

[Federal Register: June 28, 1994]

ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 372

[OPPTS-400063A; FRL-4767-5]

**Barium Sulfate; Toxic Chemical Release Reporting; Community
Right-To-Know**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is deleting **barium** sulfate from the category ``**barium** compounds'' on the list of toxic chemicals for which reporting is required under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). This action is based on EPA's conclusion that **barium** sulfate meets the deletion criteria of EPCRA section 313(d)(3). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of **barium** sulfate that occurred during the 1993 reporting year, and releases that will occur in the future.

DATES: This rule is effective June 28, 1994.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, 202-260-9592, for specific information regarding this final rule. For further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 800-535-0202, Toll free TDD: 800-553-7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is issued under section 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023). EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106, ``PPA''). Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. Under section

313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added chemicals to and deleted chemicals from the original statutory list.

EPA issued a statement of petition policy and guidance in the Federal Register of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories.

II. Effective Date

This action becomes effective immediately. Thus, the last year in which facilities had to report releases of **barium** sulfate was 1993, covering releases that occurred in 1992. The effect of this deletion is that, since **barium** sulfate will not be on the section 313 list when facilities report in 1994 for releases that occurred in 1993, these reports and all subsequent reports need not include **barium** sulfate release data. Facilities will therefore not have to collect release information for any releases of **barium** sulfate that occur during the 1993 reporting year or for any releases that occur in the future.

Section 313(d)(4) provides that "[a]ny revision [to the section 313 list] made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 and before January 1 shall take effect beginning with the calendar year following the next calendar year." The Agency interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list. For deletions, the Agency may, in its discretion, make such actions immediately effective. An immediate effective date is authorized, in these circumstances, under 5 U.S.C. section 553(d)(1) since a deletion from the section 313 list relieves a regulatory restriction.

The Agency believes that the purpose behind the section 313(d)(4) effective date provision is to allow facilities adequate planning time to incorporate newly added chemicals to their TRI release data collection processes. A facility would not need additional planning time to not report releases of a given chemical. Thus, a reasonable construction of section 313(d)(4), given the overall purpose and structure of EPCRA -- to provide the public with information about chemicals which meet the criteria for inclusion on the section 313 list -- is to apply the delayed effective date requirement only to additions to the list. Where the Agency has determined, as it has with **barium** sulfate, that a chemical does not satisfy the criteria of section 313(d)(2)(A)-(C), no purpose is served by requiring facilities to collect release data or file release reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. Nothing in the legislative history suggests that 313(d)(4) was intended to apply to deletions as well as additions; indeed, such a construction would be incongruous, since deleted chemicals, by definition, do not satisfy the criteria for being on the section 313 list and their deletion from that list should not be delayed in the absence of any compelling reason to the contrary. This construction of section 313(d)(4) is also consistent with previous rules deleting chemicals from the section 313 list. Indeed, the Agency has not given any of its rules deleting chemicals from the section 313 list the delayed effective dates specified in section 313(d)(4).

III. Description of Petition and Rationale for Delisting

A. Petition and Proposed Action

On September 24, 1991, EPA received a petition from the Chemical

Products Corporation (CPC) to delete **barium** sulfate (BaSO_4) from the list of toxic chemicals established under EPCRA section 313. A second petition, submitted by the Dry Color Manufacturer's Association (DCMA), to delete **barium** sulfate was received on November 6, 1991. Both petitions are based on the contention that **barium** sulfate is not toxic and does not meet any of the statutory criteria under EPCRA section 313(d)(2).

Following a review of the petitions, EPA granted the petitions and issued a proposed rule in the Federal Register of June 11, 1993 (58 FR 32622), to delete **barium** sulfate from the category '**barium** compounds' on the list of toxic chemicals under EPCRA section 313. EPA's proposal was based on its conclusion that BaSO_4 meets the EPCRA section 313(d)(3) criteria for deletion from the list. With respect to deletions, EPCRA section 313(d)(3) provides that '[a] chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph [(d)(2)(A)-(C)].' Specifically, in the proposal EPA preliminarily concluded that there is not sufficient evidence to establish that BaSO_4 causes adverse acute human health effects, chronic human health effects, or environmental toxicity. EPA's rationale is detailed in the proposed rule and is based on the Agency's review of the petitions, as well as other relevant materials.

