

[FR Doc. 01-5854 Filed 3-9-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-6882-2]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards for Dry Cleaning Facilities; State of Washington; Puget Sound Clean Air Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (CAA), the State of Washington Department of Ecology (Ecology) submitted a request on behalf of the Puget Sound Clean Air Agency (Puget Sound Clean Air) for approval to implement and enforce Puget Sound Clean Air's Regulation III, section 3.03, Perchloroethylene Dry Cleaners in place of federal National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities ("dry cleaning NESHAP"), as it applies to area sources. EPA has reviewed this request and found that it satisfies the requirements necessary to qualify for approval. Thus, EPA is hereby granting Puget Sound Clean Air the authority to implement and enforce its Perchloroethylene Dry Cleaners regulation in place of the federal dry cleaning NESHAP, for area sources under Puget Sound Clean Air's jurisdiction. This approval makes Puget Sound Clean Air's rules federally enforceable and reduces the burden on area sources within Puget Sound Clean Air's jurisdiction such that they will only have one rule with which they must comply. Major sources remain subject to the federal dry cleaning NESHAP, as adopted into Puget Sound Clean Air Regulation III, Section 2.02.

DATES: This action will be effective on May 11, 2001 without further notice, unless EPA receives relevant adverse comments by April 11, 2001. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 11, 2001.

ADDRESSES: Written comments should be mailed concurrently to the addresses below:

Doug Hardesty, U.S. Environmental Protection Agency, Region X, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle, WA, 98101.

Dennis McLerran, Director, Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101.

Copies of the requests for approval are available for public inspection at EPA's Region X office during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Doug Hardesty, US EPA, Region X (OAQ-107), 1200 Sixth Avenue, Seattle, WA, 98101, (206) 553-6641.

SUPPLEMENTARY INFORMATION:

This Supplementary Information section is organized as follows:

- I. Background and Purpose
- II. EPA Evaluation and Action
 - A. Puget Sound Clean Air's Dry Cleaning Rule
 - 1. Classification of Sources
 - 2. Applicability of Major Sources
 - 3. New Facilities Constructed After 12/09/91
 - 4. Technical Reference for Definitions
 - 5. Washer Shall Not Share Refrigerated Condensers with Any Other Equipment
 - 6. Put Perc Into Solvent Tank or Container with "No Perceptible Leaks"
 - 7. Dry Cleaning System Inspection
 - 8. Conditions for Refrigerated Condensers and Carbon Absorbers That are Performing Out of Parameter Limits
 - 9. Use of Colorimetric Tubes
 - 10. Maintain Records for at Least 5 Years
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- III. Opportunity for Public Comment
- IV. Summary of EPA's Action
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I. Background and Purpose

Under CAA section 112(l), EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable CAA section 112 federal rules, emission standards, or requirements. The federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E (*see* 59 FR 62262, November 26, 1993). Under these regulations, a local air pollution control agency has the option to request EPA's approval to substitute a local rule for the applicable federal rule (i.e., the federal National Emission Standards for Hazardous Air Pollutants (NESHAP)).

Upon approval, the local agency is given the authority to implement and enforce its rule in place of the NESHAP. To receive EPA approval using this "rule substitution" option, the requirements of 40 CFR 63.91 and 63.93 must be met.

On December 1, 1998, (*see* 63 FR 66054), EPA promulgated direct final approval of the State of Washington Department of Ecology's (Ecology) request, on behalf of the Puget Sound Clean Air Agency¹ (Puget Sound Clean Air), for delegation of authority to implement and enforce certain 40 CFR parts 61 and 63 NESHAP rules, as they apply to both part 70 and non-part 70 sources (i.e., "area sources"). Ecology had submitted a request on behalf of Puget Sound Clean Air for approval of a rule adjustment for 40 CFR part 63, subpart M (dry cleaning NESHAP). The original request was dated January 16, 1997, with a correction letter dated September 4, 1997. EPA did not address this request in the December 1, 1998, rulemaking because EPA anticipated that approval of the requested rule adjustments would require a more detailed review under 40 CFR 63.92, and decided to address Puget Sound Clean Air's request for rule adjustments in a separate notice. After completing its review of Puget Sound Clean Air's request, EPA has determined that Puget Sound Clean Air's request does not qualify as a rule adjustment under 40 CFR 63.92. Instead, the request shall be treated as a request for a rule substitution as defined in 40 CFR 63.93. Therefore, EPA is acting on this request as a rule substitution according to 40 CFR 63.93.

