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40 CFR Part 372

[OPPTS-400057A; FRL-4946-3]

Sulfuric Acid; Toxic Chemical Release Reporting; Community Right-To-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is modifying the listing for sulfuric acid on the list of toxic chemicals subject to section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) in response to a petition. Specifically, EPA is deleting non-aerosol forms of sulfuric acid from the list of toxic chemicals subject to section 313. This deletion of non-aerosol forms of sulfuric acid is based on EPA's review of the available data on the health and environmental effects of sulfuric acid. EPA has concluded that these forms of sulfuric acid cannot reasonably be anticipated to cause adverse effects on human health or the environment under normal exposure scenarios. Therefore, these forms of sulfuric acid meet the EPCRA section 313(d)(3) deletion criteria. By promulgating this rule, EPA is relieving facilities of their obligation to report releases of non-aerosol forms of sulfuric acid that occurred during the 1994 reporting year, and releases that will occur in the future.

DATES: This rule is effective June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, 202-260-9592, e-mail:

doa.maria@epamail.epa.gov, for specific information on this final rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:**I. Introduction***A. Statutory Authority*

This action is issued under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). When enacted, section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added and deleted chemicals from the original statutory list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition has been denied.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued a statement of policy and guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has published a statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for adding and deleting chemicals from the section 313 toxic chemical list (November 30, 1994, 59 FR 61439).

II. Description of Petition and Proposed Action

On December 24, 1990, EPA received a petition from the Environmental Policy Center on behalf of American Cyanamid to qualify the listing of sulfuric acid by requiring release reporting only for sulfuric acid aerosols and deleting other forms of sulfuric acid from the list of chemicals under section 313. The petitioner maintains that non-aerosol forms of sulfuric acid do not meet the statutory criteria for acute, chronic, or environmental effects under normal exposure scenarios.

Following a review of the petition, EPA issued a proposed rule in the **Federal Register** of July 26, 1991 (56 FR 34156), proposing to delete non-aerosol forms of sulfuric acid from the list of toxic chemicals under EPCRA section

313. EPA's proposal was based on its conclusion that these forms of sulfuric acid meet the EPCRA section 313(d)(3) criteria for deletion from the list. EPCRA provides at section 313(d)(3) that "[a] chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph [(d)(2)(A)-(C)]." Specifically, in the proposed rule, EPA concluded preliminarily that there is not sufficient evidence to establish that non-aerosol forms of sulfuric acid cause adverse acute human health effects, chronic human health effects, or environmental toxicity. This preliminary conclusion, which is detailed in the proposed rule, was based on the Agency's review of the petition, as well as other relevant materials included in the docket.

In the **Federal Register** of February 1, 1993 (58 FR 6609), EPA re-opened the comment period for the proposal to modify the listing of sulfuric acid and announced that a public hearing would be held to address petitions to modify the listings for both sulfuric and hydrochloric acids (a petition was received from BASF Corporation, E.I. du Pont de Nemours and Company, Monsanto, and Vulcan Chemical Company on September 11, 1991, to modify the listing of hydrochloric acid by deleting non-aerosol forms). In this notice, EPA requested comment on a number of issues raised by commenters in response to the proposed rule to modify the listing for sulfuric acid that also apply to hydrochloric acid. Specifically, these issues were: (1) The extent to which EPA should rely on existing regulatory controls under other statutes to support a determination that continuous or frequently recurring releases of these acids are unlikely to cause adverse acute human health effects or significant adverse environmental effects; (2) the sufficiency of the evidence required to determine if the non-aerosol forms of these acids meet the EPCRA section 313(d)(2)(A) and (C) criteria; (3) whether EPA should consider accidental release data in making a finding for environmental effects under EPCRA section 313(d)(2)(C); (4) the relevance of release reporting under other statutory provisions to the issue of whether non-aerosol forms of these acids meet the listing criteria; and (5) other reporting options.

