



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[EPA-R06-OAR-2008-0063; FRL-9972-26-Region 6]

National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Oklahoma Department of Environmental Quality (ODEQ) has submitted updated regulations for receiving delegation and approval of its program for the implementation and enforcement of certain National Emission Standards for Hazardous Air Pollutants (NESHAP) for all sources (both part 70 and non-part 70 sources), as provided for under previously approved delegation mechanisms. The updated state regulations incorporate by reference certain NESHAP promulgated by the EPA at parts 61 and 63, as they existed through September 1, 2016. The EPA is proposing to approve ODEQ's requested delegation update.

DATES: Written comments on this proposed rule must be received on or before **INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2008-0063, at <http://www.regulations.gov> or via email to barrett.richard@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed

from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Mr. Rick Barrett, 214-665-7227, barrett.richard@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Rick Barrett (6MM-AP), (214) 665-7227; email: barrett.richard@epa.gov. To inspect the hard copy materials, please schedule an appointment with Mr. Rick Barrett or Mr. Bill Deese at (214) 665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

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I. What does this action do?

EPA is proposing to update its approval of Oklahoma's program for the implementation and enforcement of certain NESHAP. If finalized, the delegation will provide ODEQ with the primary responsibility to implement and enforce the delegated standards.

II. What is the authority for delegation?

Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorize the EPA to delegate authority for the implementation and enforcement of emission standards for hazardous air pollutants to a State or local agency that satisfies the statutory and regulatory requirements in subpart E. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63.

III. What criteria must Oklahoma's program meet to be approved?

Section 112(l)(5) of the CAA requires the EPA to disapprove any program submitted by a State for the delegation of NESHAP standards if the EPA determines that:

(A) the authorities contained in the program are not adequate to assure compliance by the sources within the State with respect to each applicable standard, regulation, or requirement established under section 112;

(B) adequate authority does not exist, or adequate resources are not available, to implement the program;

(C) the schedule for implementing the program and assuring compliance by affected sources is not sufficiently expeditious; or

(D) the program is otherwise not in compliance with the guidance issued by the EPA under section 112(l)(2) or is not likely to satisfy, in whole or in part, the objectives of the CAA.

In carrying out its responsibilities under section 112(l), the EPA promulgated regulations at 40 CFR part 63, subpart E setting forth criteria for the approval of submitted programs. For example, in order to obtain approval of a program to implement and enforce Federal section 112 rules as promulgated without changes (straight delegation) for part 70 sources, a State must demonstrate that it meets the criteria of 40 CFR 63.91(d). 40 CFR 63.91(d)(3) provides that

interim or final Title V program approval will satisfy the criteria of 40 CFR 63.91(d).¹ The NESHAP delegation for Oklahoma, as it applies to both part 70 and non-part 70 sources, was most recently approved on December 13, 2005 (70 FR 73595).

IV. How did ODEQ meet the NESHAP program approval criteria?

As to the NESHAP standards in 40 CFR parts 61 and 63, as part of its Title V submission ODEQ stated that it intended to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 into its regulations. This commitment applied to both existing and future standards as they applied to part 70 sources. EPA's final interim approval of Oklahoma's Title V operating permits program delegated the authority to implement certain NESHAP, effective March 6, 1996 (61 FR 4220, February 5, 1996). On December 5, 2001, EPA granted final full approval of the State's operating permits program (66 FR 63170). These interim and final Title V program approvals satisfy the up-front approval criteria of 40 CFR 63.91(d). 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 for delegation of the section 112 standards. ODEQ has affirmed that it still meets the up-front approval criteria. With respect to non-part 70 sources, the EPA has previously approved delegation of NESHAP authorities to ODEQ after finding adequate

¹ Some NESHAP standards do not require a source to obtain a title V permit (e.g., certain area sources that are exempt from the requirement to obtain a title V permit). For these non-title V sources, the EPA believes that the State must assure the EPA that it can implement and enforce the NESHAP for such sources. *See* 65 FR 55810, 55813 (Sept. 14, 2000). EPA previously approved Oklahoma's program to implement and enforce the NESHAP as they apply to non-part 70 sources. *See* 66 FR 1584 (Dec. 5, 2001).

authorities to implement and enforce the NESHAP for such sources. *See* 66 FR 1584 (January 9, 2001).

V. What is being delegated?

By letter dated June 25, 2018, the EPA received a request from ODEQ to update its existing NESHAP delegation.² With certain exceptions noted in section VI below, Oklahoma's request included NESHAP in 40 CFR part 61 and 40 CFR part 63. ODEQ's request included newly incorporated NESHAP promulgated by the EPA and amendments to existing standards currently delegated, as they existed through September 1, 2016. This proposed action is being taken in response to ODEQ's request noted above.

