

$$\bar{E}_o = \frac{\sum_{h=1}^n E_{ho}}{n} \quad (\text{Equation A-5})$$

Where:

$\bar{E}_o$  = Hg emission rate for the averaging period (lb/GWh).

$E_{ho}$  = Electrical output-based hourly Hg emission rate for unit or stack operating hour "h" in the averaging period, from Equation A-4 of this section (lb/GWh).

n = Number of unit or stack operating hours in the averaging period in which valid data were obtained for all parameters.

(Note: Do not include non-operating hours with zero emission rates in the average).

\* \* \* \* \*

**7.2.4 Certification, Recertification, and Quality-Assurance Test Reporting.** Except for daily QA tests of the required monitoring systems (i.e., calibration error tests and flow monitor interference checks), the results of all required certification, recertification, and quality-assurance tests described in paragraphs 7.1.9.1 through 7.1.9.7 of this section (except for test results previously submitted, e.g., under the ARP) shall be submitted electronically, using the ECMP Client Tool, either prior to or concurrent with the relevant quarterly electronic emissions report.

\* \* \* \* \*

**7.2.5.3.4** The results of all daily calibration error tests of the Hg CEMS, as described in paragraph 7.1.9.1 of this section and (if applicable) the results of all daily flow monitor interference checks.

\* \* \* \* \*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 372

[EPA-HQ-OEI-2011-0196; FRL-9660-9]

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:** Final rule.

**SUMMARY:** EPA is announcing new opportunities for tribal participation and engagement in the TRI Program. Under this final rule, TRI reporting facilities located in Indian country are required to report to the appropriate tribal government of their relevant area instead of the State. This rule also improves and clarifies certain opportunities allowing tribal governments to participate more fully in the TRI Program. Further, because tribal governmental structures may vary, EPA is updating 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 for facilities located in Indian country. With regard to the procedures for EPA to modify the list of covered chemicals and TRI reporting facilities, today's rule clarifies the opportunities available to tribal governments. In particular, EPA is including 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 clarifying in this rule 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. In finalizing the actions described, 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:** This final rule is effective April 19, 2012. The requirement of facilities located in Indian country to report to tribal governments is applicable beginning with TRI reporting year 2012 (TRI reports due by July 1, 2013).

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OEI-2011-0196. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the 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 EPA Docket Center 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; email address: [Camalier.louise@epa.gov](mailto:Camalier.louise@epa.gov), for specific information on this notice. For general information on EPCRA Section 313, contact the Superfund, TRI, EPCRA, RMP & Oil Information Center toll free at (800) 424-9346, (703) 412-9810 in the Washington, DC metropolitan area, toll free TDD at (800) 553-7672, or visit the Web site at <http://www.epa.gov/superfund/contacts/infocenter>.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### *Does this action apply to me?*

You may be affected by this action if you own or operate a facility located in Indian country (see 40 CFR 372.3 for a definition of Indian country) 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 .....	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*. *Exceptions and/or limitations exist for these NAICS codes. 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 et seq.) (correspond to SIC 4953, Refuse Systems).
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 are no longer required to report to the relevant States, although States may still receive this information once it is available to the public. Tribes with facilities located in their Indian country will receive the facility reports under this final rule. This represents a change for affected 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.

## 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; July 26, 1990). EPA's rationale supporting those regulations was fully explained in the relevant preambles to the proposed and final rules. *Id.*; 54 FR 12992 (March 29, 1989). These amendments, however, were inadvertently overwritten by a subsequent rule and left out of the CFR. To correct this inadvertent omission,

EPA is including 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 will remain the same.

To further encourage tribal engagement and participation in the TRI program, EPA is also making explicitly clear in the regulations certain additional opportunities for governments of federally-recognized Tribes. The first opportunity allows 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 allows 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). Under this rule, EPA will 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 will make its final decision on the facility addition based on the criteria outlined in EPCRA Section 313(b)(2). Under existing authorities, 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. Such public participation opportunities are not changed by this final rule.

## III. Background Information and Summary of Final Rule

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

This document is primarily intended 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 when it was overwritten by a subsequent rule. Therefore, EPA is updating 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 provides guidance to further enable tribal governments to participate more fully in the TRI Program.

