Subpart GG—New Mexico

2. In §52.1620(e), the second table titled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP” is amended by adding the entry “New Mexico Progress Report for the State Implementation Plan for Regional Haze” at the end of the table to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(e) * * *

<table>
<thead>
<tr>
<th>Name of SIP provision</th>
<th>Applicable geographic or nonattainment area</th>
<th>State submittal/ effective date</th>
<th>EPA approval date</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Mexico Progress Report for the State Implementation Plan for Regional Haze.</td>
<td>Statewide</td>
<td>3/14/2014</td>
<td>6/14/2017 [Insert Federal Register citation].</td>
<td></td>
</tr>
</tbody>
</table>

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<td>3/14/2014</td>
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<td></td>
</tr>
</tbody>
</table>

For Further Information Contact:

James Belke, United States Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Ave. NW., (Mail Code 5104A), Washington, DC 20460; telephone number: (202) 564–7987; email address: belke.jim@epa.gov.

Electronic copies of this document and related news releases are available on EPA’s Web site at https://www.epa.gov/rmp. Copies of this final rule are also available at https://www.regulations.gov.

A. Does this action apply to me?

This final rule applies to those facilities, referred to as “stationary sources” under the Clean Air Act (CAA), that are subject to the chemical accident prevention requirements at 40 CFR part 68. This includes stationary sources holding more than a threshold quantity (TQ) of a regulated substance in a process. Table 5 provides industrial sectors and the associated NAICS codes for entities potentially affected by this action. The Agency’s goal is to provide a guide for readers to consider regarding entities that potentially could be affected by this action. However, this action may affect other entities not listed in this table. If you have questions regarding the applicability of this action to a particular entity, consult the person(s) listed in the introductory section of this action under the heading entitled For Further Information Contact.

<table>
<thead>
<tr>
<th>Sector</th>
<th>NAICS code</th>
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<tr>
<td>Agricultural Chemical Distributors:</td>
<td>924.</td>
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</table>
TABLE 5—INDUSTRIAL SECTORS AND ASSOCIATED NAICS CODES FOR ENTITIES POTENTIALLY AFFECTED BY THIS ACTION—Continued

<table>
<thead>
<tr>
<th>Sector</th>
<th>NAICS code</th>
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<tbody>
<tr>
<td>Crop Production</td>
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<tr>
<td>Animal Production and Aquaculture</td>
<td>112.</td>
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<tr>
<td>Support Activities for Agriculture and Forestry Farm</td>
<td>115.</td>
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<tr>
<td>Supplies Merchant Wholesalers</td>
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<tr>
<td>Chemical Manufacturing</td>
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<td>Chemical and Allied Products Merchant Wholesalers</td>
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<td>Food Manufacturing</td>
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<tr>
<td>Beverage Manufacturing</td>
<td>211.</td>
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<tr>
<td>Oil and Gas Extraction</td>
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<td>Other</td>
<td>313, 326, 327, 33.</td>
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<td>Paper Manufacturing</td>
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<td>Petroleum and Coal Products Manufacturing</td>
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<tr>
<td>Utilities</td>
<td>321.</td>
</tr>
<tr>
<td>Warehousing and Storage</td>
<td>493.</td>
</tr>
</tbody>
</table>

**B. How do I obtain a copy of this document and other related information?**

This final action and pertinent documents are located in the docket (see ADDRESSES section). In addition to being available in the docket, an electronic copy of this document and the response to comments document will also be available at [https://www.epa.gov/rmp/final-amendments-risk-management-program-rmp-rule](https://www.epa.gov/rmp/final-amendments-risk-management-program-rmp-rule).

**C. Judicial Review**

Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by August 14, 2017. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review.

**II. Background**

On January 13, 2017, the EPA issued a final rule amending 40 CFR part 68, the chemical accident prevention provisions under section 112(r)(7) of the CAA (42 U.S.C. 7412(r)). The amendments addressed various aspects of risk management programs, including prevention programs at stationary sources, emergency response preparedness requirements, information availability, and various other changes to streamline, clarify, and otherwise technically correct the underlying rules. Collectively, this rulemaking is known as the “Risk Management Program Amendments.” For further information on the Risk Management Program Amendments, see 82 FR 4594 (January 13, 2017).

On January 26, 2017, the EPA published a final rule delaying the effective date of the Risk Management Program Amendments from March 14, 2017, to March 21, 2017, see 82 FR 8499. This revision to the effective date of the Risk Management Program Amendments was part of an EPA final rule implementing a memorandum dated January 20, 2017, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review.” This memorandum directed the heads of agencies to postpone until 60 days after the date of its issuance the effective date of rules that were published prior to January 20, 2017 but which had not yet become effective.

In a letter dated February 28, 2017, a group known as the “RMP Coalition,” submitted a petition for reconsideration of the Risk Management Program Amendments (“RMP Coalition Petition”) as provided for in CAA section 307(d)(7)(B) (42 U.S.C. 7607(d)(7)(B)). On March 13, 2017, the Chemical Safety Advocacy Group (“CSAG”) also submitted a petition for reconsideration and stay. On March 14, the EPA received a third petition for reconsideration and stay from the State of Louisiana, joined by Arizona, Arkansas, Florida, Kansas, Kentucky, Oklahoma, South Carolina, Texas, Wisconsin, and West Virginia. The petitions from CSAG and the eleven states also requested that EPA delay the various compliance dates of the Risk Management Program Amendments.

Under CAA section 307(d)(7)(B), the Administrator may commence a reconsideration proceeding if, in the Administrator’s judgement, the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period but within the period for judicial review. In either case, the Administrator must also conclude that the objection is of central relevance to the outcome of the rule. The Administrator may stay the effective date of the rule for up to three months during such reconsideration.

In a letter dated March 13, 2017, the Administrator announced the convening of a proceeding for reconsideration of the Risk Management Program Amendments (a copy of “the Administrator’s Letter” is included in the docket for this rule, Docket ID No. EPA–HQ–OEM–2015–0725).
explained in the Administrator’s Letter, having considered the objections raised in the RMP Coalition Petition, the Administrator determined that the criteria for reconsideration have been met for at least one of the objections. EPA issued a three-month (90-day) administrative stay of the Risk Management Program Amendments, which delayed the effective date of the Risk Management Program Amendments rule for 90 days, from March 21, 2017 until June 19, 2017 (see 82 FR 13968, March 16, 2017). EPA will prepare a notice of proposed rulemaking in the near future that will provide the RMP Coalition, CSAG, the states, and the public an opportunity to comment on the issues raised in the petitions that meet the standard of CAA section 307(d)(7)(B), as well as any other matter we believe will benefit from additional comment.

