ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 302 and 355

[FRL–6309–3a]

Administrative Reporting Exemptions for Certain Radionuclide Releases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment of final rule.

SUMMARY: The Environmental Protection Agency today is issuing amended language to a final rule published on March 19, 1998, (63 FR 13460) that granted exemptions from certain reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act and the Emergency Planning and Community Right-to-Know Act.

Among other reporting exemptions, the March 19, 1998, final rule exempted from certain reporting requirements releases of naturally occurring radionuclides associated with land disturbance incidental to extraction activities, except that which occurs at uranium, phosphate, tin, zircon, hafnium, vanadium, and rare earth mines. Today's technical amendment will clarify that land disturbance incidental to extraction includes replacing in mined-out areas coal ash, earthen materials from farming and construction, or overburden or other raw materials generated from the exempted mining activities. The clarification is intended to remove misunderstanding as to which radionuclide releases are subject to the final reporting exemptions.

EFFECTIVE DATE: March 17, 1999.

ADDRESSES:

Release Notification: The toll-free telephone number of the National Response Center is 800/424–8802; in the Washington, DC metropolitan area, the number is 202/267–2675. The facsimile number for the National Response Center is 202/267–2165 and the telex number is 892427.

Docket: Copies of materials relevant to the March 19, 1998, rulemaking are contained in the U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202 [Docket Number 102RQ3–RN–2]. The docket is available for inspection, by appointment only, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 703/603–9232. The public may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, an administrative fee of $25 and a charge of $0.15 per page for each page after page 266 will be incurred. The Docket Office will mail copies of materials to requestors who are outside the Washington, DC metropolitan area. The docket for the March 19, 1998, rulemaking will be kept in paper form.

FOR FURTHER INFORMATION CONTACT: The RCRA/UST, Superfund, and EPCRA Hotline at 800/424–9346 (in the Washington, DC metropolitan area, contact 703/412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800/553–7672 (in the Washington, DC metropolitan area, contact 703/486–3323); or the Office of Emergency and Remedial Response (5202G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 (contact Elizabeth Zeller 703/603–8744).

SUPPLEMENTARY INFORMATION:

Potentially Affected Entities

Entities that may be affected by this technical amendment include: (1) persons in charge of vessels or facilities that may have naturally occurring radionuclide releases into the environment that are among those granted an administrative reporting exemption by the March 19, 1998, final rule; and (2) entities that plan for or respond to such releases.

The table below lists potentially affected entities. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other entities not listed in the table could also be affected. To determine whether your organization is affected by this action, carefully examine the changes to 40 CFR parts 302 and 355. If you have questions regarding the applicability of this action to a particular entity, consult the contact names and phone numbers listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

POTENTIALLY AFFECTED ENTITIES

Type of entity	Examples of affected entities
Industry	Mines and entities that backfill mined-out areas.
State, Local, or Tribal Governments	State Emergency Response Commissions, Local Emergency Planning Committees.
Federal Government	National Response Center, and any Federal agency that may have radionuclide releases granted a reporting exemption.

Reasons for Today's Amendment

The March 19, 1998, final rule broadened exemptions from the CERCLA section 103 and EPCRA section 304 release reporting requirements to include releases of naturally occurring radionuclides from land disturbance incidental to extraction activities at all mines except certain categories of mines that are likely to handle raw materials with elevated radionuclide concentrations. The final rule also broadened the reporting exemptions to include releases of naturally occurring radionuclides to and from coal and coal ash piles at all sites. EPA granted these exemptions to eliminate needless reporting burdens on persons responsible for certain mine sites and coal and coal ash piles. The reporting exemptions also allow the government to better focus its resources on the most serious releases, resulting in more effective protection of public health and welfare and the environment.

Sections 302.6(c)(2) and 355.40(a)(2)(vi)(B) of the final rule stated that land disturbance incidental to extraction includes: land clearing; overburden removal and stockpiling; excavating, handling, transporting, and storing ores and other raw materials; and replacing materials in mined-out areas so long as such materials have not been beneficiated or processed and do not contain elevated radionuclide concentrations (defined as greater than 7.6 picocuries per gram or pCi/g of Uranium-238, 6.8 pCi/g of Thorium-232, or 8.4 pCi/g of Radium-226, which equal two times the upper end of the concentration range reported in the literature for typical surface soil). One person involved with a mining operation has since commented that this language can be read to suggest that mines subject to the reporting exemption would have to test their raw materials or any other materials they use to backfill mined-out areas to determine

whether they are below the stated concentration thresholds. If so, such a requirement would in fact impose a new burden on those categories of mines that were supposed to be granted regulatory relief.

