

**Revision to**

**Allegheny County Health Department  
Rules and Regulations  
Article XXI, Air Pollution Control**

**§2104.08, National Emission Standards for Hazardous Air Pollutants**

**And**

**§2101.20, Definitions**

**Revision Tracking No. 86 file (non-SIP)**

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# **1. Revisions**

*[Additions are shown in larger font, bolded, underlined, and in red.  
Deletions are shown with strikethroughs.]*

## **PART A – GENERAL**

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**§2101.20 DEFINITIONS** {unless specifically indicated, all definitions effective October 20, 1995.}

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**"Major source applicable requirement"** means all of the following as they apply to emissions units at sources that require permits under Part C Subpart 2 of this Article (including requirements under the following that have been promulgated or approved by the County, the Commonwealth, or the U.S. EPA at the time of issuance of such permits but have future-effective compliance dates):

- a. Any standard or other requirement provided for in this Article which has been approved or promulgated by EPA as part of the Pennsylvania state implementation plan under the Clean Air Act or through regulations adopted under the Clean Air Act through rulemaking at the time of issuance but have future effective compliance dates or a standard provided for in the Commonwealth's SIP approved by EPA under Title I of the Clean Air Act that implements the relevant requirements of the Act, including any revisions to that plan;
- b. Any term or condition of any Installation Permits issued pursuant to this Article under either §2102.05 or §2102.04.h, including Installation Permits approved or promulgated through rulemaking under Title I, including Part C or D, of the Clean Air Act;
- c. Any new source performance standard or other requirement under §2105.05 of this Article or under Section 111 of the Clean Air Act, including Subsection (d);
- d. Any national emission standard for hazardous air pollutants, MACT standard, or other requirement under §2104.08 of this Article, including ~~any~~ **the** requirements concerning accidental release prevention **found in 40CFR68.215**, or any other standard or requirement under Section 112 of the Clean Air Act; {Amended September 16, 2022, effective September 26, 2022.}

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## **§2104.08 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS**

*{Subsection a revised January 22, 1998 effective March 31, 1998. Subsections a & b amended September 16, 2022, effective September 26, 2022.}*

**a. Incorporation by reference. All:**

1. NESHAP's;
2. MACT emission limitations for hazardous air pollutants;
3. Generally Achievable Control Technology (GACT) emission limitations;
4. General Provisions for hazardous air pollutants; and
5. Regulations for the determination of emission limitations by the Department under Paragraph h.1 below,

established at 40 CFR Parts 61 and 63 by the EPA in accordance with §112 of the Clean Air Act, all other federal regulations promulgated under §112, including only the accidental release prevention regulations of 40CFR68.215 under §112(r), and any state hazardous air pollutant emission or performance standards regulations promulgated under §6.6. of the Air Pollution Control Act are hereby incorporated by reference into this Article. For the purposes of this Section all of the definitions adopted by the federal regulations in this subsection are hereby incorporated by reference, including those of source and major source. Additions, revisions, or deletions to these federal and state regulations promulgated by the EPA and the Commonwealth, respectively, are incorporated into this Article and are effective on the date established by the applicable federal or state regulations, unless otherwise established by regulation under this Article.

- b. Violations.** It shall be a violation of this Article giving rise to the remedies provided by §2109.02 of this Article for any person to operate, or allow to be operated, any source in a manner that does not comply with § this Article; all requirements of any applicable NESHAP's, MACT emission limitation for hazardous air pollutants, Generally Achievable Control Technology (GACT) emission limitation for hazardous air pollutants, or accidental release prevention regulations incorporated by reference under Subsection a above, except if such person is lawfully temporarily relieved of the duty to comply with such requirements; and all applicable state hazardous air pollutant emission and performance standards regulations incorporated by reference under Subsection a above.
- c. Reporting Requirements.** Any person who operates, or allows to be operated, any source subject to any standard or limitation incorporated by reference under Subsection a above shall conduct, or cause to be conducted, such tests, measurements, monitoring and the like as is required by such standard or limitation. All notices, reports, test results and the like as are required by such standard or limitation shall be submitted to the Department in the manner and time specified by such standard or limitation. All information, data and the like which is required to be maintained by such standard or limitation shall be made available to the Department upon request for inspection and copying.
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## 2. Technical Support Document

### **Introduction**

On March 5, 2019, the U.S. EPA approved ACHD's request to withdraw from its delegated authority over the Risk Management Plan. See 84FR7825.

As a result, ACHD is updating Article XXI regulations addressing accidental release prevention regulations under §112(r), and/or the Risk Management Plan (RMP).

