

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 63

[AS-FRL]

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
Amendments to Compliance Extensions for Early Reductions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: Pursuant to section 112(i)(5) of the Clean Air Act (Act), a rule was promulgated in the FEDERAL REGISTER on December 29, 1992 to implement granting extensions to compliance with section 112(d) emission standards to sources that have achieved early reductions of hazardous air pollutants (HAPs). This action makes several amendments to the original Early Reductions Rule including: 1) revisions to the deadlines for submitting permit applications, reduction demonstrations, and source testing results, 2) a clarification of the status of an enforceable commitment under certain situations, and 3) correction of a typographical error regarding the high-risk weighting factor for hexachlorocyclopentadiene. As EPA began implementation of the Early Reductions Rule it became apparent that certain timing problems existed with respect to demonstrations that early reductions had been

achieved and the issuance of permits to sources that qualify for a compliance extension. Additionally, some questions were posed by potential program participants on the nature of enforceable commitments. This action is needed to alleviate the timing problems and clarify EPA's treatment of enforceable commitments. The intended results are to improve EPA's ability to determine that actual reductions are achieved before a compliance extension is granted, to make the permit issuance process more workable, and make the provisions of the Early Reductions Program more clear to potential participants. EFFECTIVE DATE: [Insert date of publication in the FEDERAL REGISTER].

Docket. All information used in the development of this final action is contained in the preamble below. However, Docket No. A-90-47, containing the supporting information for the original Early Reductions Rule, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room M-1500, 1st floor, 401 M Street SW, Washington DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. David Beck,

Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 2771, telephone (919) 541-5421.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

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I. BACKGROUND

The Clean Air Act Amendments of 1990 revised section 112 of the Act, which directs EPA to establish national emission standards for sources of HAP. One of the new provisions, section 112(i)(5), offers sources that emit HAPs an incentive for achieving substantial emission reductions earlier than would be required by standards

promulgated under section 112(d). Specifically, the early reductions provision allows granting an existing source emitting HAPs a six-year compliance date extension for an applicable section 112(d) standard, upon demonstration by the owner or operator that the source has achieved, prior to certain dates, a HAP reduction of 90 percent or more from established base year HAP emission levels (95 percent reduction is required for sources emitting particulate HAP).

Generally, participating sources would have to achieve the 90 (95) percent reduction prior to proposal of an applicable section 112(d) standard. However, sources that would be subject to early section 112(d) standards also have the option of participating by submitting to EPA, prior to proposal of an applicable section 112(d) standard, an enforceable commitment to achieve the 90 (95) percent reduction before January 1, 1994. Sources successfully demonstrating qualifying HAP reductions would be granted the compliance extension in a permit issued pursuant to title V of the Act. The permit would establish an alternative emission limitation to be met by the source to ensure that the early reductions are maintained.

On December 29, 1992, EPA promulgated in the FEDERAL REGISTER (57 FR 61970) an implementing rule for the early reductions provisions of the Act. As incorporated in the CODE OF FEDERAL REGULATIONS under title 40, part 63, subpart D, the Early Reductions Rule established procedures and requirements for source owners or operators wishing to obtain the six-year compliance extension. Among other provisions, the rule contains guidelines for demonstrating achievement of qualifying early reductions and established deadlines by which owners or operators must file permit applications to request a compliance extension.

III. SUMMARY OF RULE CHANGES AND RATIONALE

A. Early Reductions Demonstration

According to section 112(i)(5), the early reductions are to be demonstrated with respect to verifiable and actual emissions in a base year not earlier than calendar year 1987. The EPA's interpretation of this language was that total actual HAP emissions from the source over the entire base year (calendar year basis) is the benchmark from which the early reductions will be measured. The Early Reductions Rule implemented this interpretation and required owners or operators to establish base year

emissions using "the best available data accounting for actual emissions, during the base year, of all hazardous air pollutants from each emission point listed in the source..." As an example, an early reductions source may have actual HAP emissions of 100 tons in the base year selected.

To determine whether a source's reductions qualify for a compliance extension, post-reduction emissions must be established on a similar basis and compared to base year emissions. The Early Reductions Rule specifies post-reduction emissions as "the best available data on an annual basis accounting for actual emissions, after the base year and following employment of emission reduction measures, of all hazardous air pollutants from each emission point in the source..." Therefore, the source in the example from the preceding paragraph with base year emissions of 100 tons per year would be required to document actual post-reduction HAP emissions on a tons per year basis as well.