B. Rationale for Delisting

After reviewing comments received and other relevant information, EPA has concluded that the assessment set out in the proposed rule should be affirmed. Therefore, this final rule is based on EPA's conclusion that BaSO_4 is essentially non-toxic to humans and the environment, and thus meets the EPCRA section 313(d)(3) criterion for delisting (i.e., it does not meet any of the EPCRA section 313(d)(2) listing criteria).

In reaching this conclusion, EPA considered the toxicity of the **barium** ion because another potential source of **barium** sulfate toxicity could be from the **barium** ion. EPA initially analyzed the availability of **barium** ion. If the ion is not available, **barium** sulfate cannot cause toxicity due to **barium** ion. EPA has concluded that **barium** ion from **barium** sulfate will not be available to humans or the environment in any way that would affect the Agency's decision under EPCRA section 313(d)(3). This is because **barium** ion from **barium** sulfate will occur at significant levels only under anaerobic conditions in stagnant water bodies that are cut-off from surface and ground waters. As discussed below, such conditions do not give rise to human health or environmental concerns under the EPCRA section 313(d)(2) criteria.

Because intact BaSO_4 is acutely toxic only at levels that greatly exceed releases and resultant exposures, BaSO_4 cannot reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring releases.' EPA believes that **barium** ion anaerobically released from **barium** sulfate into isolated stagnant water bodies cannot reasonably be anticipated to result in adverse effects on human health because people do not routinely use these waters as sources of drinking water or food, or for recreation. Under other conditions, **barium** ion could not be an issue because it is not available. Thus, EPA has concluded that BaSO_4 does not meet the toxicity criterion for listing under EPCRA section 313(d)(2)(A).

EPA has concluded that BaSO_4 does not meet the toxicity criteria of EPCRA section 313(d)(2)(B) because BaSO_4 cannot reasonably be anticipated to cause cancer, developmental toxicity, reproductive toxicity, neurotoxicity, gene mutations, or chronic toxicity. Intact BaSO_4 is not known to cause such effects, and for the reasons discussed above **barium** ion will not be available to cause

chronic human toxicity.

EPA has concluded that BaSO₄ does not meet the EPCRA section 313(d)(2)(C) toxicity criteria because of the lack of availability of soluble **barium** from **barium** sulfate. Moreover, ecotoxicity data indicate that **barium** ion generated in low sulfate, anaerobic environments cannot reasonably be anticipated to result in adverse effects on the environment of sufficient seriousness to warrant reporting under EPCRA section 313.

C. Response to Comments

EPA received 34 comments on the proposed rule, all in support of the deletion of **barium** sulfate. While all the comments received were in support of the deletion, a few commenters requested clarification on some points discussed in the proposed rule.

Two commenters wanted clarification of the statement regarding the water solubility of **barium** sulfate and how it relates to the maximum contaminant level (page 32624, second column, first full paragraph). EPA agrees with the commenters that, at the water solubility of 2.4 mg/L (2.4 ppm) at 25 deg.C, there are 1.4 ppm of **barium** ion and 1.0 ppm of sulfate ion, and that the 1.4 ppm concentration of **barium** ion is below the maximum contaminant level of 2 mg/L (2 ppm) established by EPA under the Safe Drinking Water Act.

Many commenters requested clarification of EPA's characterization of the regulatory status of **barium** sulfate under the Resource Conservation and Recovery Act (RCRA) and the disposal of drilling fluids. Specifically, one commenter stated that EPA did not clarify that discharges of drilling fluids are in fact exempt from EPCRA as well as RCRA. Another commenter stated that EPA should clarify the statement in the proposed rule that there are no Federal regulations prohibiting land disposal of drilling fluids to include the possibility of state regulations. EPA agrees with the commenters that some clarification is needed on these issues. 40 CFR 261.4(b)(5) exempts from Federal regulation as hazardous waste drilling fluids and other wastes from the exploration, development, or production of crude oil, natural gas, or geothermal energy. Therefore, EPA regulations do not prohibit the land disposal of drilling fluids. This activity, however, may be regulated by state agencies. In addition, the commenter added that underground injection controls pursuant to the Safe Drinking Water Act and the National Pollutant Discharge Elimination System program under the Clean Water Act also regulate drilling waste. EPA does not agree with the comment that disposal of drilling fluids is totally exempt from EPCRA reporting. Although the discharge of drilling fluids is not specifically reportable under EPCRA section 313, the drilling fluids may contain a reportable component and the discharge of that chemical would require reporting if all applicable criteria are met.