EPA did not intend for the reporting exemptions to be contingent on new measurements of radionuclide concentrations in materials handled at mines. Instead, the final rule itself distinguished between the exempt mines and those mines handling ores likely to have elevated radionuclide concentrations. The final rule granted the exemption for radionuclide releases from land disturbance incidental to extraction based on the Agency's review of available data showing that overburden and raw (not beneficiated or processed) ore generated at most types of mines have radionuclide concentrations that are at or near background. EPA intended to exempt all land disturbance in the exempt mines, including replacement, so long as the replacement materials originated from an exempt activity. Therefore, mines subject to the exemption do not need to test their raw materials when backfilling mined-out areas.

In summary, mines subject to the exemption do not need to report releases associated with the placement of raw materials that they generate into mined-out areas. Moreover, mines subject to the exemption do not need to report radionuclide releases associated with the placement of coal ash or earthen materials from farming or construction into mined-out areas, because these materials have also been found to have radionuclide concentrations that are at or near background. Today's technical amendment to the final regulatory language clarifies these points and removes confusing language from the regulation.

Today's notice does not create any new or any different regulatory requirement; rather, it clarifies which activities are covered by the administrative exemptions promulgated on March 19, 1998. For this reason, EPA finds that this rule falls under the good cause exemption in section 553(b) of the Administrative Procedure Act (APA), allowing the Agency to forego prior notice and opportunity for public comment before issuing this final rule. For the same reason, EPA finds that good cause exists to provide for an immediate effective date under section 553(d) of the APA.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 F.R. 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the March 19, 1998 **Federal Register** notice.

Submission to Congress and the General Accounting Office

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 Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5. U.S.C. § 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 17, 1999. 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.** This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Parts 302 and 355

Environmental protection, Air pollution control, Chemicals, Hazardous materials, Hazardous wastes, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: February 19, 1999.

Timothy Fields, Jr.,

Acting Assistant Administrator.

For the reasons set out above, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

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

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

2. Section 302.6 is amended by revising paragraph (c)(2) to read as follows:

§ 302.6 Notification requirements.

* * * * *

(c) * * *

(2) Releases of naturally occurring radionuclides from land disturbance activities, including farming, construction, and land disturbance incidental to extraction during mining activities, except that which occurs at uranium, phosphate, tin, zircon, hafnium, vanadium, monazite, and rare earth mines. Land disturbance incidental to extraction includes: land clearing; overburden removal and stockpiling; excavating, handling, transporting, and storing ores and other raw (not beneficiated or processed) materials; and replacing in mined-out areas coal ash, earthen materials from farming or construction, or overburden or other raw materials generated from the exempted mining activities.

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PART 355—EMERGENCY PLANNING AND NOTIFICATION

3. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11004, and 11048.

4. Section 355.40 is amended by revising paragraph (a)(2)(vi)(B) to read as follows:

§ 355.40 Emergency release notification.

(a) * * *

(2) * * *

(vi) * * *

(B) Naturally from land disturbance activities, including farming, construction, and land disturbance incidental to extraction during mining activities, except that which occurs at uranium, phosphate, tin, zircon, hafnium, vanadium, monazite, and rare earth mines. Land disturbance incidental to extraction includes: land clearing; overburden removal and stockpiling; excavating, handling, transporting, and storing ores and other raw (not beneficiated or processed) materials; and replacing in mined-out areas coal ash, earthen materials from farming or construction, or overburden or other raw materials generated from the exempted mining activities.

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[FR Doc. 99–6512 Filed 3–16–99; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AC96

National Flood Insurance Program (NFIP); Insurance Coverage and Rates

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: We (the Federal Insurance Administration) are increasing the amount of premium you (the flood insurance policyholder) pay for flood insurance coverage for ''pre-FIRM'' buildings in coastal areas subject to high velocity waters, such as storm surges, and wind-driven waves (''V'' zones). (''Pre-FIRM'' buildings are those whose construction was started before January 1, 1975, or the effective date of a community's Flood Insurance Rate Map (FIRM), whichever is later. Pre-FIRM buildings and their contents are eligible for subsidized rates.) We are increasing rates for pre-FIRM, V-zone properties to recognize the inherently greater flood risk of these properties.