The public meeting was held on March 3, 1993. At this meeting, EPA discussed the specific issues described in the February 1, 1993 notice and presented data on accidental and routine releases of sulfuric and hydrochloric acids. Comments were

then presented by the public. Responses to the major issues raised by the comments presented and/or submitted at the public meeting concerning sulfuric acid are addressed in this rulemaking. Comments specific to the petition to modify the listing for hydrochloric acid will be addressed at the time a final regulation is promulgated.

III. Final Rule and Rationale for Delisting

A. Comments on the Proposed Modification to Delete Non-Aerosol Forms of Sulfuric Acid

EPA received 42 comments on the original notice proposing the deletion of non-aerosol forms of sulfuric acid from the EPCRA section 313 toxic chemical list, a majority of which supported the proposal. Thirteen commenters opposed the proposal arguing that: (1) The modification defeats the intent of EPCRA, and (2) the Agency had not adequately proven that non-aerosol forms of sulfuric acid cannot reasonably be anticipated to cause adverse human health or environmental effects. An additional 26 comments were received in response to the **Federal Register** notice (58 FR 6609) re-opening the comment period. Of these additional commenters, four opposed the deletion of non-aerosol forms of sulfuric acid. The major issues addressed by the commenters for both the proposed rule and the re-opening of the comment period are summarized below. A detailed response to all of the comments submitted is available in the document "Summary of Response to Public Comments Submitted on the Proposal to Modify the Sulfuric Acid Listing (56 FR 34156) and the Notice Re-opening the Public Comment Period (58 FR 6609)" which is contained in the docket for this rulemaking (Ref. 1).

1. *Accidental releases.* The Environmental Defense Fund (EDF) and the Consumer Policy Institute cite EPA's Accidental Release Information Program (ARIP) as documenting significant adverse environmental effects as a result of releases of non-aerosol forms of sulfuric acid. EDF adds that approximately half of the sulfuric acid accidents reported in the ARIP data base cite environmental damages. Furthermore, they contend that EPA's Acute Hazardous Events (AHE) data base describes sulfuric acid as the most frequently reported substance involved in chemical accidents. EDF also adds that it is important to recognize that neither the ARIP nor AHE data bases contain a complete record of accidental

chemical releases, therefore, the actual number is presumably higher.

EDF, the Minnesota Emergency Response Commission (MERC), the National Environmental Law Center, the Department of Drainage and Sanitation, County of Onondaga, NY, and the Consumer Policy Institute also believe that EPA must consider the effects from both accidental and routine releases when evaluating listing and delisting petitions. EDF adds that Congress specifically excluded the consideration of accidental releases from EPCRA section 313(d)(2)(A) by the phrase "continuous, or frequently recurring releases"; however, since that phrase is lacking from EPCRA section 313(d)(2)(C), EPA is required to consider the significance of impacts from accidental, as well as routine, releases. Ecolab further adds that EPA should consider factual information on accidental releases and not base listing decisions on the possibility of accidents.

EPA recognizes that an accidental spill of non-aerosol sulfuric acid could potentially result in adverse effects on the environment. However, even if an accidental spill were reported under EPCRA section 313, it may not be identifiable as a spill, since section 313 reporting requires annual release numbers which aggregate routine and accidental releases. Therefore, the Toxics Release Inventory (TRI) data are not the most appropriate resource for identifying the specific effects from accidental releases of a reported chemical. In addition, these data would not be immediately available under EPCRA section 313 and, therefore, would have little utility for emergency response personnel. In the proposal to modify the listing for sulfuric acid, EPA discussed the other more appropriate mechanisms through which spills of sulfuric acid would be reported and data made immediately available (e.g., the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 103 and EPCRA section 304). Therefore, EPA does not believe that this delisting will affect the availability of accidental release data for non-aerosol forms of sulfuric acid.

Furthermore, EPA has reviewed the accidental release data specific to sulfuric acid. EPA's review of available information on non-aerosol releases of concentrated sulfuric acid, including the data contained in ARIP and AHE, indicates that accidental releases of sulfuric acid to surface waters are infrequent and isolated occurrences. In fact, in only a few circumstances could evidence of adverse environmental effects (such as fish kills) be found. As such, the Agency believes that the

limited number of accidental releases of non-aerosol forms of sulfuric acid do not result in significant adverse effects of sufficient seriousness to warrant continued listing under EPCRA section 313. A description of EPA's analysis is contained in the document entitled "Analysis of Accidental Release Data for Non-Aerosol Forms of Sulfuric Acid" that is available in the docket for this rulemaking (Ref. 2).

