

retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

#### **XI. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 the 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 this final rule in the *Federal Register*. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 27, 2001.

**Anne E. Lindsay,**

*Acting Director, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

#### **PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1214 is added to subpart D to read as follows:

**§ 180.1214 *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production in corn; exemption from the requirement of a tolerance.**

*Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production in corn are exempt from the requirement of a tolerance when used as plant-pesticides in the food and feed commodities of field corn, sweet corn and popcorn. *Genetic material necessary for its production* means the genetic material which comprise genetic material encoding the Cry3Bb1 protein and its regulatory regions. *Regulatory regions* are the genetic material, such as promoters, terminators, and enhancers, that control the expression of the genetic material encoding the Cry3Bb1 protein. This exemption from the requirement of a tolerance will expire on May 1, 2004.

3. Section 180.1215 is added to subpart D to read as follows:

**§ 180.1215 *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production in corn or cotton; exemption from the requirement of a tolerance.**

*Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production in corn or cotton are exempt from the requirement of a tolerance when used as plant-pesticides in the food and feed commodities of field corn, sweet corn, popcorn, cotton seed, cotton oil, cotton meal, cotton hay, cotton hulls, cotton forage, and cotton gin byproducts. *Genetic material necessary for its production* means the genetic material which comprise genetic material encoding the Cry2Ab2 protein and its regulatory regions. *Regulatory regions* are the genetic material, such as promoters, terminators, and enhancers, that control the expression of the genetic material encoding the Cry2Ab2 protein. This exemption from the

requirement of a tolerance will expire on May 1, 2004.

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#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR PART 372**

**[OPPTS-400134A; FRL-6722-9]**

**RIN 2025-AA00**

#### **Chromite Ore from the Transvaal Region of South Africa; Toxic Chemical Release Reporting; Community Right-to-Know**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is granting a petition to delete both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the chromite ore processing residue (COPR) from the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). These chemicals are currently reported as part of the category "chromium compounds" on the list of toxic chemicals in section 313(c) of EPCRA. The action is based on EPA's conclusion that this particular chromite ore from the Transvaal Region and the unreacted ore component of the COPR (in the case of this delisting decision, COPR includes the solid waste remaining after the aqueous extraction of oxidized chromite ore that has been combined with soda ash and kiln roasted at approximately 2,000 °F) meet the deletion criterion under EPCRA section 313(d)(3). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of and other waste management information on chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR that occurred during the 2000 reporting year, and for activities in the future.

**EFFECTIVE DATE:** This rule is effective May 11, 2001.

**FOR FURTHER INFORMATION CONTACT:** Daniel R. Bushman, Petitions Coordinator, (202) 260-3882, e-mail: bushman.daniel@epa.gov, for specific information on this document, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 1200 Pennsylvania Ave.,

NW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: (703) 412-9877 or Toll free TDD: 1-800-553-7672. Information concerning this notice is also available on EPA's Web site at <http://www.epa.gov/tri>.

## SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does this Action Apply to Me?

You may be potentially affected by this notice if you kiln roast chromite ore

in the production of chromium chemicals or if you process chromite ore (e.g., metal finishers, leather tanning, etc.). Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Industry	SIC major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20 through 39; industry codes 4911 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); 4931 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 <i>et seq.</i> ), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis)
Federal Government	Federal facilities

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations (CFR). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

#### B. How Can I Get Additional Information or Copies of this Document or Other Support Documents?

1. *Electronically.* You may obtain electronic copies of this document from the EPA internet Home Page at <http://www.epa.gov/>. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the "Federal Register" listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS-400134. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public

version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260-7099.

### II. Introduction

#### A. What is the Statutory Authority for this Action?

This action is being taken under EPCRA sections 313(d) and (e)(1), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499).

#### B. What is the General Background for this Action?

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals in amounts above reporting threshold levels, to report their environmental releases of such chemicals annually. These facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of PPA, 42 U.S.C. 13106. Section 313 of EPCRA established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Chromium compounds (which include chromite ore) were included on the initial list. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. EPA has added and deleted chemicals from the

original statutory list. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days, either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

EPCRA section 313(d)(2) states that a chemical may be listed if any of the listing criteria are met. Therefore, in order to add a chemical, EPA must demonstrate that at least one criterion is met, but does not need to examine whether all other criteria are also met. Conversely, in order to remove a chemical from the list, EPA must demonstrate that none of the criteria are met.

