population, infants less than 1–year old, and children (1 to 6) are 69,000 ppb, 19,000 ppb, and 19,000 ppb, respectively, compared with EECs of 0.004 ppb and 15.4 ppb for ground and surface water, respectively.

2. *Infants and children*. In general, FFDCA Section 408 provides that EPA shall apply an additional ten-fold margin of safety (MOS) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different MOS will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard UF (usually 100 x for combined interspecies and intraspecies variability) and not the additional ten-fold MOE/UF when EPA has a complete data base under existing guidelines and when the severity of the effects in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

i. *Prenatal and postnatal sensitivity*. There is no evidence of increased susceptibility in rats and rabbits to *in utero* and/or postnatal exposure to glyphosate.

ii. *Conclusion*. There is a complete toxicity data base for glyphosate and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X SF to protect infants and children should be removed. The FQPA factor is removed because:

- The toxicology data base is complete.
- There is no indication of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to glyphosate (in the prenatal developmental toxicity study in rats, effects in the offspring were observed only at or above treatment levels which resulted in evidence of appreciable parental toxicity).
- The use of generally high quality data, conservative models and/or assumptions in the exposure assessment provide adequate protection of infants and children.

F. International Tolerances

Several maximum residue limits (MRLs) for glyphosate have been established by CODEX in or on various commodities. These limits are based on the residue definition of glyphosate *per se*, without reference to the cation used in product formulations. Based on toxicological considerations, EPA has determined that AMPA no longer needs to be regulated and has deleted AMPA from the U.S. tolerance expression, so that the U.S. residue definition is harmonized with that of CODEX. The proposed rice grain tolerance of 15.0 ppm, is based on crop field trial data obtained using glyphosate-tolerant rice and therefore cannot be lowered to maintain harmonization with the CODEX MRL of 0.1 ppm, for residues of glyphosate in or on this commodity. A CODEX MRL exists for ''hay or fodder (dry) of grasses'' at 50.0 ppm, and on ''maize forage'' at 1.0 ppm, however the proposed U.S. tolerance for ''grass, forage, fodder, and hay group'' at 300 ppm, and ''corn, field, forage'' at 6.0 ppm, are based on higher application rates than those used in the residue studies considered by CODEX, so that harmonization cannot be maintained in these cases. Other than for these specific commodities, the agreement between U.S. tolerances and Codex international residue standards is unaffected by this action.

[FR Doc. 02–9324 Filed 4–16–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7172–4]

Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is publishing as an appendix to this notice a guidance on the CERCLA section 101(10)(H) federally permitted release definition for certain air emissions.

FOR FURTHER INFORMATION CONTACT: Visit the OECA Docket Web Site at www.epa.gov/oeca/polguid/enfdock.html or contact the RCRA/UST, Superfund and EPCRA Hotline at (800) 424–9346 or (703) 412–9810 in Washington, DC area. For general questions about this guidance, please contact Lynn Beasley at (703) 603–9086 and for enforcement related questions, please contact Ginny Phillips at (202) 564–6139 or mail your questions to: U.S. EPA, 1200 Pennsylvania Ave., NW., Washington DC 20460, attention Lynn Beasley, mail code 5204G.

SUPPLEMENTARY INFORMATION:

Purpose of this Notice

Today's guidance discusses the federally permitted release definition, which is an exemption to the reporting requirements under two federal emergency response and public right to know laws: section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), as amended, 42 U.S.C. 9603 and section 304 of the Emergency Planning and Community Right-to-Know Act (''EPCRA''), 42 U.S.C. 11004. Federally permitted releases are defined in CERCLA section 101(10), which specifically identifies certain releases that are permitted or controlled under several environmental statutes and exempts these releases from the notification requirements of CERCLA section 103 and EPCRA section 304. CERCLA section 101(10)(H) identifies releases that are exempt from reporting because they are subject to permits and regulations under the Clean Air Act (''CAA'').