III. Proposal To Delay the Effective Date

The Administrator’s authority to administratively stay the effectiveness of a CAA rule pending reconsideration (without a notice and comment rulemaking) is limited to three months (see CAA section 307(d)(7)(B)) EPA believed that three months was insufficient to complete the necessary steps in the reconsideration process for the Risk Management Program Amendments and to consider other issues that may benefit from additional comment.\(^5\) Since we expect to take comment on a broad range of legal and policy issues as part of the Risk Management Program Amendments reconsideration, on April 3, 2017 (82 FR 16146), we proposed to further delay the effective date of the Risk Management Program Amendments to February 19, 2019.

The statutory authority for this action is provided by section 307(d) of the CAA, as amended (42 U.S.C. 7607(d)), which generally allows the EPA to set effective dates as appropriate unless other provisions of the CAA control, and section 112(r)(7) of the CAA (see section IV.A below).

IV. Summary of Public Comments Received

EPA received a total of 54,117 public comments on the proposed rulemaking. Several public comments were the result of various mass mail campaigns and contained numerous copies of letters or petition signatures. Approximately 54,000 letters and signatures were contained in these several comments. The remaining comments include 108 submissions with unique content (including representative copies of form letter campaigns and joint submissions), and nine duplicate submissions. EPA also held a public hearing on April 19, 2017 where EPA received five written comments and 28 members of the public provided verbal comments (three of the speakers later submitted their testimony as written comments). Comments received during the public hearing are included in the 107 submissions with unique content. A transcript of the hearing testimony is available as a support document in the docket EPA–HQ–OEM–2015–0725 for this rulemaking. A summary of public comments and EPA’s response to the comments can be found in the Response to Comments document, also available in the docket.\(^6\)

A. Comments Regarding EPA’s Legal Authority To Delay the Effective Date

In the proposed rulemaking, EPA noted that under CAA section 307(d), the Agency may set effective dates as appropriate through notice and comment rulemaking unless another provision of the CAA controls. In the past, EPA has used this authority in conjunction with the reconsideration process when the administrative stay period of three months, which the Administrator may invoke without notice and comment, would be insufficient to complete the necessary process for reconsideration.

Several industry trade associations agreed that EPA had authority under CAA section 307(d) to conduct a notice and comment rulemaking delaying the effective date for this rulemaking. Some noted that, unlike other CAA provisions, there are no provisions in CAA section 112(r)(7) requiring a specific, earlier effective date. Some pointed out that, in contrast to several other CAA provisions (see, e.g., CAA section 112(e)(1), CAA section 112(b)(3)(A), and CAA section 112(j)(5)), CAA section 112(r)(7)(A) gives the Administrator the flexibility to make a rule effective with no specific outside date beyond that which “assur[es] compliance as expeditiously as practicable.” In light of EPA’s commitment to take further regulatory action in the near future, with the potential for a broad range of rule revisions (82 FR 16148 through 16149, April 3, 2017), and the substantial resources required to prepare for compliance mentioned in the final Risk Management Program Amendments (82 FR 4676, January 13, 2017), these commenters agreed that the 20-month delay in the effective date would be as expeditiously as practicable. Several of these commenters also identified 5 U.S.C. 705 in the Administrative Procedure Act as a potential vehicle for postponing the effective date indefinitely in connection with the pending litigation.

Other commenters contested EPA’s authority to delay the effective date as proposed. A group of advocacy organizations, as well as a legal institute affiliated with a law school, argued that the 90-day stay provision in CAA section 307(d)(7)(B) is the maximum period that a rule can be stayed or have its effectiveness delayed in connection with a reconsideration. Noting that, except for the 90-day stay provision, the subparagraph provides that “reconsideration shall not postpone the effectiveness of the rule,” one commenter contends no additional exceptions can be implied. The commenter supports its position by citing Natural Resources Defense Council v. Reilly, 976 F.2d 36, 40–41 (D.C. Cir. 1992). Another commenter argues that EPA had “no excuse” for not seeking comment on its first two delays of effectiveness, making further delay impermissible.

More generally, commenters opposed to the proposed delay of effectiveness sought to rely on previous findings in the rulemaking record for the Risk Management Program Amendments. Noting that CAA section 112(r)(7)(B) provides that the regulations under that paragraph should provide for the prevention and detection of, and the response to, accidental releases “to the greatest extent practicable,” one commenter argues that a 20-month delay in effectiveness would run counter to the statute when EPA in the Risk Management Program Amendments already determined it was practicable to implement these regulations sooner. The commenter notes that paragraph (B) of CAA section 112(r)(7) requires rules to be applicable to a stationary source no later than three years after promulgation, so extending the effective date 20 months would “inevitably result in pushing some or all of the compliance deadlines far beyond three years.” The commenter viewed EPA as needing a more complete justification than if it were setting “a new policy created on a blank slate.” According to the commenter, EPA failed to justify its changed position. In the view of the commenter, EPA’s

\(^5\) See the proposed rule notice published April 3, 2017, 82 FR at 16148–16149.

\(^6\) June 2017, EPA, Response to Comments on the 2017 Proposed Rule Further Delaying the Effective Date of EPA’s Risk Management Program Amendments (April 3, 2017; 82 FR 16146). This document is available in the docket for this rulemaking.
discussion of compliance dates for new provisions in the Risk Management Program Amendments final rule (82 FR 4675–80, January 13, 2017) demonstrates that the 20-month delay in effectiveness does not comply with “as expeditiously as practicable” under CAA section 112(r)(7)(A).

Commenters also dispute the basis for convening a reconsideration proceeding by criticizing the BATF West finding itself and whether its publication two days before the close of comments made it impracticable to comment on the report. One commenter noted several of the parties requesting reconsideration in fact mentioned the BATF West finding in their comments. Another commenter objected to EPA not specifying what other issues met the reconsideration standard. More generally, commenters opposed to the delay of effectiveness found EPA lacked sufficient detail in its explanation of the basis for proposing to delay effectiveness of the Risk Management Program Amendments for them to be able to comment. Commenters further asserted that a further delay makes it more likely that another incident like the West Fertilizer explosion and other events discussed in the record, will occur. Commenters also expressed a concern that EPA could delay effectiveness of the rulemaking to further delay the effective date based on the logic in the proposed rule.

Response: EPA notes that CAA section 112(r)(7)(A) does not contain any language limiting “as expeditiously as practicable” to an outside date (e.g., “in no case later than date X”). The volume of comments received on the proposed rule validates our expectation that there will be a high level of interest in the broad range of issues we expect to take comment on. For example, in this rulemaking, several commenters have criticized the methodology of the BATF West finding and raised substantive concerns about various rule provisions. We have consistently stated that, beyond those issues that meet the CAA section 307(d)(7)(B) standard for reconsideration, we intend to raise other matters that we believe would benefit from additional comment (see, the Administrator’s Letter). Many of the decisions underlying the Risk Management Program Amendments are policy preferences based on weighing factors in the record that could be rationally assessed in different ways.