VI. What is not being delegated?

All authorities not affirmatively and expressly proposed for delegation by this action will not be delegated. These include the following part 61 and 63 authorities listed below:

- 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);

² ODEQ's June 25, 2018 letter rescinds its previous three letters, dated January 11, 2008, August 23, 2012, and October 16, 2017, requesting EPA approval to update Oklahoma's NESHAP delegation. As such, the EPA's proposed rulemaking (80 FR 9678, February 24, 2015) associated with ODEQ's January 11, 2008 letter is hereby withdrawn.

- 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);
- 40 CFR part 61, subpart W (National Emission Standards for Radon Emissions from Operating Mill Tailings); and
- 40 CFR part 63, subpart J (National Emission Standards for Polyvinyl Chloride and Copolymers Production).

In addition, the EPA regulations provide that we 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. Also, some part 61 and part 63 standards have certain provisions that cannot be delegated to the States. Furthermore, no authorities are being proposed for delegation that require rulemaking in the Federal Register to implement, or where Federal oversight is the only way to ensure national consistency in the application of the

standards or requirements of CAA section 112. Finally, this action does not propose delegation of any authority under section 112(r), the accidental release program.

If finalized, all questions concerning implementation and enforcement of the excluded standards in the State of Oklahoma should be directed to the EPA Region 6 Office.

EPA is proposing a determination that the NESHAP program submitted by Oklahoma meets the applicable requirements of CAA section 112(l)(5) and 40 CFR part 63, subpart E. This delegation to ODEQ to implement and enforce certain NESHAP does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. Oklahoma is not seeking delegation for such areas, and neither the EPA nor ODEQ is aware of any existing facilities in Indian country subject to the NESHAP being delegated. ODEQ may submit a request to expand this program to non-reservation areas of Indian country in the future, at which time the EPA would evaluate the request through the appropriate process.

VII. How will statutory and regulatory interpretations be made?

If this NESHAP delegation is finalized, ODEQ will obtain concurrence from the EPA on any matter involving the interpretation of section 112 of the CAA or 40 CFR parts 61 and 63 to the extent that implementation or enforcement of these provisions have not been covered by prior EPA determinations or guidance.

VIII. What authority does the EPA have?

We retain the right, as provided by CAA section 112(l)(7) and 40 CFR 63.90(d)(2), to enforce any applicable emission standard or requirement under section 112. In addition, the EPA may enforce any federally approved State rule, requirement, or program under 40 CFR 63.90(e)

and 63.91(c)(1)(i). The EPA also has the authority to make certain decisions under the General Provisions (subpart A) of parts 61 and 63. We are proposing to delegate to the ODEQ some of these authorities, and retaining others, as explained in sections V and VI above. In addition, the EPA may review and disapprove State determinations and subsequently require corrections. *See* 40 CFR 63.91(g)(1)(ii). EPA also has the authority to review ODEQ's implementation and enforcement of approved rules or programs and to withdraw approval if we find inadequate implementation or enforcement. *See* 40 CFR 63.96.

Furthermore, we retain any authority in an individual emission standard that may not be delegated according to provisions of the standard. Finally, we retain the authorities stated in the original delegation agreement. *See* "Provisions for the Implementation and Enforcement of NSPS and NESHAP in Oklahoma," effective March 25, 1982, a copy of which is included in the docket for this action. The delegation table as of now and how it would look if this proposal is finalized may be found in the Technical Support Document (TSD) included in the docket for this action. The table also shows the authorities that cannot be delegated to any State or local agency.

IX. What information must ODEQ provide to the EPA?

ODEQ 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, ODEQ must submit to EPA Region 6 on a semi-annual basis, copies of determinations issued under these authorities. *See* 40 CFR 63.91(g)(1)(ii). For part 63 standards, these determinations include: § 63.1, Applicability Determinations; § 63.6(e), Operation and Maintenance Requirements—

Responsibility for Determining Compliance; § 63.6(f), Compliance with Non-Opacity Standards—Responsibility for Determining Compliance; § 63.6(h), Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance; § 63.7(c)(2)(i) and (d), Approval of Site-Specific Test Plans; § 63.7(e)(2)(i), Approval of Minor Alternatives to Test Methods; § 63.7(e)(2)(ii) and (f), Approval of Intermediate Alternatives to Test Methods; § 63.7(e)(iii), Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors; § 63.7(e)(2)(iv), (h)(2) and (3), Waiver of Performance Testing; § 63.8(c)(1) and (e)(1), Approval of Site-Specific Performance Evaluation (Monitoring) Test Plans; § 63.8(f), Approval of Minor Alternatives to Monitoring; § 63.8(f), Approval of Intermediate Alternatives to Monitoring; §§ 63.9 and 63.10, Approval of Adjustments to Time Periods for Submitting Reports; § 63.10(f), Approval of Minor Alternatives to Recordkeeping and Reporting; and § 63.7(a)(4), Extension of Performance Test Deadline.