This guidance reflects our consideration of the general concerns raised by previous **Federal Register** notices on the definition of federally permitted release, the comments submitted on the Interim Guidance and our own experience in implementing the reporting requirements under CERCLA section 103 and EPCRA section 304. This guidance also considers several administrative adjudication decisions on federally permitted releases.

This guidance does not impose new reporting requirements or change the types of releases which are required to be reported under CERCLA section 103 and EPCRA section 304 or the implementing regulations at 40 CFR parts 302 and 355. The legal authority for the reporting requirements arises from those statutory and regulatory provisions, as well as the statutory provisions on federally permitted releases, not from this guidance. This guidance has no effect on CAA permit requirements.

The CAA provides EPA and states the authority to impose a wide variety of permits, regulatory limits and control requirements on emission sources. Whether a particular air release of a hazardous substance or extremely hazardous substance is exempt from CERCLA section 103 and EPCRA section 304 reporting requirements requires a case-by-case determination based on the specific permit language or applicable control requirement. As a consequence, it is difficult to establish a ''bright line'' for when releases qualify for the

CERCLA federally permitted release exemption.

Opportunities for Notice and Comment

The public has had several opportunities to comment on our interpretation of the CERCLA definition of federally permitted release. We originally requested comments on this issue in 1983, when we proposed regulations for CERCLA notification requirements and reportable quantity adjustments. See 48 FR 23552 (May 25, 1983). Subsequently, in a 1988 proposed rule, we addressed some comments on federally permitted releases, explained our understanding of the term in certain circumstances and requested additional comments. See 53 FR 27268 (July 19, 1988). In 1989, we published a Supplemental Notice of Proposed Rulemaking and requested further comment on our interpretation of federally permitted releases. See 54 FR 20305 (July 11, 1989). On December 21, 1999, we published in the **Federal Register** the ''Interim Guidance on the CERCLA section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions'' (''Interim Guidance''), requested comment and announced a public meeting. See 64 FR 71614 (December 21, 1999). We extended the comment period twice, providing the public with over 75 days to consider and prepare their comments on the Interim Guidance. We hosted a public meeting on February 24, 2000, to provide additional opportunities for oral testimony and dialogue. This extensive comment period gave the public an opportunity to raise their concerns to us prior to the publication of this guidance. The guidance addresses many of the comments received on the Interim Guidance.

Changes From the Interim Guidance

This guidance supercedes the Interim Guidance, which is now deemed to be withdrawn. It also differs from the Interim Guidance in several aspects. First, this guidance clarifies the discussion of volatile organic compounds (''VOC'') and particulate matter (''PM'') limits and controls and when releases of hazardous substances which are constituents of these criteria pollutants could qualify for the CERCLA federally permitted release exemption. Second, the Guidance adds a section addressing air emissions of nitrogen oxide (''NO'') and nitrogen dioxide (''NO_2''). Third, whether the exemption can be applied to grandfathered sources will be addressed in a separate forthcoming guidance document. Finally, the guidance explains that certain releases from minor sources subject to a federally enforceable limit may meet the definition of a CERCLA federally permitted release.

The changes from the Interim Guidance are based on the information we received from comments on the Interim Guidance. For example, commentors provided us with examples of permits that have VOC and/or PM control requirements that may also effectively limit or control the emissions of hazardous substances. Therefore, in response to this information, we clarified and expanded our discussion of when a release of a hazardous constituent of VOC or PM could be considered a federally permitted release.

Although releases of NO and NO_2 were not addressed directly in the Interim Guidance, commentors pointed out to us that the current ten pound reportable quantity for CERCLA/EPCRA reporting for NO and NO_2 could result in a large number of notifications of very small releases which could overburden the CERCLA notification system and have negative consequences on the government's ability to focus its resources on more serious releases. We agree with these commentors and are addressing this issue in several ways. First, we agree that permitted air releases of NO and NO_2 that are subject to limits or controls for NO_X are CERCLA federally permitted releases. Second, the Agency supports the proposal of an administrative reporting exemption for certain NO and NO_2 air releases which could result in these releases not being required to be reported under CERCLA section 103 and EPCRA section 304. EPA will move forward with the proposal as soon as resources become available. Finally, we are providing enforcement discretion to certain sources that would otherwise have to report their NO and NO_2 air releases until the administrative reporting exemption process is complete or until we publish a notice saying otherwise.