As stated previously, to obtain a compliance extension, a participating source must achieve sufficient reductions before proposal of an applicable section 112(d) standard or, for sources making enforceable

commitments, before January 1, 1994. Emission reduction projects completed on the day before the applicable deadline would count toward the early reduction target of an overall 90 (95) percent reduction. However, after the deadline passes, the source would be expected to emit HAP at the 90 (95) percent reduced level on an annual basis. Therefore, a source having actual HAP emissions of 100 tons in the base year would be expected to emit 10 tons or less of actual HAP emissions during the year following the proposal date of an applicable 112(d) standard to qualify for a compliance extension. (And, of course, would have to maintain that level until the compliance extension expires). For sources making enforceable commitments, actual HAP emissions would have to be 10 tons or less during calendar year 1994 to qualify.

The Early Reductions Rule also required participants to request compliance extensions in the context of title V permit applications. The applications were to consist of two main parts: 1) the demonstration that early reductions had been achieved and 2) permit terms and conditions, including emission limits, monitoring methods, and recordkeeping and reporting requirements proposed by the owner or operator for the early

reductions source. Applications had to be filed before proposal of an applicable standard or, for sources making enforceable commitments, by December 1, 1993. The combined requirements, to file permit applications on or before the date emission reductions have to be achieved and to include the reduction demonstration in the permit application, essentially precludes the source owner or operator from demonstrating post-reduction "actual" HAP emissions as envisioned by the early reductions provision of the Act. To provide a reduction demonstration under this scenario, the participant has to project what emissions will be for the post-reduction year. In most cases, this would mean that short-term emission rates for the emitting units in the early reductions source would have to be extrapolated using expected production conditions for the post-reduction year.

Such a situation is not satisfactory to ensure that sufficient early reductions actually are achieved before a compliance extension is granted. The HAP emission rate from a source can be expected to vary during a year due to seasonal factors, shifting production schedules, changing product mixes, or other factors. Therefore, it is possible that a source that can show a low emission

rate the day before proposal of an applicable section 112(d) standard may have a much higher HAP emission rate days, weeks, or months later. With the language in the Early Reductions Rule promulgated on December 29, 1992, it would be possible to grant a compliance extension to a source that never emits 90 (95) percent less than base year emissions, solely based on a "future-actual" extrapolation of a low, short-term, emission rate. Following through on the example of the source having base year emissions of 100 tons per year, suppose the source has made an enforceable commitment and on December 1, 1993 submits a permit application and a reduction demonstration showing that on November 20, 1993 emissions were 50 pounds per day. Based on that rate, the source projects 1994 emissions to be 18,250 lbs. or 9.1 tons per year (50 lbs. per day multiplied by 365 days) and would be eligible to obtain a compliance extension. However, since no permit would be in place for the source and wouldn't be until the title V permit is issued late in 1994, no monitoring and reporting requirements apply and EPA may never be sure that 1994 actual emissions would achieve the predicted level.

To rectify the apparent discrepancy between the

promulgated Early Reductions Rule and the intent of the early reductions provisions of the Act regarding the demonstration of early reductions, EPA is making several changes to the rule. The demonstration of early reductions no longer will accompany the permit application. Rather, the reduction demonstration will be required after the end of the post-reduction year, which is the year following proposal of an applicable section 112(d) standard or calendar year 1994, for sources making enforceable commitments. Specifically, participants will have to submit reduction demonstrations after the end of the post-reduction year but within 13 months of the proposal date of an applicable emission standard or, for sources subject to enforceable commitments, by January 31, 1995. The description of post-reduction emissions from the promulgated Early Reductions Rule [§63.74(d)(2)] has been revised to state specifically that actual emissions for the post-reduction year must be demonstrated.

These changes ensure that EPA will receive an accounting of post-reduction emissions for the year immediately after the reduction deadline and ensure that no compliance extensions will be granted until actual

post-reduction emissions are demonstrated and approved for the year after the reduction deadline. Early Reductions participants will have to track post-reduction emissions to make the year end demonstration, and EPA recommends that sources institute the monitoring procedures that the source will propose in the permit application to help in documenting post-reduction emissions.

