

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132 Federalism

This action also does not have federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045 Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of

the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 17, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Volatile organic compounds, Ozone.

Dated: March 7, 2005.

Norman Niedergang,

Acting Regional Administrator, Region 5.

■ Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart KK—Ohio

■ 2. Section 52.1885 is amended by removing paragraph (b)(12) and by adding paragraphs (a)(16) and (17) to read as follows:

§ 52.1885 Control Strategy: Ozone.

(a) * * *

(16) Approval—On April 19, 2004, Ohio submitted a revision to the ozone maintenance plan for the Cincinnati, Ohio area. The revision consists of allocating a portion of the area's NO_x safety margin to the transportation conformity motor vehicle emissions budget. The motor vehicle emissions budget for NO_x for the Cincinnati, Ohio area is now 62.3 tons per day for the year 2010. This approval only changes the NO_x transportation conformity emission budget for Cincinnati, Ohio.

(17) Approval—On March 1, 2005, Ohio submitted a revision to the 1-hour ozone maintenance plan for Clinton County, Ohio. The revision consists of allocating a portion of the area's oxides of nitrogen (NO_x) safety margin to the transportation conformity motor vehicle emissions budget. The motor vehicle emissions budget for NO_x for the Clinton County, Ohio area is now 3.45 tons per day for the year 2006. This approval only changes the NO_x transportation conformity emission budget for Clinton County, Ohio.

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[FR Doc. 05-5409 Filed 3-17-05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[R06-OAR-2004-TX-0004; FRL-7886-4]

National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; delegation of authority.

SUMMARY: The Texas Commission on Environmental Quality (TCEQ) has submitted updated regulations for receiving delegation of EPA authority for National Emission Standards for Hazardous Air Pollutants (NESHAPs) for all sources. These regulations apply to certain NESHAPs promulgated by EPA, as adopted by the TCEQ. The delegation of authority under this notice does not apply to sources located in Indian Country. EPA is taking direct final action to approve the delegation of certain NESHAPs to TCEQ.

DATES: This rule is effective on May 17, 2005 without further notice, unless EPA receives relevant adverse comment by April 18, 2005. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Materials in EDocket (RME) ID No. R06-OAR-2004-TX-0004, by one of the following methods:

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

- *Agency Web site:* <http://docket.epa.gov/rmepub/>, Regional Materials in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

- U.S. EPA Region 6 "Contact Us" Web site: <http://epa.gov/region6/r6coment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

- *E-mail:* Jeff Robinson at robinson.jeffrey@epa.gov.

- *Fax:* Mr. Jeff Robinson, Air Permits Section (6PD-R), at fax number 214-665-7263.

- *Mail:* Mr. Jeff Robinson, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- *Hand or Courier Delivery:* Mr. Jeff Robinson, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Regional Materials in EDocket (RME) ID No. R06-OAR-2004-TX-0004. EPA's

policy is that all comments received will be included in the public file without change, and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through Regional Material in EDocket (RME), regulations.gov, or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the federal regulations.gov are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Materials in EDocket (RME) index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in the official file which is available at the Air Permitting Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working

days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12100 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Robinson, U.S. EPA, Region 6, Multimedia Planning and Permitting Division (6PD), 1445 Ross Avenue, Dallas, TX 75202-2733, telephone (214) 665-6435; fax number 214-665-7263; or electronic mail at robinson.jeffrey@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

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I. General Information

A. Tips for Preparing Your Comments

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

B. Submitting Confidential Business Information (CBI)

Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

II. What Does This Action Do?

EPA is taking direct final action to approve the delegation of certain NESHAPs to TCEQ. With this delegation, TCEQ has the primary responsibility to implement and enforce the delegated standards.

III. What Is the Authority for Delegation?

Section 112(l) of the CAA and 40 CFR part 63, Subpart E, authorizes EPA to delegate authority to any state or local agency which submits adequate regulatory procedures for

implementation and enforcement of emission standards for hazardous air pollutants. The hazardous air pollutant standards are codified at 40 CFR part 63.

IV. What Criteria Must Texas' Program Meet To Be Approved?

Section 112(l) of the CAA enables EPA to approve State air toxics programs or rules to operate in place of the Federal air toxics program or rules. 40 CFR part 63, subpart E (subpart E) governs EPA's approval of State rules or programs under section 112(l).