We also received a significant number of comments concerned with the possible impacts of the Interim Guidance on the notification requirements for releases from CAA minor sources. Commentors have provided us with useful information on the number of minor sources they feel are potentially impacted by this guidance, the treatment of minor sources under federal and state air regulatory programs and why they feel that releases from minor sources meet the definition of federally permitted release under CERCLA. Most commentors believe that emissions from minor sources meet the CERCLA federally permitted release definition. We agree with one group of commentors which has pointed out that in some situations emissions that are in compliance with a federally enforceable threshold limit meet the definition of federally permitted releases. The specific situations are discussed in section V of the guidance.

Finally, we have reformatted this guidance to more clearly respond to the questions raised by commentors, and to make the document easier to read in accordance with President Clinton's June 1, 1998, Executive Memorandum on Plain Language in Government Writing. The word ''we'' in this guidance means EPA. The word ''you'' in this guidance means the reader and, depending on context, may mean state, local or tribal government agencies, industry, environmental groups or other stakeholders.

The Office of Solid Waste and Emergency Response and the Office of Enforcement and Compliance Assurance jointly issue this guidance.

Dated: April 4, 2002.

Marianne Lamont Horinko,

Assistant Administrator for Solid Waste and Emergency Response.

Dated: April 11, 2002.

Sylvia K. Lowrance,

Acting Assistant Administrator for Enforcement and Compliance Assurance.

Appendix A—Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions

Table of Contents

I. Background: CERCLA Section 103 and EPCRA Section 304

Reporting Requirements

The Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 *et seq.* (''CERCLA'') gives EPA broad authority to respond to releases or threats of releases of hazardous substances. In order to alert federal officials of potentially dangerous releases of hazardous substances, CERCLA section 103 requires facilities to immediately notify the National Response Center (''NRC'') of any release of a hazardous substance in an amount equal to or greater than the reportable quantity

(''RQ'') for that substance. Section 103(a) states, in part, as follows:

> Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to section 9602 of this title, immediately notify the National Response Center * * *

42 U.S.C. 9603(a). This notification provides release information to the government so that government personnel can evaluate the need for a response and undertake any necessary action in a timely fashion. CERCLA section 103(f) stablishes an alternative reporting scheme for releases that are continuous and stable in quantity and rate. A facility choosing this alternative submits a report on the continuous release in compliance with the regulations at 40 CFR 302.8 and 355.40(a)(2)(iii). CERCLA section 104 authorizes the federal government to respond whenever there is a release or a substantial threat of a release of a hazardous substance.

The Emergency Planning and Community Right-to-Know Act (''EPCRA''), 42 U.S.C. 11001 *et seq.*, also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (''SARA''), and its implementing regulations (40 CFR part 355) was established to ''* * * provide the public with important information on the hazardous chemicals in their communities, and to establish emergency planning and notification requirements which would protect the public in the event of a release of hazardous chemicals.'' H.R. Conf. Rep. No. 962, 96th Cong., 2d Sess. (1986). EPCRA section 304 requires the owner or operator of a facility to immediately notify both the state emergency response commissions (''SERC'') and local emergency planning committees (''LEPC'') whenever the facility has a release of an RQ or more of a CERCLA hazardous substance or an EPCRA extremely hazardous substance (''EHS'') for each area that the release is likely to affect. EPCRA section 304(c) requires the owner or operator of the facility, as soon as practicable after a reportable release, to provide a written follow up notice that includes information on the release, response actions, risks and medical advice.

