

pursuant to paragraph (l)(5)(ii) of this section, a nationwide weighted average charge is calculated for each combined HCPCS code group, using as weights the population (census) frequencies for each geographic area as presented in the Milliman USA, Inc., Health Cost Guidelines (see paragraph (a)(3) of this section for Data Sources).

(m) *Charges for prescription drugs not administered during treatment.*

Notwithstanding other provisions of this section, when VA provides or furnishes prescription drugs not administered during treatment, within the scope of care referred to in paragraph (a)(1) of this section, charges billed separately for such prescription drugs will be based on VA costs in accordance with the methodology set forth in § 17.102 of this part.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0606.)

(Authority: 38 U.S.C. 101, 501, 1701, 1705, 1710, 1721, 1722, 1729.)

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[CARB-106-DELa; FRL-7600-5]

### Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of California

**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 in California. Several local air pollution control agencies in California have requested delegation of these Federal standards as they apply to non-major sources. The purpose of this action is to approve those delegation requests and update the listing in the Code of Federal Regulations.

**DATES:** This rule is effective on February 17, 2004, without further notice, unless EPA receives relevant adverse comments by January 20, 2004. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this 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 requests for delegation and other supporting documentation are available for public inspection (docket number A-96-25) at the Region IX office during normal business hours by appointment. Copies are also available at: Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave, NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901, (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 title 40 of the Code of Federal Regulations (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(l) (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. On July 6, 1995, the California Air Resources Board (CARB) submitted a demonstration that

California has adequate authorities and resources to implement and enforce Clean Air Act section 112 programs and rules. This demonstration was approved on May 21, 1996 (61 FR 25397).

##### B. California Delegations

While each local air pollution control agency in California (district) has an approved program for receiving delegation of any CAA section 112 standards as promulgated, California districts currently have delegation only for standards that apply to major sources. As part of EPA's approval of each district's Title V operating permits program, districts received delegation of unchanged federal section 112 standards for Title V sources. This delegation did not extend to sources not covered by the California Title V program submittals. Therefore, California needed to make a separate voluntary request for delegation of any section 112 standards that apply to sources not covered by district Title V programs (area sources).

##### C. Area Source Delegation Requests

On October 6, 2003, CARB submitted on behalf of nine California districts a request for delegation of all Federal section 112 standards that apply to area sources, with the exception of the dry cleaning and chromium electroplating standards for which State or local rules have already been approved (see 61 FR 25397 and 64 FR 12762). Upon the effective date of this delegation, these districts will have authority to implement and enforce existing area source standards unchanged as promulgated by EPA. Additionally, each of these nine districts will receive delegation of any future area source standards or revisions 90 days after promulgation of these standards or revisions, unless the district chooses to decline delegation of a particular future standard by notifying the EPA Region IX office in writing. If no such notification is received, the delegation will go into effect 90 days after promulgation of the standard or revision, without any additional action from the district or EPA.

CARB's October 6, 2003, request was submitted on behalf of the following nine districts in California: Antelope Valley Air Quality Management District, Butte County Air Quality Management District, Kern County Air Pollution Control District, Mendocino County Air Quality Management District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, Ventura County Air Pollution Control

District, and Yolo-Solano Air Quality Management District. Each of these districts asked CARB to make a delegation request on their behalf for CAA section 112 area source standards. The dates of each district's letter to CARB are listed in the table below:

Local agency	Date of letter to CARB
Antelope Valley AQMD .....	Dec. 5, 2002.
Butte County AQMD .....	July 7, 2003.
Kern County APCD .....	July 7, 2003.
Mendocino County AQMD .....	July 14, 2003.
Mojave Desert AQMD .....	Dec. 5, 2002.
Monterey Bay Unified APCD.	July 30, 2002.
San Luis Obispo County APCD.	Nov. 22, 2002.
Ventura County APCD .....	July 7, 2003.
Yolo-Solano AQMD .....	Aug. 11, 2003.

In the future, other districts may choose to make similar delegation requests through CARB. EPA Region IX may grant approvals of such requests by means of a letter. These delegation approvals would then be effective upon the date of the approval letter and EPA Region IX would later publish a **Federal Register** action to update the CFR.

## II. EPA Action

With the exception of the dry cleaning and chromium electroplating standards, EPA is hereby granting delegation of unchanged Federal section 112 area source standards to the following districts in California: Antelope Valley Air Quality Management District, Butte County Air Quality Management District, Kern County Air Pollution Control District, Mendocino County Air Quality Management District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, Ventura County Air Pollution Control District, and Yolo-Solano Air Quality Management District. Upon the effective date of this action, these nine districts will have authority to implement and enforce existing area source standards unchanged as promulgated by EPA. Each of these districts will also receive delegation of any future area source standards or revisions 90 days after promulgation of these standards or revisions, unless the district chooses to decline delegation of a particular future standard by notifying the EPA Region IX office in writing.