EPA will approve an air toxics program if we find that:

- (1) The State program is "no less stringent" than the corresponding Federal program or rule;
- (2) the State has adequate authority and resources to implement the program;
- (3) the schedule for implementation and compliance is sufficiently expeditious; and
- (4) the program otherwise complies with Federal guidance.

In order to obtain approval of its program to implement and enforce Federal section 112 rules as promulgated without changes (straight delegation), only the criteria of 40 CFR 63.91(d) must be met. 40 CFR 63.91(d)(3) provides that interim or final Title V program approval will satisfy the criteria of 40 CFR 63.91(d) for part 70 sources.

V. How Did TCEQ Meet the Subpart E Approval Criteria?

As part of its Title V submission, TCEQ stated that it intended to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 into its regulations. This applied to both existing and future standards as they applied to part 70 sources ((60 FR 30444 (June 7, 1995) and 61 FR 32699 (June 25, 1996)). On December 6, 2001, EPA promulgated final full approval of the State's operating permits program effective November 30, 2001 (66 FR 63318).

Under 40 CFR 63.91(d)(2), once a state has satisfied up-front approval criteria, it needs only to reference the previous demonstration and reaffirm that it still meets the criteria for any subsequent submittals. TCEQ has affirmed that it still meets the up-front approval criteria.

In addition, Texas has requested delegation of a State requirement to adjust a section 112 rule. The approval of this adjustment is regulated at 40 CFR 63.92. The TCEQ has modified the General Provisions at 40 CFR part 63, subpart A, by promulgating different timing requirements at Texas Administrative Code (TAC), Title 30, Part 1, Chapter 113, Subchapter C, section 113.100. Public notice was given pursuant to the requirements of the Texas Health and Safety Code Annotated, section 382.017 (Vernon's 1992) and Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 2000). The TCEQ (formally the Texas Natural Resource Conservation Commission) conducted a public hearing on April 11, 1997, to receive testimony regarding the revision to 30 TAC Chapter 113 which included the General Provisions at section 113.100. EPA believes the timing requirement adjustments do not result in a reduction of stringency of the part 63 emission standards. The TCEQ has met the criteria of 40 CFR 63.91, and the State is requesting EPA approval of the exceptions to the General Provisions (40 CFR part 63, subpart A) pursuant to 40 CFR 63.92.

VI. What Is Being Delegated?

EPA received requests from TCEQ to delegate certain NESHAP subparts on August 20, 1997; October 15, 1997; July 9, 1998; October 14, 1998; January 13, 2000, July 13, 2000, and December 2, 2004. The TCEQ requests delegation of certain NESHAP for all sources (both part 70 and non-part 70 sources). For the part 63 NESHAPs, Texas's requests included the NESHAPs set forth in Table 1 below.

TABLE 1.—40 CFR PART 63 NESHAP FOR SOURCE CATEGORIES

Subpart	Emission standard
A	General Provisions.
F	Hazardous Organic NESHAP (HON)—Synthetic Organic Chemical Manufacturing Industry (SOCMI).
G	HON—SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater.
H	HON—Equipment Leaks.
I	HON—Certain Processes Negotiated Equipment Leak Regulation.
J	Polyvinyl Chloride and Copolymers Production.
L	Coke Oven Batteries.
M	Perchloroethylene Dry Cleaning.
N	Chromium Electroplating.
O	Ethylene Oxide Sterilizers.
Q	Industrial Process Cooling Towers.
R	Gasoline Distribution.

