



BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 372

[EPA-HQ-TRI-2016-0222; FRL-9979-16]

RIN 2070-AK15

### Addition of Nonylphenol Ethoxylates Category; Community Right-to-Know Toxic Chemical Release Reporting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is adding a nonylphenol ethoxylates (NPEs) category to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). EPA is adding this chemical category to the EPCRA section 313 list because EPA has determined that NPEs meet the EPCRA section 313(d)(2)(C) toxicity criteria.

Specifically, EPA has determined that short-chain NPEs are highly toxic to aquatic organisms and longer chain NPEs, while not as toxic as short-chain NPEs, can break down in the environment to short-chain NPEs and nonylphenol, both of which are highly toxic to aquatic organisms.

**DATES:** *Effective date:* This final rule is effective November 30, 2018.

*Applicability date:* This final rule will apply for the reporting year beginning January 1, 2019 (reports due July 1, 2020).

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-

TRI-2016-0222. All documents in the docket are listed on <http://www.regulations.gov>.

Although listed in the index, some information is not publicly available, e.g., Confidential Business Information 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 electronically through <http://www.regulations.gov>. Additional instructions on visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:*

Daniel R. Bushman, Toxics Release Inventory Program Division (7410M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-0743; email: [bushman.daniel@epa.gov](mailto:bushman.daniel@epa.gov).

*For general information contact:* The Emergency Planning and Community Right-to-Know Hotline; telephone numbers: toll free at (800) 424-9346 (select menu option 3) or (703) 348-5070 in the Washington, DC Area and International; or go to <https://www.epa.gov/home/epa-hotlines>.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you manufacture, process, or otherwise use NPEs. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers

determine whether this document applies to them. Potentially affected entities may include:

- Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (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\*, 211130\*, 212324\*, 212325\*, 212393\*, 212399\*, 488390\*, 511110, 511120, 511130, 511140\*, 511191, 511199, 512230\*, 512250\*, 519130\*, 541713\*, 541715\* 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 (corresponds to SIC code 12, Coal Mining (except 1241)); or 212221, 212222, 212230, 212299 (corresponds to SIC code 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221118, 221121, 221122, 221330 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (limited to facilities previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC code 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 code 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.*) (corresponds to SIC code 4953, Refuse Systems).

- Federal facilities.

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 under "**FOR FURTHER INFORMATION CONTACT**".

*B. What Action is the Agency Taking?*

EPA is adding a NPEs category to the list of toxic chemicals subject to reporting under EPCRA section 313 and PPA section 6607. EPA is adding this chemical category to the EPCRA section 313 list because EPA believes NPEs meet the EPCRA section 313(d)(2)(C) toxicity criteria.

*C. What is the Agency's Authority for Taking this Action?*

This action is issued under EPCRA sections 313(d) and 328, 42 U.S.C. 11023 *et seq.*, and PPA section 6607, 42 U.S.C. 13106. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

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 was comprised of 308 individually listed 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 EPCRA 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 criteria in EPCRA section 313(d)(2) are met. The listing criteria in EPCRA section 313(d)(2)(A)-(C) are as follows:

- 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 EPCRA section 313(d)(2)(A) criterion as the “acute human health effects criterion;” the EPCRA section 313(d)(2)(B) criterion as the “chronic human health effects criterion;” and the EPCRA section 313(d)(2)(C) criterion as the “environmental effects criterion.”

EPA published in the **Federal Register** of November 30, 1994 (59 FR 61432) (FRL-4922-2), a statement clarifying its interpretation of the EPCRA section 313(d)(2) and (d)(3)

criteria for modifying the EPCRA section 313 list of toxic chemicals.