The Bekaert Corporation, Chemical Manufacturers Association (CMA), Air Products and Chemicals Inc., American Cyanamid Company, Agrico Chemical Company, Armco Steel Company, Rhone Poulenc, Aluminum Company of America, Battery Council International, and the Acrylonitrile Group state that accidental releases of sulfuric acid are adequately covered by other statutory mechanisms (e.g., EPCRA section 304, CERCLA section 103). They contend that these other mechanisms are more effective and more appropriate for capturing accidental release information. Accidental release information is reported immediately under these statutes versus the delayed reporting (and even further delayed availability of data) under TRI. BASF Corporation, E.I. du Pont de Nemours, Monsanto Company, Vulcan Materials Company, Eli Lilly and Company, and The Fertilizer Institute state that the statutory intent of EPCRA section 313 is to cover annual reporting on releases of certain chemicals that occur during normal business operations. The commenters further assert that Congress made a clear distinction between this purpose and the purpose of EPCRA section 304 reporting on accidental releases.

EPA agrees that accidental releases are more appropriately captured under EPCRA section 304 and CERCLA section 103 for purposes of assisting emergency responders and identifying specific adverse effects from a spill. While it may be true that Congress clearly defined the different purposes of EPCRA section 304 and EPCRA section 313, it is not accurate to state that EPCRA section 313 only covers releases from routine business operations. Accidental releases are reported in aggregate with releases from routine operations under EPCRA section 313.

2. *Whether sulfuric acid non-aerosols meet the statutory criteria.* Six commenters (the New Jersey Environmental Federation, EDF, Coalition Against Toxics, National Environmental Law Center, Northwest Illinois Audubon Society, and the Alaska Health Project) state that EPA has not sufficiently demonstrated that non-aerosol forms of sulfuric acid do

not meet the EPCRA section 313(d)(2) criteria.

As explained in Unit III.B. of this preamble, EPA has concluded, based on the Agency's evaluation of sulfuric acid's toxicity and the levels of sulfuric acid exposure to which humans and the environment may be subject, that non-aerosol forms of sulfuric acid do not meet the EPCRA section 313(d)(2) criteria.

The National Environmental Law Center, Onondaga, NY Department of Drainage and Sewage, and EDF state that Publicly Owned Treatment Works (POTWs) workers are endangered by the corrosion and toxicity caused by the large amounts of sulfuric acid released to POTWs. Furthermore, they contend that emergency response personnel are harmed by transportation and plant accidents and that these risks may not be proportional to the "routine" releases as evaluated by the Agency in the proposed rule.

EPA agrees that the non-aerosol forms of sulfuric acid are acutely toxic at a low pH. The Agency believes that for chemicals that are acutely toxic, such as concentrated non-aerosol forms of sulfuric acid, the statute precludes consideration of only accidental, non-routine releases when making a determination of whether a chemical meets the criteria of EPCRA section 313(d)(2)(A). Further, the Agency has found that there is no evidence that non-aerosol sulfuric acid releases cause adverse effects to human health under ordinary exposure scenarios.

Several commenters state that this delisting is indefensible from an environmental perspective because sulfuric acid causes acidification, which harms aquatic life and vegetation. The Kentucky Resources Council and the National Environmental Law Center argue that there is insufficient data to state with any certainty whether the releases of non-aerosol forms of sulfuric acid will cause environmental harm. The Environmental Health Coalition adds that sulfuric acid is highly corrosive to wildlife, particularly aquatic life and that it makes no sense to delist a chemical whose toxicity at the time of release is not known and may be very high.

The toxic properties of non-aerosol forms of sulfuric acid are dependent upon concentration and duration of exposure. EPA believes that releases of non-aerosol forms of sulfuric acid in concentrations that are corrosive will almost exclusively exist as a result of accidental releases. Further, EPA believes that the occurrence of these accidental releases that result in adverse environmental effects is limited. As a

result, EPA does not believe that non-aerosol forms of sulfuric acid cause an adverse effect on the environment of sufficient seriousness to warrant continued reporting under EPCRA section 313.