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 submitting 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 compounds categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) and (3) criteria for modifying the section 313 list of toxic chemicals (59 FR 61432, November 30, 1994) (FRL-4922-2).

### III. What Does this Petition and Related Past Petitions Request of the Agency?

#### A. What Does this Petition Request?

On January 26, 1998, EPA received a petition from Elementis Chromium LP (ECLP) (formerly American Chrome & Chemicals, Inc.) requesting that EPA delete from the chromium compounds

category both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR. COPR is the solid waste remaining after aqueous extraction of oxidized chromite ore that has been combined with soda ash and kiln roasted at approximately 2,000 °F. Elementis believes that the chemical and toxicological properties of chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR do not meet the statutory listing criteria of EPCRA 313(d)(2) and therefore should be removed from the reporting requirements of EPCRA section 313 and PPA section 6607. The EPCRA section 313 list of toxic chemicals includes a category listing for chromium compounds, thus, all chromium compounds are subject to the annual reporting requirements of EPCRA section 313 and PPA section 6607. This petition decision is specific to chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from this particular process.

#### *B. What Other Petitions for Chromium Compounds Have Been Filed?*

EPA has received two other petitions requesting the deletion of certain chromium compounds. On January 8, 1990, a petition to delist chromium antimony titanium buff rutile (CATBR) from the EPCRA section 313 list of toxic chemicals was denied based on EPA's determination that CATBR is a potential carcinogen via inhalation (55 FR 650). Based on test data on chromium (III) oxide, EPA determined that CATBR, an insoluble crystalline chromium (III) compound, could be retained in the lung and taken up by cells. EPA denied this petition due to the determination that CATBR was a potential carcinogen, and that it could reasonably be anticipated to cause cancer in humans.

Since then, EPA published a statement of policy and guidance for petitions under EPCRA section 313 (56 FR 23703, May 23, 1991). In that notice, EPA set forth its policy concerning petitions to delist individual members of the metal compound categories. In response to concerns with respect to individual members of categories that do not meet the toxicity criteria of section 313, EPA has stated that it will "grant petitions on individual members providing that the petitioner establishes and EPA concludes that the intact species does not meet the criteria of section 313(d)(2), and that the metal ion will not become available at a level that can be expected to induce toxicity."

On November 22, 1991, a petition to delist Chromium (III) Oxide from the EPCRA section 313 list of chemicals was denied based on the evidence that chromium (III) oxide may be oxidized to carcinogenic chromium (VI) compounds in soil (56 FR 58859). The petition response also discussed the possibility that chromium (III) oxide is a potential carcinogen via inhalation.

#### **IV. What is EPA's Summary of its Proposed Action?**

Following a review of the petition (Ref. 1), EPA granted the petition and issued a proposed rule in the **Federal Register** of February 23, 1999 (64 FR 8774) (FRL-6030-6) proposing to delete both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from reporting under the EPCRA section 313 chromium compounds category. EPA's proposal was based on its preliminary conclusion that both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR met the deletion criteria of EPCRA section 313(d)(3). With respect to deletions, EPCRA provides at section 313(d)(3) 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)]." In the proposed rule, EPA preliminarily concluded that, while many concerns exist for the hazards associated with soluble Cr(III) compounds and all Cr(VI) compounds, these concerns do not appear to be pertinent to the chromite ore from the Transvaal Region of South Africa and the unreacted ore component of the COPR. The available data indicate that this particular chromite ore does not leach chromium of any oxidation state nor does it oxidize to produce any Cr(VI) compounds under any biotic or abiotic processes. EPA preliminarily determined that there are no human health or environmental hazard concerns for this particular chromite ore that meet the toxicity criterion of EPCRA section 313(d)(2)(A), (B), or (C). A more detailed discussion of the technical information can be found in the proposed rule and the supporting EPA technical reports (Refs. 2, 3, 4, 5, 6, and 7) and other references contained or cited in the docket.

#### **V. What is EPA's Response to the Submitted Petition and Rationale?**

##### *A. What is EPA's Response to the Submitted Petition?*

EPA is granting the ECLP petition by delisting both chromite ore mined in the

Transvaal Region of South Africa and the unreacted ore component of the COPR from the reporting requirements under the EPCRA section 313 chromium compounds category. Note that this delisting does not include any of the Cr(III) or Cr(VI) compounds that are also part of the COPR. This delisting only applies to the unreacted ore component of the COPR.

