

for the State of Wyoming and are applicable to the following proposed major stationary sources or major modifications:

\* \* \* \* \*

**Subpart AAA—[Amended]**

35. Section 52.2676 is amended by revising paragraph (b) to read as follows.

**§ 52.2676 Significant deterioration of air quality.**

\* \* \* \* \*

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21(a)(2) and (b) through (bb) are hereby incorporated and made a part of the applicable State plan for the State of Guam.

**Subpart BBB—[Amended]**

36. Section 52.2729 is amended by revising paragraph (b) to read as follows.

**§ 52.2729 Significant deterioration of air quality.**

\* \* \* \* \*

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21(a)(2) and (b) through (bb) are hereby incorporated and made a part of the applicable State plan for the State of Puerto Rico.

**Subpart CCC—[Amended]**

37. Section 52.2779 is amended by revising paragraph (b) to read as follows.

**§ 52.2779 Significant deterioration of air quality.**

\* \* \* \* \*

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21(a)(2) and (b) through (bb) are hereby incorporated and made a part of the applicable State plan for the Virgin Islands.

**Subpart DDD—[Amended]**

38. Section 52.2827 is amended by revising paragraph (b) to read as follows.

**§ 52.2827 Significant deterioration of air quality.**

\* \* \* \* \*

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21(a)(2) and (b) through (bb) are hereby incorporated and made a part of the applicable State plan for American Samoa.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 122**

[FRL-7464-2]

RIN 2040-AC82

**Modification of National Pollutant Discharge Elimination System (NPDES) Permit Deadline for Storm Water Discharges for Oil and Gas Construction Activity That Disturbs One to Five Acres of Land**

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

**ACTION:** Final rule.

**SUMMARY:** Today's action postpones until March 10, 2005, the requirement to obtain National Pollutant Discharge Elimination System (NPDES) storm water permit for oil and gas construction activity that disturbs one to five acres of land. On December 8, 1999 (64 FR 68722), the U.S. Environmental Protection Agency (EPA) published a final rule expanding the then-existing NPDES permitting program to require permit coverage by March 10, 2003 for, among other things, construction sites that disturb one to five acres. As part of

that rulemaking, EPA assumed that few, if any, oil and gas exploration, production, processing, or treatment operations or transmission facilities would be affected by the rule. Since rule promulgation, EPA has become aware that close to 30,000 oil and gas sites per year may be affected by the December 8, 1999, storm water regulations.

The two-year postponement of the deadline from March 10, 2003, to March 10, 2005, will allow time for EPA to analyze and better evaluate: the impact of the permit requirements on the oil and gas industry; the appropriate best management practices for preventing contamination of storm water runoff resulting from construction associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities; and the scope and effect of 33 U.S.C. 1342 (l)(2) and other storm water provisions of the Clean Water Act.

**DATES:** This final regulation is effective on March 10, 2003. For the purposes of judicial review, this final rule is promulgated as of March 10, 2003 as provided in 40 CFR 23.2.

**ADDRESSES:** The administrative record is available for inspection and copying at the Water Docket, located at the EPA Docket Center in the basement of the EPA West Building, Room B-102, at 1301 Constitution Ave., NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Wendy Bell, Office of Wastewater Management, Office of Water, Environmental Protection Agency, at (202) 564-0746 or e-mail: [bell.wendy@epa.gov](mailto:bell.wendy@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Regulated Entities.*

Entities Potentially Regulated by This Action Include:

Category	Examples of regulated entities
Industry .....	Oil and gas producers constructing drilling sites disturbing one to five acres of land; construction site operators associated with oil and gas construction projects disturbing one to five acres of land; and operators of transmission facilities as defined herein.

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

the applicability criteria in 40 CFR 122.26(b)(15). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. How Can I Get Copies of this Document and Other Related Information ?*

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW-2002-0068. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related

to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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 Water Docket is (202) 566-2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.B.1. Once in the system, select "search," then key in the appropriate docket identification number.

### C. When Does This Rule Take Effect?

Because this rule provides temporary relief from permitting requirements for certain dischargers, this rule is not subject to the general requirement for a thirty-day waiting period after publication before a final rule takes effect. 5 U.S.C. 553(d)(1). Moreover, pursuant to 5 U.S.C. 553(d)(3), EPA has good cause to make this rule effective immediately. The March 10, 2003, deadline this action extends is less than thirty days after the publication of this rule. Making this action effective as soon as it's published will help reduce any confusion by those affected by the rule regarding the necessity for obtaining permit coverage. EPA is aware of no reason why those directly affected by this rule would need, or want, a waiting period before this action becomes effective. Therefore, a thirty-day waiting period is unnecessary and would be contrary to the public interest.

