



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61 and 63

[EPA-R06-OAR-2010-1054; FRL-12688-01-R6]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Louisiana Department of Environmental Quality (LDEQ) has submitted updated regulations for receiving delegation and approval of its program for the implementation and enforcement of certain New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) for all sources, as provided for under previously approved delegation mechanisms. The updated State regulations incorporate by reference certain NSPS and NESHAP promulgated by the Environmental Protection Agency (EPA), as they existed through July 1, 2021. EPA is providing notice that it is updating the delegation of certain NSPS to LDEQ and proposing to approve the delegation of certain NESHAP to LDEQ. The proposed delegation of authority under this action does not apply to sources located in Indian country.

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-2010-1054, at <https://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 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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Rick Barrett, EPA Region 6 Office, ARPE, (214) 665-7227, barrett.richard@epa.gov. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

Table of Contents

- I. What Does This Action Do?
- II. What is the Authority for Delegation?
- III. What Criteria Must Louisiana’s Programs Meet to be Approved?
- IV. How did LDEQ Meet the NSPS and NESHAP Program Approval Criteria?
- V. What is Being Delegated?
- VI. What is Not Being Delegated?
- VII. How Will Statutory and Regulatory Interpretations be Made?
- VIII. What Authority Does the EPA Have?
- IX. What Information Must LDEQ Provide to the EPA?
- X. What is the EPA’s Oversight Role?
- XI. Should Sources Submit Notices to the EPA or LDEQ?

- XII. How Will Unchanged Authorities be Delegated to LDEQ in the Future?
- XIII. Proposed Action
- XIV. Statutory and Executive Order Reviews

I. What Does This Action Do?

The EPA is updating the delegation of the implementation and enforcement of certain NSPS to LDEQ. EPA is also proposing to approve the delegation of the implementation and enforcement of certain NESHAP to LDEQ. If finalized, the delegation will provide LDEQ with the primary responsibility to implement and enforce the delegated standards.

II. What is the Authority for Delegation?

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

Section 112(l) of the Clean Air Act (CAA), and 40 CFR part 63, subpart E, authorize the EPA to delegate authority to any State or local agency which submits adequate regulatory procedures for implementation and enforcement of emission standards for hazardous air pollutants. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63.

III. What Criteria Must Louisiana's Programs Meet to be Approved?

In order to receive delegation of NSPS, a State must develop and submit to the EPA a procedure for implementing and enforcing the NSPS in the State, and their regulations and resources must be adequate for the implementation and enforcement of the NSPS. EPA initially approved Louisiana's program for the delegation of NSPS on February 22, 1982 (47 FR 7665). EPA reviewed the laws of the State and the rules and regulations of the Louisiana Department of Natural Resources (now the LDEQ) and determined the State's procedures, regulations and resources adequate for the

implementation and enforcement of the NSPS program. This action notifies the public that EPA is updating LDEQ's delegation to implement and enforce certain additional NSPS.

As to the NESHAP standards in 40 CFR parts 61 and 63, 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

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

Louisiana, as it applies to both part 70 and non-part 70 sources, was most recently approved on February 24, 2015 (80 FR 9613).

IV. How did LDEQ Meet the NSPS and NESHAP Program Approval Criteria?

As to the NSPS standards in 40 CFR part 60, LDEQ adopted the Federal standards via incorporation by reference. The LDEQ regulations are, therefore, at least as stringent as EPA's rules. *See* 40 CFR 60.10(a). Also, in the EPA initial approval of NSPS delegation, we determined that the State developed procedures for implementing and enforcing the NSPS in the State, and that the State's regulations and resources are adequate for the implementation and enforcement of the NSPS program. *See* 47 FR 7665 (February 22, 1982).

As to the NESHAP standards in 40 CFR parts 61 and 63, as part of its Title V submission LDEQ stated that it intended to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 standards into its regulations. This commitment applied to both existing and future standards as they applied to part 70 sources. The EPA's final interim approval of Louisiana's Title V operating permits program delegated the authority to implement certain NESHAP to the State. *See* 60 FR 17750 (April 7, 1995). EPA promulgated final full approval of the State's operating permits program, on September 12, 1995. *See* 60 FR 47296. 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. LDEQ has affirmed that it still meets the up-front approval criteria. With respect to non-part 70 sources, the

sources. *See* 65 FR 55810, 55813 (September 14, 2000). The EPA previously approved Louisiana's program to implement and enforce the NESHAP as they apply to non-part 70 sources. *See* 69 FR 15687 (March 26, 2004).

