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[FR Doc. E6–21843 Filed 12–21–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[TRI–2005–0073; FRL–8260–4]

RIN 2025–AA14

Toxics Release Inventory Burden Reduction Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revising the Toxics Release Inventory (TRI) reporting requirements to reduce burden while continuing to provide valuable information to the public, and promote recycling and treatment as alternatives to disposal and other releases. TRI reporting is required by section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). This rule expands non-Persistent Bioaccumulative and Toxic (non-PBT) chemical eligibility for Form A by raising the eligibility threshold to 5,000 pounds of total annual waste management (i.e., releases, recycling, energy recovery, and treatment for destruction) provided total annual releases of the non-PBT chemical comprise no more than 2,000 pounds of the 5,000-pound total waste management limit. This rule also allows, for the first time, limited use of Form A for PBT chemicals when total annual releases of a PBT chemical are zero and the total annual amount of the PBT chemical recycled, combusted for energy, and treated for destruction does not exceed 500 pounds. This rule, however, retains the current exclusion of dioxin and dioxin-like compounds from Form A eligibility. By structuring Form A eligibility for both PBT chemicals and non-PBT chemicals in a way that favors recycling and treatment over disposal and other releases, today's rule encourages facilities to reduce their releases and ensures that valuable information will continue to be provided to the public pursuant to the purposes of section 313 of EPCRA and section 6607 of PPA. Further, to guard against situations where large non-production related amounts are not reported on Form R and to provide greater consistency between PBT chemical and non-PBT chemical Form A eligibility, this rule redefines the non-PBT Form A eligibility threshold to include non-production related amounts reported in Section 8.8 of Form R.

DATES: This rule is effective on January 22, 2007. The first reports with the revised reporting requirements will be due on or before July 1, 2007, for reporting year (i.e., calendar year) 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. TRI–2005–0073. All documents in the docket are listed in the docket index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, i.e., confidential business information (CBI) or other information, the disclosure of which 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 at www.regulations.gov or in hard copy at the OEI Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752. **Note**: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket status, locations and telephone numbers.

FOR FURTHER INFORMATION CONTACT: For more specific information or technical questions relating to this rule, contact Marc Edmonds, Toxics Release Inventory Program Division, Office of Information Analysis and Access (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–0758; fax number: 202–566–0741; e-mail: *edmonds.marc@epa.gov;* or Larry Reisman, Toxics Release Inventory Program Division, Office of Information Analysis and Access (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–0751; fax number: 202–566–0741; e-mail: *reisman.larry@epa.gov.* The press point of contact for this rule is Suzanne Ackerman, Office of Public Affairs, 202–564–7819. For general inquiries relating to the Toxics Release Inventory or more information on EPCRA section 313, contact the TRI Information Center; toll free: 1–800–424–9346, in Virginia and Alaska: 703–412–9810, toll free TDD: 1–800–553–7672, or TDD DC area local: 703–412–3323.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action applies to facilities that submit annual reports under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). It specifically applies to those that submit the TRI Form R or Form A Certification Statement. (See *http://www.epa.gov/tri/report/index.htm#forms* for detailed information about EPA's TRI reporting forms.) 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. If you have questions regarding the applicability of this action to a particular entity, consult the individuals listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

This action is also relevant to those who utilize EPA's TRI information, including State agencies, local governments, communities, environmental groups and other non-governmental organizations, as well as members of the general public.

II. What is EPA's Statutory Authority for Taking This Action?

This rule is being issued under sections 313(f)(2) and 328 of EPCRA, 42 U.S.C. 11023(f)(2) and 11048. In general, section 313 of EPCRA and section 6607 of the PPA require owners and operators of facilities in specified Standard Industrial Classification (SIC) codes that manufacture, process, or otherwise use a listed toxic chemical in amounts above specified threshold levels to report certain facility-specific information about such chemicals, including the annual releases and other waste management quantities. This information is submitted on EPA Form 9350–1 (Form R) or EPA Form 9350–2 (Form A) and compiled in an annual Toxics Release Inventory (TRI). Each covered facility must file a separate Form R for each listed chemical manufactured, processed, or otherwise used in excess of applicable reporting

thresholds, which were initially established in section 313(f)(1). 42 U.S.C. 11023(f)(1). Congress set statutory default reporting thresholds of 25,000 pounds for manufacturing, 25,000 pounds for processing, and 10,000 pounds for the otherwise use of a listed toxic chemical in EPCRA section 313(f)(1). Id. EPA has authority to revise the threshold amounts pursuant to section 313(f)(2); however, such revised threshold amounts must obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to section 313. 42 U.S.C. 11023(f)(2). In addition, Congress granted EPA broad rulemaking authority to allow the Agency to fully implement the statute. EPCRA section 328 authorizes the ''Administrator [to] prescribe such regulations as may be necessary to carry out this chapter.'' 42 U.S.C. 11048. Using these provisions, EPA may, at the Administrator's discretion, modify reporting thresholds on classes of chemicals or categories of facilities.

EPA has raised the reporting thresholds for a class of chemical reports once previously. In 1994, EPA finalized a rule that created the Form A Certification Statement (59 FR 61488). See 40 CFR 372.27. That rule raised the reporting thresholds for manufacturing, processing, and the otherwise use of listed toxic chemicals to one million pounds for a category of facilities whose total annual reportable amount for a particular chemical was 500 pounds or less. In that rulemaking, EPA discussed the value of information that is collected on the Form A as follows: ''EPA believes that the proposed annual certification will provide information relating to the location of facilities manufacturing, processing, or otherwise using these chemicals, that the chemicals are being manufactured, processed, or otherwise used at current reporting thresholds, and that chemical releases and transfers for the purpose of treatment and/or disposal are [500 pounds or less] per year (i.e., within a range of zero to [500] pounds per year).'' 59 FR 38527. EPA further indicated that the information collected on the Form A helped to ensure that the revised thresholds continued to obtain reporting on a substantial majority of releases.

The burden reduction approach in today's rule is modeled after the approach taken in the 1994 Form A rulemaking. Today's rule expands Form A eligibility for non-PBT chemicals and allows limited Form A eligibility for PBT chemicals by raising the reporting threshold for eligible chemicals at specifically defined categories of facilities. Eligibility is determined on a chemical-by-chemical basis, rather than a facility-wide basis. Under the expanded Form A eligibility, facilities qualifying for the raised threshold for a given chemical will continue to file an annual certification statement in place of a Form R. Through its narrow definition of the category of facilities eligible for the raised threshold and through the information collected on the certification statements, EPA is ensuring that reporting under the raised threshold will continue to ''obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section.''

III. What Is the Background and Purpose of These Actions?

A. What Are the Toxics Release Inventory Reporting Requirements and Who Do They Affect?

Pursuant to section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), certain facilities that manufacture, process, or otherwise use specified toxic chemicals in amounts above reporting threshold levels must submit annually to EPA and to designated State officials toxic chemical release forms containing information specified by EPA. 42 U.S.C. 11023. These reports must be filed by July 1 of each year for the previous calendar year. In addition, pursuant to section 6607 of the Pollution Prevention Act (PPA), facilities reporting under section 313 of EPCRA must also report pollution prevention and waste management data, including recycling information, for such chemicals. 42 U.S.C. 13106. These reports are compiled and stored in EPA's database known as the Toxics Release Inventory (TRI).

Regulations at 40 CFR part 372, subpart B, require facilities that meet all of the following criteria to report:

- The facility has 10 or more full-time employee equivalents (i.e., a total of 20,000 hours worked per year or greater; see 40 CFR 372.3); and
- The facility is included in a North American Industry Classification System (NAICS) Code listed at 40 CFR 372.23 or under Executive Order 13148, Federal facilities regardless of their industry classification; and
- The facility manufactures (defined to include importing), processes, or otherwise uses any EPCRA section 313 (TRI) chemical in quantities greater than the established thresholds for the specific chemical in the course of a calendar year.

Facilities that meet the criteria must file a Form R report or, in some cases, may submit a Form A Certification Statement, for each listed toxic chemical for which the criteria are met. As specified in EPCRA section 313(a), the report for any calendar year must be submitted on or before July 1 of the following year. For example, reporting year 2004 data should have been postmarked on or before July 1, 2005.

The list of toxic chemicals subject to TRI reporting can be found at 40 CFR 372.65. This list is also published every year as Table II in the current version of the Toxics Release Inventory Reporting Forms and Instructions. The current TRI chemical list contains 581 individually-listed chemicals and 30 chemical categories.

