

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 355**

[FRL-3303-3]

Extremely Hazardous Substances List**AGENCY:** U.S. Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: On November 17, 1986, the U.S. Environmental Protection Agency (EPA) proposed the deletion of 40 substances from the list of "extremely hazardous substances" promulgated by the Agency under section 302 of the Emergency Planning and Community Right-to-Know Act of 1986, Title III of the Superfund Amendments and Reauthorization Act of 1986. Today's final rule removes one of those substances, bacitracin, from the list of extremely hazardous substances.

EFFECTIVE DATE: This rule becomes effective on December 17, 1987.

ADDRESS: The record supporting this rulemaking is contained in the Superfund Docket located in Room Lower Garage at the U.S. EPA, 401 M Street, SW., Washington, DC. 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding federal holidays. The docket phone number is 202-382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Carrie Wehling, Office of General Counsel, LE-132S, U.S. EPA, 401 M Street, SW., Washington, DC 20460, (202) 382-7706. The Chemical Emergency Preparedness Hotlines can also be contacted for further information at 1-800-535-0202, in Washington, DC at 1-202-479-2449.

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

- I. Statutory Authority
- II. Delisting of Bacitracin
- III. Effective Date
- IV. Regulatory Analyses

I. Statutory Authority

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

II. Delisting of Bacitracin

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99-499

(1986). Title III of SARA established a program designed to encourage state and local planning and preparedness for spills or releases of hazardous substances and to provide the public and local governments with information concerning potential chemical hazards in their communities. This program is codified as the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001-11050.

Subtitle A of the Act establishes the framework for local emergency planning. Under section 302, a facility which has present an "extremely hazardous substance" in excess of its "threshold planning quantity" ("TPQ") must notify the State emergency planning commission and participate, as necessary, in local emergency planning activities.

On November 17, 1986, EPA published the statutorily-designated list of "extremely hazardous substances" and their associated TPQs in an interim final rule, as required by section 302. 51 FR 41570. On the same day, EPA proposed the deletion of a number of substances, including bacitracin, from the list of extremely hazardous substances based on the fact that they did not meet the Agency's criteria for acute toxicity. 51 FR 41593.

On November 23, 1987, EPA published a notice of availability of its further study on the long-term toxicity of bacitracin. 52 FR 44921. In that notice, EPA stated that, based on its analysis of the toxicity of bacitracin, the Agency has no reason to believe that the substance should remain on the list of extremely hazardous substances.

Also on November 23, 1987, the District Court for the District of Columbia issued an order in *A.L. Laboratories, Inc. v. Environmental Protection Agency*, Civ. Action No. 87-1991-OG (and consolidated cases) requiring EPA to remove bacitracin from the list of extremely hazardous substances under section 302 of the Act.

As a result of the Court's order and in light of the absence of information suggesting that bacitracin may result in toxic or other effects upon exposure to a release of the substance into the environment, EPA today is delisting bacitracin from the list of "extremely hazardous substances" subject to emergency planning and notification requirements under this Act.

As a result of today's action, EPA is no longer considering comments on one aspect of the November 23, 1987 notice of availability, *i.e.* whether bacitracin should be delisted. However, because the bacitracin study sets forth several general criteria for evaluation of long-term toxic effects, EPA is still requesting

comment on the study and those criteria for purposes of future listings and delistings from the extremely hazardous substances list under section 302.

III. Effective Date

As indicated in the opening section of this preamble, this rule is effective immediately. Section 553(d) of the Administrative Procedure Act ("APA") generally requires the publication of a rule no less than 30 days prior to its effective date. However, under section 553(d)(1), the Agency may suspend the 30 day effective date requirement for a rule which relieves a restriction. Because this rule provides relief from regulatory requirements previously applicable to persons handling large amounts of bacitracin, EPA is suspending the 30 day effective date requirement for this delisting.

IV. Regulatory Analyses

Because this delisting is not a "major" rule as defined under Executive Order 12291, no regulatory impact analysis has been prepared in connection with this final rule.

In addition, because this delisting will not have a significant impact on a substantial number of small entities, no analysis of the impacts of this rule on small entities is required under the Regulatory Flexibility Act of 1980.

List of Subjects in 40 CFR Part 355

Chemicals, Hazardous substances, Extremely hazardous substances, Community right-to-know, Chemical accident prevention, Chemical emergency preparedness, Threshold planning quantity, Reportable quantity, Community emergency response plan, Contingency planning, Reporting and recordkeeping requirements.

Dated: December 10, 1987.

Lee M. Thomas,
Administrator.

For the reasons set out in the Preamble, Part 355 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

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

Authority: 42 U.S.C. 11002, 11003, 11004, 11025, 11028, and 11029 (1986).

Appendix A—[Amended]

2. Appendix A to Part 355 is amended to remove the following entry:

| CAS No. | Chemical name |
|-----------|---------------|
| 1405-87-4 | Bacitracin |

Appendix B—[Amended]

3. Appendix B to Part 355 is amended to remove the following entry:

| CAS No. | Chemical name |
|-----------|---------------|
| 1405-87-4 | Bacitracin |

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40 CFR Part 355

Extremely Hazardous Substances List

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

ACTION: Final rule.

