



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Potential Future Regulation for Emergency Release Notification Requirements for Animal Waste Air Emissions/EPCRA: U.S. Environmental Protection Notice Advance Notice of Proposed Rulemaking

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The United States Environmental Protection Agency (“EPA”) published in the November 17th Federal Register an Advance Notice of Proposed Rulemaking (“ANPRM”) titled:

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

See 88 Fed. Reg. 80223.

EPA states it is using the ANPRM to solicit information to assist the agency in the potential development of regulations to reinstate the reporting of animal waste air emissions at farms under EPCRA.

Section 304 of EPCRA generally requires owners or operators of certain facilities to immediately notify state, tribal, and local authorities when there is a release of an extremely hazardous substance (“EHS”) under Section 302 or of a Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) hazardous substance in an amount equal to or greater than the reportable quantity for that substance within a 24-hour period.

EPA had exempted reporting of animal waste air emissions under EPCRA for all farms, regardless of their size, in 2019. See 84 Fed. Reg. 27533. The federal agency states it is reconsidering that final rule and therefore using the ANPRM to solicit information to assist with the potential future rulemaking. Such rulemaking would address potential requirements for certain farms to report air emissions of EHS from animal waste under EPCRA.

Comments are being solicited under what EPA describes as “five general categories”:

- Health Impacts
- Implementation Challenges
- Costs and Benefits
- Small Farm Definition and Potential Reporting Exemption
- National Report on Animal Waste Air Emissions

The ANPRM preamble provides a discussion of the lengthy history of EPA's consideration of release reporting for air emissions from animal waste at farms. Key events described include:

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

A copy of the Federal Register Notice can be downloaded [here](#).