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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA-HQ-TRI-2012-0111; FRL-9902-12-OEI]

RIN 2025-AA35

Addition of ortho-Nitrotoluene; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is adding *ortho*-nitrotoluene (*o*-nitrotoluene) to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 and section 6607 of the Pollution Prevention Act (PPA) of 1990. *o*-Nitrotoluene has been classified by the National Toxicology Program in its 12th Report on Carcinogens as “reasonably anticipated

to be a human carcinogen.” EPA has determined that *o*-nitrotoluene meets the EPCRA section 313(d)(2)(B) criteria because it can reasonably be anticipated to cause cancer in humans.

DATES: This final rule is effective November 29, 2013, and shall apply for the reporting year beginning January 1, 2014 (reports due July 1, 2015).

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-TRI-2012-0111. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202)

566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Environmental Analysis Division, Office of Information Analysis and Access (2842T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202-566-0743; fax number: 202-566-0677; email: bushman.daniel@epa.gov, for specific information on this notice. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, toll free at (800) 424-9346 (select menu option 3) or (703) 412-9810 in Virginia and Alaska or toll free, TDD (800) 553-7672, <http://www.epa.gov/superfund/contacts/infocenter>.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

You may be potentially affected by this action if you manufacture, process, or otherwise use *o*-nitrotoluene. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry	Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*. *Exceptions and/or limitations exist for these NAICS codes. Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221119, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 et seq.) (correspond to SIC 4953, Refuse Systems).
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. Some of the entities listed in the table have exemptions and/or limitations regarding coverage, and 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. 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.

II. Introduction

A. What is the statutory authority for this final rule?

This rule is issued under EPCRA section 313(d) and section 328, 42 U.S.C. 11023 *et seq.* EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

B. What is the background for this action?

Section 313 of EPCRA, 42 U.S.C. 11023, requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the PPA, 42 U.S.C. 13106. Congress established an initial list of toxic chemicals that

comprised more than 300 chemicals and 20 chemical categories.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets criteria for these actions. EPCRA section 313(d)(2) states that EPA may add a chemical to the list if any of the listing criteria in Section 313(d)(2) are met. Therefore, to add a chemical, EPA must demonstrate that at least one criterion is met, but need not determine whether any other criterion is met. Conversely, to remove a chemical from the list, EPCRA section 313(d)(3) dictates that EPA must demonstrate that none of the listing criteria in Section 313(d)(2)(A)–(C) are met. The EPCRA section 313(d)(2)(A)–(C) criteria are:

- The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.
- The chemical is known to cause or can reasonably be anticipated to cause in humans:
 - cancer or teratogenic effects, or
 - serious or irreversible–
 - reproductive dysfunctions,
 - neurological disorders,
 - heritable genetic mutations, or
 - other chronic health effects.
- The chemical is known to cause or can be reasonably anticipated to cause, because of:
 - its toxicity,
 - its toxicity and persistence in the environment, or
 - its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA often refers to the section 313(d)(2)(A) criterion as the “acute human health effects criterion;” the section 313(d)(2)(B) criterion as the “chronic human health effects criterion;” and the section 313(d)(2)(C) criterion as the “environmental effects criterion.”

EPA published in the **Federal Register** of November 30, 1994 (59 FR 61432), a statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for modifying the section 313 list of toxic chemicals.

III. Summary of Proposed Rule

A. What chemical did EPA propose to add to the EPCRA section 313 list of toxic chemicals?

As discussed in the proposed rule (78 FR 15913, March 13, 2013) EPA proposed to add *o*-nitrotoluene to the EPCRA section 313 list of toxic chemicals. *o*-Nitrotoluene had been classified as “Reasonably Anticipated To Be Human Carcinogen” by the National Toxicology Program (NTP) in its 12th Report on Carcinogens (RoC) document. In addition, based on a review of the available production and use information, EPA determined that *o*-nitrotoluene is expected to be manufactured, processed, or otherwise used in quantities that would exceed the EPCRA section 313 reporting thresholds. The NTP is an interagency program within the Department of Health and Human Services (DHHS) headquartered at the National Institute of Environmental Health Sciences (NIEHS) of the National Institutes of Health (NIH). As part of the NTP’s cancer evaluation work, it periodically publishes the RoC document which contains cancer classifications from the NTP’s most recent chemical evaluations as well as the classifications from previous versions of the RoC. There is an extensive review process for the RoC which includes evaluations by scientists from the NTP, other Federal health research and regulatory agencies (including EPA), and nongovernmental institutions. The RoC review process also includes external peer review and several opportunities for public comment.

B. What was EPA’s rationale for proposing to list *o*-nitrotoluene?

As EPA stated in the proposed rule (78 FR 15913, March 13, 2013), the NTP RoC document undergoes significant scientific review and public comment and mirrors the review EPA has historically done to assess chemicals for listing under EPCRA section 313 on the basis of carcinogenicity. The conclusions regarding the potential for chemicals in the NTP RoC to cause cancer in humans are based on established sound scientific principles. EPA believes that the NTP RoC is an excellent and reliable source of information on the potential for chemicals covered therein to cause cancer in humans. Based on EPA’s review of the data contained in the 12th NTP RoC (Reference (Ref. 1)) for *o*-nitrotoluene, the Agency agreed that *o*-nitrotoluene can reasonably be anticipated to cause cancer. Therefore, EPA determined that the evidence was

sufficient for listing *o*-nitrotoluene on the EPCRA section 313 toxic chemical list pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for *o*-nitrotoluene as presented in the 12th RoC (Ref. 2).

