

while the facility is in a fixed (non-transportation) operating mode.

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[FR Doc. 06-1502 Filed 2-16-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[EPA-HQ-OPPT-2006-0025; FRL-7760-7]

RIN 2070-AC61

TSCA Inventory Update Reporting Partially Exempted Chemicals List; Addition of Certain Vegetable-based Oils, Soybean Meal, and Xylitol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the Toxic Substances Control Act (TSCA) section 8(a) Inventory Update Reporting (IUR) regulations by adding the following four chemical substances to the list of chemical substances in § 710.46(b)(2)(iv) which are exempt from reporting processing and use information required by § 710.52(c)(4): Two vegetable-based oils (fats and glyceridic oils, vegetable (CASRN 68956-68-3) and canola oil (CASRN 120962-03-0)), soybean meal (CASRN 68308-36-1), and xylitol (CASRN 87-99-0). EPA has determined that the IUR processing and use information for these chemicals is of low current interest. Manufacturers and importers of the chemicals listed in § 710.46(b)(2)(iv) must continue to report manufacturing information.

DATES: This direct final rule is effective on April 18, 2006 without further notice, unless EPA receives adverse comment by March 20, 2006. If, however, EPA receives adverse comment, EPA will publish a **Federal Register** document to withdraw the direct final rule before the effective date.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2006-0025, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov/>. Follow the on-line instructions for submitting comments.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg.,

Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA-HQ-OPPT-2006-0025.

The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPPT-2006-0025. EPA's policy is that all comments received will be included in the public docket without change and may be made available in the on-line docket at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index at <http://www.regulations.gov/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the online docket at <http://www.regulations.gov/> or in hard copy at the OPPT Docket, EPA Docket Center, EPA West, Rm. B102, 1301 Constitution Ave., NW., Washington,

DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566-1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566-0280.

FOR FURTHER INFORMATION CONTACT: For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Susan Sharkey, Project Manager, Economics, Exposure and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-8789; e-mail address: sharkey.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you manufacture (defined by statute at 15 U.S.C. 2602(7) to include import) chemical substances, including inorganic chemical substances, subject to reporting under the Inventory Update Rule (IUR) at 40 CFR part 710. Any use of the term "manufacture" in this document will encompass import, unless otherwise stated.

Potentially affected persons may include, but are not limited to: Chemical manufacturers and importers subject to IUR reporting, including chemical manufacturers and importers of inorganic chemical substances (The North American Industrial Classification System (NAICS) codes 325, 32411).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. Other types of persons not listed in this unit could also be affected. NAICS codes have been provided to assist you and others in determining whether this action might apply to certain persons. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions at 40 CFR 710.48. If you have any questions regarding the applicability of this action to a particular person, consult the technical

contact person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the rulemaking by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives, and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns, and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What is the Agency's Authority for Taking this Action?

EPA is required under TSCA section 8(b), 15 U.S.C. 2607(b), to compile and keep current an inventory of chemical substances manufactured or processed in the United States. Additionally, TSCA section 8(a)(1) authorizes the EPA Administrator to promulgate rules under which manufacturers and

processors of chemical substances and mixtures (referred to hereinafter as chemical substances) must maintain such records and submit such information as the Administrator may reasonably require.

In 1977, EPA promulgated a rule (42 FR 64572, December 23, 1977) under TSCA section 8(a), 15 U.S.C. 2607(a), to compile an inventory of chemical substances in commerce at that time. This inventory is known as the TSCA Chemical Substances Inventory (the TSCA Inventory). In 1986, EPA promulgated the initial IUR rule under TSCA section 8(a) at 40 CFR part 710 (51 FR 21447, June 12, 1986) to facilitate the periodic updating of the TSCA Inventory and to support activities associated with the implementation of TSCA. In 2003, EPA promulgated extensive amendments to the IUR rule (68 FR 848, January 7, 2003) (FRL-6767-4) (2003 Amendments) to collect manufacturing, processing, and use exposure-related information, and to make certain other changes. Further revisions to the IUR rule were made in July of 2004 (69 FR 40787, July 7, 2004) (FRL-7332-3) and December of 2005 (70 FR 75059, December 19, 2005) (FRL-7743-9) (2005 Revisions).

B. What is the Inventory Update Reporting (IUR) Rule?

The data reported under the IUR rule are used to update the information maintained on the TSCA Inventory. EPA uses the TSCA Inventory and data reported under the IUR rule to support many TSCA-related activities and to provide overall support for a number of EPA and other Federal health, safety, and environmental protection activities. The IUR rule, as amended by the 2003 Amendments and the 2005 Revisions Rule, requires U.S. manufacturers (including importers) of chemicals listed on the TSCA Inventory to report to EPA every 5 years the identity of chemical substances manufactured during the reporting year in quantities of 25,000 pounds or more at any plant site they own or control. The IUR rule generally excludes several categories of substances from its reporting requirements, i.e., polymers, microorganisms, naturally occurring chemical substances, and certain natural gas substances. Manufacturers (including importers) are required to report information such as company name, site location and other identifying information, identity and production volume of the reportable chemical substance, manufacturing exposure-related information associated with each reportable chemical substance, including the physical form and

maximum concentration of the chemical substance and the number of potentially exposed workers.

