

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 63**

[DE001-1000; FRL-6988-3]

**Approval of Section 112(l) Authority for Hazardous Air Pollutants; Chemical Accident Prevention Provisions and Risk Management Plans; Delaware; Approval of Accidental Release Prevention Program****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve the Delaware Department of Natural Resources and Environmental Control's (DNREC's) request to implement and enforce its accidental release prevention program in place of similar Federal requirements. EPA is taking this action under the requirements of the Clean Air Act.

**DATES:** This direct final rule will be effective August 7, 2001 unless EPA receives adverse or critical comments by July 9, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments on this action should be sent concurrently to: Makeba A. Morris, Chief, Permits and Technical Assessment Branch, Mail Code 3AP11, Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029 and Robert A. Barrish, Delaware Department of Natural Resources and Environmental Control, Division of Air and Waste Management, 715 Grantham Lane, New Castle, DE 19720. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Delaware Department of Natural Resources & Environmental Control, Division of Air and Waste Management, 715 Grantham Lane, New Castle, DE 19720.

**FOR FURTHER INFORMATION CONTACT:**

Dianne J. Walker, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street (3AP11), Philadelphia, PA 19103-2029, [walker.dianne@epa.gov](mailto:walker.dianne@epa.gov) (telephone 215-814-3297)

**SUPPLEMENTARY INFORMATION:****I. Background**

Section 112(r) of the Clean Air Act (CAA) provides for the prevention and mitigation of accidental chemical releases. CAA section 112(r)(3)-(5) mandates that EPA promulgate a list of "regulated substances", with threshold quantities. Processes at stationary sources that contain a threshold quantity of a regulated substance are subject to accidental release prevention regulations promulgated under CAA section 112(r)(7). Pursuant to CAA section 112(r)(3) and (5), EPA published a list of substances and threshold quantities on January 31, 1994 (59 FR 4478) and subsequently amended this list on June 20, 1996 (61 FR 31730), August 25, 1997 (62 FR 45129), January 6, 1998 (63 FR 639), May 28, 1999 (64 FR 29167) and March 13, 2000 (65 FR 13243). Pursuant to CAA section 112(r)(7), EPA published the risk management program regulations on June 20, 1996 (61 FR 31668), and subsequently amended the regulations on January 6, 1999 (64 FR 963) and May 26, 1999 (64 FR 28695). The risk management program regulations are set forth at 40 CFR part 68. The regulations require, among other things, that owners and operators of stationary sources with more than a threshold quantity of a regulated substance in a process submit a risk management plan (RMP) by June 21, 1999, to a central location specified by EPA. A RMP must include, in general, an offsite consequence analysis (OCA), a prevention program, and an emergency response program.

It should be noted that the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act, Public Law No. 106-40, which was enacted on August 5, 1999, excludes from coverage by the Federal Chemical Accident Prevention provisions any regulated flammable substance when used as fuel or held for sale as fuel by a retail facility. In its May 28, 1999 (64 FR 29167) rule amendments, EPA provided a stay of effectiveness from the risk management program regulation for these facilities until December 21, 1999. EPA amended its regulations on March 13, 2000 (65 FR 13243) to conform with this legislation. Public Law 106-40 also limits, until at least August 5, 2000, public access to the OCA portions of risk management plans submitted by covered facilities. A final rule concerning distribution of OCA information was published on August 4, 2000 (65 FR 48107) and codified in 40 CFR chapter IV.

In its January 6, 1999 (64 FR 963) amendments to the rule, EPA added

mandatory and voluntary RMP data elements, specified the use of the North American Industry Classification System (NAICS), listed the applicable processes by NAICS code, required the five year accident history to include the weight percent of a toxic substance involved in a release and the NAICS code for the process involved a release, required an owner or operator to certify compliance with the regulation, established specific procedures for confidential business information and made technical clarifications to the regulation. In addition, EPA amended the procedure to calculate worst-case release scenarios for flammable substances in its regulations on May 26, 1999 (64 FR 28695) so that worst-case release scenarios for liquified or refrigerated flammable substances can be calculated in the same manner as liquified or refrigerated toxic substances.