The proposed revisions to Article XXI that are shown in Section 1 above, remove from §2104.08 the incorporation by reference of the federal regulations promulgated under Clean Air Act §112(r) relating to federal accidental release prevention regulations, *except for those found in 40CFR68.215*, and revise related language in the definition of "major source applicable requirement" in §2101.20, "Definitions."

To prepare this regulatory revision, ACHD conducted word searches on Article XXI for words related to "risk management," "112(r)," "chemical accident release," and all shorter variations thereof. Only those portions of Article XXI indicated above require revision under this change document.

Note that this NESHAP related change does not constitute a change to the Pennsylvania State Implementation Plan

### **Basis for Making the Change**

The Air Program considers it necessary to make this revision to eliminate a contradiction that would exist if Article XXI continued to incorporate by reference all of the federal regulations of 40 CFR Part 68, promulgated under CAA §112(r) – while no longer having the authority to implement and enforce those provisions (ref: 40CFR§63.99(a)(39)(v)), as explained in the March 5, 2019 federal register (84FR7825), the applicable contents of which are detailed below.

**The Air Program considers it necessary however to incorporate by reference the federal regulations of 40CFR68.215** dealing with permit content and air permitting authority as it relates to chemical accident prevention.

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**As stated in the March 5, 2019 Federal Register (84FR7825):**

***I. Background***

*Section 112(l) of the Clean Air Act (CAA) and 40 CFR part 63, subpart E, authorizes EPA to approve of State, and local, rules and programs to be implemented and enforced in place of certain CAA requirements, including the chemical accident prevention provisions set forth at 40 CFR part 68 (Chemical Accident Prevention Regulations). EPA promulgated the Chemical Accident Prevention Regulations (or risk management program (RMP) regulations) (RMP regulations) pursuant to CAA Section 112(r)(7). By letter dated June 15, 2001, ACHD requested delegation of authority to implement and enforce the RMP regulations for all sources, among other requests for delegation of other programs. On January 30, 2002, EPA issued a direct final rule, which became effective on April 1, 2002, approving ACHD's request for delegation of authority to implement and enforce EPA's RMP regulations, which had been adopted by reference from 40 CFR part 68, for all sources within Allegheny County, Pennsylvania, subject to such regulations. See 67 FR 4363 (January 30, 2002).*

*By letter dated July 28, 2017, ACHD formally notified EPA of its intent to voluntarily withdraw from EPA's delegation of authority to enforce the RMP regulations. On June 22, 2018 (83 FR 29085), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania. In the NPRM, EPA notified the public that ACHD had completed the regulatory process for voluntary withdrawal from EPA's delegation of authority to implement and enforce the RMP provisions of CAA section 112(r) and proposed a revision to 40 CFR 63.99(a)(39)(v), codifying the withdrawal of EPA's delegation of authority.*

*The procedures for a State, or local authority, to voluntarily withdraw from a CAA approved rule, program or portion of a rule or program are set forth at 40 CFR 63.96(b)(7). In summary, these regulations and relevant EPA guidance provide that a State, or local authority, may voluntarily withdraw from an approved delegated program by notifying EPA and all affected sources of its intent to withdraw and the specific requirements subject to such withdrawal. Any such withdrawal is not effective sooner than 180 days after such notification to EPA. The State, or local authority, must also provide notice and opportunity for comment to the public. To the extent that any source that is affected by the withdrawal is also subject to a CAA operating permit issued pursuant to 40 CFR part 70, the State, or local authority, must reopen and revise such permit to the extent necessary.*

***II. Summary of Withdrawal Process and EPA Analysis***

*By letter dated July 28, 2017, ACHD notified EPA Region III of its intent to voluntarily withdraw from EPA's delegation of authority to enforce the RMP regulations. By letter dated November 9, 2017, ACHD notified EPA Region III that ACHD announced a public comment period to take comment on ACHD's voluntary withdrawal from EPA's delegation of authority to enforce the RMP regulations. The public comment period extended from November 10, 2017 to December 10, 2017. During this public comment period, ACHD did not receive any comments in response to the public comment notification. ACHD provided all applicable facilities with written notice that ACHD is voluntarily withdrawing from EPA's delegation of authority to enforce the RMP regulations set forth at 40 CFR part 68.*

Pursuant to [40 CFR 63.96\(b\)\(7\)](#), ACHD has determined which facilities, located in Allegheny County, are subject to the RMP regulations and have effective CAA Title V operating permits in accordance with [40 CFR part 70](#). As of June 22, 2018, sixteen (16) facilities within Allegheny County had submitted risk management plans to EPA and ACHD had issued Title V operating permits to twenty-eight (28) currently operating facilities. ACHD Title V operating permits incorporate the RMP regulations, set forth at [40 CFR part 68](#), by reference. Therefore, each facility, located in Allegheny County, Pennsylvania, that is subject to the RMP regulations and has an effective Title V operating permit has been issued a Title V permit which includes the proper citation to any applicable RMP regulation.

