

**§ 152.96 Claim of data gap.**

(a) *When a data gap may be claimed.* Except as provided in paragraph (b) of this section, an applicant may defer his/her obligation to satisfy an applicable data requirement until the Agency requires the data if no other person has previously submitted to the Agency a valid study that would satisfy the data requirement in question.

(b) *When a data gap may not be claimed—*(1) *Product containing a new active ingredient.* An applicant for registration of a product containing a new active ingredient may not defer his/her obligation by claiming a data gap unless he/she can demonstrate to the Agency's satisfaction that the data requirement was imposed so recently that insufficient time has elapsed for the study to have been completed and that, in the public interest, the product should be registered during the limited period of time required to complete the study. Refer to FIFRA section 3(c)(7)(C).

(2) *Product not containing a new active ingredient.* An applicant for registration of a product under FIFRA section 3(c)(7)(A) or (B) (a product not containing a new active ingredient) may not defer his/her obligation by claiming a data gap if the data are:

(i) Data needed to determine whether the product is identical or substantially similar to another currently registered product or differs only in ways that would substantially increase the risk of unreasonable adverse effects on the environment.

(ii) Efficacy data specific to the product, if required to be submitted to the Agency.

(iii) If a new use is proposed for a product that is identical or substantially similar to an existing product, data to demonstrate whether the new use would substantially increase the risk of unreasonable adverse effects on the environment.

(c) *Approval of application with a data gap claim.* (1) In accordance with § 152.115(a), any registration that is approved based upon a data gap claim shall be conditioned on the submission of the data no later than the time that the data are required to be submitted for similar products already registered.

(2) Notwithstanding paragraph (c)(1) of this section, the Agency will not approve an application if it determines that the data for which a data gap claim has been made are needed to determine if the product meets the requirements of FIFRA section 3(c)(5) or 3(c)(7).

12. Section 152.97 is revised to read as follows:

**§ 152.97 Rights and obligations regarding the Data Submitters List.**

(a) Each original data submitter shall have the right to be included on the Agency's Data Submitters List.

(b) Each original data submitter who wishes to have his/her name added to the current Data Submitters List must submit to the Agency the following information:

(1) Name and current address.

(2) Chemical name, common name (if any) and CAS number (if any) of the active ingredient(s), with respect to which he/she is an original data submitter.

(3) For each such active ingredient, the type(s) of study he/she has previously submitted (identified by reference to data/information requirements listed in part 158 of this chapter or part 161 of this chapter as applicable), the date of submission, and the EPA registration number, file symbol, or other identifying reference for which it was submitted.

(c) Each applicant not already included on the Data Submitters List for a particular active ingredient must inform the Agency at the time of submission of a relevant study whether he/she wishes to be included on the Data Submitters List for that pesticide.

13. Section 152.99 is amended by removing paragraph (a)(2)(iv), redesignating paragraphs (a)(2)(v) and (a)(2)(vi) as (a)(2)(iv) and (a)(2)(v), and revising newly redesignated paragraph (a)(2)(iv) to read as follows:

**§ 152.99 Petitions to cancel registration.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(iv) The applicant has falsely or improperly claimed that a data gap existed at the time of his/her application.

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 450**

**[EPA-HQ-OW-2010-0884; FRL-9222-3]**

**Proposed Rule Staying Numeric Limitation for the Construction and Development Point Source Category**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to stay the numeric effluent limitation of 280 NTU and associated monitoring requirements

for the Construction and Development Point Source Category. This action is necessary so that EPA can reconsider the record basis for calculating the numeric effluent limitation. EPA plans to take final action to recalculate the numeric effluent limitation by June 29, 2011. EPA proposes to stay the 280 NTU limit and associated monitoring requirements until it takes final action to recalculate the numeric limitation.

**DATES:** Comments must be received on or before December 6, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OW-2010-0884, by one of the following methods:

- *http://www.regulations.gov:* This is EPA's preferred approach, although you may use the alternatives presented below. Follow the on-line instructions for submitting comments.