CERCLA section 101(14) defines the term ''hazardous substance'' by reference to provisions in other environmental statutes that identify substances as hazardous and to CERCLA section 102, which authorizes the EPA Administrator to designate additional hazardous substances when their release may present substantial danger to the public health or welfare or the environment. Pursuant to CERCLA section 102, the Administrator sets the quantities for hazardous substances known as reportable quantities (''RQ'') that, when released, require reporting. If the Administrator has not established an RQ, section 102(b) provides for a default RQ. A table at 40 CFR 302.4 lists the CERCLA hazardous substances with their RQs, and tables at 40 CFR part 355, appendices A & B list the EPCRA EHSs with their RQs.

Immediate notification provides emergency planning authorities with the information they need to respond to the release as quickly as possible in order to minimize the danger to human health and the environment, including dangers to children, other sensitive populations and sensitive ecosystems. The release reports also alert emergency planning personnel to the potential for future risks so that local communities can work with facilities to minimize those risks. Emergency planning authorities can also use the release reports to assess emergency planning needs, to identify and develop appropriate responses to acute as well as chronic exposure and to assess cumulative effects of chemical exposures from many different sources in local areas. EPCRA gives members of the public, including local communities and individuals, the right to know the types and amounts of releases of certain chemicals in their communities.

Exemption for Federally Permitted Releases

Congress exempted ''federally permitted releases'' as defined in CERCLA section 101(10) from the notification requirements in CERCLA section 103 and EPCRA section 304. The definition of federally permitted release in CERCLA section 101(10) specifically identifies releases that are regulated under other environmental programs, such as the National Pollutant Discharge Elimination System of the Clean Water Act; Resource Conservation and Recovery Act; and the Underground Injection Control program of the Safe Drinking Water Act, among others. Our guidance document only addresses certain air releases when the source of the release is regulated under the Clean Air Act (''CAA''). CERCLA section 101(10)(H) defines federally permitted releases under the CAA as:

> any emission into the air subject to a permit or control regulation under section 111, section 112, title I part C, title I part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated, or approved under these sections.

CERCLA section 101(10)(H); 42 U.S.C. 9601(10)(H)(internal citations omitted).

II. Purpose of Guidance

This guidance document discusses the most common questions we have received from the public on the federally permitted release definition and discusses the principles we consider most important in evaluating whether an air release may be considered a CERCLA section 101(10)(H) federally permitted release.

The Senate committee that considered the CERCLA definition of federally permitted release recognized that the CAA controls air pollutants in several ways:

> In the Clean Air Act, unlike some other Federal regulatory statutes, the control of hazardous air pollutant emissions can be achieved through a variety of means: express emissions limitations (such as control on the pounds of pollutant that may be discharged from a source during a given time); technology requirements (such as floating roof tanks on hydrocarbons in a certain vapor pressure range); operational requirements (such as start up or shut down procedures to control emissions during such operations); work practices (such as the application of water to suppress certain particulates); or other control practices. Whether control of hazardous substance emissions is achieved directly or indirectly, the means must be specifically designed to limit or eliminate emissions of a designated hazardous pollutant or a criteria pollutant. Senate Rep. 848, 96th Cong., 2d Sess. 49 (1980).

Because of the numerous programs under the CAA and their complexity, this guidance does not address each application of the exemption. This guidance is intended for you to use as a general guide to determine, on a case-by-case basis, whether an air release of a hazardous substance qualifies as a federally permitted release. You should consider any permit language as a whole rather than reviewing specific language in isolation and also look at all applicable control requirements in order to determine whether, taken together, they subject a release of a hazardous substance to a relevant CAA permit or control regulation.

The CERCLA, EPCRA and CAA statutory provisions and the EPA regulations described in this guidance contain legally binding requirements. This guidance does not substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose new legally-binding requirements on EPA, states or the regulated community, and may not

apply to particular situations depending upon the circumstances. We retain the discretion to adopt approaches that differ from this guidance when appropriate, and may change this guidance in the future. In implementing and enforcing the reporting requirements of the statutes, we will decide what position to take in each particular case based on the applicable statutes and regulations for each release. Interested parties are free to challenge our position in particular situations before the administrative or judicial courts, which ultimately decide how the exemption applies based on the statutes and regulations themselves.