The Kentucky Resources Council and the National Environmental Law Center contend that EPA did not provide any information concerning the pH levels typically associated with sulfuric acid releases so that the assertion that all releases of sulfuric acid of a pH less than 6 will not result in environmental harm is unsubstantiated, since the Agency recognizes that at certain low pH levels acute toxicity and other environmental effects occur.

The commenters are correct in their claim that EPA did not provide any pH levels associated with sulfuric acid releases in the proposed rule. However, EPA did provide some pH estimates as a result of modelling from data reported to the Emergency Response Notification System (ERNS) at the March 3, 1993 public meeting. The complete results of this modelling are contained in the document entitled "Analysis of Accidental Release Data for Non-Aerosol Forms of Sulfuric Acid" that is available in the docket for this rulemaking (Ref. 2). The model used for estimating these pH levels did not take into account other factors (e.g., buffering) that affect the pH once the release has occurred. Therefore, it is difficult to assess the actual pH in the environment. Furthermore, EPA did not make the assertion that releases of sulfuric acid at a pH less than 6 would not result in environmental harm; however, the Agency did assert in the proposed rule (56 FR 34157) that releases of sulfuric acid solutions *at or above* pH 6 are not expected to result in adverse environmental effects. As stated above, EPA recognizes that at low pH non-aerosol releases may cause an adverse effect on the environment. However, based on a review of accidental release reports, EPA believes these incidents are limited and are not of sufficient seriousness to warrant continued reporting under EPCRA section 313.

EDF adds that there are numerous industries that are not regulated under the Clean Water Act's (CWA) pre-treatment program, and thus may not be subject to pH limitations. If facilities discharging directly to surface waters are not regulated for pH, and/or facilities have serious pH excursions, environmental damage can result.

Discharge permits issued under the CWA ordinarily restrict the pH range of these and other discharges. However, EPA did not limit its analyses to CWA

restrictions. Although permit restrictions, by themselves, are not an adequate grounds for dismissing possible impacts of releases of non-aerosol forms of sulfuric acid, taken together with other data on sulfuric acid, EPA has not uncovered any information identifying these discharges as reasonably anticipated to cause significant adverse environmental effects of sufficient seriousness to warrant reporting.

BP Chemicals, E.I du Pont de Nemours, Air Products and Chemicals, American Petroleum Institute (API), Adolph Coors Company, Pennzoil Company, and CMA agree with the Agency's position that non-aerosol forms of sulfuric acid cannot reasonably be anticipated to cause adverse effects to human health or the environment under normal exposure scenarios. The Battery Council International concurs with the Agency's finding on non-aerosol forms of sulfuric acid and requests that the Agency re-evaluate the data on aerosol forms of sulfuric acid as well.

As stated in the proposed rule (56 FR 34158), the Agency has determined that aerosol forms of sulfuric acid meet the EPCRA section 313(d)(2) criteria and cannot be delisted under EPCRA section 313(d)(3).

3. Effect on the Right-to-Know program. Six commenters (New Jersey Environmental Federation, Northwest Illinois Audubon Society, EDF, MERC, New Jersey Department of Environmental Protection and Energy (NJDEPE), and the Kansas Department of Health and Environment (KDHE)) oppose the delisting of non-aerosol forms of sulfuric acid on the grounds that it defeats the intent of the Right-to-Know program. Kentucky Resources Council expresses concern for the full implementation of the Community Right-to-Know provisions of EPCRA section 313. This commenter adds that there are severe limitations in the existing data bases concerning human health effects from exposure to sulfuric acid. In addition, deletion of non-aerosol forms of sulfuric acid will result in a significant gap in reporting, since "routine" permitted releases are not captured under CERCLA and the 1,000 pound reportable quantity will allow significant releases to go unreported. The Environmental Health Coalition believes the delisting of sulfuric acid limits and weakens the effectiveness of TRI as a comprehensive data base of Right-to-Know information.