II. EPA Evaluation and Action

A. Puget Sound Clean Air's Dry Cleaning Rule

Puget Sound Clean Air's dry cleaning rule differs in several ways from the federal dry cleaning NESHAP. Many of these differences make Puget Sound Clean Air's regulations more stringent than the federal NESHAP. However, some of the provisions of Puget Sound Clean Air's dry cleaning regulations require further clarification to explain how they are at least equivalent to the federal dry cleaning NESHAP. In a letter dated June 9, 2000, Puget Sound Clean Air committed to interpreting and implementing its dry cleaning rule consistent with the explanations provided in this section so that its rule

¹ Puget Sound Clean Air was formerly known as the Puget Sound Air Pollution Control Agency (PSAPCA). Federal Register rules that were published prior to January 2000 regarding this agency have used the PSAPCA name.

is more stringent or as stringent as the federal dry cleaning NESHAP.

1. Classification of Sources

In 40 CFR 63.320(g), the federal NESHAP classifies dry cleaning sources based on either annual perchloroethylene ("perc") emissions or annual perc consumption. Major sources are those sources with either 10 tpy perc emissions or perc consumption greater than 8000 Liters (2100 gallons) for dry to dry machines or greater than 6800 liters (1800 gallons) for transfer or transfer & dry to dry machines. Puget Sound Clean Air's regulation use only perc emissions to identify major sources. Puget Sound Clean Air Regulation I, section 1.07(aa) defines Major Source of Hazardous Air Pollutant (HAP) as one that emits 10 tpy of a single HAP (such as perc). EPA believes that this definition adequately captures all major source dry cleaning facilities within Puget Sound Clean Air's jurisdiction. For both the federal and the Puget Sound Clean Air regulations, area sources are those sources which do not meet the criteria listed above. Puget Sound Clean Air's regulation applies to all dry cleaning systems using perc (Puget Sound Clean Air Regulation III, section 3.03(a)). Therefore, EPA believes that this requirement captures all area source dry cleaning facilities within Puget Sound Clean Air's jurisdiction.

2. Applicability of Major Sources

Puget Sound Clean Air's request for approval included only those provisions of the dry cleaning NESHAP that apply to area sources. Thus, perchloroethylene dry cleaning facilities that qualify as major sources, will remain subject to the federal NESHAP (40 CFR part 63, subpart M), as adopted by reference into Puget Sound Clean Air Regulation III, section 2.02. Additionally, major sources are required to obtain a Title V permit (Puget Sound Clean Air Regulation III, section 3.03(h)).

3. New Facilities Constructed After 12/09/91

In 40 CFR 63.320(b), the federal dry cleaning NESHAP states that new facilities constructed after 12/09/91 must comply upon startup. Puget Sound Clean Air's regulations do not specifically address this because Puget Sound Clean Air has been regulating its dry cleaning facilities since before 12/09/91, and all sources constructed after this date would be required to install Best Available Control Technology (BACT) upon startup. BACT is more stringent than MACT (in this case, BACT would be a nonventing, closed

loop machine, while MACT would not be closed loop and would allow venting), so Puget Sound Clean Air's regulation would be more stringent for new sources. Also, for existing sources that are modified or upgraded, they would be required by Puget Sound Clean Air's regulations to vent to a refrigerated condenser which EPA considers to be equivalent to the MACT.

4. Technical Reference for Definitions

Puget Sound Clean Air's dry cleaning regulation does not include all of the same definitions as the federal dry cleaning NESHAP. Puget Sound Clean Air determined that some of the terms are defined elsewhere in its regulations, and that some definitions are not necessary for its dry cleaning regulation. In its equivalency determination, Puget Sound Clean Air stated that if a conflict arises in defining terms, it will defer to the definitions in the federal dry cleaning NESHAP.

5. Washer Shall Not Share Refrigerated Condensers With Any Other Equipment

The federal dry cleaning NESHAP states in 40 CFR 63.322(f)(3), that washers shall not share refrigerated condensers (RC) with any other equipment. Puget Sound Clean Air's regulations do not address this section because no current facilities share the RC and no new transfer machines are permitted. This is acceptable to EPA based on the understanding that no new transfer machines will be permitted and that there are no new (or existing) facilities that couple their RC with any other equipment.

