



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 355

[EPA-HQ-OLEM-2023-0142; FRL-10285-01-OLEM]

RIN 2050-AH31

### **Potential Future Regulation for Emergency Release Notification Requirements for Animal Waste Air Emissions under the Emergency Planning and Community Right-to-Know Act (EPCRA)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Advance Notice of Proposed Rulemaking (ANPRM).

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) is soliciting information pertaining to and is requesting comments to assist in the potential development of regulations to reinstate the reporting of animal waste air emissions at farms under the Emergency Planning and Community Right-to-Know Act (EPCRA). The Agency is soliciting comments under five general categories: health impacts; implementation challenges; costs and benefits; small farm definition and potential reporting exemption; and national report on animal waste air emissions. Requiring reporting of animal waste air emissions may advance the community right-to-know aspect of EPCRA by providing the public with information that may impact their health and the environment. This information may advance EPA's environmental justice goals of increasing the awareness of the potential impact these emissions have on communities with environmental justice concerns. We solicit comments on all aspects of this potential action.

**DATES:** Comments must be received on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-HQ-OLEM-2023-0142, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method).

Follow the online instructions for submitting comments.

- Mail: U.S. Environmental Protection Agency, EPA Docket Center, EPA-HQ-OLEM-2023-0142 Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC, 20460.
- Hand Delivery or Courier: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC, 20004. The Docket Center’s hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal Holidays).

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking.

Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** William Noggle, U.S. Environmental Protection Agency, Office of Emergency Management, 1200 Pennsylvania Avenue, NW, Washington, DC, 20460; 202-566-1306; [noggle.william@epa.gov](mailto:noggle.william@epa.gov).

**SUPPLEMENTARY INFORMATION:**

*Organization of this document.* The information in this preamble is organized as follows:

- I. Public Participation
  - A. Written Comments
  - B. Comment Headings
- II. General Information
  - A. Does this ANPRM apply to me?
  - B. What is the purpose of this ANPRM?
  - C. Legal authority
- III. Background
  - A. Overview
  - B. Release Reporting Requirements under CERCLA and EPCRA

- C. Continuous Release Reporting (CRR) Regulations
  - D. Regulatory and Legal Background
    - 1. 2008 CERCLA/EPCRA Reporting Exemption Rule and Related Litigation
    - 2. 2018 FARM Act and Related 2018 CERCLA Rule
    - 3. 2019 EPCRA Rule and Related Litigation
    - 4. Executive Order 13990, January 20, 2021
- IV. What Information is EPA Seeking?
- A. Health Impacts from Animal Waste Air Emissions
  - B. Implementation Challenges
    - 1. National Air Emissions Monitoring Study (NAEMS)
    - 2. Emissions Calculator and Guidance on Estimating Amounts of Air Releases
    - 3. Grazing Operations
    - 4. Use of Continuous Release Reporting by Farms
    - 5. Citizen Suits
    - 6. Privacy Concerns
    - 7. EPCRA National Database
  - C. Costs and Benefits
    - 1. Estimated Regulated Universe
    - 2. Burden Estimates
    - 3. Environmental Justice and Community Right-to-Know
  - D. Small Farms
    - 1. Potential Reporting Exemption for “Small Farms”
    - 2. Defining “Small Farms”
    - 3. Animal Waste Management Methods for “Small Farms”
    - 4. Health Impacts from “Small Farms”
    - 5. State, Tribal, and Local Emergency Planners and Responders Use of “Small

## Farm” Animal Waste Air Emissions Information

### 6. Adjusting the RQs of Ammonia and Hydrogen Sulfide for Animal Waste Air Emissions

#### E. National Report on Animal Waste Emissions

#### V. Request for Comment and Additional Information

#### VI. What are the Next Steps EPA Will Take?

#### VII. Statutory and Executive Order Reviews

## **I. Public Participation**

### *A. Written Comments*

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2023-0142, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA’s docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

### *B. Comment Headings*

Commenters should review the discussions in the preamble and are encouraged to comment on any matter that is addressed by this ANPRM. For comments submitted through

postal mail or <https://www.regulations.gov>, EPA is requesting that commenters identify their comments on specific issues by using the appropriate number and comment headings listed below to make it simpler for the Agency to process your comment. If your comment covers multiple issues, please use all the heading numbers and names that relate to that comment. These are the comment headings for specific issues in this ANPRM:

- #1 – Health Impacts (see Section IV.A)
- #2 – Emissions Estimating Methodologies (see Section IV.B.1)
- #3 – 2005 Compliance Agreement (see Section IV.B.1)
- #4 – Emissions Calculator – General (see Section IV.B.2)
- #5 – Emissions Calculator – Continuous Release Reporting (see Section IV.B.2)
- #6 - Accuracy of Reported Release Quantity (see Section IV.B.2)
- #7 – Turkey and Beef Contribution Factors (see Section IV.B.2)
- #8 – Estimating Emissions from Less Common Species (see Section IV.B.2)
- #9 – Estimating Emissions from Atypical Farming Operations (see Section IV.B.2)
- #10 – Cutoffs for Estimating (see Section IV.B.2)
- #11 – Other Guidance (see Section IV.B.2)
- #12 – Grazing Operations (see Section IV.B.3)
- #13 – Application of Continuous Release Reporting (see Section IV.B.4)
- #14 – Application of Upper and Lower Bounds (see Section IV.B.4)
- #15 – Exceptions to Continuous Release Reporting (see Section IV.B.4)
- #16 – Benefit of Continuous Release Reporting Data (see Section IV.B.4)
- #17 – Continuous Release Reporting - Other (see Section IV.B.4)
- #18 – Citizen Suits – Wholly Past Violations (see Section IV.B.5)
- #19 – Citizen Suit Cost and Benefits (see Section IV.B.5)
- #20 – Citizen Suit – Guidance (see Section IV.B.5)
- #21 – Citizen Suit – Other (see Section IV.B.5)
- #22 – Privacy Concerns (see Section IV.B.6)
- #23 – Privacy Concerns – Other (see Section IV.B.6)
- #24 – National EPCRA Database - General (see Section IV.B.7)
- #25 – National Database – Managing Right-to-Know Data (see Section IV.B.7)
- #26 – National Database – Managing Reports from Facilities (see Section IV.B.7)
- #27 – National Database – Animal Waste Air Emissions Reporting (see Section IV.B.7)
- #28 – National Database – Facility Benefits and Disadvantages (see Section IV.B.7)
- #29 – National Database – Managing FOIA Requests (see Section IV.B.7)
- #30 – National Database – Other (see Section IV.B.7)
- #31 – Regulated Universe – Number of Farms Reporting (see Section IV.C.1)
- #32 – Burden –Reporting Farms (see Section IV.C.2)
- #33 – Burden –Non-Reporting Farms (see Section IV.C.2)
- #34 – Burden - Small Farms (see Section IV.C.2)
- #35 – Burden – Qualitative Costs (see Section IV.C.2)
- #36 – Benefits –Environmental Justice (see Section IV.C.3)
- #37 – Indirect Benefits (see Section IV.C.3)
- #38 – Small Farm Exemption – General (see Section IV.D.1)
- #39 – Small Farm Exemption – Criteria (see Section IV.D.1)
- #40 – Small Farm Definition (see Section IV.D.2)
- #41 – Small Farm – Waste Handling (see Section IV.D.3)
- #42 – Small Farm – Health Impacts (see Section IV.D.4)

- #43 – State, Local, and Tribal Impacts (see Section IV.D.5)
- #44 – RQ Adjustment - General (see Section IV.D.6)
- #45 – Industry-Specific RQ Adjustment (see Section IV.D.6)
- #46 – National Report based on USDA or State Data (see Section IV.E)
- #47 – Other Technology for Estimating Air Releases (see Section IV.E)
- #48 – Other Solutions (see Section IV.E)
- Other Comments (Section V)

**II. General Information**

*A. Does this ANPRM apply to me?*

A list of entities that could be affected by a potential future rulemaking include, but are not limited to:

**Table 1. Entities Potentially Affected by a Future Rulemaking**

Type of Entity	Examples of Potentially Affected Entities
Industry	NAICS Code 112 – Animal Production
State and /or Local Governments	NAICS Code 999200 – State Government, excluding schools and hospitals. NAICS Code 999300 – Local Government, excluding schools and hospitals. State Emergency Response Commissions, Tribal Emergency Response Commissions, Tribal Emergency Planning Committees and Local Emergency Planning Committees.

NAICS = North American Industry Classification System

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by a future rulemaking. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*B. What is the purpose of this ANPRM?*

On June 13, 2019, the Agency published a final rule (84 FR 27533) which exempted reporting of animal waste air emissions under EPCRA for all farms, regardless of size. The Agency is reconsidering that final rule and through this ANRPM is seeking information that may assist with a potential future rulemaking requiring farms to report air emissions of extremely hazardous substances from animal waste under EPCRA.

EPA is specifically soliciting information on the following five topics: (1) health impacts; (2) implementation challenges; (3) costs and benefits; (4) small farm definition and reporting exemption, and (5) a national report on animal waste air emissions. Information collected during the public comment period for this ANPRM will better inform the Agency on whether to pursue a proposed rule, as well as assist the Agency on how best to implement the reinstating of EPCRA reporting from farms, if such a rule is finalized. The Agency is also requesting comments and information on any other topics relevant to conducting a future rulemaking on EPCRA reporting of air emissions from animal waste on farms. The solicitation of information in this ANPRM does not necessarily mean any action on farms will occur.

The solicitation of comment on these matters should not be read as EPA suggesting legal ambiguity in the relevant regulations or recognizing a particular interpretation by EPA of either EPCRA, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), or their implementing regulations. For purposes of this comment solicitation, exploration of ways to further clarify particular aspects of the existing regulations should not be viewed as an indication that the existing language is inadequate, or in any way be seen to undermine the Agency's ability to enforce these regulations as written.

### *C. Legal authority*

This advanced notice of proposed rulemaking (ANPRM) is being issued under EPCRA, which was enacted as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99-499). Any future rulemaking would fall under the authority of EPCRA section 304 (42 U.S.C. 11004) and the Agency's general rulemaking authority under EPCRA section 328 (42 U.S.C. 11048).

## **III. Background**

### *A. Overview*

Animal waste air emissions reporting from farms has been subject to a complex history of EPA regulatory actions, subsequent legal challenges, and Congressional legislation. Animal

waste can generate potentially harmful air emissions of ammonia and hydrogen sulfide,<sup>1</sup> which are listed as hazardous substances (HSs) under CERCLA and as extremely hazardous substances (EHSs) under EPCRA. The following sections provide a discussion of the regulatory reporting requirements and the history of prior regulatory and legal actions leading to this ANPRM.

### *B. Release Reporting Requirements under CERCLA and EPCRA*

CERCLA and EPCRA are separate, but interrelated, environmental statutes that work together to provide notification of qualifying releases of HSs and EHSs to the appropriate government authorities. In general, CERCLA section 103 provides for notice to federal officials, whereas EPCRA section 304 provides for notice to state, tribal, and local officials.

Section 103 of CERCLA requires the person in charge of a vessel or facility to immediately notify the National Response Center (NRC)<sup>2</sup> when there is a release of an HS, as defined under CERCLA section 101(14), in an amount equal to or greater than the reportable quantity (RQ) for that substance within a 24-hour period. These requirements are codified in the CERCLA regulations at 40 CFR part 302. In addition to these CERCLA reporting requirements, EPCRA section 304 generally requires owners or operators of certain facilities<sup>3</sup> to immediately notify state, tribal and local authorities when there is a release of an EHS, as defined under EPCRA section 302, or of a CERCLA hazardous substance in an amount equal to or greater than the RQ for that substance within a 24-hour period. These requirements are codified in the EPCRA regulations at 40 CFR part 355 subpart C.

Notice given to the NRC under CERCLA serves to inform the federal government of a release so that federal personnel can evaluate the need for a response in accordance with the

---

<sup>1</sup> Air emissions from animal wastes on farms are generally a result of decomposition of the animal waste.

<sup>2</sup> NRC is a part of the federally established National Response System and staffed 24 hours a day by the U.S. Coast Guard. It is the designated federal point of contact for reporting all oil, chemical, radiological, biological and etiological discharges into the environment, anywhere in the United States and its territories.

<sup>3</sup> The EPCRA definition of facility at 40 CFR 355.16: means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person (or by any person that controls, is controlled by, or under common control with, such person). Facility includes manmade structures, as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

National Oil and Hazardous Substances Contingency Plan (NCP), the federal government's framework for responding to both oil discharges and hazardous substance releases. Related, notice under EPCRA is given to the State or Tribal Emergency Response Commission (SERC or TERC)<sup>4</sup> for any state or tribal region likely to be affected by the release and to the community emergency coordinator for the Local or Tribal Emergency Planning Committee (LEPC or TEPC)<sup>5</sup> for any area likely to be affected by the release so that state, tribal and local authorities have information to help protect the community. As stated in the title of the statute, EPCRA also has an important community right-to-know component that provides for public availability of release notifications pursuant to EPCRA section 324.

Release reporting under EPCRA depends, in part, on whether reporting is required under CERCLA. Specifically, EPCRA section 304(a) provides for reporting under the following three release scenarios:

1. EPCRA section 304(a)(1) requires notification if a release of an EPCRA EHS occurs from a facility at which a hazardous chemical is produced, used or stored, and such release requires a notification under CERCLA section 103(a).
2. EPCRA section 304(a)(2) requires notification if a release of an EPCRA EHS occurs from a facility at which a hazardous chemical is produced, used or stored, and such release is not subject to the notification requirements under CERCLA section 103(a), but only if the release:
  - Is not a federally permitted release as defined in CERCLA section 101(10),
  - Is in an amount in excess of the reportable quantity as determined by EPA, and
  - Occurs in a manner that would require notification under CERCLA section 103(a).

---

<sup>4</sup> SERC is defined at 40 CFR 355.61 as: the State Emergency Response Commission for the state in which the facility is located except where the facility is located in Indian Country, in which case, SERC means the Emergency Response Commission for the tribe under whose jurisdiction the facility is located. In the absence of a SERC for a state or Indian Tribe, the governor or the chief executive officer of the tribe, respectively, shall be the SERC. Where there is a cooperative agreement between a state and a tribe, the SERC shall be the entity identified in the agreement.

<sup>5</sup> LEPC is defined at 40 CFR 355.61 as: the Local Emergency Planning Committee appointed by the State Emergency Response Commission. TEPCs are appointed by the TERCs.

3. EPCRA section 304(a)(3) requires notification if a release of a substance not designated as an EPCRA EHS occurs from a facility at which a hazardous chemical is produced, used or stored, and such release requires a notification under CERCLA section 103(a).

### *C. Continuous Release Reporting (CRR) Regulations*

There are situations where known or anticipated releases may be subject to significantly reduced reporting requirements, rather than the immediate or occurrence-based reporting of CERCLA section 103(a) and EPCRA section 304(a) as outlined above. CERCLA section 103(f) and its attendant regulations at 40 CFR 302.8 provide such relief for a release of a hazardous substance that is continuous and stable in quantity and rate. Similarly, EPA relied on EPCRA section 304(a)(2) to promulgate analogous reduced reporting regulations for continuous releases under EPCRA at 40 CFR 355.32. Those EPCRA regulations instruct a facility to rely on and follow, in part, the related CERCLA regulations at 40 CFR 302.8. As discussed further in this document, the continuous release reporting option is meant to save facilities and response authorities from the unnecessary burden of notification each time a repeated release—that is continuous and stable—occurs.

Under CERCLA section 103(a), regulated entities are required to immediately report releases of CERCLA hazardous substances that meet or exceed the RQ threshold. In lieu of reporting for each release, however, certain continuous releases can qualify for reduced reporting (see 40 CFR 302.8), which allows the regulated entity to only provide the following:

- 1) Initial telephone notification made to the NRC;
- 2) Initial 30-day written notification to the EPA;
- 3) One-year follow-up written notification to the EPA;
- 4) Notification to the EPA of a change in the composition or source(s) of the release or in the other information submitted in the initial written notification; and

5) Notification to the NRC of any increase in the quantity of the hazardous substance being released during any 24-hour period, which represents a statistically significant increase (SSI).

Reduced release reporting provisions are also available under EPCRA, which requires reporting of CERCLA hazardous substances and EPCRA extremely hazardous substances. Under the EPCRA continuous release reporting regulations codified at 40 CFR 355.32, which cross-reference the CERCLA regulations at 40 CFR 302.8, facilities are required to report only items 1, 2, and 5 (from the list above) to their SERC or TERC and LEPC or TEPC. Any changes in source or composition (item 4) may be considered a new release, which is also required to be reported to the SERC or TERC and the LEPC or TEPC. A first anniversary report (item 3) is not required under EPCRA section 304.

CERCLA and the implementing regulations of both CERCLA and EPCRA<sup>6</sup> and their implementing regulations define whether a release qualifies for continuous release reporting. The continuous release regulations in 40 CFR section 302.8(d)(1) provide that a facility can establish a continuous release by “[u]sing release data, engineering estimates, knowledge of operating procedures, or best professional judgment to establish the continuity and stability of the release.” There is no specific requirement for release monitoring or collecting release data if a facility is relying on engineering estimates, best professional judgment, or knowledge of operations.

The definitions in the continuous release regulations in 40 CFR 302.8(b) provide further assistance to determine what qualifies as a continuous release. There, a continuous release is defined as a release “that occurs without interruption or abatement or that is routine, anticipated, and intermittent and incidental to normal operations or treatment processes.” A routine release is defined as a release “that occurs during normal operating procedures or processes.” And the

---

<sup>6</sup> The EPCRA continuous release reporting regulation at 40 CFR 355.32 cross-references the CERCLA definition of continuous releases at 40 CFR 302.8(b).

phrase “stable in quantity and rate” is defined as a release “that is predictable and regular in amount and rate of emission.”

The continuous release regulations also include reporting the normal range of releases defined in 40 CFR 302.8 as “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.” The upper and lower bounds of the normal range of the release are reported in the 30-day written report under EPCRA.

#### *D. Regulatory and Legal Background*

As previously noted, the history of release reporting for air emissions from animal waste at farms is long and complex. The following summary of events leading to this ANPRM is not meant to be exhaustive. Publicly available documents cited below and included in the docket provide further background information.

##### 1. 2008 CERCLA/EPCRA Reporting Exemption Rule and Related Litigation

Prior to 2008, all farms were subject to release reporting for air emissions under both CERCLA and EPCRA but were eligible for reduced continuous release reporting. In December 2008, EPA published a final rule that exempted all farms from reporting animal waste air emissions under CERCLA and exempted small and medium concentrated animal feeding operations (CAFOs)<sup>7</sup> from reporting such emissions under EPCRA (73 FR 76948, December 18, 2008). Large CAFOs with emissions equal to or exceeding an RQ were still required to report under EPCRA with the continuous release reporting option, as applicable. EPA intended the 2008 rulemaking to reduce the reporting burden on farms and emergency response agencies.

