

(i) Maintains a centralized recordkeeping system. (See paragraph (d)(1) of this section.);

(ii) Has administrative capability for the branch campus (or branch campuses) within the same State; and

(iii) Centralizes its Certifying Official function at the main campus.

(3) Educational institutions with multi-state campuses when an educational institution wants to centralize its Certifying Official function into one or more locations if:

(i) The educational institution submits all required reports and certifications that §§ 21.4203, 21.4204, 21.5810, 21.5812, 21.7152, and 21.7652 require via electronic submission through VA's internet-based education certification application;

(ii) The educational institution designates an employee, at each teaching location of the educational institution that does not have a Certifying Official present, to serve as a point-of-contact for veterans, servicemembers, reservists, or other eligible persons; the Certifying Official(s); the State approving agency of jurisdiction; and VA. The designated employee must have access (other than to transmit certifications) to VA's internet-based education certification application to provide certification information to veterans, servicemembers, reservists, or other eligible persons, State approving agency representatives, and VA representatives;

(iii) Each Certifying Official uses the VA facility code for the location that has administrative capability for the teaching location where the student is training when submitting required reports and certifications to VA; and

(iv) Each Certifying Official has full access to the administrative records and accounts that § 21.4209 requires for each student attending the teaching location(s) for which the Certifying Official has been designated responsibility. These records may be originals, certified copies, or in an electronically formatted recordkeeping system.

(Authority: 38 U.S.C. 3672)

[FR Doc. 06-1652 Filed 2-21-06; 8:45 am]

BILLING CODE 8320-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2005-TX-0003; FRL-8034-8]

#### Approval and Promulgation of State Implementation Plans; Texas; Revision to the Rate of Progress Plan for the Beaumont/Port Arthur Ozone Nonattainment Area

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve revisions to the Texas State Implementation Plan (SIP) Post-1996 Rate of Progress (ROP) Plan, the 1990 Base Year Inventory, and the Motor Vehicle Emissions Budgets (MVEB) established by the ROP Plan, for the Beaumont/Port Arthur (BPA) ozone nonattainment area submitted November 16, 2004. The intended effect of this action is to approve revisions submitted by the State of Texas to satisfy the reasonable further progress requirements for 1-hour ozone nonattainment areas classified as serious and demonstrate further progress in reducing ozone precursors. We are approving these revisions in accordance with the requirements of the Federal Clean Air Act (the Act).

**DATES:** Written comments should be received on or before March 24, 2006.

**ADDRESSES:** Comments may be mailed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the Rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Carl Young, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone 214-665-6645, [young.carl@epa.gov](mailto:young.carl@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant adverse comments, the

direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: February 6, 2006.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. 06-1564 Filed 2-21-06; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 61

[EPA-R10-OAR-2006-0001; FRL-8035-6]

#### Partial Approval of the Clean Air Act, Section 112(l), Delegation of Authority to the Washington State Department of Health

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to partially approve a delegation request submitted by the Washington State Department of Health (WDOH). WDOH has requested delegation authority to implement and enforce the National Emission Standards for Hazardous Air Pollutants for radionuclide air emission. This action is being taken under the Clean Air Act (CAA or the Act).

**DATES:** Written comments must be received on or before March 24, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R10-OAR-2006-0001, by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. E-Mail: [zhen.davis@epa.gov](mailto:zhen.davis@epa.gov).

C. Mail: Davis Zhen, Federal and Delegated Air Programs Unit, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Stop: AWT-107, Seattle, WA 98101.

D. Hand Delivery: U.S. Environmental Protection Agency Region 10, Attn: Davis Zhen (AWT-107), 1200 Sixth

Avenue, Seattle, Washington 98101, 9th Floor. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R10-OAR-2006-0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Office of Air, Waste and Toxics, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the State submittal are also available at the Washington State Department of Health, 111 Israel Road, Tumwater, Washington 98501.