III. Emission Exceedances of Permit Limits and Control Regulations

• I have discovered a violation at my facility which resulted in a release of a hazardous substance in excess of the CAA control regulation. Does this release qualify for the CERCLA section 101(10)(H) federally permitted release exemption?

The EPA Environmental Appeals Board (''EAB'') concluded that ''* * * a release 'subject to' Clean Air Act regulatory requirements must be in conformance with those requirements in order to be exempt from EPCRA and CERCLA emergency reporting provisions * * *'' In re Mobil Oil Corp., EPCRA Appeal No. 94–2, 5 EAD 490, 508, 1994 WL 544260 (EAB, Sept. 29, 1994).

The EAB reasoned that:

To adopt Mobil's argument that any noncomplying air release triggers the [federally permitted release] exemption so long as the pollutant released is addressed in some way in a permit or other Clean Air Act requirement would mean that potentially significant air releases would be exempt from EPCRA reporting obligations, regardless of the extent of the noncompliance or resulting environmental harm.

IV. Criteria Pollutants: Ozone (VOC), PM and NO_X

• My facility has a CAA permit which contains emission limits for VOC and PM and is not subject to NESHAPs. The facility releases are in compliance with the VOC or PM limits. Are the releases of hazardous substances that are also either VOCs or emitted as particulate matter federally permitted releases under CERCLA?

If you are in compliance with your federally enforceable CAA permit limit or control regulation for volatile organic compounds (''VOC'') or particulate matter (''PM''), and those limits or controls include conditions that, when viewed together, control the release of a constituent hazardous substance, such a release would likely qualify as a federally permitted release. The Senate Report language states that to qualify for the CERCLA 101(10)(H) federally permitted release exemption, the means of controlling the hazardous substance emissions must be ''* * * specifically designed to limit or eliminate emissions of a designated hazardous pollutant or a criteria pollutant'' (Senate Report No. 848 at 49). [1] Whether the hazardous substance or EHS is a criteria pollutant or a hazardous air pollutant, the permit limit or control should have the specific effect of limiting or eliminating the releases of the designated hazardous substance or EHS if releases of that hazardous substance or EHS are to qualify for the federally permitted release exemption.

When evaluating whether a release qualifies for the federally permitted release exemption, you should consider whether your federally enforceable CAA permit limit or the applicable control regulations limit or eliminate the release of the designated hazardous substance or EHS. Because of the variety of VOC and PM permit terms and controls, we cannot establish any ''bright line'' tests to determine whether a control regulation or permit limit for VOC or PM is adequate to qualify a release of a designated hazardous substance or EHS as a CERCLA federally permitted release. You should consider whether the permit provides direct or indirect control of a designated hazardous substance or EHS by reviewing the federally enforceable permit limits and control regulations that apply to your releases of hazardous substances or EHSs. Where the federally enforceable permit limits and control regulations, considered together, have the specific effect of limiting or eliminating releases of a hazardous substance or EHS, we will infer that these permit limits and control regulations were designed to achieve that result unless circumstances or evidence clearly indicate to the contrary. The following criteria may help you determine whether a permit limit or control requirement for VOC or PM has the specific effect of limiting or eliminating the release of a hazardous substance or EHS:

• Are the federally enforceable permit limits short term, or do the federally enforceable control requirements minimize the likelihood of a substantial release of a hazardous substance or EHS? If short term limits control releases of the hazardous substances or EHS, even when the limit is expressed in VOC or PM terms, the releases of those substances subject to short term limits would probably qualify for the CERCLA federally permitted release definition.