TABLE 1.—40 CFR PART 63 NESHAP FOR SOURCE CATEGORIES—Continued

Subpart	Emission standard
S	Pulp and Paper Industry.
T	Halogenated Solvent Cleaning.
U	Polymers and Resins I.
W	Polymers and Resins II—Epoxy Resins and Non-Nylon Polyamides.
X	Secondary Lead Smelting.
Y	Marine Tank Vessel Loading.
AA	Phosphoric Acid.
BB	Phosphate Fertilizers.
CC	Petroleum Refineries.
DD	Off-Site Waste and Recovery.
EE	Magnetic Tape Manufacturing.
GG	Aerospace Manufacturing and Rework Facilities.
HH	Oil and Natural Gas Production.
II	Shipbuilding and Ship Repair.
JJ	Wood Furniture Manufacturing.
KK	Printing and Publishing Industry.
LL	Primary Aluminum Reduction Plants.
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.
OO	Tanks—Level 1.
PP	Containers.
QQ	Surface Impoundments.
RR	Individual Drain Systems.
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.
TT	Equipment Leaks—Level 1.
UU	Equipment Leaks—Level 2 Standards.
VV	Oil-Water Separators and Organic-Water Separators.
WW	Storage Vessels (Tanks)—Control Level 2.
XX	Ethylene Manufacturing Process Units.
YY	Generic Maximum Achievable Control Technology Standards.
CCC	Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration.
DDD	Mineral Wool Production.
EEE	Hazardous Waste Combustors.
GGG	Pharmaceuticals Production.
HHH	Natural Gas Transmission and Storage.
III	Flexible Polyurethane Foam Production.
JJJ	Polymers and Resins, Group IV.
LLL	Portland Cement Manufacturing.
MMM	Pesticide Active Ingredient Production.
NNN	Wool Fiberglass Manufacturing.
OOO	Polymer and Resins III—Amino Resins and Phenolic Resins.
PPP	Polyether Polyols Production.
QQQ	Primary Copper Smelting.
RRR	Secondary Aluminum.
TTT	Primary Lead Smelting.
UUU	Petroleum Refineries—Catalytic Cracking, Catalytic Reforming and Sulfur Plants.
VVV	Publicly Owned Treatment Works (POTW).
XXX	Ferroalloys Production.
AAAA	Municipal Solid Waste Landfills.
CCCC	Nutritional Yeast Mfg.
GGGG	Vegetable Oil Production—Solvent Extraction.
HHHH	Wet Formed Fiberglass Mat Production.
JJJJ	Paper and Other Web Coating.
NNNN	Surface Coating of Large Appliances.
SSSS	Surface Coating for Metal Coil.
TTTT	Leather Finishing Operations.
UUUU	Cellulose Production Manufacture.
VVVV	Boat Manufacturing.
XXXX	Rubber Tire Manufacturing.
QQQQQ	Friction Materials Manufacturing.

VII. What Is Not Being Delegated?

EPA cannot delegate to a State any of the Category II subpart A authorities set forth in 40 CFR 63.91(g)(2). These include the following provisions: § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity

Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. In addition, some MACT standards have certain provisions that cannot be delegated to the States.

Therefore, any MACT standard that EPA is delegating to TCEQ that provides that certain authorities cannot be delegated are retained by EPA and not delegated. Furthermore, no authorities are delegated that require rulemaking in the **Federal Register** to implement, or where Federal overview is the only way to ensure national consistency in the

application of the standards or requirements of CAA section 112. Finally, section 112(r), the accidental release program authority, is not being delegated by this approval.

All of the inquiries and requests concerning implementation and enforcement of the excluded standards in the State of Texas should be directed to the EPA Region 6 Office.

In addition, this delegation to TCEQ to implement and enforce certain NESHAPs does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. 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 TCEQ has not submitted information to demonstrate authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

VIII. How Will Applicability Determinations Under Section 112 Be Made?

In approving this delegation, TCEQ will obtain concurrence from EPA on any matter involving the interpretation of section 112 of the CAA or 40 CFR part 63 to the extent that implementation, administration, or enforcement of these sections have not been covered by EPA determinations or guidance.

IX. What Authority Does EPA Have?

We retain the right, as provided by CAA section 112(l)(7), to enforce any applicable emission standard or requirement under section 112. EPA also has the authority to make certain decisions under the General Provisions (subpart A) of part 63. We are granting TCEQ some of these authorities, and retaining others, as explained in sections VI and VII above. In addition, EPA may review and disapprove of State determinations and subsequently require corrections. (See 40 CFR 63.91(g) and 65 FR 55810, 55823, September 14, 2000.)

Furthermore, we retain any authority in an individual emission standard that may not be delegated according to provisions of the standard.¹ Also, listed

in the footnotes of the part 63 delegation table at the end of this rule are the authorities that cannot be delegated to any State or local agency which we therefore retain.

X. What Information Must TCEQ Provide to EPA?

In delegating the authority to implement and enforce these rules and in granting a waiver of EPA notification requirements, we require TCEQ to input all source information into the Aerometric Information Retrieval System (AIRS) for both point and area sources. TCEQ must enter this information into the AIRS system and update the information by September 30 of every year. TCEQ must provide any additional compliance related information to EPA, Region 6, Office of Enforcement and Compliance Assurance within 45 days of a request under 40 CFR 63.96(a).

