OSHA's purpose in including an MSD column on the Log was to gather data on ''musculoskeletal disorders'' as that term is defined in Section 1904.12. Following Congressional disapproval of OSHA's ergonomics standard (PL 107.5, Mar. 20, 2001), the Secretary announced that she intends to develop a comprehensive plan to address ergonomic hazards and scheduled a series of forums to consider basic issues related to ergonomics (66 FR 31694, 66 FR 33578). One of the key issues to be considered in connection with the Secretary's comprehensive plan is the approach to defining an ergonomic injury.

Based on these developments, the Secretary believes that it is premature to define an MSD for recordkeeping purposes. Any definition of ''musculoskeletal disorder'' or other term for soft tissue injuries in the recordkeeping rule should be informed by the views of business, labor and the public health community on the problem of ergonomic hazards in the workplace, which the Secretary's forums are intended to elicit. Furthermore, to require employers to implement a new definition of MSD while the Agency is considering the issue in connection with the comprehensive ergonomics plan could create unnecessary confusion and uncertainty. Therefore, OSHA is proposing to delay the effective date of § 1904.12. Accordingly, the Log to be used for calendar year 2002 would not contain a definition for MSD or an MSD column. When the Department has progressed further in developing its comprehensive approach to ergonomic hazards, it will be in a better position to consider how employers will be required to report work-related ergonomics injuries.

This proposed action does not affect the employer's obligation to record all injuries and illnesses that meet the criteria set out in Sections 1904.4–1904.7, regardless of whether a particular injury or illness meets the definition of MSD found in Section 1904.12. Employers will be required to record soft-tissue disorders, including those involving subjective symptoms such as pain, as injuries or illnesses if they meet the general recording criteria that apply to all injuries and illnesses. The proposed delay of the effective date of Section 1904.12 does not affect this basic requirement. It simply means that employers will not have to determine which injuries should be classified under the category of ''MSDs'' or ''ergonomic injuries'' during the calendar year 2002.

## II. Effect of the Proposed Delay of the Effective Date on Employer's Recordkeeping Obligations in Calendar Year 2002

A one-year delay of the effective date of the specified recordkeeping provisions would have the following effect on an employer's recordkeeping obligations during the 2002 calendar year:

*Hearing loss cases:* Employers would continue to record work-related shifts of an average of 25 dB or more at 2000, 3000, and 4000 hertz (Hz) in either ear on the OSHA 300 Log. When a recordable hearing loss occurs, the audiogram indicating the hearing loss would become the new baseline for determining whether future additional hearing loss by the individual must be recorded. Employers would check either the ''injury'' or the ''all other illness''column, as appropriate.

*Soft-tissue disorder:* Employers would record disorders affecting the muscles, nerves, tendons, ligaments and other soft tissue areas of the body in accordance with the general criteria in Sections 1904.4–1904.7 applicable to any injury or illness. Employers would also treat the symptoms of soft-tissue disorders the same as symptoms of any other injury or illness. Soft-tissue cases would be recordable only if they are work-related (Sec. 1904.5), are a new case (Sec. 1904.6), and meet one or more of the general recording criteria (Sec. 1904.7). Employers would check either the ''injury'' or the ''all other illness'' column, as appropriate.

## III. Issues for Public Comment

OSHA particularly invites comment on the following issues. Issue 1. What is the appropriate criterion for recording cases of occupational hearing loss? OSHA is particularly interested in comments on the advantages and disadvantages of various hearing loss levels, including 10, 15, 20 and 25 dB, on alternative approaches such as the use of a sliding scale in which smaller incremental shifts would be recordable for employees with significant pre-existing hearing loss, and on the frequency of ''false positive'' results or other errors in audiometric measurements associated with each of these levels and approaches. Issue 2. What is the variability of audiometric testing equipment and how should this variability be taken into account, if at all, in the recordkeeping rule? Issue 3. What is the appropriate benchmark against which to measure hearing loss, e.g., the employee's baseline audiogram, audiometric zero, or some other measure? Issue 4. Should the recordkeeping rule treat subsequent hearing losses in the same employee as a new case for recording purposes?

### Paperwork Reduction Act

On January 22, 2001, the Office of Management and Budget (OMB) received OSHA's request under the Paperwork Reduction Act of 1995 for approval of the information collection requirements in the final recordkeeping rule. This request for approval was withdrawn by the Agency on March 26, 2001, before OMB acted on it. OSHA will resubmit a request for OMB approval of the information collection requirements in the final rule, including appropriate changes in such requirements resulting from this proposal.

### Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601), the Acting Assistant Secretary certifies that the proposed rule will not have a significant adverse impact on a substantial number of small entities.

### Executive Order

This document has been deemed significant under Executive Order 12866 and has been reviewed by OMB.

### Authority

This document was prepared under the direction of R. Davis Layne, Acting Assistant Secretary for Occupational Safety and Health. It is issued under Section 8 of the Occupational Safety and Health Act (29 U.S.C. 657), and 5 U.S.C. 553.

Issued at Washington, DC this 28th day of June, 2001.

**R. Davis Layne,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 01–16669 Filed 6–29–01; 9:53 am]

**BILLING CODE 4510–26–M**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 61 and 63

**[FRL–7006–7]**

### Proposed Approval of the Clean Air Act, Section 112(l), Delegation of Authority to Washington Department of Ecology and Four Local Air Agencies in Washington

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the authority of Clean Air Act (CAA), section 112(l), EPA proposes to approve the State of

Washington Department of Ecology's (Ecology) request, and the requests of four local air pollution control agencies in Washington, for program approval and delegation of authority to implement and enforce specific federal National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations (as they apply to both part 70 and non-part 70 sources) which have been adopted into state law. EPA proposes to delegate these programs to Ecology for the purpose of direct implementation and enforcement (within Ecology's jurisdiction). EPA also proposes to delegate these programs to the following four local agencies: the Benton Clean Air Authority (BCAA), the Olympic Air Pollution Control Authority (OAPCA), the Spokane County Air Pollution Control Authority (SCAPCA), and the Yakima Regional Clean Air Authority (YRCAA).