6. Put Perc Into Solvent Tank or Container With "No Perceptible Leaks"

In 40 CFR 63.322(j), the federal dry cleaning NESHAP requires that perc must be put into a solvent tank or solvent container with "no perceptible leaks." Puget Sound Clean Air Regulation I, section 3.03(c)(4) requires that perc be put into a "closed container." Puget Sound Clean Air has clarified that a "closed container" will be interpreted as a container that has "no perceptible leaks."

7. Dry Cleaning System Inspection

In 40 CFR 63.322(k), the federal dry cleaning NESHAP requires weekly perceptible leak inspections and identifies the specific components which must be inspected. Puget Sound Clean Air's rule at Regulation III, section 3.03(c)(1) requires a visual inspection of the "dry cleaning system." EPA has confirmed that Puget Sound Clean Air's interpretation of the requirement in section 3.03(c)(1) to conduct a visual

inspection is that this inspection must include a weekly inspection of all the parts listed in 40 CFR 63.322(k) and must be conducted when the dry cleaning system is operating.

8. Conditions for Refrigerated Condensers and Carbon Absorbers That Are Performing Out of Parameter Limits

In 40 CFR 63.322(n), the federal dry cleaning NESHAP states that if a RC or carbon absorber (CA) does not meet the monitoring parameter limits, then adjustments or repairs shall be made to the dry cleaning system or control device to meet those values. It also states that if repair parts must be ordered, then a written or verbal order for these parts shall be initiated within 2 working days of detecting such parameter value. Additionally, these repair parts shall be installed within 5 working days after receipt. Puget Sound Clean Air Regulation III, section 3.03(f)(1), does not specify the time period in which to repair the dry cleaning system. Instead, it refers to Puget Sound Clean Air Regulation I, section 5.05(e), which states that a dry cleaner's operation and maintenance plan shall include "prompt" repair of any defective equipment or control equipment. EPA and Puget Sound Clean Air interpret this regulation as requiring repair within the time frames required by the federal dry cleaning NESHAP.

9. Use of Colorimetric Tubes

Puget Sound Clean Air's Regulation III, section 3.03(e)(2) does not provide a specific requirement regarding the use of a colorimetric tube. In 40 CFR 63.323(b)(2) and (3), the federal dry cleaning NESHAP describes where to place a sampling port and states that the colorimetric tube should be used according to the manufacturer's instructions. Puget Sound Clean Air has agreed to implement Puget Sound Clean Air Regulation III, section 3.03(e)(2) consistent with the requirements of section 63.323(b) of the federal dry cleaning NESHAP regarding the use of the colorimetric tubes, including the correct placement of the sampling port.

10. Maintain Records for at Least 5 Years

In 40 CFR 63.324(d), the federal dry cleaning NESHAP requires a facility to maintain records on site for a minimum of 5 years. Puget Sound Clean Air's Regulation I, section 5.05(e) does not specify a time frame that a facility must maintain records on site. Both EPA and Puget Sound Clean Air interpret section 5.05(e) to require that records must be maintained indefinitely.

11. On-site Design Specs and Operating Manuals for Each System

In 40 CFR 63.324(e), the federal dry cleaning NESHAP requires a facility to maintain on-site design specs and operating manuals for each system and control device. Puget Sound Clean Air's Regulation III, section 3.03(c)(5) states that facilities shall operate and maintain the dry cleaning system according to manufacturer's specifications and recommendations. EPA agrees with Puget Sound Clean Air's interpretation of section 3.03(c)(5) that, in order to follow a manufacturer's specifications, a dry cleaner must maintain an operating manual.

12. Authority To Determine Equivalent Emission Control Technology for Dry Cleaning Facilities

Under the federal dry cleaning NESHAP, any person may petition the EPA Administrator for a determination that the use of certain equipment or procedures is equivalent to the standards contained in the dry cleaning NESHAP (see 40 CFR 63.325). In its request, Puget Sound Clean Air requested approval for the provisions in Puget Sound Clean Air Regulation I, section 3.23, that would allow for the use of alternative emission control technology without previous approval from EPA. However, CAA section 112(h)(3) limits EPA's authority to approve alternative standards solely to the EPA Administrator. A source seeking permission to use an alternative means of emission limitation under CAA section 112(h)(3) must receive approval, after notice and opportunity for comment, from EPA before using such alternative means of emission limitation for the purpose of complying with CAA section 112. Therefore, EPA cannot approve Puget Sound Clean Air's request for authority to approve alternative emission control technologies.

