caprolactam as a hazardous substance. As the commenter correctly notes, caprolactam is included in the definition of "hazardous substance" because it has been listed as a hazardous air pollutant under the CAA, and CERCLA section 101(14)(E) incorporates by reference any hazardous air pollutant listed under section 112 of the CAA. The commenter has failed to mention, however, that under CERCLA section 101(14)(B), the term "hazardous substance" also includes "\* \* \* any element, compound, mixture, solution, or substance designated pursuant to section 102 of [CERCLA] \* \* \*.' CERCLA section 102(a) authorizes EPA to designate as hazardous and assign RQs to those substances which, when released into the environment, may present substantial danger to the public health or welfare or the environment.

Furthermore, the regulations governing designation of hazardous substances (40 CFR 302.4(a)) provide that "[t]he elements and compounds and hazardous wastes appearing in Table 302.4 are designated as hazardous substances under section 102(a) of [CERCLA]." Thus, once a hazardous substance listed under any of the statutes referred to in CERCLA section 101(14) is added to the regulatory list at 40 CFR 302.4, that substance automatically is also designated as a hazardous substance under CERCLA section 102(a). As the commenter acknowledges, caprolactam has been proposed to be added to the list at 40 CFR 302.4; therefore, upon the effective date of this final rule, caprolactam is also designated as a hazardous substance under CERCLA section 102(a), not only under section 101(14)(E).

If the commenter is correct that its petition to delist caprolactam under CAA section 112 will be granted, 30 then EPA would evaluate caprolactam to determine whether there is any independent basis for retaining this substance as hazardous under section 102(a) of CERCLA and 40 CFR 302.4(a). If EPA determines that there is no independent basis for retaining caprolactam in Table 302.4, it may be possible to delete caprolactam from the CERCLA list of hazardous substances

simultaneously with delisting under the CAA.

In addition, the commenter cited a May 25, 1983 proposed rule (48 FR 23554), in which EPA suggested that changes to lists of substances under statutes incorporated in the CERCLA definition of a hazardous substance (CERCLA section 101(14)) would be reflected simultaneously on the CERCLA list of hazardous substances in Table 302.4 at 40 CFR 302.4. In the April 4, 1985 final rule (50 FR 13456), however, EPA modified this previous policy by providing that all hazardous substances in Table 302.4 are also designated under CERCLA section 102(a) (see 40 CFR 302.4(a)). Thus, even if substances are removed from lists under other statutes referred to in CERCLA section 101(14), these substances may remain in Table 302.4 by virtue of their designation under CERCLA section 102(a). Because of the CERCLA section 102(a) designation reflected in 40 CFR 302.4(a), the Agency does not believe that changes to lists of substances under statutes listed in CERCLA section 101(14) necessarily require simultaneous changes to Table 302.4.

## III. Changes to List of Hazardous Substances and Their RQs

To show more clearly the two types of changes to the list of CERCLA hazardous substances resulting from the addition of the CAA Amendments hazardous air pollutants and the RCRA hazardous wastes, EPA proposed in the October 22, 1993 NPRM, and is promulgating in today's final rule two sets of revisions to Table 302.4 of 40 CFR 302.4. One set of revisions contains the new listings for the CAA Amendments hazardous air pollutants (including the revised cresols and xylenes entries) and the RCRA hazardous wastes, including final RQs for these substances. The other set of revisions adds a new statutory source code for certain hazardous substances that were already on the CERCLA list (e.g., acetaldehyde and acetonitrile) to indicate that, as a result of their listing as hazardous air pollutants in the CAĀ Amendments, an additional statutory source for designation of these hazardous substances is CAA section

## IV. Changes to 40 CFR Parts 355 and 117

Appendices A and B of 40 CFR part 355, which list extremely hazardous substances (EHSs) and their threshold planning quantities (TPQs) under EPCRA, also show the RQs for EHSs. Five of the new CAA hazardous air

pollutants whose RQs are adjusted today are also EHSs. These substances are chloroacetic acid, hydroquinone, beta-propiolactone, titanium tetrachloride, and o-cresol. This rule promulgates 100-pound RQ adjustments for chloroacetic acid, hydroquinone, and o-cresol, a 10-pound RQ adjustment for beta-propiolactone, and a 1,000-pound RQ adjustment for titanium tetrachloride. Therefore, to reflect fully the RQ adjustments for these five substances, EPA today is revising Appendices A and B of 40 CFR part 355 to include these new adjusted RQs.

EPA also is amending the RQs for "cresol" and "xylene (mixed)" in Table 117.3 of 40 CFR part 117 to be consistent with the CERCLA RQs. Table 117.3, the list of CWA hazardous substances and their RQs, currently contains listings for "cresol" and "xylene (mixed)," each with an RQ of 1,000 pounds. "Cresol" and "xylene (mixed)" are included in Table 117.3 because they were originally listed as hazardous substances under CWA section 311(b)(4).

## V. Regulatory Analyses

## A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. An economic analysis performed by EPA <sup>31</sup> shows that this

<sup>&</sup>lt;sup>30</sup> CAA section 112(b)(3)(C) requires delisting of a hazardous air pollutant if EPA finds "that there is adequate data on the health and environmental effects [of the substance] to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects." EPA has not yet issued a final determination whether the petition to delist caprolactam meets the CAA delisting criteria.

<sup>&</sup>lt;sup>31</sup> See the Economic Impact Analysis of Reportable Quantity Adjustments for CAA