• Does the permit application or applicable regulation (including supporting materials such as preambles, technical background documents, or details in the permit application that are referenced in the permit) include information that clearly shows that the federally enforceable VOC or PM limits have the specific effect of limiting or eliminating the release of the designated hazardous substance or EHS? If so, then the releases of those substances would probably qualify for the CERCLA section 101(10)(H) federally permitted release exemption.

Permit limits and control regulations usually do not control or limit unanticipated releases such as accidents or malfunctions and for that reason such releases generally do not qualify for the CERCLA section 101(10)(H) federally permitted release exemption.

• If I am in compliance with my federally enforceable permit limit for NO_X issued under Title I of the CAA, would my release of NO and NO2 equal to or greater than the RQ qualify for the CERCLA section 101(10)(H) federally permitted release exemption?

Yes. NO_X permit limits and control regulations under CAA Title I are designed to regulate nitrogen oxide (''NO'') and nitrogen dioxide (''NO_2'') emissions, and their hazardous impacts are taken into consideration when establishing these limits. Thus, NO_X permit limits are sufficient to meet the CERCLA federally permitted release definition for releases of NO and NO_2. Accordingly, your releases of NO or NO_2 are federally permitted releases if they are in compliance with your NO_X permit limit.

V. Minor Sources

• NESHAP, SIP or other CAA permitting requirements are not applicable to my source because my emissions are below an annual threshold limit. Would my releases meet the definition of CERCLA section 101(10)(H) federally permitted release?

Releases in compliance with a federally enforceable threshold as well as releases that comply with any federally enforceable technology requirements, operational requirements, work practices or other control practices, would generally meet the definition of federally permitted releases in CERCLA section 101(10)(H) when the emission threshold limits or eliminates the release of the designated

[1] Hazardous substance or EHS include any pollutant for which a reportable quantity has been established under CERCLA or EPCRA.

hazardous substance or EHS at issue. Releases of hazardous substances or EHSs from the normal operations of such minor sources would qualify for the CERCLA section 101(10)(H) federally permitted release definition when the emissions of designated hazardous substances or EHSs are subject to the threshold limit imposed by law or regulation. For example, under the CAA section 112 ''area sources'' (sources that do not have the potential to emit 10 tons per year or more of any one HAP, or 25 tons per year or more of a combination of HAPs) do not have to comply with NESHAP regulations that apply to major sources only, as long as they stay below that threshold. If their emissions exceed this limit they must comply with the appropriate NESHAP standards for their major source. Releases of designated hazardous substances or EHSs from normal operations are limited by this standard and therefore meet the definition of federally permitted release in CERCLA 101(10)(H).

In addition to thresholds under the CAA section 112, some states have incorporated regulations into their federally enforceable CAA section 110 state implementation plans (''SIPs'') imposing federally enforceable thresholds on air toxics in addition to criteria pollutants such as NO_X or sulfur dioxide (SO_2). As long as a source complies with the emission (or potential-to-emit) thresholds, it does not have to comply with other CAA requirements. These sources are commonly referred to as minor sources. A release of a hazardous substance or EHS resulting from normal operations of a minor source that is in compliance with these SIP regulations generally meet the CERCLA definition of a federally permitted release. See section IV (Criteria Pollutants: VOC and PM) for a discussion on whether VOC or PM limits and controls qualify as CERCLA federally permitted releases for releases of designated hazardous substances or EHSs. If, as discussed in that section, federally enforceable VOC or PM thresholds for minor sources limit emissions of the designated hazardous substance or EHS, these releases would generally meet the definition of federally permitted release in CERCLA section 101(10)(H).

These thresholds, however, generally do not control unanticipated releases such as accidents or malfunctions. The thresholds for minor sources are usually only directed at the facility's releases from its normal operations. Even a very small source could have an accident or malfunction that causes a release of a hazardous substance or EHS that requires an immediate response. The Senate committee report stated that ''Accidents—whatever their cause—which result in, or can reasonably be expected to result in releases of hazardous pollutants would not be exempt from the requirements and liabilities of this bill. Thus, fires, ruptures, wrecks and the like invoke the response and liability provisions of the bill.'' Senate Report No. 96–848 at 48. Area sources and other sources that are subject to a regulation that limits their total annual emissions should generally report their releases at or above the RQ of hazardous substances and EHSs that are caused by accidents, malfunctions, unanticipated releases and other releases that are not part of the facility's normal operations.

