

**§ 52.1075 1990 base year emission inventory.**

\* \* \* \* \*

(h) EPA approves revisions to the Maryland State Implementation Plan amending the 1990 base year emission inventories for the Cecil County portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area, submitted by the Secretary of the Maryland Department of the Environment on December 24, 1997. This submittal consists of amendments to the 1990 base year point, area, highway mobile and non-road mobile source emission inventories for volatile organic compounds and nitrogen oxides in the Cecil County portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area.

3. Section 52.1076 is amended by adding paragraph (f) to read as follows:

**§ 52.1076 Control strategy and rate-of-progress plans: ozone.**

\* \* \* \* \*

(f)(1) EPA approves revisions to the Maryland State Implementation Plan for post 1996 rate of progress plans for milestone years 1999, 2002 and 2005 for the Cecil County portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area. These revisions were submitted by the Secretary of the Maryland Department of the Environment on December 24, 1997, as revised on April 24 and August 18, 1998, December 21, 1999 and December 28, 2000.

(2) EPA approves the contingency plans for failure to meet rate of progress in the Cecil County portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area for milestone years 1999, 2002 and 2005. These plans were submitted by the Secretary of the Maryland Department of the Environment on December 24, 1997, as revised on April 24 and August 18, 1998, December 21, 1999 and December 28, 2000.

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 61 and 63**

[FRL-7057-8]

**Final 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.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the authority of Clean Air Act (CAA), section 112(l), The United States Environmental Protection Agency, Region 10 (EPA) approves 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 delegates these programs to Ecology for the purpose of direct implementation and enforcement (within Ecology's jurisdiction). EPA also delegates 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 approves a mechanism by which Ecology and the four local agencies will receive delegation of future NESHAPs; and waives its notification requirements such that sources within Ecology, BCAA, and SCAPCA's jurisdictions only need to send notifications and reports to Ecology, BCAA, or SCAPCA, and do not need to send a copy to EPA.

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:** This rule becomes effective on October 19, 2001.

**FOR FURTHER INFORMATION CONTACT:**

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107), 1200 Sixth Avenue, Seattle, WA, 98101, (206) 553-1172.

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**I. Comments**

EPA received comments from SCAPCA and BCAA in response to the proposed notice published on July 3, 2001 (see 66 FR 35115).

Pursuant to 40 CFR 61.04(b), 63.9(a)(4)(ii) and 63.10(a)(4)(ii), BCAA amended its delegation request to ask EPA to waive the requirement that sources submit certain notifications and reports to EPA, as well as BCAA (the delegated agency). BCAA stated that the duplication of effort would pose an added burden on the local sources and the local authority, and that this requirement may prove to be a source of confusion for sources. BCAA demonstrated that it has the resources to adequately review such notices. Thus, today's final action grants BCAA's request and waives the requirement that sources provide notifications and reports to EPA in addition to BCAA. The waiver is the same as that approved for Ecology and SCAPCA. (Note, this waiver applies only to notifications and reports pertaining to those authorities that are delegated to the local agency. Some General Provisions authorities are retained by EPA and sources subject to a delegated NESHAP should continue to send responsive materials to EPA for Administrator decision. The delegated agency should be copied on these submissions to EPA. For more information, see the sections below titled, "How does this Delegation Affect the Regulated Community" and "Where Will the Regulated Community Send Notifications and Reports?")

SCAPCA submitted comments requesting further clarification about: (1) The requirement that agencies input information for all area sources subject to delegated standards in AIRS (Aerometric Information Retrieval System (AIRS)—the national EPA air depository database); and (2) what documents must be submitted to EPA when SCAPCA carries-out its delegated General Provisions authorities.

In response to SCAPCA's comment #1, all major sources must be entered into AIRS. All area sources subject to part 61 or receiving an administrative order or civil referral must be entered into AIRS. MACTRAX (EPA's part 63

database) reporting is required for all major and area sources subject to a MACT. If an agency enters its major and area source data into AIRS, a local agency need not submit semi-annual and annual MACSTRAX reports.

In response to SCAPCA's comment #2, only copies of determinations made by the delegated agency in carrying-out General Provisions authorities need to be submitted to EPA in most cases. The delegated agency is not required to forward all materials sources send to them in order to make these determinations, unless these are specifically required as a condition of this delegation (*see* the section titled, "What are Ecology and the Four Local Agencies Reporting Requirements to EPA" below).

