

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 455**

[FRL-6126-6]

Amendments to the Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Organic Pesticide Chemicals Manufacturing Industry—Pesticide Chemicals Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating amendments to regulations that limit the discharge of pollutants into navigable waters of the United States and into publicly owned treatment works (POTWs) by existing and new sources that manufacture pesticide active ingredients (PAIs). Today's amendments only affect new and existing facilities that manufacture the PAI pendimethalin. These amendments are based on additional effluent monitoring data submitted to the Agency by the sole existing pendimethalin manufacturer, the American Cyanamid Company.

DATES: This direct final rule is effective without further notice on October 20, 1998 unless EPA receives relevant adverse comment by September 21, 1998. If relevant adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send comments in triplicate to Ms. Shari H. Zuskin, Office of Water, Engineering and Analysis Division (4303), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460. Comments may also be sent via e-mail to:

zuskin.shari@epamail.epa.gov.

Electronic comments must be submitted in ACSII file avoiding the use of special characters and any form of encryption. Electronic comments will also be accepted in WordPerfect 5.1 or 6.1 file format. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Ms. Shari H. Zuskin at (202) 260-7130 or via e-mail at: zuskin.shari@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:**Regulated Entities**

Entities potentially regulated by this action are existing or new sources which generate process wastewater from

the manufacture of the pesticide active ingredient Pendimethalin. Regulated categories and entities include:

Category	Examples of regulated Entities
Industry	<ul style="list-style-type: none"> Existing or New Pesticide Manufacturers of Pendimethalin.

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 is regulated by this action, you should carefully examine the applicability criteria in § 455.20 of the final rule, published in the **Federal Register** on September 28, 1993 [58 FR 50869]. 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.

Overview

This preamble describes the legal authority of this direct final rule, background information on the final pesticide chemicals manufacturing industry effluent limitations guidelines and standards (58 FR 50638; September 28, 1993), the amendments to the September 1993 final rule, and the application of the technical and economic methodologies developed for the final rule to the development of these amendments.

Abbreviations, acronyms, and other terms used in this preamble are defined in Appendix A of the preamble to the final pesticide chemicals manufacturing effluent limitations guidelines and standards (58 FR 50638; September 28, 1993).

I. Legal Authority**II. Background**

- A. Development of Final Pesticide Chemicals Manufacturing Guidelines
- B. American Cyanamid Petition for Review
- III. Amendments to the Final Pesticide Chemicals Manufacturing Guidelines
- IV. Environmental Impact of the Amendments
- V. Economic Impact of the Amendments
- VI. Promulgation as a Direct Final Rule
- VII. Related Acts of Congress and Executive Orders

- A. Executive Order 12866
- B. Unfunded Mandates Reform Act (UMRA)
- C. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Act of 1996 (SBREFA)
- D. Congressional Review Act

E. Paperwork Reduction Act

F. Executive Order 13045

G. National Technology Transfer and Advancement Act

I. Legal Authority

These amendments are being promulgated to revise the effluent guidelines and standards of performance for the Organic Pesticide Chemicals Subcategory of the Pesticide Chemicals Point Source Category under the authorities of Sections 301, 304, 306, 307, and 501 of the Clean Water Act, also referred to as "the Act."

II. Background**A. Development of Final Pesticide Chemicals Manufacturing Guidelines**

A full discussion of the development of the final pesticide chemicals manufacturing effluent limitations guidelines and standards is presented in the preamble to the final rule (58 FR 50638; September 28, 1993). To summarize, on April 10, 1992, (57 FR 12560) EPA proposed new effluent limitations guidelines and standards for new and existing facilities that manufacture pesticide active ingredients (PAIs). The PAI-specific numeric limitations were based, wherever possible, on actual industry monitoring data of the effluent concentrations of PAIs in wastewaters treated by full-scale treatment systems considered to be best available technology economically achievable (BAT). Where actual full-scale data were not available, the final BAT limitations were based on a transfer of treatment system performance data between structurally similar PAIs, supported by data from EPA or industry bench-scale treatability studies. In some cases, the final BAT limitations may require that existing PAI treatment technologies be improved by enhanced operations, such as: hydrolysis with increased retention time; carbon adsorption with increased retention time; and additional PAI monitoring. After incorporating new data submittals (mostly additional long-term treatment system performance data), as discussed in a Notice of Data Availability (NOA) (58 FR 19392; April 14, 1993), EPA promulgated final regulations for the pesticide chemicals manufacturing industry on September 28, 1993.

B. American Cyanamid Petition for Review

As part of the 1993 promulgated effluent limitations guidelines and standards, numerical limitations were included based on incineration as the BAT technology for pendimethalin and two other PAIs (terbufos and phorate)

manufactured by American Cyanamid. American Cyanamid incinerates wastewater and other waste generated during the manufacture of these three PAIs, and discharges incinerator scrubber blowdown from their facility. The proposed numerical limitations for these three PAIs were calculated using data provided to EPA by American Cyanamid, including annual production data, the number of annual production days, and daily flow rate and effluent monitoring data for pendimethalin, terbufos, and phorate.