In April 2017, the 2008 rule was vacated by the United States Court of Appeals for the District of Columbia Circuit as arbitrary and capricious. *See Waterkeeper Alliance, et al. v. EPA*, 853 F.3d 527 (D.C. Cir. 2017). In so holding, the court acknowledged the potential health risks

---

<sup>7</sup> EPA defined different sizes of farms using the National Pollution Discharge Elimination System (NPDES) size definitions for concentrated animal feeding operations (CAFOs). A table of EPA’s NPDES regulatory definitions of large, medium, and small CAFOs can be viewed here: [https://www3.epa.gov/npdes/pubs/sector\\_table.pdf](https://www3.epa.gov/npdes/pubs/sector_table.pdf)

of some animal waste air emissions and found that reporting could be useful to local and state authorities who may need to investigate or respond to these releases. The effect of the court's vacatur was to reinstate reporting requirements for air emissions from animal waste at all farms under CERCLA and EPCRA. The court delayed the effective date of its ruling until May 2, 2018, to grant EPA time to develop guidance to assist farms with meeting their reporting obligations.

## 2. 2018 FARM Act and Related 2018 CERCLA Rule

On March 23, 2018, President Trump signed into law the Consolidated Appropriations Act, 2018 ("Omnibus Bill"). Title XI of the Omnibus Bill is entitled the "Fair Agricultural Reporting Method Act" or the "FARM Act." *See* Fair Agricultural Reporting Method Act, Public Law 115-141, sections 1101-1103 (2018). The FARM Act amended CERCLA section 103 to expressly exempt the reporting of air emissions from animal waste (including decomposing animal waste) at a farm. As a result, in August 2018, the Agency published a final rule to amend the CERCLA regulations at 40 CFR part 302 by adding the reporting exemption for air emissions from animal waste at farms and adding definitions of "animal waste" and "farm" from the FARM Act (83 FR 37444, August 1, 2018).

The FARM Act expressly exempted all farms from reporting air emissions from animal waste under CERCLA but did not amend EPCRA in any way.

## 3. 2019 EPCRA Rule and Related Litigation

EPA proposed a rule on November 14, 2018, to exempt all farms from reporting air emissions from animal waste under EPCRA (83 FR 56791, November 14, 2018). EPA received considerable comments from the public both supporting and opposing the proposed rule. Supporters largely agreed with EPA's interpretation of the statutes and expressed concerns over the burden that would be placed on farms if animal waste emission reporting was not exempt under EPCRA. Opposing commenters expressed concerns over the environmental and health impacts of animal waste air emissions and the public's right-to-know about these emissions.

They argued that EPA's interpretation of the statute in support of the proposed rule was unlawful.

After consideration of all these comments, EPA finalized the rule to promulgate the EPCRA exemption on June 13, 2019 (84 FR 27533) (the June 2019 EPCRA Rule).

On July 9, 2019, several environmental groups, including the Rural Empowerment Association for Community Help (REACH), the Center for Biological Diversity, the Environmental Integrity Project, and the Waterkeeper Alliance, amended an existing complaint to challenge the final rule in the U.S. District Court for the District of Columbia. *See REACH v. EPA*, No. 1:18-CV-02260 (Sept. 28, 2018) (the *REACH* case). A number of agricultural trade associations joined the action as intervenors, including the National Cattlemen's Beef Association, the National Pork Producers Council, and the American Farm Bureau Federation.

#### 4. Executive Order 13990, January 20, 2021

On January 20, 2021, shortly after the change in administration, President Biden issued Executive Order (EO) 13990, which states that it is the policy of the new administration: "to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals." (86 FR 7037, January 25, 2021).

EO 13990 further directed federal agencies to "immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions during the 4 years prior to the EO that conflict with these important national objectives, and to immediately commence work to confront the climate crisis." *See Id.* In keeping with EO 13990, EPA moved the court in the *REACH* case to remand the June 2019

EPCRA Rule back to the EPA on November 23, 2021. The district court granted the remand on February 14, 2022 “without vacatur,” meaning the EPCRA exemption for farms remains in place while EPA reconsiders the rule.

#### **IV. What Information is EPA Seeking?**

EPA is seeking comments and data that will better inform the Agency on whether to pursue a proposed rule, as well as assist the Agency on how best to implement the reinstating of EPCRA reporting from farms, if such a rule is finalized. The Agency is specifically soliciting information on the following five topics: (1) health impacts; (2) implementation challenges; (3) costs and benefits; (4) small farm definition and potential reporting exemption, and (5) a national report on animal waste air emissions.

##### *A. Health Impacts from Animal Waste Air Emissions*

EPA reviewed literature about health impacts to communities in the vicinity of farms with animal waste. A summary of the health impact studies can be found in the Technical Background Document (TBD) in the docket for this action. The literature review of 21 studies reporting on health effects associated with air releases from Animal Feeding Operations (AFOs) add to a body of evidence that exposure to AFOs is associated with respiratory health effects, mortality, odor annoyance, gastrointestinal illness, and other health effects. They also reveal that populations located in close proximity to animal operations are at a greater risk for adverse health effects compared to populations located farther away or residing in areas without AFOs. The literature search identified several studies showing a correlation between proximity and exposure to animal waste and respiratory health effects, including increased likelihood of asthma in both adults and children and reduced lung function. Some of the studies also identified exposure to animal waste as being correlated with mortality rates, gastrointestinal illness, and other human health effects. The size and type of operation, number of animals, and species may affect the intensity of animal waste exposure. The studies also concluded that populations located in closer proximity to animal farm operations are at an increased risk for adverse health effects

when compared to populations located farther away or residing in areas without animal farm operations. The studies also provided specific cases where communities with environmental justice concerns, including those comprising people of color, low-income individuals, and children in specific geographic locations of the country are disproportionately located near animal feeding operations. The location of these populations has the potential to result in significant health impacts on the members of these communities.

*Request for Information.*

EPA requests the following information relating to health impacts:

*#1 – Health Impacts:* The Agency is soliciting comment on the literature search provided in the TBD and requesting any additional relevant literature or other information on health impacts from animal waste air emissions, including any indirect health impacts. The Agency is also requesting any information on health impacts to communities with environmental justice concerns.

*B. Implementation Challenges*

If the Agency reinstates EPCRA reporting, EPA anticipates a certain level of uncertainty with determining or calculating the amount of animal waste air emissions of ammonia and hydrogen sulfide to trigger reporting. In the subsequent sections, the Agency is soliciting information on estimating amounts of air emissions, as well as other implementation challenges such as whether the continuous release reporting requirements are applicable to farm operations and how the influx of release reporting data could be managed.

1. National Air Emissions Monitoring Study (NAEMS)

EPA's Office of Air and Radiation (OAR) is developing methodologies, based on data collected under the National Air Emissions Monitoring Study (NAEMS), to estimate air emissions of ammonia, hydrogen sulfide, particulate matter (PM), and volatile organic compounds (VOCs) from animal waste from poultry (egg-layers and chicken broilers), swine, and dairy livestock. The NAEMS originated in 2005 from the EPA and agriculture industry's

understanding of the difficulty in estimating air emissions from animal feeding operations. To address the issue, the Agency entered into the Air Consent Agreement with the animal production industry, which included approximately 2,600 entities covering about 14,000 farms. As part of the agreement, EPA agreed not to pursue enforcement actions for certain past violations of the Clean Air Act, CERCLA, and EPCRA during development of the methodologies. The methodologies, based on the NAEMS data, are being developed for poultry (egg-layers and chicken broilers), swine, and dairy operations utilizing air monitoring data from animal operations and statistical analyses. The initial methodologies were released to the public starting in 2020. EPA anticipates holding a formal public comment period starting in late 2023 and finalizing the methods by spring 2024. In the existing draft form, the methods use a set of variables easily accessible to estimate emissions. These variables include type and number of animals at the farm; beginning and ending animal weight; waste management method(s) and if applicable; the housing type and number of days without animals in the barn or house; and ambient relative humidity, ambient temperature, and wind speed. Additional information can be found at <https://www.epa.gov/afos-air/national-air-emissions-monitoring-study> or in docket EPA-HQ-OAR-2004-0237.

The Agency acknowledges there are livestock types, such as turkey and beef, and operational configurations that are not covered under the NAEMS methodologies. The subsequent section, IV.B.2, solicits comment and information on these gaps and how to address them, if EPCRA reporting is reinstated.

*Request for Information.*

EPA requests the following information relating to EPA's emissions estimating methodologies developed using data collected as part of the NAEMS:

#2 – *Emissions Estimating Methodologies:* EPA requests comments on the applicability of the NAEMS methodologies for estimating air emissions from animal waste for farm types not included as part of NAEMS for a potential future reporting under EPCRA. For

instance, data were not collected from cage-free layer facilities and recent trends in the industry have been toward more eggs being produced from cage-free facilities. As part of the NAEMS program, emissions data were collected from high-rise and belt-battery layer facilities which may have different emissions than a cage-free facility.

*#3 – 2005 Compliance Agreement Reporting:* If EPA requires reporting under EPCRA, would there be confusion around the timing of reporting for participants of the 2005 compliance agreement? If the Agency were to pursue and finalize a rulemaking to reinstate EPCRA reporting for animal waste air emissions prior to the NAEMS methods being finalized, then NAEMS Agreement participants would not have to report until the timeframes triggered by publication of the final NAEMS methodologies. This point may be moot since the NAEMS methods are scheduled to be finalized well in advance of the time needed for a possible rulemaking to reinstate EPCRA reporting. The Agency is soliciting comment on any outreach that EPA should conduct to avoid potential confusion.

## 2. Emissions Calculator and Guidance on Estimating Amounts of Air Releases

If EPA moves forward with reinstating the EPCRA reporting requirement for farms, the Agency may need to develop tools and guidance to minimize the reporting burden.

EPA could develop a calculator for farms to estimate their animal waste air emissions. The web-based emissions calculator would use the estimation methods developed with the NAEMS data, enabling farms to input a limited number of variables to estimate the amount of ammonia and hydrogen sulfide air releases from animal waste. The input variables would be information that farmers are assumed to already know, such as location of the farm, species of animals at the farm, species population size, waste management method(s) and if applicable, the housing type, number of days without animals in the barn or house and beginning and ending animal weight. The emissions calculator could use the farm location (e.g., county or ZIP code) to obtain meteorological data (e.g., ambient relative humidity, ambient temperature, wind speed).