## II. Background

On December 30, 2002, EPA proposed a two-year postponement of the permit requirement for oil and gas construction activity disturbing one to five acres from March 10, 2003, to March 10, 2005, in order to allow time for EPA to analyze and better evaluate (1) The impact of the permit requirements on the oil and gas industry, (2) the appropriate best management practices for preventing contamination of storm water runoff resulting from construction associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities, and (3) the scope and effect of 33 U.S.C. 1342 (l)(2) and other storm water provisions of the Clean Water Act. In that proposal, EPA explained the background of the NPDES construction permit requirements, and why EPA believes it is appropriate to provide a two-year postponement of permit requirements for construction of oil and gas exploration and production facilities disturbing one to five acres. When describing construction activity that disturbs "one to five acres," or in discussing "small" construction activity in this preamble, EPA is referring to activities covered by 40 CFR 122.26(b)(15).

## III. Response to Comments

EPA received numerous comments on both the proposal to postpone permit requirements for small oil and gas construction and the proposed construction general permit (CGP). The proposed CGP is available in the official public docket referenced in the Notice of Availability for Comment for the Proposed CGP at 67 FR 78116 (December 20, 2002). Comments on specific aspects of the CGP will be addressed in the fact sheet that will accompany the final permit. EPA's responses to all the comments received on the proposed rule are available in the Response to Comment document that is part of the docket for this final rule. EPA's responses to many of the principal issues raised on the proposed rule are discussed below.

### *Difference Between Oil and Gas and Other Construction*

A number of commenters opposed the two-year postponement, asserting that there is no reason to treat construction at oil and gas sites differently than other types of construction. EPA agrees that sediment from all sources is a concern but believes that the oil and gas industry has raised significant questions about the differences between the nature of construction at oil and gas sites and

other types of construction. One such difference is the very short time window in which construction at oil and gas sites usually occurs. Most of the studies that EPA relied on to show the need for regulating small construction activity looked at residential or commercial construction. It is important for EPA to determine whether construction at oil and gas sites is sufficiently different from these other types of construction to warrant different regulatory treatment. EPA has decided to postpone permitting requirements for small construction at oil and gas sites for two years so that there is adequate time for all the affected parties to provide information and help us determine how to best ensure that such construction does not cause sediment and erosion problems and that these sites are not subject to inappropriate requirements. Also, as reflected in the proposal, EPA plans to use this time to assess the scope of 33 U.S.C. 1342(l)(2) and other storm water provisions of the Clean Water Act with regard to storm water discharges caused by this industry.

### *Environmental Impact*

EPA received conflicting comments on the environmental impact of oil and gas activity. Some commenters claimed that there was no evidence of negative environmental impacts associated with oil and gas activities. Other commenters asserted that oil and gas projects frequently involved logging, grading, and road building, and that these activities were conducted without erosion and sediment controls and were therefore the source of large amounts of sediment deposition. As discussed above, EPA believes the two-year postponement will provide time to evaluate these opposing assertions.

Several commenters asserted that their State currently requires erosion and sediment (E&S) controls and for oil and gas operators therefore an NPDES permit is unnecessary. Other commenters indicated that oil and gas construction activity in their area occurred without any E&S controls. EPA is aware that some States have good E&S programs in place, and that other States do not. During the two-year postponement, EPA will evaluate State E&S controls related to oil and gas construction activity in comparison to requirements that would be imposed through an NPDES permit.

### *Economic Impact*

A number of commenters asserted that EPA did not perform an economic analysis on the Phase II rule's effect on oil and gas, the national economy, and small businesses. EPA published an

extensive economic analysis that is described in the Phase II rule. EPA did not specifically address oil and gas because the information we considered at that time suggested that most oil and gas sites would disturb less than one acre. EPA's decision to postpone the construction permit requirements for small oil and gas sites is partially based on the information that we became aware of since publication of the Phase II rule. EPA needs the additional time to thoroughly consider the impact of the construction requirements on the oil and gas industry.

Commenters also stated that EPA did not do the proper evaluation of energy-related production activities in accordance with Executive Order 13211. Executive Order 13211 was issued on May 22, 2001 which was well after promulgation of the Phase II rule. However, in the spirit of this Executive Order, during the two year postponement, EPA will analyze the question of whether the imposition of storm water permitting requirements on construction of oil and gas facilities of one to five acres would result in a significant energy impact.

#### *Common Plan*

Commenters asked that EPA clarify how the "common plan of development" applies at oil and gas sites, so they would know the extent of applicability of the two-year permit postponement. Where construction activity is part of a larger common plan of development or sale that will disturb five acres or more, the two year postponement provided for in this final rule does not apply. The primary concern raised by commenters was that when a field is first developed, the producer does not know when, where, and how many wells will be drilled.