Upon a State's or local authority's voluntary withdrawal of a delegated program, in accordance with [40 CFR 63.96\(b\)\(7\)](#), EPA is required to publish a time for sources subject to the previously approved State, or local, rule or program to come into compliance with applicable Federal requirements. Because, as part of its previously approved delegated program, ACHD incorporated the RMP regulations by reference, there is no distinction between ACHD's previously approved delegated program for implementing the requirements set forth at [40 CFR part 68](#) and the applicable Federal requirements set forth at [40 CFR part 68](#). Furthermore, EPA's delegation of authority to implement the requirements set forth at [40 CFR part 68](#) to ACHD stated in relevant part: "Although ACHD has primary authority and responsibility to implement and enforce the . . . chemical accident prevention provisions, nothing shall preclude, limit, or interfere with the authority of EPA to exercise its enforcement, investigatory, and information gathering authorities concerning this part of the Act." See [67 FR 4366](#) (January 30, 2002); see also [40 CFR 63.96\(b\)\(7\)\(iii\)](#). Therefore, all facilities located in Allegheny County, Pennsylvania, subject to any requirement set forth at [40 CFR part 68](#) are required to maintain continuous compliance with such requirement.

***This action does not affect ACHD's responsibilities under Title V of the Clean Air Act. ACHD must continue to ensure compliance with Title V applicable requirements, including chemical accident prevention requirements. See [40 CFR 70.2](#), [68.215](#); [58 FR 29310](#). In addition, nothing in this action changes any source's obligation to comply with State or local laws. Affected sources may be subject to duplicative requirements, including duplicative reporting requirements to EPA and ACHD. This may include reporting to EPA under part 68, to the Title V permitting authority under [40 CFR 68.215](#), and to ACHD under their own rules. EPA received one set of comments in response to the June 22, 2018 NPRM. The comments did not concern any of the specific issues raised in the NPRM, nor did they address EPA's rationale for the proposed approval of ACHD's request. Therefore, EPA is not responding to those comments.***

### ***III. Final EPA Action***

EPA's review of this material indicates that ACHD has completed the regulatorily mandated process, set forth at [40 CFR 63.96\(b\)\(7\)](#), for voluntary withdrawal from EPA's delegation of authority to enforce the Chemical Accident Prevention regulations set forth at [40 CFR part 68](#). EPA is revising [40 CFR 63.99\(a\)\(39\)\(v\)](#) to indicate ACHD's withdrawal from EPA's delegation of authority to enforce the chemical accident prevention provisions set forth at [40 CFR part 68](#).

40 CFR part 63 is amended as follows:

**PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES**

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

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

\_ 2. Section 63.99 is amended by revising paragraph (a)(39)(v) to read as follows:

**§ 63.99 Delegated Federal authorities.**

(a) \*\*\*

(39) \*\*\*

(v) **Allegheny County is not delegated the authority to implement and enforce the provisions of 40 CFR part 68** and all future unchanged amendments to 40 CFR part 68 at sources within Allegheny County, in accordance with the final rule, dated March 5, 2019, effective April 4, 2019.

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**FOR INFORMATION ONLY – The contents of 40 CFR Part 68 Section 215**

**40 CFR §68.215 Permit content and air permitting authority or designated agency requirements.**

(a) These requirements apply to any stationary source subject to this part 68 and parts 70 or 71 of this chapter. The 40 CFR part 70 or part 71 permit for the stationary source shall contain:

- (1) A statement listing this part as an applicable requirement;
- (2) Conditions that require the source owner or operator to submit:
  - (i) A compliance schedule for meeting the requirements of this part by the dates provided in §§68.10(a) through (f) and 68.96(a) and (b)(2)(i), or;
  - (ii) As part of the compliance certification submitted under 40 CFR 70.6(c)(5), a certification statement that the source is in compliance with all requirements of this part, including the registration and submission of the RMP.

(b) The owner or operator shall submit any additional relevant information requested by the air permitting authority or designated agency.

(c) For 40 CFR part 70 or part 71 permits issued prior to the deadline for registering and submitting the RMP and which do not contain permit conditions described in paragraph (a) of this section, the owner or operator or air permitting authority shall initiate permit revision or reopening according to the procedures of 40 CFR 70.7 or 71.7 to incorporate the terms and conditions consistent with paragraph (a) of this section.