The National Environmental Law Center states that other sources of data on sulfuric acid spills and releases are no substitute for section 313 reporting due to factors of accessibility,

compliance, and consistency. Also, the National Environmental Law Center and the EDF are concerned about the loss of data provided under the Pollution Prevention Act (PPA), which they contend would be of particular concern for sulfuric acid because of the risks and amounts associated with sulfuric acid use and wastes prior to treatment.

EPA agrees that by delisting non-aerosol forms of sulfuric acid, information on the management of this form of the chemical may be more difficult to obtain. However, EPA believes that adequate information on non-aerosol forms of sulfuric acid will still be available through other more appropriate sources. For example, sulfuric acid is a hazardous substance under CERCLA and an extremely hazardous substance under EPCRA, therefore releases of greater than 1,000 pounds must be reported to the National Response Center (NRC) under CERCLA section 103 and to the State Emergency Response Commission (SERC) and the Local Emergency Planning Committee (LEPC) under EPCRA section 304. Written follow-up information on the spill, and on the potential health and environmental effects, is also required to be submitted to State and local authorities. In addition, data on the quantity and type of storage, as well as the physical and health hazards, must be submitted for sulfuric acid under sections 311 and 312 of EPCRA. These inventory data are submitted to SERCs, LEPCs, and local fire departments for chemical accident prevention purposes, to assist local emergency response personnel, and to inform the public of chemicals in communities. Furthermore, emergency planning information is collected at the State and local level for sulfuric acid under section 302 of EPCRA, if more than 1,000 pounds is on-site at a facility at any given time. EPA believes that difficulty in obtaining information available through these sources should be addressed within the context of the appropriate statute and that EPCRA section 313 should not be used as a surrogate for other environmental statutes.

EPA does not agree that the intent of EPCRA section 313 is being violated by this modification. If a chemical (or form of a chemical) does not meet the EPCRA section 313(d)(2) criteria, EPA believes that: (1) It is appropriate to delete the chemical from the toxic chemical list, and (2) this type of deletion does not violate the intent of the statute. Furthermore, the statutory criteria clearly require that EPA consider the potential health and environmental effects of a chemical in determining

whether it should be on the EPCRA section 313 toxic chemical list. EPA believes that the PPA data elements supplement TRI reporting for those chemicals that meet the statutory toxicity criteria.

Armco Steel Corporation, American Cyanamid Company, Battery Council International, Adolph Coors Company, CMA, and Air Products and Chemicals state that even though non-aerosol forms of sulfuric acid will not be reported under EPCRA section 313, they are still subject to the rest of EPCRA and other more appropriate reporting requirements to ensure that there is not a loss of significant release information.

Although it is not a factor in listing/delisting decisions, EPA agrees that releases of non-aerosol forms of sulfuric acid will still be reported under other regulatory mechanisms and the delisting of these forms of sulfuric acid under EPCRA section 313 should not result in a loss of significant release data. As stated above, the statutory criteria clearly relate to health and environmental effects for determining whether a chemical should be on the EPCRA section 313 toxic chemical list.

4. *Reliance on other regulatory mechanisms.* EDF states that it is inappropriate for EPA to rely solely on regulations developed under other statutes to assure the public that currently reported EPCRA releases will not result in adverse human health or environmental effects. The commenter adds that the TRI data were meant to be a check on other statutory programs, ensuring that unregulated and inadequately monitored chemicals are at least reported on an annual basis. The commenter cites EPA's acknowledgement of this fact in another delisting decision where the Agency stated that "permit restrictions, by themselves, are not an adequate grounds for dismissing possible impacts of [sodium hydroxide] releases" (see 54 FR 51298). In addition, the commenter contends that the shortcomings of the CWA were addressed in the preamble to the proposal to delete non-aerosol forms of sulfuric acid by stating that "pH may be subject to both technology-based and water quality-based limitations." The commenter adds that this generic statement clouds the reality that some facilities discharging to sewers may not be regulated for pH. Furthermore, the commenter contends there are numerous industries that are not regulated under the CWA's pre-treatment program. Due to the nature of reporting for neutralized acids under EPCRA section 313 (only below pH 6) and the pH limits of the CWA, it is clear

that EPCRA is capturing the more acidic (toxic) discharges.

