

**Expansion of EPCRA Section 313 Chemical List**

# **Addition of Certain Chemicals; TRI Reporting; Final Rule**

## ***Introduction***

On November 30, 1994, at 59 FR 61432, the Environmental Protection Agency (EPA) added 286 chemicals and chemical categories, which include 39 chemicals as part of two delineated categories, to the list of toxic chemicals subject to reporting under Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and Section 6607 of the Pollution Prevention Act of 1990 (PPA). In adding these new chemicals and chemical categories, EPA has exercised its authority to add chemicals based on their acute human health effects, carcinogenicity or other chronic human health effects, and/or their adverse effects on the environment.

Most of the 286 chemicals and chemical categories being added to the Toxic Chemical Release Inventory (TRI) are pesticides. Certain substances regulated under the Clean Air Act (CAA), Resource Conservation and Recovery Act (RCRA), Safe Drinking Water Act (SDWA), Toxic Substances Control Act (TSCA), California's Safe Drinking Water and Toxic Act of 1986 have also been included on the list.

Facilities, including DOE facilities, must begin reporting these newly listed chemicals and chemical categories in the 1995 calendar year (reports due to EPA and States by July 1, 1996).

## ***Statutory Authority***

EPCRA, 42 U.S.C. 11001 et seq., also known as Title III of the Superfund Amendments and Reauthorization Act (SARA), which amended the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), was passed by Congress in response to increased public concern for catastrophic hazardous chemical releases. Specifically, Subtitle B of EPCRA directs facility owners and operators to collect and make available to state, local commissions and the public, information about the types, quantities, and uses of toxic chemicals at their sites. EPCRA Section 313 established the Toxic Chemical Release Inventory, to which facilities meeting the manufacture, process or otherwise use thresholds report the release and off-site transfer of listed chemicals on an annual basis.

Under Section 313(d) of EPCRA, EPA has the authority to add or delete chemicals from the list of EPCRA Section 313 toxic chemicals based any of on the following criteria: 1) acute human health effects; 2) carcinogenicity; 3) other chronic human health effects; and 4) adverse effects on the environment.

Additionally, Section 6607 of the PPA, 42 U.S.C. 13106, requires all facilities to report pollution prevention and recycling data for the chemicals listed under EPCRA Section 313.

## ***Background***

EPA submitted a rule on January 12, 1994 (59 FR 1788) which proposed the listing of 313 additional chemicals and chemical categories to the EPCRA Section 313 list of toxic chemicals. The comment period on the proposed rule closed on April 12, 1994. A total of 266 organizations/individuals commented on the proposed rule, including 3 Federal agencies. Based on further assessment of the acute human health effects, carcinogenicity, other chronic human health effects, and adverse effects on the environment, EPA used its discretion in selecting the 286 chemicals and chemical categories for listing under the final rule.

## ***DOE Comment Resolution***

In comments prepared by the Department of Energy (DOE) on the January 12, 1994 proposed rulemaking, the Department expressed concern over listing CAA criteria air pollutants, man-made mineral fibers (i.e., fiberglass insulation), the nitrate ion, nitric oxide, and the use of "chemical categories."

Specifically, the Department opposed the listing of chemicals currently reported under other environmental laws, especially, those covered under the CAA. In the final rulemaking, EPA responded that Congress did not intend for the EPCRA Section 313 chemical list to be limited to those chemicals that are not regulated under other environmental statutes. EPA, however, agreed to defer the listing of the CAA criteria pollutants (sulfur dioxide, sulfur trioxide, nitric oxide, and carbon monoxide) to a possible future rulemaking. The agency did proceed with the listing of ozone, as emissions of ozone are not captured under the CAA.

Furthermore, DOE stated that EPA should restrict the addition of "chemical categories" to the list of reportable chemicals (ie, polycyclic aromatic compounds). Rather, DOE contended that reporting should be limited to specific chemicals in order to minimize the burden of monitoring and reporting. EPA responded in the final rule that it believes the statute may be reasonably interpreted to grant EPA authority to add "categories" of chemicals. Specifically, for polycyclic aromatic compounds, EPA believes a category listing is appropriate because the members of this category are not usually intentionally manufactured, they are structurally similar and induce a similar toxic effect.

The Department also commented that the nitrate ion should not be added to the list because it is actually a category, not a specific chemical, and would result in double counting with nitric acid. In the final rule, EPA agreed that the nitrate ion does not meet the definition of a chemical for purposes of listing. Instead, EPA added water dissociable nitrate compounds (reportable only when in aqueous solution).

Finally, DOE questioned the addition of man-made mineral fibers and nitric oxide to the list of toxic chemicals. While these chemicals may pose a threat to workers (which should be addressed under the Occupational Safety and Health Act), there is no evidence that they pose a threat to the general public. Due to the difficult technical and policy issues, EPA has deferred final action on the listing of man-made mineral fibers and nitric oxide to a future rule making.

## ***Future TRI Expansion Expected***

The expansion of the EPCRA Section 313 list of toxic chemicals is only the first phase in the overall expansion of the TRI program. In September 1995, EPA plans to initiate Phase II of TRI expansion with a proposed rulemaking that would extend reporting requirements under Section 313 to new Standard Industrial Codes (SIC). This expansion of the SIC Codes would include certain industry sectors, particularly those whose manufacturing activities result in significant releases of listed Section 313 chemicals.

EPA announced in April 1994 that the following industry sectors have been identified as possible candidates for inclusion under this proposal: utilities, mining, incinerators, water treatment works and bulk storage facilities. EPA plans to promulgate the final rule in mid-1996; therefore, it is expected that new industry sectors would begin reporting

to the TRI in calendar year 1997.

EPA's Phase III of TRI expansion involves adding data on exposure and the use of chemicals at facilities reporting to the TRI. Industry groups are opposing the inclusion of materials accounting data due to the high cost of obtaining this type of data.

Finally, in conjunction with expansion of the TRI, EPA has also considered situations where negligible data can be removed from the TRI, reducing the reporting burden on facilities. On November 30, 1994 (59 FR 61488), EPA published a final rulemaking establishing an alternate threshold for facilities with low annual reportable amounts (less than 500 pounds) of listed toxic chemicals to be exempted from filing Form R reports. Instead, if a facility meets all the criteria, it may complete a certification statement.

### ***For More Information***

For a copy of the Federal Register notice, which includes a complete listing of the 286 chemicals and chemical categories, (59 FR 61432, Wednesday, November 30, 1994), call the EPCRA Hotline in Washington, DC. The national toll-free number is (800) 535-0202 or TDD (800) 553-7672.