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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 70****[FDMS Docket No. EPA-R03-OAR-2006-0933; FRL-8252-3]****State Operating Permit Programs; Delaware; Amendments to the Definition of a "Major Source"****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: EPA is taking direct final action to amend the State of Delaware's operating permit program to correct the definition of "major source." Delaware's revision was submitted in response to the Clean Air Act (CAA) Amendments of 1990 that required States to submit to EPA program revisions in accordance with the Federal Title V regulations. The EPA granted final approval of Delaware's operating permit program on November 19, 2001. Delaware amended its operating permit program to address the Federal EPA amendment to the Federal Title V regulation, which went into effect on November 27, 2001, and this action approves this amendment. Any parties interested in commenting on this action granting approval of Delaware's amendment to the Title V operating permit program should do so at this time.

DATES: This rule is effective on February 5, 2007 without further notice, unless EPA receives adverse written comment by January 5, 2007. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2006-0933 by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. E-mail: campbell.dave@epa.gov.

C. Mail: EPA-R03-OAR-2006-0933, David Campbell, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2006-0933. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rosemarie Nino, (215) 814-3377, or by e-mail at nino.rose@epa.gov.

SUPPLEMENTARY INFORMATION: On May 18, 2004, the State of Delaware

submitted an amendment to its State operating permit program. This amendment is the subject of this document and this section provides additional information on the amendment by addressing the following questions:

What Is the State Operating Permit Program?

What Are the State Operating Permit Program Requirements?

What Is Being Addressed in This Document?

What Is Not Being Addressed in This Document?

What Changes to Delaware's Operating Permit Program Is EPA Approving?

What Action Is Being Taken by EPA?

What Is the State Operating Permit Program?

The Clean Air Act Amendments of 1990 required all States to develop operating permit programs that meet certain Federal criteria. When implementing the operating permit programs, the States require certain sources of air pollution to obtain permits that contain all of their applicable requirements under the Clean Air Act (CAA). The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of its applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a given air pollution source into an operating permit, the source, the public, and the State environmental agency can more easily understand what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of "major" sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM₁₀ and PM_{2.5}); those that emit 10 tons per year of any single hazardous air pollutant (HAP) specifically listed under the CAA; or those that emit 25 tons per year or more of a combination of HAPs. In areas that are not meeting the national ambient air quality standards (NAAQS) for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification.

What Are the State Operating Permit Program Requirements?

The minimum program elements for an approvable operating permit program are those mandated by Title V of the Clean Air Act Amendments of 1990 and established by EPA's implementing regulations at title 40, part 70—"State Operating Permit Programs" in the Code of Federal Regulations (40 CFR part 70). Title V required state and local air pollution control agencies to develop operating permit programs and submit them to EPA for approval by November 15, 1993. Under Title V, State and local air pollution control agencies that implement operating permit programs are called "permitting authorities".

The State was granted final full approval effective on November 19, 2001. On May 18, 2004, Delaware submitted an amendment to its currently EPA-approved Title V operating permit program. In general, Delaware amended its operating permit program regulations to make the current definition of a "major source" as stringent as the corresponding provision of 40 CFR Part 70, which went into effect on November 27, 2001. This change will make this aspect of Regulation No. 30 consistent with the Federal rule.

What Is Being Addressed in This Document?

This action approves an amendment to the Delaware Title V operating permit program to correct the definition of a "major source." This amendment would change the definition of "a major source" by removing the phrase "but only with respect to those air pollutants that have been regulated for that category" from the Regulation 30 (Title V) definition of a major source as it applies to Federal standards.

What Is Not Being Addressed in This Document?

EPA is not opening the entirety of Delaware's Title V operating permit program up to public comment, we are only addressing this change to the definition of "major source".

What Changes to Delaware's Program Is EPA Approving?

Delaware has revised Regulation 30, Section 2—Definitions, of the State of Delaware Regulations Governing the Control of Air Pollution to be consistent with the provision of 40 CFR 70.2. This action is necessary because the current definition is less stringent than the corresponding provision of 40 CFR part 70, which went into effect on November 27, 2001.

