

(2) Rule 56, adopted on October 22, 1968 and amended on November 11, 2003.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[NV053-0076a; FRL-7670-1]

#### Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Nevada; Nevada Division of Environmental Protection—Bureau of Air Pollution Control

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is amending certain regulations to reflect the current delegation status of national emission standards for hazardous air pollutants (NESHAPs) in Nevada. Several NESHAPs were delegated to the Nevada Division of Environmental Protection—Bureau of Air Pollution Control on January 12, 2004, and the purpose of this action is to update the listing in the Code of Federal Regulations.

**DATES:** This rule is effective on August 6, 2004, without further notice, unless EPA receives adverse comments by July 7, 2004. If EPA receives such comments, then it will publish a timely withdrawal in the *Federal Register* informing the public that this direct final rule will not take effect.

**ADDRESSES:** Send comments to Andrew Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov), or submit comments at <http://www.regulations.gov>. Copies of the request for delegation and other supporting documentation are available for public inspection (docket number A-96-25) at the following locations by appointment:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR-4), Air Division, 75 Hawthorne Street, San Francisco, California 94105-3901.  
Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B-102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, EPA Region IX, (415) 947-4124, [wang.mae@epa.gov](mailto:wang.mae@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. Delegation of NESHAPs

Section 112(l) of the Clean Air Act, as amended in 1990 (CAA), authorizes EPA to delegate to State or local air pollution control agencies the authority to implement and enforce the standards set out in the Code of Federal Regulations, Title 40 (40 CFR), part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories. On November 26, 1993, EPA promulgated regulations, codified at 40 CFR part 63, subpart E (hereinafter referred to as "Subpart E"), establishing procedures for EPA's approval of State rules or programs under section 112(1) (see 58 FR 62262). Subpart E was later amended on September 14, 2000 (see 65 FR 55810).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and subpart E. To streamline the approval process for future applications, a State or local agency may submit a one-time demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standards. If such demonstration is approved, then the State or local agency would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards. However, EPA maintains the authority to withdraw its approval if the State does not adequately implement or enforce an approved rule or program.

###### B. NDEP Delegations

On May 27, 1998, EPA published a direct final action delegating to the Nevada Division of Environmental Protection (NDEP) several NESHAPs and approving NDEP's delegation mechanism for future standards (see 63 FR 28906). That action explained the procedure for EPA to grant delegations to NDEP by letter, with periodic *Federal Register* listings of standards that have been delegated. On November 21, 2003, the Nevada Division of Environmental Protection—Bureau of Air Pollution Control (NDEP-BAPC) requested delegation of the following NESHAPs contained in 40 CFR part 63:

- Subpart F—National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry

- Subpart G—National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater
- Subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks
- Subpart I—National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks
- Subpart L—National Emission Standards for Coke Oven Batteries
- Subpart O—Ethylene Oxide Emission Standards for Sterilization Facilities
- Subpart R—National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)
- Subpart S—NESHAP from the Pulp and Paper Industry
- Subpart U—National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins
- Subpart W—NESHAP for Epoxy Resin Production and Non-Nylon Polyamides Production
- Subpart X—NESHAP from Secondary Lead Smelting
- Subpart Y—NESHAP for Marine Tank Vessel Loading Operations
- Subpart AA—NESHAP from Phosphoric Acid Manufacturing Plants
- Subpart BB—NESHAP from Phosphate Fertilizers Production Plants
- Subpart CC—NESHAP from Petroleum Refineries
- Subpart DD—NESHAP from Off-Site Waste and Recovery Operations
- Subpart EE—NESHAP for Magnetic Tape Manufacturing Operations
- Subpart GG—National Emission Standards for Aerospace Manufacturing and Rework Facilities
- Subpart HH—NESHAP from Oil and Natural Gas Production Facilities
- Subpart II—NESHAP for Shipbuilding and Ship Repair (Surface Coating)
- Subpart LL—NESHAP for Primary Aluminum Reduction Plants
- Subpart SS—National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process
- Subpart TT—National Emission Standards for Equipment Leaks—Control Level 1
- Subpart UU—National Emission Standards for Equipment Leaks—Control Level 2 Standards
- Subpart WW—National Emission Standards for Storage Vessels (Tanks)—Control Level 2