EPA acknowledged this broader issue of what constitutes a "common plan" in the "Frequently Asked Questions" section of the proposed fact sheet for the proposed CGP. EPA stated that "If you have a long range master plan of development where some portions of the master plan are a conceptual rather than a specific plan of future development and the future construction activities would, if they occur at all, happen over an extended time period, you may consider the 'conceptual' phases of development to be separate 'common plans' provided the 'conceptual phase' has not been funded and periods of construction for the physically interconnected phases will not overlap." *Fact Sheet for the Issuance of a NPDES Permit*. (This proposed fact sheet is available in the official public docket referenced in the

Notice of Availability for Comment for the proposed CGP at 67 FR 78116 (Dec. 20, 2002).) The proposed fact sheet goes on to describe a possible example in the context of the oil and gas industry. EPA plans to further clarify this issue when it takes final action on the proposed CGP.

#### *Exemption*

Many commenters reiterated their belief that Congress intended CWA 402(l)(2) to exempt all types of activities, including construction, associated with oil and gas exploration, production, processing, treatment, or transmission. EPA recognizes that this issue is, and has been, of concern to many in the oil and gas industry. See, *Appalachian Energy Group, et al. v. EPA*, 33 F.3d 319 (4th Cir. 1994). Today's action is limited to postponing permit requirements for certain oil and gas construction activities and, in this limited context, should not conflict with these commenters' position. Again, as reflected in the proposal, EPA plans to use the two-year extension to assess the scope of 33 U.S.C. 1342(l)(2) with regard to storm water discharges caused by this industry.

Differences between construction disturbing five or more acres ("large" construction. See 40 CFR 122.26(b)(14)(x).) and construction disturbing one to five acres ("small" construction. See 40 CFR 122.26(b)(15).)

Several commenters believe that the two-year postponement should apply to large construction as well as smaller sites. Large construction has been regulated as an industrial activity under CWA section 402(p)(2) since the promulgation of the Phase I storm water rule. EPA did not propose to take any action with respect to large construction activity and did not seek comment on this issue. The Agency declines to respond to these comments, as they are outside the scope of the action proposed.

#### *Transmission facilities*

EPA received many questions about our definition of "transmission facilities." EPA has looked at the information submitted by the oil and gas industry to help understand what types of pipelines should be considered "transmission facilities." For the purposes of today's action, the term "oil and gas exploration, production, processing, and treatment operations or transmission facilities" includes gathering lines, flowlines, feeder lines, and transmission lines. The construction of water lines, electrical utilities lines, etc. as part of the oil and gas exploration, production, processing,

treatment, and transmission of oil and gas are also included. Transmission lines are typically major pipelines (e.g., interstate and intrastate pipelines) that transport crude oil and natural gas over long distances and are large-diameter pipes operating at relatively high pressure. Many of these pipelines traverse long distances and disturb over five acres (and as such, are covered by EPA's permitting requirements for large construction activity). Pipelines that transport refined petroleum product and chemicals from refineries and chemical plants are not included in the terms described in today's rule as potentially eligible for the two year postponement.

One commenter requested that EPA clarify in its final rule that its definition of transmission be consistent with terms used by the U.S. Department of Transportation (DOT) at 49 CFR part 192 (Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards). Commenters also asked about other types of pipelines (i.e., distribution lines). Distribution lines are those pipelines that deliver natural gas to homes, businesses, etc. and operate at relatively low pressures. EPA does not consider distribution lines to be transmission lines, and as such, these lines are not included in the terms described in today's rule as potentially eligible for the two year postponement. While EPA is not codifying DOT definitions, the Agency does consider the DOT's definitions to be consistent with EPA's interpretation of "transmission" in this rulemaking.

#### **IV. Today's Action**

In today's action, EPA is postponing until March 10, 2005, the permit authorization deadline for National Pollutant Discharge Elimination System (NPDES) storm water permits for oil and gas construction activity that disturbs one to five acres of land and sites disturbing less than one acre that are part of a larger common plan of development or sale that disturbs one to five acres. Since January 2002, EPA has become aware that close to 30,000 oil and gas sites may be affected by the Phase II storm water regulations. In the spirit of Executive Order 13211, which directs EPA to consider the impact of its actions on energy-related production activities, the Agency believes it is important to review this new information in light of the Phase II rule to determine the impact on the oil and gas industry. During the two-year postponement of this deadline, EPA plans to gather information about the area of land disturbed during construction of oil and gas exploration and production facilities.