## II. Summary of Proposed Rule

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

As discussed in the proposed rule of November 16, 2016 (81 FR 80624) (FRL-9951-01), EPA proposed to add a NPEs category to the EPCRA section 313 list of toxic chemicals. NPEs are nonionic surfactants containing a branched nine-carbon alkyl chain bound to phenol and a chain of repeating ethoxylate units ( $C_9H_{19}C_6H_4(OCH_2CH_2)_nOH$ ). The number of repeating ethoxylate units (n) can range from 1 to 100. NPEs were proposed to be listed as a category that would include the thirteen NPEs that currently appear on the Toxic Substances Control Act inventory (<https://www.epa.gov/tsca-inventory>). The NPEs category would be defined as Nonylphenol Ethoxylates and would only include those chemicals covered by the following Chemical Abstracts Service Registry Numbers (CASRN):

- 7311-27-5; Ethanol, 2-[2-[2-[2-(4-nonylphenoxy)ethoxy]ethoxy]ethoxy]-
- 9016-45-9; Poly(oxy-1,2-ethanediyl),  $\alpha$ -(nonylphenyl)- $\omega$ -hydroxy-
- 20427-84-3; Ethanol, 2-[2-(4-nonylphenoxy)ethoxy]-
- 26027-38-3; Poly(oxy-1,2-ethanediyl),  $\alpha$ -(4-nonylphenyl)- $\omega$ -hydroxy-
- 26571-11-9; 3,6,9,12,15,18,21,24-Octaoxahexacosan-1-ol, 26-(nonylphenoxy)-
- 27176-93-8; Ethanol, 2-[2-(nonylphenoxy)ethoxy]-
- 27177-05-5; 3,6,9,12,15,18,21-Heptaoxatricosan-1-ol, 23-(nonylphenoxy)-
- 27177-08-8; 3,6,9,12,15,18,21,24,27-Nonaoxanonacosan-1-ol, 29-(nonylphenoxy)-

- 27986-36-3; Ethanol, 2-(nonylphenoxy)-
- 37205-87-1; Poly(oxy-1,2-ethanediyl),  $\alpha$ -(isononylphenyl)- $\omega$ -hydroxy-
- 51938-25-1; Poly(oxy-1,2-ethanediyl),  $\alpha$ -(2-nonylphenyl)- $\omega$ -hydroxy-
- 68412-54-4; Poly(oxy-1,2-ethanediyl),  $\alpha$ -(nonylphenyl)- $\omega$ -hydroxy-, branched
- 127087-87-0; Poly(oxy-1,2-ethanediyl),  $\alpha$ -(4-nonylphenyl)- $\omega$ -hydroxy-,  
branched

*B. What was EPA's rationale for proposing to list the NPEs category?*

As discussed in the proposed rule of November 16, 2016 (81 FR 80624) (FRL-9951-01), EPA proposed to add short-chain NPEs to the EPCRA section 313 toxic chemical list because they are highly toxic to aquatic organisms with toxicity values well below 1 mg/L. Therefore, EPA believed that the evidence was sufficient for listing short-chain NPEs on the EPCRA section 313 toxic chemical list pursuant to EPCRA section 313(d)(2)(C) based on the available ecological toxicity data. Long-chain NPEs, while not as toxic as short-chain NPEs, are known to become more toxic as they degrade in the environment to produce products that include highly toxic short-chain NPEs and nonylphenol. Nonylphenol is even more toxic to aquatic organisms than short-chain NPEs and was added to the EPCRA section 313 toxic chemical list based on its toxicity to aquatic organisms of September 30, 2014 (79 FR 58686) (FRL-9915-59-OEI). As long-chain NPEs are a source of degradation products that are highly toxic to aquatic organisms, EPA believed that the evidence was also sufficient for listing long-chain NPEs on the EPCRA section 313 toxic chemical list pursuant to EPCRA section 313(d)(2)(C) based on the available ecological toxicity and environmental fate data.

EPA stated that it did not believe that it was appropriate to consider exposure for

chemicals that are highly toxic based on a hazard assessment when determining if a chemical can be added for environmental effects pursuant to EPCRA section 313(d)(2)(C) (*see* 59 FR 61440–61442). Therefore, in accordance with EPA’s standard policy on the use of exposure assessments (*see* November 30, 1994 (59 FR 61432) (FRL-4922-2)), EPA stated that it did not believe that an exposure assessment was necessary or appropriate for determining whether NPEs meet the criteria of EPCRA section 313(d)(2)(C).