One commenter wanted clarification of the statements ``Although the TCLP may indicate that **barium** sulfate is not a hazardous waste as defined by RCRA. . .'' and later, ``Furthermore, drilling fluids are specifically exempted and are not considered hazardous wastes under RCRA including those containing **barium** sulfate, even if the **barium** sulfate itself meets the TCLP (40 CFR 261.4)'' (page 32624, column 1, second and third full paragraphs). To clarify, **barium** sulfate is not a listed hazardous waste as defined by RCRA. Furthermore, the exemption under 40 CFR 261.4(b)(5) for **barium** sulfate in drilling fluids may apply. EPA notes that **barium** is one of the contaminants tested for in the Toxicity Characteristics (TC) of 40 CFR 261.24. However, due to its limited water solubility, **barium** sulfate is not expected to produce an extractable concentration of **barium** that exceeds the maximum allowable concentration of soluble **barium** (100 mg/L) using the Toxicity Characteristic Leaching Procedure (TCLP) as described in 40 CFR 261.24. Thus, in these cases, land disposal of **barium** sulfate is not regulated under RCRA subtitle C. However, EPA reiterates that the TCLP is not

conducted under anaerobic (reducing) conditions and that it is possible for **barium** sulfate to liberate soluble **barium** under such conditions. Thus, even though land disposal of **barium** sulfate is permissible under RCRA if TC levels for **barium** are not exceeded, such disposal may lead to the availability of soluble **barium**.

One commenter claimed that throughout the proposal EPA placed too much emphasis on the release of **barium** ion from **barium** sulfate under anaerobic conditions. In addition, the commenter added that it is unlikely that disposal of drilling fluids as solid wastes would ``encourage perched water and anaerobic digestion of **barium** sulfate in low sulfate environments.'' In the proposed rule EPA wanted to make clear that although **barium** sulfate is poorly soluble (i.e., does not significantly dissociate to **barium** and sulfate ions) in water, it is still possible for this substance to liberate **barium** ion in water as a result of anaerobic degradation. In the proposed rule EPA cited several studies which clearly show that **barium** ion concentrations can become elevated as a result of anaerobic degradation of **barium** sulfate. EPA agrees with the commenter that it is probably unlikely that discharge of **barium** sulfate-containing drilling fluids will encourage the formation of stagnant waterbodies, where anaerobic degradation is likely to occur. In its discussions on the availability of **barium** ion from **barium** sulfate (units IV.D. and E. of the proposed rule) the Agency did not specifically address discharges of drilling fluids containing **barium** sulfate. Although EPA cited studies that showed elevated **barium** ion concentrations in experiments which used drilling fluids that contained **barium** sulfate, the main purpose of these discussions is to illustrate that under certain environmental conditions **barium** ion can become available from **barium** sulfate, regardless of the source of the **barium** sulfate.

One commenter stated in the proposal that EPA does not clearly make the distinction that **barium** is not a heavy metal (page 32626, column 3, first full paragraph). EPA agrees that **barium** is not a heavy metal, and it is not EPA's intent to imply that **barium** is or can be viewed as a heavy metal. EPA was describing how the solubility of **barium** sulfate may be influenced by factors other than sulfate concentration. EPA used references which describe how substances normally found in the environment (e.g., fulvic and humic acids, bicarbonate, and hydroxyl ions) or soil particle grain size can enhance the solubility of otherwise poorly soluble metal salts, such as salts of heavy metals. EPA maintains that the cited studies provide sufficient evidence that the solubility of any metal salt may be significantly affected by a variety of naturally occurring environmental conditions. The same commenter provided additional information on the toxicity of **barium** ion. EPA is considering this information but is not addressing it in this final rule since it is not relevant to this delisting. In accordance with the May 23, 1991 guidance, this delisting decision is made on the basis of availability of **barium** ion and not on **barium** ion toxicity. If the ion is not available, its inherent toxicity is irrelevant because it cannot cause adverse effects. Today's action is not intended, and should not be inferred to affect the status of BaSO₄ under any statute or program other than the Toxic Chemical Release Inventory reporting under EPCRA section 313 and PPA section 6607.