B. EPA's Action

After reviewing the request for approval of Puget Sound Clean Air's dry cleaning rules, EPA has determined that this request meets all of the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91 and 63.93. EPA has determined that Puget Sound Clean Air's dry cleaning rule is equivalent or more stringent than the federal dry cleaning NESHAP. Therefore, EPA hereby approves Puget Sound Clean Air's dry cleaning rule to be used in place of the federal dry cleaning NESHAP, as it applies to area sources in Puget Sound Clean Air's jurisdiction. As

of the effective date of this action, Puget Sound Clean Air's dry cleaning rule is enforceable by the EPA and citizens under the CAA. Although Puget Sound Clean Air has primary implementation and enforcement responsibility, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112.

C. Puget Sound Clean Air's Authorities To Implement and Enforce Section 112 Standards

1. Penalty Authorities

In response to Puget Sound Clean Air's original request for NESHAP program approval and delegation of authority, EPA had only granted interim approval to Puget Sound Clean Air (see 61 FR 43675) because Ecology's statute addressing criminal authorities, RCW 70.94.430, which Puget Sound Clean Air implements, did not meet the stringency requirements of 40 CFR 70.11 and 40 CFR 63.91. Ecology addressed these issues in a letter dated October 7, 1996. This letter included a legal memorandum from the Washington State Attorney General's Office dated May 23, 1996, explaining how the statutory authority in RCW 70.94.430(1) may be interpreted to provide the required authority for criminal penalties. Ecology also amended the State regulation at Washington Administrative Code (WAC) 173-400-105(7) and (8) to include prohibitions against knowingly making false statements and knowingly rendering inaccurate any monitoring device. In a letter dated February 28, 1997, Ecology provided supporting documentation from Puget Sound Clean Air. In this documentation, Puget Sound Clean Air committed to enforcing WAC 173-400-105(7) and (8) until such time as it might adopt its own equivalent regulations. Based on this information, EPA determined that Puget Sound Clean Air has adequate criminal authorities to meet the requirements of 40 CFR 70.11 and 40 CFR 63.91 (see 63 FR 66054 for Puget Sound Clean Air's final NESHAPs approval and delegation of authority).

As stated in section II.B. above, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112, including the authority to seek civil and criminal penalties up to the maximum amounts specified in CAA section 113.

2. Variances

Puget Sound Clean Air Regulation I, section 3.23, "Alternate Means of Compliance," provides for the granting

of variances under certain circumstances. EPA regards these provisions as wholly external to Puget Sound Clean Air's request for approval to implement and enforce a CAA section 112 program or rule and, consequently, does not approve this provision as part of this action. EPA does not recognize the ability of a State or local agency who has received delegation of a CAA section 112 program or rule to grant relief from the duty to comply with such Federally-enforceable program or rule, except where such relief is granted in accordance with procedures allowed under CAA section 112. As stated above, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112. As mentioned in section II.A.12 above, a source seeking permission to use an alternative means of emission limitation under CAA section 112 must also receive approval, after notice and opportunity for comment, from EPA before using such alternative means of emission limitation for the purpose of complying with CAA section 112.

D. Effect of EPA's Action on Tribal Lands

Under the Puyallup Tribe of Indians Settlement Act of 1989, Congress provided state and local agencies, such as Puget Sound Clean Air, authority over activities on non-trust lands within the 1873 Survey Area. As of the effective date of this action, Puget Sound Clean Air will be implementing and enforcing its dry cleaning rule, as it applies to area sources on the non-trust lands within the 1873 Survey Area, in place of the federal dry cleaning NESHAP. EPA consulted with the Puyallup Tribe by letter dated January 11, 2000 regarding this action, and received no adverse comments from the Tribe.