IV. What comments did EPA receive on the proposed rule?

EPA did not receive any comments on the proposed rule to add *o*-nitrotoluene to the EPCRA section 313 list of toxic chemicals.

V. Summary of Final Rule

EPA is finalizing the addition of *o*-nitrotoluene to the EPCRA section 313 list of toxic chemicals. EPA has determined that *o*-nitrotoluene meets the listing criteria under EPCRA section 313(d)(2)(B) based on the available carcinogenicity data.

VI. References

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–TRI–2012–0111. The public docket includes information considered by EPA in developing this action, including the documents listed below, which are electronically or physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are electronically or physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not electronically or physically located in the docket, please consult the person listed in the above **FOR FURTHER INFORMATION CONTACT** section.

1. USEPA, OEI. Memorandum from Martin Gehlhaus, Toxicologist, Analytical Support Branch to Larry Reisman, Chief, Analytical Support Branch. June 30, 2011. Subject: Review of National Toxicology Program (NTP) Cancer Classification Data for *o*-nitrotoluene.
2. NTP, 2011. National Toxicology Program. Report on Carcinogens, Twelfth Edition. Released June 10, 2011. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.
3. USEPA, OEI. Economic Analysis of the Proposed Rule to add *ortho*-Nitrotoluene to the EPCRA Section 313 List of Toxic Chemicals. February 9, 2012.

VIII. What are the Statutory and Executive Order reviews associated with this action?

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This final rule does not contain any new information collection requirements that require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq. Currently, the facilities subject to the reporting requirements under EPCRA 313 and PPA 6607 may use either the EPA Toxic Chemicals Release Inventory Form R (EPA Form 1B9350–1), or the EPA Toxic Chemicals Release Inventory Form A (EPA Form 1B9350–2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322 42 U.S.C. 11042; 40 CFR part 350.

OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control number 2025–0009 (EPA Information Collection Request (ICR) No. 1363) and those related to trade secret designations under OMB Control 2050–0078 (EPA ICR No. 1428). As provided in 5 CFR 1320.5(b) and 1320.6(a), 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 numbers relevant to EPA’s regulations are listed in 40 CFR

part 9, 48 CFR chapter 15, and displayed on the information collection instruments (e.g., forms, instructions).

For the 17 Form Rs and 5 Form As expected to be filed, EPA estimates the industry reporting and recordkeeping burden for collecting this information to average, in the first year, approximately \$3,461 per form (for a total first year cost of \$76,143 based on 1,506 total burden hours). In subsequent years, the burden for collecting this information is estimated to average approximately \$1,648 per form (for a total cost of \$36,252 based on 717 total burden hours). These estimates include the time needed to become familiar with the requirement (first year only); review instructions; search existing data sources; gather and maintain the data needed; complete and review the collection information; and transmit or otherwise disclose the information. The actual burden on any facility may be different from these estimates depending on whether they file a Form R or Form A, the complexity of the facility’s operations and the profile of the releases at the facility. Upon promulgation of a final rule, the Agency may determine that the existing burden estimates in the ICRs need to be amended in order to account for an increase in burden associated with the final action. If so, the Agency will submit an information collection worksheet (ICW) to OMB requesting that the total burden in each ICR be amended, as appropriate.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today’s rule on small entities, small entity is defined as: (1) A business that is classified as a “small business” by the Small Business Administration at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently

owned and operated and is not dominant in its field.

After considering the economic impacts of today’s rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Of the 22 entities estimated to be impacted by this rule, 6 are small businesses. Of the affected small businesses, all 6 have cost-to-revenue impacts of less than 1% in both the first and subsequent years of the rulemaking. No small businesses are projected to have a cost impact in the first year of 1% or greater. Facilities eligible to use Form A (those meeting the appropriate activity threshold which have 500 pounds per year or less of reportable amounts of the chemical) will have a lower burden. No small governments or small organizations are expected to be affected by this action. Thus this rule is not expected to have a significant adverse economic impact on a substantial number of small entities. A more detailed analysis of the impacts on small entities is located in EPA’s economic analysis support document (Ref. 3).

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA’s economic analysis indicates that the total cost of this rule is estimated to be \$76,143 in the first year of reporting. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not subject to the EPCRA section 313 reporting requirements.

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not 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, as specified in Executive Order 13132. This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule adds an additional chemical to the list of toxic chemicals subject to reporting under section 313 of EPCRA, EPA would be providing communities across the United States (including minority populations and low income populations) with access to data which they may use to seek lower exposures and consequently reductions in chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. Therefore, the informational benefits of the rule will have a positive impact on the human health and environmental impacts of minority populations, low-income populations, and children.

K. Congressional Review Act

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 the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective November 29, 2013.

List of Subjects in 40 CFR Part 372

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

Dated: October 29, 2013.

Gina McCarthy,
Administrator.

Therefore, 40 CFR part 372 is amended as follows:

PART 372—TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT-TO-KNOW

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

Authority: 42 U.S.C. 11023 and 11048.

■ 2. In § 372.65, paragraph (a) is amended by adding in the table the entry for “o-Nitrotoluene” in alphabetical order and in paragraph (b) by adding in the table the entry for “00088–72–2” in numerical order to read as follows:

§ 372.65 Chemicals and chemical categories to which this part applies.

* * * * *

(a) * * *

Chemical name	CAS No.	Effective date
* * *	* * *	* * *
o-Nitrotoluene	00088–72–2	1/1/14
* * *	* * *	* * *

(b) * * *

Chemical name	CAS No.	Effective date
* * *	* * *	* * *
o-Nitrotoluene	00088–72–2	1/1/14
* * *	* * *	* * *

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