### **III. What comments did EPA receive on the proposed rule?**

EPA received six comments on the proposed rule to add a NPEs category to the EPCRA section 313 list of toxic chemicals, three were anonymously submitted (References (Refs.) 1, 2, and 3). The comments received that were not anonymously submitted are from the following groups, the Alkylphenols & Ethoxylates Research Council (APERC) (Ref. 4), American Coatings Association (ACA) (Ref. 5), and Women’s Voices for the Earth (Ref. 6). Two of the anonymous commenters supported the listing as did the Women’s Voices for the Earth. One anonymous commenter only asked whether there were any exemptions or exceptions to the rule given its particular low-level use of NPEs (Ref. 2). ACA’s comment requested that EPA delay the effective date of the final rule. The only extensive comments received were submitted by APERC, which opposes the listing based on their technical and legal interpretations. Summaries of the most significant comments and EPA’s response are discussed here. The complete set of comments and EPA’s detailed responses can be found in the response to comments document in the docket for this rulemaking (Ref. 7).

APERC stated that long-chain NPEs are not “highly toxic” to the aquatic environment, which EPA defined in the proposed rule and its supporting documents as ecotoxicity values below aquatic concentrations of 1 mg/L.

As EPA has previously stated, when considering toxicity alone under EPCRA 313(d)(2)(C), EPA typically limits its consideration of highly toxic to those chemicals that cause acute aquatic toxicity at about 1 mg/L or less and chronic aquatic toxicity at 0.1 mg/L or less (76 FR 64022, October 17, 2011). The purpose of these values is not to determine which chemicals are toxic but rather to determine if exposure should be part of EPA's listing decision per its established exposure policy (59 FR 61432, November 30, 1994). However, these are not absolute values and they do not preclude consideration of other factors such as the environmental fate of the chemical. While not as toxic to aquatic organisms as nonylphenol and short-chain NPEs, as noted by the commenter, long-chain NPEs are still toxic to aquatic organisms. As EPA cited in the proposed rule, the longer-chain NPEs are toxic to aquatic organisms (Refs. 8 and 9). For an ethoxylate chain length of 5 reported toxicity values include a LC<sub>50</sub> (i.e., the concentration that is lethal to 50% of test organisms) of 3.6 milligrams per liter (mg/L) for Japanese killifish (*Oryzias latipes*) and LC<sub>50</sub>s of 2.4-2.8 mg/L for bluegill sunfish (*Lepomis macrochirus*). For chain lengths of 9, toxicity ranged from a LC<sub>50</sub> of 1.2 mg/L for *Mysidopsis bahia* to an EC<sub>50</sub> (i.e., the concentration that is effective in producing a sublethal response in 50% of test organisms) of 500 mg/L for green algae. Chain lengths of 50 were less toxic, for example an EC<sub>50</sub> of >4,000 mg/L for emergence in mosquito larvae (*Culex pipiens*) was reported. Analysis of data from Hall (Table 2, Ref. 8) demonstrates a significant positive log-linear relationship between nonylphenol ethoxylate chain length (1.5 to 50) and acute 48-hour toxicity (LC<sub>50</sub> values for 3 to 8-day old mysid shrimp (*M. bahia*)). Shrimp LC<sub>50</sub>'s ranged from 0.11 mg/L for an ethoxylate chain length of 1.5 to greater than 4,110 mg/L for a chain length of 50. In general, the data indicate that toxicity of NPEs decreases as ethoxylate chain length

increases, and vice versa. Because longer chain NPEs break down to shorter chain NPEs in the environment, they become more toxic. As noted in EPA's exposure policy, for chemicals that are low to moderately ecotoxic, EPA may consider exposure factors such as environmental fate (59 FR 61432, November 30, 1994). EPA's assessment of long-chain NPEs is that, depending on chain length, they are low to moderately toxic to aquatic organisms but that their environmental fate results in the formation of highly toxic nonylphenol and short-chain NPEs.