III. Opportunity for Public Comment

EPA views the approval of Puget Sound Clean Air's request to use its Perchloroethylene Dry Cleaners regulation as a substitute for the federal dry cleaning NESHAP as a noncontroversial action and anticipates no adverse comments. Therefore, EPA is publishing this direct final rule without prior proposal. However, in the Proposed Rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal for this action should relevant adverse comments be filed. This action will be effective on May 11, 2001 without further notice, unless EPA receives relevant adverse comments by April 11, 2001.

If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 11, 2001 and no further action will be taken on the proposed rule.

IV. Summary of EPA's Action

Pursuant to section 112(l) of the CAA and 40 CFR 63.91 and 63.93, EPA is approving Ecology's request for Puget Sound Clean Air to implement and enforce Puget Sound Clean Air's Regulation III, section 3.03, Perchloroethylene Dry Cleaners (section 3.03) in place of 40 CFR part 63, subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as it applies to area sources. This approval makes Puget Sound Clean Air's rules federally enforceable and reduces the burden on area sources within Puget Sound Clean Air's jurisdiction such that they only have one rule with which they must comply. Major sources remain subject to 40 CFR part 63, subpart M, as adopted into Puget Sound Clean Air Regulation III, section 2.02.

V. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled "Regulatory Planning and Review."

This rule is not subject to Executive Order 13045, entitled, "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule does not have federalism implications. It will 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, because it merely approves a State program and rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this rule.

Although section 6 of the Executive Order does not apply to this rule, EPA did consult with representatives of State and local governments in developing this rule, and this rule is in response to the State's and local's delegation request.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order

13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government entities with jurisdiction over populations of less than 50,000.

This final rule will not have a significant impact on a substantial number of small entities because approvals under 40 CFR 63.93 do not create any new requirements, but simply approve requirements that the state or local agency is already imposing. Therefore, because this action does not impose any new requirements, I certify that it does not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the delegation action promulgated does not include a federal mandate that may result in estimated annual costs of \$100

million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

F. 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).

G. 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 May 11, 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 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, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 2, 2000.

Charles E. Findley,

Acting Regional Administrator, Region X.

Title 40, chapter I, part 63 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.*

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

§ 63.14 Incorporations by reference.

* * * * *

(d) * * *

(1) * * *

(2) Revisions to Puget Sound Clean Air Regulation III, section 3.03, Perchloroethylene Dry Cleaners adopted on November 9, 1995, IBR approved for section 63.99 (a)(47)(ii) of subpart E of this part.

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

3. Section 63.99 is amended by revising the table in paragraph (a)(47)(i) and by adding paragraph (a)(47)(ii) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(47) * * *

(i) * * *

DELEGATION STATUS FOR PART 63 STANDARDS—WASHINGTON

| Subpart | Description | Ecology ¹ | BCAA ² | NWAPA ³ | OAPCA ⁴ | PSCAA ⁵ | SCAPCA ⁶ | SWAPCA ⁷ | YRCAA ⁸ |
|----------|--|----------------------|-------------------|--------------------|--------------------|--------------------|---------------------|---------------------|--------------------|
| A | General Provisions ⁹ ..... | ..... | ..... | X | ..... | X | ..... | X | |
| D | Early Reductions ..... | ..... | ..... | X | ..... | X | ..... | X | |
| F | HON-SOCMI ..... | ..... | ..... | X | ..... | X | ..... | X | |
| G | HON-Process Vents ..... | ..... | ..... | X | ..... | X | ..... | X | |
| H | HON-Equipment Leaks ..... | ..... | ..... | X | ..... | X | ..... | X | |
| I | HON-Negotiated Leaks ..... | ..... | ..... | X | ..... | X | ..... | X | |
| L | Coke Oven Batteries ..... | ..... | ..... | X | ..... | X | ..... | X | |
| M | Perc Dry Cleaning ..... | ..... | ..... | X | ..... | X ⁵ | ..... | X | |
| N | Chromium Electroplating ..... | ..... | ..... | X | ..... | X | ..... | X | |
| O | Ethylene Oxide Sterilizers ..... | ..... | ..... | X | ..... | X | ..... | X | |
| Q | Industrial Process Cooling Towers. | ..... | ..... | X | ..... | X | ..... | X | |
| R | Gasoline Distribution ..... | ..... | ..... | X | ..... | X | ..... | X | |
| S | Pulp and Paper ¹⁰ ..... | ..... | ..... | X | ..... | X | ..... | X | |
| T | Halogenated Solvent Cleaning ..... | ..... | ..... | X | ..... | X | ..... | X | |
| U | Polymers and Resins I ..... | ..... | ..... | X | ..... | X | ..... | X | |
| W | Polymers and Resins II—Epoxy ..... | ..... | ..... | X | ..... | X | ..... | X | |
| X | Secondary Lead Smelting ..... | ..... | ..... | X | ..... | X | ..... | X | |
| Y | Marine Tank Vessel Loading ..... | ..... | ..... | X | ..... | X | ..... | X | |
| AA | Phosphoric Acid Manufacturing Plants. | ..... | ..... | X | ..... | X | ..... |  |  |
| BB | Phosphate Fertilizers Production Plants. | ..... | ..... | X | ..... | X | ..... |  |  |
| CC | Petroleum Refineries ..... | ..... | ..... | X | ..... | X | ..... | X | |
| DD | Off-Site Waste and Recovery ..... | ..... | ..... | X | ..... | X | ..... | X | |
| EE | Magnetic Tape Manufacturing ..... | ..... | ..... | X | ..... | X | ..... | X | |
| GG | Aerospace Manufacturing & Re-work. | ..... | ..... | X | ..... | X | ..... | X | |
| HH | Oil and Natural Gas Production Facilities. | ..... | ..... | X | ..... | X | ..... |  |  |
| II | Shipbuilding and Ship Repair ..... | ..... | ..... | X | ..... | X | ..... | X | |
| JJ | Wood Furniture Manufacturing Operations. | ..... | ..... | X | ..... | X | ..... | X | |
| KK | Printing and Publishing Industry. | ..... | ..... | X | ..... | X | ..... | X | |