Related to the revised requirement for demonstrating early reductions, two paragraphs from the original rule have been deleted. The first is §63.74(d)(4) which required the owner or operator to submit evidence that emission reductions used to qualify for a compliance extension were achieved prior to the applicable reduction deadline. This provision was rendered superfluous by the change to require the post-reduction emission demonstration to represent actual emissions during the year after the applicable reduction deadline, instead of a projection of what actual post-reduction emissions likely would be. In other words, the criterion to determine whether the reduction deadline was met will be the showing that actual emissions in the post-reduction year were low enough to qualify the source for a

compliance extension.

The second paragraph deleted is §63.74(i), which instructed owners or operators to extrapolate post-reduction emission rates to an annual basis. Similar to the provision discussed in the above paragraph, this provision is now unnecessary because the post-reduction emissions demonstration no longer will be a prediction of emission levels for the post-reduction year.

B. Permit Application Deadlines

Two other date changes are being made to the Early Reductions Rule, primarily as a result of the change to the reduction demonstration submittal date. First, the permit application deadlines for sources participating in the Early Reductions Program have been revised.

Originally, sources that had not made enforceable commitments were to submit applications by the date of proposal of the applicable section 112(d) standard or, if later, within 120 days of approval of the involved State's title V permit program. The revised deadline is 120 days after proposal of the applicable section 112(d) standard or, if later, within 120 days of establishment of a title V permit program (either a State or federal program). For sources that have made enforceable

commitments, the application date is revised from December 1, 1993 to April 30, 1994.

Permits for early reductions sources are to be issued within 12 months of receipt of a complete application, and under the previously promulgated application dates, EPA technically could be required to issue permits before the post-reduction demonstration could be evaluated and a decision made on whether to grant a compliance extension. Moving the application submittal date to 120 days after proposal of an applicable section 112(d) standard, or April 30, 1994 for sources making enforceable commitments, would more closely match the date EPA must issue a permit with the date EPA would be ready to do so.

Another reason for delaying the December 1, 1993 application deadline for sources subject to enforceable commitments is that no title V permitting mechanism will be in place at that time. The December 1, 1993 deadline presumed that a title V permitting mechanism, either approved State title V programs or a promulgated federal title V program, would be operational by that time to process applications, and that such a program would be operational sufficiently ahead of the deadline to allow

sources time to compose permit applications based on the permit program requirements. However, this is not the case. States likely will not obtain approval of their title V permit programs until late in 1994, or later, and a federal program for issuing title V permits probably will not be promulgated until 1995. Therefore, there will be no title V permitting mechanism in place before December 1, 1993.

To fill the permitting mechanism void, EPA intends to promulgate a specialty title V program solely for the purpose of processing and issuing permits for sources participating in the early reductions program. However, that program has not yet been promulgated, and probably won't be until mid-1994. At best, a specialty title V permit program will have just been proposed by the December 1, 1993 deadline, leaving little to no time for Early Reductions Program participants to see the proposed permit program requirements and prepare applications for submission. Revising the deadline to April 30, 1994 alleviates this problem.

Since the specialty permit program likely will not have been promulgated by the new April 30, 1994 deadline,

participants will have to compose permit applications based on the proposed specialty program. In the event that there are significant changes between the proposed and promulgated versions of the specialty permit program, participants would be have to amend their permit applications to accommodate the changes.

The second change revises the deadline for submittal of source test results for sources subject to enforceable commitments. The promulgated Early Reductions Rule, although requiring the post-reduction emission demonstration to accompany the permit application, allowed owners or operators to submit source test results in support of post-reduction emissions as late as 120 days after the deadline for submitting permit applications, or for sources subject to enforceable commitments, March 31, 1994. The later submittal of test results allowed sources that had implemented reduction measures just before the early reduction deadline time to perform source tests and analyze and compile the results. The test result submittal date for sources subject to enforceable commitments is being revised to April 30, 1994, coinciding with the revised permit application date for such sources. The date is not revised for other

sources since it already coincides with the revised permit application date.

It may seem incongruent that the post-reduction emission demonstration does not have to be submitted until after the post-reduction year has ended, yet the results from any source testing done to support post-reduction emissions must be submitted well ahead of that time. However, the point of asking for test results earlier is to see that any planned source tests are performed early in the post-reduction year, thereby giving a timely indication of the performance of emission reduction measures. Allowing tests to be performed late in the post-reduction year would not ensure detection of initial emissions levels during the post-reduction year. It is emphasized that submittal of test results does not constitute the post-reduction emissions demonstration. Test results or other indications of short-term emission levels would have to be coupled with relevant monitoring information over the year to demonstrate actual, annual, post-reduction HAP emissions for the early reductions source. Relevant monitoring information could include monitoring emissions directly or monitoring process parameters or control device parameters that are related

to emissions performance.