- Subpart YY—NESHAP for Source Categories: Generic MACT Standards
- Subpart CCC—NESHAP for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants
- Subpart DDD—NESHAP for Mineral Wool Production
- Subpart EEE—NESHAP from Hazardous Waste Combustors
- Subpart GGG—National Emission Standards for Pharmaceuticals Production
- Subpart HHH—NESHAP from Natural Gas Transmission and Storage Facilities
- Subpart III—NESHAP for Flexible Polyurethane Foam Production
- Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins
- Subpart LLL—NESHAP from the Portland Cement Manufacturing Industry
- Subpart MMM—NESHAP for Pesticide Active Ingredient Production
- Subpart NNN—NESHAP for Wool Fiberglass Manufacturing
- Subpart OOO—National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins

On January 12, 2004, EPA granted delegation to NDEP–BAPC for these NESHAPs. EPA also delegated to NDEP–BAPC any amendments to previously-delegated NESHAPs, as of July 1, 2000. Today's action is serving to notify the public of the January 12, 2004, delegation and to codify these delegations into the Code of Federal Regulations.

NDEP–BAPC also included a request for delegation of the regulations implementing CAA sections 112(g) and 112(j), codified at 40 CFR part 63, subpart B. These requirements need not be delegated under the section 112(l) approval process. When promulgating the regulations implementing 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). As a result, EPA is not taking action to delegate 40 CFR Part 63, Subpart B, to NDEP–BAPC.

## II. EPA Action

Today's document serves to notify the public that on January 12, 2004, EPA granted to NDEP–BAPC delegation for the NESHAPs listed above, as well as any amendments to previously-delegated NESHAPs as of July 1, 2000. Today's action will codify these delegations into the Code of Federal Regulations.

## III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely updates the list of approved delegations in the Code of Federal Regulations and imposes no additional requirements. 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 does not impose any additional enforceable duty, 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 updates the list of already-approved

delegations, 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 State delegation submissions, our role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), we have no authority to disapprove State submissions for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews State submissions, to use VCS in place of State submissions that otherwise satisfy the provisions of the CAA. 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 United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of this 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 6, 2004. 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, Administrative practice and procedure, Air pollution control, Hazardous substances, 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: May 18, 2004.

**Deborah Jordan,**

*Director, Air Division, Region IX.*

■ Title 40, chapter I, part 63 of the Code of Federal Regulations 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.*

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

■ 2. Section 63.99 is amended by revising paragraph (a)(28)(i) to read as follows:

**§ 63.99 Delegated Federal authorities.**

(a) \* \* \*

(28) \* \* \*

(i) The following table lists the specific part 63 standards that have been delegated unchanged to the air pollution control agencies in the State of Nevada. The (X) symbol is used to indicate each category that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA

Subpart	Description	NDEP <sup>1</sup>	WCAQMD <sup>2</sup>	CCDAQM <sup>3</sup>
A	General Provisions	X	X	
F	Synthetic Organic Chemical Manufacturing Industry	X		
G	Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	X		
H	Organic Hazardous Air Pollutants: Equipment Leaks	X		
I	Organic Hazardous Air Pollutants: Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	X		
L	Coke Oven Batteries	X		
M	Perchloroethylene Dry Cleaning	X	X	
N	Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.	X	X	
O	Ethylene Oxide Sterilization Facilities	X	X	
Q	Industrial Process Cooling Towers	X		
R	Gasoline Distribution Facilities	X	X	
S	Pulp and Paper	X		
T	Halogenated Solvent Cleaning	X	X	
U	Group I Polymers and Resins	X		
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X		
X	Secondary Lead Smelting	X		
Y	Marine Tank Vessel Loading Operations	X		
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 Operations	X		
GG	Aerospace Manufacturing and Rework Facilities	X		
HH	Oil and Natural Gas Production Facilities	X		
II	Shipbuilding and Ship Repair (Surface Coating)	X		
JJ	Wood Furniture Manufacturing Operations	X		
KK	Printing and Publishing Industry	X	X	
LL	Primary Aluminum Reduction Plants	X		
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	X		
VV	Oil-Water Separators and Organic-Water Separators	X		
WW	Storage Vessels (Tanks)—Control Level 2	X		
YY	Generic MACT Standards	X		
CCC	Steel Pickling	X		
DDD	Mineral Wool Production	X		
EEE	Hazardous Waste Combustors	X		
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		
LLL	Portland Cement Manufacturing Industry	X		
MMM	Pesticide Active Ingredient Production	X		
NNN	Wool Fiberglass Manufacturing	X		

## DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA—Continued

Subpart	Description	NDEP <sup>1</sup>	WCAQMD <sup>2</sup>	CCDAQM <sup>3</sup>
000 .....	Manufacture of Amino/Phenolic Resins .....	X		

<sup>1</sup> Nevada Division of Environmental Protection.

<sup>2</sup> Washoe County Air Quality Management Division.