The RMPs will be available to state and local governments and to the public. These regulations encourage sources to reduce the probability of accidentally releasing substances that have the potential to cause harm to public health and the environment. Further, the regulations stimulate dialog between industry and the public on ways to improve accident prevention and emergency response practices.

Section 112(l) of the CAA and 40 CFR sections 63.91, 63.93 and 63.95, authorize EPA, in part, to approve of State rules and programs to be implemented and enforced in place of the certain CAA requirements, including the chemical accident prevention provisions set forth at 40 CFR part 68. EPA promulgated the program approval regulations on November 26, 1993 (58 FR 62262) and subsequently amended these regulations on September 14, 2000 (65 FR 55810). An approvable State program must contain, among other criteria, the following elements: a demonstration of the state's authority and resources to implement and enforce regulations that are at least as stringent as the CAA section 112(r) regulations including an auditing strategy at least as stringent as the EPA regulation; a requirement that subject sources submit an RMP; procedures for reviewing RMPs; and procedures to provide technical assistance to subject sources, including small businesses.

**II. DNREC's Accidental Release Prevention Program**

On June 7, 1999, DNREC requested EPA's approval of its Accidental Release Prevention Program to be implemented and enforced in place of the chemical

accident prevention provisions set forth at 40 CFR part 68. On August 9, 1999, DNREC provided supplemental information for its request.

The Delaware Extremely Hazardous Substances Risk Management Act (Chapter 77, Title 7 of the Delaware Code), as amended, became effective July 1, 1999. This amended law provides authority to DNREC to develop regulations and implement and enforce a risk management program. On January 11, 1999, DNREC's Accidental Release Prevention Regulation, as amended, became effective. This regulation adopts the Federal requirements found in 40 CFR part 68, last revised January 6, 1998, with some adjustments and substitutions. Specifically, DNREC has:

1. Modified the scope of the regulation, as described in 40 CFR section 68.1;
2. Removed the definition of "designated agency", added a definition for "Department", and replaced all references in the Federal regulation to "implementing agency" with "Department";
3. Removed irrelevant provisions in the Federal regulation, including 40 CFR sections 68.2, 68.215(c), and 68.120;
4. Modified 40 CFR section 68.215(d) by replacing the terms "implementing agency" and "air permitting authority" with "the Department"; and
5. Replaced 40 CFR section 68.220 with a more stringent auditing program that requires that all risk management plans be reviewed by DNREC within 6 months of receipt.

In addition, DNREC's regulation specifies a risk management program inspection protocol and a procedure for resolving findings of noncompliance. DNREC's regulation includes additional requirements for sources not regulated by the Federal program. These provisions are located in section 6 of DNREC's Accidental Release Prevention Regulation. DNREC is not seeking Federal approval of the requirements in section 6 of its Accidental Release Prevention Regulation.

DNREC's regulation was adopted prior to the changes that EPA made to its regulation on January 6, 1999, May 26, 1999, May 28, 1999 and March 13, 2000 (see description in Background section, above). Most of these changes are not included in the Delaware regulation. These changes, described in Section III. of this rulemaking, do not impact the stringency of DNREC's regulation and, thus, do not alter EPA's decision to approve of DNREC's rules.

### III. EPA's Analysis of DNREC's Accidental Release Prevention Program

The following paragraphs describe, in detail, the differences between the Federal regulation and DNREC's regulation. The scope of the Federal program, outlined in 40 CFR section 68.1, has been incorporated into section 1 "Statement of Authority", section 2 "Purpose" and section 3 "Policy and General Duty" of DNREC's Accidental Release Prevention Regulation. These sections of DNREC's regulation:

1. Cite DNREC's legislative and regulatory authority to implement the regulation and seek delegation of the Federal program;
2. Describe the intent of the regulation with the overall goal of preventing catastrophic releases of regulated substances and protecting the public; and
3. Outline the general duty of owners and operators of stationary sources to identify hazards, to design, operate and maintain safe facilities and to minimize the consequences of accidental releases.

These provisions are no less stringent than the corresponding Federal requirements.

DNREC has removed the definition of the term "designated agency" used in the Federal regulation, added the definition of "Department", and defined the term "implementing agency" used in the Federal regulation as "Department". The term "designated agency" in the Federal regulation refers to the state, local or Federal agency which is delegated authority by the state air permitting agency to verify that sources permitted under 40 CFR part 70 or 71 and subject to the Federal or state accidental release prevention requirements have submitted an RMP and have certified compliance with the requirements. In addition, the designated agency is tasked with ensuring that these sources are in compliance with the Federal or state accidental release prevention requirements. Because Delaware's air permitting authority, DNREC, is not delegating this authority to any other state, local or Federal agency, the "designated agency" term was removed from its regulation. DNREC will be responsible for implementing the aforementioned tasks which are described in detail in section 5.215(c) of DNREC's regulation. The term "Department" in DNREC's regulation has been defined as "the Department of Natural Resources and Environmental Control". The definition of "implementing agency" used in the Federal regulation has been replaced in DNREC's regulation with "Department"

since, on the effective date of this rulemaking, DNREC will be the state agency delegated the authority to implement an accidental release prevention program.

In addition, DNREC has defined several terms which are not used in the Federal regulation. These terms are only used in section 6 of DNREC's regulation. DNREC is not seeking Federal approval of section 6 of its regulation. DNREC has removed irrelevant sections of the Federal regulation from its regulation. Specifically, the "stayed provisions" of 40 CFR section 68.2 were removed from the DNREC regulation because the time limit of this stay has expired. DNREC has removed the permitting provisions of 40 CFR section 68.215(c), requiring the state permitting authority to reopen or reissue permits that do not contain the applicable accidental release prevention requirements, because all permits issued pursuant to Delaware's permitting program (approved under 40 CFR part 70) contain language incorporating the accidental release prevention requirements. Regardless, in accordance with the program approval requirements of 40 CFR section 63.95(b), DNREC is not required to have permitting provisions comparable to the provisions of 40 CFR section 68.215(c).

DNREC removed the auditing requirements of 40 CFR section 68.220 and replaced these requirements with sections 7 and 8 of its regulation. Specifically, section 8(a) of DNREC's regulation requires DNREC to audit all RMPs within six months of the date that they are received by DNREC or posted by EPA on its website. This provision is clearly more stringent than the Federal regulation, 40 CFR sections 68.220(a), (b) and (c), which requires the implementing agency to "periodically audit RMPs" according to specific criteria.

The Federal regulation specifically exempts stationary sources with a Star or Merit ranking under the Occupational Safety and Health Administration's (OSHA's) voluntary protection program from auditing where DNREC's regulation does not. Sections 8(b), (c), and (d) of DNREC's regulation grant DNREC access to the regulated stationary sources for auditing and outline the procedures for DNREC to notify the stationary source of its deficiencies in the program as a result of an audit and for the stationary source to respond to such deficiencies. Section 8(e) and (f) of DNREC's regulation outline the process that DNREC will use to issue a final determination of the audit and sets forth the provisions for identifying violations at a stationary source as a result of an audit. Sections

8(b), (c), (d), (e) and (f) of DNREC's regulation are equivalent to 40 CFR sections 68.220(d), (e), (f), (g) and (h).