**FOR FURTHER INFORMATION CONTACT:** Davis Zhen, (206) 553-7660, or by e-mail at [zhen.davis@epa.gov](mailto:zhen.davis@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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#### I. Background and Purpose

##### A. What Is the NESHAPs Program?

Hazardous air pollutants are defined in the Act as pollutants that threaten human health through inhalation or other type of exposure. These pollutants are commonly referred to as "air toxics" or "hazardous air pollutants" and are listed in section 112(b)(1) of the Act. National Emission Standards for Hazardous Air Pollutants or NESHAPs control emissions of hazardous air pollutants from specific source categories and implement the requirements of section 112 of the Act. These standards are found in 40 CFR parts 61 and 63.

Section 112(l) of the Act authorizes EPA to approve State and local air toxics programs or rules such that these agencies can accept full or partial delegation of authority for implementing and enforcing the NESHAPs. Typically, a State or local agency requests delegation based on Federal rules adopted unchanged into State or local rules.

##### B. What Are the Requirements for This Partial Approval and Delegation?

Requirements for partial approval and delegation of NESHAPs adopted unchanged into State or local law are set forth in 40 CFR 63.91(d). This type of delegation is referred to as "straight delegation." There are two basic requirements for straight delegation. First, the requesting agency must show it has adequate authority and resources to implement and enforce the NESHAPs. This criterion must be met for straight delegation as well as for all other types of delegation under section 112(l). Second, in the case of straight delegation, the requesting agency must show that it has adopted the Federal NESHAPs for which it is requesting delegation unchanged into State or local law.

There are two ways a State or local agency can show it has adequate authority and resources to implement and enforce the requested NESHAPs. First, the requesting agency can show that it has received from EPA final or interim approval of its operating permit program under title V of the Clean Air Act. This is because the authority and enforcement requirements for approval of a title V program are equivalent to the requirements for NESHAPs delegation found in 40 CFR 63.91(d). Moreover, EPA approval of a title V program already confers the responsibility to implement and enforce all requirements applicable to major sources and certain other sources of section 112.

A requesting agency that does not have an EPA-approved title V program can request delegation by showing it has the authority necessary to implement and enforce the NESHAPs, it has the resources and ability to carry out this responsibility, and it is capable of assuring expeditious compliance by sources, all as provided in 40 CFR 63.91(d)(3)(i) through (v). Once a requesting agency demonstrates that it meets the approval criteria, it need only reference that demonstration and reaffirm it still meets the criteria in future requests for updated delegation of section 112 standards.

With respect to radionuclide emissions from licensees of the Nuclear Regulatory Commission or licensees of Nuclear Regulatory Commission Agreement States which are subject to 40 CFR part 61, subparts I, T, or W, a State may request that EPA approve delegation of implementation and enforcement of the Federal standard pursuant to 40 CFR 63.91, but no changes or modifications in the form or content of the standard will be approved pursuant to 40 CFR 63.92, 63.93, 63.94,

or 63.97. See 40 CFR 63.90(f). In other words, the only approval option for these NESHAPs is straight delegation.

EPA is authorized to grant, with the State's consent, partial approval to a State request for delegation where the State's legal authorities substantially meet the requirements of 40 CFR 63.91(d)(3)(i) but are not fully approvable. Section 63.91(d)(3)(i) requires the State to show it has enforcement authorities meeting the requirements of 40 CFR 70.11 (the enforcement authorities of the title V program), the authority to request information from regulated sources regarding their compliance status, and the authority to inspect sources and any records required to determine a source's compliance status. In addition, if a State delegates authorities to a local agency and the local agency does not have authorities that meet the requirements of 40 CFR 70.11, the State must retain enforcement authority. In the case of a partial approval, EPA will continue to implement and enforce those authorities under 40 CFR 63.91(d)(3)(i) that are not approved.