The emissions calculator would perform the calculations using the formulas derived from the NAEMS data, which provide an estimate of release amount per day in pounds. This screening step would identify whether a farm meets or exceeds the reportable quantity and therefore, be subject to reporting under EPCRA. If the emissions calculator shows that the reportable quantity is exceeded, the farm may be able to meet the reporting requirements with continuous release reporting. The applicable information in the emissions calculator could then auto-populate an EPA webform for the continuous release report form. Finally, instructions with the webform could instruct the farmer on how to submit the continuous release report to their appropriate state, tribal and local agencies responsible for collecting EPCRA release reports. The Agency recognizes that the NAEMS data does not cover all livestock species or operational configurations. For example, common species such as turkey and beef are not included in the Air Consent Agreement, nor are less common livestock species, such as goat, llama, and aquaculture. If the Agency pursues a rule to require EPCRA reporting, the Agency does not want farmers to struggle with estimating air emissions, thus the Agency is soliciting input and recommendations for tools and/or guidance the Agency could develop to assist farms in estimating air emissions for livestock and operational configurations not covered under the NAEMS methods.

Finally, if farms are required to report under EPCRA, ideally, EPA would provide a mechanism or threshold upfront to farms as to whether an estimate of their emissions is even necessary (i.e., does a farm have enough livestock to even come close to the reportable quantity?). EPA has considered developing guidance on a minimum number of animals, where under typical farm operations, any number of livestock below the cutoff could not exceed the 100 pounds of air emissions for either hydrogen sulfide or ammonia. If possible, these types of cutoffs could be provided on EPA's website and on the front end of the emissions calculator, so that farms with numbers of animals below the cutoff, can quickly determine they would not need to report. EPA understands this may not provide the level of regulatory certainty to assure farmers that they are complying with the regulations. The Agency seeks input on whether this

type of cutoff would be helpful and what unforeseen issues with providing such cutoffs through guidance and outreach materials could arise. Of note, the Agency contemplated including such a cutoff in regulatory text for a potential future rule. Under the prior 2008 rulemaking (73 FR 76948), only large CAFOs were required to report under EPCRA, where the definition of a large CAFO (by number of livestock) provided regulatory certainty.

*Request for Information.*

EPA requests the following information relating to a potential emissions calculator:

*#4 – Emissions Calculator - General:* EPA requests comments on the utility and function of an emissions calculator. Should EPA create a webform tool that can calculate an estimate of air emissions from animal wastes on farms? The Agency has a draft design of an emissions calculator included in an appendix of the TBD to provide readers with the look and feel of the tool. Separately, is there a need for EPA to create a paper form or phone hotline to assist users that do not have access to the internet? Are there other, more efficient, ways to provide air emission estimates to farms other than through a webform calculator?

*#5 – Emissions Calculator – Continuous Release Reporting:* If the emissions calculator provides an estimate that exceeds the reportable quantity, should farmers (users) be routed from the emissions calculator to the continuous release reporting form and the instructions for submission to the specific state, tribal and local agencies? The Agency is soliciting comment on this approach in general, and on whether this is the most efficient process EPA can establish for reporting animal waste air emissions under EPCRA (i.e., Would farms find this helpful? Are there any other steps in the process which could be streamlined by EPA and/or state, tribal and local agencies? Are there alternatives that may be more efficient?).

*#6 - Accuracy of Reported Release Quantity:* Should the calculator include a disclaimer that the emissions are estimates of uncontrolled emissions, and may not reflect actual

emissions due to differences in each farm operation and applications of controls? The Agency solicits comment on adding a disclaimer and any other guidance that may be needed.

*#7 – Turkey and Beef Contribution Factors:* Turkey and beef are two of the most prevalent livestock species not included in the Air Consent Agreement. If EPCRA reporting is reinstated, the Agency would consider publishing contribution factors for turkey and beef livestock. The contribution factor would be a quantity of ammonia and hydrogen sulfide emitted per animal. The farmer would only need to conduct a “bookkeeping exercise,” of multiplying the number of livestock by the contribution factor, which would provide the air emission estimate. Potential contribution factors for turkey and beef are in an appendix in the TBD. The Agency is soliciting comment and information on whether developing contribution factors would be useful and appropriate for turkey and beef. The Agency is also soliciting any information that could be used to develop contribution factors for turkey and beef. See the TBD for the Agency’s preliminary review into turkey and beef emissions studies. The contribution factors and literature search in the TBD are only drafts to give the reader an estimate of what a turkey and beef contribution factor may be, as well as show the relevant literature EPA would review to develop contribution factors.

*#8 – Estimating Emissions from Less Common Species:* The Agency is requesting information that could be used in development of contribution factors for less common livestock which are not included in the NAEMS. Additionally, if the Agency reinstates EPCRA reporting, would it be appropriate for the Agency to devote time and resources to develop contribution factors for all conceivable farming operations? The Agency has included some preliminary draft cutoffs in the TBD for estimating the initial burden to all farms when determining if they will exceed the RQs.

*#9 – Estimating Emissions from Atypical Farming Operations:* There may be farms unable to use the NAEMS methods because they do not apply to their specific operation configuration. For example, cage-free egg laying houses were not prevalent in the industry when the NAEMS was conducted, and no data were collected to support method development. In those cases, farms would need to use other information to estimate the air emissions, if EPCRA reporting is reinstated. For examples of operations that are included in the emissions calculator, see the screenshots of a mock-up of the calculator in the appendices of the TBD. EPA requests comment on operational configuration scenarios not covered by the NAEMS methodologies, and subsequently not covered by the emissions calculator, that should be included in guidance to assist the regulated community. EPA requests comment on operational configurations not covered by the methodologies developed from NAEMS data and requests any information that could be used to develop tools or guidance on how to calculate emissions from atypical farming operations.

*#10 – Cutoffs for Estimating:* Should EPA develop guidance with de minimis thresholds which would make clear that a farm with livestock inventory below the threshold could not conceivably produce over 100 pounds of ammonia or hydrogen sulfide in a 24-hour period, and thus would not have to estimate air emissions or have to report under EPCRA? The Agency is requesting any information that could be used to develop thresholds. Are there farming operations that could be exceptions to such a threshold where very few animals are on the farm, but the farming operation would have enough manure on site to emit over 100 pounds of ammonia or hydrogen sulfide in a 24-hour period?

*#11 – Other Guidance:* EPA solicits comment on additional implementation information EPA should consider in development of guidance, and other implementation tools EPA could provide to farms to reduce reporting burden and costs.

### 3. Grazing Operations

EPA is also seeking comment on having emissions from animals living and being raised in grazing or pasture situations covered by a potential future rule. A common example is beef cattle that are raised grazing or pastured over large areas of land for a period of time in their growth cycle. The animal waste generated while grazing or pastured is generally widely dispersed across the landscape and is not in a concentrated area. The beef cattle can then be transferred from the grazing or pastured areas to feedlots or other concentrated feeding operations to complete their life cycle. Other species similarly are raised grazing or pastured for a period of their life cycle.

If reporting is reinstated under a potential future rule, only farming operations that are defined as a “facility” would need to report. Under EPCRA section 329 (Definitions), the term “facility” means “all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites...” The term “facility” is further defined in the EPCRA regulations at 40 CFR 355.61 to include “manmade structures, as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use.” In general, the Agency does not currently believe grazing operations fall under the definition of “facility,” unless the manure is collected and managed.

#### *Request for Information.*

EPA requests the following information relating to grazing operations:

*#12 – Grazing Operations:* EPA seeks comment on whether the Agency’s interpretation of “facility” relating to grazing operations is correct and appropriate. The Agency also seeks information on whether clarifications of the applicability of the regulations to other farming operations is needed.

### 4. Use of Continuous Release Reporting by Farms

The animal waste that farms handle or manage as part of their normal operations of raising animals may have regular air emissions which could fall within the scope of continuous release reporting (see section III.C. for an overview of continuous release reporting). As mentioned previously, continuous release reporting under EPCRA encompasses the following three requirements, found at 40 CFR 355.32: (1) Initial telephone notification made to the LEPC and SERC; (2) Initial 30-day written notification to the LEPC and SERC; and (3) notification to the LEPC and SERC of any increase in the quantity of the hazardous substance being released during any 24-hour period, which represents a statistically significant increase (SSI). The 30-day written notification is submitted using a range for the quantity released, and an SSI is anything that exceeds the upper bound of the range identified in the initial 30-day notification. Of note, there are no requirements for updating a continuous release report if the release decreases below the lower bound provided in the report, and there are no federal requirements for reporting when a continuous release has ceased.<sup>8</sup> Furthermore, the initial notification does not require monitoring data to support the upper and lower bounds of the quantity released; instead, the regulations allow for “using release data, engineering estimates, knowledge of operating procedures, or best professional judgment” (see 40 CFR 355.32(a) via 40 CFR 302.8(d)(1)). Finally, a continuous release is defined as “a release that occurs without interruption or abatement or that is routine, anticipated, and intermittent and incidental to normal operations or treatment processes,” (see 40 CFR 302.8(b); emphasis added).

*Request for Information.*

EPA requests the following information relating to continuous release reporting:

*#13 – Application of Continuous Release Reporting:* The Agency is soliciting comment on the appropriateness of defining all air releases from animal waste on farms as continuous releases, because they are routine, anticipated, and intermittent and incidental to normal operations.

---

<sup>8</sup> Note: State, tribal, and local EPCRA implementing agencies may have additional reporting requirements.

*#14 – Application of Upper and Lower Bounds:* The Agency is soliciting comment on allowing farms to apply upper and lower bounds on their continuous release reports to estimate the highest or lowest quantity released at any point during the year, regardless of seasonal fluctuations in farming operations.

