

for the CAA broad generic categories if the Agency, as a result of its evaluation of the CAA categories, chooses to list specific substances within the categories and assign RQs to these substances.

The same commenter asserted that, if EPA assigned an RQ to only one compound within a CAA broad generic category, a facility could be out of compliance if it chose not to report a release of that compound. In fact, each of the five CAA broad generic categories in today's final rule contains at least one substance that already is individually listed as a CERCLA hazardous substance with an RQ in Table 302.4. Examples of separately listed CERCLA hazardous substances that are members of the categories include cobaltous bromide (cobalt compounds), 2-ethoxyethanol (glycol ethers), potassium permanganate (manganese compounds), asbestos (fine mineral fibers), and benzo[a]pyrene (polycyclic organic matter). Under CERCLA section 103, releases equal to or greater than the RQs for these hazardous substances must be reported to the National Response Center as soon as the person in charge has knowledge of the release. Thus, EPA agrees with the commenter's assessment that a facility would be out of compliance if it failed to report a release of an RQ or more of an individually listed substance within any of the CAA broad generic categories.

In addition, the same commenter noted that, if a facility has no knowledge of the specific compounds released, then only the CAA broad generic category reporting requirement (i.e., no RQ for the category) would apply. This assertion, however, is inaccurate with respect to releases of hazardous substances that are within one of the generic listings and that also are individually listed in Table 302.4 with corresponding RQs.

Under CERCLA section 103(a), notification must occur when the person in charge of a facility has knowledge of a release of such a hazardous substance in an amount that equals or exceeds an RQ. This includes individually listed hazardous substances within the CAA broad generic categories. The determination of whether the person in charge has knowledge depends on the actions that a person in that position could reasonably be expected to take under the circumstances. In evaluating possible enforcement proceedings for failure to comply with the CERCLA section 103 reporting requirement, the Agency's determination whether the person in charge had knowledge will be made on a case-by-case basis. EPA believes that the most prudent course of action for the person in charge would be

to identify the substance(s) being released and to determine if the amount of the substance(s) released equals or exceeds an RQ. The Agency believes that this approach on the part of persons in charge would also help to avoid overreporting.

A different commenter expressed confusion because EPA failed to mention, in the October 22, 1993 NPRM, the commenter's 1992 petition to designate and assign RQs to about 20 ethylene glycol ethers within the larger CAA category of glycol ethers.²⁸ When the proposed rule was published, however, the Agency was still evaluating various options for applying reporting requirements to the five CAA broad generic categories, including "glycol ethers." Only after receiving and evaluating comments on the five options presented in the October 22, 1993 NPRM, did the Agency decide to select Option 5. EPA believes that responding to the commenter's petition to adjust RQs of substances within the glycol ethers category, prior to an Agency decision on the appropriate reporting requirements for the category, would have been premature and might have led to confusion within the regulated community about what reporting requirements apply to the CAA category of glycol ethers. Following promulgation of today's final rule, however, EPA will begin to evaluate the data submitted by the commenter to determine whether individual listing in Table 302.4 and RQ adjustment of specific ethylene glycol ethers is warranted under the selected Option 5.

Two commenters suggested that EPA could establish subcategories within the CAA broad generic categories, and assign separate RQs to the subcategories. For example, one commenter suggested that EPA assign a low RQ to the subcategory of carcinogenic polynuclear aromatic hydrocarbons (PAHs) within the larger CAA category of polycyclic organic matter, and a higher RQ for non-carcinogenic PAHs. EPA appreciates the commenters' suggestion and may consider using these subcategories in any future determination of whether individual listing in Table 302.4 and RQ adjustment of specific PAHs (or subcategories of PAHs) is warranted.

One commenter claimed that only individual chemicals listed under CAA section 112 are CERCLA hazardous substances, and that CAA category members not otherwise listed under CERCLA need not be reported at the

one-pound level. The Agency disagrees with the commenter's assertion that the one-pound statutory RQs did not require reporting of substances (other than those listed separately in Table 302.4) within the CAA categories *prior* to this final rule. CERCLA section 101(14)(E) states that the term "hazardous substance" includes "any hazardous air pollutant listed under section 112 of the Clean Air Act." Thus, the CAA categories automatically became hazardous substances by virtue of their listing as hazardous air pollutants under CAA section 112. CERCLA section 102(b) provides that an RQ of one pound applies to hazardous substances (which include the CAA hazardous air pollutants) until this RQ is adjusted by regulation. All substances within the categories, as well as the categories themselves, are CERCLA hazardous substances. Therefore, during the period beginning with the signing of the CAA Amendments of 1990 and ending with the effective date of today's final rule, the one-pound statutory RQs for the categories have applied to all substances within the categories.

One commenter requested that the Agency consider a low-percentage threshold for the CAA categories below which a component of a mixture may be excluded from regulation. Unless permitted or exempted, the release of an RQ or more of a hazardous substance must be reported, regardless of the concentration of the substance released. Notification of releases of hazardous substances that equal or exceed an RQ, even those with relatively low concentrations, is mandated by CERCLA and EPA believes that such reports are essential to allow government personnel to decide whether a response action is necessary to protect public health or welfare or the environment.²⁹

D. Delisting Petition for Caprolactam

Two commenters requested that EPA respond to a delisting petition for caprolactam submitted on July 19, 1993. One of the commenters asserted that, "upon the removal of caprolactam from the [CAA section 112] list of 'hazardous air pollutants,' caprolactam will no longer be a CERCLA 'hazardous substance' under CERCLA § 101(14)

* * *

This assertion, however, is not a complete characterization of the CERCLA authority for listing

²⁸ Petition to Adjust the Reportable Quantity for Glycol Ethers under CERCLA Section 102. July 8, 1992. From Gordon D. Strickland, Chemical Manufacturers Association to Barbara Hostage, Emergency Response Division, U.S. EPA.

²⁹ For detailed responses to comments on other issues related to the five CAA broad generic categories, see Section III.C of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.