Under today's final rule, an owner or operator of a TRI facility in Indian country will 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) will no longer have to be submitted to the State in which the facility is geographically located. Under this final rule, facilities will select/ provide the name of the relevant federally-recognized Tribe in the *State* data field in the *Address* block on the TRI forms. To accommodate this, EPA is changing the description of this data field on the TRI form. In addition, EPA is modifying the instructions that accompany the forms in the annual TRI Reporting Forms & Instructions document accessible from the TRI Web site (<http://www.epa.gov/tri>).

Also under today's final rule, EPA is clarifying the request and petitioning rights available to tribal governments. A

Tribe now has the opportunity to request EPA to require TRI reporting by a facility in the Indian country of that Tribe. Tribes also now have the opportunity to petition for the addition or deletion of a chemical in the same manner as a State, 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)). After EPA receives a formal request from a State Governor or Tribal Chairperson to add a facility, EPA will 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 interprets these provisions so that the Tribal Chairperson or equivalent elected official may similarly petition 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 chemical list.

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

EPA is finalizing 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 (July 26, 1990); 54 FR 12992 (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 is expressly including the reporting requirements for a facility in Indian country in part 372. Part 372 already contains a definition of Indian country at 40 CFR 372.3. To avoid any confusing overlap, EPA will 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 final rulemaking, among other things, rectifies the

inadvertent omission from the CFR of certain 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 follows: 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 final rule and per the intent of the 1990 regulation, a Tribe's only responsibility will be to receive any TRI reports submitted by facilities located within its Indian country.

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

Under this final 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 will 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 know where to send their TRI reports. If no specific contact is provided, EPA will use the Tribal Council or Tribal Environmental Department as the default contact. As described further below, tribal governments can also choose to provide electronic options for report submittal.

*F. How does the final rule affect TRI reporting facilities and the States or Tribes to which they will report?*

**1. Submission of TRI Reports to Tribal Governments**

As described above, under the rule the owner or operator of a facility located in Indian country will have to submit the facility's TRI reports to the relevant tribal government in lieu of the State government. The requirement to submit the report to EPA will remain unchanged. In many cases, this means the owner or operator will 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 can 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 will 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 final rule, a Tribe has 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) 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 interprets 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 their 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 is an opportunity and not a requirement, which means that the Tribal Chairperson or equivalent elected official is not 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 receives a formal request from a Tribe, EPA will make its final decision on the facility addition based on the criteria outlined in EPCRA Section 313(b)(2). Under existing authorities, 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 received views and comments from Tribes in relation to the actions described 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, and hosted 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 the rule (Docket ID No. EPA-HQ-OEI-2011-0196).

During the Agency's consultation with Tribes, EPA received several positive comments about the proposed clarification to the request rights for Tribes to add a facility to the TRI. As EPA has heard in consultation, however, Tribes may also be concerned about facilities that are not in Indian country but are located nearby, where releases of chemicals may 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, for Tribes under this rule, in the relevant Indian country, EPA will 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, by Governors of States. This possibility is especially relevant in

situations where a facility releases chemicals into or near a State or Indian country boundary or cross-boundary community, yet it is not located within that Governor's State or Tribal Chairperson or equivalent elected official's Indian country. While there is no 180-day time limit as there is for chemical petitions, and while this final 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 will 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 will 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 Specific Chemicals to the TRI List or To Delete Specific Chemicals From the TRI List**

Under this final rule, Tribes 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)). EPA interprets the statute to provide similar opportunities to the Tribal Chairperson or equivalent elected official. This is an opportunity and not a requirement. In other words, the Tribal Chairperson or equivalent elected official will 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 has 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 would place 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 will 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.

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 final rule, the Tribal Chairperson or equivalent elected official (compare EPCRA Section 313(e)(1) with EPCRA Section 313(e)(2)).

During the Agency's consultation with Tribes, EPA received several positive comments about this 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 rule (Docket ID No. EPA-HQ-OEI-2011-0196).

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 will 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 Tribe. The impact from this action by EPA on Tribes, States, and the general public will 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 will have to report for a particular chemical that EPA added.