C. Enforceable Commitments

A new paragraph §63.75(f) is added to clarify the status of enforceable commitments that have not been approved and are still undergoing the approval process. An enforceable commitment includes a description of the early reductions source, associated HAP emission estimates for the base year selected, and a commitment to reduce HAP emissions by 90 (95) percent before January 1, 1994. The EPA will review and approve/disapprove base year emissions contained in an enforceable commitment according to the procedures in §63.76 of the Early Reductions Rule. This process was instituted to help verify the technical adequacy and representativeness of base year emission estimates and, in turn, assure that the resulting target post-reduction emission levels are appropriate to qualify sources for compliance extensions.

If EPA finds base year emissions to be deficient in some way, the source must revise the enforceable commitment to take into account EPA's comments. If the source owner or operator cannot or chooses not to respond to EPA comments on the base year emission estimates, the source will be considered withdrawn from the program.

Without EPA approval of base year emissions, an enforceable commitment is not in effect and is not enforceable. The new language under §63.75(f) clarifies this point and the fact that when an unapproved enforceable commitment is still undergoing the approval process after the date commitments can be withdrawn without penalty (December 1, 1993), the source does not have to continue to seek approval of the commitment and will not be subject to enforcement action. Once again, the enforceable commitment must be approved to be in effect and enforceable.

A related concern raised to EPA is whether a source that has made an enforceable commitment and that has demonstrated achieving the required reductions must actually receive the compliance extension and be issued the title V permit, or could the source give up the extension and simply meet the applicable section 112(d) standard on schedule and without penalty? This question arose from a concern expressed by potential participants that some of the terms and conditions imposed in a permit issued to an early reductions source may be rigorous to the point that the source owner or operator would prefer compliance with the applicable standard under section

112(d) of the Act. While EPA considers the possibility of such a scenario remote, it is acknowledged that the terms and conditions of permits issued to early reductions sources may be more individualized and subject to judgements made by the permitting authority than permits issued to similar sources complying with section 112(d) standards. For example, section 112(d) standards likely will specify monitoring requirements for subject sources, which will then be implemented in title V permits, whereas the monitoring requirements for emission reduction measures employed by an early reductions source must be generated through reasoned application of existing information on monitoring similar sources in similar situations.

Should the scenario in the above paragraph arise, the source owner or operator could withdraw from the Early Reductions Program without penalty provided that the terms of the enforceable commitment were met. In an enforceable commitment, an owner or operator commits to achieving before January 1, 1994 a 90 (95) percent reduction in emissions from the established base year HAP emission level at the early reductions source. If the owner or operator submits a demonstration (as defined by

the amended Early Reductions Rule) that promised reductions had been achieved before the deadline and that demonstration is approved by EPA, then the terms of the enforceable commitment will have been met and the source could decide to forego receiving the compliance extension and instead meet the applicable section 112(d) standard on schedule, without penalty.

D. Hexachlorocyclopentadiene

Finally, the high-risk weighting factor for hexachlorocyclopentadiene (CAS No. 77474) as listed in Table 1 of §63.74 is corrected to read "10" instead of "100." This change simply corrects a typographical error from the publication of the Early Reductions Rule.

E. Effective Date

The EPA is publishing this rule as a final rule, and it is effective immediately upon publication. The Agency believes that this action is supported by the "good cause" exception in the Administrative Procedures Act, which permits an agency for "good cause" to proceed directly to a final rule where issuing a proposed rule would be "impracticable, unnecessary, or contrary to the public interest" [5 U.S.C. 553(b)(B)] and for "good cause found" [5 U.S.C. 553(d)] to dispense with the general

requirement that a rule be published 30 days before its effective date. The EPA believes that "good cause" exists here to issue a final, immediately effective rule because of the nearness of the December 1, 1993 permit application deadline (for sources that have made enforceable commitments) specified in the December 29, 1992 version of the Early Reductions Rule. If the changes in this rulemaking were only being proposed, then the December 1, 1993 application date would still be in effect and this would negate the intent of the changes such as delaying the permit application date until April 30, 1994 for sources that have made enforceable commitments. Furthermore, EPA views this action, which delays information submissions but improves accounting measurements, as noncontroversial.

