



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-R03-OAR-2018-0304; FRL-9990-12-Region 3]

Commonwealth of Pennsylvania; Allegheny County Health Department, Withdrawal of Section 112(l) Delegation Authority for the Chemical Accident Prevention Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is notifying the public that the Allegheny County Health Department (ACHD) has completed the regulatory process for voluntary withdrawal from EPA's delegation of authority to enforce the chemical accident prevention regulations under the Clean Air Act (CAA). The EPA is therefore amending the Code of Federal Regulations (CFR) to indicate that ACHD no longer has the delegated authority to implement and enforce the regulatory requirements. EPA is also notifying the public that each facility subject to the previously approved ACHD delegated chemical accident prevention program is required to maintain continuous compliance with applicable requirements. This action is being taken under the CAA.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2018-0304. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g.,

confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814-2117, or by e-mail at talley.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 112(l) of the Clean Air Act (CAA) and 40 CFR part 63, subpart E, authorizes EPA to approve of State, and local, rules and programs to be implemented and enforced in place of certain CAA requirements, including the chemical accident prevention provisions set forth at 40 CFR part 68 (Chemical Accident Prevention Regulations). EPA promulgated the Chemical Accident Prevention Regulations (or risk management program (RMP) regulations) (RMP regulations) pursuant to CAA Section 112(r)(7). By letter dated June 15, 2001, ACHD requested delegation of authority to implement and enforce the RMP regulations for all sources, among other requests for delegation of other programs. On January 30, 2002, EPA issued a direct final rule, which became effective on April 1, 2002, approving ACHD’s request for delegation of authority to implement and enforce EPA’s RMP regulations, which had been adopted by reference from 40 CFR part 68, for all sources within Allegheny County, Pennsylvania, subject to such regulations. *See* 67 FR 4363 (January 30, 2002).

By letter dated July 28, 2017, ACHD formally notified EPA of its intent to voluntarily withdraw

from EPA's delegation of authority to enforce the RMP regulations. On June 22, 2018 (83 FR 29085), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania. In the NPRM, EPA notified the public that ACHD had completed the regulatory process for voluntary withdrawal from EPA's delegation of authority to implement and enforce the RMP provisions of CAA section 112(r) and proposed a revision to 40 CFR 63.99(a)(39)(v), codifying the withdrawal of EPA's delegation of authority.

The procedures for a State, or local authority, to voluntarily withdraw from a CAA approved rule, program or portion of a rule or program are set forth at 40 CFR 63.96(b)(7). In summary, these regulations and relevant EPA guidance provide that a State, or local authority, may voluntarily withdraw from an approved delegated program by notifying EPA and all affected sources of its intent to withdraw and the specific requirements subject to such withdrawal. Any such withdrawal is not effective sooner than 180 days after such notification to EPA. The State, or local authority, must also provide notice and opportunity for comment to the public. To the extent that any source that is affected by the withdrawal is also subject to a CAA operating permit issued pursuant to 40 CFR part 70, the State, or local authority, must reopen and revise such permit to the extent necessary.

II. Summary of Withdrawal Process and EPA Analysis

By letter dated July 28, 2017, ACHD notified EPA Region III of its intent to voluntarily withdraw from EPA's delegation of authority to enforce the RMP regulations. By letter dated November 9, 2017, ACHD notified EPA Region III that ACHD announced a public comment period to take comment on ACHD's voluntary withdrawal from EPA's delegation of authority to enforce the RMP regulations. The public comment period extended from November 10, 2017 to

December 10, 2017. During this public comment period, ACHD did not receive any comments in response to the public comment notification. ACHD provided all applicable facilities with written notice that ACHD is voluntarily withdrawing from EPA's delegation of authority to enforce the RMP regulations set forth at 40 CFR part 68.