##### *B. What is EPA's Rationale for the Delisting?*

EPA has concluded that the assessment set out in the proposed rule should be affirmed. The available data indicate that the chromite ore from the Transvaal Region of South Africa and the insoluble Cr(III) unreacted ore component of the COPR do not leach ionic chromium of any oxidation state nor do they oxidize to produce Cr(VI) compounds under any biotic or abiotic processes. EPA has determined that there are no human health or environmental hazard concerns for this particular chromite ore that meet the toxicity criterion of EPCRA section 313(d)(2)(A), (B), or (C). EPA believes that the deletion of this particular chromite ore and the unreacted ore component of the COPR is consistent with the Agency's published guidance on how it will review petitions to delete members of EPCRA section 313 metal compound categories (56 FR 23703, May 23, 1991). Specifically, chromium is not available or bioavailable from this particular chromite ore or the unreacted ore component of the COPR through any biotic or abiotic processes and there is no evidence that the intact chromite ore or the unreacted ore component of the COPR causes any adverse effects that meet the EPCRA section 313(d)(2)(A), (B), or (C) toxicity criterion. EPA is therefore modifying the current chromium compounds listing to exclude both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR. However, EPA is not removing any other Cr(III) compounds or any Cr(VI) compounds from the chromium compounds category. As EPA has previously determined, if Cr(III) is available from a chromium compound, it can be converted to Cr(VI) compounds in the environment (56 FR 58859, November 22, 1991). While EPA is delisting this specific chromite ore and the unreacted ore component of COPR from reporting under EPCRA section 313, all other chromium compounds contained in the COPR will continue to be reportable.

## VI. What are EPA's Responses to the Public Comments?

### A. What Comments Did EPA Request in the Proposed Rulemaking?

EPA requested both general and specific comments in the proposal to delist both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from the list of toxic chemicals subject to the reporting requirements under EPCRA section 313 and PPA section 6607. EPA requested specific comments on three issues relating to chromium compounds, including: (1) Possible carcinogenicity of insoluble crystalline chromium (III) compounds via inhalation and uptake in the lung cell by phagocytosis; (2) possible indirect effects of chromium (III) competing with other cations in ligand sites in siderophore complexes; and (3) the availability of toxicity and fate information that would support excluding all chromite ores from reporting under EPCRA section 313.

### B. What Comments Did EPA Receive in Support of the Proposed Rulemaking?

EPA received comments from five organizations supporting EPA's proposal to delist both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from the list of toxic chemicals subject to the reporting requirements under EPCRA section 313 and PPA section 6607. The five commenters are: Elementis Chromium; Exponent Environmental Group; Chemical Land Holdings Inc.; Collier, Shannon, Rill, and Scott (representing the Specialty Steel Industry of North America (SSINA)); and Occidental Chemical Corporation.

1. *Did EPA receive comments relating to EPA's finding that the carcinogenicity potential is insignificant for insoluble crystalline chromium (III) compounds that may enter lung cells via phagocytosis?* Several commenters agreed with EPA that while insoluble crystalline Cr(III) may be taken up in cells via phagocytosis, there is no evidence of carcinogenicity. One commenter provided additional literature to support this point. Another commenter noted several studies that suggest a potential for biologically available Cr(III) to oxidize to Cr(VI) in the presence of peroxy or oxygen radicals. The commenter stated that oxidation under such conditions is unlikely, however, since Cr(III) readily forms a variety of inert complexes *in vivo*. Another commenter stated that bacterial genotoxicity studies have been found to be overwhelmingly negative,

and that mammalian and avian studies have also been found to be negative, concurring that Cr(III) is not carcinogenic via inhalation based on available testing and sampling data.

EPA agrees with the commenters and restates that the carcinogenicity data from the available studies of inhaled, insoluble, crystalline trivalent chromium compounds are inadequate to support listing this particular chemical under EPCRA Section 313 (Ref. 8).