B. What Led to the Development of This Rule?

Throughout the history of the TRI Program, the Agency has implemented measures to reduce the TRI reporting burden on the regulated community while still ensuring the provision of valuable information to the public that fulfills the purposes of the TRI program. ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. 44 U.S.C. 3502(2). That includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Through a range of compliance assistance activities, such as the Toxic Chemical Release Inventory Reporting Forms and Instructions (which is updated every year), industry training workshops, chemical-specific and industry-specific guidance documents, and the TRI Information Center (a call hotline), the Agency has shown a commitment to enhancing the quality and consistency of reporting and assisting those facilities that must comply with EPCRA section 313. In addition, EPA has made considerable progress in reducing burden through technology-based processes. One example of a technology-based process is electronic reporting using the Toxics Release Inventory—Made Easy (TRI–ME) software, an interactive, user-friendly software tool that guides

facilities through TRI reporting. Other technology-based examples include the use of EPA's Central Data Exchange (CDX) for form submission, and the use of data submitted to the Agency through other EPA programs to pre-populate TRI data fields. These measures have reduced the time, cost, and complexity of existing environmental reporting requirements, while enhancing reporting effectiveness and efficiency and continuing to provide useful information to the public that fulfills the purposes of the TRI program.

The burden-reducing measure of particular relevance to today's rule is the Form A Certification Statement, which EPA established through rulemaking in 1994. This burden-reducing measure is based on an alternate threshold for quantities manufactured, processed, or otherwise used by those facilities with relatively low annual reportable amounts of TRI chemicals. Pursuant to this 1994 rule, a facility can use an alternate, higher reporting threshold for a non-PBT chemical for which it has an annual reportable amount not exceeding 500 pounds. The annual reportable amount (ARA) was defined as the total of the quantity released at the facility, the quantity treated at the facility, the quantity recovered at the facility as a result of recycling operations, the quantity combusted for the purpose of energy recovery at the facility, and the quantity transferred off-site for recycling, energy recovery, treatment, and/or disposal. This combined total corresponds to the quantity of the toxic chemicals in production-related waste (i.e., the sum of sections 8.1 through and including section 8.7 on the Form R). Pursuant to the 1994 rule, the reporting threshold for chemicals with an ARA less than or equal to 500 pounds is one million pounds manufactured, processed, or otherwise used, considered individually.

Beginning with the 1995 reporting year, facilities that meet the ARA eligibility requirement and do not exceed the one-million-pound reporting threshold for a particular toxic chemical can so certify by using Form A, and thus avoid having to submit a detailed Form R. The Form A serves to certify that a facility is not subject to Form R reporting for a specific toxic chemical (Toxic Chemical Release Inventory Reporting Forms and Instructions (EPA 260–B–04–001), pages 1–2).

The primary difference between information contained on Form R and the Form A Certification Statement is that the Form R provides details of releases and other waste management (e.g., total quantity of releases to air, water, and land; and on- and off-site recycling, treatment, and combustion for energy recovery), while the Form A does not. If the reporter meets the criteria for using the Form A, the reporter need only report the name of the chemical and certain facility identification information. The Form A serves as a range report which, to date, has told the public that the total production related waste for the chemical is between zero and 500 pounds. Several chemicals can be reported on each Form A.

In 1999, when EPA lowered reporting thresholds in the PBT rule, EPA determined that allowing the Form A certification for PBT chemicals at that time would be inconsistent with the intent of expanded PBT chemical information (64 FR 58732, October 29, 1999) and so disallowed the use of Form A for PBT chemicals. EPA cited concerns over releases and other waste management of these chemicals at low levels and said that, based on the information available to the Agency at that time, it believed that the level of information from Form A was insufficient to do meaningful analyses on PBT chemicals (Id. at 58733). EPA also stated ''the Agency believes that it is appropriate to collect and analyze several years worth of data at the lowered thresholds before EPA considers developing a new alternate threshold and reportable quantity appropriate for PBT chemicals.'' (Id. at 58732).

In an effort to explore additional burden reduction opportunities, EPA conducted a TRI Stakeholder Dialogue between November 2003 and February 2004. A summary of this dialogue is available at *http://www.epa.gov/tri/programs/stakeholders/outreach.htm.* The dialogue process focused on identifying improvements to the TRI reporting process and exploring a number of burden reduction options associated with TRI reporting. As a result of the Stakeholder Dialogue and subsequent comments from stakeholders, the Agency identified several burden reducing options. These options fall into three broad categories: (1) Relatively minor changes or modifications to the reporting forms and the TRI–ME software; (2) expanding Form A eligibility; and (3) reducing the frequency of reporting for some or all reports.

EPA decided to address the three categories of changes through separate actions, the first of which was promulgated in July 2005. In July 2005, the Agency promulgated the TRI Reporting Forms Modification Rule (70 FR 39931, July 12, 2005), which streamlined the current forms by eliminating some fields and simplifying completion of others. The changes eliminated some redundant or seldom-used data elements from Forms A and R, and modified others that could be shortened, simplified, or otherwise improved to reduce the time and costs required to complete and submit annual TRI reports. The changes also improved data consistency and reliability by replacing some elements on the forms with information extracted from the EPA's Facility Registry System (FRS), which includes data on most facilities subject to environmental reporting requirements across EPA programs.

Today's rule, the second of the three categories of changes, which the Agency has referred to as the ''Phase 2'' burden reduction rulemaking, expands eligibility for Form A reporting for non-PBT chemicals, and allows, for the first time, limited Form A reporting for PBT chemicals with zero releases. In developing the proposed rule for Phase 2, EPA considered input from stakeholders, and identified a number of criteria to guide the development of the approach. The criteria used by the Agency to develop the proposal continued to play a guiding role in the development of today's final rule. These criteria include providing meaningful data to users that fulfill the purposes of the TRI program; providing an overall burden savings in hours needed for reporting; providing benefits to both non-PBT and PBT reporting facilities, as appropriate; ensuring that the approach is relatively easy to implement; and creating incentives consistent with national pollution prevention policy.

In a separate notice issued on October 4, 2005, the same day the Phase 2 Proposed Rule was published in the **Federal Register**, EPA announced its intent to explore potential approaches for modifying the reporting frequency for facilities that report to TRI and its notification to Congress, as required by 42 U.S.C. 11023(i), of its intent to initiate a rulemaking to modify TRI reporting frequency. This statutory provision requires one-year advance notification to Congress before initiating such a rulemaking. Many commenters who responded to the Phase 2 proposed rule to expand Form A eligibility also voiced concerns over any modification to the TRI reporting frequency. Because these comments are outside the scope of the Phase 2 rulemaking, EPA has not responded to them as part of today's rule on expanded Form A eligibility. With regard to TRI reporting frequency, the Agency has decided not to pursue any changes in the TRI reporting frequency at this time. While EPA does not intend to take any further actions

concerning the TRI reporting frequency, EPA will adhere to the process outlined in 42 U.S.C. 11023(i)(5) and provide 12 months advance notice to Congress if the Agency decides in the future to initiate changes to the TRI reporting frequency.

C. What Reporting Requirement Changes Did EPA Propose?

1. Form A Eligibility—PBT Chemicals

In October 2005, EPA issued a proposed rule that would allow facilities reporting zero or not applicable (NA) for disposal or other releases of a PBT chemical,[1] except dioxin and dioxin-like compounds, to use the Form A Certification Statement in lieu of Form R provided the facilities do not exceed a one-million-pound manufacture, process, or otherwise use activity threshold for the specific PBT chemical and provided the facilities have 500 pounds or less of total other waste management quantities for the chemical. The other waste management quantities include all recycling, energy recovery, and treatment for destruction. As it relates to the Form R, this proposed approach allows a facility to use Form A for a specific PBT chemical when zero or NA is reported for items a, b, c, and d of Section 8.1 (Total Disposal or Other Releases) and the facility does not have any non-production-related releases for the PBT chemical included in Section 8.8 (quantities released to the environment as a result of remedial actions, catastrophic events, or one-time events not associated with production processes). Under the proposed approach, the facility may have other waste management quantities in Sections 8.2 through 8.8 totaling 500 pounds or less and still qualify for the Form A Certification Statement. In summary, as proposed, facilities must manufacture, process, or otherwise use no more than one million pounds of a PBT chemical, have zero disposal or other releases in Section 8.1 and 8.8 for the chemical, and have 500 pounds or less of total other waste management quantities in Sections 8.2 through 8.8 for the chemical. The Agency has referred to this 500-pound PBT other waste management sum of Sections 8.2 + 8.3 + 8.4 + 8.5 + 8.6 + 8.7+ 8.8 for Form A eligibility as the PBT Reportable Amount (PRA).