It is well documented that long-chain NPEs can readily degrade to nonylphenol and short-chain NPEs and thus are a primary source of these chemicals found in the environment (Ref. 10). As noted in the proposed rule:

“Nonylphenol ethoxylate biodegradation products include shorter chain NPEs and ethoxycarboxylates. (Refs. 9, 10, and 20). Nonylphenol ethoxycarboxylates are NPEs that terminate with a carboxylate group (-CO<sub>2</sub>H) rather than an alcohol group (-OH). Although not commonly observed under aerobic conditions, nonylphenol is a major metabolite of NPEs under anaerobic conditions (Refs. 9, 10, 21, 22, 23, 24, 25, 26, and 27)” (81 FR 80626, November 16, 2016).

Releases of long-chain NPEs, therefore, are essentially releases of both nonylphenol and short-chain NPEs which are highly toxic to aquatic organisms. To ignore the available data on the environmental fate of NPEs would underestimate the potential impact long-chain NPEs can have on aquatic organisms.

APEREC stated that listing the long-chain NPEs on the basis that they are a source of degradation products that are highly toxic to aquatic organisms is not consistent with the statutory language in EPCRA section 313(d)(2)(C). APEREC stated that the language in

EPCRA section 313(d)(2)(C) is clear in stating that only the hazard of the chemical to be listed is to be considered. APERC notes that the statutory language specifies that significant adverse effects to the environment should be based on a compound's toxicity, or its toxicity and persistence or its toxicity and bioaccumulation. APERC stated that the statutory language does not portend that listing of a chemical should be based on its degradation pathways or the toxicity of its degradation products. APERC also stated that where degradation intermediates themselves represent the hazard of interest that hazard is contingent on the conditions of disposal and treatment and ultimately the occurrence of those degradants in emissions and the receiving environment. They stated that disposal of long-chain NPEs in one treatment scenario may generate degradation products of concern whereas disposal in another treatment scenario may not generate any degradants of concern. APERC noted that reporting is already required for nonylphenol, which is the degradant of highest concern.

As noted in the previous comment response, long-chain NPEs are toxic to aquatic organisms and become more toxic as they degrade. In the 1994 chemical expansion final rule EPA made the following statements regarding degradation products:

“The EPCRA section 313(d)(2) listing criteria each state that EPA may list a chemical that it determines "causes or may reasonably be anticipated to cause" the relevant adverse human health or environmental effects. EPA believes that this language allows EPA to consider the effects caused by the degradation products of a listed chemical. Where it may reasonably be anticipated, based on available data, that the listed chemical would readily degrade into another chemical that would cause the adverse effect, EPA is acting reasonably and within its grant of authority in listing the

precursor to the toxic degradation product” (59 FR 61432, November 30, 1994).

EPA believes that the “toxicity” of a chemical includes the toxicity of degradation products that are produced as a result of the chemical’s release to the environment. These degradation products are a direct result of the chemical properties of the parent compound that determine its environmental fate, and as such should be considered part of the chemical’s toxicity. As EPA has previously noted:

“Therefore, to meet its obligation under section 313(d)(2)(C), in cases where a chemical is low or moderately ecotoxic, EPA may look at certain exposure factors (including pollution controls, the volume and pattern of production, use, and release, environmental fate, as well as other chemical specific factors, and the use of estimated releases and modeling techniques) to determine if listing is reasonable, i.e., could the chemical ever be present at high enough concentrations to cause a significant adverse effect upon the environment to warrant listing under section 313(d)(2)(C)” [emphasis added] (59 FR 61432, November 30, 1994).

While the distribution and type of degradation products can vary based on disposal and environmental conditions, the environmental data clearly show that there are numerous disposal and environmental conditions that result in the degradation of NPEs to short-chain NPEs and nonylphenol (Ref. 4). Therefore, EPA has concluded that the long-chain NPEs to be listed, like the short-chain NPEs in the category, can reasonably be anticipated to cause a significant adverse effect on the environment of sufficient seriousness to warrant reporting.