Manufacturers (including importers) of larger volume chemicals (i.e., 300,000 lbs. or more manufactured during the reporting year at any plant site) are required to additionally report certain processing and use information (40 CFR 710.52(c)(4)). This information includes industrial information such as process or use category, NAICS code, industrial function category, percent production volume associated with each process or use category, number of use sites, number of potentially exposed workers and consumer/commercial information such as use category, use in or on products intended for use by children, and maximum concentration.

For the 2006 submission period, inorganic chemicals are partially exempt (i.e., submitters do not report the processing and use information listed in 40 CFR 710.52(c)(4)), regardless of production volume. The partial exemption for inorganic chemicals will no longer be applicable in subsequent submission periods, when submitters will report all information on inorganic chemical substances, based on site-specific production volume. In addition, specifically listed petroleum process streams and other specifically listed chemical substances are partially exempt during the 2006 and subsequent submission periods.

C. What is the "Low Current Interest" Partial Exemption and Petition Process?

The 2003 Amendments established a partial exemption in 40 CFR 710.46(b)(2) for certain chemicals for which EPA has determined the IUR processing and use information to be of "low current interest." The public may petition EPA to add or remove a chemical substance to or from the list of chemical substances partially exempt from reporting under 40 CFR 710.46(b)(2). The partial exemption was altered by the 2005 Revisions rule. However, because the petition for the four chemical substances covered by this direct final action was received prior to the 2005 Revisions rule, the petition was evaluated by EPA under the criteria originally set forth by the 2003 Amendments. The 2003 Amendment criteria is as follows:

In determining whether the partial exemption should apply to a particular chemical substance, EPA will consider the totality of information available for the chemical substance in question, including but not limited to information associated with one or more of the following considerations (see 40 CFR 710.46(b)(2)(ii)):

(i) Whether the chemical qualifies or has qualified in past IUR collections for the reporting of the information described in 40 CFR 710.52(c)(4) (*i.e.*, at least one site manufactures 300,000 pounds or more of the chemical).

(ii) The chemical substance's chemical and physical properties or potential for persistence, bioaccumulation, health effects, or environmental effects (considered independently or together).

(iii) The information needs of EPA, other federal agencies, tribes, states, and local governments, as well as members of the public.

(iv) The availability of other complementary risk screening information.

(v) The availability of comparable processing and use information.

(vi) Whether the potential risks of the chemical substance are adequately managed by EPA or another agency or authority.

It is important to note that the addition of a chemical substance under this partial exemption will not necessarily be based on its potential risks, but on the Agency's current assessment of the need for collecting IUR processing and use information for that chemical, based upon the totality of information considered during the petition review process. Additionally, interest in a chemical or a chemical's processing and use information may increase in the future, at which time EPA will reconsider the applicability of this partial exemption for those chemicals.

A petition to amend the list of chemicals partially exempt from reporting under 40 CFR 710.46(b)(2) (whether by adding or removing a chemical to or from the list) must be in writing. It must identify the chemical in question, including a chemical identification number, and should provide sufficient information for EPA to determine whether collection of the information in § 710.52(c)(4) for the chemical in question is of low current interest.

In the 2005 Revisions rule, EPA clarifies the standards for submitting a petition by explaining that the information provided in a petition must include a written rationale or justification for the request, relevant documents, and specific cites to information in those documents. The last of the considerations listed above was changed to read "[w]hether the potential risks of the chemicals substance are adequately managed." The 2005 Revisions rule also required that the supporting rationale provide sufficient information which the Agency

can use to assess the current need for IUR processing and use information and make a decision concerning reporting of that information for the subject chemical. Finally, the 2005 Revisions rule clarifies that the burden is on the petitioner to demonstrate why a given chemical substance should, or should not, be considered of low current interest. These changes made by the 2005 Revisions rule will apply prospectively to future petitions.

D. What Action is the Agency Taking?

Through this action, EPA is amending the list of chemical substances that are partially exempt from reporting requirements under the IUR regulation. EPA received a petition requesting the addition of xylitol (CASRN 87-99-0), soybean meal (CASRN 68308-36-1), fats and glyceridic oils, vegetable (CASRN 68956-68-3), and canola oil (CASRN 120962-03-0) to the list of chemical substances in § 710.46(b)(2)(iv) (Ref 1). The petitioner later supplemented their petition with additional information (Ref 2). The Agency determined that these four chemicals have been previously reported under IUR in volumes of 300,000 pounds or more and would therefore be expected to trigger the requirement to report IUR processing and use information. Based on their past production volume, these four chemical substances satisfy the first consideration identified in 40 CFR 710.46(b)(2)(ii) (see Unit II.C.).