#### **IV. What comments did EPA receive on this rule for TRI reporting for facilities in Indian country and what are EPA's responses to those comments?**

EPA received 10 comments on the **Federal Register** document "TRI Reporting for Facilities Located in Indian Country and Clarification of Additional Opportunities Available to Tribal Governments under the TRI Program" (September 30, 2011; 76 FR 60781). The commenters included two individuals, two tribal environmental groups, one state agency, four organizations, and one industry group. The comments from individuals and tribal environmental groups were supportive of EPA's intent to clarify opportunities for Tribes regarding participation in the TRI Program. These commenters supported this rule as it promotes tribal sovereignty and will better enable Tribes to understand toxic releases within Indian country. Some of these commenters, while supporting EPA's action, requested additional actions such as: Clarifying the procedures for tribal executive officials to submit requests or petitions; and extending the rule to include ceded territories used for hunting, fishing, and gathering. Other commenters expressed concerns regarding EPA's authority to implement this rule, possible complications in State emergency response activities, and EPA's assessment of compliance burdens on reporting facilities or receipt burdens on responsible tribal officials. Many of the comments and EPA's responses are summarized below. The complete set of comments and EPA's complete responses can be found in the response to comment document in the docket for this action.

##### **1. Comments Asserted That EPA Lacks Congressional Authority To Implement This Rulemaking**

Several commenters stated that section 313(a) of EPCRA requires a facility owner or operator to submit the reporting form to two governmental authorities: The EPA Administrator and the appropriate State official or officials, as designated by the Governor. These commenters assert that EPA can neither relieve the facility of the statutory obligation to submit the form to State officials nor require the facility to submit the form to any authority other than the EPA or the State. The commenters further assert that section 329(9) of EPCRA, the definition of "State," does not include Indian Tribes.

The commenters assert that when Congress intends to include Tribes within the definition of "State," it does so clearly, and the commenters point to the Clean Air Act, the Safe Drinking Water Act, and the Clean Water Act as examples of such clear intentions. One commenter also notes that Congress expressly included a provision that Tribes should be afforded substantially the same treatment as States for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. This commenter argues that the use of this language in CERCLA and its corresponding absence in EPCRA indicates an intent to preclude Tribes from being treated similar to States for the purposes of EPCRA. The commenters argue that EPA does not have the authority to construe "an official or officials of the State designated by the Governor" to mean "an official or officials of the Indian Tribe designated by the Tribal Chairperson or equivalent elected official of the relevant Indian Tribe."

EPA disagrees with the comments and believes that EPCRA provides EPA ample authority to fill gaps in implementing the statute's requirements in Indian country by reasonably exercising the Agency's discretion to establish appropriate tribal roles to receive TRI reports in Indian country. EPCRA does not explicitly address the role of Tribes in implementing Title III programs. EPA notes that relevant authorities in Indian country generally lie with Tribes and the federal government, and not with States. *See, e.g., Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527 n.1 (1998). EPA does not interpret the statute's silence regarding Tribes and Indian country as demonstrating the requisite clear Congressional intent to extend State roles into such areas. Further, EPA does not agree with the commenters' premise that when a statute is silent as to the role of Tribes, EPA is precluded from exercising its discretion to designate Indian Tribes as the appropriate implementing entities in Indian country. Rather, EPA views the statute's silence as reserving to EPA's discretion the appropriate means to fill implementation gaps in Indian country. In view of the critical importance of local leadership in Title III implementation, EPA has exercised its discretion to treat Tribes as the appropriate entities to receive TRI reports from facilities in their Indian country. EPA notes that this approach is consistent with existing tribal roles under EPA's Emergency Planning and

Notification regulations at 40 CFR part 355.

## *2. Comments Asserted That Tribes Lack Congressional Authority To Implement the TRI Program*

EPA received comments stating that Tribes do not have the legal authority to implement EPCRA. The commenters argue that because this rule involves the regulation of non-members, *i.e.*, non-Indians, that own land in fee within Indian reservations and the regulation of facilities adjacent to, but not within, Indian country, express authorization by Congress is required for Tribes to exercise this legal authority. One of the comments cites *Montana v. United States*, 450 U.S. 544 (1981), for the proposition that tribal jurisdiction over non-members is limited.

EPA disagrees with the commenters' premise that Tribes are unable to implement the EPCRA roles included in this rulemaking in Indian country and notes that this rulemaking does not change the reporting requirements for facilities adjacent to, but not within, Indian country. EPA notes that in the prior rulemaking establishing tribal roles in implementing Title III, the Agency concluded that Tribes are generally able to exercise sufficient authority to carry out Title III emergency planning and response activities in Indian country. 55 FR 30632, 306041 (July 26, 1990). *See also* "Summary and Response to Comments Received on Notice of Proposed Rulemaking Under Sections 311 and 312 of the Superfund Amendments and Reauthorization Act of 1986—March 29, 1989" (June 20, 1990). EPA continues to believe that Tribes are the appropriate entities for such functions in Indian country. This is especially true with regard to the functions at issue in this rulemaking, which do not include any separate regulatory program approval or other exercise of regulatory authority by Tribes. Tribes will simply need to accept the reports filed by covered facilities pursuant to statutory requirements. EPA is not approving any separate regulatory or enforcement functions for Tribes, as such functions are not necessary elements of this program. With regard to the opportunities for Tribes to petition EPA to add chemicals or facilities to the TRI program, we note that it is EPA, not Tribes or States, who ultimately decides which chemicals and facilities will be covered. The exercise of this federal function by EPA does not entail any exercise of regulatory authority by Tribes (or States).