We continue to believe that evaluating these issues will be difficult and time consuming. A delay of effectiveness will allow EPA time for a comprehensive review of objections to the Risk Management Program Amendments rule without imposing the rule’s substantial compliance and implementation resource burden when the outcome of the review is pending.

A delay of 20 months is a reasonable length of time to engage in the process of revisiting issues in the underlying Risk Management Program Amendments. Contrary to some commenters’ assertions (and contrary to the urging of those commenters who asked that we invoke the Administrative Procedure Act (APA) section 705), we did not propose and are not finalizing an indefinite delay of effectiveness. During this period, the pre-Amendments 40 CFR part 68 rules will remain in effect. As we noted when we proposed and finalized the Risk Management Program Amendments, “[t]he [Risk Management Program] regulations have been effective in preventing and mitigating chemical accidents in the United States” (see 82 FR 4595, January 13, 2017). We discuss additional bases for the delay of effectiveness for 20 months in section V of the preamble. For all of these reasons, we conclude that the delay of effectiveness for 20 months is as expeditious as practicable for allowing the rule to go into effect.

We disagree with the view that the three month stay provision in CAA section 307(d)(7)(E) prohibits the use of rulemaking to further delay the effectiveness of rules that are not in effect. As an initial matter, there was no reconsideration involved, a rule with a future effective date could have its effective date delayed simply by a timelier rulemaking amending its effective date before the original date. Cf. NRDC v. EPA, 683 F.2d 752, 764 (3d Cir. 1982) (discussing application of rulemaking procedures to action to postpone effective date of rule); NRDC v. Abraham, 203 F.3d 203 (2d Cir. 2004) (discussing amendment of effective date of rule through notice-and-comment process). While one commenter criticizes the initial delay of effectiveness for relying on the good cause exception (arguing that, in lieu of the initial good cause delay, we should have used a notice and comment procedure to delay the effective date), and the subsequent 90-day stay for continuing that delay, neither of those actions were challenged. There is no reasonable doubt that the Risk Management Program Amendments are not yet in effect. EPA has explained in both the proposed rule and in the Administrator’s Letter of March 13, 2017, that part of its purpose in proposing to delay the effective date 20 months is to not only to conduct a reconsideration on the issues identified in that letter but also to solicit comment on any other matter that will benefit from additional comment. The interpretation of CAA section 307(d)(7)(B) urged by the commenters would say that EPA’s ability to use a notice and comment procedure to delay the effective date for these matters that EPA seeks to solicit additional comment on is negated when there is a reconsideration ongoing as well.

We also disagree with the commenters’ view that the phrase “reconsideration shall not postpone the effective date of the rule” is meant to prohibit using a notice and comment procedure or any means other than the three month stay in CAA section 307(d)(7)(B) to delay a rule that is not in effect. In quoting the statute, the comment omits the word “[s]uch.” In context, “such reconsideration” follows a discussion of the process for convening reconsideration and precedes the three month stay provision. A natural reading of the language is that the act of convening reconsideration does not, by itself, stay a rule but that the Administrator, at his discretion, may issue a stay if he has convened a proceeding. The three-month limitation on stays issued without rulemaking under CAA section 307(d)(7)(B) does not limit the availability or length of stays issued through other mechanisms. Furthermore, CAA section 307(d) expressly contemplates the “revision” of rules to which it applies. See CAA section 307(d)(1); see also CAA section 112(r)(7)(E) (regulations under CAA section 112(r) “shall for purposes of sections 113 . . . and 307 . . . be treated as a standard in effect under subsection (d) of [section 112(“)]. EPA is issuing this rule as a revision of the Risk Management Program Amendments. The case of Natural Resources Defense Council v. Reilly, 976 F.2d 36 (D.C. Cir. 1992) (NRDC) does not prohibit EPA from using rulemaking procedures under CAA section 307(d) to modify and delay the effective date of the Risk Management Program Amendments. In that case, EPA had made the finding that radionuclides

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were hazardous air pollutants under the pre-1990 CAA. That finding, in turn, triggered a series of mandatory duties under the CAA that required promulgation of emission standards. EPA did so after several court orders but, under a series of rules under CAA section 301 and the pre-1990 CAA section 112, continuously stayed the effectiveness of those rules. The 1990 Amendments added special provisions for radionuclides, saving the former rules, delaying the effectiveness of a category of rules impacting medical facilities regulated by the Nuclear Regulatory Commission (NRC), and establishing specific procedures for exempting NRC-licensed sources. See CAA section 112(d)(9), CAA section 112(g). EPA conducted a rulemaking under CAA section 112(d)(9) but lacked sufficient data to promulgate an exemption for most NRC-licensed facilities. Nevertheless, EPA promulgated a stay of effectiveness of the radionuclide rules, using CAA section 301, while it gathered the necessary information to establish exemptions. (See NRDC at 38–39.) EPA characterized its rule as a transitional rule necessary to implement the intent of the 1990 Amendments. Id. at 40.

The NRDC court observed that the pre-1990 CAA had a highly circumscribed schedule for promulgating hazardous air pollutant rules. NRDC at 41. Recognizing that its past precedents did not allow the grant of general rulemaking authority to override specific provisions of the CAA, the court held that “[i]n the face of such a clear statutory command, we cannot conclude that section 301 provided the EPA with the authority to stay regulations that were subject to the deadlines established by [former] section 112(b).” Id.

In contrast to the “clear statutory command” to promulgate rules for radionuclides once they were found to be hazardous air pollutants, CAA section 112(r) contains no similar mandate to promulgate the Risk Management Program Amendments. There is no dispute that EPA discharged its mandatory duty under CAA section 112(r)(7)(B) to promulgate “reasonable regulations” when it promulgated the Risk Management Program rule in 1996. These rules have been in effect and stationary sources that have present a threshold quantity of a regulated substance must comply with 40 CFR part 68 as in effect. The Risk Management Program Amendments were not promulgated to comply with a court order enforcing a mandatory duty. In contrast to the specific deadlines in the pre-1990 CAA for hazardous air pollutant regulation and the detailed structure in CAA section 112(d)(9) and CAA section 112(g) for addressing radionuclides under the amended CAA, CAA section 112(r)(7)(A) provides the Administrator substantial discretion regarding the setting of an effective date. The statutory framework for a discretionary rule under CAA section 112(r)(7) differs greatly from the “highly circumscribed schedule” analyzed by the NRDC court. Absent an otherwise controlling provision of the CAA, CAA section 307(d) allows EPA to set a reasonable effective date.