DELEGATION STATUS FOR PART 63 STANDARDS—WASHINGTON—Continued

| Subpart | Description | Ecology ¹ | BCAA ² | NWAPA ³ | OAPCA ⁴ | PSCAA ⁵ | SCAPCA ⁶ | SWAPCA ⁷ | YRCAA ⁸ |
|-----------|--|----------------------|-------------------|--------------------|--------------------|--------------------|---------------------|---------------------|--------------------|
| LL | Primary Aluminum ¹¹ . | | | | | | | | |
| OO | Tanks—Level 1 | | | X | | X | | | |
| PP | Containers | | | X | | X | | | |
| QQ | Surface Impoundments | | | X | | X | | | |
| RR | Individual Drain Systems | | | X | | X | | | |
| SS | Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or Process. | | | X | | X | | | |
| TT | Equipment Leaks—Control Level 1. | | | X | | X | | | |
| UU | Equipment Leaks—Control Level 2. | | | X | | X | | | |
| VV | Oil-Water Separators and Or- ganic-Water Separators. | | | X | | X | | X | |
| WW | Storage Vessels (Tanks)—Con- trol Level 2. | | | X | | X | | | |
| YY | Source Categories: Generic MACT. | | | X | | X | | | |
| CCC | Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants. | | | X | | X | | | |
| DDD | Mineral Wool Production | | | X | | X | | | |
| EEE | Hazardous Waste Combustors | | | X | | X | | | |
| GGG | Pharmaceuticals Production | | | X | | X | | | |
| HHH | Natural Gas Transmission and Storage Facilities. | | | X | | X | | | |
| III | Flexible Polyurethane Foam Production. | | | X | | X | | | |
| JJJ | Polymers and Resins IV | | | X | | X | | X | |
| LLL | Portland Cement Manufacturing | | | X | | X | | | |
| MMM | Pesticide Active Ingredient Pro- duction. | | | X | | X | | | |
| NNN | Wool Fiberglass Manufacturing | | | X | | X | | | |
| PPP | Polyether Polyols Production | | | X | | X | | | |
| TTT | Primary Lead Smelting | | | X | | X | | | |
| XXX | Ferroalloys Production: & Silicomanganese. | | | X | | X | | | |

¹ Washington Department of Ecology.

² Benton Clean Air Authority.

³ Northwest Air Pollution Authority (7/1/99).

⁴ Olympic Air Pollution Control Authority.

⁵ Puget Sound Clean Air Agency (7/1/99).

Note: For area source drycleaners within Puget Sound Clean Air's jurisdiction, see 40 CFR 63.99(a)(47)(ii).