Section 8(g) of DNREC's regulation grants the public access to the preliminary determinations, responses and final determinations made as a result of an audit, however, in accordance with section 14(a) of DNREC's regulation, confidential business information and the identification of persons interviewed during an inspection can be withheld from the public. This provision is equivalent to 40 CFR section 68.220(i) and 40 CFR section 68.210(a), which requires that preliminary determinations, responses and final determinations made as a result of an audit and RMP information be available to the public consistent with 42 U.S.C. 7414(c). In addition to these provisions, under 40 CFR section 68.151, owners and operators of stationary sources required to submit an RMP can assert a claim of confidential business information under 40 CFR section 2.301. Section 8(h) of DNREC's regulation, outlining DNREC's right to exercise its enforcement investigation and information gathering authorities, is equivalent to 40 CFR section 68.220.

EPA has, therefore, determined that in accordance with the program approval requirements of 40 CFR section 63.95(b)(4), DNREC's auditing strategy is no less stringent than the corresponding Federal requirement.

Section 7 of DNREC's regulation provides a detailed description of DNREC's inspection procedures. There is no similar provision in the Federal regulation, however, this information provides the description necessary to fulfill DNREC's requirement to demonstrate its authority to implement and enforce the regulation, as required by 40 CFR section 63.95(b)(1)(i) and (4).

DNREC removed the provisions to petition EPA to modify the list of regulated substances identified in 40 CFR section 68.130, as described in 40 CFR section 68.120, from its regulations since DNREC does not have the authority to adopt future regulatory amendments or revisions. DNREC retained the provisions outlined in 40 CFR sections 68.150 through 68.190 in sections 5.150 through 5.190 of its regulation. However, DNREC added the following language to section 5.150:

"Note: The data elements of the Plan are required to be submitted to EPA. The data elements of the plan are based upon 40 CFR 68.150 through 68.190 dated July 1, 1997 reprinted here under Sections 5.150 through 5.190. It is the responsibility of the owner or operator to meet the existing EPA risk

management plan data submittal requirements at the time of submission." These provisions are required by 40 CFR section 63.95(b)(1)(ii).

DNREC removed Tables 2 and 4 found in 40 CFR part 68 from its regulation. These tables present information identical to that presented in Tables 1 and 3 of 40 CFR part 68. DNREC has retained Tables 1 and 3 and has renamed them Tables 1 and 2, respectively. Appendix A of 40 CFR part 68 is Table 3 of DNREC's regulation.

As stated earlier, DNREC's regulation does not include all of the modifications that EPA made to its regulation on January 6, 1999, May 26, 1999, May 28, 1999 and March 13, 2000. DNREC made changes to its regulation in an attempt to conform with the January 6, 1999 amendments, based upon EPA's proposed amendments of April 17, 1998 (63 FR 19216). DNREC's changes included the addition of the definition of NAICS in section 5.3 and the requirements in sections 5.10(b)(1) and 5.79(a). These provisions are identical to the amendments made in EPA's regulation 40 CFR sections 68.3, 68.10(b)(1) and 68.79(a), respectively. Section 5.42(b) of DNREC's regulation does not conform with EPA's amendments in 40 CFR sections 68.42(b)(3) and (4) which added requirements to the five year accident history. Sections 5.160(b), 5.165(b), 5.170(b), 5.175(b) and 5.180(b) of DNREC's regulation do not conform with the provisions in 40 CFR sections 68.160(b)(1), (7), (12), (14)–(18), 68.165(b)(2), 68.170(b), 68.175(b) and 68.180(b) of EPA's amended regulation which require the RMP to contain the method for obtaining and describing the location of longitude and latitude of the facility, the Title V permit number, certain optional data elements, and the weight percentage of toxic substance in a liquid mixture used in the offsite consequence analysis. In addition, DNREC did not include the provisions corresponding to 40 CFR sections 68.150(e), 68.151, and 68.152 related to the procedures for claiming confidential business information.

However, regardless of the differences between DNREC's regulation and the January 6, 1999 amendments to EPA's regulation, section 5.150 of DNREC's regulation requires affected sources to submit RMPs which meet the existing EPA risk management plan data submittal requirements at the time of submission (see the description of section 5.150 of DNREC's regulation provided in Section II. of this document). Therefore, DNREC's regulation, when taken as a whole with

respect to these provisions, is no less stringent than EPA's regulation.

