

V. Summary of Supporting Analyses**A. Executive Order No. 12291**

Executive Order (E.O.) No. 12291 requires that regulations be classified as major or nonmajor for purposes of review by the Office of Management and Budget (OMB). Under E.O. No. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of \$100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As demonstrated by an economic analysis (Economic Impact Analysis Supporting the Final Rule on Continuous Release Reporting under Section 103(f)(2) of CERCLA) performed by the Agency, available for inspection in the Superfund Docket Room 2427, U.S. EPA, 401 M Street SW., Washington, DC 20460, this final rule is nonmajor, because the rule will result in estimated annualized costs of \$5.9 million, with \$5.18 million incurred by facilities and vessels, and an estimated annualized cost of \$0.76 million incurred by the government. Moreover, the rule will not cause a major increase in costs or prices mentioned in (2) above or cause any of the significant adverse effects mentioned in (3) above.

OMB completed its review, as required by E.O. No. 12291, on March 9, 1990 without comment.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." EPA certifies that this final regulation will not have a significant impact on a substantial number of small entities and that a Regulatory Flexibility Analysis is not required. See Chapter Five of the Economic Analysis supporting today's final rule, available in the Superfund Docket

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB

control numbers 2050-0086 and 2050-0092.

Public reporting burden for this collection of information is estimated at 9 hours per response for the initial written report, at 5 hours per response for the follow-up report, and at 2.2 hours per change notification letter, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects**40 CFR Part 302**

Air pollution control, Chemicals, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

40 CFR Part 355

Chemical accident prevention, Chemical emergency preparedness, Chemicals, Community emergency response plan, Community right-to-know, Contingency planning, Extremely hazardous substances, Hazardous substances, Reportable quantity, Reporting and recordkeeping requirements, Threshold planning quantity.

Dated: June 21, 1990.

William K. Reilly,
Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for part 302 is revised to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

2. Part 302 is amended by adding § 302.8 to read as follows:

§ 302.8 Continuous releases.

(a) Except as provided in paragraph (c) of this section, no notification is required for any release of a hazardous substance that is, pursuant to the definitions in paragraph (b) of this section, continuous and stable in quantity and rate.

(b) *Definitions.* The following definitions apply to notification of continuous releases:

Continuous. A continuous release is a release that occurs without interruption or abatement or that is routine, anticipated, and intermittent and incidental to normal operations or treatment processes.

Normal range. The normal range of a release is all releases (in pounds or kilograms) of a hazardous substance reported or occurring over any 24-hour period under normal operating conditions during the preceding year. Only releases that are both continuous and stable in quantity and rate may be included in the normal range.

Routine. A routine release is a release that occurs during normal operating procedures or processes.

Stable in quantity and rate. A release that is stable in quantity and rate is a release that is predictable and regular in amount and rate of emission.

Statistically significant increase. A statistically significant increase in a release is an increase in the quantity of the hazardous substance released above the upper bound of the reported normal range of the release.

(c) *Notification.* The following notifications shall be given for any release qualifying for reduced reporting under this section:

(1) Initial telephone notification;

(2) Initial written notification within 30 days of the initial telephone notification;

(3) Follow-up notification within 30 days of the first anniversary date of the initial written notification;

(4) Notification of a change in the composition or source(s) of the release or in the other information submitted in the initial written notification of the release under paragraph (c)(2) of this section or the follow-up notification under paragraph (c)(3) of this section; and

(5) Notification at such times as an increase in the quantity of the hazardous substance being released during any 24-hour period represents a statistically significant increase as defined in paragraph (b) of this section.

(d) *Initial telephone notification.* Prior to making an initial telephone notification of a continuous release, the person in charge of a facility or vessel

must establish a sound basis for qualifying the release for reporting under CERCLA section 103(f)(2) by:

(1) Using release data, engineering estimates, knowledge of operating procedures, or best professional judgment to establish the continuity and stability of the release; or

(2) Reporting the release to the National Response Center for a period sufficient to establish the continuity and stability of the release.

(3) When a person in charge of the facility or vessel believes that a basis has been established to qualify the release for reduced reporting under this section, initial notification to the National Response Center shall be made by telephone. The person in charge must identify the notification as an initial continuous release notification report and provide the following information:

(i) The name and location of the facility or vessel; and

(ii) The name(s) and identity(ies) of the hazardous substance(s) being released.

(e) *Initial written notification.* Initial written notification of a continuous release shall be made to the appropriate EPA Regional Office for the geographical area where the releasing facility or vessel is located. (Note: In addition to the requirements of this part, releases of CERCLA hazardous substances are also subject to the provisions of SARA Title III section 304, and EPA's implementing regulations codified at 40 CFR part 355, which require initial telephone and written notifications of continuous releases to be submitted to the appropriate State emergency response commission and local emergency planning committee.)

