

the environment. Therefore, lessees must contact the appropriate MMS Regional Supervisor prior to burning liquid hydrocarbons.

The MMS recognizes that the best way to provide restrictions on burning liquid hydrocarbons is by rulemaking. Therefore, MMS is issuing a proposed rule under a separate **Federal Register** Notice that will cover the restrictions on burning liquid hydrocarbons.

The proposed rule will also give the public the opportunity to comment on the restrictions on burning liquid hydrocarbons.

Dated: December 23, 1994.

**Bob Armstrong,**

*Assistant Secretary, Land and Minerals Management.*

[FR Doc. 95-3985 Filed 2-16-95; 8:45 am]

BILLING CODE 4310-MR-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 372

[OPPTS-400006A; FRL-4929-6]

#### **Butyl Benzyl Phthalate; Toxic Chemical Release Reporting; Community Right-to-Know**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is granting a petition to delete butyl benzyl phthalate (BBP) from the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of BBP that occurred during the 1994 calendar year and releases that will occur in the future. This relief applies only to reporting requirements under section 313 of EPCRA.

**EFFECTIVE DATE:** This rule is effective February 17, 1995.

**FOR FURTHER INFORMATION CONTACT:** For specific information on this rule: Maria J. Doa, Petition Coordinator, Mail Code 7408, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-9592. For more information on EPCRA section 313: 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 TTD: 1-800-553-7672.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

### A. Statutory Authority

This final rule is issued under section 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 (SARA) of 1986 (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 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, from time-to-time, added and deleted chemicals from the original statutory list.

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 published guidance regarding the recommended content of petitions to delete individual members of section 313 metal compound categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) criteria for adding and deleting chemicals from the section 313 list (59 FR 61439, November 30, 1994).

## II. Description of Petition and Proposed Response

On January 12, 1987, EPA received from the Monsanto Company a petition to delete BBP from the list of toxic chemicals subject to reporting under section 313 of EPCRA. BBP was included on the original list of toxic chemicals when EPCRA was enacted. On July 20, 1987, following a review which consisted of a toxicity evaluation and an exposure analysis, EPA proposed to grant the petition to delete BBP from the section 313 list by issuing a proposed rule in the **Federal Register** (52 FR 27226).

The proposal to grant the petition was based upon EPA's preliminary finding that BBP did not meet the listing criteria found in section 313(d) of EPCRA. It was EPA's belief that there was not sufficient evidence to demonstrate that BBP causes or can reasonably be anticipated to cause significant adverse human health or environmental effects.

One concern which remained following the initial review was the apparently widespread presence of BBP in the environment despite low anticipated release levels. Because of this concern, EPA stated in the proposed rule that the delisting would not be promulgated until the 1987 Toxic Chemical Release Inventory (TRI) reports submitted pursuant to section 313 could be examined to confirm that there were no substantial releases of BBP from covered facilities (see unit III. of this preamble).

Only one commenter, the Monsanto Company, responded to EPA's proposal to delete BBP from the section 313 list of toxic chemicals. The Monsanto Company concurred with EPA's proposed deletion but objected to the decision to delay promulgation until the 1987 TRI reports could be reviewed.

Based upon evaluation of the petition, available toxicity and exposure information, the review of the 1987 - 1992 TRI reports, and the comment, EPA affirms its determination that BBP does not meet any of the toxicity criteria listed in section 313(d). Therefore, EPA is deleting BBP from the list of chemicals subject to reporting under section 313 of EPCRA.

BBP also appears on the Priority Pollutant List (PPL) of section 307 of the Clean Water Act (33 U.S.C. 1317); however, at this time EPA believes that insufficient data preclude the derivation of ambient water quality criteria for BBP by the Agency.

This petition does not request that any action be taken under any statutory provision other than EPCRA section 313, and today's rule should not be inferred as an action under any statutory provision other than EPCRA section 313. Each statute prescribes different standards for adding or deleting chemicals of pollutants from their respective list. Specifically, the deletion of BBP from the EPCRA section 313 list does not alter its regulatory status under other statutory provisions. Today's rule is based solely on the criteria in EPCRA section 313.

## III. EPA's Review of Butyl Benzyl Phthalate

As discussed in the proposal, EPA preliminarily determined that BBP has low toxicity with respect to human

health, and moderate environmental toxicity. Under these circumstances, EPA believes that it is appropriate to consider exposure in its listing decisions (see position set out in November 30, 1994 **Federal Register** cited above). Therefore, EPA's review of BBP consisted of two main components: a toxicity evaluation and a release and exposure analysis. EPA has concluded that (1) human health effects from BBP are not expected to be significant for purposes of section 313, and (2) BBP's moderate environmental toxicity, coupled with a low concern for persistence and bioaccumulation, does not represent a significantly high level of risk for the purposes of section 313(d). Details of the review can be found in the proposed rule (52 FR 27226) and in the document entitled "Hazard Assessment of n-Butyl Benzyl Phthalate" in the public docket.

#### A. Toxicity Evaluation

1. *Human toxicity.* At the time of publication of the proposed rule, EPA had preliminarily placed BBP in EPA's weight-of-evidence cancer risk assessment Category D (i.e., available evidence inadequate to determine human carcinogenic potential). EPA later placed BBP in weight-of-evidence Category C (i.e., a possible human carcinogen based on limited evidence in animals).

BBP's classification is based upon a 1982 study conducted by the National Toxicology Program (NTP). Because of serious flaws in this study, NTP has undertaken a second animal study to evaluate the carcinogenicity of BBP. It was initially expected that results of this study would be available by 1994. EPA has waited for a number of years for the results of this study; however, there is currently no indication that the study will be completed and results made available in the near future. Therefore, EPA has decided to take action on this petition at this time using the existing cancer study. If the results of the NTP study indicate that BBP can reasonably be anticipated to cause cancer, EPA will re-evaluate the chemical and may consider re-adding BBP to the section 313 list of toxic chemicals.

This reclassification resulted from further review of the existing evidence; no new evidence has been found beyond that considered in EPA's initial review of this petition to delete BBP from the section 313 list. Therefore, EPA continues to believe that, while the limited animal evidence available for BBP suggests a possible carcinogenic effect, the study providing this evidence is flawed. Because of the flawed nature of the study, EPA has concluded that

BBP exhibits low toxicity for purposes of EPCRA 313(d)(2)(B) listing decisions. Accordingly, exposure consideration will be factored in. EPA has no evidence to indicate other potential human toxicity.

2. *Environmental toxicity.* As discussed in the proposal, EPA has concluded that BBP is moderately but not highly ecotoxic. There is low concern for potential bioconcentration, and the half-life for primary biodegradation of BBP is approximately 2 days, which indicates that the substance should have low persistence in the environment.

#### B. Release and Exposure Analysis

EPA has received and entered into the section 313 TRI data base more than 100 reports per year for BBP for reporting years 1987 to 1992. EPA examined these reports primarily for water releases, both directly to surface waters and through Publicly Owned Treatment Works (POTWs). For these years, from 18 to 53 companies reported water releases to POTWs and from 1 to 15 reported releases directly to surface water. For the releases to POTWs, EPA assumed (based on the physical and chemical characteristics of BBP) that BBP releases are 90 percent removed in wastewater treatment at the POTW before the final release to surface water.

EPA analyzed the 1987 reported release data to estimate the surface water concentrations based upon mean and low receiving stream flow data, where available. Where stream flow data were unavailable, the POTW mean effluent flow was used as a worst-case estimate. Where BBP releases were reported as a range (e.g., 1 to 499 lb/yr), the upper end of the release range was used as a conservative estimate for purposes of this section 313 analysis.

No firms were identified with a potential surface water concentration at or above the Lowest Effect Concentration (LEC) for BBP of 110 ppb (chronic aquatic ecotoxicity) under mean flow conditions. Under low flow conditions, two firms had a predicted concentration of this magnitude (200 ppb for one firm, and an unquantifiable, high concentration for the other site). The other 17 firms all had estimated surface water concentrations under low flow conditions of 30 ppb or less.

The release patterns from subsequent years were similar, and thus the analyses using 1987 data were considered representative of subsequent years. To confirm this assumption, an additional exposure review was conducted using 1992 release data (the most current data available). Estimates of concentrations downstream from TRI

facilities were made using recent stream flow data. Surface water concentrations for the five highest releasers of BBP ranged from 0.03 ppb to 1.0 ppb during mean flow conditions, and from 0.2 ppb to 18.8 ppb during low flow conditions. Only the 18.8 ppb value exceeds the Maximum Acceptable Toxicant Concentrations (MATCs) for several algal species. However, because the low flow conditions are only expected to occur during one 7-day event in 10 years, EPA does not believe that this will result in adverse effects to the environment. Efforts were made to check as many sites as feasible in addition to the five highest releasers, because moderate releases may lead to higher concentrations for streams with less dilution. The surface water concentrations for the stream found to have potentially higher concentrations were estimated to be less than 2 ppb during mean flow conditions, and less than 13 ppb for low flow conditions. Again, although the low flow concentrations may exceed the MATC for certain algal species, the duration of exceedence is not expected to be sufficient to result in significant adverse effects.

Human exposure potential to BBP was also examined. The aquatic concentrations at drinking water utilities under mean flow conditions are expected to be below 1 ppb (i.e., less than 1 microgram per liter). The two largest release facilities are both on the Delaware River, and their combined result (after accounting for treatment) is less than 0.7 ppb under mean flow conditions. These concentrations are not expected to result in significant adverse effects in humans.

#### IV. Conclusion of EPA's Review

The hazard review conducted in 1987 concluded that BBP has low toxicity with respect to human health and moderate environmental toxicity. There is no new data available which would cause EPA to change this assessment. EPA's review of the 1987 and 1992 TRI reports for BBP uncovered no potentially significant releases at mean flow conditions and only two potentially significant releases at low flow conditions. EPA's conclusion is that these releases do not raise sufficient concern about potential human or environmental exposures to warrant retention of BBP on the section 313 list.

After reviewing available data and the comment on the proposed rule, EPA continues to believe that BBP does not cause, nor can it reasonably be anticipated to cause, the adverse human health or environmental effects set forth in section 313(d). Accordingly, it is

appropriate to delete BBP from the list of toxic chemicals in EPCRA section 313.

#### V. Effective Date

This action becomes effective upon publication. Thus the last year in which facilities had to file a TRI report for BBP 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 BBP, 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, June 28, 1994).

#### VI. 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 the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action likely to lead to a rule (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and therefore not subject to OMB review.

##### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, EPA must conduct a small business analysis to determine whether a substantial number of small entities

will be significantly affected. Because the rule will result in cost savings to facilities, EPA certifies that small entities will not be significantly affected by this rule.

##### C. Paperwork Reduction Act

This rule relieves facilities from having to collect information on the use and releases of BBP. Therefore, there were no information collection requirements for OMB to review under 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, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: February 10, 1995.

**Lynn R. Goldman,**

*Assistant Administrator for 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. 11013 and 11028.

#### § 372.65 [Amended]

2. Section 372.65(a) and (b) are amended by removing the entire entry for butyl benzyl phthalate under paragraph (a) and removing the entire CAS No. entry for 85-68-7 under paragraph (b).

[FR Doc. 95-3937 Filed 2-16-95; 8:45 am]

BILLING CODE 6560-50-F

§ 30:2014(A) provides, in part, that the Secretary shall act as the primary public trustee of the environment, and shall consider and follow the will and intent of the Louisiana Constitution and Louisiana statutory law in making any determination relative to the granting or denying of permits. This matter is also clarified in LDEQ's revised Program Description, which refers to the review as a 'de novo review of the record.'

In the tenth paragraph under Response to Public Comments, the third sentence is corrected to read "The commentor alleged LDEQ argued that the courts have jurisdiction to review its decisions only when the decision resulted from an LDEQ mandatory adjudicatory hearing."

In the tenth paragraph under Response to Public Comments, the fifth sentence is corrected to read "Thus, none of LDEQ's hazardous waste permitting decisions, with the possible exception of commercial treatment, storage, or disposal facility permits, would be subject to judicial review."

In the tenth paragraph under Response to Public Comments, the sixth sentence is corrected to read "However, EPA considered this issue resolved by the Louisiana Supreme Court in *Matter of American Waste and Pollution Control Co.*, 642 So.2d 1258 (La 1994), where the Court ruled that LDEQ decisions are appealable whether or not they result from a mandatory adjudicatory hearing."

On page 4382, in the twelfth paragraph under Response to Public Comments, the third sentence is corrected to read "In addition, EPA retains Federal enforcement authority under RCRA §§ 3008(h) and 7003."

In the fourteenth paragraph under Response to Public Comments, the second sentence is corrected to read "Even then, EPA will retain the authority to enforce against violators, even in an authorized State, under RCRA §§ 3008(h) and 7003."

In the fifteenth paragraph under Response to Public Comments, the first sentence is corrected to read "EPA has reevaluated its decision to approve this final authorization for revision to the State's hazardous waste program, and revisited all pertinent documentation, including the authorization application with revised Program Description, and several EPA mid-year and end-of-year evaluation reports on LDEQ."

Finally, in the fifteenth paragraph under Response to Public Comments, the third sentence is corrected to read "EPA hereby affirms its decision to approve this final authorization, which was effective January 23, 1995."

Dated: March 29, 1995.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 95-8876 Filed 4-10-95; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 372

[OPPTS-400085A; FRL-4929-3]

RIN 2070-AC00

### Copper Phthalocyanine Compounds; Toxic Chemical Release Reporting; Community Right-To-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** EPA is deleting copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine from the "copper compounds" category on the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). This action is based on EPA's conclusion that copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine meet the deletion criteria of EPCRA section 313(d)(3). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine that occurred during the 1994 reporting year, and releases that will occur in the future.

**EFFECTIVE DATE:** This rule is effective April 11, 1995.

**FOR FURTHER INFORMATION CONTACT:** Maria J. Doa, Petitions Coordinator, 202-260-9592, 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 section 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 (PPA) 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 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, from time to time, added and deleted chemicals from the original statutory list.

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 compound categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) criteria for adding and deleting chemicals from the section 313 list (59 FR 61439; November 30, 1994).

#### II. Description of Petition and Proposed Action

On March 5, 1993, the Agency received a petition from the Color Pigments Manufacturers Association (CPMA) to delete Color Index (C.I.) Pigment Blue 15:1 from the chemical category "copper compounds" subject to EPCRA reporting requirements. C.I. Pigment Blue 15:1 is a mixture of C.I. Pigment Blue 15 (copper phthalocyanine) and copper monochlorophthalocyanine. Because C.I. Pigment Blue 15 had already been deleted from the chemical category "copper compounds" (56 FR 23650; May 23, 1991), the Agency treated this petition as a request to remove copper monochlorophthalocyanine from the chemical category "copper compounds."

Following a review of the petition, EPA issued a proposed rule in the **Federal Register** of June 6, 1994 (59 FR 29252), proposing to delete copper

monochlorophthalocyanine from the category "copper compounds" on the list of toxic chemicals under EPCRA section 313. EPA's proposal was based on its conclusion that copper monochlorophthalocyanine meets the EPCRA section 313(d)(3) criteria for deletion from the list. With respect to deletions, 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 copper monochlorophthalocyanine causes 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 proposed rule, EPA requested comment on the alternative of exempting all copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine from the reporting requirements under the "copper compounds" category on the EPCRA section 313 list. As stated in the

preamble of the proposed rule, EPA has previously reviewed brominated/chlorinated copper phthalocyanine compounds as well as the parent compound, copper phthalocyanine, and believes that its conclusions regarding the toxicity of the intact compound and the availability of soluble copper from these substituted compounds apply to all copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine.

### III. Final Rule and Rationale for Delisting

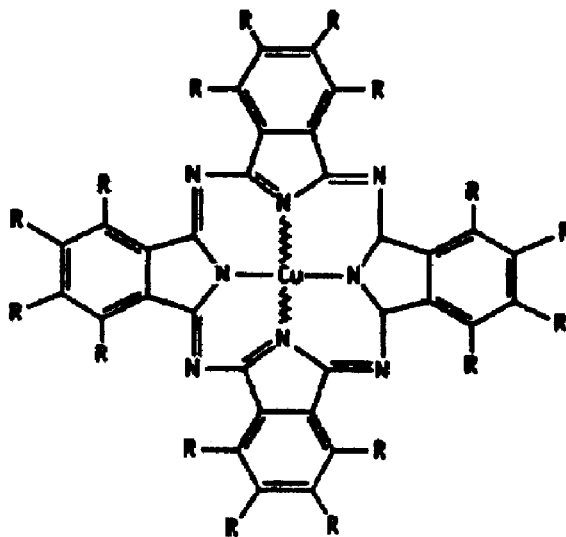
In response to the petition from CPMA, EPA has decided to delete copper monochlorophthalocyanine from the list of chemicals for which reporting is required under section 313 of EPCRA and section 6607 of PPA. Further, the Agency has decided to expand this delisting action to include all copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine. EPA is delisting these chemicals because the Agency has determined that they satisfy the delisting criteria of EPCRA section 313(d)(3).

#### A. Response to Comments

EPA received two comments on the proposed rule, both in support of the deletion of copper

monochlorophthalocyanine. In addition, one of the commenters, CPMA strongly supports EPA's alternative proposal exempting all copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine from the reporting requirements under the "copper compounds" category on the EPCRA section 313 list. The commenter requests that EPA delete all of the possible compounds using the definition of substituted phthalocyanines provided in the proposed rule because these chemicals are abiotically and biotically stable chemicals that will not liberate soluble forms of copper and are not toxic in the intact form.

EPA agrees with the commenters. EPA believes that copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine cannot reasonably be anticipated to cause adverse acute human health effects, chronic human health effects, or environmental toxicity. Thus, EPA is exempting these chemicals from the reporting requirements under the "copper compounds" category on the EPCRA section 313 list. Specifically, EPA is deleting all the chemicals that meet the following molecular structure definition:



where R= H and/or Br and/or Cl only.

A guidance document, entitled "Copper Phthalocyanine Compounds Excluded from the Reporting Requirements under the 'Copper Compounds' Category on the EPCRA Section 313 List," that lists all known chemicals that meet this definition and that have Chemical Abstract Service

(CAS) numbers, is available from the Emergency Planning and Community Right-to-Know Hotline. See the unit of this preamble entitled FOR FURTHER INFORMATION CONTACT for the address and telephone number. This guidance document is not intended to be all inclusive and there may be compounds not included in the

guidance document which meet the above formula. Such compounds are also delisted by today's action.

#### B. Rationale for Delisting and Conclusions

After reviewing comments received and other relevant information, EPA has concluded that the assessment set out in

the proposed rule should be affirmed. A more detailed discussion of the rationale for delisting is given in the proposed rule (June 6, 1994; 59 FR 29252). Therefore, this final rule is based on EPA's conclusion that copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine cannot reasonably be anticipated to cause adverse acute human health effects, chronic human health effects, or environmental toxicity, because (1) The intact species do not meet the EPCRA section 313(d) criteria and (2) the copper ion from these copper phthalocyanine compounds will not become available. Thus, these chemicals meet the EPCRA section 313(d)(3) criterion for delisting (i.e., they do not meet any of the EPCRA section 313(d)(2) listing criteria). In reaching this conclusion, EPA considered the toxicity of intact copper phthalocyanine compounds and the copper ion as a potential source of toxicity from copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine. Initially, EPA analyzed the availability of copper ion. If the ion is not available, these compounds cannot cause toxicity due to copper ion. EPA has concluded that copper ion cannot reasonably be anticipated to become available from copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine.

The intact copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine can reasonably be anticipated to be acutely toxic only at levels that greatly exceed estimated releases and resultant exposures. Therefore, these copper phthalocyanine compounds cannot 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." Thus, EPA has concluded that copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine do not meet the toxicity criteria for listing under EPCRA section 313(d)(2)(A).

EPA has also concluded that copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine do not meet the toxicity criteria of EPCRA section 313(d)(2)(B) because these copper phthalocyanine compounds cannot reasonably be anticipated to cause cancer, developmental toxicity, reproductive toxicity, neurotoxicity,

gene mutations, or chronic toxicity. These intact copper phthalocyanine compounds cannot reasonably be anticipated to cause such effects, and copper ion will not be available to cause chronic human toxicity.

Finally, EPA has concluded that copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine and/or chlorine do not meet the toxicity criteria of EPCRA section 313(d)(2)(C) because these copper phthalocyanine compounds cannot reasonably be anticipated to cause adverse environmental effects. In addition, copper ion will not become available from these copper phthalocyanine compounds and, therefore, will not be available to cause adverse environmental effects.

#### IV. Effective Date

This action becomes effective April 11, 1995. Thus, the last year in which facilities had to file a Toxic Release Inventory (TRI) report for these copper phthalocyanine compounds 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 copper phthalocyanine compounds, 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.

#### V. Rulemaking Record

The record supporting this final rule is contained in docket number OPPTS-400085A. 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.

#### VI. 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. Under section 3(f), the order defines a "significant regulatory action" as an action likely to lead to a rule (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this 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.

##### 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 the 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, and Toxic chemicals.

Dated: March 30, 1995.

**Lynn Goldman,**

Assistant Administrator for Prevention,  
Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is  
amended as follows:

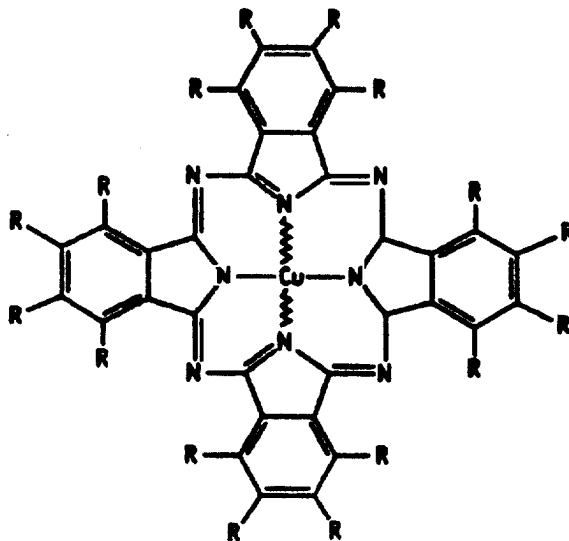
1. The authority citation for part 372  
continues to read as follows:

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

**§ 372.65 [Amended]**

2. In § 372.65(c) by adding the  
following language to the copper

compounds listing "except copper  
phthalocyanine compounds that are  
substituted with only hydrogen and/or  
bromine and/or chlorine that meet the  
following molecular structure  
definition:



where R = H and/or Br and/or Cl only."

[FR Doc. 95-8874 Filed 4-10-95; 8:45 am]

BILLING CODE 6560-50-F

#### 40 CFR Part 763

[OPPTS-62121A; FRL-4914-6]

#### Asbestos-Containing Materials in Schools; State Request for Waiver From Requirements; Notice of Final Decision

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

**ACTION:** Notice of final decision on  
requested waiver.

**SUMMARY:** EPA is issuing a final decision  
which approves the request of Louisiana  
for a waiver from the requirements of 40  
CFR part 763, subpart E, Asbestos-  
Containing Materials in Schools.

**ADDRESSES:** A copy of the complete  
waiver application submitted by the  
State is available from the TSCA Public  
Docket Office. A copy is also on file and  
may be reviewed at the EPA Region 6  
office in Dallas, Texas.

TSCA Docket Receipt (7407), Office of  
Pollution Prevention and Toxics, Rm.  
NE-B607, Environmental Protection  
Agency, 401 M St., SW., Washington,  
DC 20460.

EPA, Region 6 (6T-PT), 1445 Ross  
Avenue, Dallas, TX 75202-2733.

#### FOR FURTHER INFORMATION CONTACT:

James B. Willis, Acting Director,  
Environmental Assistance Division  
(7408), Office of Pollution Prevention  
and Toxics, Rm. E-543B, Environmental  
Protection Agency, 401 M St., SW.,  
Washington, DC 20460, (202) 554-1404,  
TDD: (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** This  
notice is issued under the authority of  
Title II of the Toxic Substances Control  
Act (TSCA), 15 U.S.C. 2641, *et seq.*  
TSCA Title II was enacted as part of the  
Asbestos Hazard Emergency Response  
Act 1986 (AHERA), Pub. L. 99519.  
AHERA is the abbreviation commonly  
used to refer to the statutory authority  
for EPA's rules affecting asbestos in  
schools and will be used in this  
document. EPA issued a final rule in the  
**Federal Register** of October 30, 1987 (52  
FR 41846), the Asbestos-Containing  
Materials in Schools Rule (the Schools  
Rule, 40 CFR part 763, subpart E),  
which requires all Local Education  
Agencies (LEAs) to identify asbestos-  
containing building materials (ACBMs)  
in their school buildings and to take  
appropriate actions to control the  
release of asbestos fibers.

Under section 203 of AHERA, EPA  
may, upon request by a State Governor  
and after notice and comment and  
opportunity for a public hearing in the  
State, waive in whole or part the  
requirements of the Schools Rule, if the

State has established and is  
implementing or intends to implement  
an ongoing program of asbestos  
inspection and management which is at  
least as stringent as the requirements of  
the rule. Section 763.98 (40 CFR 763.98)  
sets forth the procedures to implement  
this statutory provision. The Schools  
Rule requires that specific information  
be included in the waiver request  
submitted to EPA, establishes a process  
for reviewing waiver requests, and sets  
forth procedures for oversight and  
rescission of waivers granted to States.  
The Agency encourages States to  
establish and manage their own school  
regulatory programs under the AHERA  
waiver provisions.

EPA issued a notice in the **Federal  
Register** of February 18, 1993 (58 FR  
8926), which announced the receipt of  
a waiver request from the State of  
Louisiana, and solicited comments from  
the public. The notice also discussed  
the program elements of the State  
program, listed differences between the  
State program and the AHERA  
requirements, and provided EPA's  
preliminary response to the State on the  
differences identified.

No comments were received during  
the 60-day comment period. No request  
for a public hearing was received.  
Consequently, no hearing was held.

EPA is required to issue a notice in  
the **Federal Register** announcing its

7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 5, 1995.

**Chuck Clarke,**

*Regional Administrator.*

[FR Doc. 95-14806 Filed 6-15-95; 8:45 am]

BILLING CODE 6560-50-P

## 40 CFR Part 372

OPPTS-400086A; FRL-4952-7]

### Acetone; Toxic Chemical Release Reporting; Community Right-to-Know

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

**ACTION:** Final rule.

**SUMMARY:** EPA is granting a petition to delete acetone from the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). This deletion is based on a determination that acetone meets the delisting criteria of EPCRA section 313(d)(3). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of acetone that occurred during the 1994 calendar year and releases that will occur in the future. This relief applies only to the reporting requirements under section 313 of EPCRA.

**DATES:** This rule is effective June 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** For specific information on this final rule: Maria J. Doa, Petitions Coordinator, Telephone: 202-260-9592. For more information on EPCRA section 313: 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 TTD: 1-800-553-7672.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

###### A. Statutory Authority

This final rule 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 (SARA) of 1986 (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 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 chemicals to and deleted chemicals from the original statutory list. 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 published guidance regarding the recommended content of petitions to delete individual members of section 313 metal compound categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) criteria for adding and deleting chemicals from the section 313 toxic chemical list (59 FR 61439, November 30, 1994).

##### II. Description of Petition and Regulatory History

On September 24, 1991, EPA received a petition from Eastman Chemical Company and Hoechst Celanese to delete acetone from the EPCRA section 313 list of toxic chemicals. The petitioners contend that acetone should be deleted from the EPCRA section 313 list because it does not meet any of the EPCRA section 313(d)(2) criteria and because acetone's low photochemical reactivity does not present substantial concerns for formation of tropospheric ozone or other air pollutants.

On September 30, 1994, following a review which consisted of a toxicity evaluation and an exposure analysis, EPA proposed to grant the petition to delete acetone from the section 313 list by issuing a proposed rule in the **Federal Register** (59 FR 49888). The proposal to grant the petition was based upon EPA's finding that acetone did not meet the listing criteria found in section 313(d)(2) of EPCRA. It was EPA's belief that there was insufficient evidence to demonstrate that acetone causes or can reasonably be anticipated to cause significant adverse human health or environmental effects.

Until this time, acetone has been considered to be a Volatile Organic Compound (VOC). Emissions of VOCs

are managed under regulations (40 CFR parts 51 and 52) that implement Title I of the Clean Air Act (CAA), as amended, 42 U.S.C. 7401 *et seq.* EPA's definition of VOCs excludes certain listed chemicals that have been determined to be negligibly photochemically reactive (57 FR 3941, February 3, 1992). Elsewhere in this issue of the **Federal Register**, EPA is finalizing its addition of acetone to the list of compounds excluded from the definition of a VOC based on the determination that acetone has a negligible contribution to tropospheric ozone formation.

##### III. Final Rule and Rationale for Delisting

###### A. Comments on the Proposed Deletion of Acetone

The public comment period for the proposed rule closed on November 29, 1994. EPA received 51 comments on the proposed rule to delete acetone. Of these, 29 comments concurred with the proposal, and 22 comments objected to the proposal.

The Chemical Manufacturers Association objected to the statement in the proposed rule that all VOCs "meet the criteria for listing under EPCRA section 313."

In the proposed rule, EPA did not state that all VOCs meet the criteria for listing under EPCRA section 313 solely by virtue of their being so designated. However, EPA reaffirms its position as stated in the proposed rule, that chemicals that clearly fit the definition of VOC under the CAA meet the listing criteria of EPCRA section 313. VOCs contribute to the formation of tropospheric ozone. Ozone can reasonably be anticipated to cause significant adverse effects on human health and the environment, and therefore meets the listing criteria of EPCRA section 313.

Artco Inc. and National Marine Manufacturers Association comment that EPA should further research other chemicals which are not depleting the stratospheric ozone layer and promulgate their removal as well. EPA does not believe that the removal of chemicals from the EPCRA section 313 list is warranted solely on the basis of whether they deplete the stratospheric ozone layer. In making a determination that a chemical should be deleted from the EPCRA section 313 list, EPA examines whether the chemical meets any of the criteria set forth in EPCRA section 313(d)(2). A chemical which is shown not to deplete the stratospheric ozone layer could still meet one of the other criteria, and thus, could not be deleted from the list.

Eastman Chemical Co. and Hoechst Celanese stated that the deletion of acetone will "improve EPA's TRI program as well as conserve EPA and industry resources." Further, Outboard Marine Corp., Hoechst Celanese, and the Savannah River Pulp and Paper Corp. stated that the removal of acetone from the list of EPCRA section 313 toxic chemicals will reduce, in part, the administrative burden on facilities.

As described in the economic analysis, EPA agrees that the deletion of acetone will result in a resource savings by EPA and industry. In addition, EPA agrees that, as a result of this action, there will be a decrease in the administrative burden on facilities who have previously been required to report for acetone under EPCRA section 313.

A number of the commenters who supported the deletion stated that acetone is a substitute for more hazardous air pollutants, and that removing acetone from the list will encourage facilities to use acetone rather than these more hazardous chemicals. Specifically, Eastman Chemical Co. and Hoechst Celanese commented that the proposed rule does not address any of the environmental benefits associated with deleting acetone from the section 313 list. These two commenters pointed to the benefits derived from the use of acetone as a substitute for other regulated chemicals.

Although there might be environmental benefits from using acetone rather than some other chemicals, this has no impact on whether acetone meets the listing criteria of EPCRA section 313(d)(2). EPA agrees that, to the extent that the substances being substituted by acetone are more hazardous to human health or the environment than acetone, such substitution would be beneficial.

These two commenters further brought up several technical points, which they felt should have been included in the proposal. Specifically, they believe that a description of drinking water studies which have been conducted with acetone, as well as information on the recently revised oral reference dose (RfD) for acetone, would be a useful addition to the preamble to this final rule. EPA acknowledges that the drinking water studies have been conducted, but does not feel that a description of them is warranted. These studies support the decision to delist acetone. EPA also acknowledges that the RfD has recently been revised. At the time of publication of the proposed rule, the RfD was 0.1 milligram per kilogram per day (mg/kg/day). EPA has revised this RfD to 0.9 mg/kg/day. This higher value reflects a slightly lower toxicity

and, as stated above, supports the delisting decision.

A number of the commenters that oppose the delisting stated that there are substantial data to support a concern for health effects from acetone, and that EPA's review of evidence of toxicity for acetone must address the serious concerns raised by the Agency for Toxic Substances and Disease Registry (ATSDR) in its *Draft Toxicological Profile for Acetone*. In addition, as some commenters have pointed out, there are insufficient data to assess the toxicity of acetone.

As reviewed by the ATSDR, there has been considerable research on the health effects of acetone. However, most of this research has involved acute or subchronic exposure to relatively moderate and high levels of acetone. There is a lack of information with which to firmly characterize the critical effects of low-level exposure to acetone. Under EPCRA section 313, a lack of evidence cannot be used as a basis for listing a chemical. The known toxicity levels for acetone fall in the range which can be considered to be moderately low to low, and the decision must be based on the weight-of-the-evidence available.

EPA has reviewed the ATSDR draft profile as well as other relevant materials and has concluded that there is not sufficient evidence of toxicity to retain acetone on the EPCRA section 313 list. According to the ATSDR, based on a lowest observed adverse effect level (LOAEL) of 1,250 parts per million (ppm) for (transient) neurological effects over a 6-week period, intermediate and chronic inhalation Minimal Risk Levels (MRLs) of 13 ppm were calculated. Furthermore, the ATSDR indicates that levels of acetone which are normally found in outdoor air are generally significantly lower than this, at less than 8 parts per billion (ppb), and also generally lower than the air concentrations of acetone inside homes. At this time, there is insufficient evidence regarding chronic or subchronic exposure to such low levels of acetone to warrant listing (Ref. 1).

Several commenters recommended that EPA require industry to fully test acetone for toxicity under the criteria of section 4 of the Toxic Substances Control Act (TSCA), stating that testing should be performed before acetone is removed from the public's right-to-know. Other commenters, noting that EPA is currently negotiating with industrial users of acetone for neurotoxicity testing of the chemical, claimed that the proposal for delisting is ill-timed and inappropriate.

At this time, the Agency has already entered into an Enforceable Consent

Agreement with industry, requiring subchronic testing of acetone for neurotoxicity. At concentrations to which workers may be exposed in the workplace, which are much higher than those in outdoor air, central nervous system (CNS) effects such as narcosis, headache, and changes in operant behavior do appear to be relevant concerns indicative of neurotoxicity. However, the criteria for requiring neurotoxicity testing under TSCA section 4 and the criteria for inclusion in section 313 of EPCRA are very different. At this point in time, the weight-of-the-evidence is not sufficient to show that acetone meets the EPCRA section 313(d)(2) criteria for listing. EPA cannot deny a petition under EPCRA section 313 based on the fact that testing is going to be performed to fill data gaps.

A number of commenters stated that EPA should consider the synergistic effects of acetone together with other chemicals and stated that exposure to acetone is well known to increase the toxicity of many other chemicals. Commenters stated that the increased toxicity of other compounds in combination with exposure to acetone, as detailed in the ATSDR draft profile, justifies maintaining the EPCRA section 313 listing of acetone.

The ATSDR draft profile does provide a detailed review of the interaction of acetone and other chemicals. This report indicates that acetone may alter the effect of other chemicals by either increasing, decreasing, having a mixed effect on or having no effect on their toxicity. For example, carbon tetrachloride, halogenated alkanes, ethanol, and some ketones were more toxic when co-administered with acetone. However, acetone had mixed effects on the toxicity of other chemicals (dichlorobenzene, chlorinated alkanes, possibly halogenated alkanes, nitrosoamine, and acetonitrile) either at varying doses or for different toxicity endpoints. Furthermore, acetone had no reported effect on styrene or methyl ethyl ketone, and actually reduced the toxicities of acetaminophen and semicarbazide (Ref. 1).

As with the toxicity of acetone alone, the doses of acetone required for these interactive effects far exceed the concentrations of acetone which are found in outdoor air. For example, the lowest doses for acetone potentiation of toxicity reported by the ATSDR were found with carbon tetrachloride. Liver toxicity of carbon tetrachloride was shown to be potentiated by co-administration of acetone. However, non-effective doses of acetone were as high as 78 milligrams/kilogram (mg/kg)

twice a day for 3 days, or 1,000 ppm over 4 hours (Ref. 1).

Again, the weight-of-the-evidence for the synergistic effects of acetone on the toxicity of other chemicals is not sufficient to show that acetone meets the EPCRA section 313(d)(2) criteria for listing.

Several commenters state that EPA has not considered the effects of acetone on susceptible populations such as children, the elderly, or pregnant women, as detailed in the ATSDR draft profile. EPA disagrees. The ATSDR draft profile reported no human data on acetone in "more susceptible populations." Several studies in rats reported possible sex differences in susceptibility. Other factors which may have affected susceptibility in rats were age and pregnancy; however, no doses were reported.

The National Council of the Paper Industry for Air and Stream Improvement Inc. submitted a review on the *Toxicity of Acetone* in support of delisting acetone. This report concludes that acetone does cause CNS depression and irritation of mucous membranes, but that these effects become apparent only at high concentrations (above 500 ppm for irritation and 1,000 ppm for CNS effects).

This review was not as detailed as the ATSDR *Draft Toxicological Profile for Acetone*; however, reports of effective dose levels were similar. This review provides further indication of the relatively high levels of acetone necessary to induce toxicity or enhance the toxicity of other chemicals.

The Chesapeake Bay Foundation commented that acetone is toxic to aquatic life, and that it has a potential to bioaccumulate, and therefore, it should not be removed from the EPCRA section 313 list of toxic chemicals. The commenter cites toxicity values of 10 milligrams/liter (mg/L) to *Daphnia magna*, and a median lethal concentration (LC<sub>50</sub>) for the clawed toad of 25 mg/L.

The toxicity values quoted by the commenter are within the range which are considered by EPA to be "moderately low." However, the majority of the available aquatic toxicity (LC<sub>50</sub>) values for acetone are greater than 100 mg/L. In fact, several studies reported LC<sub>50</sub> values for *Daphnia magna* of greater than 100 mg/L. Taken as a whole, the data indicate that acetone presents a low level of hazard to aquatic organisms. As to the statement that acetone has the potential to bioaccumulate, EPA disagrees. As stated in the proposed rule, acetone is readily biodegradable in aquatic systems. Its octanol/water coefficient (-0.24)

indicates a low potential for bioaccumulation, and its high water solubility indicates that acetone is not likely to biomagnify. The commenter did not supply any data which would lead EPA to change this assessment.

The Maine Greens comment that acetone is a known hazardous substance based on flammability, and the State and Territorial Air Pollution Program Administrators/Association of Local Pollution Control Officials comments that acetone should not be removed from the EPCRA section 313 list of toxic chemicals because delisting a flammable solvent will eliminate information needed by emergency response personnel regarding the true hazard presented by a given facility.

While EPA believes that the data collected under EPCRA section 313 may be of use to local response authorities in developing emergency response plans, it is not the primary focus of EPCRA section 313 as it is with EPCRA sections 302-312. Furthermore, flammability is not one of the criteria for listing a substance under EPCRA section 313.

#### B. Rationale for Delisting and Conclusions

EPA is granting the petition by deleting acetone from the EPCRA section 313 list. EPA believes that acetone does not meet the toxicity criteria of EPCRA section 313(d)(2)(A) because acetone exhibits acute toxicity only at levels that greatly exceed releases and resultant exposures. Specifically, acetone cannot 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."

EPA believes that acetone does not meet the toxicity criteria of EPCRA section 313(d)(2)(B) because acetone: (1) Cannot reasonably be anticipated to cause cancer or neurotoxicity and has not been shown to be mutagenic, and (2) cannot reasonably be anticipated to cause adverse developmental effects or other chronic effects except at relatively high dose levels.

EPA believes that acetone does not meet the toxicity criteria of EPCRA section 313(d)(2)(C) because acetone causes adverse environmental effects only at relatively high dose levels.

Based upon evaluation of the petition, available toxicity and exposure information, and public comment, EPA reaffirms its determination that acetone meets the EPCRA section 313(d)(3) criteria for deletion. Therefore, EPA is finalizing the deletion of acetone from

the list of chemicals subject to reporting under section 313 of EPCRA.

This petition does not request that any action be taken under any statutory provision other than EPCRA section 313, and today's rule should not be inferred as an action under any statutory provision other than EPCRA section 313. Each statute prescribes different standards for adding or deleting chemicals or pollutants from its respective list. Specifically, the deletion of acetone from the EPCRA section 313 list does not alter its regulatory status under other statutory provisions. Today's rule is based solely on the criteria in EPCRA section 313.

#### IV. Effective Date

This action is effective June 16, 1995. Thus the last year in which facilities had to file a Toxic Release Inventory (TRI) report for acetone 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, in these circumstances, is also consistent with 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 acetone, 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 June 28, 1994.

#### V. Rulemaking Record

The record supporting this rule is contained in the docket number OPPTS-400086A. All documents, including an index of the docket, are available in the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

**VI. References**

(1) USEPA, OPPTS, HERD, HEB. Norris, Deborah O., "Summary of and Response to Health-Related Public Comments on Proposal to Remove Acetone from TRI," dated March 14, 1995.

(2) USEPA, OPPTS, EAB. Cinalli, C., "Exposure Report for Acetone," dated April 13, 1994.

(3) USEPA, OPPTS, EAB. Nold, A. and Cinalli, C., "Addendum to Exposure Report for Acetone," dated June 15, 1994.

**VII. 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. Under section 3(f), the Order defines a "significant regulatory action" as an action likely to lead to a rule (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically

significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

In accord with Executive Order 12866, EPA has prepared an economic analysis of this final rule. This final rule will reduce the number of reports submitted under EPCRA section 313 by 2,500 per year. EPA estimated that this will yield savings of \$7 million per year for industry and EPA. Pursuant to the terms of this Executive Order, EPA has determined that this final rule is not significant and therefore not subject to OMB review.

**B. Regulatory Flexibility Act**

Under the Regulatory Flexibility Act of 1980, EPA must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected. 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 relieves facilities from having to collect information on the use

and releases of acetone. Therefore, there were no information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. This rule will reduce reporting burden by approximately 131,000 hours per year."

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

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

Dated: June 9, 1995.

**Lynn R. Goldman,**

*Assistant Administrator for 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. 11013 and 11028.

**§ 372.65 [Amended]**

2. Section 372.65(a) and (b) are amended by removing the entire entry for acetone under paragraph (a) and removing the entire CAS No. entry for 67-64-1 under paragraph (b).

[FR Doc. 95-14805 Filed 6-15-95; 8:45 am]

BILLING CODE 6560-50-F

government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 29, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: May 31, 1995.

**David A. Ullrich,**

*Acting Regional Administrator.*

40 CFR part 52, is amended as follows:

#### Subpart YY—Wisconsin

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7671q.

2. Section 52.2570 is amended by adding paragraph (c)(81) to read as follows:

#### § 52.2570 Identification of Plan.

\* \* \* \* \*

(c) \* \* \*

(81) A revision to the ozone State Implementation Plan (SIP) was submitted by the Wisconsin Department of Natural Resources on June 30, 1994,

and supplemented on July 15, 1994. This revision consists of volatile organic compound regulations which establish reasonably available control technology for yeast manufacturing, molded wood parts or products coating, and wood door finishing.

(i) Incorporation by reference. The following sections of the Wisconsin Administrative Code are incorporated by reference.

(A) NR 422.02(7), (34) as amended and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994. NR 422.02(12e), (18m), (24s), (27m), (33d), (34m), (46m), and (51) as created and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994.

(B) NR 422.03(intro.) as amended and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994. NR 422.03 (8) and (9) as created and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994.

(C) NR 422.04(1)(a) as amended and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994.

(D) NR 422.132 as created and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994.

(E) NR 422.135 as created and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994.

(F) NR 424.02 (3), (4), (5), (6), and (7) as created and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

(G) NR 424.05 as created and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

(H) NR 439.04(5)(a)(intro.) as amended and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994.

(I) NR 439.075(2)(a)4. as amended and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

(J) NR 439.09(7m) as created and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994. NR 439.09(9)(b) as amended and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

(K) NR 439.095 (1)(e) and (5)(e) as created and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

(L) NR 484.05(9) as renumbered from NR 484.05(2), amended and published in the (Wisconsin) Register, August,

1994, No. 464, effective September 1, 1994.

[FR Doc. 95-16064 Filed 6-29-95; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 372

[OPPTS-400032B; FRL-4962-4]

RIN 2070-AC00

#### Ammonia; Ammonium Sulfate (solution); Ammonium Nitrate (solution); Water Dissociable Ammonium Salts; Toxic Chemical Release Reporting; Community Right-to-Know

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking the following four actions in response to a petition to delete ammonium sulfate (solution) from the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA): (1) Deleting ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals; (2) requiring that threshold and release determinations for aqueous ammonia be limited to 10 percent of the total ammonia present in aqueous ammonia solutions; (3) modifying the ammonia listing by adding a qualifier; and (4) deleting ammonium nitrate (solution) as a separately listed chemical on the EPCRA section 313 list of toxic chemicals. EPA has concluded that the aqueous ammonia present in ammonium sulfate (solution) is more appropriately reported under the EPCRA section 313 ammonia listing, and that reporting 10 percent total aqueous ammonia under the ammonia listing is appropriate and provides sufficient information for the public to assess the impacts of releases of aqueous ammonia. EPA has also concluded that releases of ammonium nitrate (solution) are more appropriately reported under the EPCRA section 313 listings for ammonia and the water dissociable nitrate compounds category.

**EFFECTIVE DATES:** All provisions of this rule are final June 30, 1995. For effective dates on the reporting requirements, see Unit IV. of this preamble.

**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 promulgated under sections 313(d) and (e)(1) and 328 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. EPA has added chemicals to and deleted chemicals from the original statutory list. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the 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 is 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 list (59 FR 61439, November 30, 1994).

Facilities that manufacture, process, or otherwise use ammonia, ammonium sulfate (solution), ammonium nitrate (solution), and other water dissociable

ammonium salts may be affected by this final rule if they meet the following criteria: (1) The facility has the equivalent of 10 or more full-time employees; and (2) the facility is included in Standard Industrial Classification (SIC) Codes 20 through 39; and (3) the facility manufactures (defined to include importing), processes, or otherwise uses the chemicals listed above in quantities equal to or greater than the threshold quantities set under EPCRA section 313(f).

### II. Description of Petition and Proposed Actions

#### A. Description of Petition

On January 23, 1989, EPA received a petition from Allied-Signal Inc. to delete ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals (EPA also received letters in support of this petition from W. R. Grace Company and ITT Rayonier Inc.). The petition was based on Allied-Signal Inc.'s contention that ammonium sulfate (solution) does not meet the EPCRA section 313 criteria for listing. Specifically, Allied-Signal Inc. claimed that: (1) Ammonium sulfate is not known to cause and cannot 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, (2) ammonium sulfate does not show potential for causing in humans cancer or teratogenic effects, serious or irreversible reproductive dysfunction, neurological disorders, heritable genetic mutations, or other chronic health effects, and (3) ammonium sulfate does not show potential for adverse effects on the environment due to toxicity, persistency in the environment, and/or tendency to bioaccumulate in the environment.

#### B. Summary of Proposed Actions

Following a review of the petition, EPA issued a proposed rule in the **Federal Register** of March 30, 1990 (55 FR 12144), proposing to delete ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals. This proposal, hereafter referred to as "the original proposal," was based on EPA's belief that the only concerns identified for ammonium sulfate (solution) were for the aqueous ammonia present in the solution and that this aqueous ammonia is more appropriately reported under the EPCRA section 313 listing for ammonia. EPA stated that aqueous ammonia is

manufactured when ammonium salts that dissociate in water (such as ammonium sulfate) are dissolved in water. EPA stated that therefore, releases of these ammonium salt solutions are environmentally equivalent to the release of aqueous ammonia generated by dissolving anhydrous ammonia in water.

In the original proposal, EPA preliminarily concluded that although there are no known significant human health effects associated with ammonium sulfate (solution), there are ecotoxic effects of concern. EPA further preliminarily concluded that the ecotoxicity concerns for ammonium sulfate (solution) were limited to the aqueous ammonia (i.e., total ammonia) present in these solutions and that the sulfate portion was not of concern. EPA stated that the toxicity of aqueous ammonia to aquatic organisms has been extensively studied and is well understood and that the un-ionized form of ammonia is relatively more toxic than the ionized form of ammonia. EPA stated that because the toxicity of aqueous ammonia solutions is dependent on the pH and temperature of the solution, the toxicity of aqueous ammonia is not dependent solely on the amount of the un-ionized form present. For this reason, aqueous ammonia toxicity cannot be represented solely by the concentration of the un-ionized form of ammonia. Thus, EPA preliminarily concluded that the toxicity of an aqueous solution of ammonia cannot be represented by a single value but must be expressed as a function of pH and temperature. Because the un-ionized ammonia concentration changes with pH and temperature, and the toxicity is not due solely to the un-ionized form, EPA reasoned that it is necessary to calculate the total ammonia concentration in order to determine the toxicity of the solution as the pH and temperature conditions change.

In the original proposal EPA also discussed how to address the fact that certain facilities might not be aware of the chemistry of aqueous solutions of ammonium salts. As a result, facilities that manufacture, process, or otherwise use aqueous solutions of ammonium salts that dissociate in water might not understand that they should make threshold determinations under EPCRA section 313 to assess whether reporting for releases under the ammonia listing is required. Therefore, EPA discussed options concerning how to inform the regulated community of the need to include these solutions in their calculations. EPA preliminarily concluded that technical guidance should be issued clarifying the reporting

requirements under the ammonia listing. In the same issue of the **Federal Register** in which the original proposal was published, a notice of availability was published (55 FR 12148, March 30, 1990) notifying the public and the regulated community of the availability of a guidance document on the reporting of ammonia releases.

In the original proposal, EPA also discussed two options for reporting releases of aqueous ammonia:

(1) Report releases of total ammonia;

or

(2) Report a proportion of the releases of total ammonia.

In discussing the two options, EPA stated that reporting total ammonia would allow communities to determine the proportion of un-ionized ammonia and ionized ammonia present in the receiving stream based on the pH and temperature characteristics of the stream. This information would allow communities to easily determine the un-ionized ammonia and ionized ammonia loading resulting from facility releases of aqueous ammonia. EPA stated that although the ionized form of ammonia is less toxic to aquatic organisms than the un-ionized form of ammonia, it is present in a higher proportion under most environmental conditions and may present the greater hazard. EPA also stated that reporting releases as a proportion of the amount of un-ionized ammonia released would result in data that cannot be used as well since it must be extrapolated to determine the amount of total ammonia released.

EPA proposed the second option in recognition of the fact that the un-ionized form of ammonia is relatively more toxic than the ionized form of ammonia and that under environmental conditions only a proportion of total ammonia is in the un-ionized form. EPA requested comment on whether a proportion, which would be the same for all facilities, of releases of total ammonia should be reported. EPA suggested that this proportion could be a worst-case estimate of the proportion of the un-ionized form of ammonia present in processing waters reflecting an upper bound level of the amount of the un-ionized form of ammonia formed. EPA also requested comment on what proportion of total ammonia should be used as an estimate.

In response to comments received on the original proposal and issues raised in subsequent discussions with the regulated community, EPA issued an amended proposed rule (60 FR 16830, April 3, 1995), hereafter referred to as "the amended proposal." The issue of what forms of ammonia should be reportable under the ammonia listing

had been the source of ongoing discussions between EPA and affected parties since publication of the original proposal. This resulted in a significant amount of additional information becoming available to EPA, and was one of the reasons EPA amended the proposed rule. This information covered five main areas: (1) Data concerning the pH and temperature of lakes, rivers, and streams in the U.S.; (2) additional data concerning the toxicity of aqueous ammonia to one aquatic organism; (3) data on the environmental fate of aqueous ammonia; (4) additional exposure analysis of releases of aqueous ammonia; and (5) a review of the scientific issues concerning the reporting of aqueous ammonia under EPCRA section 313 by the Agency's Science Advisory Board (SAB).

Also, due to the recent addition of a water dissociable nitrate compounds category to the EPCRA section 313 list of toxic chemicals (59 FR 61439, November 30, 1994), EPA expanded the proposed rule to include the deletion of ammonium nitrate (solution) as a separately listed chemical under EPCRA section 313. Therefore, EPA decided to publish the amended proposal to allow for adequate public notice and comment on the ammonium nitrate (solution) issue.

In the amended proposal, EPA reaffirmed its preliminary conclusion that ammonium sulfate (solution) should be deleted from the EPCRA section 313 list of toxic chemicals. EPA proposed to take four specific actions and asked for public comment on these proposed actions. The four proposed actions are the same as those being promulgated in this rule and are discussed below in Unit III. of this preamble. The amended proposal contained a detailed rationale for each of these actions that will not be repeated here. Unit III.B. of this preamble contains additional discussion of the rationales and conclusions concerning these actions.

The original proposal, the amended proposal, and the combined docket for these two proposals and this final rule contain complete discussions and documentation of EPA's technical review of ammonium sulfate (solution), aqueous ammonia, ammonium nitrate (solution), and the options EPA has considered for resolving the reporting requirements under the ammonia listing.

### III. Final Rule and Rationale for Actions

In response to the petition from Allied-Signal Inc., EPA is taking the following four actions under EPCRA

section 313: (1) Deleting ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals; (2) requiring that threshold and release determinations for aqueous ammonia be based on 10 percent of the total ammonia present in aqueous solutions of ammonia; (3) modifying the ammonia listing by adding the following qualifier: ammonia (includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources; 10 percent of total aqueous ammonia is reportable under this listing); and (4) deleting ammonium nitrate (solution) as a separately listed chemical on the EPCRA section 313 list of toxic chemicals. Under this action, facilities will be required to include 10 percent of the total ammonia in aqueous solutions in all threshold and release determinations under the EPCRA section 313 listing for ammonia. EPA has concluded that ammonium sulfate (solution) does not meet the EPCRA section 313 criteria based on human health concerns; however, there remain concerns about ecotoxicity from the aqueous ammonia present in this solution. Accordingly, EPA has determined that the aqueous ammonia present in this solution is more appropriately reported under the EPCRA section 313 ammonia listing. EPA has concluded that reporting 10 percent total aqueous ammonia under the ammonia listing is an appropriate way to report aqueous ammonia and provides sufficient information for the public to assess the impacts of releases of aqueous ammonia. EPA has concluded that in order to avoid confusion over what is reportable under the ammonia listing, the listing should be modified to include a description of what is covered by the listing. EPA has concluded that releases of ammonium nitrate (solution) are more appropriately reported under the EPCRA section 313 listings for ammonia and the water dissociable nitrate compounds category.

#### A. Response to Comments

EPA received 15 comments on the original proposal and 18 comments on the amended proposal. All of the comments received were from members or representatives of the industrial sectors that are subject to the reporting requirements of EPCRA section 313. In this final rule, EPA is providing responses to the major comments received that are relevant to today's final action. In addition, EPA has prepared and placed in the docket for this rulemaking a response to comment document that addresses the additional comments received (Ref. 1). All commenters support the deletion of

ammonium sulfate (solution) and ammonium nitrate (solution) from the EPCRA section 313 list, therefore that aspect of the comments will not be addressed further. Eight of the 18 companies that commented on the amended proposal strongly urged EPA to promulgate this final rule prior to July 1, 1995.

As a separate action, taken at the same time as the original proposal, EPA requested comment on the revised guidance for reporting aqueous ammonia under the ammonia listing (55 FR 12148). Several commenters contended that EPA should not require the reporting of aqueous ammonia from ammonium salts or any proportion of total ammonia by revising guidance but rather should do this by rulemaking. As discussed below, EPA believes that total aqueous ammonia is covered by the EPCRA section 313 ammonia listing. EPA also believes that the quantities of aqueous ammonia manufactured by dissolving water dissociable ammonium salts in water are subject to release and threshold determinations under the EPCRA section 313 ammonia listing. However, one of the reasons EPA amended the original proposal was to respond to these comments and concerns by making this position explicit in the listing. EPA is also providing a new guidance document to reflect the requirements of today's final rule; EPA's previous guidance document on ammonia reporting is no longer applicable. Comments received concerning the previous guidance document that are relevant to today's final rule are addressed below and in the response to comment document.

1. *Neither total ammonia nor the ionized form of ammonia is reportable under the ammonia listing.* Several commenters stated that EPA cannot require the reporting of any portion of the ionized form of ammonia under the EPCRA section 313 ammonia listing because they contend that only the un-ionized form of ammonia is covered by that listing. Two commenters contended that aqueous ammonia is ammonium hydroxide and that it is not listed on nor is it reportable under the EPCRA section 313 ammonia listing. One of these commenters also asserted that ammonium hydroxide is the ionized form of ammonia.

EPA believes that the ionized form of ammonia is covered by the EPCRA section 313 listing for ammonia. The EPCRA section 313 listing for ammonia is not limited to anhydrous forms, and, as such, quantities of ammonia in water (i.e., aqueous ammonia) must be applied to threshold and release determinations for this listing. Aqueous ammonia

consists of two forms of ammonia, the un-ionized form and the ionized form. These are not two discrete chemicals; rather they are two forms of the same chemical, ammonia. When placed in water, ammonia is not destroyed or converted to a different chemical. It simply exists as an equilibrium mixture of the ionized and un-ionized forms with the concentration of each form mainly dependent on the pH and temperature of the solution.

With regard to the purported chemical ammonium hydroxide ( $\text{NH}_4\text{OH}$ ), this is a misnomer. It is a common name used to describe a solution of ammonia in water, typically a concentrated solution of 28 to 30 percent ammonia. Aqueous ammonia is not ammonium hydroxide. The true nature of aqueous ammonia "deviates appreciably from the simple composite of ammonium and hydroxide ions" (Ref. 2). In the process of dissolving ammonia in water ( $\text{H}_2\text{O} + \text{NH}_3 \rightarrow \text{'A'}$ ), 'A' is not ammonium hydroxide. "There is clear evidence that it is not ammonium hydroxide under two important conditions (1) in aqueous solution (Ref. 3); and (2) as a solid (which exists only at low temperatures) (Refs. 4 and 5)" (Ref. 6). It is reasonable to conclude, in accord with modern theories of bonding, that 'A' consists of ammonia and water molecules engaged in hydrogen bonding (Refs. 6 and 7). It is clear that dissolving ammonia in water does not result in a new chemical compound, i.e., ammonium hydroxide, but rather results in hydrated ammonia. The pH and temperature dependency of the equilibrium between the un-ionized and ionized forms of ammonia reveal that the 28 to 30 percent solutions of ammonia in water (which, as noted above, are sometimes referred to as ammonium hydroxide) must consist almost entirely of the un-ionized form of ammonia. EPA has consistently responded to questions regarding the reportability of these purported ammonium hydroxide solutions under the EPCRA section 313 ammonia listing by stating that these are 28 to 30 percent solutions of ammonia in water and that the ammonia in this solution is reportable under the ammonia listing.

The issue of what is reportable under the ammonia listing should no longer be a subject of debate since in today's final rule EPA is modifying the ammonia listing to make it clear that 10 percent of total aqueous ammonia from all sources is reportable under the ammonia listing.

2. *Total ammonia should not be reported under the ammonia listing.* All commenters responding to the original proposal stated that EPA should not require the reporting of total aqueous

ammonia (i.e., the sum of the un-ionized and ionized forms of ammonia) under the ammonia listing since this drastically overstates the amount of the toxic un-ionized form of ammonia in a facility's releases. Commenters stated that under environmental conditions aqueous ammonia consists mainly of the relatively non-toxic ionized form of ammonia. Commenters stated that reporting total aqueous ammonia would mislead the public as to the volume of toxic chemical released.

EPA believes that the toxicity characteristics of aqueous ammonia do not preclude the reporting of total aqueous ammonia. The consensus of the scientific community is that the toxicity of a solution of aqueous ammonia is dependent on the pH and temperature of the solution. Studies of the pH and temperature dependency of aqueous ammonia toxicity have led to the commonly held opinion that the ionized form of ammonia is relatively less toxic than the un-ionized form, perhaps as much as 100 times less toxic. However, the exact toxicity of each form cannot be independently measured since under conditions that will support most aquatic organisms each form is always present at some level. In addition, the pH and temperature dependency of aqueous ammonia toxicity is not simply a reflection of the amount of the un-ionized form of ammonia present. Therefore, EPA does not believe that reporting total aqueous ammonia in some manner would drastically overstate the amount of toxic chemical released since both forms of ammonia contribute to the toxicity of an aqueous solution of ammonia. In today's final rule EPA is not requiring the reporting of total aqueous ammonia under the ammonia listing. EPA is limiting the reporting of aqueous ammonia to a proportion of total aqueous ammonia in consideration of the fact that the un-ionized form of ammonia is relatively more toxic than the ionized form. EPA believes that this alternative is less burdensome since a smaller number of facilities will meet the reporting thresholds based on 10 percent total aqueous ammonia than would if EPA required the reporting of total aqueous ammonia. In addition, EPA believes that this alternative addresses concerns raised by the regulated community about how reporting total aqueous ammonia would mislead the public as to the volume of the toxic chemical released.

3. *Under EPCRA section 313 reporters are not required to consider chemical conversions that occur in the environment.* Because some commenters contend that ionized ammonia and un-

ionized ammonia are two different chemicals, they argue that by requiring facilities to base release determinations on 10 percent of total aqueous ammonia EPA is requiring facilities to report releases of a chemical that is not listed on EPCRA section 313. They contend that the statute does not require facilities to report on conversion of non-listed chemicals into listed chemicals where such conversion takes place after release to the environment.

EPA disagrees. As stated above in Unit III.A.1. of this preamble, EPA believes that un-ionized ammonia and ionized ammonia are two forms of one chemical not two separate chemicals. Therefore, EPA is requiring that only a fraction of the total releases of the listed chemical be reported. Further, even if EPA were to accept the argument that these two forms were actually two separate chemicals, EPA believes that it would be appropriate to list a chemical on EPCRA section 313 because the chemical is transformed in the environment into a more toxic chemical. EPCRA allows EPA to add a chemical to the section 313 list if the chemical is "known to cause or can reasonably be anticipated to cause" certain adverse human health or environmental effects. The statute and the legislative history do not specifically preclude the consideration of whether the listed chemical is transformed in the environment to a more toxic chemical that causes the adverse effects in evaluating whether or not a chemical meets the statutory criteria for listing under EPCRA section 313. EPA believes that environmental transformations can and should be considered in determining whether or not a chemical should be subject to reporting under EPCRA section 313. When listing a chemical on the EPCRA section 313 list that is transformed in the environment to a more toxic chemical, EPA requires threshold and release determinations to be made only on quantities of the listed chemical, not on quantities of the more toxic chemical generated subsequent to release into the environment.

4. *The un-ionized portion of aqueous ammonia should be calculated based on the pH and temperature of the industrial effluent.* Commenters stated that only the un-ionized form of ammonia should be reported for aqueous ammonia and that the reporting should be based on calculations using the pH and temperature data of the facility's effluent. Commenters state that this is the most accurate information that can be provided concerning the amount of the toxic chemical released by the facility.

EPA believes that reporting the amount of the un-ionized form of ammonia in an aqueous ammonia release without reporting the pH and temperature of the release would not adequately report or characterize the toxic chemical released. For aqueous ammonia, in order to appropriately characterize the toxic chemical released, not only would the amount of the un-ionized form have to be reported but the pH and temperature of the effluent solution (which are data not currently required to be reported under EPCRA section 313) would have to be reported as well. This is because the toxicity of aqueous ammonia solutions is dependent on the pH and temperature of the solution; the toxicity of aqueous ammonia is not dependent solely on the amount of the un-ionized form of ammonia present. The pH and temperature dependency of aqueous ammonia toxicity is not simply a reflection of the amount of the un-ionized form of ammonia present since in the lower pH range (where there is less un-ionized ammonia), aqueous ammonia is more toxic when expressed in terms of the concentration of the un-ionized form. Therefore effluent solutions cannot be appropriately reported or characterized based solely on the amount of the un-ionized form of ammonia present. For aqueous ammonia, the nature of the toxic chemical released or its impact on the environment cannot be determined unless, at a minimum, total aqueous ammonia can be determined from the reported data. The pH and temperature data not only provide information as to the true nature of the toxic chemical releases but can also be used to determine total aqueous ammonia from the amount of un-ionized ammonia present. The only alternatives to reporting the pH and temperature data for releases are to report total aqueous ammonia or a proportion of total aqueous ammonia which when combined with environmental pH and temperature data are sufficient to characterize the toxic chemical released. Under any of these reporting options, the user of the data must still acquire environmental pH and temperature data in order to fully characterize the environmental significance of a release. However, this information can be readily obtained from public sources and would not involve access to information from a facility's private records. If facilities are allowed to report only the amount of the un-ionized form of ammonia in a release, then the pH and temperature of each release (to water, to POTWs, to land, to

underground injection) as well as off-site transfers for disposal would need to be reported in order to appropriately report and characterize the toxic chemical released. If this information is not collected, then it is not possible for the public to determine the toxicity of the chemical released or to assess the potential impact on the environment from such a release. Reporting only the amount of the un-ionized form of ammonia in a facility's effluent would not provide the public with information sufficient to assess the volume and hazard of the toxic chemical released. For example, a facility could reduce its reportable releases by 10-fold simply by adjusting the pH of its effluent from 7 to 6. However, the same amount of total ammonia would be released under both conditions and upon mixing in the receiving stream the same potential hazard would result from both releases. Therefore, the public would be misled as to the amount and significance of the toxic chemical released.

EPA believes that it would be an unnecessary and overly burdensome requirement to have facilities report the pH and temperature of each release since the alternative of reporting a set percentage of total ammonia without pH and temperature data provides sufficient information to assess the impact of releases to the environment of aqueous ammonia solutions while minimizing burden. Further, EPA believes that aqueous ammonia meets the criteria of EPCRA section 313 primarily, but not exclusively, based on the toxicity of the un-ionized form of ammonia. Therefore, EPA believes it would be inappropriate to require reporting of only the un-ionized form of ammonia.

5. *The un-ionized portion of aqueous ammonia should be calculated based on receiving stream conditions.* Several commenters stated that facilities should be allowed to calculate the concentration of the un-ionized form of ammonia in a release based on the pH and temperature data for the water bodies that they release to, either as the required method or as an alternative to reporting a set percentage of total ammonia.

EPA considered the option of reporting the amount of the un-ionized form of ammonia released based on the pH and temperature of the receiving streams. However, this option has the same problems that occur when using the pH and temperature of the effluent, in that the facility must report the pH and temperature data used to make the calculations in order to appropriately report and characterize the toxic chemical released (see Unit III.A.4. of this preamble). In addition, the pH and

temperature of receiving streams are subject to seasonal variations that are likely to vary much more than that of industrial effluent streams. This would mean that reported releases of un-ionized ammonia would be based on data with much more variability than those based on effluent data. If the pH and temperature information is not reported, then it is not possible to determine the toxicity of the chemical released or to assess the impact on the environment from such a release under various conditions. An additional burden of this option is that it would require reporters to gather information about conditions outside of their facility which is not currently a requirement for reporting under EPCRA section 313. Although information on environmental pH and temperature conditions should be available from public sources, it would be an added reporting burden for reporters to gather such data. The facilities would also still need to report the pH and temperature of their other releases (to land, POTWs, underground injection, etc.) in order to appropriately report and characterize the toxic chemical present in these releases. EPA believes that it would be an unnecessary and overly burdensome requirement to have facilities report the pH and temperature data used to determine each release since the alternative of reporting a set percentage of total ammonia provides sufficient information to assess the impact of releases to the environment of aqueous ammonia solutions and reduces reporting burdens. Further, as stated above in Unit III.A.4. of this preamble, EPA believes that it is inappropriate to require the reporting of only the un-ionized form of ammonia.

*6. Reporting a set proportion of total ammonia is not appropriate.*

Commenters stated that reporting a set proportion of total aqueous ammonia overestimates releases of the un-ionized form of ammonia for some facilities and underestimates the releases for others, thus misrepresenting the quantity of the un-ionized ammonia released.

Commenters state that the use of national conditions rather than local conditions is inappropriate.

Commenters stated that it is not appropriate to mandate an estimation method (i.e., 10 percent total aqueous ammonia) when the facility may have better information available. Commenters contend that EPA reporting guidance and enforcement policy states that all readily available information be used to calculate releases as accurately as possible and that reporting a set proportion violates this guidance.

EPA believes that reporting a proportion of total ammonia is appropriate. A proportion is used to reflect a reasonable estimation of the amount of the un-ionized form of ammonia that may be present under environmental conditions and takes into account the contribution of the ionized form of ammonia to the toxicity of aqueous ammonia. It also serves as an alternative to the more burdensome reporting requirements of either reporting the amount of the un-ionized form of ammonia in a release along with the pH and temperature of each release or of the receiving stream, or reporting total aqueous ammonia. Given that the ionized form of ammonia contributes to the toxicity of aqueous ammonia and that not all of the aqueous ammonia released will be in the more toxic un-ionized form, EPA believes that it is appropriate to limit the reporting of total aqueous ammonia to a proportion of total aqueous ammonia. For aqueous ammonia, the pH and temperature of the solution are not only used to estimate the proportion of aqueous ammonia existing in the un-ionized form, but also to define the toxicity of the solution at that pH and temperature. For example, the aquatic toxicity of three solutions of aqueous ammonia that each contain 0.1 mg/l of the un-ionized form of ammonia, but at different pH and temperatures (thus, with differing amounts of total ammonia), will not be the same.

EPA does not agree that reporting a proportion of total aqueous ammonia misrepresents the toxic chemical released. As discussed above in Unit III.A.4. of this preamble, EPA believes that reporting only the amount of the un-ionized form of ammonia in a facility's effluent, in the absence of pH and temperature data, misleads the public as to the volume and hazard of the toxic chemical released.

EPA is not mandating an estimation method, rather EPA is defining the limits of the reportability of a listed chemical. How a facility determines what represents 10 percent of total aqueous ammonia in their threshold and release determinations is still determined by the facility.

*7. Reporting 10 percent of total aqueous ammonia overestimates the releases of un-ionized ammonia.* Of the 18 comments received on the amended proposed rule, 10 commenters stated that reporting 10 percent total ammonia was too high or inappropriate, while 5 other commenters agreed with the proposal, and 2 other commenters agreed at least to some degree with the Agency's proposal. Commenters also stated that EPA should not use a

percentage of total aqueous ammonia that it based on "worst-case scenario" environmental conditions. Of the commenters that oppose the 10 percent standard, 8 suggested that 1 percent would be a more realistic value (since it would be consistent with the 50th percentile for pH and temperature data) as an alternative to calculating the un-ionized portion based on pH and temperature of the effluent. Two commenters on the original proposal stated that, as a default value, 45 percent of total ammonia should be used since this would represent the amount of un-ionized ammonia present at pH 9 and 30 °C and one commenter suggested 7.5 percent as the reporting level which is based on pH 8 and 30 °C. Three commenters cited what they contend are the SAB recommended standard conditions and suggested that reporting 1 percent total aqueous ammonia would be closer to the SAB standard conditions. None of these commenters indicated any support for reporting the pH and temperature data for their releases of aqueous ammonia.

EPA believes that for reporting purposes under EPCRA section 313, 10 percent of total aqueous ammonia is an appropriate proportion to report under the ammonia listing. Both the un-ionized and ionized forms of ammonia are toxic to aquatic organisms with the ionized form being relatively less toxic, but not non-toxic. EPA believes that aqueous ammonia meets the criteria of EPCRA section 313 primarily, but not exclusively, based on the toxicity of the un-ionized form of this chemical. Given the complexity of aqueous ammonia toxicity and the scientific consensus that the un-ionized form is primarily responsible for the aquatic toxicity, EPA believes that it is appropriate to limit the amount of total aqueous ammonia that is reported.

EPA believes that setting the proportion of total aqueous ammonia to be reported based on the 90th percentile for pH and temperature of the Nation's waters is not overly conservative given the complex nature of the toxicity of aqueous ammonia. By using 10 percent of total aqueous ammonia EPA is discounting 90 percent of the releases. EPA believes this addresses concerns raised by some commenters that reporting 100 percent total aqueous ammonia misleads the public as to the hazard associated with the release due to the high numbers associated with such reporting. Ten percent total aqueous ammonia reflects a reasonable estimation of the amount of un-ionized ammonia that may be present under environmental conditions and takes into account the contribution of the ionized

form to the toxicity of aqueous ammonia since total ammonia can be derived from the data. It also serves as an alternative to the more burdensome reporting requirement of reporting the amount of un-ionized ammonia in a release along with the pH and temperature of each release or of the receiving stream. EPA does not believe that discounting 99 percent of a release (i.e., reporting only 1 percent total aqueous ammonia) is appropriate given the nature of the toxicity of aqueous ammonia and the pH and temperature data for the Nation's waters.

EPA does not agree that 10 percent total aqueous ammonia represents a "worst-case scenario." EPA believes that a "worst-case scenario" would be to report a percentage of total ammonia based on the highest pH and temperatures reported for the Nation's waters. A review of the data indicates that the average of the highest reported pH and temperature conditions for each State would result in aqueous ammonia consisting of approximately 75 percent un-ionized ammonia. Therefore, EPA believes that 10 percent is far from being a "worst-case" estimation of the amount of the un-ionized form of ammonia released into the environment. Given the seasonal variations in pH and temperature, it is reasonable to assume that many locations may equal or exceed 10 percent at some point during the year even if the average conditions would produce less than 10 percent un-ionized ammonia. One added complexity is the timing of releases from facilities which may or may not be consistent throughout the year. In fact, higher releases may occur during periods when the pH and temperature of the receiving stream is well above the average conditions resulting in higher concentrations of the un-ionized form of ammonia in the receiving stream than estimated by the average conditions. In addition, there are some other types of releases, such as to deep wells, which may contain aqueous ammonia at pH and temperature conditions that result in much more than 10 percent of the un-ionized form of ammonia being present in the environment. For these releases reporting only 10 percent total aqueous ammonia clearly does not represent a "worst-case scenario" and is a significant reduction in reporting burden since a smaller number of facilities will meet reporting thresholds. Again, as stated above, EPA does not believe that reporting 10 percent total aqueous ammonia is overly conservative or misrepresents the potential impact on the environment or the toxicity of such releases.

The SAB letter received by EPA in response to the Agency's requested review contained the following statement: "For example, if the policy concern is solely for aquatic toxicity, then reporting non-ionized ammonia concentrations at a standard pH and temperature (e.g., pH 7 and 15 °C) would address this endpoint." EPA believes that the important part of this statement is that "a standard pH and temperature" be used. This is consistent with EPA's position that unless a facility reports total aqueous ammonia, a proportion of total aqueous ammonia, or the amount of the un-ionized form of ammonia along with the pH and temperature of the solution released or of the receiving stream, the toxic chemical is not appropriately reported or characterized. With regards to the parenthetical "(e.g., pH 7 and 15 °C)", EPA does not believe that this should be considered as being the recommended pH and temperature to be used. Since "e.g." means "for example", EPA believes that the pH and temperature values in the SAB letter were an example, not a recommended best set of conditions. In fact, the SAB letter gave no justification for these conditions, nor did it provide any discussion of the issue of the most appropriate or standard conditions to use. The SAB letter went on to state, "Thus, the question of whether to list or how to list ammonia or any of its forms is not a scientific issue but strictly a matter of policy for the Agency to decide." EPA believes that reporting a proportion of total aqueous ammonia that is based on reported pH and temperature data for the Nation's waters provides the necessary standard conditions and allows for appropriate reporting and characterization of the toxic chemical released.

**8. Releases of aqueous ammonia to Class I wells should be exempt from reporting.** Several commenters stated that since the only identified concern for aqueous ammonia is aquatic toxicity, then discharges to Class I deep wells should not be reported since they do not represent an aquatic environment and have no potential for release to an aquatic environment.

EPA does not believe that, for reporting purposes under EPCRA section 313, it is appropriate to exempt the reporting of releases to a particular medium. Although the release of a toxic chemical to one type of medium may have a greater or lesser potential for adverse impacts on human health or the environment, there is always the potential for released material to enter into more sensitive environments. In addition, EPA does not believe that all

of the release information provided under EPCRA section 313 should be viewed as being negative. The fact that one facility discharges to a medium that may pose less of a direct threat to human health or the environment is useful data for the public to know. In addition, there is some question as to whether EPA would have the statutory authority to provide such an exemption: section 313(g) requires facilities to report on the quantities of a toxic chemical entering each environmental medium and does not explicitly provide any mechanism to exempt releases to individual media.

**9. Aqueous solutions of ammonium salts are not equivalent to aqueous ammonia from anhydrous ammonia.** Some commenters stated that they do not believe that aqueous ammonia from solutions of ammonium salts is equivalent to aqueous ammonia produced from anhydrous ammonia.

EPA does not agree with this comment. As stated in the amended proposed rule, there are differences in the concentrations of the un-ionized form of ammonia between equimolar solutions of aqueous ammonia generated by dissolving dissociable ammonium salts versus anhydrous ammonia. These differences are due to the buffering effects (mainly reflected as pH differences) of the counter ions from the ammonium salts and disappear when both solutions are released to the environment. It is clear that ammonium salt solutions do produce aqueous ammonia since the sources of aqueous ammonia used to test the aquatic toxicity of aqueous ammonia are often ammonium salts (see Ref. 8 and references therein). For example, some of the chemicals that have been used as sources of aqueous ammonia are: Ammonium acetate, ammonium bicarbonate, ammonium carbonate, ammonium chloride, ammonium hydrogen phosphate, and ammonium sulfate. Clearly all of these ammonium salts produce aqueous ammonia that does not significantly differ from that produced from anhydrous ammonia.

#### *B. Conclusion and Rationale for Actions*

After reviewing comments received on the original proposal and the amended proposal, EPA has concluded that the four actions proposed in the amended proposal should be adopted as proposed. A brief discussion of the rationale for each action is provided below. A more detailed discussion of the rationales for each of these actions was provided in the amended proposal (60 FR 16830, April 3, 1995).

**1. Deletion of ammonium sulfate (solution).** EPA has concluded that the

sulfate portion of ammonium sulfate (solution) does not meet the EPCRA section 313(d)(2)(A), (B), or (C) criteria. EPA has previously reviewed the toxicity of sodium sulfate (54 FR 7217 and 54 FR 25850) and concluded that sulfate from sodium sulfate did not meet the EPCRA section 313(d)(2)(A), (B), or (C) criteria. EPA has concluded that the only component of ammonium sulfate (solution) that meets the EPCRA section 313 listing criteria is the aqueous ammonia present in this solution. EPA has concluded that this aqueous ammonia is more appropriately reported under the EPCRA section 313 ammonia listing, therefore it is appropriate to delete ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals. EPA has concluded that 10 percent of the ammonium portion of ammonium sulfate (solution) (i.e., 10 percent of the total aqueous ammonia present in this solution) will remain reportable under the ammonia listing.

**2. Reporting of 10 percent of total aqueous ammonia.** EPA has reviewed all available data and considered all comments concerning how to report aqueous ammonia releases under EPCRA section 313. EPA has concluded that reporting only the amount of the un-ionized form of ammonia released does not provide sufficient information to describe the toxicity of the aqueous ammonia released or the impact of such releases. The toxicity of an aqueous solution of ammonia is not only dependent on the amount of aqueous ammonia or either of the two forms of ammonia present, but also on the pH and temperature of the solution. In addition, as was discussed in Unit III.A.4. of this preamble, reporting only the amount of the un-ionized form of ammonia in a facility's effluent misleads the public as to the volume and hazard of the toxic chemical released. Accordingly, EPA has concluded that reporting total ammonia in some manner is the appropriate way to report aqueous ammonia under EPCRA section 313.

EPA considered three total ammonia options for reporting aqueous ammonia releases that would adequately report and characterize the toxic chemical released. The first way is to report the pH and temperature of each type of release or of the receiving stream. This would better describe the toxicity of the aqueous ammonia released and allow for assessing its impact on the environment since total ammonia can be calculated from the pH and temperature data. The second way is to report total aqueous ammonia. Although this does not in itself better describe the toxicity of the solution released, it does report

all of the aqueous ammonia released and provides sufficient information to assess the potential impact of releases. The third way is to report a proportion of total aqueous ammonia, which provides a level of information similar to reporting total aqueous ammonia but takes into consideration the fact that the un-ionized form of ammonia contributes more to the toxicity of the solution.

EPA has concluded that reporting the pH and temperature data for each release would be an unnecessary reporting burden since a less burdensome alternative to this requirement exists. In the original proposal EPA favored the reporting of total aqueous ammonia under the ammonia listing. However, based on comment, EPA has concluded that another appropriate way to report releases of aqueous ammonia is to report a uniform proportion of total aqueous ammonia. EPA has concluded that reporting only a proportion of total aqueous ammonia is appropriate since aqueous ammonia meets the EPCRA section 313 criteria primarily, but not exclusively, based on the toxicity of the un-ionized form of this chemical. EPA has concluded that reporting 10 percent total aqueous ammonia would be appropriate since, based on the 90th percentile for the pH and temperature conditions in the Nation's waters, 10 percent represents the amount of the un-ionized form of ammonia that would be present in receiving streams from releases of aqueous ammonia. EPA has concluded that considering the variations in the pH and temperature of the types of releases reported under EPCRA section 313, the fact the ionized form of ammonia also contributes to the toxicity of aqueous ammonia, and the potential impacts of aqueous ammonia releases, that the reporting of 10 percent total aqueous ammonia is appropriate. EPA has concluded that reporting 10 percent total aqueous ammonia will not overestimate the potential impacts of these releases and that this provides a much less burdensome method of reporting than requiring the reporting of the pH and temperature data for each release.

The reporting of 10 percent total aqueous ammonia will allow users of the data to determine potential impacts on the environment from such releases. Users of the data can calculate total aqueous ammonia releases by multiplying the reported amount of aqueous ammonia released by 10. The users can then use the amount of total aqueous ammonia released along with the pH, temperature, and other characteristics of the specific receiving

stream to assess the potential impact of the aqueous ammonia releases.

**3. Modification of the ammonia listing.** The quantities of aqueous ammonia manufactured by dissolving water dissociable ammonium salts in water are subject to release and threshold determinations under the EPCRA section 313 ammonia listing. While clearly reportable, EPA believes that there may be some confusion about this requirement. EPA guidance in response to inquires concerning what is reportable under the ammonia listing has been that aqueous ammonia from water dissociable ammonium salts is reportable under the listing. However, even after publishing this guidance in 1990 (55 FR 12148), EPA continued to receive numerous inquires regarding what should be reported. Therefore, EPA has concluded that a qualifier to the ammonia listing should be added to clarify that aqueous ammonia from water dissociable ammonium salts is reportable under the ammonia listing. EPA believes that this modification of the ammonia listing, specifying that the listing includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources, will aid the regulated community in determining whether they are required to report and will eliminate any confusion over what is reportable under the ammonia listing. This modification also includes the 10 percent total aqueous ammonia reporting limit.

**4. Deletion of ammonium nitrate (solution).** EPA has concluded that deleting ammonium nitrate (solution) from the EPCRA section 313 list is appropriate because the recent addition of the water dissociable nitrate compounds category (59 FR 61432, November 30, 1994) and reporting of aqueous ammonia from water dissociable ammonium salts under the ammonia listing (as clarified in this final rule) negate the need for a separate listing for this chemical solution. EPA has concluded that this is not a significant change since the releases of ammonium nitrate (solution) are still reportable under the EPCRA section 313 listing for ammonia and the water dissociable nitrate compounds category. Under the water dissociable nitrate compounds category, the amount of ammonium nitrate in solution is counted in threshold determinations for the category, but only the amount of nitrate ion is counted in release and transfer determinations, therefore no double counting of releases will occur. This deletion simply consolidates the reporting of ammonium nitrate

(solution) under existing EPCRA section 313 listings.

#### IV. Effective Dates

All provisions of this rule are final June 7, 1995. However, these changes (with the exception of the deletion of ammonium nitrate (solution)) are effective for the 1994 reporting year. The deletion of ammonium nitrate (solution) listing is effective for the 1995 reporting year.

Section 313(d)(4) of EPCRA provides, "Any revision [to the section 313 list] 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." EPA interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list; EPA may, at its discretion, make deletions from the list and amendments to listings immediately effective.

EPA believes that the purpose behind section 313(d)(4) is to allow facilities adequate planning time to incorporate newly added chemicals to their TRI release data collection processes. A facility would not need additional planning time not to report releases of a delisted chemical. Moreover, where EPA has determined that a chemical does not satisfy the criteria of section 313(d)(2)(A) through (C), no purpose is served by requiring facilities to collect release data or file release reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. Nothing in the legislative history suggests that section 313(d)(4) was intended to apply to deletions as well as additions. Thus, a reasonable construction of section 313(d)(4), given the overall purposes and structure of EPCRA--to provide the public with information about chemicals which meet the criteria for inclusion on the section 313 list--is to apply the delayed effective date requirement only to additions to the list. This construction of section 313(d)(4) is also consistent with previous rules deleting chemicals from the section 313 list.

An immediately effective date for two of the actions in this final rule is also consistent with 5 U.S.C. section 553(d)(1), since a deletion from the section 313 list relieves a regulatory burden. EPA believes the combined effect of the changes in this final rule would be to reduce the burden by clarifying what is reportable under the

ammonia listing and by simplifying the reporting requirements for ammonia. In addition, the requirement that facilities include 10 percent of total ammonia in aqueous solutions in threshold determinations might relieve some facilities from the obligation to report for aqueous ammonia.

The following effective dates and requirements apply to this final rule.

1. *Deletion of ammonium sulfate (solution)*. The deletion of ammonium sulfate (solution) is effective for the 1994 reporting year (reports due July 1, 1995).

2. *Deletion of ammonium nitrate (solution)*. The deletion of ammonium nitrate (solution) is effective for the 1995 reporting year (reports due July 1, 1996). EPA is delaying the effective date of this provision to coincide with the effective date of the recently-added water dissociable nitrate compounds category (59 FR 61432, November 30, 1994). The requirement that aqueous ammonia from ammonium nitrate (solution) be reported under the ammonia listing as 10 percent of total aqueous ammonia is also effective for the 1995 reporting year.

3. *Reporting 10 percent of total aqueous ammonia*. The requirement that 10 percent of total aqueous ammonia be reported under the ammonia listing for aqueous ammonia from all water dissociable ammonium salts (except ammonium nitrate (solution)) is effective for the 1994 reporting year. EPA believes that facilities that have been subject to record keeping requirements for ammonium sulfate (solution) already have the information needed to calculate threshold and release quantities for 10 percent total aqueous ammonia. Specifically, a facility would multiply the appropriate ammonium sulfate (solution) quantities by 2.7 percent, which represents 10 percent of the weight percent of aqueous ammonia from ammonium sulfate (solution).

Facilities that currently report or make threshold determinations for the aqueous ammonia from other water dissociable ammonium salts may not be keeping the kind of information in their records that would allow them to calculate 10 percent of total aqueous ammonia from their un-ionized ammonia data. EPA recognizes that issuance of this final rule has come so close to the reporting deadline that some of these facilities may not be able to comply with this requirement before the July 1, 1995 reporting date.

Accordingly, for this one year, such facilities can continue to use the pH and temperature of their process and waste streams to estimate the quantities of un-

ionized ammonia present for threshold and release determinations, respectively.

Facilities that have already reported under the current requirements are not required to resubmit their reports under the new requirements. They can, however, withdraw their reports if they did not meet the threshold for ammonia under the revised ammonia listing.

#### V. Rulemaking Record

The record supporting this final rule is contained in docket number OPPTS-400032B. 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.

#### VI. References

- (1) USEPA/OPPT. "Response to Comments Received on the March 30, 1990 and April 3, 1995 Proposed and Amended Proposed Rules to Delete Ammonium Sulfate (solution) from the EPCRA Section 313 List", U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics, Washington, DC (1995).
- (2) Tuttle, Jr., T. R., "Ammonium Hydroxide: What is its Structure?", Letters to the Editor No. 1 and No. 3, *Journal of Chemical Education*, 68, (1991), p. 533.
- (3) Grunwald, E.; Ralph, E. K., "Kinetic Studies of Hydrogen-Bonded Solvation Complexes of Amines in Water and Hydroxylic Solvents", *Accounts of Chemical Research*, 4, (1971), pp. 107-113.
- (4) Bertie, J.E.; Morrison, M. M., "The Infrared Spectra of the Hydrates of Ammonia,  $\text{NH}_3 \cdot \text{H}_2\text{O}$  and  $\text{NH}_3 \cdot 2\text{H}_2\text{O}$ ", *Journal of Chemical Physics*, 73, (1980), pp. 4832-4836.
- (5) Bertie, J.E.; Shehata, M. R., "Ammonia Dihydrate: Preparation, X-Ray Powder Diffraction Pattern and Infrared Spectrum of  $\text{NH}_3 \cdot \text{H}_2\text{O}$  and  $\text{NH}_3 \cdot 2\text{H}_2\text{O}$  at 100 K", *Journal of Chemical Physics*, 81, (1984), pp. 27-29.
- (6) Yoke, J., "Ammonia and Water Molecules Engaged in Hydrogen Bonding", Letter to the Editor No.2, *Journal of Chemical Education*, 68, (1991), p. 533.
- (7) Yoke, J., "Ammonium Hydroxide Does Not Exist", *Journal of Chemical Education*, 66, (1989), p. 310.
- (8) USEPA/OW. "Ambient Water Quality Criteria for Ammonia - 1984", U. S. Environmental Protection Agency, Office of Water Regulations and

Standards, Washington, DC, EPA 440/5-85-001 (1985).

**VII. 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. Under section 3(f), the order defines a "significant regulatory action" as an action likely to lead to a rule (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this 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.

**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 the final rule does not create any new requirements and consolidates other requirements, it would not significantly affect facilities, including small entities.

**C. Paperwork Reduction Act**

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

**D. Unfunded Mandates Reform Act of 1995**

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, EPA has assessed the effects of this regulatory action on State, local and tribal governments, and the private sector. This action does not result in the expenditure of \$100 million or more by any State, local or tribal governments, or by anyone in the private sector. The cost associated with this action are described

in the Executive Order 12866 unit above.

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

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and 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:

**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 by revising the entries for ammonia and ammonium nitrate (solution) and removing the entire entry for ammonium sulfate (solution) under paragraph (a), and revising the CAS No. entries for 6484-52-2 and 7664-41-7 and removing the entire CAS No. entry for 7783-20-2 under paragraph (b) to read as follows:

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

\* \* \* \* \*  
(a) \* \* \*

Chemical name	CAS No.	Effective date
* * * * *	* * *	
Ammonia (includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources; 10 percent of total aqueous ammonia is reportable under this listing)	7664-41-7	1/1/87
Ammonium nitrate (solution)	6484-52-2	1/1/87*
* * * * *	* * *	

\*Note: Ammonium nitrate (solution) is removed from this listing; the removal is effective July 2, 1995, for the 1995 reporting year.

(b) \* \* \*

CAS No.	Chemical name	Effective date
* * * * *	* * *	
6484-52-2	Ammonium nitrate (solution)	1/1/87*
* * * * *	* * *	
7664-41-7	Ammonia (includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources; 10 percent of total aqueous ammonia is reportable under this listing)	1/1/87
* * * * *	* * *	

\*Note: CAS No. 6484-52-2 is removed from this listing; the removal is effective July 2, 1995, for the 1995 reporting year.

\* \* \* \* \*

[FR Doc. 95-16184 Filed 6-29-95; 8:45 am]

BILLING CODE 6560-50-F

**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 (SO<sub>3</sub>), 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-

§§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

**V. Unfunded Mandates**

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements.

Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

**Note:** Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: July 2, 1996.

**Chuck Clarke,**  
*Regional Administrator.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows: Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7671q.

**Subpart WW—Washington**

2. Section 52.2470 is amended by adding paragraph (c)(62) to read as follows:

**§ 52.2470 Identification of plan.**

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(c) \* \* \*

(62) On September 30, 1994, the Director of WDOE submitted to the Regional Administrator of EPA a revision to the carbon monoxide State Implementation Plan for, among other things, the CO attainment demonstration for the Puget Sound carbon monoxide nonattainment area. This was submitted to satisfy federal requirements under section 187(a)(7) of the Clean Air Act, as amended in 1990, as a revision to the carbon monoxide State Implementation Plan.

(i) Incorporation by reference.

(A) September 30, 1994, letter from WDOE to EPA submitting an attainment demonstration revision for the Puget Sound CO nonattainment area (adopted on September 30, 1994), and a supplement letter and document from WDOE, "Reexamination of Carbon Monoxide Attainment Demonstration for the Tacoma Carbon Monoxide Monitoring Site for the Supplement to the State Implementation Plan for Washington State, A Plan for Attaining and Maintaining National Ambient Air Quality Standards for Carbon Monoxide in the Puget Sound Nonattainment Area," dated May 10, 1996.

[FR Doc. 96-18651 Filed 7-24-96; 8:45 am]  
BILLING CODE 6560-50-P

**40 CFR Part 372**

[OPPTS-400062A; FRL-5372-3]

**Hydrochloric Acid; Toxic Chemical Release Reporting; Community Right-to-Know**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is modifying the listing for hydrochloric acid on the list of toxic chemicals subject to the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). Specifically, EPA is deleting non-aerosol forms of hydrochloric acid because the Agency has concluded that the non-aerosol forms of hydrochloric acid meet the section 313(d)(3) deletion criterion. By promulgating this rule, EPA is relieving facilities of their obligation to report releases of and other waste management information on non-aerosol forms of hydrochloric acid that occurred during the 1995 reporting year, and for activities in the future.

**DATES:** This rule is effective July 25, 1996.

**FOR FURTHER INFORMATION CONTACT:** Daniel R. Bushman, Acting Petitions Coordinator, 202-260-3882, e-mail: bushman.daniel@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. Affected Entities

Entities potentially affected by this action are those which manufacture, process, or otherwise use hydrochloric acid and which are subject to the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023, and section 6607 of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13106. Some of the affected categories and entities include:

Category	Examples of affected entities
Industry	Facilities in the manufacturing sector (Standard Industrial Classification codes 20-39) that manufacture, process or otherwise use hydrochloric acid.
Federal Government	Federal Agencies that manufacture, process, or otherwise use hydrochloric acid.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is 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.

### B. Statutory Authority

This action is taken under sections 313(d) and (e)(1) of EPCRA. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499).

### C. 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 PPA. When enacted, section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical

categories. Hydrochloric acid was included in the initial list of chemicals and 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 (3) criteria for adding and deleting chemicals from the section 313 toxic chemical list (59 FR 61439, November 30, 1994) (FRL-4922-2).

## II. Description of Petition and Proposed Action

On September 11, 1991, EPA received a petition from BASF Corporation, E.I. duPont de Nemours, Monsanto Company, and Vulcan Materials Company to qualify the listing for hydrochloric acid by requiring release reporting only for hydrochloric acid aerosols and deleting other forms of hydrochloric acid from the list of chemicals under EPCRA section 313. The petitioners maintain that non-aerosol forms of hydrochloric acid do not meet the statutory criteria under EPCRA section 313 for acute, chronic, or environmental effects.

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), phosphorus (yellow or white), vanadium (fume or dust), and zinc (fume or dust). Also EPA recently modified the sulfuric acid listing (60 FR 34182, June 30, 1995) (FRL-4946-3) by exempting non-aerosol forms of sulfuric acid exactly as is being done in today's action. As with this list modification, EPA found that non-aerosol forms of sulfuric acid do not meet the toxicity criteria of section

313(d)(2). Other qualified listings include those for fibrous aluminum oxide (55 FR 5220, February 14, 1990) and water dissociable nitrate compounds (59 FR 61432, November 30, 1994) (FRL-4922-2).

Following a review of the petition, EPA granted the petition and issued a proposed rule in the **Federal Register** on November 15, 1995 (60 FR 57383) (FRL-4045-4), proposing to delete non-aerosol forms of hydrochloric acid from the list of toxic chemicals under EPCRA section 313. EPA's proposal was based on its conclusion that these forms of hydrochloric acid meet the EPCRA section 313(d)(3) criterion 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 preliminarily concluded that there is not sufficient evidence to establish that non-aerosol forms of hydrochloric acid cause adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries, 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 rulemaking record for this action. For the purposes of this final rule, EPA considers the term aerosol to cover any generation of airborne hydrochloric acid (including mists, vapors, gas, or fog) without regard to particle size.

On February 1, 1993 (58 FR 6609), EPA issued a notice announcing that a public hearing would be held to address petitions to modify the listings for both hydrochloric and sulfuric acids (on December 24, 1990, a petition was received from the Environmental Policy Center on behalf of American Cyanamid to modify the listing of sulfuric acid to include only aerosol forms of this chemical). In the February 1, 1993 notice, EPA requested comment on a number of the issues raised by commenters in response to the proposed rule to modify the listing for sulfuric acid (56 FR 34156, July 26, 1991). The Agency believed that these issues were also relevant 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. One comment presented at the public meeting specific to hydrochloric acid came from the Great Lakes Chemical Company. This commenter stated that hydrochloric acid does not meet either of the listing criteria set forth in EPCRA section 313(d)(2)(A) or (C). The commenter discussed at length the lack of environmental risks posed by deep well injection of hydrochloric acid in oil and gas operations. EPA agrees with the commenter that non-aerosol forms of hydrochloric acid do not meet the EPCRA section 313 listing criteria and therefore none of the environmental releases, including deep well injection, of these non-aerosol forms should be reported under EPCRA section 313.

At the public meeting, EPA received other comments that pertained to both the non-aerosol forms of hydrochloric and sulfuric acid. The major comments received concerned the reporting of accidental releases, effects of the removal of these chemicals on the Right-to-Know program, reliance on other regulatory mechanisms for reporting, and the effects delisting would have on pollution prevention. A brief summary of the major comments received that are relevant to hydrochloric acid and EPA's responses to those comments follow. More detailed responses to the major issues raised by the comments presented and/or submitted at the public meeting can be found in the final rulemaking delisting non-aerosol forms of sulfuric acid (60 FR 34182, June 30, 1995) (FRL-4946-3).

EPA received comments citing concerns for accidental releases of non-aerosol forms of hydrochloric acid and the environmental damages that have resulted. As discussed further in Unit III.B. of this preamble, the Agency believes that the limited number of accidental releases of non-aerosol forms

of hydrochloric acid do not result in significant adverse effects of sufficient seriousness to warrant continued listing under EPCRA section 313.

Several commenters stated their opposition to removing non-aerosol forms of hydrochloric acid from reporting under EPCRA section 313 because it defeats the intent of the Right-to-Know program. These commenters contend that removing reporting for non-aerosol forms of hydrochloric acid under EPCRA section 313 will result in a significant information gap regarding "routine" releases of the chemical.

EPA agrees that by delisting non-aerosol forms of hydrochloric acid, information on the management of these forms of the chemical may be more difficult to obtain. However, EPA believes that adequate information on non-aerosol forms of hydrochloric acid will still be available through other sources.

EPA received a comment stating that it is inappropriate for the Agency to rely solely on regulations developed under other statutes to determine whether significant adverse human health or environmental effects result from releases that are reported under EPCRA section 313.

While EPA does not rely solely on data as collected under other regulations, the Agency does believe that data collected under other regulations can assist in listing and delisting decisions. In the Agency's review of non-aerosol forms of hydrochloric acid, EPA has not uncovered any information to indicate that non-aerosol forms of this chemical cause significant adverse human health or environmental effects of sufficient seriousness to warrant reporting.

A number of comments received from industry contend that any significant adverse effects that may be caused from releases of non-aerosol forms of hydrochloric acid are already addressed through several other regulations. Additional comments from industry asserted that non-compliance with other statutes must be addressed through the enforcement mechanisms of those statutes and should not be considered in EPCRA section 313 listing or delisting decisions.

EPA agrees with the commenters that non-compliance with other statutes should be addressed through those regulations. However, the Agency has also found that the EPCRA section 313 data are useful in identifying facilities that may not be in compliance with a particular statute.

EPA received comments that stated that the removal of non-aerosol forms of

hydrochloric acid will have the effect of removing industry's incentive for conducting pollution prevention efforts for their uses of this chemical which is contrary to the intent of the PPA.

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 forms of hydrochloric acid that pose the greatest hazard, the aerosol forms.

### III. Final Rule and Rationale for Delisting

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

EPA received 21 written comments (i.e., in addition to those received at the public meeting) on the proposed deletion of non-aerosol forms of hydrochloric acid from the EPCRA section 313 toxic chemical list, all of which supported the proposed action. All 21 comments were from industry representatives. All commenters supported the listing modification on the grounds that non-aerosol forms do not meet the statutory criteria of section 313(d)(2)(A)-(C). One commenter from the International Dairy Foods Association requested that this listing modification be extended to include non-aerosol forms of phosphoric and nitric acids. Specifically, the commenter "support[s] an alternative listing option that eliminates the reporting requirement for all transfers to Publicly Owned Treatment Works (POTW) of all non-aerosol forms of mineral acids."

The commenter refers to an issue raised at the March 3, 1993 public meeting regarding the health and safety of POTW workers that may be jeopardized as a result of transfers of mineral acids to POTWs. The commenter contends that the effluent guidelines, issued under 40 CFR part 403, prohibit an effluent discharge to a POTW with a pH below 5. The commenter continues, "EPA has stated that a pH between 6 and 9 is neutral, therefore, the only concern is for discharges [within effluent guidelines] between pH 5 and pH 6." The commenter compares this range with that of acid rain. The commenter further states that he is "unaware of any human health hazard associated with direct contact with acid rain, and therefore, continuing to report releases between a pH of 5 and 6 provides no benefit to POTW workers."

The Agency is currently reviewing the toxicity hazards associated with phosphoric and nitric acid to determine if any modification to the EPCRA section 313 reporting requirements for these acids is appropriate. However, in response to a petition that was withdrawn, EPA has published an analysis of the hazards associated with phosphoric acid (55 FR 25876, June 25, 1990). There are also additional concerns for nitric acid. In addition to exhibiting the characteristic of acidity, nitric acid, when neutralized, exhibits the toxicity of a nitrate compound. On November 30, 1994 (59 FR 61432), EPA added a nitrate compounds category to the EPCRA section 313 list of toxic chemicals based on the toxicity of nitrate. EPA believes that water dissociable nitrate compounds meet the criteria of EPCRA section 313(d)(2)(B).

#### *B. Rationale for Delisting and Conclusions*

EPA has concluded that the assessment set out in the proposed rule should be affirmed. Specifically, hydrochloric acid aerosols meet the toxicity criteria of section 313(d)(2), while non-aerosol forms of the acid do not. EPA's decision to delete non-aerosol forms of hydrochloric acid is based on the Agency's evaluation of the toxicity of non-aerosol forms of hydrochloric acid and the levels of hydrochloric acid exposure to which humans and the environment may be subject (Ref. 1). The non-aerosol forms of hydrochloric acid are acutely toxic at low pH; however, there is no information to indicate that non-aerosol forms of hydrochloric acid present a health or environmental risk as a result of continuous, or frequently recurring, releases from facilities.

EPA has concluded that non-aerosol forms of hydrochloric acid do not meet the statutory criterion 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 acute 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 hydrochloric 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."

Rather than being dependent upon average dose over time, e.g., quantity ingested as milligrams/kilogram/day

(mg/kg/day), the chronic toxicity hazard of non-aerosol forms of hydrochloric acid is primarily dependent on the pH of the solution which is directly related to the concentration of hydrochloric acid in the solution. Only solutions of high hydrochloric acid concentration (i.e., solutions with a pH of approximately 1 or lower) express this chronic toxicity hazard. The physical and chemical properties of hydrochloric acid (Ref. 2) are such that, in the environment, highly concentrated solutions (i.e., solutions with low pH) are not anticipated to be sustained for any significant period of time, particularly in water. Therefore, concentrations of non-aerosol forms of hydrochloric acid that can express a chronic toxicity hazard are unlikely to exist in the environment, particularly in water. Because the physical and chemical properties of non-aerosol forms of hydrochloric acid limit its existence as highly concentrated solutions in the environment and because only highly concentrated solutions result in a pH low enough to cause chronic toxicity, non-aerosol forms of hydrochloric acid pose a low chronic toxicity hazard to human health. Therefore, EPA has concluded that non-aerosol forms of hydrochloric acid do not meet the chronic toxicity listing criterion 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.

As with chronic human health effects, the adverse environmental effects of non-aerosol forms of hydrochloric acid are dependent on the pH of the solution which is directly related to the concentration of hydrochloric acid in the solution. Adverse environmental effects are observed at pH levels below approximately 5.0. Based on the amount of hydrochloric acid required to maintain a pH of 5.0 or less, the non-aerosol forms of hydrochloric acid are considered to pose a moderate hazard to aquatic organisms. Given the regulatory restrictions governing handling and environmental releases of concentrated hydrochloric acid, exposures to pH levels below 5.0 are primarily a result of accidental releases. The data indicate that accidental releases of hydrochloric acid to surface waters are infrequent and isolated occurrences. In only a few circumstances could evidence of adverse environmental effects (e.g., fish kills) be found. Chronic aquatic toxicity is not expected to occur since any pH excursions are expected to dissipate rapidly due to the physical and chemical properties of non-aerosol

forms of hydrochloric acid (Ref. 2). Therefore, the environmental listing criterion, 313(d)(2)(C), is not met because the non-aerosol forms of hydrochloric acid are not known to cause nor can they 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, deleting non-aerosol forms of hydrochloric acid from the section 313 list will not result in any significant reduction in the information now available to the public concerning spills of hydrochloric 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 hydrochloric acid is available through section 313 reports or through the Toxic Release Inventory (TRI) data base, i.e., only annual release figures are available. In addition, other statutory mechanisms exist by which information on spills of hydrochloric acid will be made available to the public. These mechanisms, which are the same as for sulfuric acid, are detailed in Unit III.A. of the preamble to the Final Rule on sulfuric acid (60 FR 34183).

Therefore, EPA is modifying the listing for hydrochloric acid by deleting non-aerosol forms of hydrochloric acid. For the purposes of this deletion, EPA considers the term aerosol to cover any generation of airborne hydrochloric acid (including mists, vapors, gas, or fog) without regard to particle size. This action to delete non-aerosol forms of hydrochloric acid from the section 313 list is not meant to suggest that the Agency considers hydrochloric 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). Nor is today's action intended, or should it be inferred, to affect the status of non-aerosol forms of hydrochloric acid under any other statute or program other than the reporting requirements under EPCRA section 313.

#### *C. Reporting Aerosol Forms of Hydrochloric Acid*

For purposes of threshold determination under 40 CFR 372.25, any generation of airborne hydrochloric acid (including mists, vapors, gas, or fog) without regard to particle size, is considered manufacture of hydrochloric acid aerosols. The quantity of airborne hydrochloric acid manufactured, not the amount released, would be compared

with the reporting thresholds in EPCRA section 313(f).

Generation of airborne hydrochloric acid is expected to occur from, but is not limited to: The reaction of alkali metal chlorides (e.g., sodium chloride, potassium chloride) by strong acids (e.g., sulfuric acid); the reaction of alkali metal chlorides with sulfur dioxide in the presence of air and water; the reaction of hydrogen with chlorine; syntheses of organic compounds that require the use of chlorine or chloride-containing substances; combustion of organic chlorides or inorganic chlorides; production or processing of solutions of hydrochloric acid; and volatilization or vaporization of hydrochloric acid from manufacture or processing. EPA will be developing a guidance document to assist facilities in determining whether the facilities are manufacturing, processing or otherwise using aerosol forms of hydrochloric acid as defined under EPCRA section 313.

#### IV. Effective Date

This action becomes effective July 25, 1996, thus the last year in which facilities had to file a TRI report for non-aerosol forms of hydrochloric acid was 1995, covering releases and other activities that occurred in 1994. 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 hydrochloric 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 (June 28, 1994).

#### V. Additional Time to Report for 1995

EPA recognizes that today's action has come so close to the extended August 1, 1996, deadline for filing TRI reports for

the 1995 reporting year (see 61 FR 2721, January 29, 1996) that facilities that have not yet filed their report for hydrochloric acid may not have sufficient time to reassess their threshold determinations and release estimates based on the new reporting requirements for hydrochloric acid. Therefore, in order to avoid inaccurate and unnecessary reporting and to reduce the reporting burden associated with the filing of revised reports, EPA is allowing an additional two weeks, until August 15, 1996, for facilities to file their TRI reports for hydrochloric acid (acid aerosols). TRI Reports on hydrochloric acid (acid aerosols) for the 1995 reporting year that are filed after August 15, 1996, will be subject to EPA enforcement action, where appropriate. This 2-week extension applies only to TRI reports for hydrochloric acid; reports for all other chemicals subject to the reporting requirements of EPCRA section 313 and PPA section 6607 are still subject to the August 1, 1996 reporting deadline.

Facilities that have already filed a Form R report for hydrochloric acid covering Reporting Year 1995 may wish to either: (1) Revise this report, or (2) submit a withdrawal request if the facility did not exceed the appropriate threshold for the aerosol forms of the chemical, or (3) submit a withdrawal request if the threshold determinations were made on non-aerosol forms of hydrochloric acid only. Revisions and withdrawal requests must be submitted no later than October 15, 1996. Unless EPA receives a revision or withdrawal request by October 15, 1996, EPA will include, in the TRI under the hydrochloric acid (acid aerosols) listing, all hydrochloric acid release and waste management information as reported on each Form R received. This will include any quantities of the non-aerosol forms of hydrochloric acid that where included on a facility's Form R report.

This allowance of additional time for reporting on hydrochloric acid applies only to the EPCRA section 313/PPA section 6607 reporting obligations for TRI reports otherwise due on August 1, 1996, covering calendar year 1995. Nothing in this notice regarding extension of reporting deadlines shall be construed to apply to any other EPCRA reporting obligations, or to any TRI reports due for past or future reporting years. Further, this allowance of additional time for reporting applies only to the federal EPCRA section 313/PPA section 6607 reporting obligation; it does not apply to independent obligations under State laws which also require TRI-type reports. However, EPA encourages the States with similar

requirements that relate to federal TRI reporting to embrace this allowance of additional time.

To the extent that this action extending the reporting deadline might be construed as rulemaking subject to section 553 of the Administrative Procedure Act, for the reasons stated above, EPA has determined that notice and an opportunity for public comment are impracticable and unnecessary. Providing for public comment might further delay reporting, and, because there is no substantive change in the reporting obligation, other than allowing an additional 2 weeks, the public will continue to receive the same information, though slightly delayed. Also, public comment would not further inform EPA's decision because the event giving rise to the need to provide extra time for reporting on hydrochloric acid has already occurred. In addition, additional notice and comment procedures in this situation would be contrary to the public interest in timely and accurate reporting of data under EPCRA section 313 and PPA section 6607.

#### VI. Rulemaking Record

The record supporting this decision is contained in docket control number OPPTS-400062A. All documents, including an index of the docket and the references listed in Unit VI. of this preamble, are available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office from 12 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. 1995. Technical Support Document for the Petition to Delist Non-aerosol Forms of Hydrochloric Acid from EPCRA Section 313.
2. Brady, J.E., Humiston, G.E. General Chemistry Principles and Structure. John Wiley & Sons, New York, (1978), pp. 394-431.

#### VIII. Regulatory Assessment Requirements

It has been determined that this action is not a "significant regulatory action" within the meaning of Executive Order 12866 (58 FR 51735, October 4, 1993), because this action eliminates an existing regulatory requirement. The Agency estimates the cost savings to industry from this action to be between \$4.9 and \$7.6 million per year. The cost savings to EPA is estimated at \$135,000 to \$201,000 per year. The lower bound estimate of the total annual savings for

industry and EPA from this action is \$5,035,000 and the upper bound estimate is \$7,801,000.

This action does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). And, given its deregulatory nature, I hereby certify pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this action does not have a significant economic impact on a substantial number of small entities. As required, information to this effect has been forwarded to the Small Business Administration.

This action 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. The elimination of the information collection components for this action is expected to result in the elimination of 92,000 to 141,000 paperwork burden hours.

In addition, pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," the Agency has determined that there are no environmental justice related issues with regard to this action since this final rule simply eliminates reporting requirements for a chemical that, under the criteria of EPCRA section 313, does not pose a concern for human health or the environment.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104-121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

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

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

Dated: July 19, 1996.

**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. Sections 372.65(a) and (b) are amended by adding the parenthetical to the entry for hydrochloric acid to read "Hydrochloric acid (acid aerosols including mists, vapors, gas, fog, and other airborne forms of any particle size)" under paragraph (a) and for CAS number entry 7647-01-0 under paragraph (b).

[FR Doc. 96-18944 Filed 7-24-96; 8:45 am]

BILLING CODE 6560-50-F

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 20 and 52

[CC Docket No. 95-116; FCC 96-286]

#### Telephone Number Portability

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** On June 13, 1995, The Commission adopted a notice of proposed rulemaking (CC Docket No. 95-116) regarding telephone number portability. The First Report and Order released July 2, 1996, promulgates rules and regulations implementing the statutory requirement that local exchange carriers (LECs) provide number portability as set forth in section 251 of the Telecommunications Act of 1996 (1996 Act). The Report and Order mandates the implementation of number portability by LECs, consistent with the procompetitive goals of the Telecommunications Act of 1996. Concurrently with the adoption of the Report and Order, the Commission adopted a Further Notice of Proposed Rulemaking which is published elsewhere in this issue.

**EFFECTIVE DATE:** August 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Jason Karp, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418-1517, or Mindy Littell, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418-1394. For additional information concerning the information collections contained in this Report and Order contact Dorothy Conway at 202-418-0217, or via the Internet at [dconway@fcc.gov](mailto:dconway@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's First Report and Order adopted June 27, 1996, and released July 2, 1996. The full text of this First Report and Order is

available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be obtained through the World Wide Web, at <http://www.fcc.gov/Bureaus/CommonCarrier/Orders/fcc96286.wp>, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M St., NW., Suite 140, Washington, DC 20037. Pursuant to Section 251, the Report and Order establishes performance criteria for acceptable long-term number portability methods and requires all LECs to begin deploying number portability in the 100 largest Metropolitan Statistical Areas (MSAs) no later than October 1, 1997, and to complete deployment in those MSAs by December 31, 1998, in accordance with a phased schedule. Number portability must be provided in these areas by all LECs to all telecommunications carriers, including commercial mobile radio services (CMRS) providers. In addition, pursuant to the Commission's independent authority under sections 1, 2, 4(i) and 332 of the Communications Act of 1934, as amended, the Report and Order requires all cellular, broadband personal communications services (PCS) and covered Specialized Mobile Radio (SMR) service providers to be able to deliver calls from their networks to ported numbers anywhere in the country by December 31, 1998, and requires cellular, broadband PCS and covered SMR customers to be able to move their own numbers to other carriers by June 30, 1999. In the Report and Order, the Commission delegates responsibility to the North American Numbering Council (NANC) to oversee the initial administration of the system of regional databases which will be used by carriers to provide number portability. Pursuant to the 1996 Act, the Commission also requires LECs to provide currently available number portability measures upon specific request from another carrier until long-term number portability is available. However, the Report and Order concludes that CMRS providers need not provide such measures due to technical considerations specific to the CMRS industry. In addition, consistent with section 251(e)(2) of the Telecommunications Act of 1996, the Report and Order sets forth principles that ensure that the costs of currently available measures are borne by all telecommunications carriers on a competitively neutral basis, and permits states to utilize various cost recovery mechanisms, so long as they are

**ENVIRONMENTAL PROTECTION  
AGENCY**
**40 CFR Part 372**

[FRL-5959-7]

**Technical Amendments to  
Hydrochloric Acid; Toxic Chemical  
Release Reporting; Community Right-  
to-Know; Correction of Effective Date  
Under Congressional Review Act  
(CRA)**
**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction effective date under CRA.

**SUMMARY:** On July 25, 1996 (61 FR 38600), the Environmental Protection Agency published in the **Federal Register** a final rule modifying the listing for hydrochloric acid on the list of toxic chemicals subject to the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986, and section 6607 of the Pollution Prevention Act of 1990, which established an effective date of July 25, 1996. This document corrects the effective date of the rule to February 10, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

**EFFECTIVE DATE:** This rule is effective on February 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Angela Hofmann, OPPTS, at (202) 260-2922.

**SUPPLEMENTARY INFORMATION:**
**I. Background**

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on July 25, 1996 (61 FR 38600) by operation of law, the rule did not take effect on July 25, 1996, as stated therein. Now the EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public

procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 25, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2). Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the July 25, 1996, **Federal Register** should be penalized if they were complying with the rule as promulgated.

**II. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 25, 1996, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of

Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 10, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: January 30, 1998.

**Carol Browner,**  
Administrator.

[FR Doc. 98-3032 Filed 2-9-98; 8:45 am]

BILLING CODE 6560-50-M

**ENVIRONMENTAL PROTECTION  
AGENCY**
**40 CFR Part 721**

[FRL-5959-5]

**Technical Amendments to  
Cyclohexanecarbonitrile, 1,3,3-  
trimethyl-5-oxo; Revocation of a  
Significant New Use Rule; Correction  
of Effective Date Under Congressional  
Review Act (CRA)**
**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction of effective date under CRA.

**SUMMARY:** On June 27, 1996 (61 FR 33373), the Environmental Protection Agency published in the **Federal Register** a final rule revoking a significant new use rule promulgated under section 5(a)(2) of the Toxic Substances Control Act for cyclohexanecarbonitrile, 1,3,3-trimethyl-5-oxo- based on receipt of new data, which established an effective date of July 29, 1996. This document corrects the effective date of the rule to February 10, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

**EFFECTIVE DATE:** This rule is effective on February 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Angela Hofmann, OPPTS, at (202) 260-2922.

**SUPPLEMENTARY INFORMATION:**
**I. Background**

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the

EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no federal mandates for state, local or tribal governments or the private sector. The Act excludes from the definition of a "federal mandate" duties that arise from participation in a voluntary federal program, except in certain cases where a "federal intergovernmental mandate" affects an annual federal entitlement program of \$500 million or more that are not applicable here. The Kansas request for approval of revisions to its authorized hazardous waste program is voluntary and imposes no federal mandate within the meaning of the Act. Rather, by having its hazardous waste program approved, the state will gain the authority to implement the program within its jurisdiction, in lieu of the EPA thereby eliminating duplicative state and federal requirements. If a state chooses not to seek authorization for administration of a hazardous waste program under RCRA Subtitle C, RCRA regulation is left to the EPA.

In any event, the EPA has determined that this rule does not contain a federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The EPA does not anticipate that the approval of the Kansas hazardous waste program referenced in today's notice will result in annual costs of \$100 million or more. The EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector since the state, by virtue of the approval, may now administer the program in lieu of the EPA and exercise primary enforcement. Hence, owners and operators of treatment, storage, or disposal facilities (TSDFs) generally no longer face dual federal and state compliance requirements, thereby reducing overall compliance costs. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

The EPA has determined that this rule contains no regulatory requirements that

might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR Parts 264, 265, and 270 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once the EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs under the approved state program, in lieu of the federal program.

#### *Certification Under the Regulatory Flexibility Act*

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. The EPA recognizes that small entities may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, since such small entities which own and/or operate TSDFs are already subject to the requirements in 40 CFR Parts 264, 265 and 270, this authorization does not impose any additional burdens on these small entities. This is because the EPA's authorization would result in an administrative change (i.e., whether the EPA or the state administers the RCRA Subtitle C program in that state), rather than result in a change in the substantive requirements imposed on small entities. Once the EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small entities will be able to own and operate their TSDFs under the approved state program, in lieu of the federal program. Moreover, this authorization, in approving a state program to operate in lieu of the federal program, eliminates duplicative requirements for owners and operators of TSDFs in that particular state.

Therefore, the EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively approves the Kansas program to operate in lieu of the federal program, thereby eliminating duplicative requirements for handlers of

hazardous waste in the state. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

#### *Submission to Congress and the General Accounting Office*

Under Section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by Section 804(2) of the APA as amended.

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

#### **List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This rulemaking is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended [42 U.S.C. 6912(a), 6926, 6974(b)].

Dated: July 17, 1996.

#### **Dennis Grams,**

*Regional Administrator.*

[FR Doc. 96-19086 Filed 7-26-96; 8:45 am]

BILLING CODE 6560-50-P

#### **40 CFR Part 372**

[OPPTS-400096A; FRL-5372-6]

#### **Diethyl Phthalate; Toxic Chemical Release Reporting; Community Right-to-Know**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is deleting diethyl phthalate (DEP) from the list of chemicals subject to the reporting requirements under section 313 of the Emergency Planning and Community

Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). Specifically, EPA is deleting DEP because the Agency has concluded that DEP meets the deletion criterion of EPCRA section 313(d)(3). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of and other waste management information on DEP that occurred during the 1995 reporting year, and for activities in the future.

**DATES:** This rule is effective July 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Daniel R. Bushman, Acting Petitions Coordinator, 202-260-3882, e-mail: bushman.daniel@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. Affected Entities*

Entities potentially affected by this action are those which manufacture, process, or otherwise use diethyl phthalate (DEP) and which are subject to the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023 and section 6607 of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13106. Some of the affected categories and entities include:

Category	Examples of affected entities
Industry	Facilities that produce soaps, detergents, cleaners, perfumes, cosmetics, other toilet preparations, unsupported film and sheet plastics, other plastic products, and miscellaneous industrial organic chemicals.
Federal Government	Federal Agencies that manufacture, process, or otherwise use DEP.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is 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.

*B. Statutory Authority*

This action is taken under sections 313(d) and (e)(1) of EPCRA. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-9499).

*C. 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 PPA. Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. DEP was included in the initial list of chemicals and 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 (3) criteria for adding and deleting chemicals from the section 313 toxic chemical list (59 FR 61432, November 30, 1994) (FRL-4922-2).

**II. Description of Petition and Proposed Action**

On February 7, 1995, the Fragrance Materials Association petitioned the Agency to delete DEP (Chemical Abstract Service (CAS) Registry No. 84-66-2) from the EPCRA section 313 list of toxic chemicals. The petitioner contends that DEP, which is mainly used as a plasticizer, should be deleted from the EPCRA section 313 list because it does not meet any of the EPCRA section 313(d)(2) criteria.

Following a review of the petition, EPA granted the petition and issued a proposed rule in the **Federal Register** of September 5, 1995 (60 FR 46076) (FRL-4970-5) proposing to delete DEP from the list of chemicals subject to the reporting requirements under EPCRA section 313. EPA's proposal was based on its preliminary conclusion that DEP meets the deletion criteria of EPCRA section 313(d)(3). With respect to deletions, 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))." In the proposed rule, EPA preliminarily concluded that the available toxicological data indicates that DEP does not cause adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility cite boundaries, and causes systemic, developmental, and reproductive toxicities only at relatively high doses and thus has low chronic toxicity. Furthermore, EPA preliminarily concluded that DEP exhibits low toxicity to aquatic organisms, and is not likely to bioconcentrate. EPA also preliminarily concluded that releases of DEP will not result in exposures of concern. Therefore, EPA preliminarily concluded that based on the total weight of available data, DEP cannot reasonably be anticipated to cause a significant adverse effect on human health or the environment.

**III. Final Rule and Rationale for Delisting**

In response to the petition from the Fragrance Materials Association, EPA is deleting DEP from the list of chemicals for which reporting is required under EPCRA section 313 and PPA section 6607. EPA is delisting this chemical because the Agency has determined that DEP satisfies the delisting criterion of EPCRA section 313(d)(3).

### A. Response to Comments

EPA received four comments in response to the proposed rule, all in support of the proposed deletion. EPA agrees with the commenters that DEP satisfies the criterion for delisting. One commenter requests that EPA make this action effective as of the date of the proposal, September 5, 1995, in order for the deletion to apply for the 1995 reporting year. While this action is effective as of the date of publication of this final rule, not the date of the proposal, EPA agrees that DEP should not be reported for the 1995 calendar year. As discussed in Unit IV. of this preamble, reporting for DEP is not required for the 1995 reporting year, covering activities and releases which occurred in 1995.

### B. Rationale for Delisting and Conclusions

EPA has concluded that the assessment set out in the proposed rule should be affirmed. Further, because of questions raised recently about the ability of phthalates to produce hormone disruption, EPA has looked at this issue as it relates to DEP. While EPA is aware of limited and preliminary *in vitro* data indicating that some phthalates bind/activate estrogen receptors at high concentrations, EPA has not located any such information on DEP. Further, for those few phthalates tested *in vitro*, there is no indication that any common structural feature of these compounds is responsible for the observed activity. In addition, EPA is not aware of any data that demonstrate that DEP produces estrogenic effects *in vivo*. Accordingly, EPA has determined that there is insufficient evidence, at this time, to demonstrate that DEP causes hormone disruption. In summary, based on the total weight of available data, EPA has concluded that DEP cannot reasonably be anticipated to cause a significant adverse effect on human health or the environment, and therefore DEP meets the delisting criterion of 313(d)(3). A more detailed discussion of the rationale for delisting is given in the proposed rule (60 FR 46076, September 5, 1995) (FRL-4970-5).

Based on current data, EPA concludes that DEP does not meet the toxicity criterion of EPCRA section 313(d)(2)(A) because DEP exhibits acute oral toxicity only at levels that greatly exceed estimated exposures outside the facility. Specifically, DEP cannot 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."

EPA has concluded that there is not sufficient evidence to establish that DEP meets the criterion of EPCRA section 313(d)(2)(B). The lowest-observed-adverse-effect-level (LOAEL) for systemic toxicity is 3,160 milligrams/kilogram/day (mg/kg/day) and the no-observed-adverse-effect-level (NOAEL) is 750 mg/kg/day. The LOAEL for developmental toxicity is 3,210 mg/kg/day and the NOAEL is 1,910 mg/kg/day. The NOAEL for reproductive toxicity is approximately 3,750 mg/kg/day, which was the highest dose tested. EPA has no information indicating that DEP causes any other section 313(d)(2)(B) effects. EPA considers the above doses where DEP caused adverse effects to be relatively high and concludes that DEP has low chronic toxicity. Therefore, EPA conducted an exposure assessment for chronic human exposure and found that exposure to DEP at the estimated levels is not likely to result in adverse health risks in humans. EPA has estimated that releases of DEP will not result in exposures of concern. Therefore, EPA has concluded that DEP does not meet the EPCRA section 313(d)(2)(B) listing criterion.

EPA has also concluded that DEP does not meet the toxicity criterion of EPCRA section 313(d)(2)(C) because it cannot reasonably be anticipated to cause adverse effects on the environment of sufficient seriousness to warrant continued reporting. DEP exhibits low toxicity to aquatic organisms (fish 96 hr median lethal concentration (LC<sub>50</sub>), 12 to 100 milligrams/liter (mg/l); daphnid 48 hr LC<sub>50</sub>, 50 to 90 mg/l; and algae 96 hr median effective concentration (EC<sub>50</sub>), 30 to 86 mg/l, and is not likely to bioconcentrate.

Thus, in accordance with EPCRA section 313(d)(3), EPA is deleting DEP from the section 313 list of toxic chemicals. Today's action is not intended, and should not be inferred, to affect the status of DEP under any other statute or program other than the reporting requirements under EPCRA section 313.

### IV. Effective Date

This action becomes effective July 29, 1996. Thus, the last year in which facilities had to file a Toxic Release Inventory (TRI) report for DEP was 1995, covering releases and other activities that occurred in 1994.

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 DEP, 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 (June 28, 1994).

### V. Rulemaking Record

The record supporting this decision is contained in docket control number OPPTS-400096A. 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 12 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.

### VI. Regulatory Assessment Requirements

It has been determined that this action is not a "significant regulatory action" within the meaning of Executive Order 12866 (58 FR 51735, October 4, 1993), because this action eliminates an existing regulatory requirement. The Agency estimates the total cost savings to industry from this action to be \$124,000 per year. The cost savings to EPA is estimated at \$3,000 per year.

This action does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). And, given its deregulatory nature, I hereby certify pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this action does not have a significant economic impact on a substantial number of small entities. As required, information to this effect has been forwarded to the Small Business Administration.

This action 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. The elimination of the information collection components for this action is expected to result in the elimination of 2,305 paperwork burden hours.

In addition, pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," the Agency has determined that there are no environmental justice related issues with regard to this action since this final rule simply eliminates reporting requirements for a chemical that, under the criteria of EPCRA section 313, does not pose a concern for human health or the environment.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104-121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

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

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

Dated: July 19, 1996.

**Lynn R. Goldman,**

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

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

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

**Authority:** 42 U.S.C. 11013 and 11028.

#### § 372.65 [Amended]

Sections 372.65(a) and (b) are amended by removing the entire entry for diethyl phthalate under paragraph (a) and removing the entire CAS No. entry for 84-66-2 under paragraph (b).

[FR Doc. 96-19075 Filed 7-26-96; 8:45 am]

BILLING CODE 6560-50-F

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Chapter 201

[FIRMR Amendment 9]

RIN 3090-AG04

#### Removal of Chapter 201, Federal Information Resources Management Regulation, From Title 41—Public Contracts and Property Management

**AGENCY:** Office of Policy, Planning and Evaluation, GSA.

**ACTION:** Final rule.

**SUMMARY:** This amendment removes Chapter 201, Federal Information Resources Management Regulation (FIRMR), from Title 41—Public Contracts and Property Management. This action is necessary because the Information Technology Management Reform Act of 1996, (Pub. L. 104-106) effectively removes most of the statutory basis for the FIRMR after August 7, 1996.

**EFFECTIVE DATE:** August 8, 1996.

**FOR FURTHER INFORMATION CONTACT:** R. Stewart Randall, GSA, Office of Policy, Planning and Evaluation, Strategic IT Analysis Division (MKS), 18th and F Streets, NW., Room 3224, Washington, DC 20405, telephone FTS/Commercial (202) 501-4469 (v) or (202) 501-0657 (tdd), or Internet (steward.randall@gsa.gov).

**SUPPLEMENTARY INFORMATION:** (1) The President signed S. 1124, the National Defense Authorization Act (NDAA) For Fiscal Year 1996, (Pub. L. 104-106) on February 10, 1996. Included in the NDAA was Division E, the Information Technology (IT) Management Reform Act of 1996. Section 5105 of the said Act repeals section 111 of the Federal Property and Administrative Services Act of 1949, as amended (the Brooks Act) (40 U.S.C. 759). The Brooks Act was the authority for most of the provisions in the GSA's Federal Information Resources Management Regulation so that the Brooks Act repeal effectively removes most of the statutory basis for the FIRMR. Any FIRMR provisions that are still needed, such as those regarding records management, are being removed from the FIRMR and are being reestablished as appropriate.

(2) GSA has determined that this rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993, because it is not likely to result in any of the impacts noted in Executive Order 12866, affect the rights of specified individuals, or raise issues arising from the policies of the Administration. GSA has based all

administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

#### List of Subjects in 41 CFR Parts 201-1 Through 201-39

Archives and records, Computer technology, Federal information processing resources activities, Government procurement, Government property management, Records management, Telecommunications.

#### CHAPTER 201—FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATION—[REMOVED AND RESERVED]

Accordingly, under the authority of 40 U.S.C. 486(c) and 751(f), Chapter 201 is removed and reserved.

Dated: July 17, 1996.

**David J. Barram,**

*Acting Administrator of General Services.*

[FR Doc. 96-19184 Filed 7-26-96; 8:45 am]

BILLING CODE 6820-25-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Chapter I

[CC Docket No. 96-21, FCC 96-313]

#### Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final Rule; change of effective date.

**SUMMARY:** In this Order on Reconsideration, the Commission advances the effective date of its recently released Report and Order concerning Bell operating company provision of domestic, out-of-region, interstate, interexchange services. In the Matter of Out-of-Region Interstate, Interexchange Services, CC Docket No. 96-21, FCC 96-288 (rel. July 1, 1996) (*Interim BOC Out-of-Region Order*). The effective date as specified in that *Interim BOC Out-of-Region Order* was thirty days after its publication in the **Federal Register**, which is August 8, 1996. To further facilitate the efficient and rapid provision of such services by the BOC as contemplated by the Telecommunications Act of 1996, the Order on Reconsideration advances the

CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under the docket number [PP4F4291/R2265] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule: (1) Having an annual effect on the economy of \$100 million

or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

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

Pursuant to the requirements of the Regulatory Flexibility Act, under section 801(a) (1) (A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104-121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended (5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A statement explaining the factual basis for this certification was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

In addition, this action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Reform Act of 1995 (Pub. L. 104-4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled *Enhancing the Intergovernmental Partnership*, or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 25, 1996.

**Daniel M. Barolo,**  
*Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. By amending § 180.418 in the table therein, by removing the entry for cabbage and by adding and alphabetically inserting the following raw agricultural commodities to read as follows:

**§ 180.418 Cypermethrin; tolerances for residues.**

Commodities	Parts per million
Brassica head and stem .....	2.0
* * * *	*
Leafy brassica .....	14.0
* * * *	*

[FR Doc. 96-19458 Filed 7-30-96; 8:45 am]  
BILLING CODE 6560-50-F

**40 CFR Part 372**

[OPPTS-400095A; FRL-5389-6]

**Di-(2-ethylhexyl) Adipate; Toxic Chemical Release Reporting; Community Right-to-Know**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is deleting di-(2-ethylhexyl) adipate (DEHA) (CAS No. 103-23-1), also known as bis(2-ethylhexyl) adipate, from the list of chemicals subject to reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). Specifically, EPA is deleting DEHA because the Agency has concluded that DEHA meets the deletion criteria of EPCRA section 313(d)(3). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of and other waste management information on DEHA that occurred during the 1995 reporting year, and for activities in the future.

**EFFECTIVE DATE:** This rule is effective July 31, 1996.

**FOR FURTHER INFORMATION CONTACT:** Daniel R. Bushman, Acting Petitions Coordinator, 202-260-3882, e-mail: bushman.daniel@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 Information Hotline, Environmental Protection Agency, Mail Stop 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. Affected Entities*

Entities potentially affected by this action are those which manufacture, process, or otherwise use di-(2-ethylhexyl) adipate (DEHA) and which are subject to the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023 and section 6607 of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13106. Some of the affected categories and entities include:

Category	Examples of affected entities
Industry	Facilities that compound, shape, or manufacture plastic and rubber products. Metal working industries including foundries, automotive plants, coating and engraving shops, and metal products companies. Firms that formulate or produce adhesives and sealants; lubricants for jet engines; pharmaceuticals, perfumes, and cosmetics; and other organic chemicals.
Federal Government	Federal Agencies that manufacture, process, or otherwise use DEHA.

This table is not meant to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected.

To determine whether your facility is 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.

*B. Statutory Authority*

This action is taken under sections 313(d) and (e)(1) of EPCRA. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 9909-499).

*C. 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 PPA. Section 313 of EPCRA established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. DEHA was included in the initial list of chemicals and 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 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 compounds category. EPA has published a statement clarifying its interpretation of the section 313(d)(2) and (3) criteria for adding and deleting chemicals from the section 313 toxic chemical list (59 FR 61439, November 30, 1994) (FRL-4922-2).