The May 26, 1999 amendments include changes to the procedures in calculating the worst-case scenario releases for liquified and refrigerated flammable gases. Because these amendments allow for a less conservative approach for calculating worst-case scenario releases than the previous provisions, DNREC's current regulation is no less stringent than EPA's regulation. EPA's May 28, 1999 amendment, which provided a stay of effectiveness until December 21, 1999, is no longer applicable. EPA's March 13, 2000 amendment to its regulation revised the list of regulated flammable substances to exclude those substances when used as a fuel or held for sale as a fuel at a retail facility. DNREC's current regulation, which does not incorporate these provisions, is no less stringent than EPA's regulation. In fact, because DNREC will regulate sources which use flammable substances as a fuel or hold flammable substances for sale as a fuel at a retail facility, DNREC's regulation will cover a larger universe of sources than the Federal regulation.

DNREC's regulation includes additional requirements for sources not regulated by the Federal program. These provisions are located in section 6 of DNREC's Accidental Release Prevention Regulation. DNREC is not seeking Federal approval of the requirements in section 6 of DNREC's Accidental Release Prevention Regulation. EPA has separated these portions of DNREC's regulation from this approval, per the requirements of 40 CFR section 63.91(a)(3) and (f). Consequently, in accordance with 40 CFR section 63.91(c)(1)(iii), upon approval, section 6 of DNREC's Accidental Release Prevention Regulation will remain enforceable only by the State.

DNREC's regulation conforms to EPA's regulation regarding the distribution of off-site consequence analysis information, dated August 4, 2000 (65 FR 48107) and codified in 40 CFR chapter IV, because it requires that disclosure of classified information be controlled by applicable laws, regulations or executive orders, per section 5.120 of DNREC's regulation.

Based upon DNREC's program approval request and its pertinent laws and regulations, EPA has determined that such an approval is appropriate in that DNREC has satisfied the criteria of 40 CFR sections 63.91, 63.93 and 63.95. The DNREC program has adequate and effective authorities, resources, and procedures in place for implementation and enforcement of sources subject to the CAA section 112(r)(7) requirements.

DNREC has the primary authority and responsibility to carry out all elements of the CAA section 112(r)(7) program for all sources covered in Delaware, including on-site inspections, record keeping reviews, audits and enforcement.

DNREC's program to implement 112(r) of the CAA, has the authority and resources to educate subject sources through outreach programs; provide technical assistance; to review all risk management plans; to coordinate its efforts with other agencies and programs including the State Emergency Response Commission, the Local Emergency Planning Committees, and DNREC's air permitting program; and to adequately enforce its 112(r) program.

Upon approval, DNREC's program will be administered by its Accidental Release Prevention Group. Although DNREC has primary authority and responsibility to implement and enforce the CAA section 112(r)(7) requirements, 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.

#### IV. Final Action

EPA is approving DNREC's Accidental Release Prevention Regulation sections 1 through 5 and sections 7 through 14, as amended, effective January 11, 1999, as equivalent to the CAA section 112(r)(7) requirements set forth in Chapter 40 of the Code of Federal Regulations (CFR) part 68 for affected sources in the State of Delaware. Accordingly, EPA is revising 40 CFR sections 63.14 and 63.99 to reflect the Federal enforceability of DNREC's regulation. DNREC's regulation adopts the federal requirements found in 40 CFR part 68, last revised January 6, 1998, with some adjustments and substitutions. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. The adjustments and substitutions made in the DNREC regulation are primarily non-substantive. The three substantive changes from the Federal regulation relate to auditing of the RMPs, calculating worst-case scenarios for flammable substances and the applicability of the DNREC regulations to flammable substances when used as a fuel or held for sale at retail facilities. These three substantive changes are clearly more stringent than EPA's regulation. DNREC is required to audit all RMPs within six months of submittal. EPA's regulations do not have such a requirement. DNREC requires