2. *What comments did EPA receive relating to the possible indirect effects of Cr(III) on siderophore complexes and the availability of studies (in vivo) that address the competition of Cr(III) with other ions?* Several commenters contend that, since *in vivo* biological effects of Cr(III) are unknown and unreported, the ability of Cr(III) to inhibit the ability of cells to uptake iron *in vitro* is not relevant. Another commenter responded to the possible indirect effects of Cr(III) on siderophore complexes by referring to the binding of DNA material to Cr(III). The commenter noted, however, that Cr(III) is impermeable to cell membranes and that Cr(VI) is transported into the cell then reduced to Cr(III) before any toxic effects are observed. The commenter concludes that this reduction of Cr(VI) to Cr(III) should not be misinterpreted "as evidence that Cr(III) is responsible for the adverse effects of Cr(VI) \* \* \*."

EPA notes that the commenters focused on the potential cationic exchange as a possible mechanism for carcinogenicity. In requesting comments on the possible indirect effects of Cr(III) on siderophore complexes, EPA was not necessarily implying a concern for carcinogenicity. Rather, EPA's primary concern for siderophoric ion exchange relates to environmental exposures to heavy metal cations displaced from soils that are exposed to soluble chromium ions (64 FR 8778). As was stated in the proposal, EPA has determined that there are inadequate data to determine the potential carcinogenicity of Cr(III) (Ref. 8).

In addition to the direct leaching as a function of water solubility, metal ions have been found to be transported via macromolecules and siderophoric complexes. The addition of certain metal ions to contaminated soil plots or experimental samples produce equilibrium effects on the ability of these materials to "carry" the heavy metal cations. In certain studies, metals ions (specifically zinc (II) and cadmium (II)) have been found to compete for sites and exchange ions "even when only a few percentage of all surface sites were occupied" (Ref. 9).

EPA requested comment in the proposed rule to determine if releases of chromium, particularly from COPR sites, would exchange with the existing metal contaminants and thereby cause both a direct and indirect environmental release (e.g., elevated chromium levels) (Ref. 10). EPA did not receive any comments on this topic. The Agency believes, however, that the chromium in this specific chromite ore and corresponding unreacted ore portion of the COPR is neither available nor soluble and therefore these issues will have no bearing on the delisting of these two chemical compounds based on the current available information (56 FR 23703).

3. *What comments did EPA receive relating to whether all chromite ore and COPR behaves similarly to the chromite ore from the Transvaal Region of South Africa and the unreacted ore portion of the COPR remaining from the process described in the proposed rule?* EPA received comments that addressed four aspects of this topic including: conversion of Cr(III) to Cr(VI); biological activity of Cr(III); carcinogenic effects of Cr(III); and environmental fate of chromium compounds. In general, the commenters state specific known chemical characteristics for individual chemicals and apply them to the entire class. A broad structure-activity relationship (SAR) approach to justify delisting insoluble Cr(III) chemicals in general appears to be the overall goal of the approach submitted by commenters. The SAR approach examines the structure of a chemical to predict the chemical's toxicity.

Although the Agency requested comments on the "availability of toxicity and fate information that would support excluding all chromite ores from reporting under EPCRA section 313," EPA proposed to delist only the chromite ore mined in the Transvaal region of South Africa and the associated unreacted chromite ore component of the COPR. The Agency is delisting only these two chemicals. EPA's purpose for soliciting information regarding the broader class of chromite ore was to gather information to determine whether a future rulemaking including other chemicals would be appropriate.

In response to the comments received, the Agency believes that test results for a variety of Cr(III) compounds (including toxicity, oxidation, and fate) are insufficient to support any broad determinations concerning chromium compounds. The chromium compounds category listing is based on the well established toxicity of chromium. As EPA stated in its EPCRA section 313

metals policy, the Agency will consider delisting a chemical or chemical compound if the intact metal compound is not toxic and the metal from that compound cannot become available through any abiotic or biotic process (56 FR 23703). In reviewing the four areas of concern described by commenters, including conversion of Cr(III) to Cr(VI); biological effects of Cr(III); carcinogenicity of Cr(III); and environmental fate of chromium compounds, the commenters did not submit sufficient evidence to support the delisting of all chromite ores or any other specific Cr(III) compound.

For example, commenters submitted data for chromium trioxide. Chromium trioxide is insoluble and has chemical characteristics attributed to this class of insoluble chromium compounds. However, in 1991, EPA denied a petition to delist this chemical (58 FR 58859, Nov. 22, 1991) due to availability of the Cr(III), and the potential of Cr(III) to oxidize to Cr(VI). The four individual comments and corresponding EPA responses follow.

a. *What comments did EPA receive relating to the conversion of Cr(III) to Cr(VI)?* One commenter contends that studies show that chromium oxide (the component of concern in chromite ore) does not oxidize to form hexavalent chromium under biological conditions. In addition, several commenters believe that the oxidation of Cr(III) to Cr(VI) requires relatively harsh conditions that do not occur naturally in biological systems (i.e., the presence of strong oxidants or low pH levels).

