

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 61 and 63**

[FRL-6187-8]

Approval of the Clean Air Act, Section 112(l), Delegation of Authority to Three Local Air Agencies in Washington**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule and delegation of authority.

SUMMARY: EPA is promulgating direct final approval of the state of Washington Department of Ecology (Ecology) request for program approval and delegation of authority for three local agencies in Washington to implement and enforce locally-adopted hazardous air pollutant (HAP) regulations which adopt by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) contained within 40 CFR Parts 61 and 63, as these regulations apply to all sources (i.e., both Part 70 and non-Part 70 sources). In this action EPA is delegating these programs to Ecology for the purpose of redelegating them to three local agencies in Washington, consistent with Ecology's statute, the Revised Code of Washington (RCW) 70.94.860. EPA is also promulgating approval of a mechanism by which these three agencies will receive delegation of future NESHAPs; and is waiving its notification requirements such that sources will only need to send notifications and reports to the delegated local agencies. Additionally, EPA is promulgating direct final approval of certain local air agency potential-to-emit limiting regulations which will now be recognized as federally enforceable.

The adopted regulations approved as part of this action will be implemented and enforced by the following local air authorities within the state of Washington: the Northwest Air Pollution Authority (NWAPA); the Puget Sound Air Pollution Control Agency (PSAPCA); and the Southwest Air Pollution Control Authority (SWAPCA) collectively referred to as "NWAPA, PSAPCA, and SWAPCA." (For purposes of this action and consistent with RCW 70.94.860, "delegation to NWAPA, PSAPCA, and SWAPCA" means "delegation to Ecology for the purpose of redelegation to NWAPA, PSAPCA, and SWAPCA"). Delegation to Ecology to directly implement 40 CFR Parts 61 and 63 and to redelegate the same authority to the remaining four Washington local agencies (the Benton Clean Air

Authority, the Olympic Air Pollution Control Authority, the Spokane County Air Pollution Control Authority, and the Yakima Regional Clean Air Authority) is anticipated in the near future and will be the subject of a separate rulemaking. **DATES:** This action will be effective on February 1, 1999 without further notice, unless EPA receives relevant adverse comments by December 31, 1998. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

ADDRESSES: Comments must be submitted to Doug Hardesty at the Region X office listed below. Copies of the requests for delegation and other supporting documentation are available for public inspection at the following location: U.S. Environmental Protection Agency, Region X, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle, WA, 98101.

FOR FURTHER INFORMATION CONTACT: Andrea Wullenweber, US EPA, Region X (OAQ-107), 1200 Sixth Avenue, Seattle, WA, 98101, (206) 553-8760.

SUPPLEMENTARY INFORMATION:**I. Background and Purpose**

Section 112(l) of the federal Clean Air Act (CAA) enables the EPA to approve State and local air toxics programs or rules to operate in place of the federal air toxics program or rules. The federal air toxics program implements the requirements found in section 112 of the CAA pertaining to the regulation of hazardous air pollutants. Approval of an air toxics program is granted by EPA if the Agency finds that: (1) the State (or local) program is "no less stringent" than the corresponding federal program or rule, (2) the State (or local) has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with federal guidance. Once approval is granted, the air toxics program can be implemented and enforced by State or local agencies, as well as EPA.

On February 16, 1996 (see 61 FR 6184), EPA proposed to approve the request of Ecology and the Washington local agencies, including NWAPA, PSAPCA, and SWAPCA, for delegation of authority to implement and enforce certain 40 CFR Parts 61 and 63 NESHAP rules, as they apply to Part 70 sources. On August 26, 1996 (see 61 FR 43675), under the authority of CAA section 112(l)(5) and 40 CFR 63.91, EPA promulgated final interim approval of

this request. EPA also promulgated interim approval of NWAPA, PSAPCA, and SWAPCA's mechanism for receiving future delegation of CAA section 112 standards that are adopted unchanged from federal standards as promulgated. Additionally, EPA promulgated interim approval of PSAPCA and SWAPCA's potential-to-emit limiting regulations to be recognized as federally enforceable.

