

the environment. Therefore, lessees must contact the appropriate MMS Regional Supervisor prior to burning liquid hydrocarbons.

The MMS recognizes that the best way to provide restrictions on burning liquid hydrocarbons is by rulemaking. Therefore, MMS is issuing a proposed rule under a separate **Federal Register** Notice that will cover the restrictions on burning liquid hydrocarbons.

The proposed rule will also give the public the opportunity to comment on the restrictions on burning liquid hydrocarbons.

Dated: December 23, 1994.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS-400006A; FRL-4929-6]

Butyl Benzyl Phthalate; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting a petition to delete butyl benzyl phthalate (BBP) from the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of BBP that occurred during the 1994 calendar year and releases that will occur in the future. This relief applies only to reporting requirements under section 313 of EPCRA.

EFFECTIVE DATE: This rule is effective February 17, 1995.

FOR FURTHER INFORMATION CONTACT: For specific information on this rule: Maria J. Doa, Petition Coordinator, Mail Code 7408, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-9592. For more information on EPCRA section 313: Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, In Virginia and Alaska, 703-412-9877 or Toll free TTD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This final rule is issued under section 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99-499).

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 must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). When enacted, 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 or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has, from time-to-time, added 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 section 313 metal compound categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) criteria for adding and deleting chemicals from the section 313 list (59 FR 61439, November 30, 1994).

II. Description of Petition and Proposed Response

On January 12, 1987, EPA received from the Monsanto Company a petition to delete BBP from the list of toxic chemicals subject to reporting under section 313 of EPCRA. BBP was included on the original list of toxic chemicals when EPCRA was enacted. On July 20, 1987, following a review which consisted of a toxicity evaluation and an exposure analysis, EPA proposed to grant the petition to delete BBP from the section 313 list by issuing a proposed rule in the **Federal Register** (52 FR 27226).

The proposal to grant the petition was based upon EPA's preliminary finding that BBP did not meet the listing criteria found in section 313(d) of EPCRA. It was EPA's belief that there was not sufficient evidence to demonstrate that BBP causes or can reasonably be anticipated to cause significant adverse human health or environmental effects.

One concern which remained following the initial review was the apparently widespread presence of BBP in the environment despite low anticipated release levels. Because of this concern, EPA stated in the proposed rule that the delisting would not be promulgated until the 1987 Toxic Chemical Release Inventory (TRI) reports submitted pursuant to section 313 could be examined to confirm that there were no substantial releases of BBP from covered facilities (see unit III. of this preamble).

Only one commenter, the Monsanto Company, responded to EPA's proposal to delete BBP from the section 313 list of toxic chemicals. The Monsanto Company concurred with EPA's proposed deletion but objected to the decision to delay promulgation until the 1987 TRI reports could be reviewed.

Based upon evaluation of the petition, available toxicity and exposure information, the review of the 1987 - 1992 TRI reports, and the comment, EPA affirms its determination that BBP does not meet any of the toxicity criteria listed in section 313(d). Therefore, EPA is deleting BBP from the list of chemicals subject to reporting under section 313 of EPCRA.

BBP also appears on the Priority Pollutant List (PPL) of section 307 of the Clean Water Act (33 U.S.C. 1317); however, at this time EPA believes that insufficient data preclude the derivation of ambient water quality criteria for BBP by the Agency.

This petition does not request that any action be taken under any statutory provision other than EPCRA section 313, and today's rule should not be inferred as an action under any statutory provision other than EPCRA section 313. Each statute prescribes different standards for adding or deleting chemicals of pollutants from their respective list. Specifically, the deletion of BBP from the EPCRA section 313 list does not alter its regulatory status under other statutory provisions. Today's rule is based solely on the criteria in EPCRA section 313.

III. EPA's Review of Butyl Benzyl Phthalate

As discussed in the proposal, EPA preliminarily determined that BBP has low toxicity with respect to human

health, and moderate environmental toxicity. Under these circumstances, EPA believes that it is appropriate to consider exposure in its listing decisions (see position set out in November 30, 1994 **Federal Register** cited above). Therefore, EPA's review of BBP consisted of two main components: a toxicity evaluation and a release and exposure analysis. EPA has concluded that (1) human health effects from BBP are not expected to be significant for purposes of section 313, and (2) BBP's moderate environmental toxicity, coupled with a low concern for persistence and bioaccumulation, does not represent a significantly high level of risk for the purposes of section 313(d). Details of the review can be found in the proposed rule (52 FR 27226) and in the document entitled "Hazard Assessment of n-Butyl Benzyl Phthalate" in the public docket.

A. Toxicity Evaluation

1. *Human toxicity.* At the time of publication of the proposed rule, EPA had preliminarily placed BBP in EPA's weight-of-evidence cancer risk assessment Category D (i.e., available evidence inadequate to determine human carcinogenic potential). EPA later placed BBP in weight-of-evidence Category C (i.e., a possible human carcinogen based on limited evidence in animals).

BBP's classification is based upon a 1982 study conducted by the National Toxicology Program (NTP). Because of serious flaws in this study, NTP has undertaken a second animal study to evaluate the carcinogenicity of BBP. It was initially expected that results of this study would be available by 1994. EPA has waited for a number of years for the results of this study; however, there is currently no indication that the study will be completed and results made available in the near future. Therefore, EPA has decided to take action on this petition at this time using the existing cancer study. If the results of the NTP study indicate that BBP can reasonably be anticipated to cause cancer, EPA will re-evaluate the chemical and may consider re-adding BBP to the section 313 list of toxic chemicals.

