by-case basis to determine the appropriate response action, if any.

CERCLA sections 102(a), 103, and 115 (the general rulemaking authority under CERCLA) together provide EPA with authority to grant administrative reporting exemptions. Such exemptions may be granted for releases of hazardous substances that pose little or no risk or to which a Federal response is infeasible or inappropriate. Requiring reports of such releases serves little or no useful purpose and could, instead, impose a significant burden on the Federal response system and on the persons responsible for notifying the Federal government of the release. Through such reporting exemptions, therefore, the Federal response system is able to more efficiently implement CERCLA and EPCRA and more effectively focus on reports of releases that are more likely to pose a significant hazard to human health and the environment.

B. Background of This Rulemaking

Radionuclides are CERCLA hazardous substances because they are listed as hazardous air pollutants under section 112 of the Clean Air Act. Radionuclides initially had a one-pound RQ as established by CERCLA section 102(b). EPA recognized that an RQ of one pound for radionuclides was not appropriate because radionuclides are not generally measured in units of pounds, and releases of much less than one pound of radionuclides may present a substantial threat to public health or welfare or the environment. On March 16, 1987, EPA published a Notice of Proposed Rulemaking (NPRM) to adjust the RQ for radionuclide releases (52 FR 8172), with the comment period ending on May 15, 1987. A total of 28 comment letters, totaling about 150 pages, were received. The comments received, together with the Agency's responses, are contained in "Responses to Comments on the Notice of Proposed Rulemaking on the Adjustment of Reportable Quantities for Radionuclides" (Responses to Comments), which is available for inspection in Docket Number 102RQ-RN located at the U.S. EPA CERCLA Docket Office (Mail Code 5201G), Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA

The Agency promulgated a final rule (54 FR 22524; May 24, 1989) to adjust the RQs for all (approximately 1,500) radionuclides. In preparing the final rule, EPA considered carefully all of the public comments submitted on the proposals made in the March 16, 1987 NPRM. The final rule granted four administrative exemptions from

CERCLA section 103 and EPCRA section 304 reporting requirements based on those comments. In particular, the Agency exempted: (1) Releases of naturally occurring radionuclides from large generally undisturbed land holdings, such as golf courses and parks; (2) releases of radionuclides naturally occurring from the disturbance of large areas of land for purposes other than mining, such as farming or building construction; (3) releases of radionuclides from the dumping of coal and coal ash at utility and industrial facilities with coal-fired boilers; and (4) radionuclide releases to all media from coal and coal ash piles at utility and industrial facilities with coal-fired boilers.

Following the final rulemaking, the American Mining Congress (AMC), The Fertilizer Institute (TFI), and others challenged the rule in the United States Court of Appeals for the District of Columbia in *TFI* v. *EPA* (935 F2d 1303). In the litigation, AMC and TFI argued that EPA violated the Administrative Procedure Act (APA) by failing to provide notice and opportunity to comment on the proposed exemptions. The petitioners also argued that it was arbitrary and capricious for EPA to discriminate against mining by excluding it from the land disturbance exemption.

The Court found that the administrative reporting exemptions were improperly promulgated because EPA failed to provide adequate notice of, and opportunity for public comment on, those exemptions. The Court, however, left the four exemptions in place while the Agency undertakes a new round of notice and comment rulemaking

In a proposed rule published on November 30, 1992 (57 FR 56726), the Agency complied with the Court's decision by providing notice of, and requesting comment on, the same four exemptions from CERCLA section 103 and EPCRA section 304 notification requirements that were promulgated in the 1989 final radionuclide RQ adjustment regulation. EPA requested that public comments on the November 30, 1992 proposal be submitted by January 29, 1993. In response to several requests for an extension to the comment period, and in the interest of allowing the public greater opportunity to evaluate the issues raised in the November 30, 1992 NPRM, EPA reopened the public comment period for an additional 60 days beginning on March 5, 1993 (58 FR 12876). All background materials and public comments related to the November 30, 1992 proposal are available for

inspection in Docket Number 102RQ–RN–1 located at the U.S. EPA CERCLA Docket Office (Mail Code 5201G), Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

A total of 27 comment letters, totalling more than 750 pages, were received on the November 30, 1992 NPRM, including two after the initial deadline and one after the close of the second comment period. These comments raised a number of issues that the Agency cannot resolve without additional information and analysis. Chief among these issues are:

- —Do radionuclide releases from land disturbance incidental to extraction activities at mines pose a greater risk than such releases from farming and construction?
- —Do coal and coal ash piles at sites without coal-fired boilers (e.g., coal piles at mines, railroad stockyards, and steel mills, and coal ash disposed of in off-site landfills) pose a greater radiological threat than such piles at boiler sites?
- —Is the government likely to respond to radionuclide releases from land disturbance incidental to extraction activities or coal and coal ash piles at non-boiler sites, and if so, what response realistically can be taken?

After reviewing the public comment letters and evaluating these issues, the Agency has decided to issue this supplemental proposal requesting information and comment on expanded reporting exemptions for certain radionuclide releases.

C. Consultation and Outreach Activities

EPA has undertaken a number of activities to involve interested stakeholders in considering and developing this supplemental proposal. The November 30, 1992 NPRM served as a basis for informing and soliciting comments from all parties on the original reporting exemptions for four categories of radionuclide releases. Comment letters from mining trade organizations, individual mining companies, electric power generators and trade organizations, railroads, steel manufacturers, private citizens, States, and others were received and served as the prime impetus for considering broader exemptions. At their request, EPA met with representatives of AMC and TFI on January 22, 1993 to hear their issues and concerns regarding the November 30, 1992 NPRM. Following this meeting and the receipt of requests submitted by commenters, EPA reopened the public comment period for an additional 60 days to give