In evaluating the impact of this action, the Agency will work with States, industry, and other entities to gather and evaluate data on the development and use of appropriate best management practices for the oil and gas industry. As part of today's action, EPA is seeking additional information on size, location and other site characteristics to better evaluate compliance costs, as well as technical and cost data to evaluate best management practices appropriate to controlling storm water runoff from oil and gas starts. EPA will also evaluate the applicability of the exemption at 33 U.S.C. 1342(l)(2) to construction activity at oil and gas exploration, production, processing, or treatment operations or transmission facilities. EPA will use the additional data and analyses produced during the two-year period to determine the appropriate NPDES requirements, if any, for small construction of oil and gas exploration and production facilities.

## V. Statutory and Executive Order Reviews

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

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The 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 rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

### B. Paperwork Reduction Act

This action does not impose an information collection burden under the

provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It merely postpones implementation of an existing rule deadline.

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.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business based on SBA size standards; (2) 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 (3) 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 final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. It merely postpones the permit authorization deadline for oil and gas construction activities that disturb one to five acres.

### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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 to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one 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.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule does not impose any costs. It merely postpones the permit authorization deadline for oil and gas construction activities that disturb one to five acres. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final rule is not subject to

the requirements of section 203 of UMRA.

*E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (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 rule 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. It merely postpones the permit authorization deadline for oil and gas construction activities that disturb one to five acres. Thus, Executive Order 13132 does not apply to this rule.

*F. 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." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. It merely postpones the permit authorization deadline for oil and gas construction activities that disturb one

to five acres. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (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, the Agency 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 the Agency. This regulation is not subject to Executive Order 13045 because it is not economically significant as defined under E.O. 12866.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. The only effect of this rule is to delay the permit authorization requirement for affected small oil and gas operations by two years. As noted above, EPA will use the two-year delay to analyze the broader question of whether the imposition of storm water permitting requirements on construction of oil and gas facilities disturbing one to five acres would result in a significant energy impact, and will factor the results of this analysis into its final determination regarding appropriate requirements for such facilities.

*I. National Technology Transfer And Advancement Act*

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. No. 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) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. 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 promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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). This rule will be effective March 10, 2003.

**List of Subjects in 40 CFR Part 122**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

Dated: March 5, 2003.

**Christine Todd Whitman,**  
*Administrator.*

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

**PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

1. The authority citation for part 122 continues to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Revise § 122.26(e)(8) to read as follows:

**§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).**

\* \* \* \* \*  
(e) \* \* \*

(8) For any storm water discharge associated with small construction activity identified in paragraph (b)(15)(i) of this section, see § 122.21(c)(1). Discharges from these sources, other than discharges associated with small construction activity at oil and gas exploration, production, processing, and treatment operations or transmission facilities, require permit authorization by March 10, 2003, unless designated for coverage before then. Discharges associated with small construction activity at such oil and gas sites require permit authorization by March 10, 2005.

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[FR Doc. 03-5708 Filed 3-7-03; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-2002-0348; FRL-7292-6]

#### Aluminum tris (O-ethylphosphonate); Pesticide Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of the fungicide aluminum tris (O-ethylphosphonate) (fosetyl-Al) in or on onion, green. The Interregional Research Project #4 (IR-4), Center for Minor Crop Management, Rutgers, The State University of New Jersey, 681 U. S. Highway #1 South, North Brunswick, NJ 08902-3390 requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective March 10, 2003. Objections and requests for hearings, identified by docket ID number OPP-2002-0348, must be received on or before May 9, 2003.

**ADDRESSES:** Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7610; e-mail address: [jackson.sidney@epa.gov](mailto: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 North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. Potentially affected entities may include, but are not limited to:

- Crop production (NAIC code 111)
- Animal production (NAIC code 112)
- Food manufacturing (NAIC code 311)
- Pesticide manufacturing (NAIC code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in OPP-2002-0348. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2002-0348. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at [http://www.access.gpo.gov/nara/cfr/cfrhtml/00/Title\\_40/40cfr180\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml/00/Title_40/40cfr180_00.html), a beta site currently under development.

[www.access.gpo.gov/nara/cfr/cfrhtml/00/Title\\_40/40cfr180\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml/00/Title_40/40cfr180_00.html), a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

## II. Background and Statutory Findings

In the **Federal Register** of January 2, 2003 (68 FR 103) (FRL-7282-5), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104-170), announcing the filing of a pesticide petition (PP 2E6366) by IR-4, Center for Minor Crop Management, Rutgers, The State University of New Jersey, 681 U. S. Highway #1 South, North Brunswick, NJ 08902-3390. That notice included a summary of the petition prepared by Bayer CropScience, the registrant.

The petition requested that 40 CFR 180.415 be amended by establishing a tolerance for residues of the fungicide fosetyl-Al, aluminum tris (O-ethylphosphonate), in or on onion, green at 10 parts per million (ppm). There were no comments received in response to the notice of filing.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."