EPA disagrees with the commenters. There are environmental conditions that will oxidize Cr(III) to Cr(VI) (e.g., those used by the petitioner in the leaching studies including soil having a high manganese oxide content and low pH). The commenters did not provide adequate evidence to conclude that the findings of the petitioner could be extended to any other chromium containing compound. This delisting decision applies only to the chromite ore and the unreacted chromite ore component of COPR that were tested by the petitioner. After reviewing the petitioner's studies, EPA concluded that the chromite ore and COPR tested were both insoluble and are not biologically available. Arguments that Cr(III) does not readily oxidize in the body unless under harsh conditions is not sufficient to claim that the chromium present from other sources will not oxidize or will not pose human health or environmental hazards.

Commenters submitted no evidence to justify this conclusion for any other chromium containing compounds.

There is only evidence for the specified ore and the unreacted ore portion of the COPR associated with that particular processing described previously. All other data comparisons are speculative and unsatisfactory for delisting. The Agency would, therefore, require data from similar testing (compared to that done in support of this delisting petition) on any other ore or COPR from another process in order to remove it from the EPCRA section 313 list of toxic chemicals. The particular chromite ore and the unreacted ore component of COPR discussed in this action were studied in depth. Samples were subjected to a variety of tests that provided conclusive evidence that these materials would not produce hexavalent chromium via oxidation in the environment. There was no evidence that Cr(III) was available through either abiotic or biotic processes. The petitioner based their argument on the testing data provided in the original submission.

b. *What comments did EPA receive relating to the biological activity of Cr(III)?* Several commenters suggest that the biological activity of Cr(III) compounds are not associated with adverse health effects due principally to the inability of Cr(III) to pass through cell membranes. The commenters cite the daily requirement of chromium as an essential element for nutritional health as evidence for the stability of Cr(III) in the body. The commenters reported that Cr(VI) intracellular reduction to form Cr(III), suggested to be the active toxicant in the proposed rule, would have to form via other chromium oxidation states (i.e., Cr(IV) and Cr(V)). The commenters contend that it is these highly reactive forms of chromium that are responsible for the adverse biological reactivity. Therefore, the commenters conclude that all Cr(III) compounds are biologically unreactive.

EPA agrees with the commenters that insoluble Cr(III) *in vivo* is unlikely to pass through the cellular membrane. EPA also agrees that Cr(VI) readily passes through the cell membrane, and produces a variety of potentially hazardous products following reduction to an active species other than Cr(III). EPA stated in the proposed rule that Cr(III) is an essential mineral that has not been demonstrated to have carcinogenic, genotoxic, or adverse health effects under the conditions discussed. With regard to the biological reactivity of Cr(III) compounds with hydroxy or peroxy radicals, EPA agrees that the oxidative conditions described by the commenters may not be present in biological systems. These facts do not support delisting all Cr(III) compounds.

It simply reinforces the notion that Cr(III) once in the body may not pose a hazard to human health. As stated in the response in Unit VI.B.3.a., there are other concerns for Cr(III) compounds.

c. *What comments did EPA receive relating to the carcinogenic effects of Cr(III)?* Several commenters contend that the presentation of the historical review of chromium compounds is misleading. To date, EPA has historically not ruled on the carcinogenicity of Cr(III) compounds and, as more data has become available, the Agency has determined that insoluble Cr(III) compounds (the chemical class as a whole) have not been found to be carcinogenic via inhalation. The commenters state that the overall scientific view reflects the conclusion that Cr(III) is not carcinogenic or genotoxic. They contend, however, that the presentation of the historical review on chromium compounds, while providing context, is misleading. The commenters imply that past references to potential carcinogenicity will be misinterpreted to imply some hidden potential concern for insoluble Cr(III) compounds.

EPA disagrees that the presentation of the historical treatment and concerns for Cr(III) as part of the record for the chromium compounds category is misleading. In the past, EPA has stated that there was a potential human health concern for the carcinogenic effects of Cr(III). EPA has since made the determination that there is no evidence to support a concern for the carcinogenicity of inhaled insoluble Cr(III) compounds. There are, however, other concerns for chromium (including certain forms of Cr(III)). This delisting will also be part of that historical record and will help inform the public of those remaining concerns for the human health and environmental hazards of chromium.