<sup>3</sup> Clark County Department of Air Quality Management.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 25 and 101

[ET Docket No. 98-206; RM-9147; RM-9245; DA 04-1554]

#### Amendment of the Commission's Rules Governing Multichannel Video Distribution and Data Service in the 12.2-12.7 GHz Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** On April 11, 2002, the Commission adopted rules to establish technical, service and licensing rules governing Multichannel Video Distribution and Data Service (MVDDS) in the 12 GHz band. Because an error was made in the publication of the final rules, this document contains correcting amendments to the final rules that were published in the *Federal Register*. This document also updates § 101.1417 to reflect the Commission's reorganization of the Wireless Telecommunications Bureau in 2003.

**DATES:** Effective on June 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Mock, Broadband Division, Wireless Telecommunications Bureau at (202) 418-2487.

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission published in the *Federal Register* final rules, 67 FR 43031, (June 26, 2002), in the above captioned proceeding (*Memorandum Opinion and Order and Second Report and Order*). In six rules related to MVDDS, there were errors in the version published in the *Federal Register*. This document corrects them to conform to the rules adopted by the Commission on April 11, 2002, and released on May 23, 2002, in addition to amendments to the rules subsequently adopted by the Commission. The subsequent rule changes were adopted by the Commission and published in the *Federal Register* in 68 FR 4953, (January

31, 2003), (Report and Order in WT Dkt. 00-19), 68 FR 16446, April 4, 2003, (Third Memorandum Opinion and Order); 68 FR 42610, (July 18, 2003), (Third Report and Order); 68 FR 43942, (July 25, 2003), (Fourth Memorandum Opinion and Order); 68 FR 34336, (June 9, 2003), (Second Memorandum Opinion and Order); as well as in errata released on July 31, 2003 (18 FCC Rcd 15310), and August 14, 2002 (17 FCC Rcd 15849).

The rules require correction as follows:

- In section 25.208(o)(1) and (2), negative signs must be inserted to precede numbers at the beginning of each paragraph.
- Section 101.105 must be revised to conform to the adopted version of the rule and to correct other editorial errors.
- Section 101.111 must be revised because the instruction published at 68 FR 43946 (Fourth MO&O revisions to § 101.111) neglected to reflect revisions to this rule that were published in the *Federal Register*, 68 FR 4956, (January 31, 2003).
- Section 101.1412 must be revised to conform to the adopted version of the rule, which applies the cable cross-ownership rule where a particular percentage of households that subscribe to one or more Multichannel Video Program Distributors (MPVDs) within the MVDDS operator's license area.
- The title of § 101.1421 must be revised to conform to the title appearing in the Table of Contents.
- Section 101.1440(f) requires revision to conform to the adopted version of the rule, specifically clarifying circumstances under which a modification to an MVDDS station would trigger requirements to protect DBS receivers.

In this document, revisions to §§ 25.208, 101.105, and 101.111, reflect the specific revisions. The rules in part 101, subpart P (§§ 101.1401-101.1440) are republished in their entirety for clarity; however, only §§ 101.1412, 101.1421, and 101.1440 require editorial correction. In addition, § 101.1417 requires a nonsubstantive update to reflect the Commission's reorganization of the Wireless Telecommunications Bureau, effective November 13, 2003, under which the relevant duties of the

former Public Safety and Private Wireless Division were assumed by the Broadband Division. See Reorganization of the Wireless Telecommunications Bureau, Order, 18 FCC Rcd 25414 (2003). Because we are publishing the Order, DA 04-1554 (rel. May 28, 2004), the Erratum, DA 04-336 (rel. Feb. 9, 2004), 19 FCC Rcd 2355 (WTB BD 2004) will not be published in the *Federal Register*.

#### Procedural Matters

Any impact as defined by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, the Congressional Review Act (CRA), and the Regulatory Flexibility Act of 1980, as amended (RFA) was addressed at the time of adoption and release of the *Memorandum Opinion and Order and Second Report and Order*, FCC 02-116, adopted on April 11, 2002, and released on May 23, 2003, 67 FR 43031 (June 26, 2002). Therefore, the PRA, CRA and RFA requirements have already been fulfilled for these rules.

#### List of Subjects in 47 CFR Parts 25 and 101

Communications common carriers, Communications equipment, Radio. Federal Communications Commission. Andrew S. Fishel, Managing Director.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 25 and 101 as follows:

#### PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

**Authority:** 47 U.S.C. 701-744. Interprets or applies sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 2. Section 25.208 is amended by revising paragraphs (o)(1) and (2) to read as follows:

#### § 25.208 Power flux density limits.

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(o) \* \* \*  
(1) -158 dB(W/m<sup>2</sup>) in any 4 kHz band for angles of arrival between 0 and