EPA also proposes to approve a mechanism by which Ecology and the four local agencies will receive delegation of future NESHAPs; and proposes to waive its notification requirements such that sources within Ecology and SCAPCA's jurisdictions would only need to send notifications and reports to Ecology or SCAPCA, and would *not* need to send a copy to EPA, Region X.

Delegation to the remaining local agencies in the State of Washington (the Northwest Air Pollution Authority, the Puget Sound Clean Air Agency, and the Southwest Air Pollution Control Authority) was promulgated in a direct final rule on December 1, 1998. A correction and clarification to that direct final rule was published on February 17, 1999, and amendments updating this delegation were published on April 22, 1999, and February 28, 2000.

**DATES:** Written comments must be received on or before August 2, 2001.

**ADDRESSES:** Written comments should be submitted concurrently to the addressees listed below:

Tracy Oliver, U.S. Environmental Protection Agency, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, WA, 98101.

Mary Burg, Washington State Dept of Ecology, P.O. Box 47600, Olympia, WA 98504–7600.

Copies of the delegation requests and other supporting documentation are available for public inspection at US EPA, Region X office during normal business hours. Please contact Doug Hardesty to make an appointment.

**FOR FURTHER INFORMATION CONTACT:** Tracy Oliver, US EPA, Region X (OAQ–107), 1200 Sixth Avenue, Seattle, WA, 98101, (206) 553–1172.

**SUPPLEMENTARY INFORMATION:** This Supplementary Information section is organized as follows:



## I. EPA Action

### *What Action Is EPA Proposing Today?*

In this action, under the authority of CAA section 112(l)(5) and 40 CFR 63.91, EPA proposes approval of Ecology's request, and the requests of BCAA, OAPCA, SCAPCA and YRCAA, for program approval and delegation of authority to implement and enforce specific 40 CFR parts 61 and 63 subparts, as listed in the tables at the end of this rule. Along with these specific standards, EPA proposes to delegate certain General Provisions authorities, as explained below. EPA proposes to delegate this authority to Ecology for the purpose of direct implementation (within Ecology's jurisdiction). EPA also proposes to delegate this authority to BCAA, OAPCA, SCAPCA and YRCAA.

In this action, EPA proposes to waive its notification requirements such that sources within Ecology and SCAPCA's jurisdictions would only need to send notifications and reports to Ecology or SCAPCA, and would *not* need to send a copy to EPA, Region X. (Sources within BCAA, OAPCA or YRCAA's jurisdictions would need to continue sending notifications to both the respective agency and EPA, Region X).

Under the authority of CAA section 112(l)(5) and 40 CFR 63.91, EPA is also proposing approval of Ecology and the four locals agencies' mechanism for streamlining future delegation of those federal NESHAP regulations that are adopted unchanged into state and local laws. This mechanism is explained in a separate paragraph below.

Delegation to the remaining local agencies in the State of Washington (the Northwest Air Pollution Authority (NWAPA), the Puget Sound Clean Air Agency (Puget Sound Clean Air), and the Southwest Air Pollution Control Authority (SWAPCA)) was promulgated in a direct final rule on December 1, 1998 (*see* 63 FR 66054) and became effective on February 1, 1999. A correction and clarification to that direct final rule was published on February 17, 1999 (*see* 64 FR 7793). Additionally, amendments updating this delegation were published on April 22, 1999 (*see* 64 FR 19719) and February 28, 2000 (*see* 65 FR 10391). Therefore, this action will not apply to NWAPA, Puget Sound Clean Air, or SWAPCA.

### *Why Is EPA Proposing This Action?*

EPA is proposing this action because it has determined that these agencies have met the following criteria for approval:

(1) The state or local program is ''no less stringent'' than the corresponding federal program or rule;

(2) The State or local has adequate authority and resources to implement the program;

(3) The schedule for implementation and compliance is sufficiently expeditious; and

(4) The program is otherwise in compliance with federal guidance.

### *What Changes Would This Delegation Create?*

If EPA approves this proposal, Ecology and the four local agencies will have primary implementation and enforcement responsibility for the adopted NESHAP regulations. This means that if approved, sources subject to the delegated standards would send notifications and reports to these agencies (and send a copy to EPA, Region 10, except for those sources within Ecology and SCAPCA's jurisdictions). Questions and

compliance issues would also be directed to these agencies. As with any delegation, however, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112. Additionally, if approved, EPA would retain certain General Provisions authorities, as explained below.

*What Specific Standards Does EPA Propose to Delegate?*

EPA proposes to delegate certain 40 CFR parts 61 and 63 NESHAPs in effect on July 1, 2000, as adopted by reference into WAC 173–400–075 on November 22, 2000. In most cases, this delegation would apply to all sources (exceptions are explained below). The standards to be delegated are specified in the tables at the end of this rule.

EPA agrees with the position of the Office of the Attorney General of Washington's office that the November 22, 2000 revision to WAC 173–400–075(5)(a) adopts as state rules those parts of Part 63 that EPA proposes to delegate. A revision to the state rule, which will clarify the provision, is currently being processed by the State.

EPA proposes to delegate 40 CFR part 61, subpart M (Asbestos NESHAP) to Ecology, BCAA, and OAPCA as it applies to major sources only, based on their requests. Also, EPA proposes to delegate 40 CFR part 63, subpart M (Perchloroethylene Dry Cleaning NESHAP) to Ecology and YRCAA as it applies to major sources only.