In the August 26, 1996, rulemaking, EPA granted only interim approval of the request for delegation because EPA determined that the criminal authorities under Ecology's statute, RCW 70.94.430, did not meet the stringency requirements of 40 CFR 70.11. In this respect, EPA retained implementation and enforcement authority for these rules as they applied to non-Part 70 sources during the interim period or until such time as Ecology and the local agencies could demonstrate that their criminal authorities met EPA stringency requirements. Full approval has been contingent upon a demonstration that Ecology and the local agencies' criminal enforcement authorities are consistent with the requirements of 40 CFR 70.11(a), and therefore 40 CFR 63.91(b)(1) and (b)(6). Specifically, in the proposed interim approval notice (see 61 FR 6184), EPA requested the following of Ecology and the local agencies:

(1) Revise RCW 70.94.430 to provide for maximum criminal penalties of not less than \$10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii),

(2) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than \$10,000 per day per violation, and

(3) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than \$10,000 per day per violation, or

(4) Demonstrate to the satisfaction of EPA that these authorities are consistent with 40 CFR 70.11, and therefore 40 CFR 61.91.

In response to EPA's request, Ecology submitted a letter dated October 7, 1996, that addressed these issues. This documentation included a legal memorandum from the Washington State Attorney General's Office dated May 23, 1996, explaining how the

statutory authority in RCW 70.94.430(1) may be interpreted to provide the required authority, which satisfied condition 1. In addition, Ecology amended the state regulation at Washington Administrative Code (WAC) 173-400-105(7) and (8) to include prohibitions against knowingly making false statements and knowingly rendering inaccurate any monitoring device, thus satisfying requirements 2 and 3. Furthermore, in a letter dated February 28, 1997, Ecology provided supporting documentation from NWAPA, PSAPCA, and SWAPCA describing how they each have addressed these issues. NWAPA and PSAPCA committed to enforcing WAC 173-400-105(7) and (8) until such time as they might adopt their own equivalent regulations on this subject. SWAPCA is requesting delegation based on its local regulation, SWAPCA 400-105(7) and (8), which contains the same language as the state rule. Based on information provided by Ecology, NWAPA, PSAPCA, and SWAPCA, EPA has determined that these actions adequately address the issue of adequate criminal authorities needed to meet the requirements of 40 CFR 70.11 and 61.91, and to obtain final delegation for all sources within NWAPA, PSAPCA, and SWAPCA's jurisdiction.

After resolving the above issues related to criminal authorities, this delegation was again delayed due to certain state regulations which EPA believed conflicted with the enforcement authorities required for delegation of federal programs. The regulation in question was the State of Washington's Regulatory Reform Act of 1995 ("Act"), codified at Chapter 43.05 RCW. The Act precludes "regulatory agencies", as defined in RCW 43.05.010, from assessing civil penalties except for a violation of a specific permit term or condition; a repeat violation; a violation that is not corrected within a reasonable period of time; or a violation that has a probability of placing a person in danger of death or bodily harm, a probability of causing more than minor environmental harm, or of causing physical damage to the property of another in excess of one thousand dollars. Counsel for PSAPCA has provided EPA with a legal opinion stating that the Act does not apply to local air pollution control authorities in Washington because local air pollution control authorities are not "regulatory agencies" within the meaning of the Act. EPA has reviewed the statutory and regulatory language relied on by PSAPCA's counsel in reaching this conclusion and agrees that the Act does not constrain the enforcement authority

of local air pollution control authorities and therefore does not pose a bar to delegation of CAA programs to local air pollution control agencies in Washington.¹

In the August 26, 1996, rulemaking, EPA granted interim approval for delegation of the regulations implementing CAA sections 112(g) and 112(j), codified at 40 CFR Part 63, Subpart B. After further review, EPA recognizes that Subpart B need not be delegated under the section 112(l) approval process. When promulgating the regulations implementing CAA section 112(g), EPA stated its view that "the Act directly confers on the permitting authority the obligation to implement section 112(g) and to adopt a program which conforms to the requirements of this rule. Therefore, the permitting authority need not apply for approval under section 112(l) in order to use its own program to implement section 112(g)" (see 61 FR 68397). Similarly, when promulgating the regulations implementing section 112(j), EPA stated its belief that "section 112(l) approvals do not have a great deal of overlap with the section 112(j) provision, because section 112(j) is designed to use the title V permit process as the primary vehicle for establishing requirements" (see 59 FR 26447). Therefore, state or local agencies implementing the requirements under sections 112(g) and 112(j) do not need approval under section 112(l). As a result, EPA is not taking action to grant direct final delegation of 40 CFR Part 63, Subpart B, to NWAPA, PSAPCA, and SWAPCA.

