

Environmental Protection Agency

40 CFR Part 355

[FRL-3676-9]

RIN 205C-AC77

Extremely Hazardous Substance List

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On July 21, 1989 (54 FR 30700), the U.S. Environmental Protection Agency (EPA) proposed deleting six substances from the list of "extremely hazardous substances" promulgated by the Agency under section 302 of the Emergency Planning and Community Right-to-Know Act of 1986, Title III of the Superfund Amendments and Reauthorization Act of 1986. In addition, EPA proposed to change the threshold planning quantity for one other substance and to modify the rationale for listing another substance. Today EPA is taking final action to remove these six substances from the list of extremely hazardous substances, to change the threshold planning quantity for one substance on the list and to modify the rationale for listing another substance.

EFFECTIVE DATE: This rule becomes effective on March 19, 1990.

ADDRESSES: The record supporting this rulemaking is contained in Room 2427 Mall, Docket No. 300 PQ, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The technical background document relevant to the rulemaking is available in the docket. The docket is available for inspection, by appointment only, between the hours of 9:00 a.m. and 4 p.m. Monday through Friday, excluding federal holidays. The docket telephone number is (202) 382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Kathleen Bishop, Chemical Emergency Preparedness and Prevention Office, OS-120, U.S. EPA, 401 M Street SW, Washington, DC 20460. The Emergency Planning and Community Right-to-Know Information Hotline can also be contacted for further information at 1-800-535-0202, in Washington, DC and Alaska at 1-202-479-2449.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

- I. Statutory Authority
- II. Background
- III. Today's Rulemaking
- IV. Regulatory Analyses

I. Statutory Authority

This final rule is issued under sections 302 and 328 of the Emergency Planning and Community Right-to-Know Act of 1986 ("the Act").

II. Background

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499 (1986). Title III of SARA, known as the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 1100-11050, established a program designed to require state and local planning and preparedness for spills or releases of hazardous substances and to provide the public and local governments with information concerning potential chemical hazards in their communities.

Subtitle A of the Act establishes the framework for local emergency planning. It requires that EPA publish a list of extremely hazardous substances ("EHSs"). This list was to be the same as had been published in November, 1985, by the EPA Administrator in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidance" (CEPP Guidance), as the list of acutely toxic chemicals. On April 22, 1987, the Agency published this list in final form, 40 CFR 355 Appendices A and B. Under section 302, a facility which has present an EHS in excess of its "threshold planning quantity" ("TPQ") must notify the Local Emergency Planning Committee (previously the State Emergency Response Commission was the notification recipient) and participate, as necessary, in local emergency planning activities.

On July 1, 1988, EPA received a petition from the Gaylord Chemical Corporation requesting the Agency to delete dimethyl sulfide from the list of extremely hazardous substances because it did not meet the list criteria. In response to this petition, EPA undertook a review of dimethyl sulfide and other chemicals the Agency suspected may not have met the original listing criteria. In March, 1989, the Agency received a second petition, from the Food Ingredient Division of Hercules Incorporated, also requesting that the Agency delist dimethyl sulfide from the list of extremely hazardous substances. Today's rule delisting dimethyl sulfide from the section 302 list constitutes the Agency's final response to these petitions. The background of the delisting of these substances is discussed in the proposed rule.

III. Today's Rulemaking

Today EPA is taking final action to remove dimethyl sulfide (CAS # 75-18-3); isopropyl formate (625-55-8); methyl disulfide (624-92-0); phenol 2,2'-thiobis(4,6-dichloro-(97-18-7); piprotal (5281-13-0); and sodium pentachlorophenate (131-52-2) from the list of EHSs under section 302 of the Act. The Agency has reviewed the available toxicity data for these chemicals and has concluded that they do not meet the listing criteria. EPA believes that these chemicals were incorrectly listed under section 302. The references reviewed for these chemicals and for the other chemicals discussed in this final rule are cited in the technical background document, available in the docket.