(1) Initial written notification to the appropriate EPA Regional Office shall occur within 30 days of the initial telephone notification to the National Response Center, and shall include, for each release for which reduced reporting as a continuous release is claimed, the following information:

(i) The name of the facility or vessel; the location, including the latitude and longitude; the case number assigned by the National Response Center or the Environmental Protection Agency; the Dun and Bradstreet number of the facility, if available; the port of registration of the vessel; the name and telephone number of the person in charge of the facility or vessel.

(ii) The population density within a one-mile radius of the facility or vessel, described in terms of the following ranges: 0-50 persons, 51-100 persons, 101-500 persons, 501-1,000 persons, more than 1,000 persons.

(iii) The identity and location of sensitive populations and ecosystems within a one-mile radius of the facility or vessel (e.g., elementary schools, hospitals, retirement communities, or wetlands).

(iv) For each hazardous substance release claimed to qualify for reporting under CERCLA section 103(f)(2), the following information must be supplied:

(A) The name/identity of the hazardous substance; the Chemical Abstracts Service Registry Number for the substance (if available); and if the substance being released is a mixture, the components of the mixture and their approximate concentrations and quantities, by weight.

(B) The upper and lower bounds of the normal range of the release (in pounds or kilograms) over the previous year.

(C) The source(s) of the release (e.g., valves, pump seals, storage tank vents, stacks). If the release is from a stack, the stack height (in feet or meters).

(D) The frequency of the release and the fraction of the release from each release source and the specific period over which it occurs.

(E) A brief statement describing the basis for stating that the release is continuous and stable in quantity and rate.

(F) An estimate of the total annual amount that was released in the previous year (in pounds or kilograms).

(G) The environmental medium(a) affected by the release:

(1) If surface water, the name of the surface water body;

(2) If a stream, the stream order or average flowrate (in cubic feet/second) and designated use;

(3) If a lake, the surface area (in acres) and average depth (in feet or meters);

(4) If on or under ground, the location of public water supply wells within two miles.

(H) A signed statement that the hazardous substance release(s) described is(are) continuous and stable in quantity and rate under the definitions in paragraph (a) of this section and that all reported information is accurate and current to the best knowledge of the person in charge.

(f) *Follow-up notification.* Within 30 days of the first anniversary date of the initial written notification, the person in charge of the facility or vessel shall evaluate each hazardous substance release reported to verify and update the information submitted in the initial written notification. The follow-up notification shall include the following information:

(1) The name of the facility or vessel; the location, including the latitude and longitude; the case number assigned by

the National Response Center or the Environmental Protection Agency; the Dun and Bradstreet number of the facility, if available; the port of registration of the vessel; the name and telephone number of the person in charge of the facility or vessel.

(2) The population density within a one-mile radius of the facility or vessel, described in terms of the following ranges: 0-50 persons, 51-100 persons, 101-500 persons, 501-1,000 persons, more than 1,000 persons.

(3) The identity and location of sensitive populations and ecosystems within a one-mile radius of the facility or vessel (e.g., elementary schools, hospitals, retirement communities, or wetlands).

(4) For each hazardous substance release claimed to qualify for reporting under CERCLA section 103(f)(2), the following information shall be supplied:

(i) The name/identity of the hazardous substance; the Chemical Abstracts Service Registry Number for the substance (if available); and if the substance being released is a mixture, the components of the mixture and their approximate concentrations and quantities, by weight.

(ii) The upper and lower bounds of the normal range of the release (in pounds or kilograms) over the previous year.

(iii) The source(s) of the release (e.g., valves, pump seals, storage tank vents, stacks). If the release is from a stack, the stack height (in feet or meters).

(iv) The frequency of the release and the fraction of the release from each release source and the specific period over which it occurs.

(v) A brief statement describing the basis for stating that the release is continuous and stable in quantity and rate.

(vi) An estimate of the total annual amount that was released in the previous year (in pounds or kilograms).

(vii) The environmental medium(a) affected by the release:

(A) If surface water, the name of the surface water body;

(B) If a stream, the stream order or average flowrate (in cubic feet/second) and designated use;

(C) If a lake, the surface area (in acres) and average depth (in feet or meters);

(D) If on or under ground, the location of public water supply wells within two miles.

(viii) A signed statement that the hazardous substance release(s) is(are) continuous and stable in quantity and rate under the definitions in paragraph (a) of this section and that all reported information is accurate and current to

the best knowledge of the person in charge.

