

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 action will be effective immediately upon publication in the **Federal Register**.

6. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), 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 various levels of government." This final rule, a technical correction, 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 various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), 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 final rule does not have tribal implications, as specified in Executive Order 13175. The final rule is a technical correction and does not establish any regulatory policy with tribal implications. Thus, Executive Order 13175 does not apply to this rule.

8. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

Executive Order 13045 applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned

regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this final action, a technical correction, present a disproportionate risk to children.

9. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This 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) because it is not a "significant regulatory action" as defined under Executive Order 12866.

10. 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) 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 bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rule is a technical correction and does not involve technical standards.

11. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Because this final

rule is a technical correction with no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: June 22, 2005.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

■ For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as set forth below:

PART 228—[AMENDED]

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

■ 2. Section 228.15 is amended by revising paragraph (n)(8)(i) as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *
(n) * * *
(8) * * *

(i) Location: Overall Site Coordinates:
46°15'31.64" N, 124°05'09.72" W;
46°14'17.66" N, 124°07'14.54" W;
46°15'02.87" N, 124°08'11.47" W;
46°15'52.77" N, 124°05'42.92" W. Drop
Zone: 46°15'35.36" N, 124°05'15.55" W;
46°14'31.07" N, 124°07'03.25" W;
46°14'58.83" N, 124°07'36.89" W;
46°15'42.38" N, 124°05'26.65" W (All
NAD 83)

* * * * *

[FR Doc. 05-12941 Filed 6-29-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[TRI-2005-0027; FRL-7532-5]

Deletion of Methyl Ethyl Ketone; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today amending its regulations to delete methyl ethyl ketone (MEK) from the list of chemicals subject to reporting 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). This action is being taken to comply with a DC Circuit decision and order

requiring the Agency to delete MEK. Because this action is being taken to conform the regulations to the court's order, notice and comment are unnecessary, and this rule is effective immediately. Upon promulgation of this rule, facilities will no longer be required under EPCRA section 313 to report releases of and other waste management information on MEK, including those that occurred during the 2004 reporting year.

DATES: This final rule is effective on June 30, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. TRI-2005-0027. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. 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 EDOCKET or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 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 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, Toxics Release Inventory Program Division, Office of Information Analysis and Access (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone

number: 202-566-0743; fax number: 202-566-0741; e-mail: bushman.daniel@epamail.epa.gov, for specific information on this proposed rule, 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: 1-800-424-9346, in Virginia and Alaska: 703-412-9810 or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Final Rule Apply to Me?

You may be potentially affected by this proposed rule if you manufacture, process, or otherwise use methyl ethyl ketone. 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; or industry codes 4911 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 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. 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. Background and Rationale for Action

In the **Federal Register** of March 30, 1998 (63 FR 15195), EPA issued a Denial of Petition entitled "Methyl Ethyl Ketone; Toxic Chemical Release Reporting; Community Right-to-Know." The denial was in response to a petition from the Ketones Panel of the Chemical Manufacturers Association (CMA) that requested the deletion of methyl ethyl ketone from the list of chemicals reportable under EPCRA section 313 and PPA section 6607.

The American Chemistry Council (formerly CMA) filed suit challenging

EPA's decision in the United States District Court for the District of Columbia. Subsequently, the court granted summary judgment in favor of EPA. See *American Chemistry Council v. Whitman*, 309 F.Supp. 2d 111 (D.D.C. 2004). On appeal, the Court of Appeals for the District of Columbia Circuit reversed the lower court's decision, vacating the lower court's decision, and directing the district court to issue an order to "direct EPA to delete MEK from the TRI." 406 F.3d 738, 742 (D.C. Cir. 2005). The Circuit Court issued its mandate on June 13, 2005 (Ref. 1).

Accordingly, EPA is issuing this final rule revising the EPCRA section 313 list of reportable chemicals in 40 CFR 372.65 to delete methyl ethyl ketone. Under 5 U.S.C. 553(b)(3)(A), the notice-and-comment requirements of the Federal Administrative Procedure Act (5 U.S.C. 551-706) do not apply where the Agency "for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Because this action is being taken merely to comply with the court's direction and because the court's order left EPA no discretion in implementing that order EPA hereby

finds that notice and comment on this action are unnecessary.

