

TABLE III.—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
SSSS	Metal Coil Surface Coating	04/29/03 10/23/03	.....	06/30/02 10/30/03	07/01/02 11/24/03	.....
TTTT	Leather Finishing Operations	04/29/03 10/23/03	.....	06/30/02 10/30/03	07/01/02 11/24/03	.....
UUUU	Cellulose Products Manufacturing	04/29/03 10/23/03	.....	06/30/02 10/30/03	07/01/02 11/24/03	.....
VVVV	Boat Manufacturing	04/29/03 10/23/03	.....	06/30/02 10/30/03	07/01/02 11/24/03	.....
WWWW ...	Reinforced Plastic Composites	04/29/03 10/23/03	.....	.....	.....	.....
XXXX	Rubber Tire Manufacturing	04/29/03 10/23/03	.....	.....	.....	.....
YYYY	Combustion Turbines .....	.....	.....	.....	.....	.....
AAAA	Lime Manufacturing .....	.....	.....	.....	.....	.....
BBBB	Semiconductor Manufacturing .....	.....	.....	.....	.....	.....
CCCC	Coke Oven: Pushing, Quenching, & Battery Stacks.	04/29/03 10/23/03	.....	.....	.....	.....
EEEE	Iron and Steel Foundries .....	.....	.....	.....	.....	.....
FFFF	Integrated Iron & Steel .....	.....	.....	.....	.....	.....
GGGG	Site Remediation .....	.....	.....	.....	.....	.....
HHHH	Misc. Coating Manufacturing .....	.....	.....	.....	.....	.....
IIII	Mercury Cell Chlor-Alkali Plants .....	.....	.....	.....	.....	.....
JJJJ	Brick & Structural Clay Prod. Mfg. ....	.....	.....	.....	.....	.....
KKKK	Clay Ceramics Mfg. ....	.....	.....	.....	.....	.....
LLLL	Asphalt Roofing & Processing	04/29/03 10/23/03	.....	.....	.....	.....
MMMM	Flexible Polyurethane Foam Fabrication Operation.	04/29/03 10/23/03	.....	.....	.....	.....
NNNN	Hydrochloric Acid Prod.	04/29/03 10/23/03	.....	.....	.....	.....
PPPP	Engine Test Cells/Stands	04/29/03 10/23/03	.....	.....	.....	.....
QQQQ	Friction Products Manufacturing	04/29/03 10/23/03	.....	.....	.....	.....
RRRR	Taconite Iron Ore Processing .....	.....	.....	.....	.....	.....
SSSS	Refractory Products Mfg.	04/29/03 10/23/03	.....	.....	.....	.....
TTTT	Primary magnesium Refining .....	.....	.....	.....	.....	.....

Summary of This Action

All sources subject to the requirements of 40 CFR parts 60, 61, and 63 are also subject to the equivalent requirements of the above-mentioned state or local agencies.

This action informs the public of delegations to the above-mentioned agencies of the above-referenced Federal regulations.

Authority: This document is issued under the authority of sections 101, 110, 112, and 301 of the CAA, as amended (42 U.S.C. 7401, 7410, 7412, and 7601).

Dated: December 1, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03-30706 Filed 12-10-03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[NM-40-2-7445a; FRL-7598-8]

New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; delegation of authority.

SUMMARY: The New Mexico Environment Department (NMED) has submitted updated regulations for receiving delegation of EPA authority for implementation and enforcement of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) for all sources (both part 70 and non-part 70 sources). These regulations apply to certain NSPS

promulgated by EPA, as amended through September 1, 2002, and certain NESHAPs promulgated by EPA, as amended through September 1, 2001 and September 1, 2002. The delegation of authority under this notice does not apply to sources located in Bernalillo County, New Mexico, or sources located in Indian Country. EPA is providing notice that it has approved delegation of certain NSPS to NMED, and taking direct final action to approve the delegation of certain NESHAPs to NMED.

DATES: This rule is effective on February 9, 2004 without further notice, unless EPA receives adverse comment by January 12, 2004. 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: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in

the **SUPPLEMENTARY INFORMATION** section below.