*#15 – Exceptions to Continuous Release Reporting:* Given the flexibility of the EPCRA continuous release reporting requirements, the Agency is soliciting comment on whether there are scenarios for which releases from animal waste at farms could not be covered under continuous release reporting. If that is the case, the Agency requests any information on such farming operations, so the Agency can account for the burden these operations would incur from episodic release reporting, instead of continuous release reporting.

*#16 – Benefits and Costs of Continuous Release Reporting Data:* The Agency is soliciting comment and supporting data on the usefulness of continuous release reporting data to the surrounding communities and SERCs and LEPCs (i.e., If the report is submitted with a large range for the quantity released, would that help the public understand what's in their community?).

*#17 – Continuous Release Reporting - Other:* The Agency is soliciting information and comment on any other issue relating to the application of continuous release reporting by farms subject to a potential future rule.

## 5. Citizen Suits

Reinstating animal waste air emissions reporting requirements would create potential liability for farms that meet or exceed the RQ, but fail to report, under the citizen suit provisions of EPCRA. Under EPCRA section 326(a)(1)(A)(i), a citizen may file suit against an owner or operator of a facility, including a farm, for failing to submit the follow-up emergency notice of

release required by EPCRA section 304(c).<sup>9</sup> Before filing a citizen suit, the citizen must provide 60 days' notice of the alleged violation to the facility, the state, and EPA, as required by EPCRA section 326(d)(1). If the alleged violator files the missing report in that time (i.e., the violation is “wholly past”), EPA believes an actual lawsuit would be unlikely. Pursuant to the Supreme Court decision in *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998), citizens may not be able to demonstrate that they have standing to bring a suit for wholly past violations. In practice, if a facility files a release report within 60 days of receiving notice of a citizen suit, the suit may be dismissed with no award of attorney’s fees or investigative costs. A suit also may not be brought if EPA has “commenced and is diligently pursuing” an action to enforce a requirement or impose a civil penalty under EPCRA.

The Agency does not have a list of past citizen suits, but believes they are infrequent and not focused on small farms. EPA requests comment on potential citizen suit issues and concerns that are related to non-reporting farms. If there are other citizen suit considerations, EPA requests comment on these issues and concerns, including benefits of this potential remedy. These comments may assist in the development of guidance and outreach information to be shared with the regulated community as part of future compliance assistance if reporting is reinstated.

Comments received on the 2018 proposed rule included a concern of liabilities that reporting requirements could create for farmers because the information is “inherently imprecise and therefore subject to dispute.”<sup>10</sup> The Agency notes that under EPCRA section 326(a)(1)(A)(i), a citizen suit can be brought against an owner or operator for failing to submit the follow-up emergency notice of release required by EPCRA section 304(c). That notice includes an “estimate of the quantity of any such substance that was released...” (see EPCRA section 304(b)(2)(C)).

#### *Request for Information.*

---

<sup>9</sup> When using continuous release reporting, the 30-day initial written notification under 40 CFR 355.32(a), further specified under 40 CFR 302.8(e), is considered the follow-up emergency notice under EPCRA section 304(c).

<sup>10</sup> See comment with docket ID EPA-HQ-OLEM-2018-0318-0224.

EPA requests the following information relating to potential impacts on farms from citizen suits:

*#18 – Citizen Suits – Wholly Past Violations:* Given that EPCRA requires 60 days' notice before filing a citizen suit, and the decision in *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998), could citizen suits create more than a minimal burden on farms? Given that only an estimate needs to be provided to fulfill the requirements, the Agency is also soliciting comment and information on the potential for additional citizen suits based on the accuracy of the reporting estimate.

*#19 – Citizen Suit Benefits and Costs:* What are the potential costs and liabilities of EPCRA citizen suits for non-reporting farms if reporting is reinstated? The Agency is also soliciting any information on realized benefits of a citizen suit being filed against a farm. Finally, the Agency is soliciting information on the frequency and number of previous citizen suits for failing to submit the follow-up emergency notice of release required by EPCRA section 304(c), as well as the frequency and number of 60-day notices provided to farms in advance of the citizen suit. We realize that EPCRA reporting for animal waste air emissions at farms is not currently required, however, reporting was required by large CAFOs prior to 2019, which is the time period for which EPA is seeking information.

*#20 – Citizen Suit – Guidance:* If the Agency develops guidance on citizen suits, what information should the guidance include?

*#21 – Citizen Suit – Other:* The Agency is soliciting information and comment on any other issues related to citizen suits in the context of a potential future rulemaking to reinstate EPCRA reporting for farms.

## 6. Privacy Concerns

If reporting is reinstated in a future rulemaking for farms, the public may seek access to the report under the right-to-know provision in EPCRA section 324(a). EPA understands there

may be privacy concerns by the farmers when their personal residence is the same as the address for the farm, in which case the submitted reports may contain personal information that was previously unavailable from any other source to the public. The Agency expects that most small farms will not meet the applicable release reporting thresholds and will therefore fall outside the scope of any EPCRA reporting requirement entirely; however, the Agency still appreciates the concern for the small farms that would need to report.

*Request for Information.*

*#22 – Privacy Concerns:* EPA seeks comment, generally, on the privacy concerns of farmers who would be required to report animal waste air emissions. The Agency is also seeking creative solutions that could provide communities with information on air emissions from a farm without disclosing the location (i.e., personal address) of a “small” farm.

*#23 – Privacy Concerns – Other:* The Agency is soliciting information and comment on any other issues related to privacy concerns in the context of a potential future rulemaking to reinstate EPCRA reporting for farms.

## 7. EPCRA National Database

Under EPCRA’s statutory authority (42 U.S.C.11004), EPCRA emergency release notifications (Section 304; 40 CFR 355.30) are submitted to the SERCs or TERCs and LEPCs or TEPCs, but not to the EPA or another federal agency. EPA recognizes that reinstatement of EPCRA animal waste air emissions reporting will increase the number of release reports submitted to state, tribal, and local agencies (the implementing agencies). Under the existing authorities, the implementing agencies will have the responsibility of receiving and managing the reports and making the information publicly available as part of the EPCRA right-to-know provisions.

The EPA requests comment and information on creating an EPCRA database for animal

waste air emissions information at the national level, that would be housed at EPA. The Agency believes a centralized EPCRA submission portal and management system can improve the reporting program by centralizing and standardizing reporting and reducing burden on both the implementing agencies and the regulated community. Recognizing that existing statutory reporting requirements under EPCRA may need to be amended to allow it, EPA also seeks comment from the implementing agencies and the regulated community on the benefits and challenges of creating an EPCRA national database. EPA requests comment not only for animal air emissions, but for reporting under all sections of EPCRA, except section 313, which is the Toxics Release Inventory (TRI) program. Following is a list of applicable EPCRA reporting requirements that could be built into a national system:

- Facility emergency planning notifications (40 CFR part 355, subpart B; EPCRA section 302).
- Emergency release notifications (40 CFR part 355, subpart C; EPCRA section 304)
- Hazardous chemical inventory reports (40 CFR part 370; EPCRA sections 311 and 312).

Currently, reporting methods are determined by the state or tribe. These SERCs and TERCs are using a variety of submission and data management platforms to meet their statutory obligations. Over half of the states are using three existing submission platforms for annual Section 312 Tier II submissions: Tier2 Submit, E-Plan, and TIER II MANAGER. The other states use other commercial software or have state-specific programs. Through a centralized database, EPA could collect EPCRA reports and make those reports immediately available to state, tribal, and local agencies, thus improving the efficiency, efficacy, and transparency of EPCRA reporting compliance and removing the burden to state, tribal, and local agencies receiving and managing the submittals. The database can also reduce the burden on these implementing agencies by providing a public right-to-know information center. The clearinghouse would be a “one-stop shop” for industry, the EPCRA implementing agencies, and

the public. A national database would provide industry the opportunity to report to multiple states and local entities in one platform. The implementing agencies would have access to all of the submitted information for their covered area, reducing their administrative burden and allowing them to focus on implementation, community safety, and compliance. The database would handle all reporting requirements, as well as requests from the public for information, allowing entities to use their limited resources to improve compliance efficacy.

The EPCRA emergency planning provisions, codified under 40 CFR part 355, Subpart B, include several required communications with the SERC or TERC and/or LEPC or TEPC, such as the initial notification that a facility is subject to EPCRA emergency planning requirements; notification of the facility emergency coordinator; notification of any relevant changes to emergency planning; and providing information to the LEPC or TEPC upon request. A national database could manage, track, and store all these required communications. Furthermore, with the planning data, the EPA could facilitate coordination between LEPCs or TEPCs with similar types of facilities to share best practices and lessons learned on how to plan for specific risks.

The emergency release notification requirements, under 40 CFR part 355, Subpart C, include immediate notification via phone and follow-up written reports to the SERC or TERC and LEPC or TEPC, as well as specific requirements for continuous release reporting requirements. A national EPCRA database could handle these notifications, although initial release notification may not be ideal, because initial notifications are time-sensitive and are typically phone calls to the LEPC or TEPC and SERC or TERC. However, the 30-day follow-up written reports and continuous release reports could be well-suited for a national database. LEPCs, TEPCs, TERCs and SERCs would have the benefit of having the data standardized and stored. Additionally, EPA could coordinate discussions on clean-up and response activities among LEPCs and TEPCs with similar releases.

*Request for Information.*

EPA requests the following information relating to a National EPCRA Database:

*#24 – National EPCRA Database - General:* The Agency is soliciting information and comment in general about a national EPCRA database, as well as any input on how such a system should be designed, developed, and implemented. EPA seeks quantitative information characterizing how a centralized reporting clearinghouse could reduce burden to stakeholders. The Agency also solicits information on conducting a pilot of a national database with a small number of states and local implementing agencies.

*#25 – National Database – Managing Right-to-Know Data:* EPA requests comment and information from LEPCs, TEPCs, SERCs, and TERCs on whether a national EPCRA database would be beneficial to receive and manage reports and, pursuant to the right-to-know requirements, make those reports available to the public.