This action is effective immediately upon publication in the **Federal Register**. Under 5 U.S.C. 553(d)(3), 30-day advance notice of a rule is not required where the Agency provides otherwise for good cause. EPA finds that good cause for an immediate effective date exists in this case, because as explained below, there would be no purpose in requiring facilities to file reports for a chemical that does not satisfy any of the criteria of EPCRA section 313(d)(2)(A)-(C).

This action becomes effective June 30, 2005. Since the court order removing MEK from the TRI was issued before July 1, 2005 the last year in which facilities had to file a TRI report for MEK was 2004, covering releases and other activities that occurred in 2003. 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. 553(d)(1) because a deletion from the section 313 list relieves a regulatory restriction. EPA believes that where 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).

III. References

1. *American Chemistry Council v. Johnson*, No. 04–5189, (DC Cir. June 13, 2005).

IV. Statutory and Executive Order Reviews

This rule is not a significant regulatory action, as defined under EO 12866, and therefore 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), or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). It also does not meet the requirements for review under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4), Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), Executive Order 13175, entitled Consultation and Coordination With Indian Tribal Governments (65 FR 67249, November 9, 2000), Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), or Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). In addition, this rule does not impose any impact on small entities and thus does not require preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

The deletion of methyl ethyl ketone from the EPCRA section 313 list will reduce the overall reporting and recordkeeping burden estimate provided for EPCRA section 313, 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. until EPA decides to subtract the total burden eliminated by today's action from the EPCRA section 313 overall burden approved by OMB. At some point in the future, EPA will determine the total EPCRA section 313 burden associated with the deletion of methyl ethyl ketone, and will complete the required Information Collection Worksheet to adjust the total EPCRA section 313 estimate. The reporting and recordkeeping burdens associated with EPCRA section 313 are approved by OMB under OMB No. 2070–0093 (EPCRA section 313 base program and Form R, EPA ICR No. 1363) and under OMB No. 2070–0145 (Form A, EPA ICR No. 1704). The current public reporting burden for EPCRA section 313 is estimated to be 34.2 hours for a Form R submitter and 20.6 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. For reporting year 2003 there were 1,515 Form Rs submitted for methyl ethyl ketone and 108 Form As submitted.

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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**. However, section 808 of that Act provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of June 30, 2005. 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, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 24, 2005.

Stephen L. Johnson,
Administrator.

■ Therefore, 40 CFR part 372 is amended to read as follows:

■ 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 is amended by removing the entry for methyl ethyl ketone under paragraph (a), and removing the entire CAS No. entry for 78–93–3 under paragraph (b).

[FR Doc. 05–12928 Filed 6–29–05; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 401 and 405

[CMS–4064–IFC2]

RIN–0938–AM73

Medicare Program; Changes to the Medicare Claims Appeal Procedures: Correcting Amendment to an Interim Final Rule

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correcting amendment to an interim final rule.

SUMMARY: This amendment corrects technical errors in the interim final rule with comment period that appeared in the **Federal Register**, entitled “Medicare Program: Changes to the Medicare Claims Appeal Procedures.”

EFFECTIVE DATE: This correcting amendment is effective July 1, 2005.

FOR FURTHER INFORMATION CONTACT: Arrah Tabe-Bedward, (410) 786–7129.

SUPPLEMENTARY INFORMATION:

I. Background

We have identified technical errors and omissions that appeared in the interim final rule with comment period entitled “Medicare Program: Changes to the Medicare Claims Appeal Procedures.” (FR Doc. 05–4062) (*See* 70 FR 11420, March 8, 2005.) In this correcting amendment, we are correcting these technical errors and omissions.

II. Correction of Errors

A. Summary of Technical Corrections to the Preamble

On page 11436 of the preamble, we identified decisions regarding the timely submission of claims as not being initial determinations. We attempted to convey that this was true whether a provider or supplier failed to submit a timely claim for its own purposes or at the request of a beneficiary or the beneficiary's