(d) The state may delegate the authority to implement and enforce the requirements of paragraph (e) of this section to a state or local agency or agencies other than the air permitting authority. An up-to-date copy of any delegation instrument shall be maintained by the air permitting authority. The state may enter a written agreement with the Administrator under which EPA will implement and enforce the requirements of paragraph (e) of this section.



(e) The air permitting authority or the agency designated by delegation or agreement under paragraph (d) of this section shall, at a minimum:

(1) Verify that the source owner or operator has registered and submitted an RMP or a revised plan when required by this part;

(2) Verify that the source owner or operator has submitted a source certification or in its absence has submitted a compliance schedule consistent with paragraph (a)(2) of this section;

(3) For some or all of the sources subject to this section, use one or more mechanisms such as, but not limited to, a completeness check, source audits, record reviews, or facility inspections to ensure that permitted sources are in compliance with the requirements of this part; and

(4) Initiate enforcement action based on paragraphs (e)(1) and (e)(2) of this section as appropriate. [61 FR 31728, June 20, 1996, as amended at 84 FR 69916, Dec. 19, 2019]

### **3. Documentation of Public Hearing**

Notice of Public Hearing

Summary of Comments and responses

**NOTICE OF VIRTUAL PUBLIC HEARING AND PUBLIC COMMENT PERIOD  
FOR PROPOSED AMENDMENTS TO  
ALLEGHENY COUNTY HEALTH DEPARTMENT RULES AND REGULATIONS  
ARTICLE XXI, AIR POLLUTION CONTROL**

The Allegheny County Board of Health (ACHD) will hold a virtual public hearing on Wednesday, November 3, 2021, at 10:00 AM to take testimony on proposed modifications to the following sections of ACHD Article XXI, along with the corresponding sections of County Ordinance 16782, as follows:

Sections related to Permit Advertising:

- §2101.20, Definitions
- §2102.03, Permits Generally
- §2102.04, Installation Permits
- §2102.05, Installation Permits for New and Modified Major Sources
- §2103.11, Operating Permits (All Major and Minor Permits) Applications
- §2103.14, All Major and Minor Permits -- Revisions, Amendments, Modifications
- §2103.21, Additional Requirements for Major Permits -Applications
- §2103.22 Issuance, Standard Conditions
- §2103.24, Additional Requirements for Major Permits - Revisions, Amendments, Modifications
- §2105.31, Waste-Derived Liquid Fuel

The changes to these sections will be submitted as revisions to Allegheny County's portion of the Pennsylvania State Implementation Plan (SIP) as delineated in the Technical Support Document.

Sections related to De-delegation of Authority of the Risk Management Plan:

- §2104.08, National Emission Standards for Hazardous Air Pollutants; and related
  - §2101.20, Definitions
- The changes to these sections will not be submitted as revisions to Allegheny County's portion of the Pennsylvania SIP.

The proposed regulations/SIP revisions are available on the Allegheny County Health Department (ACHD) Air Quality web site at [www.alleghenycounty.us/regs-sips](http://www.alleghenycounty.us/regs-sips). Written copies may be obtained by calling 412-578-8103.

The hearing will be held virtually in compliance with safety precautions due to the COVID-19 pandemic.

- Persons wishing to present testimony at the hearing must register by going to the ACHD's website at [Public Hearing Participation Form | Health Department | Allegheny Home](http://PublicHearingParticipationForm|HealthDepartment|AlleghenyHome) ([alleghenycounty.us](http://alleghenycounty.us)). Persons who do not have access to the internet may register by calling 412-578-8103.
- You must register to present testimony no less than 24 hours in advance of the virtual hearing.
- Testimony is limited to 3 minutes.

The Board will also accept written comments, beginning on Monday, October 4, 2021, and concluding at 4:00 PM on Wednesday, November 3, 2021, by mail to ACHD Air Program, 301 39th Street, Bldg. 7, Pittsburgh, PA 15201-1811, or by email to [aqcomments@alleghenycounty.us](mailto:aqcomments@alleghenycounty.us).

Please call 412-578-8103, if you have any questions or if you have any difficulty registering for the hearing.

**SUMMARY OF COMMENTS AND RESPONSES**

**for**

**Proposed Revision 86 (non-SIP)**

**§2104.08, National Emission Standards for Hazardous Air Pollutants**

**and**

**§2101.20, Definitions**

**Public Comment Period: October 4, 2021 to November 3, 2021**

**Public Hearing: November 3, 2021**

No comments were received during the public comment period.