As discussed in the proposal, the inclusion of Section 8.8 waste management amounts in PBT chemical Form A eligibility is different from the approach taken to date for non-PBT chemical Form A eligibility. Section 8.8 of the Form R is for release and other waste management quantities of toxic chemicals associated with remedial actions, catastrophic events, or one-time events not associated with production processes. As explained in the proposed rule, the Agency examined data from the 2003 reporting year and determined that some of the reporters that had zero releases also reported quantities in Section 8.8 which appear to be associated with ongoing CERCLA-related or RCRA-related remediation. If any of these quantities are disposal or other releases, the facility would not qualify for Form A. It is possible, however, that some of these quantities represent other waste management activities carried out to deal with waste created from non-production-related events. Based on the assumption that local communities may be concerned about the progress of these activities and may wish to track non-release quantities in Section 8.8 exceeding 500 pounds using the Form R, EPA proposed that both release and non-release Section 8.8 amounts be considered in determining Form A eligibility for PBT chemicals. EPA acknowledged in the proposal that using a different basis for reportable amount for PBT chemicals than has been used for non-PBT chemicals could potentially confuse reporters. As a practical matter, however, the inclusion of Section 8.8 in Form A eligibility determinations for PBT chemicals only affects a small number of facilities. In the proposed rule, the Agency requested comment on whether Section 8.8 management amounts should be included in the definition of the ARA for PBTs.

The proposed rule retained the current exclusion of dioxin and dioxin-like compounds from Form A eligibility. As explained in the proposal, because of the high toxicity of some dioxin and dioxin-like compounds and the wide variation in toxicity among forms of dioxin, in a prior action, EPA proposed adding toxic equivalency (TEQ) reporting for the dioxin and dioxin-like compounds category (70 FR 10919, March 7, 2005). EPA proposed TEQ reporting in response to requests from TRI reporters that EPA create a mechanism for facilities to report TEQ data to provide important context for the dioxin and dioxin-like compounds release data. In addition, EPA believes that the public will benefit from the additional context and comparability of data provided by TEQ reporting. Accordingly, in the proposed burden reduction rule, the Agency decided to wait until the dioxin TEQ rulemaking is finalized and until the Agency has appropriate data before considering whether this class of PBT chemicals should be considered for Form A eligibility.

In the proposed rule, EPA stated that it is focusing on providing burden relief for smaller businesses that have zero disposal or other releases. EPA referred to the Stakeholder Dialogue, where some commenters pointed out that there are reporters with no releases but who send small amounts of TRI chemicals into more desirable management techniques like recycling or energy recovery. Because the Agency encourages reuse and recycling, it decided to explore whether a clearly demarcated group of such reporters could be defined. EPA reasoned that by expanding Form A eligibility as described in the proposed rule, the Agency would be providing burden relief for PBT reporters with no disposal or other releases and small quantities of other waste management activities reportable in sections 8.2 through 8.8. The Agency believes that this approach will encourage facilities to reduce their releases of PBT chemicals to zero and, for those facilities that are already not releasing any PBT chemicals, to accomplish further source reduction so that their other waste management totals are low enough to use this option (500 pounds or less). The Agency balanced this pollution prevention incentive with the needs of TRI data users who use this information for tracking and reporting trends in recycling, waste treatment, and energy recovery, and decided that limited Form A eligibility for PBT chemicals with zero releases would be an appropriate approach for providing burden relief to this group of reporters while minimizing the amount of useful detailed data that would no longer be reported on Form R.

With regard to data that would no longer be reported on Form R, the Agency analyzed TRI data submitted in previous reporting years. Based on its analysis of the data, the Agency expected the group of PBT chemicals

[1] Allowing Form A for PBT chemicals affects those chemicals identified by EPA as ''chemicals of special concern'' in the October 1999 PBT rule to identify chemicals subject to a lower reporting threshold. Currently, ''chemicals of special concern'' include only certain chemicals that have been found to be ''persistent, bioaccumulative, and toxic (PBT).'' Therefore, for the reader's convenience, in the proposed rule EPA referred to the chemicals in 40 CFR 372.28 as ''PBT chemicals.'' In today's final rule EPA continues to use the term ''PBT chemical'' in lieu of ''chemicals of special concern'' for improved readability. For purposes of the proposed rule as well as today's final rule, the Agency refers to non-PBT chemicals, when referring to the larger group of TRI chemicals that are not PBTs (i.e., not chemicals of special concern). Should the Agency identify additional chemicals of special concern in the future, at that time the Agency will consider whether it is appropriate to extend these or other burden reduction measures to those chemicals.

that would qualify for the proposed approach to represent a total of approximately 2,700 Form Rs. This number of forms was expected to save approximately 47,000 hours (or $2.1 million) of reporting burden (Economic Analysis of Toxics Release Inventory Burden Reduction Proposed Rule, EPA, September 2005). Of these 2,700 Forms Rs with zero release amounts, approximately 2,100 also reflected zeros for the other waste management activities of recycling, energy recovery, and treatment for destruction. Accordingly, only about 600 Form Rs reported non-zero amounts for at least one of the sections 8.2 through 8.8 (Economic Analysis of Toxics Release Inventory Burden Reduction Proposed Rule, EPA, August, 2005). As discussed in the proposal, those forms with some other waste management quantity are primarily forms for lead and lead compounds; polycyclic aromatic compounds (PACs), including benzo(g,h,i)perylene; and mercury and mercury compounds. At the time of the proposal, these three chemicals accounted for about 98% of the eligible reports with non-zero waste management quantities.

Prior to proposing, EPA analyzed the data TRI collects on these three chemicals. EPA conducted an extensive analysis of lead reporters in conjunction with the 2002 Public Data Release.[2] Based on this analysis, EPA found that the detailed information that would no longer be reported on Form R under the proposed approach would be information on the recycling of small amounts of lead; in particular, the off-site transfer of lead waste to recyclers. EPA further noted that in addition to the requirement of zero releases as proposed, facilities managing lead and lead compounds cannot be conducting the activities of energy recovery or treatment for destruction because metals may not be reported in those categories.[3] Similarly, for mercury and mercury compounds, recycling[4] is the only permissible waste management activity in section 8 of Form R for those facilities that would qualify for Form A under the proposal. Finally, for PACs and benzo(g,h,i)perylene, EPA explained in the proposal its understanding that facilities that produce small amounts of these chemicals may burn the waste in a boiler or industrial furnace for energy recovery or treatment for destruction via incineration. As a consequence of the extremely high destruction efficiencies achieved in burning, combustion in these units can result in zero releases for purposes of TRI reporting. Since the PBT rule, which lowered reporting thresholds for PACs, was published, the Agency has adopted new Clean Air Act (CAA) Maximum Achievable Control Technology (MACT) standards for hazardous waste combustion facilities that, among other things, help to ensure that 99.99% of these chemicals are destroyed during either energy recovery or incineration. These standards cover hazardous waste incinerators and cement kilns. (See 40 CFR parts 63 and 264.) The MACT standards also control products of incomplete combustion that may result. With a PBT ARA limiting the total PACs treated to 500 pounds or less, releases at the lowest allowable efficiency could be no more than 0.01% (or a maximum of .05 pound) for facilities that must comply with these strict standards. The Guidance for Reporting Toxic Chemicals: Polycyclic Aromatic Compounds Category (EPA 260–9–01–01, August 2001) allows for this level of PACs to be rounded to zero. If, for any reason, treatment of PACs does result in a release of even one pound, the facility would no longer be eligible. So, while very small amounts of releases may occur from facilities combusting 500 pounds or less, the PAC chemicals are unlikely to be released at levels which would require a non-zero response in section 8.1 and, therefore, the completion of Form R.

2. Form A Eligibility—Non-PBT Chemicals

As proposed, a facility reporting on a non-PBT chemical[5] would be able to use Form A if the facility meets the one-million-pound manufacture, process, or otherwise use activity threshold and the facility has 5,000 pounds or less of total ''annual reportable amount'' (ARA), defined as the combined total quantity released at the facility, treated at the facility, recovered at the facility as a result of recycling operations, combusted for the purpose of energy recovery at the facility, and amounts transferred from the facility to off-site locations for the purpose of recycling, energy recovery, treatment, and/or disposal. This combined total ARA corresponds to the quantity of the toxic chemical in production-related waste, i.e., the sum of section 8.1 through and including section 8.7 of the Form R. This proposed 5,000-pound ARA represents an increase from the 500-pound ARA threshold that has been in effect since the 1994 Form A rulemaking.

As part of the proposed rule, the Agency requested comment on whether the ARA for non-PBT chemicals should be modified to include section 8.8 management information. As discussed above, section 8.8 of the Form R collects release and other waste management quantities of toxic chemicals resulting from remedial actions, catastrophic events, or one-time events not associated with production processes. Recognizing that a different basis for the reportable amount for PBT chemicals and non-PBT chemicals poses some risk of confusion among reporters, EPA specifically asked for comment on whether the ARA for non-PBT chemicals should be modified to include section 8.8 amounts, thereby making the proposed PBT annual reportable amount, which includes section 8.8 amounts, and the non-PBT annual reportable amount more consistent.

In the proposal, EPA explained that after several years of reporting experience, the Agency believes it is appropriate to increase the ARA to expand eligibility for Form A for non-PBT chemicals. During the stakeholder dialogue, a number of stakeholders suggested increasing the ARA to 5,000 pounds. In addition to proposing an ARA of 5,000 pounds, EPA also analyzed and requested comment on 1,000-pound and 2,000-pound ARA levels. Recognizing that the 500-pound ARA, which has been available to reporters since the 1994 rulemaking (59 FR 61488), gained a measure of success in reducing reporting burden, the Agency stated in the proposal that it believes a higher ARA would provide additional burden relief to facilities and at the same time continue to allow the TRI program to provide valuable information to the public that fulfills the purposes of the TRI program.