The commenter also believes that the Resource Conservation and Recovery Act (RCRA) is inadequate for ensuring that there will be no adverse environmental effects from land treatment and disposal of non-aerosol forms of sulfuric acid.

While EPA does not rely solely on data from permits or other regulations, the Agency does consider this information in concert with other data. In the case of non-aerosol forms of sulfuric acid, EPA has not uncovered any information to indicate that non-aerosol forms of sulfuric acid can be reasonably anticipated to cause significant adverse health effects or environmental effects of sufficient seriousness to warrant reporting.

Armco Steel Company, Air Products and Chemicals, BASF Corporation, E.I. du Pont de Nemours, Monsanto Company, Vulcan Materials Company, Aluminum Company of America, Eli Lilly and Company, American Cyanamid Company, Battery Council International, Rhone Poulenc Inc., Edison Electric Institute, CMA, and the Acrylonitrile Group state that any threat to the public that may exist from a release of non-aerosol forms of sulfuric acid is being addressed by a number of existing regulations. Ecolab, Air Products and Chemicals, BASF Corporation, E.I. du Pont de Nemours, Monsanto Company, Vulcan Materials Company, American Cyanamid Company, Edison Electric Institute, CMA, Pharmaceuticals Manufacturers Association, and the Acrylonitrile Group assert that non-compliance with other statutes must be addressed through the enforcement provisions of those statutes and their enabling regulations and that concern for compliance under other statutes should not be used in EPCRA section 313 listing/delisting decisions. EPCRA provides no additional enforcement authority to address non-compliance issues.

EPA agrees with these commenters that non-compliance with other statutes should be addressed through those regulations. However, the Agency has also found that the TRI data are useful in identifying facilities that may not be in compliance with a particular statute. For chemicals that meet the statutory criteria this is an appropriate use of the TRI data. Nonetheless, the Agency does not believe that issues of noncompliance with other regulations should be considered in listing/delisting determinations.

5. *Effect on pollution prevention.* Six commenters (the New Jersey

Environmental Federation, Coalition Against Toxics, Northwest Illinois Audubon Society, EDF, MERC, and the Consumer Policy Institute) state that by delisting non-aerosol forms of sulfuric acid, EPA is removing the incentive for facilities to neutralize discharges to a pH of 6 or above.

The National Environmental Law Center, MERC, and NJDEPE also believe that the delisting of non-aerosol forms of sulfuric acid will undermine pollution prevention efforts and is contrary to the intent of the PPA.

EPA concedes that by deleting non-aerosol forms of sulfuric acid, the incentive for facilities to neutralize their discharges may be lessened. However, there are other requirements (e.g., CWA pre-treatment program) that still require facilities to neutralize their wastestreams prior to discharge. EPA does not agree that this delisting action will undermine pollution prevention efforts. There are numerous other incentives for facilities to reduce their releases of a specific chemical, including financial incentives. In addition, facilities will be able to focus their pollution prevention efforts and report their progress on the form of sulfuric acid that poses the greatest hazard, the aerosol forms.

6. *Other listing options.* Armco Steel Company, Air Products and Chemicals, Eli Lilly and Company, Edison Electric Institute, and CMA oppose the options mentioned by EPA in the February 1, 1993 notice (58 FR 6609) either because the Agency has no statutory authority to create a category for pH releases or to promulgate peak release reporting rules. American Cyanamid Company, BASF Corporation, E.I. du Pont de Nemours, Monsanto Company, Vulcan Materials Company, and the Acrylonitrile Group state that the listing options presented in the February 1, 1993 notice (58 FR 6609; see Unit II. of the preamble) go beyond the scope of the proposed rule on delisting non-aerosol forms of sulfuric acid and should be considered separately.

At this time, EPA is not considering the other listing options discussed in the February 1, 1993 notice.

