

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-7162-7]

RIN 2060-AJ34

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production; Good Cause Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendment.

SUMMARY: We are taking final action to amend the national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. This amendment will extend the compliance date as currently promulgated for existing sources subject to the PAI NESHAP by 60 days. Without this amendment, the compliance date under the rule would be June 23, 2002. With this action, existing sources will be required to comply with the rule by August 22, 2002.

DATES: March 22, 2002.

ADDRESSES: Docket No. A-95-20 contains supporting information used in

developing the PAI Production NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M-1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504-04), U.S. EPA, Research Triangle Park, North Carolina 27711 (express packages to 4930 Old Page Road, Research Triangle Park, North Carolina 27709), telephone number (919) 541-5402, electronic mail address mcdonald.randy@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with

the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules <http://www.epa.gov/ttn/oarpg>. The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

Regulated Entities. The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320	Typically, 2869 and 2879	<ul style="list-style-type: none"> Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. Producers of any integral intermediate used in onsite production of an active ingredient used in herbicides, insecticides, or fungicides.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR part 63, subpart MMM. If you have questions regarding the applicability of the amendment to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by May 21, 2002.

I. What Amendment Are We Making to the Rule?

Today's action extends the compliance deadline for existing sources under the PAI NESHAP by 60 days. Without this amendment, 40 CFR 63.1364(a)(1) would require existing affected sources to comply with the provisions of subpart MMM by June 23, 2002. With today's action, existing sources must be in compliance by August 22, 2002.

This amendment will result in deferring the deadline for submitting precompliance plans pursuant to 40 CFR 63.1368(e). Sources are required to submit these precompliance plans 3 months prior to the compliance date of the standard (66 FR 58393, November 21, 2001). Without this amendment, precompliance plans would be due March 23, 2002. As a result of this amendment, precompliance plans will now be due May 22, 2002, unless and

until the compliance deadline is further extended.

II. Why Are We Amending the Rule?

We are promulgating an interim 60-day extension of the compliance deadline for the PAI NESHAP in order to avoid unnecessary and potentially confusing submittals of the precompliance plans currently due March 23, 2002. Submittal of the precompliance plans on March 23, 2002 would be premature and unnecessary because EPA is currently in the process of proposing amendments to the PAI NESHAP, including an extension of the compliance deadline. These other amendments are the result of a settlement agreement between EPA and the American Crop Protection Association (ACPA) and BASF

Corporation signed January 18, 2002.¹ Under the settlement agreement, EPA is to take final action on the proposed amendments by September 6, 2002.

Pursuant to the settlement agreement, EPA is publishing a direct final rulemaking and parallel proposal that would extend the compliance deadline in 40 CFR 63.1364(a)(1) to December 23, 2003. These actions, however, will not be effective before March 23, 2002.

Thus, in order to minimize confusion and potentially unnecessary paperwork, we believe an immediate short-term extension of the compliance deadline is necessary while the direct final rulemaking process is completed.

III. Why Are We Relying on the Good Cause Exemption to Promulgate This Final Rule?

Clean Air Act section 307(d) generally requires EPA to provide notice and an opportunity for public comment on actions promulgating or revising regulations under CAA section 112(d). Section 307(d)(2), however, exempts rulemakings where the Agency, pursuant to section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)), finds for good cause that notice and comment are impracticable, unnecessary, or contrary to the public interest.

The EPA finds that good cause is warranted to forgo notice and opportunity for comment for this action to provide a short, interim extension of the compliance deadline. The EPA is publishing a direct final rule and parallel proposal to extend the compliance deadline further, but the public review process will not be completed before the current March 23, 2002 precompliance plan deadline. The EPA believes it is in the interest of all parties to avoid the unnecessary paperwork burden associated with submitting precompliance plans that need to be revised and resubmitted if the PAI NESHAP are amended according to the settlement agreement with ACPA and BASF. The interim extension is of limited duration to allow EPA time to complete the public review process on the direct final rule extending the compliance deadline to December 23, 2003.

IV. What Are the Administrative Requirements for This Final Rule?

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. Because the EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute (see Summary), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate as described in sections 203 and 204 of UMRA. This final rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This final rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

This final rule amendment does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This final rule amendment also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This final rule amendment does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This direct final rule amendment is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 23, 1999 final rule (64 FR 33550).

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, the EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 22, 2002. The 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**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 19, 2002.

Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble, title 40, chapter I part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart MMM—National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

2. Section 63.1364 is amended by revising the paragraph (a)(1) as follows:

§ 63.1364 Compliance dates.

(a) *Compliance dates for existing sources.* (1) An owner or operator of an existing affected source must comply with the provisions in this subpart by August 22, 2002.

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¹ Notice of this agreement was published in the **Federal Register** pursuant to the requirements of CAA section 113(g) on February 4, 2002 (67 FR 5116).