IV. Rulemaking Record

The record supporting this final rule is contained in the docket number OPPTS-400063A. All documents, including an index of the docket, are available in the TSCA Document Receipt Office from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Document Receipt Office is located at EPA Headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

V. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ``significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Section 3(f) of the Order defines a ``significant regulatory action'' as an action likely to lead to a rule (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ``economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this final rule is not ``significant'' and therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities would be significantly affected by the final rule. Because this final rule eliminates an existing requirement, it would result in cost savings to facilities, including small entities.

C. Paperwork Reduction Act

This final rule does not have any information collection requirements under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: June 16, 1994.

Lynn R. Goldman,
Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended to read as follows:

Part 372--[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

Sec. 372.65 [Amended]

2. In Sec. 372.65(c), by adding the following language to the **barium** compounds listing ``(except for **barium** sulfate, (CAS No. 7727-43-7)).''

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ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 372

[OPPTS-400073B; FRL-4864-8]

**Glycol Ethers Category; Toxic Chemical Release Reporting;
Community Right-to-Know**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is redefining the **glycol** ethers category list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). EPA is changing the present definition of the **glycol** ethers category to exclude the high molecular weight **glycol** ethers that do not, in EPA's judgement, meet the criteria set out in EPCRA section 313(d). This redefinition of the **glycol** ethers category, which is based on EPA's review of available human health data on short-chain length **glycol** ethers, eliminates the EPCRA section 313 reporting requirements for those **glycol** ethers known as surfactant **glycol** ethers.

EFFECTIVE DATE: This rule is effective June 28, 1994.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, 202-260-9592, for specific information regarding this final rule. For further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 800-535-0202, Toll free TDD: 800-553-7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is issued under section 313(d) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023, ``EPCRA''). EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list,

and sets forth criteria for these actions. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added to and deleted chemicals from the original statutory list.

EPA issued a statement of petition policy and guidance in the Federal Register of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA published guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories.

II. Effective Date

This action becomes effective immediately. Thus, the last year in which facilities had to report releases of high molecular weight **glycol** ethers now excluded from the list was 1993, covering releases that occurred in 1992. The effect of this category redefinition is that, since the high molecular weight **glycol** ethers being excluded from the category will not be on the section 313 list when facilities report in 1994 for releases that occurred in 1993, these reports and all subsequent reports need not include release data for these **glycol** ethers. Facilities will therefore not have to collect release information for any releases of the excluded **glycol** ethers that occurred during the 1993 reporting year or for any releases that occur in the future.

Section 313(d)(4) provides that "[a]ny revision [to the section 313 list] made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 and before January 1 shall take effect beginning with the calendar year following the next calendar year." The Agency interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list. For deletions, the Agency may, in its discretion, make such actions immediately effective. An immediate effective date is authorized, in these circumstances, under 5 U.S.C. section 553(d)(1) since a deletion from the section 313 list relieves a regulatory restriction.

The Agency believes that the purpose behind the section 313(d)(4) effective date provision is to allow facilities adequate planning time to incorporate newly added chemicals to their Toxic Release Inventory (TRI) release data collection processes. A facility would not need additional planning time to not report releases of a given chemical. Thus, a reasonable construction of section 313(d)(4), given the overall purpose and structure of EPCRA -- to provide the public with information about chemicals which meet the criteria for inclusion on the section 313 list -- is to apply the delayed effective date requirement only to additions to the list. Where the Agency has determined, as it has with the excluded **glycol** ethers, that a chemical does not satisfy the criteria of section 313(d)(2)(A)-(C), no purpose is served by requiring facilities to collect release data or file release reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. Nothing in the legislative history suggests that section 313(d)(4) was intended to apply to deletions as well as additions; indeed, such a construction would be incongruous, since deleted chemicals, by definition, do not satisfy the criteria for being on the section 313 list and their deletion from that list should not be delayed in the absence of any compelling reason to the contrary. This construction of section 313(d)(4) is also consistent with previous rules deleting chemicals from the section 313 list. Indeed, the Agency has not given any of its rules deleting chemicals from the section 313 list the delayed effective dates specified in section 313(d)(4).