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

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I. General Information

A. What Is the Public Rulemaking File?

EPA is committed to ensuring public access to the information that is used to inform the public of the Agency's decisions regarding the environment and human health and to ensuring that the public has an opportunity to participate in the Agency's decision process. The official public rulemaking file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The public rulemaking file does not include Confidential Business Information (CBI) or other information for which disclosure is restricted by statute, although such information is a part of the administrative record for this action. The public rulemaking file is the collection of materials that is available for public viewing at the Regional Office. The administrative record is the collection of material used to inform the public of the Agency's decision on this rulemaking action.

B. How Can I Get Copies of This Document and Other Related Information?

1. *An official public rulemaking file is available for inspection at the Regional Office.* The Regional Office has established an official public rulemaking file for this action under NM-40-2-7445a. The public rulemaking file is available for viewing at the Air Permits Section, U.S. Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section two working days in advance to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4 p.m. excluding Federal holidays.

2. *Copies of the State submittal.* Copies of the State submittal are also available for public inspection during official business hours, by appointment at the New Mexico Environment Department, Air Quality Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

3. *Electronic Access.* You may access this Federal Register document electronically through the [Regulation.gov](http://www.regulations.gov) web site located at <http://www.regulations.gov> where you can find, review, and submit comments on federal rules that are open for comment and have been published in the **Federal Register**.

The E Government Act of 2002 states that to "to the extent practicable" agencies shall accept electronic comments and establish electronic dockets. Also, President Bush's management plan for government includes a government-wide electronic rulemaking system. The first phase of the e-Rulemaking initiative was the development a Federal portal that displays all Federal Register notices and proposed rules open for comment. The URL for this site is <http://www.regulations.gov>. The site also provides the public with the ability to submit electronic comments that can then be transferred to the Agency responsible for the rule.

EPA's policy is to make all comments it receives, whether submitted electronically or on paper, available for public viewing at the Regional Office as EPA receives them and without change. However, those portions of a comment that contain properly identified and claimed CBI or other information for which disclosure is restricted by statute will be excluded from the public rulemaking file. The entire comment,

including publicly restricted information, will be included in the administrative record for this action.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section I.D, below. Do not use e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the public rulemaking file, and may be made available in EPA's electronic public docket. 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.

i. E-mail. Comments may be sent by electronic mail (e-mail) to robinson.jeffrey@epa.gov, Attention "Public comment on proposed rulemaking NM-40-2-7445a." In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official

public docket, and made available in EPA's electronic public docket.

ii. Regulations.gov. As an alternative to email, you may submit comments electronically to EPA by using the Federal web-based portal that displays all **Federal Register** notices and proposed rules open for comment. To use this method, access the Regulations.gov Web site at <http://www.regulations.gov>, then select "Environmental Protection Agency" at the top of the page and click on the "Go" button. The list of current EPA actions available for comment will be displayed. Select the appropriate action and please follow the online instructions for submitting comments. Unlike EPA's email system, the Regulations.gov Web site is an "anonymous" system, which means EPA will not know your identity, e-mail address, or other contact information, unless you provide it in the text of your comments.

iii. Disk or CD-ROM. You may submit comments on a disk or CD-ROM that you mail to the mailing address identified in section I.C.2, directly below. These electronic submissions will be accepted in WordPerfect, Word, or ASCII file format. You should avoid the use of special characters and any form of encryption.

2. By Mail. Send your comments to: Jeff Robinson, Air Permits Section (6PD-R), Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. Please include the text "Public comment on proposed rulemaking NM-40-2-7445a" in the subject line of the first page of your comments.

3. By Hand Delivery or Courier. Deliver your written comments or comments on a disk or CD-ROM to: Jeff Robinson, Air Permits Section (6PD-R), Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, Attention "Public comment on proposed rulemaking NM-40-2-7445a." Such deliveries are only accepted during official hours of business, which are Monday through Friday, 8:30 a.m. to 4 p.m., excluding Federal holidays.