In their comments on the proposed rule, American Cyanamid disagreed with EPA on the technical details of how the numerical limitations were developed for pendimethalin, terbufos, and phorate. For pendimethalin, American Cyanamid commented that EPA had only included data from one of their two incinerators used to treat wastewaters containing pendimethalin. American Cyanamid's other comments, concerning all three PAIs, focused primarily on the calculation and use of long-term flow rates and PAI loadings in the incinerator scrubber blowdown streams. EPA recalculated the limitations for pendimethalin, phorate, and terbufos based on American Cyanamid's comments, and presented the revised limitations in the April 14, 1993, NOA. American Cyanamid did not comment on the phorate and terbufos limitations presented in the NOA, but did comment on the pendimethalin limitations. The comments related to pendimethalin questioned whether certain daily loadings in their effluent monitoring database should have been used to calculate the pendimethalin limitations based on the incinerator flow rate data available on those days. EPA took these comments into account when calculating the final pendimethalin limitations, which were promulgated on September 28, 1993.

In February 1994, American Cyanamid filed a petition for review of the final effluent limitations guidelines and standards (*American Cyanamid Company v. U.S. Environmental Protection Agency*, No. 94-1367 (8th Cir.)). Among other things, American Cyanamid disagreed with the statistical approach EPA used in the final rule to calculate mass-based limitations using the daily mass loading, flow rate, and production data available for pendimethalin. After filing its petition, American Cyanamid also provided EPA with some additional long-term monitoring data for the company's pendimethalin incineration operations. Although EPA has not changed its statistical approach for deriving the

limitations, the Agency has evaluated the new monitoring data submitted by American Cyanamid and has agreed, through today's rule amendments, to revise the limitations for pendimethalin based on these new data. EPA and American Cyanamid also agreed on an approach for determining which daily monitoring data EPA should use to calculate today's revised pendimethalin limitations. Specifically, EPA used monitoring data for only those days when both flow rate and PAI concentration data (specifically pendimethalin data) were available for both operating incinerators. American Cyanamid has agreed that it will terminate its petition for review of the final regulations in light of the new pendimethalin limits that EPA is promulgating today as well as an additional letter that EPA has sent to the company clarifying the operation of these regulations.

III. Amendments to the Final Pesticide Chemicals Manufacturing Guidelines

The amendments change the daily maximum and monthly average effluent limitations for pendimethalin listed for new and existing direct and indirect discharges. Table 2 to Part 455 lists the "Organic Pesticide Active Ingredient Effluent Limitations Best Available Technology Economically Achievable (BAT) and Pretreatment Standards for Existing Sources (PSES)." Table 3 to Part 455 lists the "Organic Pesticide Active Ingredient New Source Performance Standards (NSPS) and Pretreatment Standards for New Sources (PSNS)."

EPA has revised the daily maximum effluent limitation for pendimethalin from the current limit of 1.17×10^{-2} pounds pendimethalin pollutant/1,000 pounds pendimethalin product to a new limit of 1.30×10^{-2} pounds pendimethalin pollutant/1,000 pounds pendimethalin product.

EPA has also revised the monthly average effluent limitation for pendimethalin from the current limit of 3.62×10^{-3} pounds pendimethalin pollutant/1,000 pounds pendimethalin product to a new limit of 3.99×10^{-3} pounds pendimethalin pollutant/1,000 pounds pendimethalin product.

IV. Environmental Impact of the Amendments

The previously promulgated pendimethalin limitations are being amended in today's notice based on additional incinerator operating data provided to EPA by American Cyanamid. EPA modified the long-term monitoring database used to calculate the previously promulgated

pendimethalin limitations with these operating data. EPA believes that the long-term monitoring database supporting today's revised limitations represents an accurate indication of incinerator performance and achievable pendimethalin discharge loadings. The amended limitations represent relatively small increases in the allowable pendimethalin discharge loadings. Therefore, these amendments are not expected to significantly impact the pendimethalin loadings currently discharged from the incinerators. As noted, there is only one existing manufacturer of pendimethalin. For these reasons, the revised limitations are not expected to significantly affect the environmental impact analysis that was issued at the time the final rule was promulgated.

V. Economic Impact of the Amendments

These amendments to the previously promulgated limitations do not alter the BAT treatment technology for pendimethalin. The Agency considered the economic impact of the regulation when the limitations were promulgated in 1993, and concluded at that time that the pendimethalin limitations were economically achievable. Because the amendments are based on the same BAT technology and level of operation for which costs were developed at promulgation, the economic impact is not expected to be significantly changed.