EPA has not deleted all **glycol** ethers from reporting requirements

under EPCRA section 313. Reporting will still be required for those **glycol** ethers which meet the revised definition.

III. Description of the EPCRA Section 313 **Glycol** Ethers Category

In the Federal Register of July 6, 1993 (58 FR 36180), EPA issued a proposed rule to redefine the **glycol** ethers category on the EPCRA section 313 list of toxic chemicals. EPA has evaluated the current scope of the section 313 **glycol** ethers category and believes that it is overly broad. The existing category includes substances that traditionally have not been considered **glycol** ethers. Also, it is apparent that this category contains members that do not meet the EPCRA section 313(d)(2) criteria for listing. EPA has reviewed the current **glycol** ethers category and is redefining it to exclude the surfactant **glycol** ethers. Surfactant **glycol** ethers are those **glycol** ethers with pendant alkyl groups which typically consist of eight or more carbon atoms (i.e., high molecular weight **glycol** ethers). However, EPA does not believe that the category can be more narrowly defined at this time.

EPA's revised **glycol** ethers category for which section 313 reporting is required, consists of those **glycol** ethers which meet the following definition:

Certain **Glycol** Ethers:

R - (OCH<INF>2CH<INF>2)<INF>n - OR'

Where:

n = 1, 2, or 3;

R = alkyl C7 or less, or

R = phenyl or alkyl substituted phenyl;

R' = H or alkyl C7 or less; or

OR' consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

IV. Rationale for Redefinition

EPA's concerns for the included chemicals is based on a review of available human health data on short-chain length **glycol** ethers. Specifically, EPA believes that these chemicals meet the criterion of EPCRA section 313(d)(2)(B) because the individual members of this category can be reasonably anticipated to cause one or more of the following effects: Kidney toxicity, liver toxicity, adverse blood effects, adverse central nervous system effects, reproductive effects, and developmental effects. EPA believes that the category can be redefined to exclude those **glycol** ethers known as surfactant **glycol** ethers because these high molecularweight **glycol** ethers do not meet the listing criteria in section 313(d)(2)(A) or (B). None of the chemicals in the current **glycol** ethers category meet the toxicity criterion of section 313(d)(2)(C) based on their ecotoxicity. EPA's rationale for this redefinition is detailed in the proposed rule and is based on the Agency's review of various relevant materials.

V. Response to Comments

EPA received 11 comments on the proposed rule, all in support of the proposed redefinition of the **glycol** ethers category. However, several of the commenters expressed the opinion that the proposed rule does not narrow the definition sufficiently, and that EPA should consider a further narrowing of the definition in the future. As discussed below, EPA does not believe that it currently has sufficient data to further narrow the category definition.

Two commenters, the Chemical Manufacturers Association (CMA), Propylene **Glycol** Ethers Panel, and CMA Ethylene **Glycol** Ethers Panel, stated that the name of the category should be changed to ``certain

glycol ethers'' to more accurately characterize the chemicals that are within the category. EPA has incorporated this comment, since this category does not consist of all chemicals that contain the **glycol** ether functionality.

One commenter, General Electric, suggested that the definition should not identify reportable **glycol** ethers by molecular structure. Instead, the commenter recommended listing the **glycol** ethers of concern individually, and identifying those which must be reported on an individual basis. All remaining **glycol** ethers would then be reported in an aggregate form. EPA believes this approach to defining the category is inappropriate and unnecessary. EPA has identified by molecular formula a specific group of **glycol** ethers having a common structure that pose similar hazards. EPA currently believes that the most appropriate way to report on this group of **glycol** ethers is in aggregate by category. A listing of **glycol** ethers as proposed by the commenter may exclude from reporting certain **glycol** ethers within the scope of the definition in this rulemaking that meet the section 313(d)(2) criterion. Therefore, EPA is adopting the redefinition of the **glycol** ethers category based on a molecular structure formula. A reporting facility must make aggregate reporting threshold and estimated release determinations for all **glycol** ethers in the category.