D. How Should I Submit CBI to the Agency?

For comments submitted to the Agency by mail or hand delivery, in either paper or electronic format, you may assert a business confidentiality claim covering confidential business information (CBI) included in your comment by clearly marking any part or all of the information as CBI at the time

the comment is submitted to EPA. CBI should be submitted separately, if possible, to facilitate handling by EPA. Submit one complete version of the comment that includes the properly labeled CBI for EPA's official docket and one copy that does not contain the CBI to be included in the public docket. If you submit CBI on a disk or CD-ROM, mark on the outside of the disk or the CD-ROM that it contains CBI and then identify the CBI within the disk or CD-ROM. Also submit a non-CBI version if possible. Information which is properly labeled as CBI and submitted by mail or hand delivery will be disclosed only in accordance with procedures set forth in 40 CFR part 2. For comments submitted by EPA's e-mail system or through Regulations.gov, no CBI claim may be asserted. Do not submit CBI to Regulations.gov or via EPA's e-mail system. Any claim of CBI will be waived for comments received through Regulations.gov or EPA's e-mail system. For further advice on submitting CBI to the Agency, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

E. Privacy Notice

It is important to note that the comments you provide to EPA will be publicly disclosed in a rulemaking docket or on the Internet. The comments are made available for public viewing as EPA receives them and without change. Any personal information you choose to include in your comment will be included in the docket. However, EPA will exclude from the public docket any information labeled confidential business information (CBI), copyrighted material or other information restricted from disclosure by statute.

Comments submitted via Regulations.gov will not collect any personal information, e-mail addresses, or contact information unless they are included in the body of the comment. Comments submitted via Regulations.gov will be submitted anonymously unless you include personal information in the body of the comment. Please be advised that EPA cannot contact you for any necessary clarification if technical difficulties arise unless your contact information is included in the body of comments submitted through Regulations.gov. However, EPA's e-mail system is not an anonymous system. E-mail addresses are automatically captured by EPA's e-mail system and included as part of your comment that is placed in the public rulemaking docket.

F. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Does This Action Do?

EPA is providing notice that it is delegating authority for implementation and enforcement of certain NSPS to NMED. EPA is also taking direct final action to approve the delegation of certain NESHAPs to NMED. With this delegation, NMED has the primary responsibility to implement and enforce the delegated standards.

III. What Is the Authority for Delegation?

Section 111(c)(1) of the Clean Air Act (CAA) authorizes EPA to delegate authority to any state agency which submits adequate regulatory procedures for implementation and enforcement of the NSPS program. The NSPS standards are codified at 40 CFR part 60.

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 parts 61 and 63.

IV. What Criteria Must New Mexico's Program Meet To Be Approved?

EPA previously approved NMED's program for the delegation of NSPS. 51 FR 20648 (June 6, 1986). This notice notifies the public that EPA is updating NMED's delegation to implement and enforce certain NSPS. As to the NESHAP standards in parts 61 and 63,

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 and enforce 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. Section 63.91(d)(3) provides that interim or final Title V program approval will satisfy the criteria of § 63.91(d) for part 70 sources.

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

As part of its Title V submission, NMED 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. 59 FR 26158, 26160–26161 (May 19, 1994). EPA approved NMED's program for receiving delegation of existing and future standards when it granted final interim approval to NMED's Title V program. 59 FR 59656, 59658 & 56960. In addition, on November 26, 1996, EPA promulgated full approval of the State's operating permits program as administered by NMED. 61 FR 60032. 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. NMED has affirmed that it still meets the up-front approval criteria.

VI. What Is Being Delegated?

EPA received requests to update the NSPS and NESHAP delegations on November 13, 1998, August 16, 1999, April 25, 2002, and May 23, 2003. NMED requested the EPA to update the delegation of authority for the following:

- A. NSPS (40 CFR part 60 standards) from July 2, 1997, through September 1, 2002;

B. NESHAPs (40 CFR part 61 standards) from July 2, 1997 through September 1, 2001; and

C. NESHAPs (40 CFR part 63 standards) from December 19, 1994 (effective date of final interim approval of NMED's Title V program).

NMED's request was for delegation of certain NSPS and NESHAP for all sources (both part 70 and non-part 70 sources). The request includes revisions of 20 NMAC 2.77, 20 NMAC 2.78, and 20 NMAC 2.82 as adopted by the New Mexico Environmental Improvement Board. For NSPS, this revision incorporated all NSPS promulgated by EPA (except subpart AAA—Standards of Performance for New Residential Wood Heaters) as amended in the **Federal Register** through September 1, 2002. The effective date of the Federal delegation for NSPS under section 111 is the date that this **Federal Register** is published. For the part 61 NESHAPs, this revision included all NESHAPs promulgated by EPA as amended in the **Federal Register** through September 1, 2001, excluding Subparts B, H, I, K, Q, R, T, and W. For the part 63 NESHAPs, this includes the NESHAPs set forth in Table 1 below. The effective date of the Federal delegation for parts 61 and 63 standards is the effective date of this rule.