Also, Ecology has a working relationship with BCAA to manage the Asbestos NESHAP for sources located on the Hanford Nuclear Reservation. Ecology retains enforcement authority for the Asbestos NESHAP consistent with RCW 70.105.240. EPA acknowledges this managerial relationship between Ecology and BCAA concerning the Asbestos NESHAP since both agencies are delegated the authority to implement this program. However, EPA asserts that Ecology retains enforcement authority for sources located on the Hanford Nuclear Reservation because Ecology is the enforcing agency.

*What Specific Standards Does EPA Propose Not to Delegate?*

EPA proposes *not* to delegate to Ecology and the four local agencies any 40 CFR part 61, subparts pertaining to radon or radionuclides. Typically, EPA delegates all standards adopted (and requested) by an air agency and in effect as of a certain date, regardless of whether or not there are any applicable sources within that agency's jurisdiction. As an exception, EPA proposes *not* to delegate the 40 CFR part 61, subparts pertaining to radon or radionuclides which includes: subparts B, H, I, K, Q, R, T, and W. EPA has determined that there are either no sources in these agencies' jurisdictions (and that no new sources are likely to emerge), or if there are sources, the agency does not have sufficient expertise to implement these NESHAPs.

The State Department of Health is currently implementing 40 CFR part 61, subparts H and I as the state radionuclide standards for the State of Washington. The State Department of Health had received interim delegation for these two radionuclide standards (as they pertain to part 70 sources only) on August 2, 1995 (*see* 60 FR 39263). However, this interim delegation lapsed on November 9, 1996, because the State had not received full approval of the Washington Title V operating permits program. (*see* 60 FR 39264). Therefore, EPA is currently responsible for federal implementation of 40 CFR part 61, subparts H and I. (Note: EPA recently received a request from the Department of Health for delegation of federal radionuclide standards at 40 CFR part 61, subparts H and I. EPA is evaluating this request.)

Additionally, EPA is *not* proposing delegation of the regulations implementing CAA sections 112(g) and 112(j), codified at 40 CFR part 63, subpart B, to Ecology and the four local agencies. EPA recognizes that subpart B need not be delegated under the section 112(l) approval process. When promulgating the regulations implementing CAA section 112(g), EPA stated its view that ''the Act directly confers on the permitting authority the obligation to implement section 112(g) and to adopt a program which conforms to the requirements of this rule. Therefore, the permitting authority need not apply for approval under section 112(l) in order to use its own program to implement section 112(g)'' (*see* 61 FR 68397). Similarly, when promulgating the regulations implementing section 112(j), EPA stated its belief that ''section 112(l) approvals do not have a great deal of overlap with the section 112(j) provision, because section 112(j) is designed to use the Title V permit process as the primary vehicle for establishing requirements'' (*see* 59 FR 26447). Therefore, state or local agencies implementing the requirements under sections 112(g) and 112(j) do not need approval under section 112(l).

*What General Provisions Authorities Does EPA Propose to Delegate?*

In a 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,'' EPA clarified which of the authorities in the General Provisions may and may not be delegated to state and local agencies under 40 CFR part 63, subpart E. Based on this memo, EPA proposes to delegate the part 63, subpart A, sections that are listed below. Delegation of these General Provisions Authorities would enable Ecology and the four local agencies to carry out the Administrator's responsibilities in these sections of subpart A. In delegating these authorities, EPA would be granting Ecology and the four local agencies the authority to make decisions which are not likely to be nationally significant or to alter the stringency of the underlying standard. The intent is that these agencies would make decisions on a source-by-source basis, *not* on a source category-wide basis.

PART 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES WHICH EPA PROPOSES TO DELEGATE TO ECOLOGY AND THE FOUR LOCALS

| Section | Authorities |
|---|---|
| 63.1 | Applicability Determinations |
| 63.6(e) | Operations and Maintenance Requirements—Responsibility for Determining Compliance |
| 63.6(f) | Compliance with Non-Opacity Standards—Responsibility for Determining Compliance |
| 63.6(h) [except 63.6(h)(9)]. | Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance |
| 63.7(c)(2)(i) and (d). | Approval of Site-Specific Test Plans |
| 63.7(e)(2)(i) | Approval of Minor Alternatives to Test Methods |
| 63.7(e)(2)(ii) and (j). | Approval of Intermediate Alternatives to Test Methods |
| 63.7(e)(2)(iii) | Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors |
| 63.7(e)(2)(iv) and (h)(2), (3). | Waiver of Performance Testing |
| 63.8(c)(1) and (e)(1). | Approval of Site-Specific Performance Evaluation (monitoring) Test Plans |
| 63.8(f) | Approval of Minor Alternatives to Monitoring |

PART 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES WHICH EPA PROPOSES TO DELEGATE TO ECOLOGY AND THE FOUR LOCALS—Continued

| Section | Authorities |
|---|---|
| 63.8(f) ..... | Approval of Intermediate Alternatives to Monitoring |
| 63.9 and 63.10 [except 63.10(f)]. | Approval of Adjustments to Time Periods for Submitting Reports |

In delegating 40 CFR 63.9 and 63.10, ''Approval of Adjustments to Time Periods for Submitting Reports,'' these agencies would have the authority to approve adjustments to the timing that reports are due, but would not have the authority to alter the contents of the reports. For Title V sources, semiannual and annual reports are required by part 70 and nothing herein would change that requirement.

*What General Provisions Authorities Are Automatically Granted as Part of These Agencies' Part 70 Operating Permits Program Approval?*

Certain General Provisions authorities are automatically granted to Ecology and the four local agencies as part of their part 70 operating permits program approval (regardless of whether the operating permits program approval is interim or final). These are 40 CFR 63.6(i)(1), ''Extension of Compliance with Emission Standards,'' and 63.5(e) and (f), ''Approval and Disapproval of Construction and Reconstruction.'' [1] Additionally, for 40 CFR 63.6(i)(1), Ecology and the four local agencies do not need to have been delegated a particular standard or have issued a part 70 operating permit for a particular source to grant that source a compliance extension. However, Ecology or the local agency must have authority to implement and enforce the particular standard against the source in order to grant that source a compliance extension.