We view the provision in CAA section 112(r)(7)(B) regarding when regulations shall be “applicable” to a stationary source that does not prohibit the delay of effectiveness we promulgate in this rule. First, we note that February 2019 is before January 2020 (three years after the January 2017 promulgation), so even assuming the provision in question requires compliance by three years after promulgation of the Risk Management Program Amendments, it is speculative to say that it is “inevitable” that some compliance dates will be “pushed off far beyond three years” from promulgation. Even if the commenter’s intuition is correct, the argument is premature. A challenge to compliance dates after January 2020 should be brought in litigation over a rule that establishes such a date. Second, the appropriate rule to challenge compliance dates set in the Risk Management Program Amendments would be the underlying rule (i.e., the Risk Management Program Amendments rule promulgated on January 13, 2017) that established compliance dates. This rule does not impact compliance dates except for those dates that would be triggered prior to February 2019. If EPA proposes amending compliance dates beyond January 13, 2020, then this issue will need to be addressed.

While CAA section 112(r)(7)(B) contains a requirement that EPA’s regulations “provide, to the greatest extent practicable,” for prevention, detection, and response to accidental releases, that subparagraph places this requirement in the context of a mandate for the regulations to be “reasonable.”

The phrase “to the greatest extent practicable” does not prohibit weighing the difficulties of compliance planning and other implementation issues. This action itself is not the convening of reconsideration, therefore, the questions of whether the arson finding by the BATF was proper are outside the scope of this rule. Even if the comment were within the scope of this rulemaking, the mention of the BATF finding in a few scattered comments does not mean that it was practicable for the public generally and the hundreds of commenters to meaningfully address the significance of the finding for a rule with multiple issues and hundreds of supporting documents. EPA is not taking action under APA section 705 at this time.

B. Comments Supporting a Delay of the Effective Date

Many commenters supported EPA’s proposal to delay the effective date of the final rule to February 19, 2019. These commenters included industry associations, regulated facilities, state government agencies, and others. These commenters gave various reasons for delaying the final rule’s effective date.


Several commenters indicated the final rule included changes on which the public was never offered an opportunity to comment as required by the CAA. These commenters highlighted a new provision in the final rule requiring regulated facilities to disclose any information relevant to emergency planning to local emergency planners, and a new final rule trigger for third-party audits allowing an implementing agency to require such an audit due to “conditions at the stationary source that could lead to the release of a regulated substance” as issues that warrant reconsideration and delaying the effective date of the final rule. These commenters argued that the public was deprived of effective notice and opportunity to comment on the new provisions.

Response: EPA agrees that the final rule included some rule provisions that may have lacked notice and would benefit from additional comment and response.

2. Comments Regarding the Arson Finding for the West Fertilizer Explosion

Many commenters indicated that the finding by the Bureau of Alcohol, Tobacco, and Firearms (BATF) that the West Fertilizer explosion was caused by
arsen undermined the basis for the rule and that this necessitates delaying the final rule’s effective date, in order to reconsider its provisions, in light of the BATF finding. Some complained the timing of BATF’s announcement a few days before the end of the rule comment period precluded the development and submission of meaningful comments addressing this change in circumstances and its implications.

Response: EPA agrees that the timing of the BATF finding on the West Fertilizer incident made it impracticable for many commenters to meaningfully address the significance of this finding in their comments on the rule. Additionally, delaying the effective date of the final rule to February 19, 2019, will give the Agency an opportunity to consider comments on the BATF finding and take further action to reconsider the rule, propose any necessary changes, and provide opportunity for public comment on any changes made.

3. Other Comments Raised

Many commenters indicated that the effective date of the rule should be delayed because its information disclosure provisions create security risks, and these risks have not been adequately addressed by EPA in the final rule. Other commenters objected to other specific provisions of the final rule (e.g., third-party audits, safer technology and alternatives analysis (STAA), incident investigation requirements, etc.), indicating that EPA had provided no evidence that these provisions would produce the benefits claimed by EPA, and that EPA should delay the effective date of the final rule either to provide such evidence or remedy these deficiencies by making substantive changes to the rule. Numerous commenters argued that EPA failed to show that the benefits of the final rule outweigh its costs and made other flaws in the regulatory impact analysis, which the commenters contended were grounds for delaying the effective date of the final rule and reconsidering its provisions. One trade association stated that the Risk Management Program Amendments are not needed and that the current Risk Management Program has been effective in identifying and reducing risks and preventing offsite impacts based on EPA data showing that between 2004 and 2013 there has been a decrease of over 60% of all RMP-reportable events. Another trade association believes that the amendments raise substantial questions of policy and significantly increase the regulatory burden without corresponding benefits and should be

considered for repeal under Executive Orders 13771, “Reducing Regulation and Controlling Regulatory Costs” 10 and 13777, “Enforcing the Regulatory Reform Agenda.” 11

A commenter representing a group of State agencies argued that the effective date should be delayed because the final rule created unjustified burdens on state and local emergency responders. Several commenters indicated that EPA did not adequately coordinate with OSHA during the rulemaking process, and that EPA should delay the effective date of and reconsider the rule in order to coordinate any amendments to the Risk Management Program with changes made by OSHA to its Process Safety Management standard.

Some commenters also argued that the effective date should be delayed because EPA did not adequately address small business concerns, or made other procedural errors during the rulemaking process.

Response: While it is not necessary for EPA to address the substance of these claims in this rulemaking, we note they represent a wide-ranging and complex set of policy and procedural issues. Some of these issues would not meet the standard for reconsideration under CAA section 307(d)(7)(B), but present substantial policy concerns that EPA may wish to address while it conducts the reconsideration process for issues that meet that reconsideration standard. Whether or not EPA agrees with commenters on the merits of these claims, the Agency believes the existence of such a large set of unresolved issues demonstrates the need for careful reconsideration and reexamination of the Risk Management Program Amendments. Therefore, while EPA does not now concede that it should make the particular regulatory changes that these commenters have

recommended, or that the Agency made errors in its regulatory impact analysis or rulemaking procedures, EPA concurs with commenters to the extent that they argue for finalizing the proposed delay in the effective date of the Risk Management Program Amendments rule in order to conduct a reconsideration proceeding. That proceeding will allow EPA to address commenters’ issues as appropriate.

C. Comments Opposing a Delay of the Effective Date

Many commenters opposed EPA’s proposal to further delay the effective date of the final rule to February 19, 2019. These commenters included environmental advocacy groups, other non-governmental organizations, private citizens, an association representing fire fighters, an academic institution, and others. These commenters gave various reasons for opposing EPA’s proposal to delay the final rule’s effective date, which are discussed individually below.

1. Comments Arguing That a Further Delay of the Rule’s Effective Date Will Cause Harm

Many commenters indicated that EPA should not delay the effective date because delaying the rule’s implementation will fail to prevent or mitigate chemical accidents that will cause harm to workers at regulated facilities and members of the public in surrounding communities.