TABLE 1.—40 CFR PART 63 NESHAPs FOR SOURCE CATEGORIES DELEGATED TO NMED

Subpart	Source category
A	General Provisions.
D	Early Reductions.
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 and Chromium Anodizing Tanks.
O	Ethylene Oxide Sterilizers.
Q	Industrial Process Cooling Towers.
R	Gasoline Distribution.
S	Pulp and Paper Industry.
T	Halogenated Solvent Cleaning.
U	Group I Polymers and Resins.
W	Epoxy Resins Production and Non-Nylon Polyamides Production.
X	Secondary Lead Smelting.
Y	Marine Tank Vessel Loading.
AA	Phosphoric Acid Manufacturing Plants.
BB	Phosphate Fertilizers Production Plants.
CC	Petroleum Refineries.
DD	Off-Site Waste and Recovery Operations.
EE	Magnetic Tape Manufacturing.
GG	Aerospace Manufacturing and Rework Facilities.
HH	Oil and Natural Gas Production Facilities.
II	Shipbuilding and Ship Repair Facilities.
JJ	Wood Furniture Manufacturing Operations.
KK	Printing and Publishing Industry.
LL	Primary Aluminum Reduction Plants.
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfide, and Stand-Alone Semichemical Pulp Mills.
OO	Tanks—Level 1.
PP	Containers.

TABLE 1.—40 CFR PART 63 NESHAPS FOR SOURCE CATEGORIES DELEGATED TO NMED—Continued

Subpart	Source category
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—Control Level 1.
UU	Equipment Leaks—Control Level 2 Standards.
VV	Oil-Water Separators and Organic-Water Separators.
WW	Storage Vessels (Tanks)—Control Level 2.
YY	Generic Maximum Achievable Control Technology Standards.
CCC	Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants.
DDD	Mineral Wool Production.
EEE	Hazardous Waste Combustors.
GGG	Pharmaceuticals Production.
HHH	Natural Gas Transmission and Storage Facilities.
III	Flexible Polyurethane Foam Production.
JJJ	Group IV Polymers and Resins.
LLL	Portland Cement Manufacturing.
MMM	Pesticide Active Ingredient Production.
NNN	Wool Fiberglass Manufacturing.
OOO	Amino/Phenolic Resins.
PPP	Polyether Polyols Production.
QQQ	Primary Copper Smelting.
RRR	Secondary Aluminum Production.
TTT	Primary Lead Smelting.
UUU	Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Plants.
VVV	Publicly Owned Treatment Works (POTW).
XXX	Ferrous Alloys Production: Ferromanganese and Silicomanganese.
CCCC	Nutritional Yeast Manufacturing.
GGGG	Solvent Extraction for Vegetable Oil Production.
HHHH	Wet Formed Fiberglass Mat Production.
NNNN	Surface Coating of Large Appliances.
SSSS	Surface Coating of Metal Coil.
TTTT	Leather Finishing Operations.
UUUU	Cellulose Production Manufacture.
VVVV	Boat Manufacturing.
XXXX	Tire Manufacturing.
CCCCC	Coke Ovens: Pushing, Quenching and Battery Stacks.

VII. What Is Not Being Delegated?

As mentioned above, NMED has not been delegated the authority for the following standards:

- 40 CFR part 60, subpart AAA (Standards of Performance for New Residential Wood Heaters);
- 40 CFR part 61, subpart B (National Emission Standards for Radon Emissions from Underground Uranium Mines);
- 40 CFR part 61, subpart H (National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities);
- 40 CFR part 61, subpart I (National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H);
- 40 CFR part 61, subpart K—(National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants);
- 40 CFR part 61, subpart Q (National Emission Standards for Radon Emissions from Department of Energy facilities);

40 CFR part 61, subpart R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks);

40 CFR part 61, subpart T (National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings); and

40 CFR part 61, subpart W (National Emission Standards for Radon Emissions from Operating Mill Tailings).

In addition, 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 [e.g. 40

CFR 63.106(b)].¹ Therefore, any MACT standard that EPA is delegating to NMED 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 New Mexico should be directed to the EPA Region 6 Office.