The Soap and Detergent Association proposed that the revised definition exclude sulfonate in the category of OR' because ``carbon sulfur bonds are not easily broken and, therefore, sulfonates are not readily hydrolyzable from surfactants.'' EPA proposed the inclusion of sulfonate not because of the possible reaction at the carbon sulfur bond in the sulfonate, e.g., desulfonation of aromatic sulfonates, but rather because the sulfonate ion is a reactive leaving group and thus can reasonably be anticipated to be hydrolyzed to yield a **glycol** ether of concern. Specifically hydrolysis of R-(OCH<INF>2CH<INF>2)<INF>nOSO<INF>2R'' (where R'' is any organic substituent) yields R-(OCH<INF>2CH<INF>2)<INF>nOH and R''SO<INF>2OH. Therefore, EPA reaffirms its inclusion of sulfonate as an appropriate member in the category of OR'.

The Chemical Manufacturers Association stated that the category should be limited to four specific ethylene **glycol** ether solvents: 2-Methoxyethanol, 2-ethoxyethanol, and their acetates. As stated in the proposed rule, with respect to the **glycol** ethers and developmental effects, there is evidence that the toxicity is reduced going from the methyl to the butyl ether. However, data for other toxic effects on **glycol** ethers with pendant alkyl groups of one to seven carbons or a phenyl group do not indicate a trend towards increased toxicity based on chain length for other toxic effects. Low molecular weight ethylene **glycol** ethers disturb the hemopoiesis and the blood picture at low doses. Hemolysis has been reported in varying degrees for ethylene **glycol** ethers of one to five carbons in the alkyl chain. The optimum alkyl chain length for hemolysis is four carbons. 2-Phenoxyethanol has also been found to cause intravascular hemolysis. Therefore, the concerns for ethylene **glycol** ethers are not limited to the four specific compounds mentioned by the commenter.

In the proposed rule, EPA requested comment on whether the definition of R' should include only straight chained alkyl groups of seven or fewer carbons or both straight and branched alkyl groups of seven or fewer carbons. No comments on this issue were received. Therefore, the definition of R' will include both straight and branched alkyl groups of seven or fewer carbons.

Rochester Midland, Soap and Detergent Association, Henkel Corporation, and Union Carbide Corporation asked that the definition also exclude alkylated phenols containing seven or more carbon atoms. As stated in the proposed rule, 2-phenoxyethanol is known to cause hemolysis. No data have been found for alkyl substituted phenoxyethanol derivatives. Henkel Corporation stated that ``[t]he C<INF>8, C<INF>9, and C<INF>12 alkyl phenol ethoxylates have also been used for many

years as surfactants. There is no evidence that they present adverse human effects such as those which caused the listing of the **glycol** ether category or would otherwise meet the section 313 criteria.' However, this commenter did not supply data to substantiate this assertion. The Soap and Detergent Corporation provided two studies to support its position (Smyth and Calandra, 1969; Dudek and Ribelin, 1988). Neither of these studies specifies the composition of the test material by number of ethylene oxide units. The commenter did provide the typical weight percent of the test substances as sold in commerce. Even if EPA assumed these typical compositions represent the test materials of these two studies, the dose levels presented in the studies would not be considered adequate to establish the lack of toxicity associated with ethylene **glycol** ethers with alkyl groups consisting of seven or greater carbon atoms.

Because only phenoxyethanol has been tested for systemic toxicity, change in the **glycol** ethers category definition which would exclude alkylphenol ethoxylates is not supportable, based on the available data. To evaluate the alkylphenol ethoxylates subcategory of the ethylene **glycol** ether category, EPA would require subchronic toxicity data for one or more specific members of the category (e.g., 2-nonylphenoxyethanol). In the absence of these data, the Agency believes that the **glycol** ethers category should continue to include these substances.

General Electric contended that individual **glycol** ethers should be listed in lieu of a category because EPCRA section 313 ``clearly states that additions to the EPCRA section 313 list must be done on a chemical-by-chemical basis. Each statutory provision that deals with revising the section 313 list speaks only in terms of a chemical-by-chemical basis, and EPCRA is silent on the issue of regulating by chemical categories.' The Agency believes that the statutory authority to add ``a chemical'' to the list may be reasonably interpreted to include the authority to add groups or categories of chemicals to the list, particularly in light of the fact that the original list adopted by Congress in section 313(c) of EPCRA included 20 chemical categories. These consist mostly of metal compounds categories, but also include categories of organic chemicals, such as **glycol** ethers (as noted in the proposed rule, Congress listed this category without a delimiting definition).