Response: EPA disagrees that further delaying the final rule’s effective date will cause such harm. EPA notes that delaying the effective date of the Risk Management Program Amendments rule simply maintains the status quo, which means that the existing RMP rule remains in effect. EPA also notes that compliance dates for most major provisions of the Risk Management Program Amendments rule were set for four years after the final rule’s effective date, so EPA’s delay of that effective date has no immediate effect on the implementation of these requirements. As EPA has previously indicated, the existing RMP rule has been effective in preventing and mitigating chemical accidents, and these protections will remain in place during EPA’s reconsideration of the Risk Management Program Amendments.12

2. Comments Arguing That the EPA’s Proposal To Further Delay the Rule’s Effective Date Is Arbitrary and Capricious

Three commenters claimed that EPA’s rulemaking to extend the effective date

10 See Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs which was signed on January 30, 2017 and published in the Federal Register on February 3, 2017 (82 FR 9339). Executive Order 13771 requires that any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations https://www.federalregister.gov/documents/2017/02/03/2017-02451/reducing-regulation-and-controlling-regulatory-costs.

11 See Executive Order 13777: Enforcing the Regulatory Reform Agenda which was signed on February 24, 2017 and published in the Federal Register on March 1, 2017 (82 FR 12285). Executive Order 13777 tasks each Federal agency with identifying regulations that are unnecessary, ineffective, impose costs that exceed benefits, or interfere with regulatory reform initiatives and policies for repeal, replacement, or modification https://www.federalregister.gov/documents/2017/03/01/2017-04107/enforcing-the-regulatory-reform-agenda.

of the Risk Management Program Amendments rule to February 19, 2019 is arbitrary and capricious. Commenters stated several reasons that the proposed delay is arbitrary and capricious, including: The issues presented for reconsideration do not meet the statutory requirement for reconsideration under CAA section 307(d)(7)(B), and, even if any met the CAA section 307(d)(7)(B) standard, EPA lacks authority to extend a rule’s effective date beyond 90 days pending reconsideration; EPA failed to explain why it is appropriate to forgo the benefits of the rule during the period of the stay; EPA failed to adequately justify its change in position; and EPA has not shown that a delay of 20 months assures compliance “as expeditiously as practicable”, as required under CAA section 112(r)(7)(A) or provides to “the greatest extent practicable” for prevention, detection, and response, as required under CAA section 112(r)(7)(B). One commenter also stated that EPA appeared “to pick the duration required under CAA section 307(d)(7)(B)” and provided no explanation or justification for this timeframe.

Response: EPA disagrees that this rulemaking is arbitrary and capricious. In order to conduct a rulemaking that is reasonable, and therefore not arbitrary and capricious, the courts have held that an agency must “set forth its reasons” for its decision and “establish a rational connection between the facts found and the choice made.”

EPA has done so here. First, the reconsideration process that EPA has initiated does meet the statutory test for such a process. As EPA stated in the proposed rule, under CAA section 307(d)(7)(B), the Administrator must commence a reconsideration proceeding if, in the Administrator’s judgement, the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period but within the period for judicial review, and the objection is of central relevance to the outcome of the rule.

The Administrator’s Letter of March 13, 2017, specified at least one issue—BATF’s West finding—met the criteria for reconsideration proceeding. The letter does not reach conclusions on other issues in the RMP Coalition petition that meet this standard, but notes that at least some issues may have lacked notice and would benefit from additional comment and response. All three petitioners argued that the final rule included new requirements that were not included in the proposed rule, requirements that petitioners would have strongly objected to if they had been afforded an opportunity to comment. In particular, the petitioners cited a provision in the final rule requiring regulated facilities to disclose any information relevant to emergency planning to local emergency planners and a requirement to perform a third-party audit when an implementing agency requires such an audit due to “conditions at the stationary source that could lead to the release of a regulated substance.” Without conceding that these provisions lacked adequate notice, EPA recognizes that these provisions include core requirements for major rule provisions, and so are of central relevance to the outcome of the rule. Thus, BATF’s West finding meets the criteria for reconsideration under CAA section 307(d)(7)(B), and it make practical sense for EPA to provide an opportunity for comment on these other issues in the reconsideration proceeding.

EPA also disagrees with one commenter’s assertion that the lack of discussion in the proposed rule of the forgone benefits of the rule during the period of the delay of effectiveness makes the delay arbitrary and capricious. As an initial matter, the regulatory impact analysis for the Risk Management Program Amendments was unable to conclusively show that the benefits of the final rule exceeded its costs. The lack of a quantification of benefits in the final rule regulatory impact analysis would make a quantification of forgone benefits during the period of a delay speculative at best. However, as noted above, most provisions have a compliance date of 2021, therefore any benefits from compliance would not be impacted.

In deciding whether to implement a regulation, EPA may reasonably consider not only its benefits, but also its costs. Petitioners have claimed that the final Risk Management Program Amendments’ new provisions that were not included in the proposed rule may actually increase the risks and burdens to states, local communities, emergency responders, and regulated entities rather than fixing the problems identified in the proposed rule. It is completely reasonable for EPA to delay implementation of and reexamine the final Risk Management Program Amendments when the Agency becomes aware of information, such as that provided by petitioners, that suggests one or more of these provisions may potentially result in harm to regulated entities and the public.

Petitioners’ claims that the new final rule provisions may cause harm to regulated facilities and local communities, and the speculative but likely minimal nature of the forgone benefits, form another rational basis for EPA to delay the effectiveness of the Risk Management Program Amendments and determine whether they remain consistent with the policy goals of the Agency.

EPA also disagrees with a commenter’s assertion that delaying the final rule’s effective date by 20 months violates the requirement under CAA section 112(r)(7)(A) to assure compliance as expeditiously as practicable, or the requirement under CAA section 112(r)(7)(B) to promulgate reasonable regulations to the greatest extent practicable. EPA believes that the language of these sections of the CAA gives the Administrator broad authority to determine what factors are relevant to establishing effective dates that are practicable (unlike other sections of the CAA, where Congress constrained “as practicable” to include certain defined time limits). In exercising this authority, EPA believes effective dates must account for all relevant factors. In this case, delaying the effective date of the rule during the reconsideration proceeding is reasonable and practicable because the Agency does not wish to cause confusion among the regulated community and local responders by requiring these parties to prepare to comply with, or in some cases, immediately comply with, rule provisions that might be changed during the subsequent reconsideration. This is particularly true for provisions that might result in unanticipated harm to facilities and local communities, as petitioners have alleged may occur. The Agency notes that compliance with most major provisions in the final rule

15 Even if no issue meet the statutory standard for when the Administrator must convene a proceeding for reconsideration under CAA section 307(d)(7)(B), the Administrator retains the discretion to convene a reconsideration proceeding. See Trujillo v. Gen. Elec. Co., 621 F.2d 1084, 1086 (10th Cir. 1980) (“Administrative agencies have an inherent authority to reconsider their decisions, since the power to decide in the first instance carries with it the power to reconsider.”); Dun & Bradstreet Corp. Found. v. U.S. Postal Serv., 946 F.2d 189, 193 (2d Cir. 1991) (it is widely accepted that an agency may, on its own initiative, reconsider its interim or even its final decisions, regardless of whether the applicable statute and agency regulations expressly provide for such review.”)
would not be required until 2021, so delaying the effective date of the final rule would have minimal effect on the benefits derived from compliance with these provisions.