EFFECTIVE DATE: This rule is effective on May 1, 1999.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., room 840, Washington, DC 20472, 202–646–3422, (facsimile) 202–646–4327, or (email) *charles.plaxico@fema.gov*. 202–646–4536, or (email) *rule@fema.gov*.

SUPPLEMENTARY INFORMATION: We proposed a rule at 64 FR 3909, January 26, 1999, that would increase the premium rates that we charge under the National Flood Insurance Program for pre-FIRM, V-zone properties. We received comments from: the Association of State Floodplain Managers, Inc., the Amite River Basin Drainage and Water Conservation District, and the Coast Alliance.

The *Association of State Floodplain Managers, Inc.* raised three issues. The first issue deals with the subsidy. The Association said that ''we believe that any rate increase, however justified, needs to be made in the context established by Congress—that owners of buildings constructed before the communities joined the NFIP are intended to be subsidized.'' This rule does not eliminate the subsidy for pre-FIRM, V-zone structures. It only reduces the subsidy. The change in rates for the pre-FIRM, V-zone policyholders, currently paying an average annual premium of $440, will result in an average increase of about seven percent. The rule remains consistent with the National Flood Insurance Program's enabling legislation and the discretionary authority granted to FEMA to administer the program.

The second issue the Association raised is that the National Flood Insurance Reform Act of 1994 requires FEMA to conduct a study ''of the impact of reducing the subsidy of pre-FIRM policies.'' The Association pointed out correctly that FEMA has not yet finished that study. However, the Association's comment incorrectly characterizes the nature of the study, which involves examining economic impacts of eliminating the subsidy by charging full actuarial premiums to pre-FIRM structures. Our current regulatory action calls for a modest rate increase for pre-FIRM, V-zone properties and does not need to await completion of the study.

The Association's third issue is that ''any rate increase must be part of an overall effort to evaluate all measures to reduce flood losses, and such measures must not be based solely on increasing income by increasing the cost of insurance, but needs to focus on mitigation measures to reduce claims against the NFIP.'' We have not forsaken nor do we intend to forsake mitigation efforts in favor of merely raising premiums for a small group of policyholders. Experience shows us that we can make small improvements to the program without jeopardizing or delaying larger initiatives such as the agency's repetitive for dealing with properties with multiple flood losses.

The *Amite River Basin Drainage and Water Conservation District* agreed with our overall objective of minimizing losses, but disagreed with the rule as proposed saying that ''we do not agree on the proposed rules to increase the subsidized rates for pre-FIRM properties in A and V zones.'' The District went on to say that any ''increase in subsidized insurance rates should be considered in the context of an overall strategy and program to reduce flood losses at this time, which FEMA has not done. The overall strategy and program should include a very critical and important 'phase-out' program that will lead us from a 'high loss' status to a 'low loss' status. This will require time (years) and funding at the federal, state, and local level.''

There are several misunderstandings by the District. First, the rule does not affect pre-FIRM, A-zone properties. The rule affects only the rates for pre-FIRM, V-zone properties. The affected properties currently constitute a little more than one percent of the National Flood Insurance Program's policies in force. Second, our action complements rather than stands apart from other initiatives that FEMA has undertaken or is currently developing, particularly with regard to structures with multiple flood losses. The agency is currently looking at permanent solutions, including funding, technical assistance, and insurance approaches, to the recurring problems of multiple-flood-loss structures. Taking this action now in no way diminishes any of those other initiatives. Third, we have phased in rate increases for pre-FIRM properties over time. The last time we increased subsidized premium rates was in 1996. So we believe we are consistent with the District's recommendation for a phased-in approach.

The *Coast Alliance* agreed with the proposed rule saying, ''We support the Federal Emergency Management Agency's proposed rule to increase the amount of premium paid by the policyholder for flood insurance for 'pre-FRM' buildings in coastal areas subject to high velocity waters and wind-driven waves ('V' zones).'' The Coast Alliance, however, expressed concern about any availability of subsidized or non-actuarial premium rates in coastal areas and recommended that ''FEMA must take the next logical step to deny new flood policies in high risk areas.'' We believe that this recommendation should be dealt with legislatively, as were the two precedents for denying flood insurance coverage in certain geographical areas at 42 U.S.C.