VI. Waivers

• My hazardous release is subject to a waiver pursuant to CAA section 111. Would this release qualify for the CERCLA federally permitted release exemption?

Yes, your release subject to the waiver is a CERCLA federally permitted release. Section 101(10)(H) of CERCLA exempts releases subject to ''* * * any schedule or waiver granted, promulgated, or approved under * * *'' the CAA sections 110, 111, 112 and Title I Parts C and D. 42 U.S.C. 9601(10)(H)(internal citations omitted).

As an example, under section 111(j)(1) of the CAA, we may grant a waiver from a New Source Performance Standard (''NSPS'') in order to encourage the use of an innovative technological system or systems of continuous emission reduction. If the technology does not result in an emission reduction that equals or exceeds the applicable standard, we will terminate the waiver and establish a schedule for compliance. The release of a hazardous substance or EHS that would have been controlled by the NSPS without the waiver is a CERCLA federally permitted release, as long as it is in compliance with the terms of the CAA waiver.

VII. Accidents and Malfunctions

• I had an accidental release of a hazardous substance above the CERCLA RQ while I was operating consistent with my accident and malfunction plan. Would my release, qualify for the CERCLA section 101(10)(H) federally permitted release exemption?

In most circumstances, releases resulting from accidents and malfunctions do not qualify for the federally permitted release exemption as defined in CERCLA section 101(10)(H). Releases due to accidents and malfunctions, because they are by definition not anticipated, are difficult to subject to controls which limit or eliminate emissions. Congress did not intend to exempt unanticipated releases such as accidents and malfunctions from CERCLA section 103 and EPCRA section 304. As explained in the Senate Report, ''Accidents—whatever their cause—which result in, or can reasonably be expected to result in releases of hazardous pollutants would not be exempt from the requirements and liabilities of this bill. Thus, fires, ruptures, wrecks and the like invoke the response and liability provisions of the bill.'' Senate Report No. 96–848 at 48.

Although the CAA requires accident and malfunction plans in order to prevent, identify and minimize accidental releases, these plans may be too general to be considered specifically designed to limit or eliminate emissions of a designated hazardous pollutant or a criteria pollutant, and thus releases resulting from accidents and malfunctions would generally not qualify as CERCLA federally permitted releases.

For example, in *In re Borden Chemicals & Plastics, Co.,* [CERCLA]EPCRA 003–1992 (Order Granting Partial Accelerated Decision Concerning Liability, Feb. 18, 1993), the Administrative Law Judge concluded that a release is only a CERCLA federally permitted release if the regulation imposes an emission limit or otherwise controls the release. In Borden, the judge held that the discharge from an emergency relief valve was not a federally permitted release, regardless of whether the discharge violated the CAA, because the release was not controlled by the NESHAP regulation.

Nevertheless, we realize that there are a wide variety of approaches to dealing with accidents and malfunctions in CAA regulations, permits and SIPs. Accordingly, there may be unusual circumstances in which a release of a hazardous substance or EHS that resulted from an accident or malfunction might qualify for the federally permitted release exemption in section 101(10)(H) of CERCLA. Regardless, EPA strongly encourages the prompt reporting of any release associated with an accident or malfunction. In addition, remember that under many provisions in the CAA, in order for a release to qualify as an accident or malfunction it must not be preventable. Releases that were preventable may violate the general duty clause of the CAA.

VIII. Start-up and Shut-down

• I am operating under an approved start-up/shut-down plan. If I have a release of a hazardous substance during a start-up or shut-down, will it qualify as a federally permitted release?