facilities to estimate worst-case scenarios for liquified or refrigerated flammable substances in the same manner used for gaseous flammable substances (i.e., assuming the entire quantity of a liquified or refrigerated flammable substance vaporizes resulting in a vapor cloud explosion). EPA's regulation allow facilities to calculate worst-case scenarios for liquified or refrigerated flammable substances in the same manner used for liquified or refrigerated toxic substances which results in a less conservative estimate than DNREC's approach. Finally, because DNREC's regulation did not include EPA's exclusion of flammable substances used as a fuel or held for sale at retail facilities, DNREC will regulate a larger universe of facilities. Although EPA does not anticipate adverse comments on these changes, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the program approval request if adverse comments are filed. This rule will be effective on August 7, 2001 without further notice unless EPA receives adverse comment by July 9, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

#### V. Administrative Requirements

##### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This rule also does not have a

substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing requests for rule approval under Clean Air Act section 112, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove requests for rule approval under Clean Air Act section 112 for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a request for rule approval under Clean Air Act section 112, to use VCS in place of a request for rule approval under Clean Air Act section 112 that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*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 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).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 the approval of Delaware's accidental release prevention program (Clean Air Act Section 112(r)), may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects 40 CFR Part 63**

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations.

Dated: May 16, 2001.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*

40 CFR part 63 is amended as follows:

**PART 63—[AMENDED]**

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

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

2. Section 63.14 is amended by adding paragraph (d)(3) to read as follows:

**§ 63.14 Incorporation by Reference.**

\* \* \* \* \*

(d) \* \* \*

(3)(i) Letter of June 7, 1999 to the U.S. Environmental Protection Agency

Region 3 from the Delaware Department of Natural Resources and Environmental Control requesting formal full delegation to take over primary responsibility for implementation and enforcement of the Chemical Accident Prevention Program under Section 112(r) of the Clean Air Act Amendments of 1990.

(ii) Delaware Department of Natural Resources and Environmental Control, Division of Air and Waste Management, Accidental Release Prevention Regulation, sections 1 through 5 and sections 7 through 14, effective January 11, 1999, IBR approved for § 63.99(a)(8)(i) of subpart E of this part.

**Subpart E—Approval of State Programs and Delegation of Federal Authorities**

3. Section 63.99 is amended by adding paragraph (a)(8) to read as follows:

**§ 63.99 Delegated Federal Authorities**

(a) \* \* \*

(8) Delaware

(i) Affected sources must comply with the Delaware Department of Natural Resources and Environmental Control, Division of Air and Waste Management, Accidental Release Prevention Regulation, sections 1–5 and sections 7–14, January 11, 1999 (incorporated by reference as specified in § 63.14). The material incorporated in the Delaware Department of Natural Resources and Environmental Control, Division of Air and Waste Management, Accidental Release Prevention Regulation, sections 1–5 and sections 7–14 pertains to owners and operators of stationary sources in the State of Delaware that have more than a threshold quantity of a regulated substance in a process, as described in section 5.10 of Delaware's regulation, and has been approved under the procedures in §§ 63.93 and 63.95 to be implemented and enforced in place of 40 CFR part 68—Chemical Accident Prevention Provisions.

(ii) [Reserved]

[FR Doc. 01–14079 Filed 6–7–01; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP–301127; FRL–6780–9]

**RIN 2070–AB78**

**Methyl Anthranilate; Exemption from the Requirement of a Tolerance**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of the methyl anthranilate on corn and sunflower when applied/used as a bird repellent. Bird Shield Repellent Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of methyl anthranilate on corn and sunflower and reassesses the existing tolerance exemption for methyl anthranilate.

**DATES:** This regulation is effective June 8, 2001. Objections and requests for hearings, identified by docket control number [OPP–301127], must be received by EPA, on or before August 7, 2001.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301127 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Jim Downing, c/o Product Manager (PM) 91, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–9071; and e-mail address: downing.jim@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to: