraph (A) or (B) of subsection (d)(2) and (d)(3) of section 313 of Title III. Within 180 days after receipt of a petition, the Administrator shall take one of the following actions:

(i) Initiate a rulemaking to add or delete the chemical to or from the list, in accordance with subsection (d)(2) or (d)(3) of section 313 of Title III.

(ii) Publish an explanation of why the petition is denied.

(2) *State and Tribal petitions.* A State Governor, or a Tribal chairperson or equivalent elected official, may petition the Administrator to add or delete a chemical to or from the list described in subsection (c) of section 313 of Title III on the basis of the criteria in subparagraph (A), (B), or (C) of subsection (d)(2) of section 313 of Title III. In the case of such a petition from a State Governor, or a Tribal Chairperson or equivalent elected official, to delete a chemical, the petition shall be treated in the same manner as a petition received under paragraph (b)(1) of this section. In the case of such a petition from a State Governor, or a Tribal Chairperson or equivalent elected official, to add a chemical, the chemical will be added to the list within 180 days after receipt of the petition, unless the Administrator:

(i) Initiates a rulemaking to add the chemical to the list, in accordance with section (d)(2) of section 313 of Title III, or

(ii) Publishes an explanation of why the Administrator believes the petition does not meet the requirement of subsection (d)(2) of section 313 of Title III for adding a chemical to the list.

4. In § 372.27, paragraph (d) is revised to read as follows:

**§ 372.27, Alternate threshold and certification.**

\* \* \* \* \*

(d) Each certification statement under this section for activities involving a toxic chemical that occurred during a calendar year at a facility must be submitted to EPA and to the State in which the facility is located on or before July 1 of the next year. If the covered facility is located in Indian country, the facility shall submit the certification statement as described above to EPA and to the official designated by the Tribal Chairperson or equivalent elected official of the relevant Indian Tribe, instead of to the State.

\* \* \* \* \*

5. In § 372.30(a), paragraph (a) is revised to read as follows:

**§ 372.30 Reporting requirements and schedule for reporting.**

(a) For each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in § 372.25, § 372.27, or § 372.28 at its covered facility described in § 372.22 for a calendar year, the owner or operator must submit to EPA and to the State in which the facility is located a completed EPA Form R (EPA Form 9350-1), EPA Form A (EPA Form 9350-2), and, for the dioxin and dioxin-like compounds category, EPA Form R Schedule 1 (EPA Form 9350-3) in accordance with the instructions referred to in subpart E of this part. If the covered facility is located in Indian country, the facility shall submit (to the extent applicable) a completed EPA Form R, Form A, and Form R Schedule 1 as described above to EPA and to the official designated by the Tribal Chairperson or equivalent elected official of the relevant Indian Tribe, instead of to the State.

\* \* \* \* \*

[FR Doc. 2011-24821 Filed 9-29-11; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**45 CFR Parts 153, 155 and 156**

[CMS-9989-N2]

**Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, and Standards Related to Reinsurance, Risk Corridors and Risk Adjustment; Extension of Comment Period**

**AGENCY:** Department of Health and Human Services.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** This document extends the comment period for two proposed rules published in the **Federal Register** on July 15, 2011. One proposed rule would implement the new Affordable Insurance Exchanges (“Exchanges”), consistent with Title I of the Patient Protection and Affordable Care Act of 2010 as amended by the Health Care and Education Reconciliation Act of 2010, referred to collectively as the Affordable Care Act. The other proposed rule would implement standards for States related to reinsurance and risk adjustment, and for health insurance issuers related to reinsurance, risk corridors, and risk adjustment consistent with Title I of the Affordable Care Act. The comment period for both

proposed rules, which would have ended on September 28, 2011, is extended to October 31, 2011.

**DATES:** The comment period for two proposed rules published in the **Federal Register** on July 15, 2011 (76 FR 41866 and 76 FR 41930, respectively), is extended from 5 p.m. Eastern Standard Time on September 28, 2011, to 5 p.m. Eastern Standard Time on October 31, 2011.

**ADDRESSES:** In commenting, please refer to file code CMS-9989-N2. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the instructions under the “More Search Options” tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-9989-N2, P.O. Box 8010, Baltimore, MD 21244-8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-9989-N2, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid