

ACTION: Final rule in response to court order.

SUMMARY: This action removes a provision of a final rule concerning emission limitations for the second phase of the Nitrogen Oxides Reduction Program under Title IV of the Clean Air Act ("Act"). The provision was recently remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit at EPA's request.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 564-9151.

SUPPLEMENTARY INFORMATION: On April 13, 1995, EPA promulgated nitrogen oxides ("NO_x") emission limitations (in lb/mmBtu) for certain types of coal-fired utility boilers for the Acid Rain Program under title IV of the Act. 60 FR 18751 (1995). EPA set limits of 0.45 and 0.50 lb/mmBtu respectively for tangentially fired boilers and dry bottom, wall fired boilers ("Group 1 boilers"). On December 19, 1996, EPA promulgated additional NO_x emission limitations for Phase II of the program, i.e., revised limits for Group 1 boilers and new limits for cell burner, cyclone, wet bottom, and vertically fired boilers ("Group 2 boilers"). 61 FR 67112 (1996). In setting the December 19, 1996 NO_x limits, EPA also promulgated a final rule provision (i.e. § 76.16) that addressed the relationship between NO_x requirements under titles I and IV of the Act and provided a mechanism under which the December 19, 1996 NO_x limits would become inapplicable to certain boilers. As part of recent litigation in which the December 19, 1996 regulations were upheld by the Court (*Appalachian Power v. U.S. EPA*, 135 F.3d 791 (D.C. Cir., 1998)), EPA requested a remand, which was granted by the Court, of § 76.16 in order to provide additional opportunity for public comment on the provision. In today's action, EPA is removing the existing, final provision in § 76.16 and will take no further action on the provision in the instant rulemaking proceeding. In a separate, future rulemaking proceeding, EPA intends to propose a similar provision (i.e., as a new, proposed § 76.16) and provide an additional opportunity for public comment.

For the reasons discussed above, this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735 (1993)). For the same

reasons, this action does not impose annual costs of \$100 million or more, will not significantly or uniquely affect small governments, and is not a significant federal intergovernmental mandate. With regard to this action, the Agency thus has no obligations under sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4). Moreover, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, the action is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and any 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 this document in the **Federal Register**. This action is not a "major rule" as defined in 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 76

Environmental protection, Acid rain, Air pollution control, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 24, 1998.

Richard D. Wilson,

Assistant Administrator for Air and Radiation.

Accordingly, for the reasons set out above, 40 CFR part 76 is amended as follows:

PART 76—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 576.16 [Removed]

2. Section 76.16 is removed.

[FR Doc. 98-11662 Filed 4-30-98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-5983-5]

Technical Amendments to Use of Alternative Analytical Test Methods in the Reformulated Gasoline Program; 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 November 13, 1996 (61 FR 58303), the Environmental Protection Agency published in the **Federal Register** a final rule concerning the extension of the time period during which certain alternative analytical test methods may be used in the Federal Reformulated Gasoline (RFG) program, which established an effective date of January 13, 1997. This document corrects the effective date of the rule to May 1, 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 May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, Office of Air and Radiation at (202) 260-5585.

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 the date stated in the November 13, 1996, **Federal Register** document, by operation of law, the rule did not take effect on January 13, 1997, as stated therein. Now that EPA has discovered its error, the November 13, 1996, rule has been 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 November 13, 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 November 13, 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 November 13, 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 May 1, 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: April 22, 1998.

Carol Browner,
Administrator.

[FR Doc. 98-11548 Filed 4-30-98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[FRL-5983-6]

Technical Amendments to Sulfentrazone; Establishment of Tolerances; 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 March 10, 1997 (62 FR 10703), the Environmental Protection Agency published in the **Federal Register** a final rule concerning the establishment of tolerances for residues of the herbicide sulfentrazone (N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and its major metabolite 3-hydroxymethyl sulfentrazone (N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide), in or on the raw agricultural commodity soybean seed at 0.05 ppm and for combined inadvertent residues of sulfentrazone, and its metabolites, 3-hydroxymethyl sulfentrazone and 3-desmethyl sulfentrazone [N-2[2,4-dichloro-5[4-(difluoromethyl)-4,5-dihydro-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide] in cereal grains (excluding sweet corn) forage at 0.2 ppm, straw at 0.6 ppm, hay at 0.2 ppm, grain at 0.1 ppm, stover at 0.1 ppm, bran at 0.15 ppm and hulls at 0.30 ppm. The March 10, 1997, document established an effective date of March 10, 1997. This document

corrects the effective date of the rule May 1, 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 May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofman, Office of Pesticide Programs and Toxic Substances 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 the date stated in the March 10, 1997, **Federal Register** document, by operation of law, the rule did not take effect on March 10, 1997, as stated therein. Now that EPA has discovered its error, the rule has been 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 408(e)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e)(2), provides that the Administrator, before issuing a final rule under section 408(e)(1), shall issue a proposed rule and allow 60 days for public comment unless the Administrator for good cause finds that it would be in the public interest to provide a shorter period. 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 section 408(e)(2). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since March 10, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 808(2). Under section 408(g)(1) of FFDCA, today's rule is effective upon publication.