(g) *Notification of changes in the release.* If there is a change in the release, notification of the change, not otherwise reported, shall be provided in the following manner:

(1) *Change in source or composition.* If there is any change in the composition or source(s) of the release, the release is a new release and must be qualified for reporting under this section by the submission of initial telephone notification and initial written notification in accordance with paragraphs (c)(1) and (2) of this section as soon as there is a sufficient basis for asserting that the release is continuous and stable in quantity and rate;

(2) *Change in the normal range.* If there is a change in the release such that the quantity of the release exceeds the upper bound of the reported normal range, the release must be reported as a statistically significant increase in the release. If a change will result in a number of releases that exceed the upper bound of the normal range, the person in charge of a facility or vessel may modify the normal range by:

(i) Reporting at least one statistically significant increase report as required under paragraph (c)(7) of this section and, at the same time, informing the National Response Center of the change in the normal range; and

(ii) Submitting, within 30 days of the telephone notification, written notification to the appropriate EPA Regional Office describing the new normal range, the reason for the change, and the basis for stating that the release in the increased amount is continuous and stable in quantity and rate under the definitions in paragraph (b) of this section.

(3) *Changes in other reported information.* If there is a change in any information submitted in the initial written notification or the follow-up notification other than a change in the source, composition, or quantity of the release, the person in charge of the facility or vessel shall provide written notification of the change to the EPA Region for the geographical area where the facility or vessel is located, within 30 days of determining that the information submitted previously is no longer valid. Notification shall include the reason for the change, and the basis for stating that the release is continuous and stable under the changed conditions.

(4) Notification of changes shall include the case number assigned by the National Response Center or the Environmental Protection Agency and also the signed certification statement required at (c)(2)(xi) of this section.

(h) *Notification of a statistically significant increase in a release.* Notification of a statistically significant increase in a release shall be made to the National Response Center as soon as the person in charge of the facility or vessel has knowledge of the increase. The release must be identified as a statistically significant increase in a continuous release. A determination of whether an increase is a "statistically significant increase" shall be made based upon calculations or estimation procedures that will identify releases that exceed the upper bound of the reported normal range.

(i) *Annual evaluation of releases.* Each hazardous substance release shall be evaluated annually to determine if changes have occurred in the information submitted in the initial written notification, the follow-up notification, and/or in a previous change notification.

(j) *Use of the SARA Title III section 313 form.* In lieu of an initial written report or a follow-up report, owners or operators of facilities subject to the requirements of SARA Title III section 313 may submit to the appropriate EPA Regional Office for the geographical area where the facility is located, a copy of the Toxic Release Inventory form submitted under SARA Title III section 313 the previous July 1, provided that the following information is added:

(1) The population density within a one-mile radius of the facility or vessel, described in terms of the following ranges: 0-50 persons, 51-100 persons, 101-500 persons, 501-1,000 persons, more than 1,000 persons.

(2) The identity and location of sensitive populations and ecosystems within a one-mile radius of the facility or vessel (e.g., elementary schools, hospitals, retirement communities, or wetlands).

(3) For each hazardous substance release claimed to qualify for reporting under CERCLA section 103(f)(2), the following information must be supplied:

(i) The upper and lower bounds of the normal range of the release (in pounds or kilograms) over the previous year.

(ii) The frequency of the release and the fraction of the release from each release source and the specific period over which it occurs.

(iii) A brief statement describing the basis for stating that the release is continuous and stable in quantity and rate.

(iv) A signed statement that the hazardous substance release(s) is(are) continuous and stable in quantity and rate under the definitions in paragraph (b) of this section and that all reported

information is accurate and current to the best knowledge of the person in charge.

(k) *Documentation supporting notification.* Where necessary to satisfy the requirements of this section, the person in charge may rely on recent release data, engineering estimates, the operating history of the facility or vessel, or other relevant information to support notification. All supporting documents, materials, and other information shall be kept on file at the facility, or in the case of a vessel, at an office within the United States in either a port of call, a place of regular berthing, or the headquarters of the business operating the vessel. Supporting materials shall be kept on file for a period of one year and shall substantiate the reported normal range of releases, the basis for stating that the release is continuous and stable in quantity and rate, and the other information in the initial written report, the follow-up report, and the annual evaluations required under paragraphs (e), (f), and (i), respectively. Such information shall be made available to EPA upon request as necessary to enforce the requirements of this section.

(l) *Multiple concurrent releases.* Multiple concurrent releases of the same substance occurring at various locations with respect to contiguous plants or installations upon contiguous grounds that are under common ownership or control may be considered separately or added together in determining whether such releases constitute a continuous release or a statistically significant increase under the definitions in paragraph (b) of this section; whichever approach is elected for purposes of determining whether a release is continuous also must be used to determine a statistically significant increase in the release.

(m) *Penalties for failure to comply.* The reduced reporting requirements provided for under this section shall apply only so long as the person in charge complies fully with all requirements of paragraph (c) of this section. Failure to comply with respect to any release from the facility or vessel shall subject the person in charge to all of the reporting requirements of § 302.6 for each such release, to the penalties under § 302.7, and to any other applicable penalties provided for by law.

(Approved by the Office of Management and Budget under the control number 2050-0086).