## II. Corrections & Clarifications

The part 63 table on page 35123 at the end of the proposed rule indicates that part 63, subpart LL (Primary Aluminum Reduction Plants) is delegated to NWAPA and PSCAA, yet footnote #11 states that this subpart cannot be delegated to local agencies in Washington because Ecology retains exclusive authority to regulate such sources pursuant to the Washington Administrative Code (WAC) 173-405-012. Today's action clarifies that EPA is not delegating subpart LL to any local agencies because no local agency in Washington can receive such delegation. The Revised Code of Washington (RCW) 70.94.395 provides Ecology with authority to exclusively regulate a particular class of air contaminant sources on a state-wide basis. Ecology has exercised that authority pursuant to WAC 173-415-010 to regulate Primary Aluminum Plants. Today's action also clarifies that the reference to WAC 173-415-012 in footnote #11 was incorrect, and will be corrected to WAC 173-405-010.

## III. Today's Action

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

In this action, under the authority of CAA section 112(l)(5) and 40 CFR 63.91, EPA approves 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 delegates certain General Provisions authorities, as explained below. EPA delegates this authority to Ecology for the purpose of direct implementation (within Ecology's jurisdiction). EPA also delegates this

authority to BCAA, OAPCA, SCAPCA and YRCAA.

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

Under the authority of CAA section 112(l)(5) and 40 CFR 63.91, EPA is also approving Ecology and the four local 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.

### *What Specific Standards Does EPA Delegate?*

EPA delegates 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. The specific standards are identified in the tables at the end of this rule. In most cases, this delegation applies to all sources (exceptions are described below).

EPA agrees with the position of the State of Washington Office of the Attorney General that the November 22, 2000, revision to WAC 173-400-075(5)(a) adopts as state rules those parts of part 63 that EPA delegates. A revision to the state rule, which clarifies the provision, is being processed by the State.

EPA delegates 40 CFR part 61, subpart M (Asbestos NESHAP) to Ecology, BCAA, and OAPCA as it applies to major sources only (per their requests). Also, EPA delegates 40 CFR part 63, subpart M (Perchloroethylene Dry

Cleaning NESHAP) to Ecology and YRCAA for major sources only.

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 Not Delegate?*

EPA does not 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 is not delegating 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 Washington 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 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 delegating the regulations that implement 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 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 delegates the part 63, subpart A, sections that are listed below. Delegation of these General Provisions authorities will 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 grants 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 will make decisions on a source-by-source basis, *not* on a source category-wide basis.

TABLE 1.—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) .....                          | Operation 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 (f) .....           | 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.   |
| 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 now have the authority to approve adjustments to the timing that reports are due, but do 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 will 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.”<sup>1</sup> 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. The types of authorities that EPA retains are: equivalency determinations, approval of alternative test methods, decisions where federal oversight is needed to ensure national consistency, and any decision that requires rulemaking to implement. The authorities listed in the table below (also mentioned in the footnotes of the parts 61 and 63 delegation tables at the end of this rule) are the specific General Provisions authorities that cannot be delegated to any state or local agency, which EPA therefore retains.<sup>2</sup>

<sup>1</sup> 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.

<sup>2</sup> For authorities 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 are delegated.

TABLE 2.—PARTS 61 AND 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES WHICH EPA CANNOT DELEGATE TO STATE AND LOCAL AGENCIES

| Section                      | Authorities   |
|------------------------------|---|
| 61.04(b) .....               | Waiver of Recordkeeping.  |
| 61.12(d)(1) .....            | Approval of Alternative Means of Emission Limitation.   |
| 61.13(h)(1)(ii) .....        | Approval of Major Alternatives to Test Methods.   |
| 61.14(g)(1)(ii) .....        | Approval of Major Alternatives to Monitoring.   |
| 61.16 .....                  | Availability of Information.  |
| 61.53(c)(4) .....            | List of Approved Design, Maintenance, and Housekeeping Practices for Mercury Chlor-alkali Plants. |
| 63.6(g) .....                | Approval of Alternative Non-Opacity Emission Standards.   |
| 63.6(h)(9) .....             | Approval of Alternative Opacity Standard.   |
| 63.7(e)(2)(ii) and (f) ..... | Approval of Major Alternative to Test Methods.  |
| 63.8(f) .....                | Approval of Major Alternatives to Monitoring  |
| 63.10(f) .....               | Waiver of Recordkeeping—all.  |

**IV. Implications**

*What Changes Does This Delegation Create?*

Ecology and the four local agencies now have primary implementation and enforcement responsibility for the adopted NESHAP regulations. This means that sources subject to the delegated standards will send notifications and reports to these agencies and send a copy to EPA (except for those sources within Ecology, BCAA, and SCAPCA’s jurisdictions). Questions and compliance issues will 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 will retain certain General Provisions authorities, as explained above.