Lastly, EPA disagrees that it picked the 20-month duration for the proposed delay in effective date “out of a hat,” or provided no explanation or justification for this timeframe. As EPA explained in the proposed rule (82 FR 16148 through 16149, April 3, 2017): “As with some of our past reconsiderations, we expect to take comment on a broad range of legal and policy issues as part of the Risk Management Program Amendments reconsideration . . .” and,

This timeframe would allow the EPA time to evaluate the objections raised by the various petitions for reconsideration of the Risk Management Program Amendments, consider other issues that may benefit from additional comment, and take further regulatory action. This schedule allows time for developing and publishing any notices that focus comment on specific issues to be reconsidered as well as other issues for which additional comment may be appropriate. A delay of the effective date to February 19, 2019, provides a sufficient opportunity for public comment on the reconsideration in accordance with the requirements of CAA section 307(d), gives us an opportunity to evaluate and respond to such comments, and take any possible regulatory actions, which could include proposing and finalizing a rule to revise the Risk Management Program amendments, as appropriate.

This rationale for the proposed duration of the effective date is neither arbitrary nor capricious.

3. Comments Arguing Inadequate Rationale Was Provided for Further Delay of Effective Date

Several commenters argued that EPA did not provide a valid basis or reasoned explanation for its proposal to delay, for why the petitions should take more than three months to consider, or how the 20-month delay period was determined.

Response: The three petitions for reconsideration cover numerous policy and legal issues with the Risk Management Program Amendments. As stated in the April 3, 2017 proposal (82 FR 16148 through 16149) these issues may be difficult and time consuming to evaluate, and given the expected high level of interest from stakeholders in commenting on these issues, we proposed a longer delay of the effective date to allow additional time to open these issues for review and comment. Additionally, in both the Administrator’s Letter of March 13, 2017 16 as well as the proposed delay of effectiveness rule, EPA indicated it may raise other matters we believe will benefit from additional comment (82 FR 16148 through 16149, April 3, 2017). Resolution of issues may require EPA to revise the amendments through a rulemaking process, which would involve developing a proposal to focus comment of specific issues as well as other issues for which additional comment may be appropriate, allowing sufficient opportunity for public comment, review and respond to comments, and develop any final revisions. The rulemaking process also must allow time for Agency, interagency and OMB review of the proposed and final rule. Based on EPA rulemaking experience, EPA decided that a 20-month delay was warranted. Some industry commenters have pointed out that without such a delay, regulated parties would need to expend resources to prepare for compliance with the Risk Management Program Amendments final rule provisions while further changes to the program are being contemplated.

4. Comments Indicating That the BATF Arson Finding Should Not Affect the Basis of the Rule

Many commenters indicated that the BATF finding of arson should not cause EPA to reconsider the final rule. These commenters indicated that Executive Order 13650 was not specifically based on the West Fertilizer event, and that EPA did not justify the Risk Management Program Amendments rule on that single incident, but rather that EPA indicated an average of approximately 150 chemical accidents have occurred each year, and the rule’s provisions were intended to address all such accidents. Other commenters noted that conditions at West Fertilizer enabled the fire to escalate into a massive detonation, and lack of effective communication contributed to the needless deaths of emergency responders—issues that some rule amendments addressed by improving emergency preparedness. Some commenters also stated that the BATF finding was not actually based on evidence of arson, but rather relied on a process of elimination called “negative corpus” to project a conclusion without evidence, and therefore the BATF finding does not provide grounds for the petitioner’s objection to the final rule.

Response: As an initial matter, the Agency’s decision to convene a proceeding for reconsideration was made in a separate action—the Administrator’s Letter of March 13, 2017. The merits of that decision are not properly subject to collateral attack in this rule. The substantive impact of the BATF finding on the policy issues opened in the reconsideration-related proposed rule may be addressed in the notice and comment period for that rule. The focus of this delay of effectiveness rule is to provide sufficient time to conduct a proceeding on the complex set of issues identified by the petitions as well as other issues that merit additional comment.

EPA disagrees that the BATF finding of arson as the cause of the West Fertilizer explosion does not provide grounds for reconsideration of the Risk Management Program Amendments final rule. While EPA agrees that the incident was not the sole justification for Executive Order 13650, and the Agency did not solely rely on it as justification for the Risk Management Program Amendments, there is no question that the event was the proximate trigger for Executive Order 13650 17 and prominently featured in the Agency’s Risk Management Program Amendments proposed rule. 18 EPA believes the prominence of the incident in the policy decisions underlying Executive Order 13650 and the Risk Management Program Amendments rule makes the BATF finding regarding the cause of the incident of central relevance to the rule amendments. If the cause of the West Fertilizer explosion had been known sooner, the Agency may have possibly given greater consideration to potential security risks posed by the proposed rule amendments. All three of the petitions

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17 See Executive Order 13650, Actions to Improve Chemical Safety and Security—A Shared Commitment; Report for the President, May, 2014, pp 1: “The West, Texas, disaster in which a fire involving ammonium nitrate at a fertilizer facility resulted in an explosion that killed 15 people, injured many others, and caused widespread damage, revealed a variety of issues related to chemical hazard awareness, regulatory coverage, and emergency response. The Working Group has outlined a suite of actions to address these issues . . .”

18 In the proposed rule, EPA referred to the West Fertilizer event more than 15 times. For example, see 81 FR 13640, column 1: “In response to catastrophic chemical facility incidents in the United States, including the explosion that occurred at the West Fertilizer facility in West, Texas, on April 17, 2013 that killed 15 people, President Obama issued Executive Order 13650, “Improving Chemical Facility Safety and Security,” on August 1, 2013.”
for reconsideration and many of the
commenters discuss potential security
concerns with the rule’s information
disclosure requirements to LEPCs and
the public. The RMP Coalition petition
and some commenters argue that
knowing that the West Fertilizer
incident was an intentional, rather than
an accidental act, would likely have
resulted in more focus on enhanced
facility security measures and
justifications for the need for third-
parties to obtain facility information,
with protections on data use and further
disclosure.

Clearly, EPA does not desire to
establish regulations that increase
security risks. While EPA has not
concluded that the final rule would
increase such risks, the petitioner’s
concerns, which are echoed by many
other commenters, require careful
consideration, and cannot be dismissed
out of hand.