Change to Delaware's Program That Corrects a Deficiency

The EPA has reviewed Delaware's May 18, 2004 program amendment in conjunction with the portion of Delaware's program that was earlier approved. Based on this review, EPA is granting full approval of Delaware's amended operating permit program. The EPA has determined that this amendment to Delaware's operating permit program adequately addresses the deficiency. Delaware's operating permit program, including this amendment submitted on May 18, 2004, fully meets the minimum requirements of 40 CFR part 70.

What Action Is Being Taken by EPA?

The State of Delaware has satisfactorily addressed a program deficiency when EPA made a change to the Federal rule. The operating permit program amendment that is the subject of this document considered together with that portion of Delaware's operating permit program that was earlier approved fully satisfy the requirements of 40 CFR part 70 and the Clean Air Act. Therefore, EPA is taking direct final action to fully approve the Delaware Title V operating permit program in accordance with 40 CFR 70.2 definition of "a major source."

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** EPA is publishing a separate document that will serve as the proposal to approve this amendment to Delaware's operating permit program if adverse comments are filed relevant to the issues discussed in this action. This rule will be effective on February 5, 2007. If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not subject of an adverse comment.

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)). 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 (Pub. L. 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 State operating permit program submissions, 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 an operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program submission, to use VCS

in place of an operating permit program submission 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. The 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 *February 5, 2007*. 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 fully approving Delaware's Title V operating permit program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

This action approves an amendment to the Delaware Title V operating permit

program to correct the definition of a "major source."

List of Subjects in 40 CFR Part 70

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

Dated: November 21, 2006.

William T. Wisniewski,

Acting Regional Administrator, Region III.

■ 40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. Appendix A to part 70 is amended by adding paragraph (c) in the entry for Delaware to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Delaware

(c) The Delaware Department of Natural Resources and Environmental Control submitted program amendment on May 18, 2004. This rule amendment contained in the May 18, 2004 submittal is necessary to make the current definition as stringent as the corresponding provision of 40 CFR part 70, which went into effect on November 27, 2001. The State is hereby granted approval effective on February 5, 2007.

[FR Doc. E6-20645 Filed 12-5-06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2006-0175; FRL-8084-2]

Pesticides; Food Packaging Treated with a Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This rule excepts from the definitions of "pesticide chemical" and "pesticide chemical residue" under FFDCA section 201(q), food packaging (e.g. paper and paperboard, coatings, adhesives, and polymers) that is treated with a pesticide as defined in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) section 2(u). As a result, such ingredients in food packaging treated with a pesticide are exempt from regulation under FFDCA section 408 as pesticide chemical residues. Further, a food that bears or

contains such ingredients are not subject to enforcement by the Food and Drug Administration (FDA) under section 402(a)(2) (B) of the FFDCA since the ingredients are not pesticide chemical residues. Instead, such ingredients are subject to regulation by the FDA as food additives under FFDCA section 409. FDA generally regulates such food additives in food packaging as food contact substances under FFDCA, section 409(h). This rule expands the scope of the provision in 40 CFR 180.4 which currently applies only to food packaging impregnated with an insect repellent - one type of pesticide. This rule, as with the rule it amends, only applies to the food packaging materials themselves; it does not otherwise limit EPA's FFDCA jurisdiction over pesticides or limit FDA's jurisdiction over substances subject to FDA regulation as food additives. EPA, in consultation with FDA, believes this rule will eliminate the duplicative FFDCA jurisdiction and economize Federal government resources while continuing to protect human health and the environment. Under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA still regulates the food packaging as an inert ingredient of the pesticide product and still regulates the pesticide active ingredient in the treated food packaging under both FIFRA and the FFDCA.

DATES: This direct final rule is effective February 5, 2007 without further notice unless EPA receives adverse comments in writing. Any comments must be received on or before January 5, 2007. If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2006-0175, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special