From the standpoint of burden relief, the Agency's analysis at the time of the proposal indicated that a 5,000-pound ARA would extend Form A eligibility to around 12,000 non-PBT Form Rs, saving approximately 117,000 hours (or $5.2 million) of reporting burden. For more information about the burden reduction

[2] See ''Lead: TRI Lead and Lead Compounds Reporting Years 2000–2002'' (U.S. EPA) at *http://www.epa.gov/tri/tridata/tri02/index.htm.*

[3] The Agency's Toxic Chemical Release Inventory Reporting Forms and Instructions (EPA 260–B–05–001, January 2005, Appendix B) states that it is not appropriate to report energy recovery and treatment for destruction for metals that are part of metal compound categories with the exception of barium and barium compounds. When a facility reports metals and their associated metal compound categories it only reports the parent metal portion of the compounds. The parent metal cannot be destroyed nor can it be burned for energy recovery so these matals should not be reported as such.

[4] Ibid.

[5] For the purposes of the proposed rule and the final rule, ''non-PBT chemicals'' indicates all listed TRI chemicals that are not ''chemicals of special concern,'' which are listed in 40 CFR 372.28.

expected from the proposed rule, refer to the Economic Analysis of Toxics Release Inventory Burden Reduction Proposed Rule, EPA, September 2005.

Even with this proposed increase in eligible forms, the percentage of total release and other waste management pounds that would be newly eligible for Form A under a 5,000-pound ARA would be less than 1% of total release and other waste management amounts reported annually on Form R nationwide. Specifically, under the proposed 5,000-pound threshold, the Agency expected approximately 14 million pounds of releases (0.34% of total non-PBT releases) and 25 million pounds of total production-related waste (0.11% of non-PBT total production-related waste) to become newly eligible for Form A reporting.

The Agency also considered the impact the proposed rule would have at the local level and asked for comment on whether changes to the ARA would adversely impact local community uses of the information. In the proposal, EPA looked at the number of Zip Codes affected by a 5,000-pound ARA, as well as the number and identity of chemicals where all Form R reports could convert to Form A Certification Statements at the higher threshold. Detailed analyses of the impacts on communities and individual chemicals are provided in the Economic Analysis for the proposed rule (Economic Analysis of Toxics Release Inventory Burden Reduction Proposed Rule, EPA, September 2005). As part of the proposal, EPA also summarized the potential impacts on reporting that could result from raising the ARA to 1,000 pounds and 2,000 pounds.

Prior to proposing, EPA weighed the value of Form A against the potential loss of detailed Form R information. Data users know that a facility filing a Form A is a potential source of releases and other waste management activities. As discussed in the proposed rule, data users would know that for any non-PBT chemical submitted on a Form A, the total for releases (Section 8.1) and total production related waste (the sum of Sections 8.1 through and including Section 8.7) does not exceed 5,000 pounds. In other words, each Form A would serve as a range report which informs the public that total releases, as well as total production related waste (which includes releases), is in the range of zero to 5,000 pounds. TRI data users are currently able to access Form A facility information via Envirofacts and TRI Explorer (*http://www.epa.gov/triexplorer/*). Under the proposal, data users would still be able to obtain national information such as the number of Form As filed each year by individual chemical. Using EZ Query in Envirofacts (*http://www.epa.gov/enviro/*), data users would be able to access individual chemical Form As along with the TRI Facility Identification Numbers (TRIFIDs) and names of the facilities submitting Form As.

Existing Form A utilization was another factor considered by the Agency prior to issuing the proposed rule. The Agency observed that facilities use Form A for only slightly over half of the forms (54%) potentially eligible. As discussed in the proposal, there are a number of possible reasons for this estimated utilization rate. Some facilities may be using in excess of the one-million-pound alternate threshold [6] (e.g. users of feedstock chemicals like nitrapyrin and producers of pesticides or pharmaceuticals) and, therefore, they are ineligible for Form A. Other facilities may report on Form R out of a desire to showcase their pollution prevention efforts. Still other facilities may find the Form R to be an efficient mechanism for tracking their material balances. A facility, having collected all of this information, may also be making a Form R submission to demonstrate good environmental stewardship. Regardless of the factors that prompt facilities to use Form R when they may be eligible for Form A, the Agency does not believe the rate of Form A utilization would be significantly higher at a 5,000-pound threshold than it is at the current 500-pound ARA threshold.

IV. Summary of This Final Rule

Today's final rule allows facilities to use Form A in lieu of Form R for a PBT chemical as proposed when there are no annual releases of the PBT chemical, the facility's total annual amount of the chemical recycled, combusted for energy recovery, and/or treated for destruction does not exceed 500 pounds, and the facility has not manufactured, processed, or otherwise used more than one million pounds of the PBT chemical. As it relates to the Form R data elements, this final rule allows a facility to use Form A instead of Form R for a specific PBT chemical when zero or not applicable (NA) is reported for items a, b, c, and d of Section 8.1 (Total Disposal or Other Releases), the facility does not have any non-production-related releases of the PBT chemical included in Section 8.8 (quantity released to the environment as a result of remedial actions, catastrophic events, or one-time events not associated with production processes), and the total amount reported for recycling, energy recovery, and/or treatment for destruction in Section 8.2 through and including Section 8.8 does not exceed 500 pounds. Further, for the same reasons discussed in the proposal (and discussed above in Unit III.C.1), this final rule retains the current exclusion of dioxin and dioxin-like compounds from Form A eligibility.

Based on comments received and information analyzed since the proposed rule, EPA decided to finalize a hybrid approach to the proposed expansion of Form A eligibility for non-PBT chemicals. Today's rule expands non-PBT chemical eligibility for Form A by raising the eligibility threshold to 5,000 pounds for total annual waste management (i.e., releases, recycling, energy recovery, and treatment for destruction), as proposed, provided total annual releases of the non-PBT chemical comprise no more than 2,000 pounds of the 5,000-pound total waste management limit. While the proposed rule also advanced a 5,000-pound threshold, it did not place any limit on the amount of releases that a facility may consider toward the 5,000-pound threshold amount. In response to comments on data use impacts at the local level from the loss of detailed Form R information, and in particular, the loss of detailed Form R release information, EPA has decided to place a 2,000-pound limit on releases of non-PBT chemicals. By placing a 2,000-pound limit on the amount of releases that may be applied to the 5,000-pound Form A eligibility threshold, EPA is preserving on Form R a significant amount of the release and other waste management information that was expected to be eligible for Form A under the proposal. At the same time, by limiting the release portion of the non-PBT ARA to 2,000 pounds, EPA is providing an incentive for facilities to recycle or use other preferred forms of waste management other than release.

In addition, based on comments regarding consistency between Form A eligibility for PBT chemicals and Form A eligibility for non-PBT chemicals, as well as concerns over the potential loss of detailed Form R information on large, accidental releases, EPA has decided to include Section 8.8 non-production related quantities in the calculations to determine whether facilities have met the 5,000-pound ARA for non-PBT chemical Form A eligibility. Accordingly, pursuant to this rule, the Form A ARA for non-PBT chemicals is

[6] For the purposes of the proposed rule and the final rule, ''non-PBT chemicals'' indicates all listed TRI chemicals that are not ''which are listed in 40 CFR 372.28.''

now comprised of the sum of Section 8.1 through and including Section 8.8.

In summary, today's final rule allows facilities to use Form A in lieu of Form R for a non-PBT chemical when the facility's total annual amount of the chemical released, recycled, combusted for energy recovery, and/or treated for destruction does not exceed 5,000 pounds, the facility's total annual releases of the chemical do not exceed 2,000 pounds, and the facility has not manufactured, processed, or otherwise used more than one million pounds of the non-PBT chemical. As it relates to the Form R data elements, this final rule allows a facility to consider Form A for a non-PBT chemical when the sum of Section 8.1 through and including Section 8.8 does not exceed 5,000 pounds and the sum of amounts reported for items a, b, c, and d of Section 8.1 (Total Disposal or Other Releases) and any non-production-related releases reported in Section 8.8 (Quantity released to the environment as a result of remedial actions, catastrophic events, or one-time events not associated with production processes) does not exceed 2,000 pounds.

V. Summary of Public Comments and EPA Responses

EPA received well over 100,000 comments in response to the proposed rule. After accounting for about a dozen mass mail campaigns, docket staff identified approximately 5,000 distinct comments. These 5,000 comments are listed separately in the EPA docket for this rulemaking, and along with supporting materials for this rule, individual comments can be accessed at *http://www.regulations.gov* under docket ID TRI–2005–0073.