#### *C. What Is the History of This Partial Approval and Delegation?*

EPA granted interim delegation of 40 CFR part 61, subparts H and I, to WDOH on August 2, 1995. See 60 FR 39263. That interim delegation expired by its terms on November 9, 1996. Subsequent to that delegation, EPA revised 40 CFR part 61, subparts H and I on September 9, 2002. See 67 FR 57166 and 57167, respectively. In addition, EPA raised a concern regarding whether Washington's Regulatory Reform Act of 1995, RCW Ch. 43.05, conflicted with requirements for delegation or approval of Clean Air Act programs to WDOH. WDOH revised its regulations to incorporate by reference the updated NESHAP standards and obtained a determination that RCW Ch. 43.05 does not apply to the Federally-delegated Radionuclide NESHAPs.

In a letter dated October 6, 2004, WDOH submitted a new request for delegation of subparts H and I, as well as for 40 CFR part 61, subparts B, K, Q, R, T, and W. EPA considered WDOH's October 2004 delegation request, but determined that WDOH had not adopted into State law the general provisions for part 61 in 40 CFR part 61, subpart A, and the construction/modification provisions of Subpart H, which are essential for full implementation and enforcement of the Radionuclide NESHAPs. EPA therefore did not proceed with the October 2004 delegation request.

Since then, WDOH has revised its regulations to fully incorporate by reference all of the Radionuclide NESHAPs, including 40 CFR part 61, subpart A. On June 6, 2005, WDOH submitted a new request for delegation of authority to implement and enforce 40 CFR part 61, subparts A, B, H, I, K, Q, R, T, and W, as in effect on July 1, 2004. WDOH supplemented this request with a letter from the Washington Attorney General's Office dated December 14, 2005 regarding WDOH's authority to implement and enforce the radionuclides NESHAP. In addition, WDOH clarified on December 20, 2005 that it would consent to partial delegation in the event EPA determined that WDOH did not have all the enforcement authorities required by 40 CFR 63.91(d)(3)(i) for full approval.

#### *D. How Has WDOH Satisfied the Requirements for Partial Approval and Delegation of the Radionuclide NESHAPs?*

Although WDOH works with the Washington Department of Ecology (Ecology) in issuing Title V permits to radionuclide sources, Ecology, not WDOH is the EPA-approved Title V permitting program for such sources. Therefore, EPA must determine whether WDOH meets the criteria in 40 CFR 63.91(d)(3)(i) through (v).

Based on WDOH's June 6, 2005 request for delegation and supporting documentation, EPA has determined that WDOH meets the criteria for partial approval and straight delegation of the Radionuclide NESHAP. Specifically, WDOH has submitted a letter from the Washington Attorney General's Office dated December 14, 2005 stating that WDOH has the enforcement, inspection, and information gathering authority required by 40 CFR 63.91(d)(3)(i) with one exception. The exception is that, although WDOH has the authority required by 40 CFR 70.11(a)(3)(ii) and 63.91(d)(3)(i) to recover criminal penalties for knowing violations of the Radionuclide NESHAPs, WDOH does not currently have express authority to recover criminal fines for knowingly making a false material statement or knowingly rendering inadequate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii) and 63.91(d)(3)(i). The letter states that WDOH intends to include express prohibitions against these actions in the near future.

WDOH has also submitted copies of State statutes, regulations, and requirements that grant WDOH authority to implement and enforce the Radionuclide NESHAPs.

In addition, WDOH has submitted a demonstration that it has adequate resources to implement and enforce all aspects of the Radionuclide NESHAPs. This is especially important with respect to the Radionuclide NESHAPs. EPA and other Federal agencies have traditionally played the primary role in regulating radionuclide air emissions, both because radiation is not a "traditional" hazardous air pollutant and because very few State and local agencies have developed the technical expertise to independently implement the Radionuclide NESHAPs. WDOH, however, has a long history of regulating large sources of radionuclide air emissions in the State of Washington, in particular, the Department of Energy's Hanford site near Richland, Washington. The submittal also includes a plan for assuring expeditious implementation and enforcement of the Radionuclide NESHAPs.

Finally, WDOH has adopted without change or modification all of the provisions of the Radionuclide NESHAPs, 40 CFR part 61, subparts A, B, H, I, K, Q, R, T, and W, as in effect on July 1, 2004. WDOH does, as a matter of State law, have additional regulations and requirements that sources of radionuclide air emissions must meet. As discussed below, however, those additional authorities and requirements are not part of this partial delegation.