*What General Provisions Authorities Are Not Delegated?*

In general, EPA does not delegate any authorities that require implementation through rulemaking in the **Federal Register**, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112. Listed in the footnotes of the parts 61 and 63 delegation tables at the end of this rule are the specific authorities which cannot be delegated to any state or local agency; which EPA therefore would retain.[2]

*How Would This Delegation Affect the Regulated Community?*

After a state or local agency has been delegated the authority to implement and enforce a NESHAP, the delegated agency (in this case, Ecology and the four locals) becomes the primary point of contact with respect to that NESHAP. Therefore, if EPA approves this proposal, regulated facilities would direct questions and compliance issues to these agencies. Additionally, all pending questions and compliance issues, even those which may currently be under consideration by EPA, will be resolved by Ecology or the appropriate local agency.

*Where Would the Regulated Community Send Notifications and Reports?*

If this proposal is approved, facilities within BCAA, OAPCA or YRCAA's jurisdictions would need to submit notifications directly to the respective agency, and also send a copy to EPA, Region X.

Pursuant to 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii), EPA, Region X, proposes to waive the requirement for sources to submit notifications to both Ecology or SCAPCA and EPA, Region X. If approved, facilities within Ecology and SCAPCA's jurisdictions would need to submit notifications and reports directly to Ecology or SCAPCA, and would *not* need to send a copy to EPA, Region X.

*How Would This Delegation Affect Indian Country?*

The delegation proposed for Ecology and the four local agencies to implement and enforce NESHAPs would not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. ''Indian country'' is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Consistent with previous federal program approvals or delegations, EPA will continue to implement the NESHAPs in Indian country because these agencies did not adequately demonstrate their authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

*What Would Be Ecology and the Four Local Agencies' Reporting Requirements to EPA?*

In delegating the authority to implement and enforce these rules, EPA would require that these delegated agencies submit to EPA the following information:

(1) These agencies must input all source information into the Aerometric Information Retrieval System (AIRS) for both point and area sources. The agencies must enter the information into the AIRS system by September 30 of each year;

(2) These agencies must also report to EPA, Region X, all MACTRAX information upon request, which is typically semiannually. (MACTRAX provides summary data for each implemented NESHAP that EPA uses to evaluate the Air Toxics Program);

(3) These agencies must also provide any additional compliance related information to EPA, Region X, as agreed upon in the Compliance Assurance Agreement;

(4) In receiving delegation for specific General Provisions authorities, these agencies must submit to EPA, Region X, copies of determinations issued pursuant to these authorities (which are listed in the table above);

(5) These agencies must also forward to EPA, Region X, copies of any notifications received pursuant to § 63.6(h)(7)(ii) pertaining to the use of a continuous opacity monitoring system; and

(6) These agencies must submit to EPA's Emission Measurement Center of the Emissions Monitoring and Analysis Division copies of any approved intermediate changes to test methods or monitoring. (For definitions of major, intermediate and minor alternative test methods or monitoring methods, see the

[1] Sections 112(i)(1) and (3) state that ''Extension of Compliance with Emission Standards'' and ''Approval and Disapproval of Construction and Reconstruction'' can be implemented by the ''Administrator (or a State with a permit program approved under Title V).'' EPA interprets that this authority does not require delegation through subpart E and, instead, is automatically granted to States as part of their part 70 operating permits program approval.

[2] For authorities which are not addressed in this rulemaking and not identified in any part 61 or 63 subparts as authorities that cannot be delegated, the agencies may assume that the authorities in question would be delegated.

July 10, 1998, memorandum from John Seitz, referenced above). These intermediate test methods or monitoring changes should be sent via mail or facsimile to: Chief, Source Categorization Group A, U.S. EPA (MD–19), Research Triangle Park, NC 27711, Facsimile telephone number: (919) 541–1039.

*How Would These Agencies Receive Delegation for Future and Revised Standards?*

If this proposed delegation is approved, Ecology or a local agency would receive delegation of future standards by the following process:

(1) Ecology or the local agency will send a letter to EPA requesting delegation for future NESHAP standards adopted by reference into state regulations;

(2) EPA will send a letter of response back to Ecology or the local agency granting this delegation request (or explaining why EPA cannot grant the request);

(3) Ecology or the local agency does not need to send a response back to EPA;

(4) If EPA does not receive a negative response from Ecology or the local agency within 10 days of EPA's letter to Ecology or the local agency, then the delegation will be final 10 days after the date of the letter from EPA; and

(5) Periodically, EPA will publish a notice in the **Federal Register** informing the public of the updated delegation.

*How Frequently Should These Agencies Update Their Delegation?*

Ecology and the four local agencies should update their incorporations by reference of 40 CFR parts 61 and 63 standards and request updated delegation annually, as current standards are revised and new standards are promulgated.

*Does the Public Have an Opportunity to Comment?*

EPA is seeking comment on its proposal to grant Ecology and the four local agencies the authority to implement and enforce certain 40 CFR parts 61 and 63 NESHAPs. EPA will consider all public comments submitted during the public comment period. Issues raised by the comments will be carefully reviewed and considered in the decision to approve or disapprove Ecology's request. EPA will provide notice of its final decision in the **Federal Register**, including a summary of the reasons for the final decision and a summary of all major comments.

Please note that the public was provided the opportunity to comment on the proposed interim approval of Ecology and the four locals' delegation request for certain 40 CFR part 61 standards, as they apply to part 70 sources, on February 16, 1996 (*see* 61 FR 6184). EPA received public comments on that proposal and responded to them in the August 26, 1996, **Federal Register** (*see* 61 FR 43675). The public has not been given an opportunity to comment on requests submitted since the February 16, 1996, **Federal Register**, on delegation of 40 CFR part 61 standards as they apply to non-part 70 sources, and on delegation of 40 CFR part 63 standards as they apply to both part 70 and non-part 70 sources. That is why EPA is requesting comments at this time.