If your release is in compliance with the requirements in an approved start-up/shut-down plan which contains federally enforceable procedures which limit or control your releases during start-up or shut-down, then your release would generally qualify for the federally permitted release exemption. As discussed above, like accidents and malfunctions, emissions from start-ups and shut-downs have been handled in a variety of ways in CAA regulations, permits and SIPs. In many instances, facilities must have a start-up and shut-down plan that sets forth procedures for operating and maintaining a source during those periods. See, e.g., 40 CFR 63.6(e)(3). Unlike malfunctions and accidents which are unpredictable, releases from start-ups or shut-downs may be anticipated and therefore they may be more likely to have emission limitations or controls.

However, if a release of a hazardous substance or EHS is exempt from CAA regulation, or is otherwise not subject to emission limits or other controls during the start-up or shut-down of an operation, then these uncontrolled releases do not qualify for the federally permitted release exemption and must comply with CERCLA and EPCRA notification requirements.

IX. Conclusion

The federally permitted release exemption to the CERCLA section 103 and EPCRA section 304 notification requirements exempts from the notification requirements certain air emissions of hazardous substances and EHSs when the release of the hazardous substance or EHS is subject to a permit or control regulation issued pursuant to CAA sections 111 and 112, Title I part C, Title I part D, or a section 110 SIP. Each facility is responsible for determining whether its hazardous substance and EHS releases qualify for the notification exemption in light of the particular CAA requirements that apply to the facility.

Appendix B—Enforcement Discretion

In a memorandum dated February 15, 2000, and in subsequent extensions dated September 13, 2000, November 30, 2000, April 20, 2001, July 31, 2001, October 10, 2001, January 16, 2002, and March 7, 2002, the Assistant Administrator of the Office of Enforcement and Compliance Assurance exercised discretion to not enforce against facilities for failure to report certain types of air releases until publication of the revised guidance. We are extending this discretion for 180 days following the date of this notice unless the release is:

(1) an unanticipated release, such as an accident or malfunction;

(2) a release in excess of a permit limit or control regulation as described in the EAB decision In re Mobil Oil Corp., EPCRA Appeal No. 94–2, 5 EAD 490 (EAB Sept. 29, 1994);

(3) a release from an emergency relief valve, as described in the ALJ's decision In re Borden Chemicals & Plastics, Co., [CERCLA] EPCRA 003–1992 (Order Granting Partial Accelerated Decision Concerning Liability, Feb. 18, 1993);

(4) a release from a source that is grandfathered and not subject to CAA permits or control regulations; or

(5) a release from a source that is otherwise exempt and not subject to any federally enforceable CAA permit or control regulation.

Furthermore, we recognize that certain uncontrolled air emissions of nitrogen oxide (''NO'') and nitrogen dioxide (''NO_2'') equal to or greater than the ten pound reportable quantity may rarely require a government response. The Agency supports the proposal of an administrative reporting exemption for certain NO and NO_2 air releases which could result in these releases not being required to be reported under CERCLA section 103 and EPCRA section 304. EPA will move forward with the proposal as soon as resources become available. Until the process for an administrative reporting exemption is complete, or until we publish a notice stating otherwise, we will exercise enforcement discretion and not enforce against owners/operators or persons in charge for failure to report air releases of NO and NO_2 that would otherwise trigger a reporting obligation under CERCLA section 103 and EPCRA section 304, unless such releases are the result of an accident or malfunction.

[FR Doc. 02–9322 Filed 4–16–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 8, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 17, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0674.

Title: Section 76.931, Notification of Basic Tier Availability, and Section 76.932, Notification of Proposed Rate Increase.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 11,365.

Estimated Time per Response: 2.25 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 25,572 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR 76.931 requires each cable operator to provide written notification to subscribers of the availability of basic tier service by November 30, 1993, or three billing cycles from September 1, 1993, and to new subscribers at the time of installation. This notification is to include: (a) What basic tier service is available; (b) cost per month for basic tier service; and (c) list of all services included in the basic service tier. 47 CFR 76.932 requires each cable operator