## *3. Comments Requested That Rule Extend to Ceded Territories Used by Tribes*

Two commenters sought an extension of the rule to include lands ceded by treaties that may be used by Tribes for hunting, fishing, and gathering. These commenters also asked that EPA extend this action to lands ten miles away from any reservation due to the migration of air emissions.

EPA recognizes that the problem presented by releases from facilities in cross-border areas is present in any emergency response scheme that relies on reporting to local officials. EPCRA recognizes this issue and encourages cross-boundary cooperation; section 304(b)(1) requires that emergency notification be given to "the State emergency planning commission of any State likely to be affected by the release." With regard to Indian country, EPA understands Indian Tribes to be within the scope of "State" for the purposes of section 304(b)(1) notification. EPA encourages Tribes, State Emergency Response Commissions (SERCs), and Local Emergency Planning Committees (LEPCs) to participate in joint planning and cooperative efforts to prepare for potential emergencies.

EPA declines to extend the rule as requested by the commenters because of the local nature of emergency planning. It is important that one entity be responsible for emergency planning in an area to enable effective emergency response. EPA encourages joint planning and cooperative efforts between LEPCs, SERCs, and Tribes to address these entities' interests in emergency response planning in lands outside their borders.

## *4. Comments Asserted That the Rule Could Complicate Emergency Response Activities in Areas Where Indian Country Status May Be Hard To Identify*

EPA received comments that this action will make TRI data more difficult to obtain, particularly in Oklahoma, where the status of lands is often uncertain. The commenters argue that the public and first responders will need to take steps to evaluate the status of the land before knowing where to seek relevant reporting information. One commenter adds that this rule could endanger first responders, LEPCs, and local residents because they will not be able to easily determine which hazardous materials are within their communities, or how to respond to a chemical release because these facilities would only be required to report to a tribal government, not the Department of Environmental Quality (DEQ).

Additionally, these commenters note that they find EPA's database unreliable, because the information is no longer current by the time it becomes public.

EPA recognizes the need to publish current TRI data and released the preliminary 2010 data on July 28, 2011, less than one month after the July 1st reporting deadline. EPA believes that this approach of releasing the most recent TRI data soon after the reporting deadline and before the TRI National Analysis has been developed helps communities to have access to the most recent data as quickly as possible.

In addition, EPA believes that in most cases, determining whether reporting facilities are located within Indian country will be straightforward, and there should be little or no confusion regarding such locations. This is especially true for facilities that are covered by regulatory programs under other federal environmental statutes, *e.g.*, the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act, as the land status of their locations may already have been considered in determining the applicable regulatory agency. The EPA recognizes that certain rarer situations may raise more complex factual scenarios. In such cases, EPA intends to work with the relevant Tribe, State, and facility to assess the Indian country status of the particular facility's location. EPA believes that sufficient information will be available for first responders to determine the appropriate source for reporting information. EPA does not believe that this rule will increase risk to first responders and emergency response personnel. While States and Tribes will be one resource for TRI data, EPA houses all of the reported toxic release information from facilities in one comprehensive database which provides a complete account of facilities and information on their chemicals. EPA makes TRI release data available to the public less than one month after the July 1st reporting deadline. During the three-week period between new report submission and public availability, EPA encourages emergency response personnel to work with States, Tribes and EPA to assist in filling any alleged temporary gaps in data availability. In anticipation of an emergency, EPA also encourages such collaboration so that emergency response personnel can preemptively clarify the land status of any facilities of interest that may be in Indian country.

*5. Comments Asserted That EPA's Interpretation of EPCRA To Remove State's Responsibility To Receive TRI Reports Is Unreasonable*

Two commenters stated that EPA's interpretation of EPCRA is unreasonable because it removes the state's responsibility for accepting TRI reports and making them publicly available.