A. Comments on Form A Eligibility—PBT Chemicals

Some commenters supporting EPA's proposed option to extend Form A reporting to PBT chemicals favor the option because it would provide burden relief but no actual release data would be lost. Some commenters also state that the proposal will not compromise public health or reduce the ability to plan for emergency responses, and that most people are interested solely in releases to the environment. Other commenters suggest that EPA's proposal would encourage pollution prevention, as facilities would work to eliminate releases and minimize waste generation of PBT chemicals in order to qualify for Form A. On the other hand, some commenters express general opposition to the proposed option for PBT chemicals. Some of those in opposition suggest that PBT chemicals are too persistent and dangerous to human and environmental health for the reporting requirements to be relaxed and therefore, they recommend that the Agency maintain the current reporting requirements for these chemicals.

EPA agrees with commenters who stated that the proposed approach for allowing Form A for PBT chemicals provides incentives that would result in positive environmental impacts. By limiting Form A eligibility to facilities with zero PBT releases and 500 pounds or fewer other waste management quantities (i.e., recycling, energy recovery, and treatment for destruction), EPA is encouraging facilities to reduce releases and other waste management to meet these targets. For chemicals such as lead and mercury, this approach will encourage recycling and/or source reduction, both desirable waste management techniques. Further, because the proposed rule requires zero releases for PBT chemical Form A eligibility, there will be no loss of detailed Form R release information; therefore, the proposal does not affect the use of TRI release data to gauge direct impacts on public health.

Some commenters express opposition to expanding the use of Form A to PBT chemicals because it would result in some important non-release data no longer being reported on Form R. Concerns include the potential serious health impacts associated with these chemicals (especially lead, PACs and mercury) and thus the need to have public data on even small quantities managed by facilities. Comments also express concerns about the loss of the ability to assess potential liabilities of facilities that handle PBTs.

EPA believes that allowing Form A for PBT chemicals as conditioned in the proposal will not result in an appreciable reduction in the data reported to the Agency. As EPA stated in the preamble to the proposal, it anticipates this rule will have a minimal impact on the national totals for waste management. The Agency estimates that 0.01% of total waste management will go unreported on Form R as a result of this component of the rule. (Economic Analysis of Toxics Release Inventory Burden Reduction Proposed Rule, EPA September, 2005). The quantity of lead recycled and eligible for this option would be approximately 0.0084% of the lead recycled by all TRI reporters. The corresponding figures for PACs and mercury are 0.023% and 0.3%, respectively. As EPA stated in the proposed rule, it expects that 2,700 PBT chemical reports would qualify for Form A under this rule. On an individual facility basis, data users will know that the facility filing Form A for a PBT chemical has zero releases and between zero and 500 pounds of combined recycling, energy recovery, and treatment for destruction. In addition, data users will know that the facility has manufactured, processed or otherwise used the PBT chemical above the relevant thresholds and did not exceed the one-million-pound alternate threshold for Form A. EPA believes that this is an appropriate level of detail for public reporting for these substances when there are zero releases and waste management totals are under 500 pounds.

Several commenters express opposition to the proposed option for PBT chemicals because the proposal provides minimal burden reduction while losing important publicly available data. One commenter estimates that the average cost savings per facility would be only $1,035, which the commenter argues does not justify the expected loss of information from the rule. Another commenter estimates that 77% of facilities eligible to use Form A for PBTs report zero for both releases and other waste management and therefore do not save burden by switching to Form A. Other commenters support EPA's proposed option for PBTs because of the helpful burden reduction for facilities that have zero releases. These commenters state that the burden of reporting is substantial and that burden relief is needed, especially for reporters that have zero releases and are managing their chemicals in an environmentally responsible manner. Some commenters also suggested that additional burden reduction could be provided by allowing use of Form A for PBT chemical reports with small, non-zero release quantities.

EPA believes that the rule will result in significant burden reduction without losing crucial information. Facilities that use Form A for a PBT chemical will save an estimated 15.5 hours of burden for each Form A submitted instead of a Form R. From the standpoint of total burden, the Agency estimates that the approximately 1,800 facilities eligible for this option will save approximately 36,000 hours (or $1.8 million) of reporting burden. In response to comments that the burden savings is minimal because the majority of facilities eligible for this option have no waste management quantities to report (i.e., zeros in Sections 8.1 through 8.8), such facilities will still realize burden savings from no longer having to complete all of the Form R data elements (e.g., the Production Ratio in Part II, Section 8.9; and the maximum

amount of the TRI chemical on-site at any one time during the year in Part II, Section 4).

While a higher PBT-release level would provide additional burden reduction, EPA believes that a zero release amount under current TRI reporting requirements strikes an appropriate balance between paperwork burden and the provision of valuable information consistent with the goals and statutory purposes of the TRI program. EPA notes that under current TRI reporting guidance, facilities are already allowed to round small PBT chemical releases to zero. As discussed in the preamble to the PBT chemical final rule (64 FR 58672, October 29, 1999), facilities are required to report PBT chemical releases greater than 0.1 pound (except dioxins). In that preamble, the Agency stated that it believes that facilities may be able to calculate their estimates of releases to one-tenth of a pound and that such guidance is consistent with the requirements of sections 313(g) and (h).

B. Comments on Form A Eligibility—Non-PBT Chemicals

1. Overview

Commenters who support EPA's proposed expansion of Form A eligibility for non-PBT chemicals assert that the proposed rule would provide significant burden relief from TRI reporting—especially for small facilities. These proponents argue that this relief would be significant despite the need to calculate releases and other waste management amounts to determine if they qualify for Form A.

Other commenters opposed to the proposed rule focused on the impact at the local level from the detailed Form R waste management information that would no longer be reported on Form R. While many of these commenters recognize that the potential non-reporting of detailed Form R waste management information represents less than 1% of the total waste management reported nationwide on Form R, they argue that at the local level, a 5,000-pound Form A range of release and other waste management information will adversely affect the ability of data users to perform local trend analyses, monitor the performance of individual facilities, and more generally, meet the intended purpose of the data collection to inform the public, government, and other data users about releases of toxic chemicals to the environment. Many commenters gave examples of local data uses that could be affected by the proposed rule such as identifying pollution-prevention opportunities, conducting risk analyses, identifying trends in toxic exposures, conducting spatial analyses of toxic hazards, setting environmental and public-health policy, and evaluating trends in the environmental performance of individual companies.

After a thorough consideration of commenters' concerns about the potential non-reporting of detailed Form R information, EPA has decided to modify the proposed 5,000-pound total waste management threshold for Form A by placing a 2,000-pound limit on releases of non-PBT chemicals eligible for Form A. In today's final rule, in order for a facility to use the Form A Certification Statement for a non-PBT chemical, the facility cannot have more than 5,000 pounds of total annual waste-management (i.e., releases, recycling, energy recovery, and treatment for destruction) of that chemical, and the contribution of total annual releases toward the 5,000-pound total annual waste management amount must be no greater than 2,000 pounds. This approach is partially responsive to those commenters who expressed a preference for a lower ARA than the proposed 5,000-pound cutoff. Under today's rule, Form A continues to serve as a range report and with regard to releases, it will inform the public that a facility filing a Form A for a specific non-PBT chemical has total annual releases of that chemical in the range of zero to 2,000 pounds. With regard to total waste management (which includes releases), today's rule increases the current range of zero to 500 pounds to zero to 5,000 pounds. The Agency believes that today's approach effectively balances concerns associated with potential non-reporting of detailed Form R release information against total paperwork burden and the promotion of recycling and treatment as alternatives to disposal and other releases.

Specifically, by finalizing a Form A eligibility threshold that favors the waste management activities of recycling, energy recovery, and treatment for destruction over disposal and other releases, this rule responds to comments about the proposed rule's failure to promote improvements in environmental performance. By placing a 2,000-pound limit on the amount of non-PBT chemical releases that may be applied to the 5,000-pound threshold for Form A eligibility, today's rule actively encourages facilities to make improvements in environmental performance consistent with national pollution-prevention policy. That is, it creates incentives for facilities to move away from disposal and other releases towards treatment and recycling. In addition, by including all waste management activities in the Form A eligibility criteria, EPA is encouraging facilities above the 5,000-pound ARA to reduce their total waste management in order to qualify for Form A.

2. Comments on the Impact of the Annual Reportable Amount (ARA) Criterion on Environmental Performance

Some commenters state that recycling, energy recovery, and treatment for destruction should be excluded from the ARA to provide facilities with an incentive for pollution-prevention activities. EPA believes that it has addressed this comment in the final rule by providing one threshold (2,000 pounds) which considers only releases, and a second threshold (5,000 pounds) that includes releases to the environment and other waste management activities. EPA believes that by including these other waste management activities in the 5,000-pound eligibility threshold, it is promoting pollution prevention. Section 6602 of the Pollution Prevention Act states that ''pollution should be prevented or reduced at the source whenever feasible.'' Accordingly, the Agency has decided to continue to include all waste management activities under the Form A threshold determination in the expectation that the cost savings associated with using Form A instead of Form R would provide incentives to promote source reduction. Further, by limiting the release portion of the 5,000-pound ARA to 2,000 pounds, today's rule structures Form A eligibility in a way that encourages treatment, recycling, and/or energy recovery over releases, which is consistent with national policy under the Pollution Prevention Act.