X. What is the EPA's oversight role?

The EPA oversees ODEQ'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 ODEQ made decisions that decreased the stringency of the delegated standards, then ODEQ 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) and (b). We will initiate withdrawal of the program or rule if the corrective actions taken are insufficient. *See* 51 FR 20648 (June 6, 1986).

XI. Should sources submit notices to the EPA or ODEQ?

For the delegated NESHAP standards and authorities covered by this proposed action, if finalized, sources would submit all of the information required pursuant to the general provisions and the relevant subpart(s) of the delegated NESHAP (40 CFR parts 61 and 63) directly to the ODEQ at the following address: State of Oklahoma, Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677. The ODEQ is the primary point of contact with respect to delegated NESHAP. Sources do not need to send a copy to the EPA. The EPA Region 6 proposes to waive the requirement that notifications and reports for delegated standards be submitted to EPA in addition to ODEQ in accordance with 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii).³ For those standards and authorities not delegated as discussed above, sources must continue to submit all appropriate information to the EPA.

XII. How will unchanged authorities be delegated to ODEQ in the future?

As stated in previous NESHAP delegation actions, the EPA has approved Oklahoma's mechanism of incorporation by reference of NESHAP standards into ODEQ regulations, as they apply to both part 70 and non-part 70 sources. *See, e.g.*, 61 FR 4224 (February 5, 1996) and 66 FR 1584 (January 9, 2001). Consistent with the EPA regulations and guidance⁴, ODEQ may request future updates to Oklahoma's NESHAP delegation by submitting a letter to the EPA that

³ This waiver only extends to the submission of *copies* of notifications and reports; the EPA does not waive the requirements in delegated standards that require notifications and reports be submitted to an electronic database (e.g., 40 CFR part 63, subpart HHHHHHHH).

⁴ *See* Hazardous Air Pollutants: Amendments to the Approval of State Programs and Delegation of Federal Authorities, Final Rule (65 FR 55810, September 14, 2000); and "Straight Delegation Issues Concerning Sections 111 and 112 Requirements and Title V," by John S. Seitz, Director of Air Quality Planning and Standards, EPA, dated December 10, 1993.

appropriately identifies the specific NESHAP which have been incorporated by reference into state regulation, reaffirms that it still meets up-front approval delegation criteria for part 70 sources, and demonstrates that ODEQ maintains adequate authorities and resources to implement and enforce the delegated NESHAP requirements for all sources. We will respond in writing to the request stating that the request for delegation is either granted or denied. A Federal Register action will be published to inform the public and affected sources of the updated delegation, indicate where source notifications and reports should be sent, and amend the relevant portions of the Code of Federal Regulations identifying which NESHAP standards have been delegated to the ODEQ. We have not been using this informational notice process but intend to from now on upon receipt of the next NESHAP delegation request from ODEQ.⁵

XIII. Proposed Action

In today's action, the EPA is proposing to approve an update to the Oklahoma NESHAP delegation that would provide the ODEQ with the authority to implement and enforce certain newly incorporated NESHAP promulgated by the EPA and amendments to existing standards currently delegated, as they existed through September 1, 2016. As requested in ODEQ's June 25, 2018 letter, this proposed delegation to ODEQ does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151.

XIV. Statutory and Executive Order Reviews

⁵ A request from ODEQ that raises an issue not previously subject to comment, presents new data, requires EPA to examine its interpretation of the applicable law, or where EPA wishes to re-examine its present position on a matter will be processed through notice and comment rulemaking in the Federal Register.

Under the CAA, the Administrator has the authority to approve section 112(l) submissions that comply with the provisions of the Act and applicable Federal regulations. In reviewing section 112(l) submissions, the EPA's role is to approve state choices, provided that they meet the criteria and objectives of the CAA and of the EPA's implementing regulations. Accordingly, this proposed action would merely approve the State's request as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects

40 CFR Part 61

Environmental protection, Administrative practice and procedure, Air pollution control, Arsenic, Benzene, Beryllium, Hazardous substances, Mercury, Intergovernmental relations, Reporting and recordkeeping requirements, Vinyl chloride.

40 CFR Part 63

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

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

Dated: July 25, 2018.

Wren Stenger,

Multimedia Division Director, Region 6.

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