ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[FRL–6202–4]

RIN 2050–AE48

Reportable Quantities: Removal of Caprolactam From the List of CERCLA Hazardous Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending regulations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, to remove caprolactam (CAS No. 105–60–2) from the list of CERCLA hazardous substances. CERCLA section 101(14) defines the term hazardous substance by referring to those substances listed under several other environmental statutes, including section 112(b) of the Clean Air Act (CAA), as well as substances designated by EPA as hazardous under CERCLA section 102(a). Today's action follows the removal of caprolactam from the list of hazardous air pollutants under section 112(b)(1) of the Clean Air Act Amendments of 1990. The effect of today's action is that caprolactam is no longer a CERCLA hazardous substance. Persons in charge of vessels or facilities from which caprolactam is released are no longer required to immediately notify the National Response Center of the release under CERCLA section 103, and are not subject to the liability provisions under CERCLA section 107. Unless EPA receives adverse written comments during the review and comment period provided in this direct final rule, the decision to remove caprolactam from the list of CERCLA hazardous substances will take effect without further notice as provided in the **DATES** section of this **Federal Register**. If EPA receives adverse comment, EPA will withdraw this rule before its effective date by publishing a document in the **Federal Register** informing the public that the rule will not take effect.

DATES: This final rule is effective on February 16, 1999 unless the Agency receives adverse comments by January 14, 1999. Should the Agency receive such comments, it will publish a timely withdrawal informing the public that this rule will not take effect.

ADDRESSES: Mail written comments referring to Docket Number (102RQ–CAP) to Lynn Beasley, Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, Phone: (703) 603–9086. You can examine copies of public comments and other materials supporting EPA's decision to remove caprolactam from the Clean Air Act and CERCLA lists of hazardous substances at the U.S. Environmental Protection Agency Superfund Docket and Document Center, 1235 Jefferson Davis Highway (1st floor), Arlington, Virginia 22202. Docket hours are 9:00 a.m. to 4:00 p.m., Monday through Friday. Please call (703) 603–9232 for an appointment. The public may copy a maximum of 100 pages from any regulatory docket at no charge; additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For information on specific aspects of this final rule, contact Lynn Beasley by mail at Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, by phone at (703) 603–9086, or by Internet e-mail at beasley.lynn@epa.gov.

SUPPLEMENTARY INFORMATION:

Outline of Today's Rule

I. Authority

This document is issued under the authority of section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9602.

II. Background

Section 101(14) of CERCLA defines the term hazardous substance as those substances listed under several other environmental statutes and those substances designated by EPA as hazardous under CERCLA section 102(a). In particular, CERCLA section 101(14)(E) incorporates by reference the list of hazardous air pollutants listed in section 112(b)(1) of the Clean Air Act. CERCLA section 102(a) authorizes EPA to designate as hazardous those substances that, when released into the environment, may present substantial danger to the public health or welfare or the environment, and to establish the reportable quantity for all CERCLA hazardous substances. A list of CERCLA hazardous substances with their corresponding reportable quantities is provided in Table 302.4 at 40 CFR part 302. CERCLA section 103 requires any person who releases a CERCLA hazardous substance in an amount equal to or greater than its reportable quantity to report the release immediately to the Federal government.

In 1990, amendments to section 112(b)(1) of the Clean Air Act added the substance caprolactam (CAS No. 105–60–2) to the list of hazardous air pollutants. Because the CERCLA definition of hazardous substance includes CAA hazardous air pollutants, caprolactam immediately became a CERCLA hazardous substance. On June 12, 1995, EPA updated Table 302.4 to include caprolactam and established a reportable quantity of 5,000 pounds for the substance (see 60 *FR* 30926). In July 1993, EPA received a petition to remove caprolactam from CAA section 112(b)(1). Following a review of the petition, EPA determined that there was adequate data on the health and environmental effects of caprolactam to indicate that emissions, ambient concentrations, bioaccumulation, or deposition of the substance would not cause adverse human health or environmental effects. Based on this determination, the Agency proposed to remove caprolactam from the list of CAA hazardous air pollutants at section 112(b)(1), and after taking comment, removed caprolactam from the list on June 18, 1996 (see 61 *FR* 30816). Parties had an opportunity to comment on the effect of removing caprolactam as a hazardous air pollutant prior to that final rule.

Today, the Agency is taking action to remove caprolactam from the list of CERCLA hazardous substances. The Agency does not have independent basis upon which to retain caprolactam as a CERCLA hazardous substance. The Agency's designation of caprolactam under section 102(a) was based solely upon its inclusion as a hazardous substance under section 101(14)(E) of CERCLA.

This rule will be effective February 16, 1999 without further notice unless the Agency receives adverse comments by January 14, 1999. If EPA receives adverse comments, the Agency will publish a notice informing the public that the rule will not take effect prior to the effective date. A companion rule is in the Proposed Rule section of today's **Federal Register**. Should the Agency receive any adverse comments, this final

rule will be withdrawn and the Agency will proceed with the proposed rule. All public comments received will be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Parties interested in commenting on this rule should do so at this time. If no adverse comments are received, the public is advised that this rule will be effective on February 16, 1999 and no further action will be taken on the proposed rule. In general, adverse comments are comments that suggest that the rule should not be adopted, that offer contrary facts or that dispute the factual basis of the rulemaking. If you are interested in commenting you should do so in accordance with the time frame provided in today's **Federal Register**. Provide any written comments on this rule to the address indicated in the **ADDRESSES** section above.

The Agency is removing caprolactam from the list of hazardous substances through direct final rule because it does not expect any adverse comments and as stated above, parties had an opportunity to coment on the effect of removing caprolactam from the hazardous air pollutant list prior to that final rule (61 *FR* 30816). Because regulating caprolactam under CERCLA presents an unnecessary burden to industry, EPA believes that the public's interest is best served by immediately removing caprolactam from the list of CERCLA hazardous substances.

III. Administrative 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 Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is not a ''significant regulatory action'' under the terms of E.O. 12866 and is therefore not subject to OMB review.

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments and it does not impose any enforceable duties on these entities. Accordingly, the requirements of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' This rule is not subject to this Executive Order because it does not impose substantial direct compliance cost on tribal communities and it does not significantly or uniquely affect those communities.

D. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) 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). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination. Because the action being taken by the Agency in today's notice reduces regulatory requirements, the Administrator certifies pursuant to U.S.C. 605(b) that

this rule will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

F. Paperwork Reduction Act

This final rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Further, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, or tribal governments or the private sector. This rule is deregulatory in nature and does not impose any enforceable duty. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. As to section 203, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective February 16, 1999.

List of Subjects in 40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Hazardous materials, Hazardous wastes, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: December 9, 1998.

Carol Browner,

Administrator.

40 CFR Part 302 is amended as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603 and 9604; 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

2. Amend § 302.4 by removing the entry for ''Caprolactam'' from Table 302.4.

[FR Doc. 98–33213 Filed 12–14–98; 8:45 am]

BILLING CODE 6560–50–P