In addition, this delegation to NMED to implement and enforce certain NSPS

¹ On June 23, 2003, EPA modified certain NESHAPS to clarify which authorities can be delegated to State, local, and tribal agencies. 68 FR 37334. However, this delegation is not directly affected by these changes, since NMED is receiving delegation of the part 63 standards that were promulgated by EPA, as amended through September 1, 2002.

and 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 NSPS and NESHAPs in Indian country because NMED has not adequately demonstrated its authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

Also, this delegation does not extend to sources or activities located in Bernalillo County because the Albuquerque/Bernalillo County Air Quality Control Board and the Albuquerque Environmental Health Department have jurisdiction to administer and enforce provisions of the New Mexico Air Quality Control Act in Bernalillo County (excluding Indian country). The Albuquerque/Bernalillo County Air Quality Control Board and the Albuquerque Environmental Health Department have been delegated the authority to implement and enforce certain NSPS and NESHAPs by EPA. See 60 FR 52329 (October 6, 1995).

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

In approving this delegation, NMED 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 NMED 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. 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 NMED Provide to EPA?

In delegating the authority to implement and enforce these rules and in granting a waiver of EPA notification requirements, we require NMED to input all source information into the Aerometric Information Retrieval System (AIRS) for both point and area sources. NMED must enter this information into the AIRS system and update the information by September 30 of every year. NMED 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, NMED 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); approvals/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)); approvals/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 Emission Measurement Center of the 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 NMED should forward these intermediate test methods or monitoring changes via mail or facsimile to: Chief, Source Categorization Group A, EPA (MD-19), Research Triangle Park, NC 27711, Facsimile telephone number: (919) 541-1039.

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

EPA must oversee NMED'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 NMED made decisions that decreased the stringency of the delegated standards, then NMED 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 NMED?

All of the information required pursuant to the Federal NSPS and NESHAP (40 CFR parts 60, 61, and 63) should be submitted by sources located outside the boundaries of Bernalillo County and areas outside of Indian country, directly to the NMED at the following address: Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, New Mexico 87502. The NMED is the primary point of contact with respect to delegated NSPS and 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 NMED in accordance with 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii).

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

In the future, NMED will only need to send a letter of request to EPA, Region 6, for those NSPS and NESHAP regulations that NMED 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**

notice will be published to inform the public and affected sources of the delegation, indicating where source notifications and reports should be sent, and to amend the relevant portions of the Code of Federal Regulations showing which NSPS and NESHAP standards have been delegated to NMED.

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 NMED. 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 NMED. 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 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.

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 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.

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 applied to part 70 sources, on May 19, 1994. The proposal was part of EPA's proposed approval of New Mexico's Operating Permits Program. 59 FR at 26160. The EPA did not receive any public comments on the proposed delegation of section 112 standards. 59 FR 59656 (November 18, 1994). In this action, the public is given the opportunity to comment on the approval of NMED 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 New Mexico's 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 February 9, 2004 without further notice unless the Agency receives relevant adverse comments by January 12, 2004.

If EPA receives 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 adverse comment on an 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 an 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 (Public Law 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 February 9, 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

40 CFR Part 60

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

40 CFR Part 61

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

40 CFR Part 63

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

Authority: This action is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended, 42 U.S.C. 7411 and 7412.

Dated: November 26, 2003.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

■ 40 CFR parts 60, 61, and 63 are amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

■ 2. Section 60.4 is amended by revising paragraph (b)(GG) and adding paragraph (e) to read as follows:

§ 60.4 Address

(b) * * *

* * * * *

(GG) State of New Mexico: New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502. Note: For a list of delegated standards for New Mexico (excluding Bernalillo County and Indian country), see paragraph (e)(1) of this section.

* * * * *

(e) The following lists the specific part 60 standards that have been

delegated unchanged to the air pollution control agencies in Region 6.

(1) *New Mexico.* The New Mexico Environment Department has been delegated all part 60 standards promulgated by EPA, except subpart AAA—Standards of Performance for New Residential Wood Heaters, as amended in the **Federal Register** through September 1, 2002.

PART 61—[AMENDED]

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

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

■ 4. Section 61.04 is amended by revising paragraph (b)(GG) and adding paragraph (c)(6) to read as follows:

§ 61.04 Address.