The Agency received nine letters on the proposed rule. Two commenters explicitly supported the Agency's proposed deletion of all six substances for the same reasons listed above. One added that this deletion will assist in reducing paperwork and burdensome reporting requirements. The Agency acknowledges their support of this rulemaking.

Two commenters supported the delisting of dimethyl sulfide and methyl disulfide. The Agency acknowledges this support. Dimethyl sulfide and methyl disulfide were listed as EHSs on the basis of one 1972 scientific article that has been found to contain critical inconsistencies. In addition, key experimental design and conduct details were not given. The article thus was determined to contain flawed scientific methods. Other articles that EPA considers valid indicate that these substances clearly do not meet the criteria for listing as EHSs.

One commenter believed more attention should be given to possible chronic effects of dimethyl sulfide. The commenter discussed personal experience, beliefs, and observations concerning the detrimental health effects incurred in a community near a plant manufacturing the substance. The comment did not discuss any scientific studies that would support listing under the current criteria, or refute the data identified in the technical background document. Therefore, the Agency is delisting dimethyl sulfide.

One commenter specified his support for the delisting of piprotal. The Agency agrees. Piprotal, according to toxicity values currently listed by the Registry of Toxic Effects of Chemical Substances (RTECS) and a recent study, does not meet the listing criteria.

Another commenter supported delisting of sodium pentachlorophenate.

The Agency agrees. Sodium pentachlorophenate, according to toxicity values currently listed by RTECS and a recent study, does not meet the listing criteria.

One commenter expressed support for delisting methyl disulfide and dimethyl sulfide and also stated that methyl mercaptan should be delisted. The commenter stated that methyl mercaptan does not meet the Agency's primary criteria of acute toxicity nor its secondary criteria of toxicity in combination with large production volume, as there is only one U.S. producer of the substance. In addition, the commenter stated that the chemical's warning odor reduces the potential for exposure to toxic levels. No studies were supplied or referenced by the commenter regarding these concerns.

The EPA has reviewed other articles that it considers scientifically valid. These articles indicate that although methyl mercaptan does not meet the criteria for acute toxicity, it does meet the secondary criteria of toxicity in combination with a large production volume. While there is only one producer of this substance in the United States, EPA data indicates that the production quantity of methyl mercaptan is within the range of large production volume chemicals. Methyl mercaptan's warning odor does not eliminate its possible toxic effects on public health and welfare and the environment. Therefore, EPA is not delisting methyl mercaptan, but will keep it on the list as one of the "chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ('other chemicals')." 52 FR 13403.

On January 23, 1989 (53 FR 3388), EPA proposed the designation of 232 EHSs as hazardous substances under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. Under section 304 of SARA, releases of EHSs not currently subject to CERCLA Section 103 reporting requirements must be reported if the quantity released is one pound or more. The Agency has proposed in a Notice of Proposed Rulemaking (NPRM) dated August 30, 1989 (54 FR 35988), to adjust reportable quantities (RQs) for all EHSs proposed for designation in the January 23, 1989 proposed rulemaking and for some EHSs already listed in CERCLA hazardous substances. The substances delisted in today's rulemaking were included in the January 23, 1989 proposed rulemaking

and the proposed rulemaking on the RQ adjustments. Because of today's rulemaking, the six delisted chemicals will not be designated as CERCLA hazardous substances nor will they receive adjusted RQs upon the final promulgation of those NPRMs.

The Agency currently is developing the criteria for evaluating the additional physical and health characteristics specified under section 302(a)(4) for future revisions of the extremely hazardous substance list. If any of these substances are found to meet such other criteria, EPA will consider relisting the substances at that time.