- *E-mail:* [OW-Docket@epa.gov](mailto:OW-Docket@epa.gov).

- *Mail:* USEPA Docket Center, Environmental Protection Agency, Docket Number EPA-HQ-OW-2010-0884, Mailcode 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* USEPA Docket Center, Public Reading Room, 1301 Constitution Ave., NW., Room 3334, EPA West Building, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OW-2010-0884. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your

name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although

listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the USEPA Docket Center, Public Reading Room, Room 3334, EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number

for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-2426.

**FOR FURTHER INFORMATION CONTACT:** Janet Goodwin, USEPA Office of Water by phone at (202) 566-1060 or by e-mail at [goodwin.janet@epa.gov](mailto:goodwin.janet@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

*A. Does this action apply to me?*

Regulated Entities

Entities potentially regulated by this action include:

Category	Examples of regulated entities	North American industry classification system (NAICS) code
Industry .....	Construction activities required to obtain 236 NPDES permit coverage and performing the following activities: Construction of buildings, including building, developing and general contracting. Heavy and civil engineering construction, including land subdivision.	236 237

EPA does not intend the preceding table to be exhaustive, but provides it as 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 40 CFR 450.10 (74 FR 62995) and the definition of "storm water discharges associated with industrial activity" and "storm water discharges associated with small construction activity" in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular site, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## **II. Discussion of Direct Final Rulemaking**

EPA is proposing to stay the provisions of 40 CFR 450.22(a) and (b) that contain the numeric limitation and associated monitoring requirements for the Construction and Development Point Source category. This stay is necessary to reconsider the record underlying the calculation of the 280 NTU numeric limitation. After the numeric limitation was promulgated, and based on EPA's examination of the dataset underlying the 280 NTU limit, EPA concluded that it improperly

interpreted the data and, as a result, the calculations in the existing administrative record are no longer adequate to support the 280 NTU effluent limitation. EPA intends to expeditiously conduct a separate rulemaking to correct the numeric effluent limitation. Until the new rulemaking is effective, it is proposed that the stay will remain in place. EPA expects to complete a notice and comment rulemaking to correct the data error by May 30, 2011 so that the revised numeric limitation will be effective by June 29, 2011. An effective date of June 29, 2011 for the corrected numeric limit will enable EPA to incorporate the revised numeric limit and associated monitoring requirements in EPA's Construction General Permit. In the "Rules and Regulations" section of today's Federal Register, we are issuing this stay as a direct final rule without prior proposal because we view this stay as noncontroversial and anticipate no adverse comment. We have described the justification for the stay in the direct final rule. If EPA receives no adverse comment on either of these two actions, the Agency will not take further action on this proposed rule. If EPA receives adverse comment on either of these two actions, the Agency will publish a timely withdrawal of the direct final rule in the **Federal Register**. We would then address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

For the various statutes and Executive Orders that require findings for each rulemaking, EPA incorporates the findings from the direct final rulemaking into this companion notice for the purpose of providing public notice and opportunity for comment.

#### **List of Subjects in 40 CFR Part 450**

Environmental protection, Construction industry, Land development, Erosion, Sediment, Stormwater, Water pollution control.

Dated: November 1, 2010.

**Lisa P. Jackson,**  
Administrator.

[FR Doc. 2010-28034 Filed 11-4-10; 8:45 am]

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 721**

[EPA-HQ-OPPT-2009-0669; FRL-8849-7]

RIN 2070-AB27

### **Modification of Significant New Uses of 2-Propen-1-one, 1-(4-morpholinyl)-**

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

**ACTION:** Proposed rule.

**SUMMARY:** Under the Toxic Substances Control Act (TSCA), EPA is proposing to amend the significant new use rule (SNUR) for 2-Propen-1-one, 1-(4-morpholinyl)- (CAS No. 5117-12-4) to allow certain uses without requiring a significant new use notice (SNUN). EPA