APERC’s statement that TRI reporting is already required for nonylphenol, which is the degradant of highest concern, is irrelevant to the issue of listing NPEs. The reports of releases of nonylphenol do not provide any information related to the presence of

nonylphenol in the environment that results from the release and degradation of NPEs. Nonylphenol was not listed because it is a degradation product of NPEs, it is also used in the chemical industry, including as the starting material for the production of NPEs. Since nonylphenol is used in the chemical industry there is the potential for releases to the environment. With regard to listing chemicals that are degradation products, EPA has stated:

“If the degradation product meets the toxicity criteria of EPCRA section 313, the precursor chemical may be considered for listing on EPCRA section 313. The degradation product would not be considered for listing on EPCRA section 313 because a facility subject to EPCRA section 313 is only required to file a TRI report for a chemical that it manufactures, processes, or otherwise uses, within the facility boundaries” (59 FR 1788, January 12, 1994).

If nonylphenol were present in the environment only as a degradation product of releases of NPEs, EPA would not have added it to the EPCRA section 313 toxic chemical list since no reports would have been filed.

ACA requested that EPA adopt a January 1, 2020 effective date for the addition of a NPEs category. ACA stated that their members require sufficient lead time to ensure that all facilities are able to comply with changes in regulations. ACA stated that even though some of their industry members are already subject to reporting, a significant amount of other industry members would now fall under the scope of the proposed rule and have to comply. ACA claimed that the January 1, 2018 compliance date would not give their members adequate time to account for and report NPEs under the regulations. ACA also stated that several of their industry members are planning on reformulating their products to lower or eliminate the use of designated NPEs altogether, rather than become subject to the new

reporting requirements. ACA stated that those facilities intend to phase out the use of NPEs and replace them with safer alternative chemicals, or lower their usage below the reporting threshold. ACA noted that regardless of the reasoning, reformulation takes a substantial amount of time and increases cost for companies. ACA claims that therefore, their industry members need an extended effective date of January 1, 2020 to reformulate their products.

EPCRA 313(d)(4) provides the timing for the effective date for a change to the EPCRA section 313 list of toxic chemicals:

“(4) Effective Date. -- Any revision made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.”

If a rule is finalized by November 30 of a calendar year, then its effective date is January 1 of the following year. However, reports for that year are not due to EPA until July 1 of the following year, which would be at least 19 months from the date the final rule was published. Nineteen months should be more than enough time for facilities to make reasonable estimates of releases and waste management quantities for chemicals that they manufacture, process or otherwise use. The commenter did not provide any information on how many facilities would be new reporters under EPCRA section 313, however, EPA’s economic analysis estimated that only 8 facilities would be new reporters so most facilities would be familiar with the reporting requirements (Ref. 11). Even when EPA added nearly 300 chemicals to the EPCRA section 313 chemical list, the effective date was not extended (note the final rule was published in November 1994 with the first reports due July 1, 1996).

The final rule for the addition of NPEs is being published before November 30 of 2018, which makes the effective date for reporting purposes January 1, 2019, with the first reports due July 1, 2020. This should be more than enough time for facilities to prepare for reporting.

Further, reports from facilities that choose to reformulate products to lower or eliminate the use of NPEs would provide useful information to data users, including industry stakeholders. A key component of EPCRA section 313 reporting includes information on source reduction activities that reduce the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, energy recovery, treatment, or disposal. Data that demonstrates or fails to demonstrate anticipated downward trends alongside information on activities conducted to phase out the use of NPEs is information of high utility and can help spur other facilities to reduce their use of NPEs.