## **II. EPA Action**

#### *A. What Authorities Are Included in This Partial Approval and Delegation?*

Except as provided in Section II.B., EPA is delegating to WDOH authority to implement and enforce 40 CFR part 61, subparts A, B, H, I, K, Q, R, T, and W, as in effect on July 1, 2004. NESHAPs that are promulgated or revised substantively after July 1, 2004 are not delegated to WDOH. These remain the responsibility of EPA.

Included as part of the delegation is the authority to approve:

1. "Minor changes to monitoring," including the use of the specified monitoring requirements and procedures with minor changes in methodology as described in 40 CFR 61.14(g)(1)(i);
2. "Intermediate changes to monitoring";
3. "Minor changes to recordkeeping/reporting";
4. "Minor changes in test methods," including the use of a reference method with minor changes in methodology as described in 40 CFR 61.13(h)(1)(i);
5. Waiver of the requirement for emission testing because the owner or operator of a source has demonstrated

by other means to WDOH's satisfaction that the source is in compliance with the standard as described in 40 CFR 61.13(h)(1)(iii).

For purposes of this paragraph, the terms in quotations have the meaning assigned to them in 40 CFR 63.90.

#### *B. What Authorities Are Excluded From This Partial Approval and Delegation?*

EPA is not delegating authorities under 40 CFR part 61 that specifically indicate they cannot be delegated, that require rulemaking to implement, that affect the stringency of the standard, or

where national oversight is the only way to ensure national consistency. Table 1 below identifies the specific authorities within 40 CFR part 61, subparts A, B, H, I, K, Q, R, T, and W that EPA is specifically excluding from this delegation.

TABLE 1.—PART 61 AUTHORITIES EXCLUDED FROM PARTIAL APPROVAL AND DELEGATION

Section	Authorities
61.04(b) .....	Waiver of recordkeeping.
61.12(d)(1) .....	Approval of alternative means of emission limitation.
61.13(h)(1)(ii) .....	Approval of alternatives to test methods (except as provided in 40 CFR 61.13(h)(1)(i)).
61.14(g)(1)(ii) .....	Approval of alternatives to monitoring that do not qualify as "Minor changes to monitoring," "Intermediate changes to monitoring," or "Minor changes to recordkeeping/reporting" For purposes of the previous sentence, the terms in quotes are defined in 40 CFR 63.90.
61.16 .....	Availability of information.
61.23(b) .....	Subpart B—Radon Emissions from Underground Uranium Mines Alternative compliance demonstration to COMPLY—R (requires EPA Headquarters approval).
61.93(b)(2)(iii), (c)(2)(iii) .....	Subpart H—Emissions of Radionuclides Other than Radon from DOE Facilities (alternatives to test methods).
61.107(b)(2)(iii), (d)(2)(iii) .....	Subpart I—Radionuclide Emissions from Federal Facilities Other than NRC licensees and Not Covered in Subpart H (alternatives to test methods).
61.125(a) .....	Subpart K—Radionuclide Emissions from elemental Phosphorus Plants (alternatives to test methods).
61.206(c), (d), and (e) .....	Subpart R—Emission from Phosphogypsum Stacks (requires Approval from Assistant Administrator of EPA Office of Air and Radiation).

In addition, because WDOH does not currently have express authority to recover criminal fines for knowingly making a false material statement, representation, or certificate in any form, notice or report or knowingly rendering inadequate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii) and 40 CFR 63.91(d)(3)(i), EPA will continue to retain primary authority to implement and enforce these authorities. This is the basis for partial rather than full approval.

### III. Implications

#### *A. How Will This Partial Approval and Delegation Affect the Regulated Community?*

Once a State or local agency has been delegated the authority to implement and enforce a NESHAP, they become the primary point of contact with respect to that NESHAP. Generally speaking, the transfer of authority from EPA to WDOH in this delegation changes EPA's role from primary implementer and enforcer to overseer.