*#26 – National Database – Managing Reports from Facilities:* EPA seeks input on both the potential benefits and any disadvantages for LEPCs, TEPCs, SERCs, and TERCs of creating a national database for receiving and managing EPCRA sections 302, 304, 311, and 312 reports.

*#27 – National Database – Animal Waste Air Emissions Reporting:* EPA seeks input on the potential efficiencies or inefficiencies to the regulated community of submitting EPCRA animal waste air emissions reports to one centralized portal. EPA also seeks input on both the potential benefits and disadvantages to the communities near animal farming operations and the general public of a national database to receive and manage reports and, pursuant to right-to-know requirements, make reports available to the public.

*#28 – National Database – Facility Benefits and Disadvantages:* EPA seeks input on potential benefits and disadvantages for the regulated community of a national database for complying with EPCRA sections 302, 304, 311, and 312 reporting requirements.

*#29 – National Database – Managing FOIA Requests:* EPA seeks input from LEPCs, TEPCs, SERCs, and TERCs about EPA managing Freedom of Information Act (FOIA) requests and releasing EPCRA data from a national system. The Freedom of Information

Act generally provides the public with access to federal agency records, however FOIA does not apply to state and local agencies. Each state has their own laws and procedures for releasing records to the public. The EPA is soliciting comment and information on what issues may need to be addressed if EPA were to manage FOIA requests on what would be considered state and local data under EPCRA.

#30 – *National Database – Other*: The Agency is soliciting information and comment on any other issues related to a national EPCRA database.

### *C. Costs and Benefits*

#### 1. Estimated Regulated Universe

EPA estimates the total number of farms with livestock to be approximately 1.25 million based on data from the United States Department of Agriculture's (USDA) 2017 Census of Agriculture. However, only a fraction of these farms is expected to exceed the reportable quantity for either ammonia and/or hydrogen sulfide, and thus be regulated under a potential future rule that would reinstate reporting. The Agency used data from NAEMS and literature reviews to estimate contribution factors (i.e., estimate of quantity of air emissions per animal per day), which were applied to the livestock numbers from the USDA Census, to generate an estimate of 37,891 farms that would be expected to exceed the reportable quantity. All of the estimates, calculations and assumptions are in the TBD in the docket.

The reporting burden is expected to be relatively minimal because the Agency anticipates that continuous release reporting would be used in a majority of instances (see Section D.2 for burden estimates). Even though the reporting burden is expected to be low and only encompass approximately 38,000 farms, other farms may not know whether their operations will exceed the reportable quantity. The following section (Section D.2) solicits comment on estimating the burden to all 1.25 million farms with livestock.

*Request for Information.*

EPA requests the following information relating to estimating the regulated universe:

*#31 – Regulated Universe – Number of Farms Reporting:* The Agency is soliciting information and comments on the estimate of farms expected to exceed the reportable quantity. The Agency is specifically soliciting information and comment on the methods for estimating the number of regulated farms, the data sources used, and the estimated contribution factors, which are all detailed in the TBD. Regarding the contribution factors, the Agency realizes that the contribution factors EPA used, for estimating the regulated universe, may not take into account all the variables that impact any given farm's animal waste air emissions, and is soliciting information and comment on the accuracy of the contribution factors used to estimate the regulated universe; any additional information that may provide a more accurate estimate of the regulated universe; and the utility of refining the contribution factors or the method used.

## 2. Burden Estimates

In analyzing whether to pursue a rulemaking to rescind the reporting exemption, EPA considered the costs associated with reinstating reporting requirements. EPA estimated the total costs by combining unit costs of compliance per farm with the estimate of the affected farm universe. The Agency used animal inventory data from USDA's 2017 Census of Agriculture in the affected NAICS codes to identify the regulated universe of 37,891 farms. Farm operations with continuous air releases of ammonia or hydrogen sulfide from animal waste that meet or exceed the RQ would qualify for reduced reporting requirements, including:

- Providing initial continuous release telephone notification to the SERC (or TERC) and LEPC (or TEPC);
- Submitting initial written report to the appropriate SERC (or TERC) and LEPC (or TEPC);
- Providing notification of a statistically significant increase (SSI) in a release to the SERC

(or TERC) and LEPC (or TEPC); and,

- Providing notification of a new release resulting from a change in source or composition.

EPA estimated the annualized cost of a potential future rule over a 10-year analysis period. The total annualized cost of reinstating EPCRA reporting would be approximately \$2.9 or \$2.8 million using three and seven percent discount rates, respectively, as detailed in the TBD.

Table 2 summarizes the total undiscounted cost of a future rule, by year. For reporting farms, first-year costs are \$16.8 million, and total first-year costs for SERCs (or TERCs) and LEPCs (or TEPCs) is \$6.5 million. Costs in years 2 through 10 of the analysis are significantly less, at approximately \$0.1 million per year for both sets of affected entities.

**Table 2. Total Cost by Year (undiscounted) (2022\$)**

Compliance Requirement	Animal Operations		State, Local, Tribal Gov't	
	First Year	Years 2 – 10	First Year	Years 2 – 10
<b>Rule Familiarization and Applicability Determination</b>	\$3,710,295	\$0	\$0	\$0
<b>CRRR Reporting</b>				
<i>Labor Costs</i>	<i>\$11,782,802</i>	<i>\$164,451</i>	<i>\$6,481,555</i>	<i>\$108,026</i>
Initial Notification	\$1,073,190	\$0	\$2,160,518	\$0
Initial Written Report	\$10,709,612	\$0	\$4,321,037	\$0
Reporting an SSI	\$0	\$164,451	\$0	\$108,026
<i>O&amp;M Costs</i>	<i>\$1,307,223</i>	<i>\$0</i>	<i>\$0</i>	<i>\$0</i>
Initial Notification	\$0	\$0	\$0	\$0
Initial Written Report	\$1,307,223	\$0	\$0	\$0
Reporting an SSI or New Release	\$0	\$0	\$0	\$0
<b>Total Cost</b>	<b>\$16,800,321</b>	<b>\$164,451</b>	<b>\$6,481,555</b>	<b>\$108,026</b>

The Agency has also prepared a screening analysis to assess small entity impacts, documented in the TBD. The Agency used sales data from the USDA's 2017 Census of Agriculture in the affected NAICS codes, along with Small Business Administration (SBA)-specified small business thresholds, to identify the potential set of affected small operations. EPA combined these data with the affected universe data to estimate the subset of reporting farms that meet SBA size standards for small entities. EPA estimates that 31,921 out of the 37,891 farms in the regulated universe (84 percent) are small operations under SBA size

standards. EPA performed a cost-to-sales test for these entities and found that none of the affected operations would experience costs greater than one percent of annual sales. Based on the results of the cost-to-sales test, EPA concludes that a future rulemaking would not have a significant economic impact on a substantial number of small entities.

*Request for Information.*

EPA requests the following information relating to the costs of a potential future rule:

*#32 – Burden –Reporting Farms:* The Agency is soliciting information and comments on the cost estimates for farms and state and local agencies. See the TBD for a detailed analysis. The Agency made assumptions for hours for specific tasks; labor rates; how many SSIs would be submitted; how many new farms would report in the out years; and other variables. EPA is requesting information and comment on these assumptions and variables that could result in more accurate burden estimates.

*#33 – Burden –Non-Reporting Farms:* The Agency is soliciting information and comments on the cost estimates for all farms to understand and potentially estimate their air emissions. The Agency estimates that all 1.25 million farms with livestock (both reporting and non-reporting farms) would incur between 1 and 2.5 hours of burden per farm for rule familiarization, which totals to \$97.6 million burden for all farms. See section 3.2 in the TBD for a detailed analysis.

*#34 – Burden - Small Farms:* The Agency is soliciting information and comments on the analysis of impacts to small farms. See the TBD for a detailed analysis.

*#35 – Burden – Qualitative Costs:* The Agency is soliciting information and comments on any qualitative costs of a reinstating reporting. In the TBD, the Agency attempted to quantify as many costs of a potential future rule as it was able to.

### 3. Environmental Justice and Community Right-to-Know

Any rulemaking resulting from this ANPRM would impact only the reporting requirements for animal waste air emissions; a new rule would not directly lessen air emissions from animal waste on farms, nor directly change disproportionate and adverse effects experienced by communities with environmental justice concerns. However, one of the benefits of requiring reporting is the availability and accessibility of this information to surrounding communities. This reporting is critical to advancing the Agency's environmental justice goals by increasing the understanding of potential impacts of air emissions from animal waste on communities with environmental justice concerns. As a result, fence-line communities may benefit from the reporting of animal waste air emissions at farms.

Although a potential future rule would not directly address human health or environmental conditions, the EPA investigated potential environmental justice concerns by conducting geospatial analyses. To conduct a thorough, national-level environmental screening analysis, publicly available data of source locations of air emissions are required. These data do not exist at the national level. While the 2017 USDA Census is a complete count of U.S. farms and ranches and the individuals who operate them, publicly available data are aggregated to the county level to protect the confidentiality of the information provided by individual respondents. The EPA conducted three levels of analysis to identify communities that may be affected by the reporting rule based on the level of animal operations' ammonia emissions for 5 animal sectors (Beef, Broilers, Dairy, Layers, and Swine) at the county-level, tribal-level, and available state-level data.

As shown with the 2017 USDA Census data in the environmental justice analysis provided in TBD, that while the upper quintile of counties emitting ammonia from animal waste on average does not exceed the national average for minority populations or low-income populations, four of the top ten counties in ammonia emissions from animal waste comprise populations exceeding the national average for minority populations and low-income populations. The EPA believes that in some localities, minority and low-income populations may

be disproportionately impacted by air emissions from animal wastes, which is shown in the TBD at the county level and census block level using the USDA Census data and the state-specific farm data.