Regarding these commenters claims
that the BATF relied on an invalid form
of reasoning (i.e., “negative corpus”) to
reach its conclusion regarding the cause
of the West Fertilizer explosion, EPA
cannot evaluate these commenters
claims without obtaining detailed
information on the BATF investigation.
The decision to reconsider simply
acknowledges the fact that BATF made
this finding, that the finding went to
issues of central relevance to the Risk
Management Program Amendments and
that the finding was late enough in the
comment period to make it
impracticable for many commenters to
meaningfully comment on the finding’s
significance for the rule. The
substantive merits of the BATF
methodology and its conclusion would
be more appropriate to consider in a
reconsideration rulemaking process
addressing the Risk Management
Program Amendments issues impacted
by the finding. To the extent questions
remain concerning the cause of the West
Fertilizer explosion, EPA believes these
argue for finalizing the delay of effective
date of the Risk Management Program
Amendments in order to give the
Agency time to better understand the
basis for BATF’s conclusions.

Accordingly, EPA has decided to
finalize the proposed delay of the
effective date to February 19, 2019. This
delay will give the Agency an
opportunity to reconsider the Risk
Management Program Amendments
rule, propose changes to the rule as
necessary, and provide additional
opportunity for members of the public
to submit comments on the proposal to
EPA.

5. Comments Arguing That the
Petitioners’ Other Claims Are Without
Merit

Some commenters stated that EPA
and the petitioners for reconsideration
failed to identify objections that either
arose after the period for public
comment or were impracticable to raise
during this period, as required under
CAA section 307(d)(7)(B). One of these
commenters stated that most of the
objections that were raised by
petitioners were “simply recycled from
the comment period” and that the
“remainder address issues that cannot
possibly be considered “of central
relevance”’ to the “Chemical Disaster
Rule.” This commenter also indicated
that several parties commented on the
BATF finding during the public
comment period for the Risk
Management Program Amendments
rulemaking, and that this demonstrated
that it was not impracticable to raise the
issue during the comment period. This
commenter noted that EPA had
responded to these comments and found
that “it would be inappropriate to
suspend the rulemaking based on
outcomes of the incident investigation
of the West Fertilizer explosion.”

Response: EPA disagrees that
petitioners have failed to identify one or
two more objections that either arose after
the period for public comment or were
impracticable to raise during that
period. The decision to convene a
proceeding for reconsideration was
made in the Administrator’s Letter of
March 13, 2017. The substance of that
decision is a separate action from this
rule on the length of a delay of
effectiveness. Petitioners, as well as
numerous commenters, including
industry trade associations, regulated
facilities, state agencies, and others
asserted the final rule’s
provisions contained in the final Risk
Management Program Amendments,
which EPAR believes it would be
impracticable for commenters to
adequately consider this information
within their comments to EPA.

Also, when EPA stated, in responding
to comments on the proposed
Risk Management Program Amendments,
that it would be inappropriate to
suspend the rulemaking based on
outcomes of the incident investigation
of the West Fertilizer explosion, the
Agency had not yet received the
petitions that prompted its
reconsideration proceeding, as well as
comments on the proposal to delay the
rule’s effective date, both of which
assert that the information disclosure
provisions contained in the final
Risk Management Program Amendments
may actually increase or introduce new
security risks to RMP facilities,
emergency responders, and
communities. EPA believes it would be
reissuance for the Agency to allow the
final rule to become effective without
first fully evaluating this new
information. As previously indicated, EPA does not
desire to establish regulations that
increase security risks.

Finally, several commenters also
stated that EPA added more than 100
new documents to the rulemaking
docket after the close of the comment
date, and indicated that several of
these documents were used by EPA to
support the Agency’s position on core
provisions of the final rule, including
the STAA and third-party audit
provisions. These commenters stated
that because the comment period had
already closed when this information
was added to the docket, the public was
denied an opportunity to review and
comment on the additional information.
Without taking a position on whether
these documents required additional
comment under the rulemaking
procedures of CAA section 307(d), a
benefit of reopening comment on the
topics that meet the reconsideration
standard of CAA section 307(d)(7)(B).

Savage of Hogan Lovells Regarding Convening a
Proceeding for Reconsideration of the Final Rule
Entitled “Accidental Release Prevention
Requirements: Risk Management Programs Under
the Clean Air Act,” published on January 13, 2017,
82 FR 4594. Office of the Administrator, U.S.
Environmental Protection Agency, Washington, DC.

20 See footnote 15, above.
will be to allow for comment on some or all of these documents.

6. Other Comments on the Proposed Delay of the Effective Date

While noting their opposition to many provisions of the final regulation, an association of state and local emergency planning officials recommended that EPA allow the emergency response coordination activities provisions of § 68.93 and the emergency response program provisions of § 68.95 (and particularly paragraph (c)) to immediately go into effect immediately. This association argued that these two requirements are simple, direct, not burdensome, and in the case of § 68.95(c), essentially identical to requirements contained in the Emergency Planning and Community Right-to-Know Act (EPCRA).

Response: EPA disagrees that the emergency response coordination activities provisions of § 68.93 should immediately go into effect. These provisions contain language i.e., “Coordination shall include providing to the local emergency planning and response organizations . . . any other information that local emergency planning and response organizations identify as relevant to local emergency response planning”) for which two petitioners (the RMP Coalition and Chemical Safety Advocacy Group) specifically objected, based on their concerns that the rule included no limitations on the information requested to be disclosed or how sensitive information can be protected. In agreeing to convene a proceeding for reconsideration of the final rule, EPA agreed to provide the public with an opportunity to comment on other issues that may benefit from additional comment and response. By finalizing these provisions immediately, EPA would not be allowing the public an additional opportunity to comment on them. Additionally, § 68.93(b) requires coordination to include consulting with local emergency response officials to establish appropriate schedules and plans for field and tabletop exercises required under § 68.96(b). As § 68.96(b) is a new section created in the final rule, EPA cannot finalize § 68.93(b) as currently written without also finalizing § 68.96(b).

Regarding this commenter’s recommendation that EPA allow the emergency response program provisions of § 68.95, and particularly paragraph (c), to immediately go into effect, EPA notes that § 68.95(a)(4) also contains a reference to the new exercise requirements of § 68.96, and therefore this provision cannot go into effect without § 68.96. However, § 68.95(c) is already contained in the existing rule. In the Risk Management Program Amendments final rule, EPA simply replaced the phrase “local emergency planning committee” with the acronym “LEPC.” therefore, this requirement will remain in effect with or without the Risk Management Program Amendments final rule becoming effective.

V. Additional Twenty Month Delay of Effectiveness

EPA is delaying the effective date of the Risk Management Program Amendments final rule until February 19, 2019. Given the degree of complexity with the issues under review, and the likelihood of significant public interest in this reconsideration, we believe the delay we are adopting in this action is adequate and necessary for the reconsideration. While it is possible that we may require less time to complete the reconsideration, we believe delaying the effective date by a full 20 months is reasonable and prudent. This additional delay of the effective date enables EPA time to evaluate the objections raised by the various petitions for reconsideration of the Risk Management Program Amendments, provides a sufficient opportunity for public comment on the reconsideration in accordance with the requirements of CAA section 307(d), gives us an opportunity to evaluate and respond to such comments, and take any possible regulatory actions, which could include proposing and finalizing a rule to revise or rescind the Risk Management Program Amendments, as appropriate. During the reconsideration, EPA may also consider other issues, beyond those raised by petitioners, that may benefit from additional comment, and take further regulatory action.

