



BILLING CODE: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-R08-OAR-2014-0272; FRL-9917-49-Region 9]

Automatic Delegation of Authority to the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming to Implement and Enforce New Source Performance Standards.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action informs the public that on February 27, 2014, the EPA authorized automatic delegation to implement and enforce Clean Air Act (CAA) New Source Performance Standards (NSPS) to the states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming (hereafter Region 8 states). Also in this action, EPA is taking direct final action to delete the delegation status table of NSPS for Region 8 states in the Code of Federal Regulations (CFR) and replace it with a webpage address reflecting current delegation status of Region 8 states.

DATES: This rule is effective on **[Insert date 60 days after publication in the Federal Register]** without further notice, unless EPA receives adverse comment by **[Insert date 30 days after publication in the Federal Register]**. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2014-0272, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- E-mail: fulton.abby@epa.gov.
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket EPA-R08-OAR-2014-0272. 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 instructions on submitting comments, go to Section I.

General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

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, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Abby Fulton, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. (303) 312-6563, fulton.abby@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iii) The initials NSPS mean or refer to New Source Performance Standards.
- (iv) The initials CBI mean or refer to Confidential Business Information.
- (v) The initials CFR mean or refer to Code of Federal Regulations.
- (vi) The initials IBR mean or refer to Incorporate by Reference.

I. General Information

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

1. Submitting CBI. Do not submit this information to EPA through <http://regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.
2. Tips for Preparing Your Comments. When submitting comments, remember to:
 - a. Identify the rulemaking by docket number and other identifying information (subject

heading, Federal Register date and page number).

- b. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

II. Delegation of Authority

The CAA section 111(c) authorizes the EPA to delegate authority to any state agency which submits adequate regulatory procedures for implementation and enforcement of the NSPS program. The NSPS are codified at 40 CFR part 60. Delegation confers primary responsibility for implementation and enforcement to the respective state agency; however, the EPA also retains the concurrent authority to enforce the standards.

Section 111(c) and an approved part 70 operating permits (title V) program authorizes states to receive automatic delegation of section 111 standards if the federal standards are incorporated by reference (IBR). The title V program approval is a demonstration that the state

has the ability to implement and enforce existing section 111 standards and a commitment to implement and enforce future standards to assure the timely issuance or revision of part 70 permits. Once a state IBR's NSPS, the state then has delegation automatically to implement and enforce those standards for affected sources when the NSPS are incorporated unchanged into state rules. The EPA has determined that Region 8 state programs contain adequate and effective procedures for implementation and enforcement of those federal standards. On February 27, 2014, the EPA provided notice of automatic delegation to Region 8 state agencies to review and enforce all future NSPS standards that are incorporated into state rules. Letters (including enclosures) to each Region 8 state can be found at <http://www.regulations.gov>.

III. CFR Update

This action also replaces the EPA Region 8 delegation table in 40 CFR 60.4(c) with a web address to inform the public of current NSPS delegations to Region 8 states. The table is being deleted because it no longer contains accurate information regarding NSPS delegations. A current delegation summary of NSPS delegations to Region 8 states is posted under the "Delegations of Authorities" link at: <http://www2.epa.gov/region8/air-program>. Future delegation updates will be provided at this link on the EPA Region 8 website. The website will be updated on a quarterly basis and will replace the Federal Register Notice notifying the public of current NSPS delegation status of Region 8 states.

IV. Final Action

This action informs the public of NSPS delegations made to Region 8 states and replaces the delegation table in 40 CFR 60.4(c) with a web address directing the public to current EPA Region 8 NSPS delegations.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments since the action simply replaces a table in the CFR with a web address in order to provide the public with more accurate information regarding NSPS delegations. 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 revision if adverse comments are filed. This rule will be effective [Insert date 60 days after publication in the Federal Register] without further notice unless the Agency receives adverse comments by [Insert date 30 days after publication in the Federal Register.] If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA 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 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.

V. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, Oct. 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, Nov. 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, Aug. 10, 1999). This action merely delegates authority to implement and enforce Federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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 delegates Federal standards.

In delegating authority to states, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. In this context, voluntary consensus standards (VCS) are not a requirement for a state to accept delegation authority. 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. section 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. section 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 **insert date 60 days from date of publication of this document in the Federal Register**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed

rulemaking. 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 60

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Ammonium sulfate plants, Batteries, Beverages, Carbon monoxide, Cement industry, Chemicals, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Heaters, Household appliances, Incorporation by reference, Insulation, Intergovernmental relations, Iron, Labeling, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Polymers, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Sulfuric acid plants, Tires, Urethane, Vinyl, Volatile organic compounds, Waste treatment and disposal, Zinc.

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

Dated: September 18, 2014.

Shaun L. McGrath
Regional Administrator
Region 8

40 CFR part 60 is amended as follows:

PART 60 – STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

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

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

Subpart A – General Provisions

2. Section 60.4 is amended by revising paragraph (c) to read as follows:

§ 60.4 Address.

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(c) The delegation status table for New Source Performance Standards for Region VIII can be found online at <http://www2.epa.gov/region8/air-program>.

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