General Electric further contended that Congress listed ``**glycol** ethers'' in addition to the two individually listed **glycol** ethers, ``2-methoxyethanol'' and ``2-ethoxyethanol,'' to allow facilities the option of aggregating the releases of the two individually listed **glycol** ether chemicals and filing one TRI Form R report for ``**glycol** ether'' rather than two separate Form R reports. EPA does not accept this interpretation of Congress' intent in listing 20 chemical categories on the original EPCRA section 313(c) list of chemicals subject to TRI reporting. There is no clear statement of Congressional intent to adopt the type of ``optional'' reporting scheme advocated by General Electric. Indeed, the legislative history cited by General Electric supports EPA's current interpretation and implementation of EPCRA's reporting structure, i.e., persons manufacturing, processing, or otherwise using more than one member of a chemical category above the applicable reporting threshold may report the releases of all such chemicals, in the aggregate, on a single Form R report, rather than listing data separately for each chemical in the group.

Furthermore, contrary to General Electric's contention, several of the original chemical categories did not have corresponding ``individual'' chemicals listed on the original (CAS number specific) section 313(c) list. In their comments, General Electric acknowledged this to be the case only with regard to the polybrominated biphenyls (PBBs) category. However, there was no individual listing for any barium compounds, cadmium compounds, chromium compounds, or several other metal compounds in the original list transmitted to EPA by

Congress. See 53 FR 4500; February 16, 1988. Taken to its logical conclusion, General Electric's interpretation would result in no reporting of any members of the PBBs category unless and until EPA listed individual members of that category. EPA does not believe that this would be consistent with Congress' intent in listing this category on the initial section 313(c) list. If Congress had intended to include category listings as an optional method of reporting individually listed chemicals, it could have clearly stated so in the statute. At a minimum, some members of all the listed chemical categories would have been included in the CAS number specific list. In sum, EPA believes that its interpretation of the category reporting structure is a reasonable reading of EPCRA.

General Electric objected to the continued listing of a **glycol** ethers category because categories are difficult for EPA to administer and/or for the public and industry to understand. In addition, the commenter contended that industry compliance with reporting and supplier notification requirements is more difficult for categories, such as **glycol** ethers, because facilities are not provided with discrete chemical names and Chemical Abstract Service (CAS) registry numbers. The commenter contended that these problems are magnified in the case of the **glycol** ethers category because the category is defined by molecular structure formula.

Since the **glycol** ethers category consists of chemicals that are similar chemically and in potential effect, EPA believes that this category will not be difficult for the public or industry to understand or for the Agency to administer. The Agency will work with the public and the regulated community to develop, as appropriate, any interpretations and guidance the Agency determines are necessary to facilitate accurate reporting for the "certain **glycol** ethers" category. The Agency does not believe that the **glycol** ethers category is unique in that it is defined by molecular structure formula. All of the metal compound categories are defined based on molecular structure formula, i.e., to be considered a member of a metal compound category, the compound must consist of the parent metal and at least one substituent group. Both the chlorophenols and cyanide compound categories are defined by molecular structure formulas on the EPCRA section 313 list. EPA believes that defining the category by molecular structure formula ensures that all members of the category that meet the EPCRA section 313(d)(2) criteria are included and thus reportable.

Three commenters, the Soap and Detergent Association, Proctor and Gamble Co., and Union Carbide contended that EPA should be consistent between EPCRA and TSCA on its treatment of identical materials. Union Carbide cited the TSCA section 8(b) Inventory provisions. EPA believes that the differing treatment of **glycol** ether species with a low degree of ethoxylation under EPCRA and TSCA is appropriate given the differing purposes and standards of TSCA section 8(b) and EPCRA section 313. TSCA is concerned with the regulation of unreasonable risks to human health and the environment posed by chemical substances and mixtures in commerce; the section 8(b) Inventory, with few exceptions, provides a list of those chemical substances and mixtures. For purposes of developing an inventory of chemical substances in commerce, it is less important to specify whether those substances consist of a discrete species, e.g., chloroform, or a species with a range of molecular weights. EPCRA's goal is to provide the general public with a broad range of information on releases of certain chemicals.