EPA does not believe that EPCRA designates States as the responsible entity for accepting TRI reports for facilities in Indian country. EPA notes that, consistent with applicable principles of federal Indian law, it is the federal government and Tribes, not the States, that generally implement programs in Indian country. *See, e.g., Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527 n.1. EPA does not interpret the language or legislative history of Title III as expressing any Congressional intent to extend State programs into Indian country.

*6. Comments Expressed Concerns Regarding Identification of Facilities' Indian Country Status and Requested a Delay of the Rule's Effective Date*

One commenter stated that if the proposed rule is finalized, implementation should be delayed, because EPA and Tribes need time to develop a way for reporters to determine Indian country in Oklahoma.

EPA does not believe there is any programmatic benefit to delaying implementation of this rule or establishing new deadlines. The risks from chemical accidents are real and current, and EPA encourages the communities in which these risks exist to move quickly and expeditiously to begin addressing those risks. In addition, as noted above, EPA believes that in most cases, determining whether reporting facilities are located within Indian country will be straightforward. This is especially true for facilities that are covered by regulatory programs under other federal environmental statutes, *e.g.*, the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act, as the land status of their locations may already have been considered in determining the applicable regulatory agency. EPA also notes that assessments of whether a reporting facility is located in Indian country can generally be easily verified through consultation with the Department of the Interior or through reference to readily available materials. As stated above, EPA recognizes that certain rarer situations may raise more complex factual scenarios. In such cases, EPA intends to

work with the relevant State, Tribe, and facility to assess the Indian country status of the particular facility's location. The EPA notes that it is ultimately a facility's responsibility to ascertain whether it is required to report to the Tribe or State, in addition to EPA.

*7. Comments Expressed Concern for Potential Gaps in States' TRI Databases*

One commenter stated that States will not have access to TRI information in Indian country and will thus have potential data gaps.

EPA generally makes TRI data available to the public less than one month after the reporting deadline, thus making any alleged data availability gaps temporary and short-term in nature. We note that this concern would also apply to cross-border situations as between States, which is an issue that exists irrespective of this rulemaking. Similarly, Tribes have expressed interest in release data for areas near, but outside of, their Indian country. During the approximate three-week period between report submission and public availability, EPA encourages States and Tribes to work together to share TRI data on facilities of mutual interest.

*8. Comments Expressed Concern That Potential Delays in States' Receipt of TRI Reports for Facilities in Indian Country May Have Adverse Effects in State Compliance Monitoring*

Two commenters expressed concerns that this action may have adverse effects on compliance monitoring. One of these commenters stated that it uses TRI data to compare reported quantities of releases to media-permitted releases, which has revealed several releases in excess of permitted releases in the past. This commenter alleged that a delay in getting updated TRI information would delay this comparison and prolong potential noncompliance.

EPA recognizes the need to publish current TRI data, and released the preliminary 2010 data on July 28, 2011, less than one month after the July 1st reporting deadline. With regard to compliance monitoring under federal environmental laws, EPA also notes that it is generally EPA or the relevant Indian Tribe that implements environmental programs in Indian country. State programs are generally not approved by EPA for such areas.

*9. Comments Questioned Whether the Economic Analysis Included Indian Allotments in EPA's Assessment of Burden*

One commenter requested that EPA further consider the impact on regulated

entities and specifically asks whether EPA's Economic Analysis included TRI facilities on Indian allotments. The commenter asserted that there will be a cost in determining whether or not a facility is on an allotment.

EPA has developed an economic analysis to assess the impact on facilities located in Indian country. The economic analysis estimates incremental economic burden for facilities that are required to report releases to TRI. The term Indian country, as defined in 40 C.F.R. 372.3, includes Indian allotments, so EPA therefore accounted for such facilities in the universe of those affected by this rule. The Agency's estimation of burden to a facility included coordination with EPA and other offices regarding Indian country land status issues. Originally, EPA estimated the time it would take for a facility to make this determination would be, on average, about 10 minutes. This 10-minute assumption considered the fact that most facility reporters are already aware of their facilities' geographic status relating to Indian country. In light of this commenter's concern, EPA increased the average time (over the full universe of facilities) for a facility reporter to make this determination, including consulting with EPA as appropriate, to 30 minutes. This increase in reporter burden for compliance determination is reflected in the final economic analysis and raises the total first year incremental cost from \$377,695 to \$388,161, based on an updated total of 6,985 burden hours. EPA recognizes that certain rarer situations may raise more complex factual scenarios. In such cases, EPA intends to work with the relevant State, Tribe, and facility to assess the Indian country status of the particular facility's location.