#### **IV. Summary of Final Rule**

EPA is finalizing the addition of a NPEs category to the EPCRA section 313 list of toxic chemicals. EPA has determined that NPEs meet the listing criteria under EPCRA section 313(d)(2)(C). The NPEs category will be defined as: Nonylphenol Ethoxylates (This category includes only those chemicals covered by the CAS numbers listed here):

- 7311-27-5; Ethanol, 2-[2-[2-[2-(4-nonylphenoxy)ethoxy]ethoxy]ethoxy]-
- 9016-45-9; Poly(oxy-1,2-ethanediyl),  $\alpha$ -(nonylphenyl)- $\omega$ -hydroxy-
- 20427-84-3; Ethanol, 2-[2-(4-nonylphenoxy)ethoxy]-
- 26027-38-3; Poly(oxy-1,2-ethanediyl),  $\alpha$ -(4-nonylphenyl)- $\omega$ -hydroxy-
- 26571-11-9; 3,6,9,12,15,18,21,24-Octaoxahexacosan-1-ol, 26-(nonylphenoxy)-

- 27176-93-8; Ethanol, 2-[2-(nonylphenoxy)ethoxy]-
- 27177-05-5; 3,6,9,12,15,18,21-Heptaotricosan-1-ol, 23-(nonylphenoxy)-
- 27177-08-8; 3,6,9,12,15,18,21,24,27-Nonaotricosan-1-ol, 29-(nonylphenoxy)-
- 27986-36-3; Ethanol, 2-(nonylphenoxy)-
- 37205-87-1; Poly(oxy-1,2-ethanediyl),  $\alpha$ -(isononylphenyl)- $\omega$ -hydroxy-
- 51938-25-1; Poly(oxy-1,2-ethanediyl),  $\alpha$ -(2-nonylphenyl)- $\omega$ -hydroxy-
- 68412-54-4; Poly(oxy-1,2-ethanediyl),  $\alpha$ -(nonylphenyl)- $\omega$ -hydroxy-, branched
- 127087-87-0; Poly(oxy-1,2-ethanediyl),  $\alpha$ -(4-nonylphenyl)- $\omega$ -hydroxy-, branched

## V. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not itself physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. Anonymous public comment. November 16, 2016. EPA-HQ-TRI-2016-0222-0139.
2. Anonymous public comment. November 17, 2016. EPA-HQ-TRI-2016-0222-0140.
3. Anonymous public comment. December 6, 2016. EPA-HQ-TRI-2016-0222-0143.
4. Comments submitted by Alkylphenols and Ethoxylates Research Council

(APEREC). January 17, 2017. EPA-HQ-TRI-2016-0222-0144.

5. Comments submitted by Raleigh Davis, Assistant Director, Environmental Health and Safety and Rhett Cash, Counsel, Government Affairs, American Coatings Association (ACA). January 13, 2017. EPA-HQ-TRI-2016-0222-0142.

6. Comments submitted by Alexandra Scranton, Director, Science and Research, Women's Voices for the Earth. November 28, 2016. EPA-HQ-TRI-2016-0222-0141.

7. USEPA, OPPT. Response to Comments Received on the November 16, 2016 Proposed Rule (81 FR 80624): Addition of Nonylphenol Ethoxylates Category; Community Right-to-Know Toxic Chemical Release Reporting. U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics. May 31, 2018.

8. Hall, W.S., M.B. Patoczka, R.J. Mirenda, B.A. Porter, and E. Miller. 1989. Acute toxicity of industrial surfactants to *Mysidopsis bahia*. Arch. Environ. Contam. Toxicol. 18: 765–772. 44.

9. Servos, M.R. 1999. Review of the aquatic toxicity, estrogenic responses and bioaccumulation of alkylphenols and alkylphenol polyethoxylates. Water Qual. Res. J. Canada 34: 123–177.

10. USEPA, 2016. Chemistry and Environmental Fate of Nonylphenol Ethoxylates (NPEs). May 10, 2016.

11. USEPA, OPPT. Economic Analysis of the Final Rule to Add Nonylphenol Ethoxylates to the EPCRA Section 313 List of Toxic Chemicals. March 21, 2017.