B. Rationale for Delisting and Conclusions

Sulfuric acid aerosols meet the toxicity criteria of section 313(d)(2). EPA's decision to delete non-aerosol forms of sulfuric acid is based on the Agency's evaluation of sulfuric acid's toxicity and the levels of sulfuric acid exposure to which humans and the environment may be subject. The non-aerosol forms of sulfuric acid are acutely toxic at low pH; however, there is no

information to indicate that non-aerosol forms of sulfuric acid present a health or environmental risk under ordinary exposure scenarios. Therefore, the Agency does not believe that non-aerosol sulfuric acid releases will cause adverse effects to human health or the environment under ordinary exposure scenarios. The substance's toxic properties are dependent upon concentration and duration of exposure. Only under aberrant conditions of exposure (e.g., spills onto the skin, deliberate ingestion) do solutions of sulfuric acid pose a potentially serious health hazard.

EPA has concluded that non-aerosol forms of sulfuric acid do not meet the statutory criteria of section 313(d)(2)(A) regarding acute human health effects; specifically, that the "chemical is known to cause or can reasonably be anticipated to cause significant adverse human health effects at concentration levels that are reasonably likely to exist beyond facility boundaries as a result of continuous or frequently recurring releases." EPA's review of the toxicity and exposure information indicates that although sulfuric acid in concentrated forms is acutely toxic, it is unlikely that persons will be exposed to acutely toxic concentration levels beyond facility boundaries as "a result of continuous or frequently recurring releases."

Also, EPA has concluded that non-aerosol forms of sulfuric acid do not meet the chronic toxicity listing criteria in section 313(d)(2)(B), because the chemical in its non-aerosol forms is not known to cause nor can reasonably be anticipated to cause chronic health effects. The environmental listing criterion, 313(d)(2)(C), also is not met because the non-aerosol forms of sulfuric acid are not known to cause nor can be reasonably anticipated to cause a significant adverse effect on the environment of sufficient seriousness to warrant release reporting.

Although not a factor in the delisting decision, other statutory mechanisms exist by which information on spills of sulfuric acid will be made available to the public. These mechanisms have been detailed in Unit III.A. of this preamble. Deleting non-aerosol forms of sulfuric acid from the section 313 list will not result in any significant reduction in the information now available to the public concerning spills of sulfuric acid. Since reporting of spills under section 313 is only required to be submitted to EPA as part of an overall annual release number, no direct and immediate notice to the public of such an accidental release or spill of sulfuric acid is available through section 313 reports or through the TRI data base,

i.e., only annual release figures are available.

Therefore, EPA is modifying the listing for sulfuric acid by deleting non-aerosol forms of sulfuric acid. For the purposes of this deletion, EPA considers the term aerosol to cover any generation of airborne sulfuric acid (including mists, vapors, gas, or fog) and without regard to particle size. This action to delete non-aerosol forms of sulfuric acid from the section 313 list is not meant to suggest that the Agency considers sulfuric acid to be a "safe" chemical. Rather, this action reflects the fact that non-aerosol forms of the chemical do not meet the toxicity criteria set forth in EPCRA section 313(d)(2).

Deleting non-aerosol forms has implications for the threshold determination for reporting under section 313. For purposes of threshold determination under 40 CFR 372.25, any generation of airborne sulfuric acid (including mists, vapors, gas, or fog) without regard to particle size, is considered manufacture of sulfuric acid aerosols. The quantity of airborne sulfuric acid manufactured, not the amount released, would be compared with the reporting thresholds in EPCRA section 313(f). Generation of airborne sulfuric acid is expected to occur from, but is not limited to: production or processing of sulfur trioxide (SO₃), due to the extremely rapid reaction of sulfur trioxide with atmospheric water within the process or facility; production or processing of solutions of sulfuric acid; and volatilization or vaporization of sulfuric acid from manufacture or processing.