*10. Comments Asserted That Implementation of This Rule May Result in Additional Burden on Tribes Who Receive TRI Reports*

EPA received comment on potential economic impact and implementation issues for Tribes. This commenter expressed concern for the increased workload for Tribes and asked that EPA share the rationale of the cost analysis or conduct a benefits analysis. The commenter requested that EPA work with Tribes to assist Tribes in easily managing the data and using the data to educate the community. The commenter also requested assistance with upgrades to paper or electronic reporting systems.

EPA disagrees that the implementation of this rule will result in additional burden to the Tribes responsible for receiving TRI reports in



their Indian country. As described by the rule, a Tribe's only responsibility will be to receive the submitted TRI report(s). Per the rule, Tribes are not required to manage data, *i.e.*, analyze or disseminate data, or educate their community, although we do encourage the use of the TRI data for community right-to-know purposes. Separate from this rule, EPA already works with tribal communities to help them better understand the TRI data as well as the software tools with which individuals can access and analyze the releases on or near their location. EPA will continue to work with Tribes in this manner, and our intent through this rule is to increase tribal participation in the TRI program. Therefore, as Tribes and States now have similar responsibilities and rights pertaining to TRI report receipt and chemical petitioning, we expect that Tribes may choose to increase their focus on the TRI. EPA is prepared to work with interested Tribes to increase understanding and awareness of the TRI Program.

## V. 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. For assistance in locating any of these documents, please consult the person listed in the above **FOR FURTHER INFORMATION CONTACT** section.

## VI. 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 final 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 the Pollution Prevention Act (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 2025-0009 (EPA Information Collection Request (ICR) No. 1363.21). 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 \$44.64 per facility for the 47 facilities located in Indian country. EPA estimates an incremental burden of \$18.51 for the remaining 20,857 TRI reporters. Thus, the total first year incremental cost associated with the rule is estimated at \$388,161 based on 6,985 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.

### 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 3,210 potentially affected small entities have cost impacts of less than 1% in the first year of the rulemaking. Note that facilities do not incur an increase in 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 3,210 estimated cost impacts, there is a maximum impact of approximately 0.713% and a median impact of approximately 0.003%. A more detailed analysis of the impacts on small entities is located in EPA's economic analysis support document, *Economic Analysis of the Toxics Release Inventory (TRI) Reporting for Facilities Located in Indian Country Final Rule*, 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.

### 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 \$388,161 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 has specifically solicited comment on this action from State and local officials prior to promulgating this final rule.

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

Under Executive Order 13175 (65 FR 67249, November 9, 2000), EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this action may have tribal implications, as specified in Executive Order 13175. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities; however, it may have tribal implications due to how the Agency is changing the current way toxic chemical reporting information is transmitted and received. EPA consulted with tribal officials early in the process of developing this regulation

to permit them to have meaningful and timely input into its development. EPA organized and provided a formal consultation with Tribes to discuss the 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 received views and comments from Tribes in relation to the actions proposed, and eventually finalized in this rule. During the Agency's consultation with Tribes, EPA received several positive comments about the 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, and hosted a blog to collect electronic feedback from Tribes and other 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 solicited additional comment on the proposed action from tribal officials. EPA is finalizing this regulation in order to better clarify tribal opportunities for participation in the TRI Program and to enable Tribes to take a more active role by receiving the facility reports documenting releases within their Indian country. Through this final rule, EPA is also providing certain opportunities for Tribal Chairpersons or equivalent elected officials that are already in place for Governors of States. EPA has addressed all feedback from its consultation with Tribes in this rulemaking.

#### *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 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 final rulemaking does not involve technical standards. Therefore, EPA did not consider 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 final 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 final rule provides opportunities to request the addition of chemicals and facilities 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 this final rule will have a positive effect on the human health and environmental impacts of minority populations, low-income populations, and children.

#### K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This final rule is effective April 19, 2012. The requirement of facilities located in Indian country to report to tribal governments is effective beginning with reporting year 2012 (reports due by July 1, 2013).

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

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

Dated: April 11, 2012.

**Lisa P. Jackson,**  
Administrator.

Therefore, 40 CFR part 372 is amended as follows:

#### PART 372—TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT-TO-KNOW

■ 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.

(b) 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.

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

(d) *In general.* (1) 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 (d)(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 subsection (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, 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.

\* \* \* \* \*

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**BILLING CODE 6560-50-P**