## **VI. What are the Statutory and Executive Orders reviews associated with this action?**

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

*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 and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

*B. Paperwork Reduction Act (PRA)*

This action does not contain any new information collection requirements that require additional approval by OMB under the PRA, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2025-0009 and 2050-0078. Currently, the facilities subject to the reporting requirements under EPCRA section 313 and PPA section 6607 may use either EPA Toxic Chemicals Release Inventory Form R (EPA Form 1B9350-1), or 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 or 48 CFR chapter 15, and displayed on the information collection instruments (e.g., forms, instructions).

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are small manufacturing facilities. The Agency has determined that of the 178 entities estimated to be impacted by this action, 161 are small businesses; no small governments or small organizations are expected to be affected by this action. All 161 small businesses affected by this action are estimated to incur annualized cost impacts of less than 1%. Thus, this action 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 (Ref. 11).

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This action is not subject to the requirements of UMRA because it

contains no regulatory requirements that might significantly or uniquely affect small governments. EPA did not identify any small governments that would be impacted by this action. EPA's economic analysis indicates that the total cost of this action is estimated to be \$619,627 in the first year of reporting (Ref. 11).

*E. Executive Order 13132: Federalism*

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). 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.

*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 environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*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 (NTTAA)*

This rulemaking does not involve technical standards and is therefore not subject to considerations under section 12(d) of NTTAA, 15 U.S.C. 272 note.

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This regulatory action adds an additional chemical category to the EPCRA section 313 reporting requirements; it does not have any impact on human health or the environment. This action does not address any human health or environmental risks and does not affect the level of protection provided to human health or the environment. This action adds an additional chemical category to the EPCRA section 313 reporting requirements which provides information that government agencies and others can use to identify potential problems, set priorities, and help inform activities.

*K. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 372**

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

Date: June 6, 1018.

Charlotte Bertrand,

*Acting Principal Deputy Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 372—[AMENDED]**

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

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

2. In § 372.65, add alphabetically an entry for “Nonylphenol Ethoxylates (This category includes only those chemicals covered by the CAS numbers listed here)” to the table in paragraph (c) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

Category name							Effective date
* * * * *							
Nonylphenol Ethoxylates (This category includes only those chemicals covered by the CAS numbers listed here)							1/1/19
7311-27-5	Ethanol, 2-[2-[2-[2-(4-nonylphenoxy)ethoxy]ethoxy]ethoxy]-						
9016-45-9	Poly(oxy-1,2-ethanediyl), $\alpha$ -(nonylphenyl)- $\omega$ -hydroxy-						
20427-84-3	Ethanol, 2-[2-(4-nonylphenoxy)ethoxy]-						
26027-38-3	Poly(oxy-1,2-ethanediyl), $\alpha$ -(4-nonylphenyl)- $\omega$ -hydroxy-						
26571-11-9	3,6,9,12,15,18,21,24-Octaoxahexacosan-1-ol, 26-(nonylphenoxy)-						
27176-93-8	Ethanol, 2-[2-(nonylphenoxy)ethoxy]-						
27177-05-5	3,6,9,12,15,18,21-Heptaoxatricosan-1-ol, 23-(nonylphenoxy)-						
27177-08-8	3,6,9,12,15,18,21,24,27-Nonaoxanonacosan-1-ol, 29-(nonylphenoxy)-						
27986-36-3	Ethanol, 2-(nonylphenoxy)-						
37205-87-1	Poly(oxy-1,2-ethanediyl), $\alpha$ -(isononylphenyl)- $\omega$ -hydroxy-						
51938-25-1	Poly(oxy-1,2-ethanediyl), $\alpha$ (2-nonylphenyl)- $\omega$ -hydroxy-						
68412-54-4	Poly(oxy-1,2-ethanediyl), $\alpha$ -(nonylphenyl)- $\omega$ -hydroxy-, branched						
127087-87-0	Poly(oxy-1,2-ethanediyl), $\alpha$ -(4-nonylphenyl)- $\omega$ -hydroxy-, branched						
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