Today's action also serves to notify the public that future requests for delegation of CAA section 112 area source standards from other California districts may be approved by letter, and

these delegations will be later codified into the CFR.

## 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). Delegations of authority to implement and enforce unchanged Federal standards under section 112(l) of the Clean Air Act do not create any new requirements but simply allow the State to administer requirements that have been or will be separately promulgated. 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 (Public Law 104-4). The State voluntarily requested this delegation under section 112(l) for the purpose of implementing and enforcing the air toxics program with respect to sources not covered by district Title V operating permit programs. The delegation imposes no new Federal requirements. Since the State was not required by law to seek delegation, this Federal action does not impose a mandate on the State.

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 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. We 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 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 17, 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: December 2, 2003.

**Matt Haber,**

*Acting 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 adding paragraph (a)(5)(i) and revising paragraph (a)(5)(ii) introductory text to read as follows:

##### **§ 63.99 Delegated Federal authorities.**

- (a) \* \* \*  
(5) \* \* \*

(i)(A) California major sources. Except as described in paragraph (ii) below, each local air pollution control agency in California has delegation for national emission standards promulgated in this part as they apply to major sources.

(B) California area sources. Except as described in paragraph (ii), the local agencies listed below also have delegation for national emission standards promulgated in this part as they apply to area sources:

- (1) Antelope Valley Air Quality Management District
- (2) Butte County Air Quality Management District
- (3) Kern County Air Pollution Control District
- (4) Mendocino County Air Quality Management District
- (5) Mojave Desert Air Quality Management District
- (6) Monterey Bay Unified Air Pollution Control District
- (7) San Luis Obispo County Air Pollution Control District
- (8) Ventura County Air Pollution Control District
- (9) Yolo-Solano Air Quality Management District

(ii) California approvals other than straight delegation.

Affected sources must comply with the *California Regulatory Requirements Applicable to the Air Toxics Program*, January 5, 1999 (incorporated by

reference as specified in § 63.14), as described as follows:

\* \* \* \* \*

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#### **FEDERAL COMMUNICATIONS COMMISSION**

##### **47 CFR Part 73**

[DA 03-3871, MB Docket No. 03-132, RM-10709]

#### **Radio Broadcasting Services; Oak Grove, KY, Springfield, TN, and Trenton, KY**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of Saga Communications of Tuckessee, LLC, licensee of Station WJOI-FM, reallots Channel 232A from Springfield, Tennessee to Oak Grove, Kentucky, as the community's first local aural transmission service, and modifies Station WJOI-FM license accordingly. Channel 232A can be allotted to Oak Grove, in compliance with the minimum distance separation requirement of the Commission's rules, provided there is a site restriction 9.3 kilometers (5.8 miles) east of the community. The reference coordinates for Channel 232A at Oak Grove are 36-38-23 NL and 87-20-39 WL. This document also dismisses a counterproposal filed by Saga Communications of Tuckessee, LLC that requested the reallocation of Station WJOI-FM, Channel 232A from Springfield, Tennessee to Trenton, Kentucky in lieu of Oak Grove, Kentucky.

**DATES:** Effective January 23, 2004.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, MB Docket No. 03-132 adopted December 3, 2003, and released December 8, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex

International Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

#### **List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

#### **PART 73—RADIO BROADCAST SERVICES**

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

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

##### **§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Oak Grove, Channel 232A.

■ 3. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Springfield, Channel 232A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

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#### **FEDERAL COMMUNICATIONS COMMISSION**

##### **47 CFR Part 73**

[DA 03-3554; MM Docket No. 02-49, RM-10220]

#### **Radio Broadcasting Services; Westborough and Worcester, MA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Entercom Boston License, L.L.C., reallots Channel 297B from Worcester to Westborough, Massachusetts, as the community's first local aural transmission service and modifies Station WAAF(FM)'s license accordingly. *See* 67 FR 14664, March 27, 2002. Although Station WAAF(FM) is a pre-1964 and pre-1989 grandfathered short-spaced station, it may change its community of license at its current license site because no new short-spacings would be created. The coordinates for Channel 297B at Westborough at Station WAAF(FM)'s current license site are 42-18-11 North Latitude and 71-53-52 West Longitude. While Station WAAF(FM) has an outstanding construction permit at Worcester, this change of community proposal must be implemented at its