One commenter opposes increasing the 500-pound ARA because the Agency has not yet defined the Section 8 waste management data elements. To support this position, the commenter asserts that there are significant data-quality problems with the Section 8 data. This commenter believes EPA should not consider raising the Form A threshold until the Agency fixes these data-quality problems.

EPA has provided various forms of compliance assistance (e.g., guidance, training sessions, a call center, a TRI Web site, reporting software) to improve data quality and to promote consistent TRI reporting. Recognizing that there still is room for improvement, the Agency intends to continue its outreach efforts to improve data quality through reporting compliance. Nevertheless, EPA believes that today's final rule

appropriately balances the paperwork burdens of reporting against the promotion of pollution prevention and the requirement to provide the public and other data users with valuable information that is consistent with the goals and statutory purposes of the TRI program.

3. Comments on the Rule's Impact on Local Risk Screening Analyses

Many commenters opposed to the proposed rule assert that small releases that may no longer be reported on Form R as a result of the proposed rule do not necessarily pose less risk at the local level than the larger releases that will continue to be reported on Form R. Some of these commenters discuss the negative impact the proposed rule would have on county-level risk rankings generated by the Agency's Risk Screening Environmental Indicators (RSEI) software program, which relies on TRI release data. Some commenters describe specific county-level risk rankings generated by RSEI for which the order and composition of rankings would change under the proposed rule.

Another comment asserts that the RSEI tool can be used to show that the proposed rule would not adversely affect the use of TRI data to identify toxic releases that pose significant risk at the local level because 99% of counties would not have significant changes in reported risk. Further, some commenters state that allowing facilities that report minimal releases to utilize Form A could improve the quality of the TRI database by focusing attention on detailed Form R release information that represents a potential risk to the public. They also noted that the small reduction in detailed information would be far outweighed by the benefits of the proposed rule, in terms of reduced costs and paperwork affecting the economic competitiveness of small businesses and the counties they serve.

EPA believes that while RSEI is a valuable screening tool for identifying risk-related situations of high potential concern, and which warrant further evaluation, it makes assumptions about chemical toxicity and exposure pathways that may not hold true at the local level where a more robust risk assessment could be undertaken depending on the intended use of the data. RSEI analysis alone does not provide a detailed or quantitative assessment of risk (e.g., excess cases of cancer). By itself, RSEI is not designed as a substitute for more comprehensive, site-specific risk assessments. More information on the functionality and limitations of RSEI can be found at *http://www.epa.gov/oppt/rsei.*

4. Environmental Justice (EJ) Concerns

A number of commenters raised concerns about the proposed rule's potential Environmental Justice (EJ) impacts. Specifically, commenters are concerned about the potential health effects and other impacts from releases near minority and low-income populations. EPA has given careful consideration to these comments. In the preamble to the proposed rule, the Agency concluded (referring to both the PBT and non-PBT portions), that ''EPA has no indication that either option will disproportionately impact minority or low-income communities.'' After publication of the proposed rule, and in response to a request for information from three members of the U.S. House of Representatives, the Agency estimated that minorities comprise 31.8% of the U.S. population and 41.8% of the population residing within one mile of facilities that filed at least one Form R for reporting year 2003. Minorities make up an estimated 43.5% of the population residing within one mile of facilities that would qualify for Form A in reporting year 2003 under the proposed rule. EPA also estimated that those individuals living below the Census Bureau poverty level account for 12.9% of the U.S. population and 16.5% of the population living within one mile of facilities that filed at least one Form R for reporting year 2003. The figure for facilities that would qualify for Form A under the proposed rule is 17.0%. Based on the information provided to Congress, EPA said that ''the results show little variance between the percent of communities with facilities filing Form Rs and the percent of communities where facilities would be able to file Form A under the proposed rule.'' As noted in more detail below, EPA does not have any evidence that this rule will have a direct effect on human health or environmental conditions. Based on these results, EPA believes that the rule will not disproportionately affect the environment or public health in minority or low-income communities.

EPA recognizes that TRI provides important information that may indirectly lead to improved health and environmental conditions at the community level. Although today's action was not specifically crafted to address minority and disadvantaged communities, the reduced number of facilities eligible for Form A under today's rule, as compared to the proposed rule, means that there will be more detailed information available to communities generally, including minority and disadvantaged communities.

5. Comments on Specific Chemicals

Many commenters raised concerns about specific chemicals. In the proposed rule, EPA asked for comment on whether any of the chemicals potentially eligible for the 5,000-pound ARA are of a sufficient level of concern to justify excluding them from eligibility for Form A at the higher threshold. Commenters voiced concerns about the potential non-reporting of TRI release information on the Hazardous Air Pollutants (HAPs) regulated under the Clean Air Act (CAA). Other commenters asked EPA to exclude carcinogens from Form A eligibility at the proposed 5,000-pound ARA or to consider human developmental effects of the toxic chemical when assessing eligibility.

The Agency factored into its decision-making for today's action the impact that the proposed rule could have on HAP chemical release information. Agency analysis estimated that 32 TRI-listed HAP chemicals identified by the Agency as ''priority urban air toxics'' could account for as many as 2,600 of the approximately 12,000 Form Rs at issue under the proposal. While these 2,600 forms account for almost 20% of all Form Rs submitted for these HAPs, they account for only 0.4% of total releases reported to TRI for these 32 HAP chemicals.

Moreover, in today's final rule, the Agency set a 2,000-pound limit on non-PBT chemical releases, which will have a smaller impact on detailed reporting of HAP data than the proposed rule. In addition, although TRI provides valuable data on facility HAP emissions, broader coverage of stationary source HAP emissions, as well as data on mobile sources of HAPs, are available from EPA's publicly available National Emissions Inventory (NEI). After thoughtful consideration, EPA has decided to apply today's expanded Form A eligibility to all TRI-listed non-PBT chemicals.

6. Form A Utilization Rate and the Agency's Enforcement Policy

As discussed in the preamble to the proposed rule, the Agency considered the existing Form A utilization rate when deciding how much to expand the eligibility for Form A under this rule. Specifically, the Agency has observed to date that only slightly over half of the forms (54%) that facilities submit to TRI that could use Form A are actually submitted on Form As. The Agency believes there are a number of possible reasons for this estimated utilization rate, including the desire to showcase

pollution prevention efforts on Form R and the desire to demonstrate good environmental stewardship. The Agency is not convinced that the rate of Form A utilization is likely to be significantly higher at a 5,000-pound ARA with a 2,000-pound release limit than the rate of utilization to date with the 500-pound ARA threshold. However, many comments say that the lack of a clear EPA enforcement policy for the erroneous submission of Form A by facilities acting in good-faith contributes to an unnecessarily low Form A utilization rate. These commenters believe that Form A will continue to be underutilized unless and until the Agency widely clarifies its enforcement policy among the regulated community. Reporters should note that on March 30, 2005, EPA issued a memorandum restating its enforcement policy for reporters who submit a Form A in lieu of a Form R when the reporters did not qualify for the alternate threshold reporting exemption. At all times since the alternate reporting threshold was created, EPA enforcement policy has been to treat such a violation as a Level 3 violation, which is the same level at which data quality violations are treated. However, when a person subject to reporting fails to file either a Form R or a Form A, that violation will be treated as a Level 1 (failure to report) violation, even if the person could have qualified for the alternate reporting threshold and the report could have been made on a Form A in lieu of a Form R.[7]

7. Including Section 8.8 in the Non-PBT ARA

Commenters generally support modifying the Form A ARA to include Section 8.8 quantities. Section 8.8 of the Form R is intended to capture release and other waste management quantities resulting from remedial actions, catastrophic events, or one-time events not associated with production processes. Several commenters assert that one-time events or accidental releases can result in substantial releases to the environment. One commenter states that although Section 8.8 release amounts are not the direct result of production activities, these releases are still generated as a result of facilities doing business manufacturing, processing, or otherwise using TRI-listed chemicals, and therefore, Section 8.8 quantities should be included in the ARA. Another commenter notes that if catastrophic events are rare, as EPA may be assuming, then shielding them from disclosure would not yield any appreciable reduction in paperwork. One commenter supports modifying the ARA to include Section 8.8 waste management quantities, since including the waste management amounts of Section 8.8 in the ARA for PBT chemicals and not in the ARA for non-PBT chemicals would add unnecessary complexity in determining Form A eligibility.