*Request for Information.*

EPA requests the following information relating to the benefits of a potential future rule:

*#36 – Benefits –Environmental Justice:* The Agency is soliciting information and comments on the environmental justice analysis. See the TBD for details.

*#37 – Indirect Benefits:* The Agency is soliciting information and comments on the indirect benefits of a potential future rule to reinstate EPCRA reporting by farms. A future rule would only be a reporting rule to provide state, tribal and local implementing agencies and communities information on releases of ammonia and hydrogen sulfide from animal wastes on farms. However, after air emission information is shared with states, locals, and communities, there are potential indirect benefits, such as communities experiencing greater capacity for meaningful involvement in the development and implementation of local pollution management policies or the information leading to voluntary initiatives by farms to review farming and waste management practices and set goals for reductions in emissions, and institute “good neighbor” policies. Potential changes in farm operations—including reductions in the releases and changes in the waste management practices—could yield health and environmental benefits. Indirect benefits of a potential future rule have not been quantified.

*D. Small Farms*

Based on the existing EPCRA RQs of 100 pounds per day for both ammonia and hydrogen sulfide, EPA estimates the regulated universe of the proposed rule to be 37,891 farms. The regulated universe is 3 percent of approximately 1.25 million farms nationwide in the 2017 USDA Agriculture census. Of the 37,891 reporting farms, 31,921 farms are estimated to be

small businesses as defined by the Small Business Administration (SBA), see the TBD in the docket. Separately, using the National Pollution Discharge Elimination System (NPDES) farm size CAFO categories, only approximately 3,000 of the 37,891 farms would be considered small CAFOs and limited to swine and dairy operations, also see the TBD in the docket. Even though there are relatively few “small farms” that would be required to report releases from animal waste, EPA recognizes that most farms would not know whether they exceed the reporting threshold (i.e., be in the regulated universe). This section is designed to gather information relating to a reporting exemption for small farms, which could create regulatory certainty for farmers.

#### 1. Potential Reporting Exemption for “Small Farms”

If the Agency reinstates reporting for farms, EPA seeks information on whether “small farms,” which would need to be defined in a potential future rule, should be exempted from reporting animal waste air emissions.

EPA considered relevant comments received during the previous 2008<sup>11</sup> and 2019<sup>12</sup> rulemakings, as discussed in the response to comment documents in those dockets. For both the 2008 and the 2019 rules, commenters acknowledged that “small farms,” as described but not defined by the commenters, would not be expected to report because they are likely to fall below the RQ-based reporting threshold. In 2008, commenters stated that they did not think “small farms” would reach the established 100-pound RQs even without a reporting exemption. One commenter stated that EPA should establish an exemption for farms under an income level threshold which was not specified but would differentiate between “true” family farms and larger industrial-type operations. The 2019 rule received a comment from an environmental group that smaller animal feeding operations are unlikely to be subject to EPCRA reporting.

---

<sup>11</sup> <https://www.regulations.gov/document/EPA-HQ-SFUND-2007-0469-1359>

<sup>12</sup> <https://www.regulations.gov/document/EPA-HQ-OLEM-2018-0318-0405>

## *Request for Information.*

EPA requests the following information:

*#38 – Small Farm Exemption - General:* EPA requests comment on whether “small farms” should be exempted from reporting animal waste air emissions. If so, how should they be exempted? EPA requests any information that the Agency can use to develop a justification to exempt “small farms” from reporting air emissions under EPCRA.

Similarly, the Agency is requesting any information that supports not exempting “small farms.”

*#39 – Small Farm Exemption – Criteria:* EPA requests comment on the criteria that should be considered in establishing a potential exemption for small farms. For example, should an exemption be based on animal number thresholds at the operation; animal waste management methods; single species-focused operations; or other criteria? The Agency requests information that could be used to differentiate small farms from medium and large operations that would support exempting small farms from EPCRA reporting.

## 2. Defining “Small Farms”

Any potential action for small farms requires defining “small farm.” The term “farm” is already defined in 40 CFR 355.61. If the Agency pursues reinstatement of EPCRA reporting, and further pursues an exemption from that reporting for small farms, the Agency would not be seeking to change the definition of “farm,” but rather to expand on the existing definition to categorize “small farms.”

In the 2008 rule exempting farms from reporting animal waste air emissions (73 FR 76948), EPA defined different sizes of farms using the NPDES size definitions for CAFOs, due to familiarity with these size categorization terms within the agriculture industry.<sup>13</sup> The NPDES

---

<sup>13</sup> A table of EPA’s NPDES regulatory definitions of large, medium, and small CAFOs can be viewed here: [https://www3.epa.gov/npdes/pubs/sector\\_table.pdf](https://www3.epa.gov/npdes/pubs/sector_table.pdf)

farm size categories of small, medium, and large are based on animal threshold numbers for each species. For example, mature dairy cattle have species-specific threshold ranges as follows: less than 200 defined as a small CAFO, 200 to 699 defined as a medium CAFO, and 700 or above defined as a large CAFO.

EPA seeks input on whether using the NPDES CAFO farm size categories for defining small farms is the best choice, and if not, EPA is seeking input on an alternative definition for “small farm.” EPA is aware of and has considered other ways to define “small farms.” For example, an alternate definition for small farm could come from the Economic Research Service at USDA,<sup>14</sup> which classifies sizes based on revenue. The USDA defines small farms to have annual gross cash farm income (GCFI) of less than \$350,000. If revenue is used to define “small farms”, the farms would make the determination as to whether they were subject to the exemption, unless they voluntarily provide the applicable information. Any revenue-based definition would make it challenging for EPA, or other agencies, to conduct reporting compliance and independently determine whether a farm meets the exemption threshold. For example, EPA, or other another agency, would have to determine if revenue information is available, and whether the source of revenue (e.g., from the livestock at the farm or from another source such as crop production) is significant in defining farm size for EPCRA reporting purposes.

No direct comments were received to assist the Agency in defining “small farms” in the 2008 nor 2019 rulemakings.

*Request for Information.*

EPA requests the following information:

#40 – *Small Farm Definition:* The Agency is soliciting comment and information on how to define “small farm” in the context of creating a potential reporting exemption.

---

<sup>14</sup> USDA. 2022. Economic Research Service. Farm Structure and Contracting. Available at: <https://www.ers.usda.gov/topics/farm-economy/farm-structure-and-organization/farm-structure-and-contracting/>

Specifically, EPA is soliciting input on applying the definition of small farms from NPDES or USDA to EPCRA reporting. Are there other small farm definitions that may be more appropriate for EPCRA reporting? Are there certain attributes from “small farms” that correlate with quantity of air emissions (e.g., is there a certain level of farm revenue that correlates to farms with smaller manure management operations)?

### 3. Animal Waste Management Methods for “Small Farms”

EPA seeks information on animal waste management methods that could be used to differentiate farm size and how such methods would affect air emissions of ammonia and hydrogen sulfide.

In examining this issue, the Agency reviewed comments received on the 2008 and 2019 rules, though no comments explicitly addressed how to differentiate farms by size.

#### *Request for Information.*

EPA requests the following information:

*#41 – Small Farm – Waste Handling:* EPA is soliciting information and comment on certain waste management practices that could be used to support an exemption for small farms, if EPCRA reporting is reinstated. Specifically, the Agency seeks information on various animal waste handling methods based on size of operation (number of animals) and species of animals that would be different at small farms versus medium and large farms and may affect air emissions of ammonia and hydrogen sulfide.

### 4. Health Impacts from “Small Farms”

Section IV.A in this document outlines the health impacts from animal waste air emissions, which are further detailed in the TBD. This section is intended to solicit comment and information regarding any distinction that could be made between adverse health impacts from air emissions from small farms versus medium and large farms.

*Request for Information.*

EPA requests the following information:

*#42 – Small Farm – Health Impacts:* The Agency is soliciting information on health impacts from different size farms to determine if lack of adverse health impacts would support a reporting exemption for small farms, if EPCRA reporting is reinstated through a potential future rule. Conversely, the Agency is also soliciting information that demonstrates adverse health impacts from animal waste air emissions from “small farms.” When submitting information, the Agency requests the commenters to provide any information on how the requester or information is defining “small farm.”

5. State, Tribal, and Local Emergency Planners and Responders Use of “Small Farm” Animal Waste Air Emissions Information

Reinstating animal waste air emissions reporting requirements would require owners or operators of covered farms to provide initial notification to either the SERC or TERC, and the LEPC or TEPC in the event of a release of an EPCRA EHS, as required by EPCRA section 304, or of a CERCLA hazardous substance in an amount equal to or greater than the RQ for that substance within a 24-hour period. Within 30 days of the initial notification, farms must submit a written follow-up report to these agencies. EPA recognizes that reinstating EPCRA animal waste air emissions reporting will increase the number of notifications (ex: telephone, email, etc.) and written release reports submitted to SERCs or TERCs and LEPCs or TEPCs. These agencies will have the responsibility of receiving initial notifications and managing the reports as well as making the information publicly available as part of the EPCRA right-to-know provisions.

Previous comments submitted to EPA on the 2008 rulemaking include comments from LEPCs stating their support for a reporting exemption because there would likely be no federal,

state or local emergency response to such release reports.<sup>15</sup> EPA also received comments from the National Association of SARA Title III Program Officials (NASTTPO), an EPCRA-related association for state, tribal, and local EPCRA implementing agencies, supporting the 2019 EPCRA reporting exemption (84 FR 27533).<sup>16</sup> NASTTPO stated that these reports are of no particular value to LEPCs and first responders and instead are generally ignored because they do not relate to any specific event. The NASTTPO noted that open dialogue and coordination between local emergency authorities and animal farming operations can be more effective than EPCRA-required release reporting for farms that do not handle quantities of chemicals designated under EPCRA as EHSs.<sup>17</sup> While some state and local agencies have stated they support not receiving release reports of animal waste air emissions from farms, the EPA believes there may be value in providing these reports for fence-line communities.

