

section 355(e) of the Internal Revenue Code.

#### Need for Correction

As published, TD 8988 contains errors which may prove to be misleading and are in need of clarification.

#### Correction of Publication

Accordingly, the publication of the temporary regulations (TD 8988), which is the subject of FR Doc. 02-9929 is corrected as follows:

1. On page 20635, column 2, in the preamble under the caption "Explanation of Provisions", line 13 of paragraph H.(1.), the language "reasonable certainty" that, within six" is corrected to read "reasonable certainty" that, within 6".

#### **§ 1.355-0 [Corrected]**

2. On page 20636, column 2, § 1.355-7T(k), the language "Effective date." is corrected to read "Effective dates."

#### **§ 1.355-7T [Corrected]**

3. On page 20637, column 1, § 1.355-7T(b)(3)(iii), line 13, the language "before a distribution where a person" is corrected to read "before a distribution, a person".

4. On page 20637, column 1, § 1.355-7T(b)(3)(iii), line 15, the language "intends to cause a distribution and, as" is corrected to read "intended to cause a distribution and, as".

5. On page 20641, column 2, § 1.355-7T(j) *Example 4.(v)*, line 2, the language "of C and acquisition of X by D are part of a" is corrected to read "of C and the acquisition of X by D are part of a".

**Cynthia Grigsby,**

*Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).*

[FR Doc. 02-13846 Filed 5-31-02; 8:45 am]

**BILLING CODE 4830-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[FRL-7222-4]

RIN 2060-AJ34

### National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

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

**ACTION:** Final rule; amendment.

**SUMMARY:** On June 23, 1999, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production (40 CFR part 63, subpart MMM). On August 19 and 20, 1999, petitions for judicial review of the June 1999 rule were filed in the U.S. Court of Appeals for the District of Columbia Circuit. This action is in response to an issue raised by two of those petitioners—the American Crop Protection Association (ACPA) and the American Cyanamid Company (now BASF Corporation). On March 22, 2002 (67 FR 13504), EPA proposed an amendment to change the existing source compliance date of the NESHAP for PAI Production to December 23, 2003. Under the promulgated rule, existing affected sources would be required to be in compliance by August 22, 2002. With this final action, existing sources will be required to be in compliance with the rule by December 23, 2003.

**EFFECTIVE DATE:** June 3, 2002.

**ADDRESSES:** Docket No. A-95-20 contains supporting information used in developing the 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 (C504-04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5402, electronic mail address [mcdonald.randy@epa.gov](mailto: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 proposed rule 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"> <li>Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides.</li> <li>Producers of any integral intermediate used in on-site production of an active ingredient used in herbicides, insecticides, or fungicides.</li> </ul>

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the proposed 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 this proposed

amendment to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## I. What Is the History of the PAI Production NESHAP?

On June 23, 1999, we promulgated NESHAP for PAI Production as subpart MMM in 40 CFR part 63 (64 FR 33550). On August 19 and 20, 1999, the American Crop Protection Association and American Cyanamid Company (now BASF Corporation) filed petitions for judicial review of the promulgated PAI Production NESHAP in the U.S. Court of Appeals for the District of Columbia Circuit, *ACPA v. EPA*, No. 99-1332, and *American Cyanamid Company v. EPA*, No. 99-1334 (Consolidated with *ACPA v. EPA*, No. 99-1332) (D.C. Cir.).

On January 18, 2002, EPA entered into a Settlement Agreement with ACPA and BASF, resolving petitioners' litigation. Notice of this agreement was published in the **Federal Register** on February 4, 2002 (67 FR 5116), pursuant to the requirements of CAA section 113(g). The Agreement called for EPA to propose a number of amendments to the PAI Production NESHAP, including an amendment to extend the compliance date to December 23, 2003. The proposed amendment to change the compliance date was published on March 22, 2002 (67 FR 13504). The other agreed-upon proposed amendments were published on April 10, 2002 (67 FR 17492).

## II. What Public Comments Were Received on the March 22, 2002 Proposal and What Changes Were Made for the Final Rule?

Although EPA received no comment on the proposed settlement agreement through the section 113(g) process, one commenter, representing an environmental legal defense fund, commented on the proposal to extend the rule's effective date. The commenter maintains that such an extension is illegal because it would establish an effective date for the rule which is longer than the maximum 3 years allowed by section 112(i)(3) of the CAA (assuming no case-by-case 1 year extension). The commenter further maintained that the delay would forestall the health benefits resulting from the emissions reductions required by the underlying rule.

We appreciate the commenter's point. Nonetheless, it should be noted that section 112(i)(3) deadlines are not as inflexible as the commenter maintains. First, section 112(i)(3) is ambiguous as to whether an initial compliance date applies to a rule which has been substantially amended. Section 112(i)(3) applies to "any emissions standard." If a rule is amended so extensively as to

be a different regulation, then compliance set from the date of that amended rule would still be established for "any emission standard," in this case, the new rule. Put another way, there will be circumstances where EPA changes a rule so extensively that the amended rule should be regarded as a new standard, triggering a new effective date. Indeed, it is only common sense that this must be so. For example, suppose that we were to conclude legitimately that data supporting a standard was flawed, and that a new standard was needed, likely necessitating a different means of air pollution control. There should be no doubt that we can promulgate a new compliance date for this new standard. See also, section 112(d)(6) of the CAA, requiring EPA to periodically reexamine and, if necessary, revise MACT standards. If such a standard were revised, it is obvious that a new compliance date would be needed to reflect the time needed to come into compliance with the new standards.