This reclassification resulted from further review of the existing evidence; no new evidence has been found beyond that considered in EPA's initial review of this petition to delete BBP from the section 313 list. Therefore, EPA continues to believe that, while the limited animal evidence available for BBP suggests a possible carcinogenic effect, the study providing this evidence is flawed. Because of the flawed nature of the study, EPA has concluded that

BBP exhibits low toxicity for purposes of EPCRA 313(d)(2)(B) listing decisions. Accordingly, exposure consideration will be factored in. EPA has no evidence to indicate other potential human toxicity.

2. *Environmental toxicity.* As discussed in the proposal, EPA has concluded that BBP is moderately but not highly ecotoxic. There is low concern for potential bioconcentration, and the half-life for primary biodegradation of BBP is approximately 2 days, which indicates that the substance should have low persistence in the environment.

B. Release and Exposure Analysis

EPA has received and entered into the section 313 TRI data base more than 100 reports per year for BBP for reporting years 1987 to 1992. EPA examined these reports primarily for water releases, both directly to surface waters and through Publicly Owned Treatment Works (POTWs). For these years, from 18 to 53 companies reported water releases to POTWs and from 1 to 15 reported releases directly to surface water. For the releases to POTWs, EPA assumed (based on the physical and chemical characteristics of BBP) that BBP releases are 90 percent removed in wastewater treatment at the POTW before the final release to surface water.

EPA analyzed the 1987 reported release data to estimate the surface water concentrations based upon mean and low receiving stream flow data, where available. Where stream flow data were unavailable, the POTW mean effluent flow was used as a worst-case estimate. Where BBP releases were reported as a range (e.g., 1 to 499 lb/yr), the upper end of the release range was used as a conservative estimate for purposes of this section 313 analysis.

No firms were identified with a potential surface water concentration at or above the Lowest Effect Concentration (LEC) for BBP of 110 ppb (chronic aquatic ecotoxicity) under mean flow conditions. Under low flow conditions, two firms had a predicted concentration of this magnitude (200 ppb for one firm, and an unquantifiable, high concentration for the other site). The other 17 firms all had estimated surface water concentrations under low flow conditions of 30 ppb or less.

The release patterns from subsequent years were similar, and thus the analyses using 1987 data were considered representative of subsequent years. To confirm this assumption, an additional exposure review was conducted using 1992 release data (the most current data available). Estimates of concentrations downstream from TRI

facilities were made using recent stream flow data. Surface water concentrations for the five highest releasers of BBP ranged from 0.03 ppb to 1.0 ppb during mean flow conditions, and from 0.2 ppb to 18.8 ppb during low flow conditions. Only the 18.8 ppb value exceeds the Maximum Acceptable Toxicant Concentrations (MATCs) for several algal species. However, because the low flow conditions are only expected to occur during one 7-day event in 10 years, EPA does not believe that this will result in adverse effects to the environment. Efforts were made to check as many sites as feasible in addition to the five highest releasers, because moderate releases may lead to higher concentrations for streams with less dilution. The surface water concentrations for the stream found to have potentially higher concentrations were estimated to be less than 2 ppb during mean flow conditions, and less than 13 ppb for low flow conditions. Again, although the low flow concentrations may exceed the MATC for certain algal species, the duration of exceedence is not expected to be sufficient to result in significant adverse effects.

Human exposure potential to BBP was also examined. The aquatic concentrations at drinking water utilities under mean flow conditions are expected to be below 1 ppb (i.e., less than 1 microgram per liter). The two largest release facilities are both on the Delaware River, and their combined result (after accounting for treatment) is less than 0.7 ppb under mean flow conditions. These concentrations are not expected to result in significant adverse effects in humans.

IV. Conclusion of EPA's Review

The hazard review conducted in 1987 concluded that BBP has low toxicity with respect to human health and moderate environmental toxicity. There is no new data available which would cause EPA to change this assessment. EPA's review of the 1987 and 1992 TRI reports for BBP uncovered no potentially significant releases at mean flow conditions and only two potentially significant releases at low flow conditions. EPA's conclusion is that these releases do not raise sufficient concern about potential human or environmental exposures to warrant retention of BBP on the section 313 list.

After reviewing available data and the comment on the proposed rule, EPA continues to believe that BBP does not cause, nor can it reasonably be anticipated to cause, the adverse human health or environmental effects set forth in section 313(d). Accordingly, it is

appropriate to delete BBP from the list of toxic chemicals in EPCRA section 313.

V. Effective Date

This action becomes effective upon publication. Thus the last year in which facilities had to file a TRI report for BBP was 1994, covering releases and other activities that occurred in 1993. Section 313(d)(4) provides that "[a]ny revision" to the section 313 list of toxic chemicals shall take effect on a delayed basis. EPA interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list. For deletions, EPA 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) because a deletion from the section 313 list relieves a regulatory restriction.

EPA believes that where the Agency has determined, as it has with BBP, that a chemical does not satisfy any of the criteria of section 313(d)(2)(A)–(C), no purpose is served by requiring facilities to collect data or file TRI reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. This construction of section 313(d)(4) is consistent with previous rules deleting chemicals from the section 313 list. For further discussion of the rationale for immediate effective dates for EPCRA section 313 delistings (see 59 FR 33205, June 28, 1994).

VI. 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 the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), 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, EPA has determined that this rule is not "significant" and therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, EPA must conduct a small business analysis to determine whether a substantial number of small entities

will be significantly affected. Because the rule will result in cost savings to facilities, EPA certifies that small entities will not be significantly affected by this rule.

C. Paperwork Reduction Act

This rule relieves facilities from having to collect information on the use and releases of BBP. Therefore, there were no information collection requirements for OMB to review 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, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: February 10, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended as follows:

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

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Section 372.65(a) and (b) are amended by removing the entire entry for butyl benzyl phthalate under paragraph (a) and removing the entire CAS No. entry for 85-68-7 under paragraph (b).

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