SUMMARY: On November 17, 1986, the U.S. Environmental Protection Agency (EPA) proposed the deletion of 40 substances from the list of "extremely hazardous substances" promulgated by the Agency under section 302 of the Emergency Planning and Community Right-to-Know Act of 1986, Title III of the Superfund Amendments and Reauthorization Act of 1986. Today EPA is taking final action to remove three of those substances from the list of extremely hazardous substances.

EFFECTIVE DATE: This rule becomes effective on December 17, 1987.

ADDRESS: The record supporting this rulemaking is contained in the Superfund Docket located in Room Lower Garage at the U.S. EPA, 401 M Street, SW., Washington, DC 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding federal holidays. The docket phone number is 202-382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

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

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

I. Statutory Authority

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

II. Today's Rulemaking

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99-499 (1986). Title III of SARA established a program designed to encourage state and local planning and preparedness for spills or releases of hazardous substances and to provide the public and local governments with information concerning potential chemical hazards in their communities. This program is codified as the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001-11050. Subtitle A of the Act establishes the framework for local emergency planning. Under section 302, a facility which has present an "extremely hazardous substance" in excess of its "threshold planning quantity" ("TPQ") must notify the State emergency planning commission and participate, as necessary, in local emergency planning activities.

On November 17, 1986, EPA published the statutorily-designated list of 402 "extremely hazardous substances" and their associated TPQs in an interim final rule, as required by section 302.51 FR 41570. On the same day, EPA proposed the deletion of 40 substances from the list of extremely hazardous substances based on the fact that they did not meet the Agency's criteria for acute toxicity. 51 FR 41593.

Based on public comment on this proposal, EPA announced on April 22, 1987, that it had deferred the proposed delisting of these substances, pending an evaluation of the long-term effects from short-term exposure to each of the substances proposed for delisting. 52 FR 13388.

On November 23, 1987, the District Court for the District of Columbia issued an order in *A.L. Laboratories, Inc. v. Environmental Protection Agency*, Civ. Action No. 87-1991-OG (and consolidated cases) requiring EPA to remove four of the substances proposed for delisting from the list of extremely hazardous substances under section 302 of the Act. The basis for the Court's order was its reasoning that Congress did not intend to include in the statutorily-designated list substances listed due to clerical error.

In response to the Court's order, EPA has published a final rule removing one of those substances, bacitracin, from the section 302 list. Today EPA is taking final action to delist the remaining three substances subject to the Court's order: Dibutyl phthalate, dimethyl phthalate, and dioctyl phthalate. In addition, EPA believes that the remaining 36 substances originally proposed for delisting on November 17, 1986 are indistinguishable from the four substances subject to the Court's order with respect to their status on the list of "extremely hazardous substances". As a result, EPA intends to issue a final rule within the next 30 days deleting the other 36 substances proposed for delisting on November 17, 1986. Upon the effective date of that rule, those substances will no longer be subject to the emergency planning and notification requirements under the Act.

III. Effective Date

As indicated in the opening section of this preamble, this rule is effective immediately. Section 553(d) of the Administrative Procedure Act ("APA") generally requires the publication of a rule no less than 30 days prior to its effective date. However, under section 553(d)(1), the Agency may suspend the 30 day effective date requirement for a rule which relieves a restriction. Because this rule provides relief from regulatory requirements previously applicable to persons handling large amounts of these substances, EPA is suspending the 30 day effective date requirement for this delisting.

IV. Regulatory Analyses

Because this delisting is not a "major" rule as defined under Executive Order 12291, no regulatory impact analysis has been prepared in connection with this final rule.

In addition, because this delisting will not have a significant impact on a substantial number of small entities, no analysis of the impacts of this rule on small entities is required under the Regulatory Flexibility Act of 1980.

List of Subjects in 40 CFR Part 355

Chemicals, Hazardous substances, Extremely hazardous substances, Community right-to-know, Chemical accident prevention, Chemical emergency preparedness, Threshold planning quantity, Reportable quantity, Community emergency response plan, Contingency planning, Reporting and recordkeeping requirements.

Dated: December 10, 1987.

Lee M. Thomas,
Administrator.

For the reasons set out in the Preamble, Part 355 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

1. The authority citation for Part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11003, 11004, 11025, 11026, 11028, and 11029 (1986).

Appendix A—[Amended]

2. Appendix A to Part 355 is amended to remove the following entries:

| CAS No. | Chemical name | ... |
|---------------|---------------------|-----|
| 84-74-2..... | Dibutyl Phthalate. | ... |
| 131-11-3..... | Dimethyl Phthalate. | ... |
| 117-84-0..... | Diethyl Phthalate. | ... |

Appendix B—[Amended]

3. Appendix B to Part 355 is amended to remove the following entries:

| CAS No. | Chemical name | ... |
|---------------|---------------------|-----|
| 84-74-2..... | Dibutyl Phthalate. | ... |
| 117-84-0..... | Diethyl Phthalate. | ... |
| 131-11-3..... | Dimethyl Phthalate. | ... |

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