For several reasons, EPA has decided to include Section 8.8 non-production-related quantities in the calculations to determine whether facilities have met the 5,000-pound ARA for non-PBT chemical Form A eligibility. First, EPA agrees with commenters that while Section 8.8 release and other waste management amounts are not the direct result of production-related activities, and therefore, are less amenable to source-reduction efforts, reporting on Section 8.8 quantities provides important information in the same way the reporting on production-related release and other waste management amounts informs stakeholders. Second, EPA agrees that the ARA for non-PBT chemicals should include Section 8.8 waste management amounts in order to create consistency with the PBT eligibility criteria. In other words, including the waste management amounts of Section 8.8 in the Form A threshold determination for PBT chemicals and not in the ARA for non-PBT chemicals would add unnecessary complexity in determining Form A eligibility. Third, EPA does not expect the inclusion of Section 8.8 amounts in the Form A threshold determination for non-PBT chemicals to add a significant amount of burden to those facilities considering Form A. Less than 4% of all non-PBT chemical Form Rs have a value greater than zero in Section 8.8. Accordingly, Section 8.8 quantities will not play any role in most Form A eligibility determinations. Furthermore, because Section 8.8 is restricted to quantities involving remedial actions, catastrophic events, or one-time events not associated with production processes, EPA does not expect Section 8.8 quantities to factor into any facility's Form A eligibility determinations on a regular basis. Accordingly, based on this final rule, facilities are required to include quantities reported in Section 8.8 in their non-PBT chemical ARA threshold determinations for Form A eligibility.

VI. What Are the Statutory and Executive Order Reviews Associated With This Action?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in ''Economic Analysis of the Toxics Release Inventory Phase 2 Burden Reduction Rule.'' A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here. For more information, see the Economic Analysis of Toxics Release Inventory Phase 2 Burden Reduction Rule.

1. Methodology

To estimate the cost savings, incremental costs, economic impacts, and benefits of this rule, the Agency estimated both the cost and burden of completing Form R and Form A as well as the number of affected entities. The Agency has used Reporting Year (RY) 2004 for TRI data. The Agency identified the number of potentially affected respondents currently completing Form Rs that may be eligible for burden savings under the new Form A eligibility for PBT chemicals and the expanded Form A eligibility for non-PBT chemicals. For both PBT chemical and non-PBT chemical eligibility, the Agency compared the baseline burden for completing Form R with the burden for completing Form A. The total burden and cost savings associated with this rule are the product of the unit burden and cost savings per form times the number of forms newly eligible for Form A pursuant to this rule. Given that only 54% of currently eligible reports are filed using Form A, this approach may overestimate the actual burden reduction from the rule, but EPA believes that it is appropriate to base its estimates on the burden reduction that the rule makes available to reporters, even if not all of them choose to use it.

2. Cost and Burden Savings Results

Table 1 summarizes the potential annual cost and burden savings of the Phase 2 TRI Burden Reduction rule, if all newly eligible reports are filed using Form A.

[7] There are six levels of violations with Level 1 imposing the highest penalty and Level 6 the lowest. Thus, the severity of a Level 3 violation is less than that of a Level 1. The March 30, 2005, memorandum and all other EPCRA Section 313 enforcement policy documents can be found at *http://cfpub.epa.gov/compliance/resources/policies/civil/epcra/index.cfm.*

TABLE 1.—POTENTIAL ANNUAL COST AND BURDEN SAVINGS OF THE PHASE 2 TRI BURDEN REDUCTION RULE

[Reporting year 2004 TRI data]

Option	Number of newly eligible Form R's	Number of potentially eligible facilities	Burden savings per Form R (hours)	Total annual burden savings (hours)	Cost savings per Form R	Total annual cost savings	Percent of total cost/burden (percent)
New Form A Eligibility for PBT chemicals	2,360	1,796	15.5	36,480	$748	$1,764,969	30
Increase ARA for Non-PBT chemicals to 5,000 pounds but limit disposal and other releases to 2000 pounds	9,501	5,317	9.1	86,924	438	4,160,239	70
Total of Options	11,861	6,670	.....	123,404	500	5,925,208	100

Table 1 does not reflect those non-PBT forms that may lose their current Form A eligibility as a result of including Section 8.8 amounts (e.g., catastrophic events) in the ARA threshold determinations for Form A eligibility. While the exact number of newly ineligible forms cannot be calculated, a reasonable estimate of the number of newly ineligible forms is 95, which equates to 1% of the 9,501 non-PBT forms estimated to be newly eligible for Form A. The estimate of 95 forms is based on the sum of 45 Form Rs and 50 Form As, which are estimated to be ineligible for Form A if Section 8.8 data are included in the Form A eligibility criteria and applied to 2004 reports. Specifically, a review of the approximately 10,000 Form Rs for reporting year 2004 that currently appear to be eligible for Form A at the 500-pound ARA reveals about 45 forms that would be ineligible for Form A as a result of including Section 8.8 amounts in Form A threshold determinations. Because Form R does not record quantities related to the activity threshold, this estimate assumes facilities have not manufactured, processed or otherwise used more than one million pounds. EPA also recognizes that some number of currently filed Form As will become newly ineligible for Form A because of today's requirement to include Section 8.8 amounts in Form A eligibility determinations. Since Form A does not provide specific waste management quantities, EPA cannot estimate with certainty the number of Form As that may become newly ineligible for Form A as a result of today's rule. However, if one assumes the approximately 10,000 Form Rs that appear to be eligible for Form A at the 500-pound ARA are representative of the approximately 11,000 Form As currently filed under the 500-pound ARA, then one could estimate that 50 of the 11,000 Form As would be ineligible for Form A as a result of today's rule ($(45/10{,}000) \times 11{,}000 = 50$). For more information on Section 8.8 and Form A eligibility see Chapter 6 of the Economic Analysis.

EPA estimates that the total annual burden savings for this proposal is 123,404 hours, excluding the 1% burden increase from newly-ineligible facilities. EPA estimates the total annual cost savings for this proposal is $5.9 million. Average annual cost savings for facilities submitting Form As in lieu of Form Rs is $438 per form for non-PBT reports and $748 per form for PBT reports.

3. Impacts to Data

EPA has evaluated the potential impacts to data reported to the public for the rule and determined that the likelihood of significant impacts is minimal. For New Form A Eligibility for PBT chemicals, the TRI chemical report submitted must certify that no production-related or non-production-related releases to the environment occurred. The balance of management of these TRI chemicals is most likely either recycling or management through energy recovery or treatment for destruction at quantities totaling 500 pounds or less based on our knowledge of the chemicals and how they are managed. For Expanded Form A Eligibility for non-PBT chemicals, the Agency has evaluated both total release pounds and total annual reportable amount (ARA) pounds that may no longer be reported on Form R as a result of this final rule. Relative to the ARA of 500 pounds that includes total production-related waste (sections 8.1 through and including 8.7), approximately 5.7 million additional release pounds (0.14% of all TRI release pounds) and 10.5 million additional annual reportable amount pounds (0.06% of all TRI annual reportable amount pounds) would be eligible for Form A reporting as a result of this final rule. As noted above, based on historical experience, EPA projects that not all eligible reporters will use Form A. For those that do, the Form A for non-PBTs provides a range report of zero to 5,000 pounds for annual reportable amounts, and zero to 2,000 pounds for disposal and other releases, including non-production-related releases. Further information on how specific chemicals are affected can be found in the economic analysis of this rulemaking.

B. Paperwork Reduction Act

This action is a burden reduction rule and does not impose any new information collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2070–0093 and 2070–0143. A copy of the OMB approved Information Collection Requests (ICRs) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

EPA calculated the potential reporting and recordkeeping burden reduction for this rule to be 123,404 hours and the potential cost savings to be $5.9 million per year. As noted above, actual burden reduction and cost savings will likely be somewhat less. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing

and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 Regulatory Flexibility Act 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 this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The economic impact analysis conducted for today's rule indicates that these revisions to Form R and Form A would generally result in savings to affected entities compared to baseline requirements. However, some businesses that currently file one or more Form A's would be required to file Form R's as a result of including Section 8.8 amounts (e.g., catastrophic events) in the ARA threshold determinations for Form A eligibility. While this rule will result in a cost savings for most affected entities, these businesses would suffer a burden increase. Since the burden increase will be attributable to significant non-production-related wastes (i.e., unusual events) the number of facilities experiencing this burden each year will likely remain about the same, although the specific facilities are likely to change.

This rule is expected to adversely affect 19 parent companies that own 32 facilities that currently file Form A submissions. Of the affected parent companies, approximately 45 percent, or 9 companies, are small businesses as defined by the Small Business Administration. No small governments or small organizations are expected to be affected by this action. Each affected small business is expected to expend approximately 14 hours per year to comply with the additional reporting requirements. Based on the incremental cost estimates for these burden hours, the number of facilities owned by each small business, and the annual revenues of the affected small businesses, all 9 affected small businesses are expected to experience incremental cost impacts of less than one percent of annual revenues. See Chapter 7 (Small Entity Impact Analysis) of the Economic Analysis.