In the review of the current scientific evidence, EPA has determined that there is no evidence to support a concern for carcinogenicity of inhaled insoluble Cr(III) compounds. Should new credible scientific evidence indicate that a hazard exists, the Agency would have to consider reversing this determination. If new data support the delisting of other forms of Cr(III), EPA would consider eliminating such chemicals from reporting. EPA considers the listing and delisting of chemicals a dynamic process that can change as new information is obtained. There is nothing misleading in educating the public about what had been believed and what new facts have caused a change in EPA's assessment.

d. *What comments did EPA receive relating to environmental fate of chromium compounds?* One commenter contends that it is inappropriate to compare the oxidation of soluble chromium compounds that occur naturally in the presence of manganese oxides under specified conditions with the environmental fate of chromite ore. The commenter maintains that the environmental conditions of such soils are equally likely to reduce Cr(VI) as they would oxidize Cr(III), and that this equilibrium favors Cr(III) formation (i.e., if Cr(III) ions were released by chromite ore or the processing residue, they would not pose an environmental or human health hazard under typical conditions). No references were provided by this commenter.

Several commenters agree that chromite ore does not readily oxidize under natural conditions. These commenters further elaborate on the health impacts of residues from chromite ore processing in New Jersey stating that the New Jersey residues are characteristically different from that generated by the petitioner, yet no "appreciable health effect that may be attributable to chromium" has been identified. The commenters state that in addition to health risks, ecological risks associated with the residues from chromite ore processing in New Jersey were also evaluated. The commenters contend that from the data, it is clear that chromium ions migrate from areas high in process residue to contaminate adjacent areas, and while mobile, it appears that much of this migratory chromium is tightly bound to the soil. However, the commenters claim that there did not appear to be a correlation between levels of chromium in the soil samples and the ability of this tightly associated metal (soil:Cr complexation) to dissociate and bind to the available biota.

Another commenter contends that residues from chromite ore processing differ substantially by noting that certain chromium remediation activities are still on-going due to the concern for the exposure to hexavalent chromium contamination from process residue fill sites. This commenter reiterates the idea suggested by the other commenters that these residues (and by inference that certain sources of chromite ore and other chromite ore process residues) are, in fact, different. The commenters state that the chromite ore and unreacted COPR discussed in the petition are not considered a risk to human health or the environment.

EPA does not believe that the commenters have provided sufficient information to conclude that other

chromite ore sources or other chromite ore processing residues share the same properties as the chromite ore and unreacted ore component of COPR that are the subject of this rulemaking. EPA believes that these comments support the Agency's position that all Cr(III) compounds are not identical. With regard to chromite ore processing residues, such as the COPR that is the subject of this rulemaking, EPA notes that it contains at least three components: (1) Unreacted chromite ore (the portion that will be delisted for ore originating from the Transvaal Region); (2) Cr(III) present as a result of reduction treatment of unleached Cr(VI) (still reportable under the chromium compounds category of EPCRA section 313); and (3) the unreduced Cr(VI) from oxidized Cr(III) (also still reportable under the chromium compounds category of EPCRA section 313). Other chromite ore processing residues are also likely to contain various amounts of chromium compounds other than the unreacted ore component and thus may be sources of environmentally available chromium.

EPA believes that the information discussed in the proposed rule concerning the observed oxidation of soluble Cr(III) to Cr(VI) by manganese rich soils is a concern and that such conversions can lead to environmentally available and bioavailable forms of chromium. The fact that under certain conditions this conversion may result in an equilibrium that favors the Cr(III) form does not change the fact the Cr(VI) can be produced. In addition, since the publication of the proposed rule, EPA has reviewed a study that has addressed the potential of a second pathway for the oxidation of Cr(III) to Cr(VI) in the presence of ferric salts which further supports EPA's concerns for the conversion of Cr(III) to Cr(VI) (Ref. 11). The Agency therefore reasserts its position that, under the appropriate conditions, Cr(III) can readily oxidize to form Cr(VI) in the environment.