(b) * * *

* * * * *

(GG) *State of New Mexico:* New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502. For a list of delegated standards for New Mexico (excluding Bernalillo County and Indian country), see paragraph (c)(6) of this section.

* * * * *

(c) * * *

* * * * *

(6) The following lists the specific part 61 standards that have been delegated unchanged to the air pollution control agencies in Region 6.

(i)–(ii). [Reserved]

(iii) *New Mexico.* The New Mexico Environment Department (NMED) has been delegated the following part 61 standards promulgated by EPA, as amended in the **Federal Register** through September 1, 2001. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (PART 61 STANDARDS) FOR NEW MEXICO (EXCLUDING BERNALILLO COUNTY AND INDIAN COUNTRY)¹

Subpart	Source category	New Mexico
A	General Provisions	X
B	Radon Emissions From Underground Uranium Mines	
C	Beryllium	X
D	Beryllium Rocket Motor Firing	X
E	Mercury	X
F	Vinyl Chloride	X
G	(Reserved).	
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.	
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.	
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X
K	Radionuclide Emissions From Elemental Phosphorus Plants.	
L	Benzene Emissions From Coke By-Product Recovery Plants	X
M	Asbestos	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants	X
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X

DELEGATION STATUS FOR NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (PART 61 STANDARDS) FOR NEW MEXICO (EXCLUDING BERNALILLO COUNTY AND INDIAN COUNTRY)¹—Continued

Subpart	Source category	New Mexico
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities	X
Q	Radon Emissions From Department of Energy Facilities.	
R	Radon Emissions From Phosphogypsum Stacks.	
S	(Reserved).	
T	Radon Emissions From the Disposal of Uranium Mill Tailings.	
U	(Reserved).	
V	Equipment Leaks (Fugitive Emission Sources)	X
W	Radon Emissions From Operating Mill Tailings.	
X	(Reserved).	
Y	Benzene Emissions From Benzene Storage Vessels	X
Z-AA	(Reserved).	
BB	Benzene Emissions From Benzene Transfer Operations	X
CC-EE	(Reserved).	
FF	Benzene Waste Operations	X

¹ Program delegated to New Mexico Environment Department (NMED).

(iv)–(vi). [Reserved]

PART 63—[AMENDED]

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

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

■ 6. Section 63.99 is amended by adding paragraph (a)(31) to read as follows:

(a) * * *

* * * * *

(31) *New Mexico.*

(i) The following table lists the specific part 63 standards promulgated by EPA, that have been delegated unchanged to the New Mexico

Environment Department for all sources (both part 70 and non-part 70 sources). The delegation applies to the following part 63 standards promulgated by EPA, as amended in the **Federal Register** through September 1, 2002. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—NEW MEXICO (EXCLUDING BERNALILLO COUNTY AND INDIAN COUNTRY)¹

Subpart	Source category	New Mexico
A	General Provisions ²	X
D	Early Reductions	X
F	Hazardous Organic NESHA (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
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfide, and Stand-Alone Semichemical Pulp Mills.	

DELEGATION STATUS FOR PART 63 STANDARDS—NEW MEXICO (EXCLUDING BERNALILLO COUNTY AND INDIAN COUNTRY) ¹—Continued

Subpart	Source category	New Mexico
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	Ferrous Alloys Production: Ferromanganese and Silicomanganese	X
AAAA	Municipal Solid Waste Landfills	
CCCC	Nutritional Yeast Manufacturing	X
EEEE	Organic Liquids Distribution	
GGGG	Solvent Extraction for Vegetable Oil Production	X
HHHH	Wet Formed Fiberglass Mat Production	X
JJJJ	Paper and other Web (Surface Coating)	
KKKK	Metal Can (Surface Coating)	
NNNN	Surface Coating of Large Appliances	X
OOOO	Fabric Printing Coating and Dyeing	
PPPP	Plastic Parts (Surface Coating)	
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	Combustion Turbines	
BBBBB	Semiconductor Manufacturing	
CCCCC	Coke Ovens: Pushing, Quenching and Battery Stacks	X
EEEEE	Iron Foundries	
FFFFF	Integrated Iron and Steel	
GGGGG	Site Remediation	
HHHHH	Miscellaneous Coating Manufacturing	
IIIII	Mercury Cell Chlor-Alkali Plants	
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 Products Manufacturing	
RRRRR	Taconite Iron Ore Processing	
SSSSS	Refractory Products Manufacture	

DELEGATION STATUS FOR PART 63 STANDARDS—NEW MEXICO (EXCLUDING BERNALILLO COUNTY AND INDIAN COUNTRY) ¹—Continued

Subpart	Source category	New Mexico
TTTTT	Primary Magnesium Refining .....	.....