⁶ Spokane County Air Pollution Control Authority.

⁷ Southwest Air Pollution Control Authority (8/1/98).

⁸ Yakima Regional Clean Air Authority.

⁹ Authorities which may not be delegated include: 40 CFR 63.6(g); 63.6(h)(9); 63.7(e)(2)(ii) and (f) for approval of major alternatives to test methods; 63.8(f) for approval of major alternatives to monitoring; 63.10(f); and all authorities identified in the subparts (i.e., under "Delegation of Authority") that cannot be delegated. For definitions of *minor*, *intermediate*, and *major* alternatives to test methods and monitoring, see memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July, 10, 1998, entitled, "Delegation of 40 CFR part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies."

¹⁰ Subpart S of this part is delegated to these agencies as applies to all applicable facilities and processes as defined in 40 CFR 63.440, except kraft and sulfite pulping mills. The Washington Department of Ecology (Ecology) retains the authority to regulate kraft and sulfite pulping mills in the State of Washington, pursuant to Washington Administrative Code (WAC) 173-405-012 and 173-410-012.

¹¹ Subpart LL of this part cannot be delegated to any local agencies in Washington because Ecology retains the authority to regulate primary aluminum plants, pursuant to WAC 173-415-012.

Note to paragraph (a)(47): Dates in parenthesis indicate the effective date of the federal rules that have been adopted by and delegated to the state or local air pollution control agency. Therefore, any amendments made to these delegated rules after this effective date are not delegated to the agency.

(ii) Affected area sources within Puget Sound Clean Air's jurisdiction must comply with Puget Sound Clean Air's Regulation III, sections 3.03, Perchloroethylene Dry Cleaners, (incorporated by reference as specified in 40 CFR 63.14) as follows:

(A) The material incorporated in Puget Sound Clean Air's Regulation III,

section 3.03, Perchloroethylene Dry Cleaners, pertains to the perchloroethylene dry cleaning source category in the Puget Sound Clean Air jurisdiction, and has been approved under the procedures in 40 CFR 63.93 to be implemented and enforced in place of the federal NESHAPs for Perchloroethylene Dry Cleaning

Facilities (40 CFR part 63, subpart M), for area sources, as defined in 40 CFR 63.320(h).

(1) Authorities not delegated.

(i) Puget Sound Clean Air is not delegated the authority to implement and enforce Puget Sound Clean Air Regulation III, sections 3.03 in lieu of those provisions of Subpart M which

applies to major sources, as defined in 40 CFR 63.320(g). Dry cleaning facilities which are major sources remain subject to subpart M.

(ii) Puget Sound Clean Air is not delegated the authority of 40 CFR 63.325 to determine equivalency of emissions control technologies. Any source seeking permission to use an alternative means of emission limitation under Puget Sound Clean Air Regulation I, section 3.23 must also receive approval from the Administrator before using such alternative means of emission limitation for the purpose of complying with section 112.

(B) [reserved].

[FR Doc. 01-1343 Filed 3-9-01; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-301104; FRL-6769-8]

RIN 2070-AB78

Butene, Homopolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of butene, homopolymer; when used as an inert ingredient in or on growing crops, when applied to raw agricultural commodities after harvest, or to animals. Miller Chemical and Fertilizer 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 butene, homopolymer.

DATES: This regulation is effective March 12, 2001. Objections and requests for hearings, identified by docket control number OPP-301104 must be received by EPA on or before May 11, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP-301104 in

the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Indira Gairola, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-6379 and e-mail address: gairola.indira@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:

| Categories | NAICS codes | Examples of potentially affected entities |
|------------|----------------------------|---|
| Industry | 111 112 311 32532 | Crop production Animal production Food manufacturing Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at <http://www.access.gpo.gov/nara/cfr/>

cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-301104. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

II. Background and Statutory Findings

In the **Federal Register** of December 20, 2000 (65 FR 79839) (FRL-6760-6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104-170) announcing the filing of a pesticide petition (PP 1E6239) by Miller Chemical and Fertilizer Corporation, P.O. Box 333, Radio Road, Hanover, PA 17331. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001 (c) and (e) be amended by establishing an exemption from the requirement of a tolerance for residues of butene, homopolymer; (CAS Reg. No. 9003-29-6).

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section