In receiving delegation for specific General Provisions authorities, TCEQ must submit to EPA Region 6 on a semi-annual basis, copies of determinations issued under these authorities. For part 63 standards, these determinations include: applicability determinations (§ 63.1); approval/disapprovals of construction and reconstruction (§ 63.5(e) and (f)); notifications regarding the use of a continuous opacity monitoring system (§ 63.6(h)(7)(ii)); finding of compliance (§ 63.6(h)(8)); approval/disapprovals of compliance extensions (§ 63.6(i)); approvals/disapprovals of minor (§ 63.7(e)(2)(i)) or intermediate (§ 63.7(e)(2)(ii) and (f)) alternative test methods; approval of shorter sampling times and volumes (§ 63.7(e)(2)(iii)); waiver of performance testing (§ 63.7(e)(2)(iv) and (h)(2), (3)); approvals/disapprovals of minor or intermediate alternative monitoring methods (§ 63.8(f)); approval of adjustments to time periods for submitting reports (§ 63.9 and 63.10); and approvals/disapprovals of minor alternatives to recordkeeping and reporting (§ 63.10(f)).

Additionally, EPA's Emissions, Monitoring, and Analysis Division must receive copies of any approved intermediate changes to test methods or monitoring. (Please note that intermediate changes to test methods must be demonstrated as equivalent through the procedures set out in EPA

method 301.) This information on approved intermediate changes to test methods and monitoring will be used to compile a database of decisions that will be accessible to State and local agencies and EPA Regions for reference in making future decisions. (For definitions of major, intermediate and minor alternative test methods or monitoring methods, see 40 CFR 63.90). The TCEQ should forward these intermediate test methods or monitoring changes via mail or facsimile to: Chief, Air Measurements and Quality Group, Emissions Monitoring and Analysis Division, Office of Air Quality Planning and Standards, Mailcode D205-02, Research Triangle Park, NC 27711, Facsimile telephone number: (919) 541-0516.

XI. What Is EPA's Oversight of This Delegation to TCEQ?

EPA must oversee TCEQ's decisions to ensure the delegated authorities are being adequately implemented and enforced. We will integrate oversight of the delegated authorities into the existing mechanisms and resources for oversight currently in place. If, during oversight, we determine that TCEQ made decisions that decreased the stringency of the delegated standards, then TCEQ shall be required to take corrective actions and the source(s) affected by the decisions will be notified, as required by 40 CFR 63.91(g)(1)(ii). We will initiate withdrawal of the program or rule if the corrective actions taken are insufficient.

XII. Should Sources Submit Notices to EPA or TCEQ?

For the NESHAPs being delegated and included in the table above, all of the information required pursuant to the general provisions and the relevant subpart of the Federal NESHAP (40 CFR part 63) should be submitted by sources located outside of Indian country, directly to the TCEQ at the following address: Texas Commission on Environmental Quality, Office of Permitting, Remediation and Registration, Air Permits Division (MC 163), P.O. Box 13087, Austin, Texas 78711-3087. The TCEQ is the primary point of contact with respect to delegated NESHAPs. Sources do not need to send a copy to EPA. EPA Region 6 waives the requirement that notifications and reports for delegated standards be submitted to EPA in addition to TCEQ in accordance with 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii). For those standards which are not delegated, sources must continue to submit all appropriate information to EPA.

¹ EPA amended several NESHAPs to clarify the implementation and enforcement authorities within the standards that we may delegate to each State, local or tribal agency such as TCEQ. 68 FR 37334 (June 23, 2003). A complete list of the standards is contained in the official file available for review at

the Dallas Regional Office. An electronic copy of the rule may be obtained from EPA's Internet site, <http://www.epa.gov/fedrgstr/EPA-AIR/2003/June/Day-23/a14190.pdf>. EPA believes the changes make all of the standards consistent in defining what may not be delegated in actions such as the one we are taking today.

XIII. How Will Unchanged Authorities Be Delegated to TCEQ in the Future?

In the future, TCEQ will only need to send a letter of request to EPA, Region 6, for NESHAP regulations that TCEQ has adopted by reference. The letter must reference the previous up-front approval demonstration and reaffirm that it still meets the up-front approval criteria. We will respond in writing to the request stating that the request for delegation is either granted or denied. If a request is approved, the effective date of the delegation will be the date of our response letter. A **Federal Register** will be published to inform the public and affected sources of the delegation, indicate where source notifications and reports should be sent, and to amend the relevant portions of the Code of Federal Regulations showing which NESHAP standards have been delegated to TCEQ.