The Agency agrees with the commenters that the ability of Cr(III) to be oxidized in the environment to Cr(VI) is not relevant to the consideration of whether or not to delist chromite ore from the Transvaal region of South Africa and the unreacted ore component of the COPR. However, this oxidation is irrelevant only because the petitioner conclusively demonstrated that the chromium in these compounds is unavailable for chemical reaction and therefore does not produce Cr(VI) under the oxidizing conditions. In order to extend such a determination to other chromium compounds the unavailability of the chromium and lack

of oxidation would have to be clearly demonstrated for these other chromium compounds.

#### *B. What Comments Did EPA Receive That Did Not Support this Proposal to Delist?*

EPA did not receive any comments that were critical of its proposal to delist both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from the list of toxic chemicals subject to the reporting requirements under EPCRA section 313 and PPA section 6607.

#### **VII. What is the Effective Date of this Final Rule?**

This action becomes effective May 11, 2001. Thus, the last year in which facilities had to file a Toxics Release Inventory (TRI) report for both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR was 2000, covering releases and other activities that occurred in 1999.

EPCRA 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 had determined, as it has with this chemical, 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).

#### **VIII. What are the References Cited in this Final Rule?**

1. Elementis Chromium LP. Petition to Delist Chromite Ore from SARA 313. Elementis Chromium LP (January 5, 1998).

2. USEPA. Economic Analysis of the Proposed Deletion of Chromite Ore from the EPCRA Section 313 List of Toxic

Chemicals. OPPT/EETD/EPAB (February 1998).

3. USEPA. Preliminary Release Report Proposed Deletion of Chromite Ore from the EPCRA Section 313 Toxic Release Inventory. OPPT/EETD/CEB (March 1998).

4. USEPA. Chemistry Analysis of the Proposed Deletion of Chromite Ore from the EPCRA Section 313 Toxic Release Inventory. OPPT/EETD/ICB (February 1998).

5. USEPA. Chromite Ore Delisting Assessment of Health Hazard Concern. OPPT/RAD/SSB (May 1998).

6. USEPA. Petition to Delist Chromite Ore (Chromium Compounds Category): Ecological Hazard Assessment. OPPT/RAD/ECAB (April 1998).

7. USEPA. Environmental Fate Summary of Chromium (Cr) in Soils. OPPT/EETD/EAB (March 1998).

8. IRIS. U.S. Environmental Protection Agency's Integrated Risk Information System file pertaining to chromium (III), insoluble salts.

9. Engineering Bulletin: Technology Alternatives for the Remediation of Soils Contaminated with As, Cd, Cr, Hg, and Pb. EPA 540-S97-500.

10. Jin, X., Bailey, G.W., Yu, Y.S., and Lynch, A.T. "Kinetics of Single and Multiple Metal Ion Sorption Processes on Humic Substances." *Soil Science* v. 161 (1996), pp. 509-519.

11. Zhang, H. and Bartlett, R. "Light Induced Oxidation of Aqueous Chromium(III) in the Presence of Iron(III)." *Environmental Science & Technology*, v. 33, 1999, pp. 588-594.

## IX. What are the Regulatory Assessment Requirements for this Action?

### A. Executive Order 12866

This action, which exempts both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from the list of chemicals subject to reporting under EPCRA section 313 and PPA section 6607, eliminates an existing requirement to report and does not contain any new or modified requirements. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), because OMB has determined that the complete elimination of an existing requirement is not a "significant regulatory action" subject to review by OMB under E.O. 12866.

### B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5

U.S.C. 601 *et seq.*), the Agency hereby certifies that this final rule will not have a significant impact on a substantial number of small entities. This determination is based on the fact that the elimination of the existing requirement will also eliminate the corresponding burden and costs associated with that requirement. This action will not, therefore, result in any adverse economic impacts on the facilities subject to reporting under EPCRA section 313, regardless of the size of the facility.

### C. Paperwork Reduction Act

The delisting of both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from the EPCRA section 313 list of toxic chemicals will reduce the overall reporting and recordkeeping burden estimate provided for the TRI program, but this action does not require any review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* EPA will determine the total TRI burden associated with this delisting, and will complete the required Information Collection Worksheet to adjust the total TRI burden estimate approved by OMB.

The reporting and recordkeeping burdens associated with TRI are approved by OMB under OMB No. 2070 0093 (Form R, EPA ICR No. 1363) and under OMB No. 2070 0143 (Form A, EPA ICR No. 1704). The current public reporting burden for TRI is estimated to average 52.1 hours for a Form R submitter and 34.6 hours for a Form A submitter. These estimates include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection appears above. In addition, the OMB control number for EPA's regulations, after initial display in the final rule, are displayed on the collection instruments and are also listed in 40 CFR part 9.