EPA has previously approved delegation of NESHAP authorities to LDEQ after finding adequate authorities to implement and enforce the NESHAP for such sources. *See* 69 FR 15687 (March 26, 2004).

V. What is Being Delegated?

By letter dated September 9, 2022, the EPA received a request from LDEQ to update its existing NSPS and NESHAP delegations. With certain exceptions noted in section VI of this document, LDEQ's request included NSPS in 40 CFR part 60, and NESHAP in 40 CFR parts 61 and 63. LDEQ's request included newly incorporated NSPS and NESHAP promulgated by the EPA and amendments to existing standards currently delegated, as amended between July 1, 2013, and July 1, 2021, as adopted by the State.

VI. What is Not Being Delegated?

The following part 60, 61 and 63 authorities listed below are not delegated. All of the inquiries and requests concerning implementation and enforcement of the excluded standards in the State of Louisiana should be directed to the EPA Region 6 Office.

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

- 40 CFR part 61, subpart Q (National Emission Standards for Radon Emissions from Department of Energy facilities);
- 40 CFR part 61, subpart R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks);
- 40 CFR part 61, subpart T (National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings); and
- 40 CFR part 61, subpart W (National Emission Standards for Radon Emissions from Operating Mill Tailings).

In addition, 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 parts 61 and 63 standards have certain provisions that cannot be delegated to the States. Furthermore, no authorities are delegated 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 this action is finalized as proposed, all questions concerning implementation and enforcement of the excluded standards in the State of Louisiana should be directed to the EPA Region 6 Office.

The EPA is proposing a determination that the NESHAP program submitted by Louisiana meets the applicable requirements of CAA section 112(l)(5) and 40 CFR part 63, subpart E.

In addition, this delegation to LDEQ to implement and enforce certain NSPS and NESHAP does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. Under this definition, EPA treats as reservations, trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Consistent with previous federal program approvals or delegations, EPA will continue to implement the NSPS and NESHAP in Indian country because LDEQ has not submitted information to demonstrate authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

VII. How Will Statutory and Regulatory Interpretations be Made?

If this NSPS delegation update is finalized as proposed, LDEQ will obtain concurrence from the EPA on any matter involving the interpretation of section 111 of the CAA or 40 CFR part 60 to the extent that application, implementation, administration, or enforcement of these sections have not been covered by prior EPA determinations or guidance.

If this NESHAP delegation update is finalized as proposed, LDEQ 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 application, implementation, administration, 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 111(c)(2), to enforce any applicable emission standard or requirement under section 111.

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 LDEQ 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). The EPA also has the authority to review LDEQ'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 the 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* 47 FR 7665 (February 22, 1982).

A table of currently delegated NSPS and NESHAP standards and how the updated NSPS and NESHAP delegations would look if this proposal is finalized may be found in the Technical Support Document (TSD) included in the docket for this action. The tables also show the authorities that cannot be delegated to any State or local agency.

IX. What Information Must LDEQ Provide to the EPA?

Under 40 CFR 60.4(b), all notifications under NSPS must be sent to both EPA and to LDEQ. Notifications and reports should be sent to Manager, Air Enforcement Branch, at the EPA Region 6 office.

LDEQ must provide any additional compliance related information to the EPA, Region 6, Office of Enforcement and Compliance Assurance, within 45 days of a request under 40 CFR 63.96(a). Under 40 CFR. 63.91(g)(1), Louisiana may request delegation any of the authorities listed as Category I in 40 CFR. 63.91(g)(1)(i), and EPA will delegate any such authorities at its discretion. The State must maintain a record of all approved alternatives to all monitoring, testing, recordkeeping, and reporting requirements and provide this list of alternatives to its EPA Regional Office at least semi-

annually, or on a more frequent basis if requested by the Regional Office. See 40 CFR. 63.91(g)(1)(ii).

