

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 Clean Air Act; 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 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 February 14, 2011. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s **Federal Register**, rather than file an immediate petition

for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action pertaining to Delaware’s portable fuel containers regulation may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 30, 2010.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

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

**Subpart I—Delaware**

■ 2. In § 52.420, the table in paragraph (c) is amended by revising the entry for Regulation 1141, Section 3.0 to read as follows:

**§ 52.420 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED REGULATIONS IN THE DELAWARE SIP**

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
1141 .....	Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products			
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Section 3.0 .....	Portable Fuel Containers .....	4/11/10 .....	12/14/10 [Insert page number where the document begins].	
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

[EPA-HQ-OAR-2008-0334; FRL-9238-5]

**National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources**

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

**ACTION:** Final rule; stay for permit applications.

**SUMMARY:** On June 15, 2010, EPA notified Petitioners that the Agency intended to initiate the reconsideration process in response to their request for reconsideration of certain provisions in the National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources. Among the provisions that EPA is reconsidering

is a requirement that certain affected sources obtain a permit. EPA is staying until March 14, 2011, the requirement for certain affected sources to comply with the title V permit program. Because we believe the reconsideration process may not be completed within 90 days, we are also proposing in a separate notice to stay the provision requiring certain sources to obtain a permit after the final reconsideration rule is published in the **Federal Register**.

**DATES:** Effective December 14, 2010, 40 CFR 63.11494(e) of subpart VVVVVV is stayed until March 14, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Randy McDonald, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541-5402; fax number: (919) 541-0246; e-mail address: [mcdonald.randy@epa.gov](mailto:mcdonald.randy@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The EPA published final National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources on October 29, 2009. 40 CFR part 63, subpart VVVVVV (74 FR 56008). Included in the final rule was a new provision requiring any major source that had installed a control device on a chemical manufacturing process unit after November 15, 1990, and, as a result, became an area source under CFR 40 part 63, obtain a title V permit under 40 CFR part 70 or 40 CFR part 71. 40 CFR 63.11494(e).

On February 12, 2010, the American Chemistry Council and the Society of Chemical Manufacturers and Affiliates (collectively referred to as "Petitioners") sought reconsideration of six provisions in the final rule, including the provision requiring certain sources to obtain a title V permit. On June 15, 2010, EPA notified Petitioners that the Agency intended to initiate the reconsideration process. EPA also separately notified Petitioners that the provision requiring certain sources to obtain a title V permit was among the provisions for which EPA would grant reconsideration.

By letter dated October 28, 2010, Petitioners requested a stay of the requirement to comply with the title V permit program, specifically the requirement to submit a title V permit application, pending completion of the reconsideration process. Petitioners stated in their letter that they were requesting the stay because, "under one interpretation of EPA's [40 CFR part 70 and 40 CFR part 71] regulations,

existing sources must file title V permit applications: October 29, 2010." Petitioners maintained that it would be unreasonable and inequitable to require facilities to prepare and submit title V applications at the same time that EPA is reconsidering the requirement to obtain a title V permit. As explained below, EPA believes that it is appropriate to stay the effectiveness of the requirement in 40 CFR 63.11494(e) for certain sources to obtain a title V permit during the pendency of the reconsideration process.

Pursuant to Clean Air Act (CAA) section 307(d)(7)(B), EPA is staying for 90 days the provision in 40 CFR 63.11494(e) that requires "[a]ny source that was a major source and installed a control device on a CMPU<sup>1</sup> after November 15, 1990, and, as a result, became an area source under 40 CFR part 63 is required to obtain a permit under 40 CFR part 70 or 40 CFR part 71." This provision was first introduced in the final rule and represented a significant change from the proposal. Facilities had no chance to comment on this new requirement in the final rule. We are staying this provision because both the affected universe of sources and the substantive requirement could change as a result of this reconsideration process. Specifically, we will be reconsidering whether the affected sources noted above should be subject to title V, or whether they should be exempt from title V requirements. Because we cannot pre-judge the outcome of the reconsideration process, we think a limited stay during the duration of the administrative reconsideration process is appropriate so that sources are not incurring the cost associated with applying for a title V permit in advance of our final decision on the issue.

EPA believes that it may not be able to complete the reconsideration process within the 3-month stay period authorized in CAA section 307(d)(7)(B). For this reason, we are also proposing in a separate notice to stay the provision requiring certain sources to obtain a permit under 40 CFR part 70 or 40 CFR part 71 until the final reconsideration rule is published in the **Federal Register**.

**II. Statutory and Executive Order Reviews**

*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. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), or require prior consultation with State officials, as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues, as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This action also does not have Tribal implications because it will 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). This action also does not have Federalism implications because it does not 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). This action is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). 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. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the October 29, 2009, **Federal Register** document.

*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

<sup>1</sup>Chemical manufacturing process unit.

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 notice and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. The stay of these particular provisions in 40 CFR subpart VVVVVV is not a "major rule" as defined by 5 U.S.C. 804(2).

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

Environmental protection, Administrative practice and procedure, Air pollution control, Monitoring, Reporting and recordkeeping.

Dated: December 7, 2010.

**Lisa P. Jackson**,  
Administrator.

■ For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations 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.*

#### § 63.11494 [STAYED IN PART]

■ 2. In § 63.11494, paragraph (e) is stayed from December 14, 2010 until March 14, 2011.

[FR Doc. 2010-31327 Filed 12-13-10; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

[Docket ID FEMA-2010-0003]

#### Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

**ADDRESSES:** The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4064, or (e-mail) [luis.rodriquez1@dhs.gov](mailto:luis.rodriquez1@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

*National Environmental Policy Act.* This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This final rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This final rule meets the applicable standards of Executive Order 12988.

#### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

#### PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

*Authority:* 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

#### § 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows: