## ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 302 and 355

[FRL-5268-9]

Administrative Reporting Exemptions for Certain Radionuclide Releases

**AGENCY:** Environmental Protection

Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This notice of proposed rulemaking requests comments on broader administrative exemptions from the release reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and the Emergency Planning and Community Right-to-Know Act. In particular, the Environmental Protection Agency (EPA) is proposing to grant reporting exemptions for releases of naturally occurring radionuclides associated with land disturbance incidental to extraction activities at certain kinds of mines, and coal and coal ash piles at all kinds of sites. EPA also is requesting comments on two alternatives to these exemptions.

These reporting exemptions are being proposed in response to comments on a November 30, 1992 proposed rule on administrative reporting exemptions (57 FR 56726).

EPA thoroughly evaluated the radionuclide concentrations in various mining materials, coal, and coal ash relative to background levels to determine the scope of the proposed reporting exemptions; thus, this document reflects a sound, scientific approach. The exemptions would be consistent with the Agency's common sense goals in that they would eliminate unnecessary reporting burdens and allow EPA to focus its resources on the most serious releases. The reporting exemptions would result in an estimated net cost savings to industry of approximately \$455,000 annually.

**DATES:** Comments must be submitted on or before October 3, 1995.

ADDRESSES: Submittal of Comments: Comments should be submitted in triplicate (no facsimiles or tapes) to: Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–8917. Please note that this is the mailing address only. Documents are available for viewing, by appointment only, at the address provided below in the "Document Viewing" section.

Document Viewing: Copies of materials relevant to this rulemaking are contained in Docket Number 102RQ-RN-2 at EPA Headquarters at the following address: U.S. EPA CERCLA Docket Office (Mail Code 5201G), Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202. The docket is available for viewing, by appointment only, after the appearance of this rule. An appointment to view the docket can be made by calling the Docket Coordinator at 703/ 603-8917. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please note that this is the visiting address only. Mail comments to the address listed above in the "Submittal of Comments"

The public may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, an administrative fee of \$25 and a charge of \$0.15 per page for each page after page 266 will be incurred. The docket will mail copies of materials to requestors who are outside the Washington, DC metropolitan area.

Release Notification: The toll-free telephone number of the National Response Center is 800/424–8802; in the Washington, DC metropolitan area, the number is 202/267–2675. The facsimile number for the National Response Center is 202/267–2165 and the telex number is 892427.

FOR FURTHER INFORMATION CONTACT: The RCRA/UST, Superfund, and EPCRA Hotline at 800/424–9346 (in the Washington, DC metropolitan area, contact 703/412–9810); the Telecommunications Device for the Deaf (TDD) Hotline at 800/553–7672 (in the Washington, DC metropolitan area, contact 703/486–3323); or Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or at 703/603–8760.

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are listed in the following outline:

- I. Introduction
  - A. Statutory Authority
  - B. Background of this Rulemaking
  - C. Consultation and Outreach Activities
- II. Regulatory Reporting Exemptions
  - A. Proposed Exemptions
- B. Alternative Exemptions
- III. Regulatory Analyses
  - A. Executive Order 12866
  - B. Regulatory Flexibility Act
  - C. Paperwork Reduction Act D. Unfunded Mandates

## I. Introduction

A. Statutory Authority

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96–510), 42 U.S.C. 9601 et seq., as amended, established broad Federal authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. Section 101(14) of CERCLA defines the term "hazardous substance" primarily by reference to various Federal environmental statutes.

Under section 103(a) of CERCLA, the person in charge of a vessel or facility from which a CERCLA hazardous substance has been released in an amount equal to or greater than its reportable quantity (RQ) must immediately notify the National Response Center (see 40 CFR 302.6). In addition, the person in charge of a facility from which a CERCLA hazardous substance has been released in an amount equal to or greater than its RQ must immediately notify State and local response authorities, as required by section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (Pub. L. 99-499), 42 U.S.C. 11001 et seq. (see 40 CFR 355.40). As established by EPA in an earlier RQ rulemaking (50 FR 13463, April 4, 1985), a 24-hour period is used for measuring whether an RQ or more of a hazardous substance has been released (i.e., only releases of an RQ or more within 24 hours need to be reported) (see 40 CFR 302.6(a)).

Section 102(b) of CERCLA establishes RQs at one pound for releases of hazardous substances, except for those substances for which RQs were established pursuant to section 311(b)(4) of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes EPA to adjust the RQs for all hazardous substances by regulation.

A major purpose of the section 103(a) notification requirements is to alert the appropriate government officials to releases of hazardous substances that may require a response to protect public health or welfare or the environment. EPA emphasizes that an RQ is merely a trigger for informing the government of a release so that the appropriate government personnel can evaluate the need for a response action and can undertake any necessary response action in a timely fashion. Federal personnel evaluate all reported releases, but in some cases will not initiate a response because the release of an RQ does not pose a hazard in all circumstances. Government personnel assess each reported release on a case-