D. Unfunded Mandates Reform Act

EPA has determined that 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. This rule is estimated to save compliance costs of $5.9 million annually to the private sector. In addition, this rule does not create any additional federally enforceable duty for State, local and tribal governments. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Today's rule reduces recordkeeping and reporting burden for TRI reporters. It will not cause reductions in supply or production of oil, fuel, coal, or electricity. Nor will it result in increased energy prices, increased cost of energy distribution, or an increased dependence on foreign supplies of energy.

H. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health

or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potential effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 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, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not establish technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Environmental Justice

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that: (1) No segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities; and (2) all people are treated fairly and are given the opportunity to participate meaningfully in the development, implementation, and enforcement of environmental laws, regulations, and policies.

The TRI Program is an environmental information program. While it provides important information that may indirectly lead to improved health and environmental conditions on the community level, it is not an emissions release control regulation that could directly affect health and environmental outcomes in a community. The principal consequence of today's action will be to reduce the amount of detailed information available on some toxic chemical releases or management. However, as pointed out in the previous discussion, the impacts will be very small in terms of total national figures. EPA believes that the data provided under this rule will continue to provide valuable information that fulfills the purposes of the TRI program. By structuring Form A eligibility for both PBT chemicals and non-PBT chemicals in a way that favors recycling and treatment over disposal and other releases, today's rule encourages facilities to reduce their releases and ensures that valuable information will continue to be provided to the public pursuant to the purposes of section 313 of EPCRA and section 6607 of PPA. Furthermore, only the non-PBT chemical portion of today's rule will have any effect on the reporting of chemicals released to the environment. The PBT chemical portion of this rule requires that facilities reporting PBTs have no releases in order to be eligible for Form A. EPA does not have any evidence that this rule will have a direct effect on human health or environmental conditions. The Agency has given careful consideration to the level of detail in the information available to minority and low-income communities. While there is a higher proportion of minority and low-income communities in close proximity to some TRI facilities than in the population generally, the rule does not appear to have a disproportionate impact on these communities, since facilities in these communities are no more likely than elsewhere to become eligible to use Form A as a result of the rule. Results of the environmental justice assessment on the final rule are available in the information docket.

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 rule will be effective January 22, 2007.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: December 18, 2006.

Stephen L. Johnson,

Administrator.

■ Therefore, 40 CFR part 372 is 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.

Subpart A—[Amended]

■ 2. Revise § 372.10(d) introductory text to read as follows:

§ 372.10 Recordkeeping.

* * * * *

(d) Each owner or operator who determines that the owner operator may apply one of the alternate thresholds as specified under § 372.27(a) must retain the following records for a period of 3 years from the date of the submission of the certification statement as required under § 372.27(b):

* * * * *

Subpart B—[Amended]

■ 3. Section 372.27 is amended as follows:

■ i. Revise section heading.

■ ii. Revise paragraph (a).

■ iii. Revise paragraph (b).

■ iv. Revise paragraph (e).

§ 372.27 Alternate thresholds and certifications.

(a) Except as provided in paragraph (e) of this section:

(1) *General.* With respect to the manufacture, process, or otherwise use of a toxic chemical, the owner or operator of a facility may apply an alternate threshold of 1 million pounds per year to that chemical if the owner or operator calculates that the facility would have:

(i) No more than 2,000 pounds of total on-site and off-site disposal or other releases (including disposal or other releases that resulted from catastrophic events); and

(ii) An annual reportable amount of that toxic chemical not exceeding 5,000 pounds for the combined total quantities released at the facility;

disposed within the facility; treated for destruction at the facility; recovered at the facility as a result of recycling operations; combusted for the purpose of energy recovery at the facility; transferred from the facility to off-site locations for the purpose of recycling, energy recovery, treatment, and/or disposal; and managed as a result of remedial actions, catastrophic events, or one-time events not associated with production processes during the reporting year. These volumes correspond to the sum of amounts reportable for data elements on EPA Form R (EPA Form 9350–1; Rev. 01/2006) as Part II column B or sections 8.1 (total quantity released), 8.2 (quantity used for energy recovery on-site), 8.3 (quantity used for energy recovery off-site), 8.4 (quantity recycled on-site), 8.5 (quantity recycled off-site), 8.6 (quantity treated on-site), 8.7 (quantity treated off-site), and 8.8 (quantity released to the environment as a result of remedial actions, catastrophic events, or one-time events not associated with production processes).

(2) *Chemicals of Special Concern.* With respect to the manufacture, process, or otherwise use of a toxic chemical, the owner or operator of a facility may apply an alternate threshold of 1 million pounds per year to that chemical if the owner or operator calculates that the facility would have:

(i) Zero on-site and off-site disposal or other releases (including disposal or other releases that resulted from catastrophic events); and

(ii) An ''Annual Reportable Amount of a Chemical of Special Concern'' not exceeding 500 pounds. The ''Annual Reportable Amount of a Chemical of Special Concern'' is the combined total of:

(A) Quantities treated for destruction at the facility;

(B) Quantities recovered at the facility as a result of recycling operations;

(C) Quantities combusted for the purpose of energy recovery at the facility;

(D) Quantities transferred from the facility to off-site locations for the purpose of recycling, energy recovery, and/or treatment; and

(E) Quantities managed through recycling, energy recovery, or treatment for destruction that were the result of remedial actions, catastrophic events, or one-time events not associated with production processes during the reporting year.

(b) If an owner or operator of a facility determines that the owner or operator may apply one of the alternate reporting thresholds specified in paragraph (a) of this section for a specific toxic chemical, the owner or operator is not required to submit a report for that chemical under § 372.30, but must submit a certification statement that contains the information required in § 372.95. The owner or operator of the facility must also keep records as specified in § 372.10(d).

* * * * *

(e) The alternative thresholds described in paragraph (a) of this section are limited by the following:

(1) The provisions of paragraph (a)(1) of this section do not apply to any chemicals listed in § 372.28.

(2) The provisions of paragraph (a)(2) of this section apply only to chemicals listed in § 372.28.

(3) Dioxins and dioxin-like compounds are not eligible for the alternate thresholds described in paragraph (a) of this section.

Subpart E—[Amended]

■ 4. Section 372.95 is amended as follows:

■ i. Revise section heading.

■ ii. Revise paragraph (b) introductory text.

■ iii. Revise paragraph (b)(4).

§ 372.95 Alternate threshold certifications and instructions.

* * * * *

(b) Alternate threshold certification statement elements. The following information must be reported on an alternate threshold certification statement pursuant to § 372.27(b):

* * * * *

(4) Signature of a senior management official certifying one of the following:

(i) Pursuant to 40 CFR 372.27(a)(1), ''I hereby certify that to the best of my knowledge and belief for the toxic chemical(s) listed in this statement, for this reporting year, the annual reportable amount for each chemical, as defined in 40 CFR 372.27(a)(1), did not exceed 5,000 pounds, which included no more than 2,000 pounds of total disposal or other releases to the environment, and that the chemical was manufactured, or processed, or otherwise used in an amount not exceeding 1 million pounds during this reporting year;'' and/or

(ii) Pursuant to 40 CFR 372.27(a)(2), ''I hereby certify that to the best of my knowledge and belief for the toxic chemical(s) of special concern listed in this statement, there were zero disposals or other releases to the environment (including disposals or other releases that resulted from catastrophic events) for this reporting year, the ''Annual Reportable Amount of a Chemical of Special Concern'' for each such chemical, as defined in 40 CFR 372.27(a)(2), did not exceed 500 pounds for this reporting year, and that the chemical was manufactured, or processed, or otherwise used in an amount not exceeding 1 million pounds during this reporting year.''

* * * * *

[FR Doc. E6–21958 Filed 12–21–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 061213334–6334–01; I.D. 120806B]

RIN 0648–AV05

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Interim Rule

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; interim rule and request for comments.

SUMMARY: NMFS implements this interim rule to reduce overfishing that may occur in 2007. This rule delays the opening of the Elephant Trunk Access Area (ETAA) until March 1, 2007, reduces the maximum number of trips per vessel in the ETAA per limited access vessel, reduces the number of general category fleet trips from 1,360 to 865 trips in the ETAA, and prohibits the retention of more than 50 U.S. bushels (17.62 hL) of in-shell scallop outside of the boundaries of the ETAA. This interim action is necessary because a recent projection by the New England Fishery Management Council's (Council) Plan Development Team (PDT) indicated that overfishing of the scallop resource may occur in the 2007 fishing year (FY). The new information presents previously unforeseen circumstances that also present serious management problems to the fishery. Overharvest of the ETAA in FY 2007, and resulting overfishing that may result, could undermine the goals and objectives of area rotation that is the cornerstone of the Atlantic Sea Scallop Scallop Fishery Management Plan (FMP). The ETAA has an unprecedented high abundance of scallops, which needs to be husbanded with caution to effectively preserve the long-term health of the scallop resource and fishery.