## II. Background and Purpose

*What Authority Does EPA Have to Grant Delegations?*

Section 112(l) of the federal Clean Air Act (CAA) enables the EPA to approve state and local air toxics programs or rules to operate in place of the federal air toxics program or rules. The federal air toxics program implements the requirements found in section 112 of the CAA pertaining to the regulation of hazardous air pollutants. Approval of an air toxics program is granted by EPA if the Agency finds that:

(1) the state (or local) program is ''no less stringent'' than the corresponding federal program or rule,

(2) the State (or local) has adequate authority and resources to implement the program,

(3) the schedule for implementation and compliance is sufficiently expeditious, and

(4) the program is otherwise in compliance with federal guidance.

Once approval is granted, the air toxics program can be implemented and enforced by state or local agencies, as well as EPA.

*What Is the History of This Delegation?*

On February 16, 1996 (*see* 61 FR 6184), EPA proposed to approve the request of Ecology and the Washington local agencies, including BCAA, OAPCA, SCAPCA and YRCAA, for delegation of authority to implement and enforce certain 40 CFR part 61 NESHAP rules, as they apply to part 70 sources. On August 26, 1996 (*see* 61 FR 43675), under the authority of CAA section 112(l)(5) and 40 CFR 63.91, EPA promulgated final interim approval of this request. EPA also promulgated interim approval of a mechanism for Ecology and the four locals to receive future delegation of CAA section 112 standards that are adopted unchanged from federal standards as promulgated.

*Why Did EPA Grant Only Interim Approval of the Original Request?*

In the August 26, 1996, rulemaking, EPA granted only interim approval of the request for delegation because EPA determined that the criminal authorities under Ecology's statute, RCW 70.94.430, did not meet the stringency requirements of 40 CFR 70.11. In this respect, EPA retained implementation and enforcement authority for these rules as they applied to non-part 70 sources during the interim period or until such time as Ecology and the local agencies could demonstrate that their criminal authorities met EPA stringency requirements. Full approval has been contingent upon a demonstration that Ecology and the local agencies' criminal enforcement authorities are consistent with the requirements of 40 CFR 70.11(a), and therefore 40 CFR 63.91(b)(1) and (b)(6). Specifically, in the proposed interim approval notice (*see* 61 FR 6184), EPA requested the following of Ecology and the local agencies:

(1) Revise RCW 70.94.430 to provide for maximum criminal penalties of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii).

(2) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation, and

(3) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation, or

(4) Demonstrate to the satisfaction of EPA that these authorities are consistent with 40 CFR 70.11, and therefore 40 CFR 63.91.

*How Have These Agencies Satisfied Enforcement Authority Deficiencies?*

In response to EPA's request, Ecology submitted a letter dated October 7, 1996, that addressed these issues. This documentation included a legal memorandum from the Attorney General of Washington'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, which satisfied condition 1. In addition, Ecology 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, thus satisfying requirements 2 and 3. Furthermore, in a letter dated February 28, 1997, Ecology provided supporting documentation from BCAA, SCAPCA, and OAPCA describing how they each have addressed these issues. In a letter dated May 5, 1997, Ecology provided supporting documentation from YRCAA describing how it has addressed these issues. Ecology also updated SCAPCA and OAPCA's supporting documentation in letters dated June 4, 1997, and October 27, 1997, respectively. All four local agencies committed to enforcing WAC 173–400–105(7) and (8) until such time as they might adopt their own equivalent regulations on this subject. Based on information provided by Ecology and the four locals, EPA has determined that these actions adequately address the issue of adequate criminal authorities needed to meet the requirements of 40 CFR 63.91 and 70.11, and to obtain final delegation for all sources within Ecology and the four locals' jurisdiction.

After resolving the above issues related to criminal authorities, this delegation was again delayed due to certain state regulations which EPA believed conflicted with the enforcement authorities required for delegation of federal programs. The Regulatory Reform Act of 1995 (''Act''), codified at Chapter 43.05 RCW precludes ''regulatory agencies,'' as defined in RCW 43.05.010, from assessing civil penalties except for a violation of a specific permit term or condition; a repeat violation; a violation that is not corrected within a reasonable period of time; or a violation that has a probability of placing a person in danger of death or bodily harm, a probability of causing more than minor environmental harm, or of causing physical damage to the property of another in excess of one thousand dollars. Counsel for Puget Sound Clean Air has provided EPA with a legal opinion stating that the Act does not apply to local air pollution control authorities in Washington because local air pollution control authorities are not ''regulatory agencies'' within the meaning of the Act. EPA has reviewed the statutory and regulatory language relied on by Puget Sound Clean Air's counsel in reaching this conclusion and agrees that the Act does not constrain the enforcement authority of local air pollution control authorities and therefore does not pose a bar to delegation of CAA programs to local air pollution control agencies in Washington. As for the Act's applicability to Ecology's enforcement authorities, in letters dated June 10, 1997, and November 20, 1997, EPA advised Ecology that the Act conflicted with the necessary enforcement authority required for authorization or approval of federal environmental programs to Ecology. Subsequently, on December 10, 1997, in accordance with RCW 43.05.902, Ecology formally notified the Governor of Washington that a conflict existed between the Act and the requirements for State authorization or approval of certain federal environmental programs. As a result of the determination of an existing conflict, RCW 43.05.040, .050, .060(3), and .070, which prohibit the State from issuing civil penalties except under certain circumstances, were deemed to be inoperative to several State environmental programs administered by the Department of Ecology, including the CAA program. In reliance on this determination, EPA believes that the conflict between the Act and the requirements for EPA approval of Ecology's CAA programs has been addressed by rendering inoperative those portions of the Act that conflicted with Ecology's required enforcement authorities.

*What Changes Have Been Made to the Original Delegation Request?*

Since the August 26, 1996, rulemaking, Ecology has submitted several updated delegation requests on behalf of itself and the four local agencies to reflect the adoption of revised or newly promulgated federal standards. Based on these updated requests, Ecology and the four locals' current request includes certain subparts in 40 CFR parts 61 and 63 in effect on July 1, 2000, as adopted by reference into WAC 173–400–075 on November 22, 2000, as they apply to all sources. Two exceptions to this are: (1) Ecology, BCAA, and OAPCA, have requested the Asbestos NESHAP for part 70 sources only; and (2) Ecology has requested the Perchloroethylene Dry Cleaning NESHAP for part 70 sources only, as is allowed by their rule.

Both Ecology and SCAPCA have requested that EPA waive the part General Provisions notification requirements, in accordance with 40 CFR 63.9 and 63.10, such that sources would not need to send notifications and reports to EPA, Region X. Ecology submitted these requests in its letter dated November 1, 1999, and SCAPCA submitted a request in a letter dated March 3, 1997. Ecology and SCAPCA prefer to be the sole recipient of notifications and reports to reduce the burden on sources and EPA. By this action, EPA, Region X is waiving the notification and reporting requirements in accordance with 40 CFR 63.9 and 63.10, such that sources only need to provide notification and reports to Ecology or SCAPCA, and would not need to send notifications and reports to EPA, Region X.

In addition, Ecology and SCAPCA clarified to EPA, Region X that they seek delegation of the reporting requirements of 40 CFR 61.10 such that sources covered by this provision need only send reports to Ecology or SCAPCA and not to EPA. By this action, EPA is delegating the reporting requirements of 40 CFR 61.10 to Ecology and SCAPCA, and sources only need to provide the reports under that section to Ecology or SCAPCA.

Ecology also requested approval of Ecology's state regulation at WAC 173–400–091 to recognize this regulation as federally enforceable for purposes of establishing potential-to-emit limitations. EPA is not taking action on this request because this regulation has already received federal approval in a final **Federal Register** rule dated June 2, 1995 (see 60 FR 28726).

## III. Summary of Action

Pursuant to the authority of CAA section 112(l) of the Act and 40 CFR part 63, subpart E, EPA is proposing to approve Ecology's request, and the requests of BCAA, OAPCA, SCAPCA and YRCAA, for program approval and delegation of authority to implement and enforce specific 40 CFR parts 61 and 63 Federal NESHAP regulations (as they apply to both part 70 and non-part 70 sources) which have been adopted into state law. EPA is proposing to delegate this authority to Ecology for the purpose of direct implementation (within Ecology's jurisdiction). EPA is also proposing to delegate this authority to BCAA, OAPCA, SCAPCA and YRCAA. Additionally, EPA proposes to approve the mechanism by which Ecology and the four local agencies will receive delegation of future NESHAP regulations that are adopted unchanged into state law; and also proposes to waive the requirement for sources within Ecology and SCAPCA's jurisdictions to send copies of notifications and reports to EPA.

## IV. 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.

Delegation of authority to implement and enforce unchanged federal standards under section 112(l) of the CAA does not create any new requirements but simply transfers primary implementation authorities to the State (or local) agency. Therefore, because this action does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

*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 September 4, 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**

*40 CFR Part 61*

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl chloride.

*40 CFR Part 63*

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 5, 2001.

**Ron Kreizenbeck,**

*Acting Regional Administrator, Region X.*

Title 40, chapter I, parts 61 and 63 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7412, 7413, 7414, 7416, 7601 and 7602.

## Subpart A—General Provisions

2. Section 61.04 is amended by revising paragraphs (b)(WW)(i), (iv), (v), and (vi), by adding paragraph (b)(WW)(viii); and by revising the table in paragraph (c)(10) to read as follows:

**§ 61.04 Address.**

* * * * *

(b) * * *

(WW)(i)Washington: State of Washington, Department of Ecology (Ecology), P.O. Box 47600, Olympia, WA 98504–7600.

**Note:** For a table listing Ecology's delegation status, see paragraph (c)(10) of this section.

* * * * *

(iv) Spokane County Air Pollution Control Authority (SCAPCA), West 1101 College Avenue, Suite 403, Spokane, WA 99201.

**Note:** For a table listing SCAPCA's delegation status, see paragraph (c)(10) of this section.

(v) Yakima Regional Clean Air Authority (YRCAA), 6 South 2nd, Room 1016, Yakima, WA 98901.

**Note:** For a table listing YRCAA's delegation status, see paragraph (c)(10) of this section.

(vi) Olympic Air Pollution Control Authority (OAPCA), 909 Sleater-Kinney Road SE, Suite 1, Lacey, WA 98503.

**Note:** For a table listing OAPCA's delegation status, see paragraph (c)(10) of this section.

* * * * *

(viii) Benton Clean Air Authority (BCAA), 650 George Washington Way, Richland, WA 99352.