IV. Precedents for Modified Listings

There are precedents for qualified chemical listings under EPCRA section 313. The original list established by Congress contained a number of qualified listings including: aluminum (fume or dust), ammonium nitrate (solution), asbestos (friable), yellow or white phosphorus, vanadium (fume or dust), and zinc (fume or dust). Also, EPA recently qualified the aluminum oxide listing by exempting non-fibrous forms of aluminum oxide from the reporting requirements so that only fibrous aluminum oxide is subject to reporting (40 CFR part 372). EPA found that there was no evidence that non-fibrous forms of aluminum oxide cause adverse human health or environmental effects as specified under section 313. The decision to retain fibrous forms of aluminum oxide was based on evidence that exposure to fibrous forms of this chemical can reasonably be anticipated to cause cancer in humans. In addition, EPA recently added a category, water

dissociable nitrate compounds, to the EPCRA section 313 list (59 FR 61460) with a qualifier that limits reporting to aqueous solutions. The Agency had originally proposed (59 FR 1825) to list nitrate ion; however, many commenters argued that what the Agency actually proposed was a category of nitrate compounds that dissociate in water. EPA agreed with the commenters and used the qualified category in the final listing. This category indicates that only water dissociable nitrate compounds that are manufactured, processed, or otherwise used as an aqueous solution at a facility are subject to reporting.

V. Effective Date

This action becomes effective June 30, 1995. Thus, the last year in which facilities had to file a TRI report for non-aerosol forms of sulfuric acid was 1994, covering releases and other activities that occurred in 1993.

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. section 553(d)(1) because a deletion from the section 313 list relieves a regulatory restriction.

EPA believes that where the Agency has determined, as it has with these non-aerosol forms of sulfuric acid, that 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.

VI. Rulemaking Record

The record supporting this decision is contained in docket control number OPPTS-400057A. All documents, including an index of the docket, are available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office from noon to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA Headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

VII. References

(1) USEPA/OPPT. Summary of Response to Public Comments Submitted on the Proposal to Modify the Sulfuric Acid Listing (56 FR 34156) and the Notice Re-opening the Public Comment Period (58 FR 6609). U.S. Environmental Protection Agency, Washington, DC (1995).

(2) USEPA/OPPT. Analysis of Accidental Release Data for NonAerosol Forms of Sulfuric Acid. U.S. Environmental Protection Agency, Washington, DC (1995).

VIII. Regulatory Assessment Requirements

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. Pursuant to the terms of this Executive Order, it has been determined that this final rule is not "significant" and therefore not subject to OMB review.

EPA estimates that this final rule will result in 4,258 to 5,476 fewer reports being submitted for sulfuric acid. This will reduce industry's reporting costs by \$11.1 to \$13.7 million per year, and EPA's costs by \$300,000 to \$400,000 per year.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities would be significantly affected by the final rule. Because this final rule eliminates an existing requirement, it would result in cost savings to facilities, including small entities.

C. Paperwork Reduction Act

This final rule does not have any information collection requirements subject to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 372

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

Dated: June 26, 1995.

Lynn R. Goldman,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended as follows:

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

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

§ 372.65 [Amended]

2. Section 372.65(a) and (b) are amended by adding the parenthetical to the entry for sulfuric acid to read "Sulfuric acid (acid aerosols including mists, vapors, gas, fog, and other airborne forms of any particle size)" under paragraph (a) and for CAS number entry 7664-93-9 under paragraph (b).

[FR Doc. 95-16185 Filed 6-29-95; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-255; RM-7781]

Radio Broadcasting Services; Nowata and Collinsville, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of BSB Communications, substitutes Channel 268C3 for Channel 268A at Nowata, Oklahoma, reallots Channel 268C3 from Nowata to Collinsville, Oklahoma, and modifies Station KLTO's construction permit accordingly. See 56 FR 46144, September 10, 1991. Channel 268C3 can be allotted to Collinsville with a site restriction of 1.8 kilometers (1.1 miles) east, at coordinates North Latitude 36-21-50 and West Longitude 95-49-16, to accommodate petitioner's desired transmitter site and avoid short-spacings to Station KXOJ-FM, Channel 265A, Sapulpa, Oklahoma, and Station KEOK, Channel 269C3, Tahlequah, Oklahoma. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT:

Leslie K. Shapiro or Stanley Schmulewitz (engineering issues), Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 91-255, adopted June 19, 1995, and released June 27, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-