### D. Unfunded Mandates Reform Act and Executive Orders 13084 and 13132

Since this action involves the elimination of an existing requirement, it does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments as described in the Unfunded Mandates Reform Act of 1995 (P.L. 104-4). For the same reason, it is

not subject to the requirement for prior consultation with Indian tribal governments as specified in Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998). Nor will this action have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

### E. Executive Order 12898

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency must consider environmental justice related issues with regard to the potential impacts of this action on environmental and health conditions in low-income populations and minority populations. The Agency has determined that this delisting, which would eliminate the availability of the TRI information on this chemical that is made available to communities through the TRI Community Right-to-Know program, will not result in environmental justice related issues.

### F. Executive Order 13045

Pursuant to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), if an action is economically significant under Executive Order 12866, the Agency must, to the extent permitted by law and consistent with the Agency's mission, identify and assess the environmental health risks and safety risks that may disproportionately affect children. Since this action is not economically significant under Executive Order 12866, this action is not subject to Executive Order 13045.

### G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, etc.) 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, nor did EPA consider the use of any voluntary consensus standards. In general, EPCRA does not prescribe technical standards to be used for threshold determinations or completion of EPCRA section 313 reports. EPCRA section 313(g)(2) states that "In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation."

#### **X. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 the Congress and 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 40 CFR Part 372**

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

Dated: February 28, 2001.

**Elaine G. Stanley,**

*Director, Office of Information Analysis and Access.*

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. 11013 and 11028.

#### **§ 372.65 [Amended]**

2. Section 372.65(c) is amended by adding the following parenthetical to the chromium compounds listing "(except for chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the chromite ore processing residue (COPR). COPR is the solid waste remaining after aqueous extraction of oxidized chromite ore that has been combined with soda ash and kiln roasted at approximately 2,000 °F.)."

[FR Doc. 01-11918 Filed 5-10-01; 8:45 am]

**BILLING CODE 6560-50-F**

#### **DEPARTMENT OF THE INTERIOR**

#### **Bureau of Land Management**

#### **43 CFR Part 3160**

**[WO-310-1310-PB-01-24 1A]**

**RIN 1004-AC54**

#### **Oil and Gas Leasing; Onshore Oil and Gas Operations**

**AGENCY:** Bureau of Land Management.

**ACTION:** Correcting amendment.

**SUMMARY:** The document contains corrections to the amendatory instructions of the final regulations on protecting Federal and Indian oil and gas resources from drainage published in the **Federal Register** on January 10, 2001, (66 FR 1883) and delayed on February 8, 2001, (66 FR 9527).

**DATES:** Effective April 10, 2001.

#### **FOR FURTHER INFORMATION CONTACT:**

Donnie Shaw, Fluids Minerals Group, Bureau of Land Management, Mail Stop 401LS, 1849 "C" Street, NW., Washington, DC 20240; telephone (202) 452-0382 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339, between 8 a.m. and 4 p.m., Eastern time, Monday through Friday, excluding Federal holidays.

**SUPPLEMENTARY INFORMATION:** We are clarifying the amendatory instructions for the current regulations under Sections 3162.2 and 3165.3. The amendment for Section 3162.2, paragraph (c), indicates that more than one entity may hold interest in a lease or own operating rights.

#### **List of Subjects**

#### **43 CFR Part 3160**

Government contracts, Hydrocarbons, Land Management Bureau, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: May 1, 2001.

**Piet deWitt,**

*Acting Assistant Secretary, Land and Minerals Management.*

Accordingly, the **Federal Register** issue of January 10, 2001 is corrected as follows:

1. On page 1892, in the third column, correct the amendatory instruction 12.b for § 3162.2 to read as follows:

b. Removing in paragraph (c) the phrase "the operating rights owner" and adding in its place the phrase "the lessee(s) and operating rights owner(s)"; (Note: § 3162.2(c) was redesignated as § 3162.2-1(b))

2. On page 1894, in the second column, renumber instructions 13. and 14. as 15. and 16. respectively.

[FR Doc. 01-11877 Filed 5-10-01; 8:45 am]

**BILLING CODE 4310-84-M**