VI. Promulgation as a Direct Final Rule

EPA is promulgating these changes to the Part 455 limitations for pendimethalin as a "direct final" rule because the Agency believes they are noncontroversial. We do not expect any relevant adverse comments on these rule changes. Nevertheless, since it is possible that there are such interested parties, EPA is providing an opportunity for the public to submit comments on today's rule. Specifically, EPA is issuing a separate, parallel proposal elsewhere in today's **Federal Register** that references the rule changes set forth in this direct final rule.

If EPA receives relevant adverse comments on the rule by the close of the 60-day comment period, it will publish a document in the **Federal Register** that withdraws this direct final rule in a timely manner. The Agency will then address the public comments in a later final rule that is based on today's proposed rule. Note that EPA will not provide for a second comment period on this action. Any parties interested in commenting on this action must do so at this time.

If, as expected, EPA does not receive relevant adverse comment on the rule, then this direct final rule will become effective on the effective date noted above, without further notice.

VII. Related Acts of Congress and Executive Orders

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether this 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. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.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. Again, today's amendments do not significantly alter the pendimethalin numerical limitations and, in fact, simply relax these limitations slightly. Therefore, there is no additional compliance cost associated with today's amendments. Thus, today's final rule is not subject to the requirements of Sections 202 and 205 of the UMRA. In addition, today's amendments do not add any additional requirements/mandates on State, local and/or tribal governments beyond those of the final regulation promulgated in 1993. Currently there is only one State government that would have to revise the permit for one facility based on the amendments being promulgated today. This State government has already been notified. Therefore, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

C. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act, EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of the rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the rule will

not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare an RFA. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

As discussed earlier in this notice, there are no added costs to the regulated community associated with compliance with this final rule. The rule simply replaces the current effluent limitations and standards for one pesticide active ingredient, pendimethalin, with less stringent limitations and standards. In these circumstances, there will obviously be no increase in the cost of compliance with the requirements. Further, there is only one pesticide manufacturer of pendimethalin in this subcategory and the manufacturer is not a small entity, as defined by the Small Business Administration (SBA)¹. Consequently, today's change will not have a significant economic impact on a substantial number of small entities.

D. 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Paperwork Reduction Act

There are no information collection requirements in today's final rule.

F. Executive Order 13045

The Executive Order, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) "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,

¹ SBA defines a small business in the Pesticide Chemicals Manufacturing Industry as an entity with less than 500 firm employees.

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.

EPA interprets the E.O. 13045 as encompassing only those regulatory actions that are risk based or health based, such that the analysis required under section 5-501 of the E.O. has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not involve decisions regarding environmental health or safety risks.

G. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act ("NTTAA"), the Agency is required 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, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

There are no specified and/or otherwise affected analytical methods in today's amendments.

List of Subjects in 40 CFR Part 455

Environmental protection, Pesticide chemicals manufacturing, Water

treatment and disposal, Water pollution control.

Dated: July 14, 1998.

Carol M. Browner,
Administrator.

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

PART 455—[AMENDED]

1. The authority citation for part 455 continues to read as follows:

Authority: Sections 301, 304, 306, 307, and 501 Pub. L. 92-500, 86 Stat. 816, Pub. L. 95-217, 91 Stat. 156, and Pub. L. 100-4, 101 Stat. 7 (33 U.S.C. 1311, 1314, 1316, 1317, and 1361).

2. In Table 2 to Part 455 the entry for pendimethalin is revised to read as follows:

TABLE 2 TO PART 455.—ORGANIC PESTICIDE ACTIVE INGREDIENT EFFLUENT LIMITATIONS BEST AVAILABLE TECHNOLOGY ECONOMICALLY ACHIEVABLE (BAT) AND PRETREATMENT STANDARDS FOR EXISTING SOURCES (PSES)

Pesticide	kg/kg (lb/1,000 lb) pounds of pollutant per 1000 lbs. product		Notes
	Daily maximum shall not exceed	Monthly average shall not exceed	
* * * * *	*	*	*
Pendimethalin	1.30×10 ⁻²	3.99×10 ⁻³	
* * * * *	*	*	*

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3. In Table 3 to part 455 the entry for pendimethalin is revised to read as follows:

TABLE 3 TO PART 455.—ORGANIC PESTICIDE ACTIVE INGREDIENT NEW SOURCE PERFORMANCE STANDARDS (NSPS) AND PRETREATMENT STANDARDS FOR NEW SOURCES (PSNS)

Pesticide	kg/kg (lb/1,000 lb) pounds of pollutant per 1000 lbs. product		Notes
	Daily maximum shall not exceed	Monthly average shall not exceed	
* * * * *	*	*	*
Pendimethalin	1.30×10 ⁻²	3.99×10 ⁻³	
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