The EPA recognizes that compliance dates for some provisions in the Risk Management Program Amendments coincided with the rule’s effective date, while compliance dates for other provisions would occur in later years, i.e., 2018, 2021, or 2022, depending on the provision. Compliance with all of the rule provisions is not required as long as the rule does not become effective. The EPA did not propose and is not taking any action on any compliance dates at this time, as EPA plans to modify (c) to immediately go into effect as necessary when considering future regulatory action.

Section 553(d) of the APA, 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the Federal Register. EPA is issuing this final rule under §307(d)(1) of the CAA, which states: “The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.” Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on June 14, 2017. APA section 553(d) provides an exception when the agency finds good cause exists for a period less than 30 days before effectiveness. We find good cause exists to make this rule effective upon publication because a delay of effectiveness can only be put in place prior to a rule becoming effective. Waiting for 30 days for this rule to establish the new effective date of February 19, 2019 at this time would cause the Risk Management Amendments to become temporarily effective on June 19, 2017 (existing effective date). Avoiding this situation alleviates any potential confusion and implementation difficulties that could arise were the Risk Management Program Amendments to go into effect for a 30-day period and then be stayed during reconsideration or modified as a result of the reconsideration process.


VI. Statutory and Executive Orders

Additional information about these statutes and Executive Orders can be found at https://www.epa.gov/laws-regulations/laws-and-executive-orders.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This final rule would only delay the effective date of the Risk Management Program Amendments finalized on January 13, 2017 (see 82 FR
the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

**H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use**

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This final rule only delays the effective date of the Risk Management Program Amendments finalized on January 13, 2017 (see 82 FR 4594) and does not impose any regulatory requirements.

**I. National Technology Transfer and Advancement Act (NTTAA)**

This action does not involve technical standards.

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This final rule only delays the effective date of the Risk Management Program Amendments finalized on January 13, 2017 (see 82 FR 4594) and does not impose any regulatory requirements.

**K. Congressional Review Act (CRA)**

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

Only one major rule provision of the Risk Management Program Amendments has a compliance date that will be extended by delaying the effective date to February 19, 2019. As a result, the costs for that provision are delayed and will not be incurred by the regulated community while the rule is not yet in effect. As discussed below, the costs for this delayed compliance date are small relative to the total costs of the Risk Management Program Amendments and thus, the rule further delaying the effective date is not a major rule.

In the Risk Management Program Amendments, EPA finalized the following compliance dates:

- March 14, 2018—Require compliance with emergency response coordination activities within one year of an effective date of a final rule;
- Provide three years for the owner or operator of a non-responding stationary source to develop an emergency response program in accordance with §68.95. No specific date was established in the final rule. Instead, the three-year timeframe begins when the owner or operator determines that the facility is subject to the emergency response program requirements of §68.95;
- March 15, 2021—Comply with new provisions (i.e., third-party compliance audits, root cause analyses as part of incident investigations, STAA, emergency response exercises, and information availability provisions), unless otherwise stated, four years after the original effective date of the final rule; and
- March 14, 2022—Provide regulated sources one additional year (i.e., five years after the original effective date of the final rule) to correct or resubmit RMPs to reflect new and revised data elements.

The compliance dates of March 15, 2021 and March 14, 2022 are not affected by this rule. Therefore, the costs for the majority of the rule provisions are not affected by this rule (i.e., third-party compliance audits, root cause analyses as part of incident investigations, STAA, emergency response exercises, and information availability provisions). We are also delaying costs associated with minor rule provisions that would have become immediately effective on June 19, 2017. However, we did not estimate any costs for these provisions. These provisions include:

- §68.48 Safety information—revised to change “Material Safety Data Sheets” to “Safety Data Sheets (SDS);”
- §68.50 Hazard review—revised to clarify that the hazard review must include findings from incident investigations;
- §68.54 & 68.71 Training—revised to clarify that employee training requirements apply to supervisors responsible for directing process operations (under 68.54) and supervisors with process operational responsibilities (under 68.71);
- §68.60 & 68.81 Incident investigation—revised to require incident investigation reports to be completed within 12 months of the incident, unless the implementing agency approves, in writing, an extension of time;
- §68.65 Process safety information—revised to require that process safety information be kept up-to-date;
Also, changed the note to paragraph (b): To replace “Material Safety Data Sheets” with “Safety Data Sheets (SDS):” and
• § 68.67 Process hazard analysis—revised to require that the PHA must now add the findings from all incident investigations required under § 68.81, as well as any other potential failure scenarios.

The only major rule provision that would be affected by this rule (because its March 14, 2018 compliance date is before the delayed effective date of this rule) is the emergency response coordination provision, which has an estimated annualized cost of $16 M. Therefore, based on the costs of the provisions that would be affected by this action, EPA has concluded that this action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 68
Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 9, 2017.
E. Scott Pruitt, Administrator.
[FR Doc. 2017–12340 Filed 6–13–17; 8:45 am]
BILLING CODE 6560–50–P

ENVIROMENTAL PROTECTION AGENCY
40 CFR Part 180
Spirotetramat; Pesticide Tolerances
AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.
SUMMARY: This regulation establishes tolerances for residues of spirotetramat in or on multiple commodities which are identified and discussed later in this document. In addition, this regulation removes several previously established tolerances that are superseded by this final rule. Interregional Research Project Number 4 (IR–4) and Bayer CropScience, requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).
DATES: This regulation is effective June 14, 2017. Objections and requests for hearings must be received on or before August 14, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the SUPPLEMENTARY INFORMATION).
ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0255, is available at http://www.regulations.gov or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at http://www.epa.gov/dockets.
FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7090; email address: jackson.sidney@epa.gov.
SUPPLEMENTARY INFORMATION:
I. General Information
A. Does this action apply to me?
You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:
• Crop production (NAICS code 111).
• Animal production (NAICS code 112).
• Food manufacturing (NAICS code 311).
• Pesticide manufacturing (NAICS code 32532).
B. How can I get electronic access to other related information?
C. How can I file an objection or hearing request?
Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0255 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 14, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).
In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0255, by one of the following methods:
• Federal eRulemaking Portal: http://www.regulations.gov. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
• Mail: OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
• Hand Delivery: To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at http://www.epa.gov/dockets/aboutdockets.html.
Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at http://www.epa.gov/dockets.
II. Summary of Petitioned-For Tolerance
In the Federal Register of Wednesday, June 22, 2016 (81 FR 40594) [FRL–9947–32] and Monday, August 29, 2016 (81 FR 59165) [FRL–9950–22], EPA issued documents pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3),