In the July 21, 1989 proposed rule, the Agency proposed changing the TPQ of muscimol (2763-96-4) from 10,000 pounds in all instances to 500 pounds when the substance is in solution, in molten form, or has a particle size of 100 microns or less. The TPQ will remain at 10,000 pounds for solid forms with particle size greater than 100 microns. No comments were received on this change. In today's final rule, the Agency takes final action to change the TPQ of muscimol. This change returns the TPQ for muscimol to that published in the Agency's November 17, 1986 interim final rule that originally listed the EHSs and their TPQs (51 FR 41585). In the Final Rule of April 22, 1987 muscimol had been footnoted as not meeting the acute toxicity criteria. 52 FR 13378. This footnote was a typographical error. The basis for the listing has been verified. However, because of the error in footnoting, the TPQ for muscimol was raised to 10,000 pounds, the TPQ level of lowest concern. Based on the toxicity, the TPQ should have remained at 500 pounds or 10,000 pounds depending on the physical form of the substance.

The proposed rule requested comment on five additional chemicals that the Agency reviewed for possible removal from the list of EHSs. These chemicals are methacryloyl chloride (920-46-7), methyl vinyl ketone (78-94-4), pentadecylamine (2570-26-5), phosphorus pentoxide (1314-56-3), and pyrene (129-00-0). These chemicals were not proposed for deletion. Four of these chemicals were listed on the basis of inhalation toxicity studies that may contain flawed scientific methods. One is listed on the basis of an abstract. The information currently available to the Agency does not rebut the validity of the original listing of these chemicals. In the Proposed Rule, the Agency requested comments and additional information on these five chemicals.

No information regarding the toxicity of these chemicals was received during the comment period. One commenter

stated that the thirty day comment period was not applicable to phosphorus pentoxide because such a request was in effect a request for information and an advance notice of proposed rulemaking. The commenter requested more time to submit comments about this substance. The Agency will continue to accept comments on phosphorus pentoxide or any of these other substances and will reconsider their status if any significant new information is received, but no changes will be made as part of this rulemaking.

IV. Regulatory Analyses

A. Executive Order 12291

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a Regulatory Impact Analysis. The final rule today is not major because it will not result in an effect on the economy of \$100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic or export markets. Therefore, the Agency has not prepared a Regulatory Impact Analysis under the Executive Order. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA has examined the rule's potential effects on small entities as required by the Regulatory Flexibility Act. I certify that today's final rule will not have a significant economic effect on a substantial number of small entities.

List of Subjects in 40 CFR Part 355

Chemicals, Hazardous substances, Extremely hazardous substances, Community right-to-know, Chemical accident prevention, Chemical emergency preparedness, Threshold planning quantity, Reportable quantity,

Community emergency response plan, Contingency planning, Reporting and recordkeeping requirements.

Dated: February 1, 1990.

William Reilly,
Administrator.

For the reasons set out in the preamble, part 355 of title 40 of the Code of Federal Regulations is amended as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

1. The authority citation for part 355 is revised to read as follows:

Authority: 42 U.S.C. 11002, 11003, 11004, 11045, 11048, 11049.

PART 355—[AMENDED]

2. Appendix A to part 355 is amended by removing the following entries:

APPENDIX A—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[Alphabetical Order]

CAS No.	Chemical name
75-18-3	Dimethyl sulfide.
625-55-8	Isopropyl formate.
624-92-0	Methyl disulfide.
97-18-7	Phenol, 2,2'-thiobis(4,6-dichloro-
5281-13-0	Piprotal.
131-52-2	Sodium pentachlorophenate.

3. Appendix B to part 355 is amended by removing the following entries:

APPENDIX B—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[CAS Number Order]

CAS No.	Chemical name
75-18-3	Dimethyl sulfide.
97-18-7	Phenol, 2,2'-thiobis(4,6-dichloro-
131-52-2	Sodium pentachlorophenate.
624-92-0	Methyl disulfide.
625-55-8	Isopropyl formate.

APPENDIX B—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name
5281-13-0	Piprotal.

Appendix A to Part 355—[Amended]

4. Appendix A and Appendix B to part 355 are amended by deleting "a,h" from the Notes column and in the last column changing the threshold planning quantity (pounds) from "10,000" to "500/10,000" for Muscimol, CAS No. 2763-94-4.

Appendix B to Part 355—[Amended]

5. Appendix A and Appendix B to part 355 are amended by adding "l" to the Notes column for Methyl Mercaptan, CAS No. 74-93-1.

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