¹ Program delegated to New Mexico Environment Department (NMED).

² Authorities that cannot be delegated include § 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, all authorities identified in the certain subparts that EPA has designated that cannot be delegated.

[FR Doc. 03-30710 Filed 12-10-03; 8:45 am]
 BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket RSPA-97-2995; Notice 11]

Pipeline Safety: Drug Testing; Random Testing Rate

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of minimum annual percentage rate for random drug testing.

SUMMARY: Each year, pipeline operators randomly select employees to test for prohibited drugs. The number of employees selected may not be less than the minimum annual percentage rate the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) determines, which is either 50 percent or 25 percent of covered employees based on the industry's positive rate of random tests. In accordance with applicable standards, RSPA/OPS has determined that the positive rate of random drug tests reported by operators this year for testing done in calendar year 2002 is less than 1.0 percent. Therefore, in calendar year 2004, the minimum annual percentage rate for random drug testing is 25 percent of covered employees.

DATES: Effective January 1, 2004, through December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Sheila Wright, RSPA, OPS, Room 7128, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-4554 or e-mail sheila.wright.rspa.dot.gov.

SUPPLEMENTARY INFORMATION: Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must annually submit Management Information System (MIS) reports of drug testing conducted in the previous

calendar year (49 CFR 199.119(a)). This information is used to calculate the minimum annual percentage rate at which operators must randomly select covered employees for drug testing during the next calendar year (49 CFR 199.105(c)(2)). If the minimum annual percentage rate for random drug testing is 50 percent, RSPA/OPS may lower the rate to 25 percent if it determines that the positive rate reported for random tests for two consecutive calendar years is less than 1.0 percent (49 CFR 199.105(c)(3)). If the minimum annual percentage rate is 25 percent, RSPA/OPS will increase the rate to 50 percent if it determines that the positive rate reported for random tests for any calendar year is equal to or greater than 1.0 percent (49 CFR 199.105(c)(4)). Part 199 defines "positive rate" as "the number of positive results for random drug tests * * * plus the number of refusals of random tests * * *, divided by the total number of random drug tests * * * plus the number of refusals of random tests. * * *"

Through calendar year 1996, the minimum annual percentage rate for random drug testing in the pipeline industry was 50 percent of covered employees. Based on MIS reports of random testing conducted in 1994 and 1995, RSPA/OPS lowered the minimum rate from 50 percent to 25 percent for calendar year 1997 (61 FR 60206; November 27, 1996). The minimum rate remained at 25 percent in calendar years 1998 (62 FR 59297; Nov. 3, 1997); 1999 (63 FR 58324; Oct. 30, 1998); 2000 (64 FR 66788; Nov. 30, 1999); 2001 (65 FR 81409; Dec. 26, 2000); and 2002 (67 FR 2611; Jan. 18, 2002).

Using the MIS reports received this year for drug testing conducted in calendar year 2002, RSPA/OPS calculated the positive rate of random testing to be 0.7 percent. Since the positive rate continues to be less than 1.0 percent, RSPA/OPS is announcing that the minimum annual percentage rate for random drug testing is 25 percent of covered employees for the period January 1, 2004, through December 31, 2004.

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

Issued in Washington, DC, on December 4, 2003.

Stacey L. Gerard,
Associate Administrator for Pipeline Safety.
 [FR Doc. 03-30654 Filed 12-10-03; 8:45 am]
 BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2003-15855]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection," because it is redundant to pending rulemaking action by the agency.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Louis Molino, Office of Crashworthiness Standards, NVS-112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366-2264. Fax: (202) 493-2290.

For legal issues: Rebecca MacPherson, Office of Chief Counsel, NCC-20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2992. Fax: (202) 366-3820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
- II. The Petition
- III. Discussion and Analysis

I. Background

On May 12, 2000, we published in the **Federal Register** (65 FR 30680) a final