We believe that the proposed changes to the PAI rule, if adopted, are extensive and significant enough to result in a new rule necessitating a new compliance date. We proposed these amendments on April 10, 2002, and the amendments include revisions to every section of the regulation. The public comment period on the proposed amendments closed on May 10, 2002. Therefore, final action on the amendments is still several months in the future.

As explained in detail in the April 10 proposal, the amendments include approximately 100 revisions to the rule. The revisions address numerous issues, make significant amendments, and also make needed corrections to the rule. Several amendments address applicability issues. For example, we proposed to amend the definition of *intermediate* to cover products of extraction, as well as products of chemical synthesis. We also proposed to clarify the demarcation between new and existing sources by clarifying new source applicability. The proposed amendments go to the most basic feature of the rule—to what does it apply—a question which must be answered before any source can begin to comply.

Several amendments include provisions for compliance alternatives and alternative standards that give the source additional compliance options, which necessarily require time for sources to adopt. One example is providing sources the option of demonstrating compliance through the use of a common control device, shared among several processes, provided they

demonstrate compliance using a continuous emissions monitor (CEM) instead of parametric monitoring on a per-process basis. A source desiring to use the environmentally beneficial alternative of CEM-based compliance needs time to obtain, install, and calibrate the device. See section 504 (b) of the CAA, which allows alternatives to a CEM, but in doing so, places the CEM by inference at the top of the monitoring hierarchy.

Given the pervasive nature of the proposed amendments, and the fact that final action cannot occur until after the current existing source compliance date, we believe it is both appropriate and necessary to provide time for sources in the category to review the final changes and take appropriate steps to come into compliance with the amended rule.

## III. What Are the Administrative Requirements for This Action?

### A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this final rule amendment is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

### B. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that

have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This final rule amendment does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to the PAI Production NESHAP. Thus, Executive Order 13132 does not apply to this final rule amendment.

#### *C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”

This final rule amendment does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule amendment.

#### *D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This final rule amendment is not subject to Executive

Order 13045 because it is based on technology performance, not health or safety risks. Furthermore, this final rule amendment has been determined not to be economically significant as defined under Executive Order 12866.

#### *E. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this final rule amendment does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. For existing sources, the total annual cost of the PAI Production NESHAP has been estimated to be approximately \$39.4 million (64 FR 33559, June 23, 1999). Today’s

amendment does not add new requirements that would increase this cost. Thus, this rule amendment is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this rule amendment contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, this rule amendment is not subject to the requirements of section 203 of the UMRA.

#### *F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule amendment. For purposes of assessing the impacts of this final rule amendment on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325320 that has as many as 500 employees; (2) a small business in NAICS code 325199 that has as many as 1,000 employees; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today’s amendment on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact on small entities” (5 U.S.C. Sections 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today’s final rule amendment imposes no additional regulatory requirements on owners or operators of affected sources. We have, therefore, concluded

that today's final rule amendment will have no impact on small entities.

#### G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in the 1999 PAI Production NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control No. 2060-0370.

This final rule amendment will have no impact on the information collection burden estimates made previously, and consequently, the ICR has not been revised. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

#### H. National Technology Transfer and Advancement Act of 1995

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, Section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### I. Congressional Review Act

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 adopting 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. The EPA will submit a report containing this rule amendment 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 this rule amendment in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

#### J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This 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.

#### 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: May 23, 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 paragraph (a)(1) to read 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 December 23, 2003.

\* \* \* \* \*

[FR Doc. 02-13804 Filed 5-31-02; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Parts 3730, 3820, 3830, and 3850

[WO-620-1430-00-24 1A]

RIN 1004-AD52

#### Locating, Recording, and Maintaining Mining Claims or Sites

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Land Management (BLM) is promulgating this final rule to amend regulations on locating, recording, and maintaining mining claims or sites. In this rule, BLM amends its regulations to respond to a recent law extending until September 30, 2003, the provisions that require claimants to pay location and annual maintenance fees for unpatented mining claims or sites, and allow qualified "small miners" to seek a waiver from the annual maintenance fee. BLM has collected these fees and provided for waivers under the existing regulations based on previous laws, the most recent of which expired on September 30, 2001. The final rule is necessary to describe and publicize the statutory extension of the fee requirement, and to remove conflicts between the current regulations and the new statute.

**EFFECTIVE DATE:** This administrative final rule is effective June 3, 2002.

**ADDRESSES:** You may mail suggestions or inquiries to Bureau of Land Management, Solid Minerals Group, Room 501 LS, 1849 C Street, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Roger Haskins in the Solid Minerals Group at (202) 452-0355. For assistance in reaching Mr. Haskins, persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-(800) 877-8339, 24 hours a day, 7 days a week.

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of the Administrative Final Rule
- III. Procedural Matters