**Note:** For a table listing BCAA's delegation status, see paragraph (c)(10) of this section.

* * * * *

(c) * * *

(10) * * *

DELEGATION STATUS FOR PART 61 STANDARDS—REGION X

| Subpart | AK | ID | Oregon | | Washington | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | ADEC[1] | IDEQ[2] | ODEQ[3] | LRAPA[4] | Ecology[5] | BCAA[6] | NWAPA[7] | OAPCA[8] | PSCAA[9] | SCAPCA[10] | SWAPCA[11] | YRCAA[12] |
| A. General Provisions[13] | X | | | | X | X | X | X | X | X | X | X |
| B. Radon from Underground Uranium Mines | | | | | | | | | | | | |
| C. Beryllium | | | | | X | X | X | X | X | X | X | X |
| D. Beryllium Rocket Motor Firing | | | | | X | X | X | X | X | X | X | X |
| E. Mercury | X | | | | X | X | X | X | X | X | X | X |
| F. Vinyl Chloride | | | | | X | X | X | X | X | X | X | X |
| H. Emissions of Radionuclides other than Radon from Dept of Energy facilities | | | | | | | | | | | | |
| I. Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H | | | | | | | | | | | | |
| J. Equipment Leaks of Benzene | X | | | | X | X | X | X | X | X | X | X |
| K. Radionuclides from Elemental Phosphorus Plants | | | | | | | | | | | | |
| L. Benzene from Coke Recovery | | | | | X | X | X | X | X | X | X | X |
| M. Asbestos | [1]X | | | | [5]X | [6]X | X | [8]X | X | X | X | X |
| N. Arsenic from Glass Plants | | | | | X | X | X | X | X | X | X | X |
| O. Arsenic from Primary Copper Smelters | | | | | X | X | X | X | X | X | X | X |
| P. Arsenic from Arsenic Production Facilities | | | | | X | X | X | X | X | X | X | X |
| Q. Radon from Dept of Energy facilities | | | | | | | | | | | | |
| R. Radon from Phosphogypsum Stacks | | | | | | | | | | | | |
| T. Radon from Disposal of Uranium Mill Tailings | | | | | | | | | | | | |
| V. Equipment Leaks | X | | | | X | X | X | X | X | X | X | X |
| W. Radon from Operating Mill Tailings | | | | | | | | | | | | |
| Y. Benzene from Benzene Storage Vessels | X | | | | X | X | X | X | X | X | X | X |
| BB. Benzene from Benzene Transfer Operations | | | | | X | X | X | X | X | X | X | X |
| FF. Benzene Waste Operations | X | | | | X | X | X | X | X | X | X | X |

[1] Alaska Department of Environmental Conservation (1/18/97)
Note: Alaska received delegation for § 61.145 and § 61.154 of subpart M (Asbestos), along with other sections and appendices which are referenced in § 61.145, as § 61.145 applies to sources required to obtain an operating permit under Alaska's regulations. Alaska has not received delegation for subpart M for sources not required to obtain an operating permit under Alaska's regulations.
[2] Idaho Division of Environmental Quality.
[3] Oregon Department of Environmental Quality.
[4] Lane Regional Air Pollution Authority.
[5] Washington Department of Ecology (7/1/00)
Note: Delegation of subpart M of this part applies to major Title V sources only, including Hanford. (Pursuant to RCW 70.105.240, only Ecology can enforce regulations at Hanford).
[6] Benton Clean Air Authority (7/1/00)
Note: Delegation of subpart M of this part applies to major Title V sources only (excluding Hanford).
[7] Northwest Air Pollution Authority (7/1/99).
[8] Olympic Air Pollution Control Authority (July 1, 2000).
Note: Delegation of subpart M of this part applies to major Title V sources only.
[9] Puget Sound Clean Air Agency (7/1/99).

[10] Spokane County Air Pollution Control Authority (7/1/00).
[11] Southwest Air Pollution Control Authority (8/1/98).
[12] Yakima Regional Clean Air Authority (7/1/00).
[13] Authorities which are not delegated include: §§ 61.04(b); 61.12(d)(1); 61.13(h)(1)(ii) for approval of major alternatives to test methods; § 61.14(g)(1)(ii) for approval of major alternatives to monitoring; § 61.16; § 61.53(c)(4); any sections in the subparts pertaining to approval of alternative standards (i.e., alternative means of emission limitations), or approval of major alternatives to test methods or monitoring; 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.''

Note to paragraph (c)(10): 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.

## PART 63—[AMENDED]

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

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

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

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

**§ 63.99 Delegated Federal authorities.**

(a) * * *

(47) * * *

(i) * * *

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF WASHINGTON

| Subpart | Ecology [2] | BCAA [3] | NWAPA [4] | OAPCA [5] | PSCAA [6] | SCAPCA [7] | SWAPCA [8] | YRCAA [9] |
|---|---|---|---|---|---|---|---|---|
| A General Provisions [1] | X | X | X | X | X | X | X | X |
| D. Early Reductions | X | X | X | X | X | X | X | X |
| F. HON–SOCMI | X | X | X | X | X | X | X | X |
| G. HON–Process Vents | X | X | X | X | X | X | X | X |
| H. HON–Equipment Leaks | X | X | X | X | X | X | X | X |
| I. HON–Negotiated Leaks | X | X | X | X | X | X | X | X |
| L. Coke Oven Batteries | X | X | X | X | X | X | X | X |
| M. Perchloroethylene Dry Cleaning | [2] X | | X | | X | | X | [9] X |
| N. Chromium Electroplating | X | X | X | X | X | X | X | X |
| O. Ethylene Oxide Sterilizers | X | X | X | X | X | X | X | X |
| Q. Industrial Process Cooling Towers | X | X | X | X | X | X | X | X |
| R. Gasoline Distribution | X | X | X | X | X | X | X | X |
| S. Pulp and Paper [10] | X | X | X | X | X | X | X | X |
| T. Halogenated Solvent Cleaning | X | X | X | X | X | X | X | X |
| U. Polymers and Resins I | X | X | X | X | X | X | X | X |
| W. Polymers and Resins II–Epoxy | X | X | X | X | X | X | X | X |
| X. Secondary Lead Smelting | X | X | X | X | X | X | X | X |
| Y. Marine Tank Vessel Loading | | | X | | X | | X | |
| AA. Phosphoric Acid Manufacturing Plants | X | X | X | X | X | X | | X |
| BB. Phosphate Fertilizers Production Plants | X | X | X | X | X | X | | X |
| CC. Petroleum Refineries | X | X | X | X | X | X | X | X |
| DD. Off-Site Waste and Recovery | X | X | X | X | X | X | X | X |
| EE. Magnetic Tape Manufacturing | X | X | X | X | X | X | X | X |
| GG. Aerospace Manufacturing & Rework | X | X | X | X | X | X | X | X |
| HH. Oil and Natural Gas Production Facilities | X | X | X | X | X | X | | X |
| II. Shipbuilding and Ship Repair | X | X | X | X | X | X | X | X |
| JJ. Wood Furniture Manufacturing Operations | X | X | X | X | X | X | X | X |
| KK. Printing and Publishing Industry | X | X | X | X | X | X | X | X |
| LL. Primary Aluminum [11] | X | | X | | X | | | |
| OO. Tanks—Level 1 | X | X | X | X | X | X | | X |
| PP. Containers | X | X | X | X | X | X | | X |
| QQ. Surface Impoundments | X | X | X | X | X | X | | X |
| RR. Individual Drain Systems | X | X | X | X | X | X | | X |
| SS. Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or Process | X | X | X | X | X | X | | X |
| TT. Equipment Leaks—Control Level 1 | X | X | X | X | X | X | | X |
| UU. Equipment Leaks—Control Level 2 | X | X | X | X | X | X | | X |
| VV. Oil-Water Separators and Organic-Water Separators | X | X | X | X | X | X | | X |
| WW. Storage Vessels (Tanks)—Control 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 Production | | | X | | X | | | |
| NNN. Wool Fiberglass Manufacturing | | | X | | X | | | |
| OOO. Manufacture of Amino Phenolic Resins | | | | | | | | |
| PPP. Polyether Polyols Production | | | X | | X | | | |
| RRR. Secondary Aluminum Production | | | | | | | | |
| TTT. Primary Lead Smelting | | | X | | X | | | |
| VVV. Publicly Owned Treatment Works | | | | | | | | |