As a result, if this partial approval and delegation is finalized, sources in Washington to the delegated Radionuclide NESHAPs should direct questions and compliance issues to WDOH. For authorities that are NOT delegated (those noted in Section II.B.

above), affected sources should continue to work with EPA as their primary contact and submit materials directly to EPA. In such cases, affected sources should copy WDOH on all submittals, questions, and requests.

EPA will continue to have primary responsibility to implement and enforce Federal regulations that do not have current State or local agency delegations.

#### *B. Where Will the Regulated Community Send Notifications and Reports?*

If this partial approval and delegation is finalized, sources subject to the delegated NESHAPs will be required to send required notifications, reports and requests to WDOH for WDOH's action and to provide copies to EPA. For authorities that are excluded from this delegation, sources should continue to send required notifications, reports, and requests to EPA and to provide copies to WDOH.

#### *C. What Are WDOH's Reporting Obligations?*

WDOH must maintain a record of all approved alternatives to all monitoring, testing, recordkeeping, and reporting requirements and provide this list of alternatives to EPA at least semi-annually, or at a more frequent basis if requested by EPA. EPA may audit the

WDOH-approved alternatives and disapprove any that it determines are inappropriate, after discussion with WDOH. If changes are disapproved, WDOH must notify the source that it must revert to the original applicable monitoring, testing, recordkeeping, and/or reporting requirements (either those requirements of the original section 112 requirements, the alternative requirements approved under this subpart, or the previously approved site-specific alternative requirements). Also, in cases where the source does not maintain the conditions which prompted the approval of the alternatives to the monitoring testing, recordkeeping, and/or reporting requirements, WDOH must require the source to revert to the original monitoring, testing, recordkeeping, and reporting requirements, or more stringent requirements, if justified.

#### *D. What Is the Effect of Other State Laws Regulating Radionuclide Air Emissions?*

This partial approval and delegation delegates to WDOH authority to implement and enforce 40 CFR part 61, subparts A, B, H, I, K, Q, R, T, and W, as in effect on July 1, 2004. The partial approval and delegation does not extend to any additional State standards, including other State standards regulating radionuclide air emissions.

However, if both a State or local regulation and a Federal regulation apply to the same source, both must be complied with, regardless of whether the one is more stringent than the other, pursuant to the requirements of section 116 of the Clean Air Act.

*E. How Will WDOH Receive Partial Approval and Delegation of Newly Promulgated and Revised Radionuclide NESHAPs?*

WDOH may receive partial approval and delegation of newly promulgated or revised Radionuclide NESHAPs by the following streamlined process: (1) WDOH will send a letter to EPA requesting delegation for such new or revised NESHAPs which WDOH has adopted by reference into Washington regulations; (2) EPA will send a letter of response back to WDOH granting partial approval of the delegation request (or explaining why EPA cannot grant the request), and publish only EPA's approval in the **Federal Register**; (3) WDOH does not need to send a response back to EPA.

*F. How Frequently Should WDOH Update Its Partial Approval and Delegations?*

WDOH is not obligated to request or receive future delegations. However, EPA encourages WDOH, on an annual basis, to revise its rules to incorporate by reference newly promulgated or revised Radionuclide NESHAPs and request updated delegation. Preferably, WDOH should adopt Federal regulations effective July 1, of each year; this corresponds with the publication date of the Code of Federal Regulations (CFR).

*G. How Will This Partial Approval and Delegation Affect Indian Country?*

This partial approval and delegation to WDOH to implement and enforce the Radionuclide NESHAPs does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. "Indian country" is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA

treats as reservations trust lands validly set aside for the use of a Tribe, even if the trust lands have not been formally designated as a reservation. Consistent with previous Federal program approvals or delegations, EPA will continue to implement the NESHAPs in Indian country, because WDOH has not adequately demonstrated its authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

**IV. Summary of Proposed Action**

EPA proposes to grant partial approval to WDOH's request for program approval and delegation of authority to implement and enforce the Radionuclide NESHAPs. Pursuant to the authority of section 112(l) of the Act, this partial approval is based on EPA's finding that State law, regulations, and agency resources meet the requirements for partial program approval and delegation of authority specified in 40 CFR 63.91 and applicable EPA guidance.