XIV. What Is The Relationship Between RCRA And The Hazardous Waste Combustor MACT?

As part of today's rule, we are delegating, under the CAA, implementation and enforcement authority for the Hazardous Waste Combustor (HWC) MACT (subpart EEE) to TCEQ. Many of the sources subject to the HWC MACT are also subject to the RCRA permitting requirements. We expect air emissions and related operating requirements found in the HWC MACT will be included in part 70 permits issued by TCEQ. However, RCRA permits will still be required for all other aspects of the combustion unit and the facility that are governed by RCRA (e.g., corrective action, general facility standards, other combustor-specific concerns such as materials handling, risk-based emissions limits and operating requirements, as appropriate and other hazardous waste management units).² See the HWC

² EPA promulgated the HWC MACT (40 CFR part 63, subpart EEE) under the joint authority of the CAA and RCRA. Before this rule went into effect, the air emissions from these sources were primarily regulated under the authority of RCRA. See 40 CFR parts 264, 265, 266, and 270. With the release of HWC MACT, the air emissions are now regulated under both CAA and RCRA. Even though both statutes give EPA the authority to regulate air emissions, we determined that having the emissions standards and permitting requirements in both sets of implementing regulations would be duplicative. For this reason, using the authority provided by section 1006(b) of RCRA, EPA deferred the RCRA requirements for the HWC emission controls to the CAA requirements of 40 CFR part 63, subpart EEE. After a facility has demonstrated compliance with the HWC MACT, the RCRA standards for air emissions from these units will no longer apply, with the exception of section 3005(c)(3) of RCRA, which requires that each RCRA permit contain the terms and conditions necessary to protect human health and the environment. Under this provision

MACT rule preamble discussion (64 FR 52828, 52839–52843 (September 30, 1999)), and the RCRA Site-Specific Risk Assessment Policy for HWC Facilities dated June 2000 for more information on the interrelationship of the MACT rule with the RCRA Omnibus provision and site specific risk assessments.

XV. Final Action

The public was provided the opportunity to comment on the proposed approval of the program and mechanism for delegation of section 112 standards, as they apply to part 70 sources, on June 7, 1995, for the proposed interim approval of TCEQ's title V operating permits program; and on October 11, 2001, for the proposed final approval of TCEQ's title V operating permits program. In EPA's final full approval of Texas' Operating Permits Program on December 6, 2001, (66 FR 63318), the EPA discussed the public comments on the proposed final delegation of the title V operating permits program. In today's action, the public is given the opportunity to comment on the approval of TCEQ's request for delegation of authority to implement and enforce certain section 112 standards for all sources (both part 70 and non-part 70 sources) which have been adopted by reference into Texas' state regulations. However, the Agency views the approval of these requests as a noncontroversial action and anticipates no adverse comments. Therefore, EPA is publishing this rule without prior proposal. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the program and delegation of authority described in this action if adverse comments are received. This action will be effective May 17, 2005 without further notice unless the Agency receives relevant adverse comments by April 18, 2005.

If EPA receives relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive relevant adverse comment on an

of RCRA, if a regulatory authority determines that more stringent conditions than the HWC MACT are necessary to protect human health and the environment for a particular facility, then that regulatory authority may impose those conditions in the facility's RCRA permit.

amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of a relevant adverse comment.

XVI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state request to receive delegation of certain Federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing delegation submissions, EPA's role is to approve submissions provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a delegation submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA to use VCS in place of a delegation submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 17, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: March 9, 2005.

Richard E. Greene,
Regional Administrator, Region 6.

■ 40 CFR part 63 is amended as follows:

PART 63—[AMENDED]

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

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

■ 2. Section 63.99 is amended by adding paragraph (a)(43) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(43) *Texas.* (i) The following table lists the specific part 63 standards that have been delegated unchanged to the Texas Commission on Environmental Quality for all sources. The "X" symbol is used to indicate each subpart that has been delegated. The delegations are subject to all of the conditions and limitations set forth in Federal law, regulations, policy, guidance, and determinations. Some authorities cannot be delegated and are retained by EPA. These include certain General Provisions authorities and specific parts of some standards. Any amendments made to these rules after this effective date are not delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF TEXAS¹

Subpart	Source Category	TCEQ ²
F	Hazardous Organic NESHAP (HON)—Synthetic Organic Chemical Manufacturing Industry (SOCMI)	X
G	HON—SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater	X
H	HON—Equipment Leaks	X
I	HON—Certain Processes Negotiated Equipment Leak Regulation	X
J	Polyvinyl Chloride and Copolymers Production	X
K	(Reserved).	
L	Coke Oven Batteries	X
M	Perchloroethylene Dry Cleaning	X
N	Chromium Electroplating and Chromium Anodizing Tanks	X
O	Ethylene Oxide Sterilizers	X
P	(Reserved).	
Q	Industrial Process Cooling Towers	X
R	Gasoline Distribution	X
S	Pulp and Paper Industry	X
T	Halogenated Solvent Cleaning	X
U	Group I Polymers and Resins	X
V	(Reserved).	
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X
X	Secondary Lead Smelting	X
Y	Marine Tank Vessel Loading	X
Z	(Reserved).	
AA	Phosphoric Acid Manufacturing Plants	X
BB	Phosphate Fertilizers Production Plants	X
CC	Petroleum Refineries	X
DD	Off-Site Waste and Recovery Operations	X
EE	Magnetic Tape Manufacturing	X
FF	(Reserved).	
GG	Aerospace Manufacturing and Rework Facilities	X
HH	Oil and Natural Gas Production Facilities	X
II	Shipbuilding and Ship Repair Facilities	X
JJ	Wood Furniture Manufacturing Operations	X
KK	Printing and Publishing Industry	X
LL	Primary Aluminum Reduction Plants	X

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF TEXAS¹—Continued

Subpart	Source Category	TCEQ ²
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfide, and Stand-Alone Semichemical Pulp Mills.	X
NN	(Reserved).	
OO	Tanks—Level 1	X
PP	Containers	X
QQ	Surface Impoundments	X
RR	Individual Drain Systems	X
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	X
TT	Equipment Leaks—Control Level 1	X
UU	Equipment Leaks—Control Level 2 Standards	X
VV	Oil-Water Separators and Organic-Water Separators	X
WW	Storage Vessels (Tanks)—Control Level 2	X
XX	(Reserved).	
YY	Generic Maximum Achievable Control Technology Standards	X
ZZ—BBB	(Reserved).	
CCC	Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration	X
DDD	Mineral Wool Production	X
EEE	Hazardous Waste Combustors	X
FFF	(Reserved).	
GGG	Pharmaceuticals Production	X
HHH	Natural Gas Transmission and Storage Facilities	X
III	Flexible Polyurethane Foam Production	X
JJJ	Group IV Polymers and Resins	X
KKK	(Reserved).	
LLL	Portland Cement Manufacturing	X
MMM	Pesticide Active Ingredient Production	X
NNN	Wool Fiberglass Manufacturing	X
OOO	Amino/Phenolic Resins	X
PPP	Polyether Polyols Production	X
QQQ	Primary Copper Smelting	X
RRR	Secondary Aluminum Production	X
SSS	(Reserved).	
TTT	Primary Lead Smelting	X
UUU	Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Plants.	X
VVV	Publicly Owned Treatment Works (POTW)	X
WWW	(Reserved).	
XXX	Ferroalloys Production: Ferromanganese and Silicomanganese	X
AAAA	Municipal Solid Waste Landfills	X
CCCC	Nutritional Yeast Manufacturing	X
DDDD	Plywood and Composite Wood Products.	
EEEE	Organic Liquids Distribution.	
FFFF	Miscellaneous Organic Chemical Manufacturing (MON).	
GGGG	Solvent Extraction for Vegetable Oil Production	X
HHHH	Wet Formed Fiberglass Mat Production	X
IIII	Auto & Light Duty Truck.	
JJJJ	Paper and other Web (Surface Coating)	X
KKKK	Surface Coating of Metal Cans.	
MMMM	Miscellaneous Metal Parts and Products Surface Coating.	
NNNN	Surface Coating of Large Appliances	X
OOOO	Fabric Printing Coating and Dyeing.	
PPPP	Surface Coating of Plastic Parts and Products.	
QQQQ	Surface Coating of Wood Building Products.	
RRRR	Surface Coating of Metal Furniture.	
SSSS	Surface Coating for Metal Coil	X
TTTT	Leather Finishing Operations	X
UUUU	Cellulose Production Manufacture	X
VVVV	Boat Manufacturing	X
WWWW	Reinforced Plastic Composites Production.	
XXXX	Tire Manufacturing	X
YYYY	Stationary Combustion Turbines.	
ZZZZ	Reciprocating Internal Combustion Engines.	
AAAAA	Lime Manufacturing.	
BBBBB	Semiconductor Manufacturing.	
CCCCC	Coke Ovens: Pushing, Quenching and Battery Stacks.	
DDDDD	Industrial, Commercial, and Institutional Boilers and Process Heaters.	
EEEEE	Iron and Steel Foundries.	
FFFFF	Integrated Iron and Steel.	
GGGGG	Site Remediation.	
HHHHH	Miscellaneous Coating Manufacturing.	
IIIII	Mercury Cell Chlor-Alkali Plants.	

