



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[EPA-R03-OAR-2018-0304; FRL-9979-70-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:** Proposed rule.

**SUMMARY:** Environmental Protection Agency (EPA) is notifying the public that 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, and EPA is proposing to modify amendments indicating that ACHD does not have 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 Clean Air Act (CAA).

**DATES:** Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2018-0304 at <https://www.regulations.gov>, or via email to [duke.gerallyn@epa.gov](mailto:duke.gerallyn@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of

submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Mary Cate Opila, (215) 814-2041, or by e-mail at [opila.marycate@epa.gov](mailto:opila.marycate@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).

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 unilaterally and 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. 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. Sixteen facilities within Allegheny County have submitted risk management plans to EPA and ACHD has issued Title V operating permits to 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).

Therefore, all facilities located in Allegheny County, Pennsylvania, subject to any requirement set forth at 40 CFR part 68 shall maintain continuous compliance with such requirement.

### **III. Proposed 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 proposing to modify 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. EPA is soliciting public comments on the issues discussed in this document.

These comments will be considered before taking final action.

### **IV. Statutory and Executive Order Reviews**

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 proposes to update 40 CFR 63.99(a)(39)(v) to indicate the withdrawal. The proposed action does not impose additional requirements beyond those imposed by state and federal law. For that reason, this proposed 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 proposed rule to modify 40 CFR 63.99(a)(39)(v) to indicate ACHD's voluntary withdrawal from EPA's delegation of authority to enforce the chemical accident prevention provisions set forth at 40 CFR part 68, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the action does 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.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Paper and paper products industry, Reporting and recordkeeping requirements.

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

Dated: June 12, 2018.

Cosmo Servidio,  
Regional Administrator,  
Region III.

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