Pursuant to 40 CFR 63.96(b)(7), ACHD has determined which facilities, located in Allegheny County, are subject to the RMP regulations and have effective CAA Title V operating permits in accordance with 40 CFR part 70. As of June 22, 2018, sixteen (16) facilities within Allegheny County had submitted risk management plans to EPA and ACHD had issued Title V operating permits to twenty-eight (28) currently operating facilities. ACHD Title V operating permits incorporate the RMP regulations, set forth at 40 CFR part 68, by reference. Therefore, each facility, located in Allegheny County, Pennsylvania, that is subject to the RMP regulations and has an effective Title V operating permit has been issued a Title V permit which includes the proper citation to any applicable RMP regulation.

Upon a State's or local authority's voluntary withdrawal of a delegated program, in accordance with 40 CFR 63.96(b)(7), EPA is required to publish a time for sources subject to the previously approved State, or local, rule or program to come into compliance with applicable Federal requirements. Because, as part of its previously approved delegated program, ACHD incorporated the RMP regulations by reference, there is no distinction between ACHD's previously approved delegated program for implementing the requirements set forth at 40 CFR part 68 and the applicable Federal requirements set forth at 40 CFR part 68. Furthermore, EPA's delegation of authority to implement the requirements set forth at 40 CFR part 68 to ACHD stated in relevant part: "Although ACHD has primary authority and responsibility to implement

and enforce the ... chemical accident prevention provisions, nothing shall preclude, limit, or interfere with the authority of EPA to exercise its enforcement, investigatory, and information gathering authorities concerning this part of the Act.” See 67 FR 4366 (January 30, 2002); see also 40 CFR 63.96(b)(7)(iii). Therefore, all facilities located in Allegheny County, Pennsylvania, subject to any requirement set forth at 40 CFR part 68 are required to maintain continuous compliance with such requirement.

This action does not affect AHCD’s responsibilities under Title V of the Clean Air Act. AHCD must continue to ensure compliance with Title V applicable requirements, including chemical accident prevention requirements. See 40 CFR 70.2, 68.215; 58 FR 29310. In addition, nothing in this action changes any source’s obligation to comply with State or local laws. Affected sources may be subject to duplicative requirements, including duplicative reporting requirements to EPA and AHCD. This may include reporting to EPA under part 68, to the title v permitting authority under 40 CFR 68.215, and to ACHD under their own rules. EPA received one set of comments in response to the June 22, 2018 NPRM. The comments did not concern any of the specific issues raised in the NPRM, nor did they address EPA’s rationale for the proposed approval of ACHD’s request. Therefore, EPA is not responding to those comments.

III. Final Action

EPA’s review of this material indicates that ACHD has completed the regulatorily mandated process, set forth at 40 CFR 63.96(b)(7), for voluntary withdrawal from EPA’s delegation of authority to enforce the Chemical Accident Prevention regulations set forth at 40 CFR part 68. EPA is revising 40 CFR 63.99(a)(39)(v) to indicate ACHD’s withdrawal from EPA’s delegation of authority to enforce the chemical accident prevention provisions set forth at 40 CFR part 68.

IV. Statutory and Executive Order Reviews

A. General Requirements

This action notifies the public that ACHD has completed the process for voluntary withdrawal from EPA's delegation of authority to enforce the chemical accident prevention provisions set forth at 40 CFR part 68, and the action updates 40 CFR 63.99(a)(39)(v) to indicate the withdrawal. The action does not impose additional requirements beyond those imposed by State and Federal law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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 action 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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to ACHD's voluntary withdrawal from EPA's delegation of authority to enforce the chemical accident prevention regulations under the Clean Air Act (CAA) may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 14, 2019.

Cosmo Servidio,
Regional Administrator,
Region III.

40 CFR part 63 is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR

POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

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

2. Section 63.99 is amended by revising paragraph (a)(39)(v) to read as follows:

§63.99 Delegated Federal authorities.

(a) ***

(39) ***

(v) Allegheny County is not delegated the authority to implement and enforce the provisions of 40 CFR part 68 and all future unchanged amendments to 40 CFR part 68 at sources within Allegheny County, in accordance with the final rule, dated **[insert date of publication in the Federal Register]**, effective **[insert date 30 days after date of publication in the Federal Register]**.

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[FR Doc. 2019-03849 Filed: 3/4/2019 8:45 am; Publication Date: 3/5/2019]