X. What is the EPA's Oversight Role?

The EPA must oversee LDEQ'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 LDEQ has made decisions that decrease the stringency of the delegated standards, then LDEQ shall be required to take corrective actions and the source(s) affected by the decisions will be notified, as required by and under the procedures set forth at 40 CFR 63.96(b). We will initiate withdrawal proceedings of the program or rule under 40 CFR 63.96(b) if the corrective actions taken are insufficient.

XI. Should Sources Submit Notices to the EPA or LDEQ?

For the delegated NSPS and 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 NSPS and NESHAP (40 CFR parts 60, 61 and 63) directly via electronic submittal to online EPA database portals that are specified in each rule, and also as paper submittals to the LDEQ at the following address: Louisiana Department of Environmental Quality, P.O. Box 4301, Baton Rouge, Louisiana 70821-4301. The LDEQ is the primary point of contact with respect to delegated NSPS and NESHAP. The EPA Region 6 proposes to waive the requirement that courtesy notifications and reports for delegated standards be submitted to the EPA in addition to LDEQ in accordance with 40 CFR 63.9(a)(4)(ii) and

63.10(a)(4)(ii).² For those standards and authorities not delegated as discussed above, sources must continue to submit all appropriate information to the EPA by electronic database portals.

XII. How Will Unchanged Authorities be Delegated to LDEQ in the Future?

In the future, LDEQ will only need to send a letter of request to update their delegation to EPA, Region 6, for those NSPS which they have adopted by reference. EPA will amend the relevant portions of the Code of Federal Regulations showing which NSPS standards have been delegated to LDEQ. Also, in the future, LDEQ will only need to send a letter of request for approval to EPA, Region 6, for those specific NESHAP regulations that LDEQ has incorporated by reference into State rules. The letter must reference the previous up-front approval demonstration and reaffirm that it still meets the up-front approval criteria. We will respond in writing to the request stating that the request for delegation is either granted or denied. A *Federal Register* action will be published to inform the public and affected sources of the delegation, indicate where source notifications and reports should be sent, and to amend the relevant portions of the Code of Federal Regulations showing which NESHAP standards have been delegated to LDEQ.

XIII. Proposed Action

In this action, the EPA is proposing to update the delegation of certain NSPS to LDEQ, and to approve an update to the Louisiana NESHAP delegation that would provide the LDEQ 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 July 1, 2021.

² 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).

XIV. Statutory and Executive Order Reviews

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:

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action as defined in Executive Order 12866 (58 FR 51735, October 4, 1993) and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. *Executive Order 14192: Unleashing Prosperity Through Deregulation*

This action is not an Executive Order 14192 regulatory action because this action is not significant under Executive Order 12866.

C. *Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA (44 U.S.C. 3501 *et seq.*) because it does not impose an information collection burden.

D. *Regulatory Flexibility Act (RFA)*

This action is certified to not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This action proposes to approve the delegation of federal rules as requested by the state agency and will therefore have no net regulatory burden for all directly regulated small entities.

E. *Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C 1531-1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any State, local, or tribal governments or the private sector.

F. *Executive Order 13132: Federalism*

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will 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.

G. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This proposal to update the delegation of certain NSPS to LDEQ and to approve LDEQ's request to update their NESHAP delegation will not apply in areas of Indian Country, and therefore has no tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Louisiana tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws.

H. *Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to regulatory actions considered significant under section 3(f)(1) of Executive Order 12866 and that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in

section 2-202 of Executive Order 13045. This action is not subject to Executive Order 13045 because it approves a state program.

I. *Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

J. *National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards. This action 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 Clean Air Act.

List of Subjects

40 CFR Part 60

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

40 CFR Part 61

Environmental protection, Air pollution control, Hazardous substances, Intergovernmental relations, Radioactive materials, Reporting and recordkeeping requirements, Uranium, Vinyl chloride.

40 CFR Part 63

Environmental protection, Air pollution control, Administrative practice and procedure, Business and industry, Carbon oxides, Hazardous substances, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 11, 2025.

James McDonald,

Director, Air and Radiation Division, Region 6.

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