F. Judicial Review

Under section 307(b)(1) of the Act, judicial review of the actions taken by this final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of publication of this action. Under section 307(b)(2) of the Act, the requirements that are the subject of this final rule may not be challenged later in

civil or criminal proceedings brought by EPA to enforce these requirements.

IV. ADMINISTRATIVE REQUIREMENTS

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated Early Reductions Rule (57 FR 61970) were submitted to and approved by the Office of Management and Budget. A copy of this Information Collection Request (ICR) document (OMB control number 2060-0222) may be obtained from Sandy Farmer, Information Policy Branch (PM-223Y); U.S. Environmental Protection Agency; 401 M Street, S.W.; Washington, DC 20460 or by calling (202) 260-2740. Today's changes to the Early Reductions Rule do not affect the information collection burden estimates made previously, only the timing of submittal of the information requested has been affected somewhat. Therefore, the ICR has not been revised.

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B. Executive Order 12291 Review

Under Executive Order 12291, EPA must judge whether
a

regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The EPA concluded that the Early Reductions Rule promulgated on December 29, 1992 was not a major rule. Today's revisions to that rule do not have an effect on that decision, since the costs and benefits of the rule remain unchanged.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.

LIST OF SUBJECTS IN 40 CFR PART 63

Air pollution control, Hazardous air pollutants, Reporting and recordkeeping requirements.

_____Date

Administrator

For the reasons set out in the preamble, 40 CFR Chapter I part 63 subpart D is amended as follows:

1. The authority citation for Part 63 subpart D continues to read as follows:

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

2. Section 63.74 paragraph (d)(2) is revised and paragraphs (d)(4) and (i) are removed and reserved as follows:

§63.74 Demonstration of early reduction.

* * * * *

(d) * * *

(2) The best available data accounting for actual emissions, during the year following the applicable emission reduction deadline as specified in §63.72(a)(2), of all hazardous air pollutants from each emission point in the source listed pursuant to paragraph (b)(2) of this section.

* * * * *

(d)(4) (Reserved)

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(i) (Reserved)

3. In section 63.74 Table 1 entitled "List of High-Risk Pollutants," the entry for

"hexachlorocyclopentadiene" (CAS No. 77474) is revised to
read as follows:

TABLE 1. LIST OF HIGH RISK POLLUTANTS

<u>CAS. No.</u>	<u>Chemical</u>	<u>Weighting</u>
<u>Factor</u> * * * * *		
77474	Hexachlorocyclopentadiene	10
* * * * *		

4. Paragraph (f) is added to section 63.75 to read as follows:

§63.75 Enforceable Commitments

* * * * *

(f) An enforceable commitment submitted under this section shall not be in effect and enforceable until the base year emissions contained in the commitment have been approved according to the procedures in §63.76 of this subpart. An owner or operator is under no obligation to continue to seek approval of commitments that have not been approved by December 1, 1993.

5. Section 63.77 is revised to read as follows:

§63.77 Application procedures.

(a) To apply for an alternative emission limitation under §63.72, an owner or operator of the source shall file a permit application with the appropriate permitting authority.

(b) Except as provided in paragraph (e) of this section,

the permit application shall contain the information required by §63.74, as applicable, and the additional information required for a complete permit application as specified by the applicable permit program established pursuant to title V of the Act.

(c) Permit applications under this section for sources not subject to enforceable commitments shall be submitted by the later of the following dates:

- (1) 120 days after proposal of an otherwise applicable standard issued under section 112(d) of the Act; or
- (2) 120 days after the date an applicable permit program is approved or established pursuant to title V of the Act.

(d) Permit applications for sources subject to enforceable commitments pursuant to §63.75 shall be submitted no later than April 30, 1994.

(e) The post-reduction emissions information required under §63.74 paragraphs (d)(2), (d)(3), and (d)(5) shall not be filed as part of the initial permit application but shall be filed later as a supplement to the application. This supplementary information shall be filed no earlier than one year after the date early reductions had to be achieved according to §63.72(a)(2)

and no later than 13 months after such date.

(f) If a source test will be the supporting basis for establishing post-reduction emissions for one or more emissions units in the early reductions source, the test results shall be submitted by the applicable deadline for submittal of a permit application as specified in paragraph (c) or (d) of this section.

(g) Review and disposition of permit applications submitted under this section will be accomplished according to the provisions of the applicable permit program established pursuant to title V of the Act.

Billing Code 6560-50-P