*Request for Information.*

EPA requests information from SERCs, TERCs, LEPCs, and TEPCs on the usefulness of information pertaining to “small farm” animal waste air emissions for the purposes of emergency planning and response.

*#43 – State, Local, and Tribal Impacts:* Through prior public comment periods from previous rulemakings, as well as the ongoing coordination between EPA and SERCs, TERCs, and LEPCs, the Agency has heard that state, tribal, and local emergency planners and responders would not use EPCRA release reports of animal waste air emissions from farms, and so, the Agency is inferring that if EPCRA reporting is reinstated, an exemption for small farms would be well received by state, tribal, and local emergency planners and responders. The Agency is requesting any new comments and information that would support or contradict this position. Regarding small farms, if EPCRA

---

<sup>15</sup> See comments submitted with docket IDs: EPA-HQ-SFUND-2007-0469-0498; EPA-HQ-SFUND-2007-0469-0215.

<sup>16</sup> See comment submitted with docket ID: EPA-HQ-OLEM-2018-0318-0238.

<sup>17</sup> See NASTTPO letter as part of comment submitted with docket ID: EPA-HQ-OLEM-2018-0318-0236.

reporting is reinstated without a small farm exemption, EPA is requesting comment on whether state, tribal, and local implementing agencies would process and utilize release reports for animal waste air emissions from small farms differently from reports from larger farms.

#### 6. Adjusting the RQs of Ammonia and Hydrogen Sulfide for Animal Waste Air Emissions

One way EPA could potentially reduce reporting of air emissions from animal waste for small farms is by adjusting the RQs or creating industry and media-specific RQs. The existing RQs for ammonia and hydrogen sulfide are both set at 100 pounds. Any release of either of these substances at or above the RQ in a 24-hour period would require reporting under EPCRA.

##### Establishing category-specific animal waste air emissions RQs

CERCLA section 103 requires immediate notification to the National Response Center whenever an RQ or more of a CERCLA hazardous substance is released in a 24-hour period. Similarly, EPCRA section 304 requires notification to the SERC or TERC and the LEPC or TEPC when there is a release of an RQ or more of either a CERCLA hazardous substance or an EPCRA EHS in any 24-hour period. For substances listed under both CERCLA (40 CFR 302.4) and EPCRA (40 CFR part 355, Appendices A and B), the applicable RQ is established under CERCLA and adopted under EPCRA (April 22, 1987, 52 FR 13378). For EHSs not listed under CERCLA, EPA used the EPCRA threshold planning quantities (TPQs) to assign RQs, by raising the statutory RQ (one lb) to be the same as their TPQs.

EPA adopted a five-level system for RQs of 1, 10, 100, 1,000, and 5,000 pounds for CERCLA reporting. These levels were originally established pursuant to CWA section 311 (40 CFR part 117). EPA has authority to establish and adjust RQs for hazardous substances under CERCLA and for EPCRA EHSs.

EPCRA additionally requires EPA to consider and establish TPQs for EHSs, which is the quantity of the substance present at a facility for which emergency planning notification is

required under EPCRA section 302. Currently, the TPQ for ammonia and hydrogen sulfide is 500 lb for all industry sectors. The TPQ methodology is separate from the RQ methodology and was developed specifically to reflect a quantity that could cause serious health consequences if accidentally released. Generally, the TPQ for a substance should be higher than the RQ, which is the case for most EHSs. For other EHSs, the TPQ is the same quantity as the RQ, which is dependent on the criteria and the ranking factor established for TPQ and RQ. In a future rulemaking, if EPA were to raise the RQs for hydrogen sulfide and ammonia from animal waste air emissions at farms above the existing 500-pound TPQ (i.e., to either 1,000 or 5,000 lb), the Agency may need to address the TPQs for ammonia and hydrogen sulfide emitted from animal waste from farms, since those situations may not be appropriate for emergency planning purposes.

Based on publicly available information, EPA developed preliminary estimates of the reporting universe and the numbers of small farms under several possible RQs. Under the existing RQ of 100 pounds, approximately 37,891 of the 1.25 million farms, based on USDA's 2017 Census of Agriculture, would be required to report releases of air emissions from animal waste, which comprises approximately 3% of farms. Using the NPDES CAFO size categories, this estimate of 37,891 farms includes approximately 3,000 small farms. If the RQ for both ammonia and hydrogen were raised to 500 pounds, the preliminary estimated regulated universe would decrease from 37,891 to approximately 15,000 farms; at 1,000 pounds RQ, the estimated regulated universe would decrease even further to approximately 5,000 reporting farms. Additionally, at an RQ of 1,000 pounds, EPA estimates that no small farms, under the NPDES definition, would exceed the reportable quantity. See the TBD for the analysis of number of regulated farms at different RQs.

*Request for Information.*

EPA requests the following information relating to adjusting the RQs of ammonia and hydrogen sulfide for animal waste air emissions:

*#44 – RQ Adjustment - General:* EPA requests comments and supporting information, if available, on the potential of adjusting the RQs for ammonia and hydrogen sulfide to reduce the reporting burden for small farms, based on the existing RQ methodology.

*#45 – Industry-Specific RQ Adjustment:* The Agency is soliciting comment and information on creating industry and/or media-specific animal waste air emissions RQs for farms only, where all non-farming industries would retain the existing 100-pound RQs for ammonia and hydrogen sulfide, but animal waste at farming operations would have separate, higher RQs for ammonia and hydrogen sulfide. Additionally, the Agency is requesting comment and information on what the “farm-specific” RQs should be. The Agency is seeking information that supports or refutes the concept of separate RQs for the same hazardous substance.

#### *E. National Report on Animal Waste Emissions*

The issue of whether farms should report under EPCRA has been through various rulemakings and litigation since 2008. The decision seems to be binary (i.e., farms report or they do not). The Agency is including this section of the ANPRM to solicit comment and information on potential creative solutions to provide information to fence-line communities on air emissions from animal wastes without requiring farms with having to estimate and report to their state, tribal and local agencies.

#### *Request for Information.*

EPA requests the following information on finding a creative solution to reporting animal waste air emissions:

*#46 – National Report based on USDA or State Data:* EPA contemplated developing a national report using USDA Census data to gather locations of farms and applying the contribution factors developed under NAEMS. However, the USDA Census dataset only supplies farm locations at the county-level, and there are additional restrictions on

sharing farm data when an individual farm can be identified. The EPA conducted the county-level analysis with the USDA data, which can be found in the TBD. However, EPA does not believe that county-level data will be granular enough for fenceline communities to understand the amounts and impacts of animal waste air releases. The EPA also evaluated all the state datasets we found that included farm locations (see the TBD). However, the handful of state datasets are well short of building a national report on animal waste air emissions. The Agency is soliciting comment and information on our assessment of using USDA Census data and datasets from state agencies. We are also soliciting comment and information on any other datasets that may be used to develop a national report of air emissions. Finally, the Agency is soliciting comment on whether this type of national report would/should be a compromise for this long-standing issue.

*#47 – Other Technology for Estimating Air Releases:* The Agency is soliciting comment and information on newer technologies that could be applied to understanding animal waste air emissions and then distributing that information to fenceline communities. For example, are there existing technologies, such as satellite-based instruments, to measure ammonia and/or hydrogen sulfide that can be applied at a granular enough level to show quantities released from individual farms?

*#48 – Other Solutions:* The Agency is soliciting comment and information on other possible solutions to providing animal waste air emissions to fenceline communities without requiring farms with reporting.

## **V. Request for Comment and Additional Information**

EPA is seeking comment on all questions and topics described in this ANPRM. In addition, EPA encourages all interested persons to identify and submit comments on other issues relevant to EPA's consideration of the potential development of future regulations pertaining to

animal waste air emission reporting under EPCRA. EPA requests that commenters making specific recommendations include supporting documentation, where appropriate.

Instructions for providing written comments are provided under **ADDRESSES**, including how to submit any comments that contain CBI or PBI.

## **VI. What are the Next Steps EPA Will Take?**

EPA intends to carefully review all comments and information received in response to this ANPRM. Once that review is completed, EPA will determine whether to pursue a proposed rule to reinstate air emission reporting from animal waste at farms under EPCRA.

## **VII. Statutory and Executive Order Reviews**

Under Executive Order 12866, entitled *Regulatory Planning and Review* as amended by *Executive Order 14094: Modernizing Regulatory Review*, EPA submitted this action to the Office of Management and Budget (OMB). Any changes made in response to recommendations received as part of Executive Order 12866 review have been documented in the docket for this action. Because this action does not propose or impose any requirements, other statutory and executive order reviews that apply to rulemaking do not apply. Should EPA subsequently determine to pursue a rulemaking, EPA will address the statutes and executive orders as applicable to that rulemaking.

Nevertheless, the Agency welcomes comments and/or information that would help the Agency to assess any of the following: the potential impact of a rule on small entities pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.); potential impacts on state, local, or tribal governments pursuant to the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531-1538); federalism implications pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, November 2, 1999); availability of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113; tribal implications pursuant to Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000); environmental

health or safety effects on children pursuant to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997); energy effects pursuant to Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001); paperwork burdens pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501); or human health or environmental effects on minority or low-income populations pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) and Executive Order 14096, entitled *Revitalizing Our Nation's Commitment to Environmental Justice for All* (88 FR 25251, April 21, 2023). The Agency will consider such comments during the development of any subsequent rulemaking.

Additional information about statutes and executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

#### **List of Subjects in 40 CFR Part 355**

Environmental protection, Air pollution control, Chemicals, Disaster assistance, Hazardous substances, Hazardous waste, Natural resources, Penalties, Reporting and recordkeeping requirements, Superfund.

Michael S. Regan,  
*Administrator,*  
*Environmental Protection Agency.*

[FR Doc. 2023-25270 Filed: 11/16/2023 8:45 am; Publication Date: 11/17/2023]