EPA reviewed the information provided by the petitioner and other information as documented in the petition review report (Ref. 3) and concluded that these four chemical substances generally present a low risk of adverse human health or environmental effects. This conclusion is further supported by the fact that none of the substances is included on the various lists of concern maintained by EPA, state governments, or others (such as the Toxics Release Inventory or the Integrated Risk Information System). In addition, EPA did not identify any information needs that were not being met. Therefore, EPA has determined that, based on current knowledge, there is a low current interest in the IUR processing and use information for the four chemical substances (Ref. 3).

EPA received a total of five non-CBI reports for the four chemical substances with production volumes of 300,000 pounds or greater in the 2002 IUR submission period. However, the non-CBI IUR reporting represents only a portion of IUR reporting. For instance, while no individual non-CBI reports were submitted for xylitol in 2002, the total non-CBI volume was 10,000 to

500,000 pounds, indicating that one or more CBI reports were received. On the basis of the number of non-CBI previous reports and the production volumes for the four chemicals, EPA estimated that seven reports in excess of 300,000 pounds would be received for these four chemical substances. Eliminating the requirement to report processing and use information for seven reports results in a cost savings of \$38,017 to \$41,033 in the first reporting cycle, and \$30,414 to \$32,826 in future reporting cycles (Ref 4).

The Agency acknowledges that additional, unidentified information may exist. If you are in possession of information that may be relevant to the Agency's decision to partially exempt any of the four chemical substances listed in Unit II.D., please provide comments according to the procedure listed in ADDRESSES.

III. Direct Final Rule Procedures

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and EPA believes public comment on this action is unnecessary. This final rule will be effective on April 18, 2006 without further notice unless the Agency receives adverse comment by March 20, 2006. If EPA receives adverse comment on this rulemaking, the Agency will publish a timely withdrawal in the **Federal Register** and will publish a notice of proposed rulemaking in a future edition of the **Federal Register**. The Agency will address the comments as part of that proposed rulemaking.

IV. Materials in the Rulemaking Record

The public version of the official record for this rulemaking is contained in 2 separate dockets which can be accessed as described in the ADDRESSES unit. Docket ID number EPA-HQ-OPPT-2006-0025 contains the main rulemaking record. In addition, certain supporting records are contained in docket ID number EPA-HQ-OPPT-2004-0071, as identified in the listing contained in this unit. This record includes the documents located in the docket as well as the documents that are referenced in those documents.

1. Letter from Herbert Estreicher, Esq., and Martha E. Marrapese, Esq., Keller and Heckman LLP, to OPPT Document Control Officer, EPA, December 30, 2003. Docket document number EPA-HQ-OPPT-2004-0071-0002.

2. Letter from Herbert Estreicher, Keller and Heckman LLP, to Susan Sharkey, Office of Pollution Prevention and Toxics, U. S. EPA, November 18, 2004. Docket document numbers EPA-

HQ-OPPT-2004-0071-0033 to EPA-HQ-OPPT-2004-0071-0036.

3. USEPA, "Petition Review Report for CASRNs 87-99-0, 68308-36-1, 68956-68-3, and 120962-03-0," December 23, 2004.

4. USEPA, "Cost Savings Estimate of Adding 4 Chemicals to the 40 CFR 710.46(B)(2) Chemical Substance List," Office of Pollution Prevention and Toxics, November 4, 2005.

V. Statutory and Executive Order Reviews

A. Executive Order 12866

This direct final rule implements minor changes to 40 CFR part 710, resulting in burden and cost reduction. Because this direct final rule does not impose any new requirements, it is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

This direct final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

Because this action makes minor changes to 40 CFR part 710, resulting in burden reduction, EPA certifies this action will not have a significant economic impact on a substantial number of small entities. There will be no adverse impact on small entities resulting from this action.

D. Unfunded Mandates Reform Act

This action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

E. Executive Order 13132

The Agency has determined that this action will not 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). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in

the Executive Order to include regulations that have "substantial direct effects on the 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." This action does not alter the relationships or distribution of power and responsibilities established by Congress.

F. Executive Order 13175

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." This direct final 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.

G. Executive Order 13045

This action does not require OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

H. Executive Order 13211

Because this direct final rule is not considered to be a significant action under Executive Order 12866 and is therefore exempt from review under that Order, this direct final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

I. National Technology Transfer Advancement Act

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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 note).

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the

Small Business Regulatory Enforcement Fairness Act of 1996, generally requires that before a rule may take effect, the Agency promulgating the rule must submit a rule report, including 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 710

Environmental protection, Chemicals, Hazardous materials, IUR partial exemption, Reporting and recordkeeping requirements, Soybean meal, Vegetable-based oils, Xylitol.

Dated: January 30, 2006.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 710—[AMENDED]

■ 1. The authority citation for part 710 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

■ 2. Section 710.46 is amended by adding the following entries in ascending order to the table in paragraph (b)(2)(iv) to read as follows:

§ 710.46 Chemical substances for which information is not required.

*	*	*	*	*
(b)	*	*	*	
(2)	*	*	*	
(iv)	*	*	*	

CAS NUMBERS OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES UNDER § 710.46(B)(2)

CAS No.	Chemical
87-99-0	Xylitol
68308-36-1	Soybean meal
68956-68-3	Fats and glyceridic oils, vegetable
120962-03-0	Canola oil