The purpose of this partial approval and delegation is to acknowledge WDOH's ability to implement a Radionuclide NESHAPs program and to transfer primary implementation and enforcement responsibility for this program from EPA to WDOH. Although EPA will look to WDOH as the lead for implementing delegated Radionuclide NESHAPs for its sources, EPA retains authority under Section 113 of the Act to enforce any applicable emission standard or requirement, if needed. With partial program approval, WDOH may request newly promulgated or revised Radionuclide NESHAPs by way of a streamlined process.

**V. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements

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

The 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). Consistent with EPA policy, however, EPA nonetheless initiated consultation with representatives of tribal governments in the process of developing this proposal to permit them to have meaningful and timely input into its development. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

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 program approval and 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 Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Radionuclides, Reporting, and recordkeeping requirements.

Dated: January 27, 2006.

Julie M. Hagensen,

Acting Regional Administrator, Region 10.

[FR Doc. E6-2472 Filed 2-21-06; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 80

[EPA-HQ-OAR-2005-0170; FRL-8035-3]

#### Regulation of Fuels and Fuel Additives: Removal of Reformulated Gasoline Oxygen Content Requirement for California Gasoline and Revision of Commingling Prohibition To Address Non-Oxygenated Reformulated Gasoline in California

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In the Energy Policy Act of 2005 (Energy Act), Congress removed the oxygen content requirement for reformulated gasoline (RFG) in Section 211(k) of the Clean Air Act (CAA). The Energy Act specified that this change was to be immediately effective in California, and that it would be effective 270 days after enactment for the rest of the country. This proposed rule would amend the fuels regulations to remove the oxygen content requirement for RFG for gasoline produced and sold for use in California, thereby making the fuels regulations consistent with amended Section 211(k). In addition, for gasoline produced and sold for use in California, this rule would extend the current prohibition against combining VOC-controlled RFG blended with ethanol with VOC-controlled RFG blended with any other type of oxygenate from January 1 through September 15, to also prohibit combining VOC-controlled RFG blended with ethanol with non-oxygenated VOC-controlled RFG during that time period, except in limited circumstances authorized by the Act.

The removal of the RFG oxygen content requirement and revision of the commingling prohibition for gasoline produced and sold for use in all areas of the country is being published in a separate rulemaking that would have a

later effective date than this California specific rulemaking.

In the "Rules and Regulations" section of the **Federal Register**, we are issuing these amendments to the RFG regulations as a direct final rule without prior proposal because we view them as noncontroversial amendments and anticipate no adverse comment. We have explained our reasons for these amendments in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

**DATES:** *Comments:* Comments must be received on or before March 24, 2006. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before March 24, 2006.

*Hearings:* If EPA receives a request from a person wishing to speak at a public hearing by March 9, 2006, a public hearing will be held on March 24, 2006. If a public hearing is requested, it will be held at a time and location to be announced in a subsequent **Federal Register** notice. To request to speak at a public hearing, send a request to the contact in **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2005-0170 by one of the following methods:

1. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. E-mail: Group A-AND-R-DOCKET@epa.gov. Attention Docket ID No. OAR-2005-0170.

4. Mail: Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6406J, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.

5. Hand Delivery: EPA Docket Center, Environmental Protection Agency, 1301 Constitution Avenue, NW, Room B102, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal

hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2005-0170. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

We are only taking comment on issues related to the removal of the oxygen requirement for RFG produced and sold for use in California, and the provisions regarding the combining of ethanol blended California RFG with non-oxygenated California RFG and provisions for retailers regarding the combining of ethanol blended California RFG with non-ethanol blended California RFG. Comments on any other issues or provisions in the RFG regulations are beyond the scope of this rulemaking.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material,