**II. Description of Petition and Proposed Action**

On January 18, 1995, EPA received a petition from the Chemical Manufacturers Association (CMA) to exclude DEHA from the EPCRA section 313 list of toxic chemicals. Specifically, the petition requests that DEHA be

deleted from the list of reportable chemicals and not be subject to the annual reporting requirements under EPCRA section 313 and section 6607 of PPA. The petitioner contends that DEHA should be deleted from the EPCRA section 313 list because it does not meet any of the EPCRA section 313(d)(2) criteria.

Following a review of the petition, EPA granted the petition and issued a proposed rule in the **Federal Register** of August 1, 1995 (60 FR 39132) (FRL-4958-8), proposing to delete DEHA from the list of toxic chemicals subject to the reporting requirements under EPCRA section 313. EPA's proposal was based on its preliminary conclusion that DEHA meets the EPCRA section 313(d)(3) criteria for deletion from the list. With respect to deletions, 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)]." In the proposed rule, EPA preliminarily concluded that the available toxicological data indicates that DEHA does not cause adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries, and causes systemic, developmental, and reproductive toxicities only at relatively high doses and thus has low chronic toxicity. Furthermore, EPA preliminarily concluded that DEHA does not pose a significant hazard to the environment. EPA also preliminarily concluded that releases of DEHA will not result in exposures of concern. Therefore, EPA preliminarily concluded that based on the total weight of available data, DEHA cannot reasonably be anticipated to cause a significant adverse effect on human health or the environment.

**III. Final Rule and Rationale for Delisting**

In response to the petition from CMA, EPA is deleting DEHA from the list of chemicals for which reporting is required under section 313 of EPCRA and PPA section 6607. EPA is delisting this chemical because the Agency has determined that DEHA satisfies the delisting criteria of EPCRA section 313(d)(3).

*A. Response to Comments*

EPA received three comments in response to the proposed rule. All three of the commenters noted their support for the deletion of DEHA from the EPCRA section 313 list. EPA agrees with the commenters that DEHA satisfies the criterion for delisting.

### B. Rationale for Delisting and Conclusions

EPA has concluded that the assessment set out in the proposed rule should be affirmed. Because of questions raised recently about the ability of DEHA to produce hormone disruption, EPA has looked at this issue. EPA is aware of limited and preliminary *in vitro* data indicating that DEHA reduced the binding of the tritiated natural estrogen, 17 $\beta$ -estradiol, to the rainbow trout estrogen receptor (Ref. 1). However, these results were obtained only at high concentrations and indicated that DEHA's potential binding activity is very weak compared to the estradiol. In addition, EPA is not aware of any data that demonstrate that DEHA produces estrogenic effects *in vivo*. The *in vivo* toxicity data on DEHA, discussed below, also indicate that DEHA is a weak developmental and reproductive toxicant. However, at this time, there is no indication that these effects are due to binding to the estrogen receptor. Accordingly, EPA has determined that there is insufficient evidence, at this time, to demonstrate that DEHA causes hormone disruption. In summary, based on the total weight of available data, EPA has concluded that DEHA cannot reasonably be anticipated to cause a significant adverse effect on human health or the environment, and therefore DEHA meets the delisting criterion of section 313(d)(3). A more detailed discussion of the rationale for delisting is given in the proposed rule (August 1, 1995, 60 FR 39134) (FRL-4958-8).

Based on current data, EPA concludes that DEHA does not meet the toxicity criterion of EPCRA section 313(d)(2)(A) because DEHA exhibits acute oral toxicity only at levels that greatly exceed estimated exposures outside the facility. Specifically, DEHA cannot 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."

EPA has concluded that there is not sufficient evidence to establish that DEHA meets the criterion of EPCRA section 313(d)(2)(B). The lowest-observed-adverse-effect-level (LOAEL) for systemic toxicity, in rats, is 1,125 milligrams/kilogram/day (mg/kg/day) for both chronic and 13-week studies. In mice, the LOAELs ranged from 2,800 mg/kg/day (chronic study) to 900 mg/kg/day (13-week study). Also, based on limited data, the LOAEL for developmental toxicity is 1,080 mg/kg/

day and the no-observed-adverse-effect-level (NOAEL) is 170 mg/kg/day. Based on limited data, the LOAEL and NOAEL for reproductive toxicity are 1,080 and 170 mg/kg/day. EPA has no information indicating that DEHA causes any other section 313(d)(2)(B) effects. EPA considers the above doses where DEHA caused adverse effects to be relatively high and concludes that DEHA has low chronic toxicity. Therefore, EPA conducted an exposure assessment for chronic human exposure and found that exposures at the estimate levels are not likely to result in adverse health risks in humans. EPA has estimated that releases of DEHA will not result in exposures of concern. Therefore, EPA has concluded that DEHA does not meet the EPCRA section 313(d)(2)(B) listing criterion.

EPA has also concluded that DEHA does not meet the toxicity criterion of EPCRA section 313(d)(2)(C) because it cannot reasonably be anticipated to cause adverse effects on the environment of sufficient seriousness to warrant continued reporting. EPA considers DEHA to exhibit low toxicity to aquatic organisms. Based on structure activity relationships (SARs), no toxic effects are anticipated for both freshwater and saltwater species at saturation. For sediment species, acute and chronic toxicity are expected to occur only at high concentrations: 1,000 and 100 mg/kg (dry weight), respectively. Therefore, DEHA is not expected to pose a significant hazard to the environment.

Thus, in accordance with EPCRA section 313(d)(3), EPA is deleting DEHA from the section 313 list of toxic chemicals. Today's action is not intended, and should not be inferred, to affect the status of DEHA under any other statute or program other than the reporting requirements under EPCRA section 313 and PPA section 6607.

### IV. Effective Date

This action becomes effective July 31, 1996. Thus, the last year in which facilities had to file a Toxics Release Inventory (TRI) report for DEHA was 1995, covering releases and other activities that occurred in 1994.

EPCRA section 313(d)(4) provides that "[a]ny revision" to the section 313 list of toxic chemicals shall take effect on a delayed basis. EPA interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list. For deletions, EPA may, in its discretion, make such actions immediately effective. An immediate effective date is authorized, in these circumstances, under 5 U.S.C. section 553(d)(1) because a deletion

from the section 313 list relieves a regulatory restriction.

EPA believes that where the Agency had determined, as it has with this chemical, 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 (June 28, 1994).

### V. Rulemaking Record

The record supporting this final rule is contained in docket control number OPPTS-400095A. All documents, including an index of the docket and the reference listed in Unit VI. of this preamble, are available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, from 12 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.

### VI. References

1. Jobling, S., Reynolds, T., White, R., Parker, M. G., Sumpter, J. P., "A Variety of Environmentally Persistent Chemicals, Including Some Phthalate Plasticizers Are Weakly Estrogenic," *Environmental Health Perspectives*, 103, (1995), pp. 582-587.

### VII. Regulatory Assessment Requirements

It has been determined that this action is not a "significant regulatory action" within the meaning of Executive Order 12866 (58 FR 51735, October 4, 1993), because this action eliminates an existing regulatory requirement. The Agency estimates the total cost savings to industry from this action to be approximately \$322,620 and the savings to EPA would be approximately \$8,664.

This action does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 1041). Also, given its deregulatory nature, I hereby certify pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this action does not have a significant economic impact on a substantial number of small entities. As required, information to this effect has been

forwarded to the Small Business Administration.

This action 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.* The elimination of the information collection components for this action is expected to result in the elimination of 6,383 paperwork reduction hours.

In addition, pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," the Agency has determined that there are no environmental justice-related issues with regard to this action since this final rule simply eliminates reporting requirements for a chemical that, under the criteria of EPCRA section 313, does not pose a concern for human health or the environment.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104-121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

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

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

Dated: July 25, 1996.

**Lynn R. Goldman,**

*Assistant Administrator for 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. Sections 372.65(a) and (b) are amended by removing the entry for bis(2-ethylhexyl) adipate under paragraph (a) and the entire CAS number entry for 103-23-1 under paragraph (b).

[FR Doc. 96-19452 Filed 7-31-96; 8:45 am]

BILLING CODE 6560-50-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Part 95

RIN 0970-AB46

#### Reduction of Reporting Requirements for the State Systems Advance Planning Document (APD) Process

**AGENCY:** Administration for Children and Families, HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule decreases the reporting burden on States relative to the State systems advance planning document (APD) process by increasing the threshold amounts above which APDs and related procurement documents need to be submitted for Federal approval. The APD process is the procedure by which States obtain approval for Federal financial participation in the cost of acquiring automatic data processing equipment and services. Additionally, this rule eliminates the requirement for State submittal of biennial security plans for Federal review.

**EFFECTIVE DATE:** July 31, 1996.

**FOR FURTHER INFORMATION CONTACT:** Bill Davis, State Systems Policy Staff, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone (202) 401-6404.

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3507), information collection requirements relating to automated data processing and information retrieval systems have been approved by OMB Approval No. 0992-0005. The provisions of this rule do not contain any additional reporting and/or recordkeeping requirements subject to OMB approval.

##### Statutory Authority

These regulations are published under the general authority of sections 402(a)(5), 452(a)(1), 1902(a)(4), and 1102 of the Social Security Act (the Act).

##### Background and Description of Regulatory Provisions

State public assistance agencies acquire automatic data processing (ADP) equipment and services for computer operations which support the Aid to Families with Dependent Children, Adult Assistance, Child Support Enforcement, Medicaid, Child Welfare, Foster Care and Adoption Assistance,

Job Opportunities and Basic Skills Training (JOBS), and Refugee Resettlement programs. Conditions and procedures for acquiring such systems are found at 45 CFR part 95. To reduce the reporting burden on States and to provide better use of Federal resources, we issued a notice of proposed rulemaking revising these requirements which was published in the **Federal Register** July 24, 1995 (60 FR 37858). We received 23 letters of public comment regarding the proposed rule from State agencies and other interested parties. Specific comments and responses follow the discussion of regulatory provisions. These comments did not generate any changes to the regulatory provisions outlined in the proposed rule.

Currently any competitive acquisition over \$500,000 or any sole source acquisition over \$100,000 in total State and Federal costs which will be matched at the regular Federal financial participation (FFP) rate, as defined in Section 95.605 of these rules, requires written prior approval of an APD. Project cost increases of more than \$300,000 require the submission of an APD Update. Also, most procurement documents (Request for Proposals (RFPs) and contracts) over \$300,000, and contract amendments over \$100,000 must be approved by the Federal funding agencies.

As a first step toward reducing the reporting burden on States and improving the use of Federal resources, we are raising the threshold amounts for regular match acquisitions. We will continue to require written prior approval for all equipment and services acquired at an enhanced matching rate.

Accordingly, these rules revise 45 CFR 95.611(a)(1), which provides that States must obtain prior written approval for ADP equipment or services anticipated to have total acquisition costs of \$500,000 or more in Federal and State funds, to increase the \$500,000 threshold amount to \$5 million or more. Similarly, paragraph (a)(4), which requires prior written approval with respect to State plans to acquire noncompetitively from a non-government source, ADP equipment and services, with a total acquisition cost of greater than \$100,000, is revised to require that a State obtain prior written approval of its justification for a sole source acquisition with total State and Federal costs of more than \$1 million but no more than \$5 million and to provide that noncompetitive acquisitions of greater than \$5 million continue to be subject to the requirements of paragraph (b), which

designed to provide greater flexibility only to the OSi Specialties, Inc., Sistersville Plant, and did not impose or remove additional regulatory requirements on other regulated entities.

#### List of Subjects in 40 CFR Parts 264 and 265

Environmental protection, Air pollution control, Control device, Hazardous waste, Monitoring, Reporting and recordkeeping requirements, Surface impoundment, Treatment storage and disposal facility, Waste determination.

Dated: April 16, 1998.

**Carol M. Browner,**  
Administrator.

Accordingly, 40 CFR Chapter I is amended as follows:

#### PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6924, and 6925.

#### Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

##### § 264.1080 [Amended]

2. Section 264.1080 is amended by removing paragraphs (f) and (g).

#### PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 265 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

#### Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

##### § 265.1080 [Amended]

4. Section 265.1080 is amended by removing paragraphs (f) and (g).

[FR Doc. 98-10861 Filed 4-21-98; 8:45 am]

BILLING CODE 6560-50-M

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 372

[OPPTS-400082D; FRL-5785-5]

#### Deletion of Certain Chemicals; Toxic Chemical Release Reporting; Community Right-to-Know

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

**ACTION:** Final rule.

**SUMMARY:** EPA is today amending its regulations to delete several chemicals and chemical categories from the list of chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). This action is being taken to comply with a January 12, 1998 order from the United States District Court for the District of Columbia. Because this action is being taken to conform the regulations to the court's order, notice and comment are not required, and this rule is effective immediately.

**EFFECTIVE DATE:** This rule is effective April 22, 1998.

**FOR FURTHER INFORMATION CONTACT:** Daniel R. Bushman, Petitions Coordinator, 202-260-3882 or e-mail: bushman.daniel@epamail.epa.gov. For specific information regarding this document or for further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Information 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:** In the **Federal Register** of November 30, 1994 (59 FR 61432) (FRL-4922-2), EPA issued a final rule entitled "Addition of Certain Chemicals; Toxic Chemical Release Reporting; Community Right-to-Know" under section 313(d) of EPCRA, 42 U.S.C. 11023(d). That rule added 286 chemicals and chemical categories (hereinafter collectively "chemicals") to the list of toxic chemicals subject to reporting under section 313 of EPCRA, 42 U.S.C. 11023, and section 6607 of the PPA, 42 U.S.C. 13106(a).

The Chemical Manufacturers Association (CMA) and several other plaintiffs filed suits challenging various aspects of the rule in the United States District Court for the District of Columbia. During the pendency of those cases, EPA and CMA entered into an agreement whereby EPA consented to

the remand and vacatur of dimethyldichlorosilane, methyltrichlorosilane, and trimethylchlorosilane (hereinafter collectively "chlorosilanes") which had been added by the rule. An order to that effect was issued by the District Court. Subsequently, the court granted summary judgment in favor of EPA on all remaining issues raised in the cases. See *National Oilseed Processors Ass'n, et al. v. Browner*, 924 F. Supp. 1193 (D.D.C. 1996).

On appeal, the Court of Appeals for the District of Columbia Circuit upheld the lower court's decision on all issues except EPA's listing of 2,6-dimethylphenol (DMP) and 2-bromo-2-nitropropane-1,3-diol (Bronopol). See *Troy Corp., et al. v. Browner*, 120 F.3d 277 (D.C. Cir. 1997). As to those chemicals, by order dated December 16, 1997 the court remanded the District Court's decision with instructions to remand EPA's action to the Agency for further proceedings consistent with the Court of Appeals' ruling. On CMA's motion, the District Court then issued a January 12, 1998 order (*Chemical Manufacturers Association v. Browner, et al.*, No. 1:95CV01673) vacating the listing of DMP and Bronopol, and directing EPA to publish a notice removing chlorosilanes, DMP, and Bronopol from the EPCRA section 313 list of reportable toxic chemicals.

Accordingly, EPA is issuing this final rule revising the EPCRA section 313 list of reportable chemicals in 40 CFR 372.65 to delete chlorosilanes, DMP, and Bronopol. Under 5 U.S.C. 553(b)(3)(A), the notice-and-comment requirements of the Federal Administrative Procedure Act (5 U.S.C. 551-706) do not apply where the Agency "for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Because the District Court's orders vacate the listing of chlorosilanes, DMP, and Bronopol thus rendering those listings without effect, and because this action is being taken merely to comply with the court's direction and to amend the regulations so that they reflect the present legal status of those chemicals, EPA hereby finds that notice and comment on this action are unnecessary.

This action is effective immediately upon publication in the **Federal Register**. Under 5 U.S.C. 553(d)(3), 30-day advance notice of a rule is not required where the Agency provides otherwise for good cause. EPA finds that good cause for an immediate effective date exists in this case, because as explained above this rule merely amends the EPCRA section 313 list of

reportable toxic chemicals to reflect the present legal status of the chemicals addressed in this final rule.

Since this action does not contain any requirements, it does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). For the same reason, it does not require any review under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). In addition, since this action does not require a proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

The deletion of these chemicals from the EPCRA section 313 list will reduce the overall reporting and recordkeeping burden estimate provided for EPCRA section 313, but this action does not require any review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* until EPA decides to subtract the total burden eliminated by today's action from the EPCRA section 313 overall burden approved by OMB. At some point in the future, EPA will determine the total EPCRA section 313 burden associated with the chemicals being deleted today, and will complete the required Information Collection Worksheet to adjust the total EPCRA section 313 estimate. The reporting and recordkeeping burdens associated with EPCRA section 313 are approved by OMB under OMB No. 2070-0093 (EPCRA section 313 base program and Form R, EPA ICR No. 1363) and under OMB No. 2070-0145 (Form A, EPA ICR No. 1704). The current public reporting burden for EPCRA section 313 is estimated to average 61.3 hours for a Form R submitter and 34.5 hours for a Form A submitter. These estimates include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, including suggestions for reducing this burden, to Chief, Information Policy Branch, Mail Code 2137, U.S. Environmental Protection Agency, 401 M St., SW., Washington,

DC 20460. Please do not send your completed forms to this address.

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. However, section 808 of that Act provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of April 22, 1998. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

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

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

Dated: April 13, 1998.

**Lynn R. Goldman,**

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

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

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

**Authority:** 42 U.S.C. 11013 and 11028.

#### § 372.65 [Amended]

2. Section 372.65 is amended by deleting the entries for 2-bromo-2-nitropropane-1,3-diol, dimethyldichlorosilane, 2,6-dimethylphenol, methyltrichlorosilane, and trimethylchlorosilane under paragraph (a), and deleting the entire CAS No. entries for 52-51-7, 75-77-4, 75-78-5, 75-79-6, and 576-26-1 under paragraph (b).

[FR Doc. 98-10712 Filed 4-21-98; 8:45 am]

BILLING CODE 6560-50-F

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Parts 571 and 589

[Docket No. NHTSA-98-3421]

RIN 2127-AB85

### Federal Motor Vehicle Safety Standards; Head Impact Protection

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Denial of petitions for reconsideration.

**SUMMARY:** This document denies petitions for reconsideration submitted by the American Automobile Manufacturers Association (AAMA) and ASC, Incorporated (ASC). On April 8, 1997, NHTSA published a final rule amending provisions in Standard No. 201, Head Impact Protection, relating to upper interior head impact protection. The amendments revised and clarified test procedures, added an optional compliance phase-in plan, allowed carry-forward credits to facilitate compliance, and excluded small buses from the Standard's upper interior impact protection requirements. ASC's petition stated the company's concerns about the impact of the final rule on the integrated convertible roof and frame designs and requested a further amendment to the definition of "convertible roof frame system." AAMA's petition requested that NHTSA reconsider and modify the final rule in reference to approach angles, moveable side glazing, multiple impacts, the procedure for locating CG-F (a reference point corresponding to the location of a front seat occupant's head), and the definition of "forehead impact zone."

**DATES:** *Petition Date:* Any petitions for reconsideration of this denial must be received by NHTSA no later than June 8, 1998.

**ADDRESSES:** Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For legal issues: Mr. Otto Matheke, Office of the Chief Counsel, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Matheke's telephone number is (202) 366-5253. His facsimile number is (202) 366-3820. For non-legal issues: Dr. William Fan, Office of Crashworthiness Standards, NPS-11, Dr. Fan's telephone