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF WASHINGTON—Continued

| Subpart | Ecology [2] | BCAA [3] | NWAPA [4] | OAPCA [5] | PSCAA [6] | SCAPCA [7] | SWAPCA [8] | YRCAA [9] |
|---|---|---|---|---|---|---|---|---|
| XXX. Ferroalloys Production: Ferromanganese & Silicomanganese ..... | | | X | | X | | | |

[1] General Provision authorities which may not be delegated include: §§ 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.''

[2] Washington Department of Ecology (July 1, 2000)

Note: Delegation of Subpart M to Ecology applies to part 70 sources only.

[3] Benton Clean Air Authority (July 1, 2000)

[4] Northwest Air Pollution Authority (July 1, 1999)

[5] Olympic Air Pollution Control Authority (July 1, 2000)

[6] Puget Sound Clean Air Agency (July 1, 1999)

[7] Spokane County Air Pollution Control Authority (July 1, 2000)

[8] Southwest Air Pollution Control Authority (August 1, 1998)

[9] Yakima Regional Clean Air Authority (July 1, 2000)

Note: Delegation of Subpart M to YRCAA applies to part 70 sources only.

[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.

[FR Doc. 01–16692 Filed 7–2–01; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

**[FRL–6996–8]**

### Approval of Section 112(l) Authority for Hazardous Air Pollutants; Chemical Accident Prevention Provisions; Risk Management Plans; New Jersey Department of Environmental Protection

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to section 112(l) of the Clean Air Act (CAA), the New Jersey Department of Environmental Protection (NJDEP) requested delegation of the Federal Chemical Accident Prevention Provisions promulgated by EPA under section 112(r) of the CAA for all stationary sources with covered processes (subject sources) under its jurisdiction except those having certain specified flammable liquified petroleum gases (LPG). This action proposes to grant such authority. In the Rules section of this **Federal Register**, EPA is granting NJDEP the authority to implement and enforce the Toxic Catastrophe Prevention Act Program rule, effective July 20, 1998, at New Jersey Administrative Code (NJAC) 7:31–1.1 through 1.10 and NJAC 7:31–2.1 through 8.2 in place of the Federal Chemical Accident Prevention Provisions for all subject sources under NJDEP's jurisdiction. EPA retains the authority to regulate subject sources having processes covered only because they contain regulated quantities of LPG gases regulated under the New Jersey Liquified Petroleum Gas Act of 1950 (NJSA 21:1B). The direct final rule explains the rationale for this approval. EPA is taking direct final action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting should do so at this time. In the spirit of Executive Orders 13132 and 13175, and consistent with EPA policy to promote communications between EPA and State, local and tribal governments, EPA specifically solicits comments on this proposed rule from State, local and tribal officials.

**DATES:** Written comments must be received by August 2, 2001.

**ADDRESSES:** Written comments should be addressed to: Steven C. Riva, Chief, Permitting Section, Air Programs Branch, U. S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007–1866, with a copy to Ms. Shirlee Schiffman, Chief, Bureau of Chemical Release Information and Prevention, New Jersey Department of Environmental Protection, P.O. Box 424, 22 South Clinton Avenue, Trenton, New Jersey 08625–0424. Copies of the submitted requests are available for public review at EPA Region 2's office during normal business hours (docket # A–2000–23). Any State responses to comments must be submitted to the Administrator within 30 days of the close of the public comment period.

**FOR FURTHER INFORMATION CONTACT:** Umesh Dholakia at (212) 637–4023

**SUPPLEMENTARY INFORMATION:**

**Authority:** This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: May 25, 2001.

**Kathleen C. Callahan,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 01–16562 Filed 7–2–01; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 63 and 264

**[FRL–7002–8]**

### NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to take action on NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors. The revisions make targeted amendments to the regulations for hazardous waste burning cement kilns, lightweight aggregate kilns, and incinerators promulgated on September 30, 1999 (NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors). The revisions make improvements to the implementation of the emission standards, primarily in the areas of compliance, testing and monitoring. We are proposing these revisions to make it easier to comply with the September 30, 1999 final rule.