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF TEXAS¹—Continued

Subpart	Source Category	TCEQ ²
JJJJJ	Brick and Structural Clay Products Manufacturing.	
KKKKK	Clay Ceramics Manufacturing.	
LLLLL	Asphalt Roofing and Processing.	
MMMMM	Flexible Polyurethane Foam Fabrication Operation.	
NNNNN	Hydrochloric Acid Production, Fumed Silica Production.	
PPPPP	Engine Test Facilities.	
QQQQQ	Friction Materials Manufacturing	X
RRRRR	Taconite Iron Ore Processing.	
SSSSS	Refractory Products Manufacture.	
TTTTT	Primary Magnesium Refining.	

¹ Program delegated to Texas Commission on Environmental Quality (TCEQ).

² Authorities which may not be delegated include: § 63.6(g), Approval of Alternative Non-Opacity Emission Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting; and all authorities identified in the subparts (e.g., under "Delegation of Authority") that cannot be delegated.

(ii) Affected sources within Texas shall comply with the Federal requirements of 40 CFR part 63—subpart A—General Provisions, adopted by reference by the Texas Commission on Environmental Quality (TCEQ), with the exception of § 63.5(e)(2)(i), § 63.6(i)(12)(i), § 63.6(i)(13)(i) and (ii), § 63.8(e)(5)(ii), § 63.9(i)(3), and § 63.10(e)(2)(ii). The TCEQ has adopted alternative provisions for the cited exceptions above and affected sources in Texas that are subject to the requirements of Subpart A shall comply with the requirements established at Texas Administrative Code, Title 30, Part 1, Chapter 113, Subchapter C, section 113.100.

* * * * *

[FR Doc. 05-5411 Filed 3-17-05; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05-632, MM Docket No. 00-119, RM-9879]

Digital Television Broadcast Service; Hazleton, PA

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final regulation (47 CFR Part 73), which the Federal Communications Commission published in the *Federal Register* on February 6, 2001 (66 FR 9038). The rule change related to a change to the DTV Table of Allotments reflecting the substitution of DTV channel 45c for DTV channel 9 at Hazleton. However, DTV channel 45 was inadvertently published without the "c" designation.

This document corrects that amendment contained in § 73.622(b) of the Commission's Rules.

DATES: Effective on March 25, 2005.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION:

Background

The FCC published a document in the *Federal Register* on February 6, 2001 (66 FR 9038) removing DTV channel 9 and adding DTV channel 45 at Hazleton, Pennsylvania. This correction removes DTV channel 45 at Hazleton, Pennsylvania, and adds DTV channel 45c at Hazleton, Pennsylvania.

Need for Correction

As published, the final regulations contain an error, which may prove to be misleading, and needs to be clarified.

This document does not contain (new or modified) information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this Erratum in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Pennsylvania, is amended by removing DTV channel 45 and adding DTV channel 45c at Hazleton.

Federal Communications Commission.

Barbara Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 05-5401 Filed 3-17-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05-561; MB Docket No. 04-401; RM-11095]

Radio Broadcasting Services; Durant, OK and Tom Bean, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 69 FR 65118 (November 10, 2004), this document reallocots Channel 248C2 from Durant, Oklahoma to Tom Bean, Texas, and modifies the license of Station KLAQ (FM) accordingly. The coordinates for Channel 248C2 at Tom Bean are 33-28-52 North Latitude and 96-32-03 West Longitude, with a site restriction of 6.4 kilometers (4 miles) southwest of the community.

DATES: Effective April 18, 2005.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418-2738.