Under TSCA, for example, **glycol** ether surfactant "mixtures" are considered as a single entity for purposes of entry on the Inventory; however, for purposes of reviewing the potential health or environmental unreasonable risks posed by activities involving such chemical substances, the impacts of their various components would be considered. Because the intent of EPCRA section 313 is community right-to-know, EPA wants to ensure that the public has access to information on each listed toxic chemical or chemical category to which the public

could be exposed, regardless of whether it is in a mixture. Therefore, where a surfactant contains species with a low degree of ethoxylation that fit the **glycol** ether category definition, EPA requires that those chemicals be reported.

Union Carbide also contended that "[a]s a legal matter, the current and proposed definitions exclude polymers from the category of **glycol** ethers. Since polymers potentially include their low molecular weight species (n = 1, 2, 3), the exemption for polymers precludes the need to report low molecular weight species under [s]ection 313."

EPA disagrees with Union Carbide's conclusion regarding species with low degrees of ethoxylation. The proposed definition being finalized today continues to exclude polymer molecules (i.e., those molecules which include at least four covalently linked subunits at least two of which are internal subunits), and to include low molecular weight **glycol** ethers with a low degree of ethoxylation. The change in regulatory text deleting the phrase "polymers are excluded from this category," does not change EPA's position regarding the scope of the **glycol** ethers category.

One commenter, the Cosmetic, Toiletry, and Fragrance Association, stated support for the proposal to change the definition of **glycol** ethers on other EPA lists. Today's action is not intended, and should not be inferred to affect the definition or regulatory requirements for **glycol** ethers under any statute or EPA program other than the Toxic Release Inventory reporting requirements under EPCRA section 313 and the Pollution Prevention Act section 6607. Specifically, the redefinition of **glycol** ethers on the EPCRA section 313 list does not in any way alter their definition under section 112(b) of the Clean Air Act (CAA), 42 U.S.C. section 7412(b) as amended, or, by virtue of their status as "hazardous air pollutants" (HAP) under the CAA, as "hazardous substances" under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C section 9601(14).

VI. Rulemaking Record

The record supporting this final rule is contained in the docket number OPPTS-400073B. All documents, including an index of the docket, are available for viewing and photocopying in the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA NCIC is located at EPA Headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Section 3(f) of the Order defines a "significant regulatory action" as an action likely to lead to a rule (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this final rule is not ``significant'' and therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a ``significant impact on a substantial number of small entities.''

40 CFR part 372 exempts certain small businesses (specifically, those facilities with fewer than 10 full-time employees) from reporting. This exclusion exempts about one-half of all manufacturing facilities in Standard Industrial Classification (SIC) codes 20 through 39 from section 313 reporting. Additionally, facilities which manufacture or process less than 25,000 pounds or otherwise use less than 10,000 pounds of these chemicals annually are not required to report for these chemicals. Thus, many small facilities will not incur any regulatory costs in association with this rule. Small businesses are not expected to be adversely affected by this rule, since the rule would increase the likelihood that they would not be required to report **glycol** ether releases. Therefore, EPA certifies that this rule is not likely to significantly impact small entities.

C. Paperwork Reduction Act

There are no unique reporting requirements associated with this final rule because it redefines the **glycol** ethers category to exclude certain high molecular weight **glycol** ethers from reporting under section 313. Reporting of chemicals that are subject to section 313 has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and has been assigned the OMB control number 2070-0093.

The public reporting burden for section 313 chemicals is estimated to average 43 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This rule's redefinition will reduce the number of responses required, thus reducing overall burden.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: June 28, 1994.

Lynn R. Goldman,
Assistant Administrator for Prevention, Pesticides and Toxic
Substances.

Therefore, 40 CFR part 372 is amended as follows:

PART 372--[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

2. In Sec. 372.65(c) by amending the category, **glycol** ethers to read as follows:

Sec. 372.65 Chemicals and chemical categories to which the part applies.

* * * * *
(c) * * *

Category Name Effective Date

Certain **Glycol** Ethers..... 1/1/95

R - (OCH<INF>2CH<INF>2)<INF>n - OR'

Where:

n = 1, 2, or 3;

R = alkyl C7 or less; or

R = phenyl or alkyl substituted phenyl;

R' = H or alkyl C7 or less; or

OR' consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

[FR Doc. 94-16173 Filed 6-29-94; 1:07 pm]

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