*How Does This Delegation Affect the Regulated Community?*

Once 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. As a result of today’s action, regulated facilities will 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.

For those authorities that are NOT delegated—those noted in Table 2 or any section of 40 CFR parts 61 and 63 that specifically indicates that authority may not be delegated—affected sources will continue to work with EPA as its primary contact and submit materials directly to EPA for Administrator decision. In these specific cases, the

delegated agency should be copied on all submittals, questions, requests, etc.

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

Facilities within OAPCA and YRCAA’s jurisdictions will need to submit notifications directly to the respective agency, and also send a copy to EPA.

Pursuant to 40 CFR 61.04(b), 63.9(a)(4)(ii), and 63.10(a)(4)(ii), EPA waives the requirement for sources to submit notifications to Ecology, BCAA, and SCAPCA as well as EPA. Facilities within Ecology, BCAA, and SCAPCA’s jurisdictions need to submit notifications and reports only to Ecology, BCAA, or SCAPCA, and do not need to send a copy to EPA. The only exception to this is when sources are submitting materials pertaining to authorities that are not delegated.

*How Does This Delegation Affect Indian Country?*

The delegation proposed for Ecology and the four local agencies to implement and enforce NESHAPs does 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 Are Ecology and the Four Local Agencies’ Reporting Requirements to EPA?*

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

- (1) These agencies must input all minimum reportable requirements into the AIRS Facility Subsystem (AFS) of the Aerometric Information Retrieval System (AIRS) for both point and area sources. The agencies must enter the information into the AIRS/AFS system by September 30 of each year;
- (2) These agencies must report to EPA all reportable requirements for MACTRAX twice a federal fiscal year (semiannual and annually) (MACTRAX provides the 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 as agreed upon in the Compliance Assurance Agreement;
- (4) In receiving delegation for specific General Provisions authorities, these agencies must submit to EPA copies of determinations issued pursuant to these authorities, listed in Table 1 above;
- (5) These agencies must also forward to EPA 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 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 Will These Agencies Receive Delegation for Future and Revised Standards?*

Ecology or a local agency will 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 or local 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.

#### **V. Summary**

Pursuant to the authority of CAA section 112(l) of the Act and 40 CFR part 63, subpart E, EPA approves 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 delegates this authority to Ecology for the purpose of direct implementation (within Ecology's

jurisdiction). EPA also delegates this authority to BCAA, OAPCA, SCAPCA and YRCAA. Additionally, EPA approves 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, BCAA, and SCAPCA's jurisdictions to send copies of notifications and reports to EPA.

#### **VI. 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



DELEGATION STATUS FOR PART 61 STANDARDS—REGION 10—Continued

| Subpart   | AK                |                   | Oregon            |                    | Washington           |                   |                    |                    |                    |                      |                      |                     |
|---|-------------------|-------------------|-------------------|--------------------|----------------------|-------------------|--------------------|--------------------|--------------------|----------------------|----------------------|---------------------|
|   | ADEC <sup>1</sup> | IDEQ <sup>2</sup> | ODEQ <sup>3</sup> | LRAPA <sup>4</sup> | Ecology <sup>5</sup> | BCAA <sup>6</sup> | NWAPA <sup>7</sup> | OAPCA <sup>8</sup> | PSCAA <sup>9</sup> | SCAPCA <sup>10</sup> | SWAPCA <sup>11</sup> | YRCAA <sup>12</sup> |
| 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 .....   | X <sup>1</sup>    |                   |                   |                    | X <sup>5</sup>       | X <sup>6</sup>    | X                  | X <sup>8</sup>     | 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                   |

<sup>1</sup> 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. .

<sup>2</sup> Idaho Division of Environmental Quality.

<sup>3</sup> Oregon Department of Environmental Quality.

<sup>4</sup> Lane Regional Air Pollution Authority.

<sup>5</sup> 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).

<sup>6</sup> Benton Clean Air Authority (7/1/00).

**Note:** Delegation of Subpart M of this Part applies to major Title V sources only (excluding Hanford).

<sup>7</sup> Northwest Air Pollution Authority (7/1/99).

<sup>8</sup> Olympic Air Pollution Control Authority (July 1, 2000). .

**Note:** Delegation of Subpart M of this Part applies to major Title V sources only. .

<sup>9</sup> Puget Sound Clean Air Agency (7/1/99).

<sup>10</sup> Spokane County Air Pollution Control Authority (7/1/00).

<sup>11</sup> Southwest Air Pollution Control Authority (8/1/98).

<sup>12</sup> Yakima Regional Clean Air Authority (7/1/00).

<sup>13</sup> 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.



DELEGATION STATUS PART 63 STANDARDS—STATE OF WASHINGTON—Continued

| Subpart   | Ecology <sup>2</sup> | BCAA <sup>3</sup> | NNWAPA <sup>4</sup> | OAPCA <sup>5</sup> | PSCAA <sup>6</sup> | SCAPCA <sup>7</sup> | SWAPCA <sup>8</sup> | YRCAA <sup>9</sup> |
|---|----------------------|-------------------|---------------------|--------------------|--------------------|---------------------|---------------------|--------------------|
| XXX. Ferroalloys Production: Ferromanganese & Silicomanganese ..... |                      |                   | X                   |                    | X                  |                     |                     |                    |

<sup>1</sup> General Provisions 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."

<sup>2</sup> Washington Department of Ecology (July 1, 2000).

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

<sup>3</sup> Benton Clean Air Authority (July 1, 2000).

<sup>4</sup> Northwest Air Pollution Authority (July 1, 1999).

<sup>5</sup> Olympic Air Pollution Control Authority (July 1, 2000).

<sup>6</sup> Puget Sound Clean Air Agency (July 1, 1999).

<sup>7</sup> Spokane County Air Pollution Control Authority (July 1, 2000).

<sup>8</sup> Southwest Air Pollution Control Authority (August 1, 1998).

<sup>9</sup> Yakima Regional Clean Air Authority (July 1, 2000).

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

<sup>10</sup> Subpart S of this Part is delegated to The Washington Department of Ecology and these local agencies as it applies to all applicable facilities and processes 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.

<sup>11</sup> 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 173-415-010.

**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.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 76**

[CS Docket No. 99-363; FCC 01-229]

**Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; order on reconsideration.

**SUMMARY:** This document resolves petitions for reconsideration filed by US WEST, Inc. ("US WEST") and the Wireless Communications Association International, Inc. ("WCA") of the Commission's First Report and Order in Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity, which adopted regulations and procedures governing the negotiation of agreements in connection with the retransmission of television broadcast station signals by multichannel video programming distributors ("MVPDs"), including satellite carriers and cable systems.

**DATES:** Effective September 19, 2001.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order on Reconsideration, FCC 01-229, adopted August 10, 2001; released August 15, 2001. The full text of the Commission's Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) at its headquarters, 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036, or may be reviewed via Internet at <http://www.fcc.gov/csb/>.

**Synopsis of the Order on Reconsideration**

*Burden of Proof*

In the First Report and Order, 65 FR 15559 (March 23, 2000), the Commission placed the burden of proof on the MVPD complainant to establish that a broadcaster violated its duty to negotiate retransmission consent in good faith. The Commission found this conclusion to be consistent with labor law precedent, which also places the burden on the complainant. The Commission also found that placing the burden of proof on the MVPD complainant to be consistent with its belief that generally the evidence of a violation of the good faith standard will be accessible by the complainant.

WCA and US WEST assert that the Commission should reconsider its decision to impose the burden of proof exclusively on the MVPD complainant, especially in cases in which the Commission presumes that the defendant broadcaster has not acted in good faith. Specifically, petitioners request that the Commission amend its rule to provide that when an MVPD's complaint alleges facts that, if true, would establish a *prima facie* case that a Commission presumption against a broadcaster should apply, the burden of proof will shift to the broadcaster.

We decline to establish the burden-shifting procedure suggested by US WEST and WCA. While we agree with petitioners that the Commission "enjoys express statutory authority to conduct its proceedings in such a manner as will best conduce to the proper dispatch of business and to the ends of justice," US WEST and WCA have not persuaded us that reconsideration in this instance is warranted or appropriate. US WEST and WCA correctly state that the Commission, in the First Report and Order, determined that certain bargaining proposals, including proposals based on the exercise of market power by a broadcast station or other MVPDs in the market or proposals that result from agreements not to compete or to fix prices, are presumptively not consistent with the good faith negotiation requirement. We fail to see, however, how the establishment of such presumptions would lead to the shifting of the burden of proof for merely alleging facts that, if