Since the August 26, 1996, rulemaking, Ecology has submitted updated delegation requests on behalf of NWAPA, PSAPCA, and SWAPCA. Ecology submitted requests on behalf of NWAPA on March 21, 1997, May 5,

1997, and August 28, 1998, to update NWAPA's delegation request such that its current request includes certain subparts in 40 CFR Parts 61 and 63 in effect on May 14, 1998, as adopted into NWAPA Regulation Section 104.2 (effective May 14, 1998). On November 18, 1996 and October 27, 1997, Ecology submitted requests on behalf of PSAPCA to update its delegation request such that its current request includes certain subparts in 40 CFR Parts 61 and 63 in effect on July 1, 1997, as adopted into PSAPCA Regulation III, Section 2.02 (effective November 1, 1997). On February 28, 1997, and May 14, 1998, Ecology submitted requests on behalf of SWAPCA to update its delegation request such that its current request includes certain subparts in 40 CFR Parts 61 and 63 in effect on August 1, 1996, as adopted into SWAPCA Regulation 400 Section 075 (effective November 21, 1996), and to add SWAPCA Regulation 400 Section 111 to its delegation request for potential-to-emit regulations.

Additionally, Ecology submitted a request on behalf of PSAPCA for approval of rule adjustments for 40 CFR Part 63, Subparts M and N (Drycleaning and Chromium Electroplating, respectively). The original request for the 40 CFR Part 63, Subpart M rule adjustment was dated January 16, 1997, with a correction letter dated September 4, 1997. The request for the 40 CFR Part 63, Subpart N rule adjustment was dated June 26, 1997. Because EPA approval of the requested rule adjustments will require a more detailed review under 40 CFR 63.92, EPA will address PSAPCA's request for rule adjustments in a separate notice to avoid further delay of this delegation.

NWAPA, PSAPCA, and SWAPCA have also requested that EPA waive the Part 63 General Provisions notification requirements, in accordance with 40 CFR 63.9 and 63.10, such that sources would not need to send notifications and reports to EPA, Region X. Ecology submitted this request for PSAPCA in a letter dated January 10, 1997, for NWAPA in a letter dated May 5, 1997, and for SWAPCA in a letter dated May 14, 1998. These three local agencies prefer to be the sole recipient of notifications and reports to reduce the burden on sources and EPA.

Ecology submitted a letter dated July 31, 1998, describing the Washington state process for delegating the federal hazardous air pollutants program to local agencies in Washington. Pursuant to RCW 70.94.860, Ecology must first accept delegation of this program on behalf of the local agency and then redelegate the program to that agency. In

¹ As for the Act's applicability to Ecology's enforcement authorities, in letters dated June 10, 1997, and November 20, 1997, EPA advised Ecology that the Act conflicted with the necessary enforcement authority required for authorization or approval of federal environmental programs to Ecology. Subsequently, on December 10, 1997, in accordance with RCW 43.05.902, Ecology formally notified the Governor of Washington that a conflict existed between the Act and the requirements for State authorization or approval of certain federal environmental programs. As a result of the determination of an existing conflict, RCW 43.05.040, .050, .060(3), and .070, which prohibit the State from issuing civil penalties except under certain circumstances, were deemed to be inoperative to several State environmental programs administered by the Department of Ecology, including the CAA program. In reliance on this determination, EPA believes that the conflict between the Act and the requirements for EPA approval of Ecology's CAA programs has been addressed by rendering inoperative those portions of the Act that conflicted with Ecology's required enforcement authorities.

its July 31, 1998, letter, Ecology included the delegation orders to be signed by the local agencies and Ecology. These orders outline this redelegation process. Ecology signed the orders for each agency on August 4, 1998, and NWAPA, PSAPCA, and SWAPCA signed these orders on August 11, 1998, August 14, 1998, and August 12, 1998, respectively. As described in these orders, the effective date of the orders is the same as the effective date of this rule. Therefore, the delegation to these agencies via Ecology will cause no delay in this delegation to NWAPA, PSAPCA, and SWAPCA.

II. EPA Action

A. Delegation of specific standards

In this action, under the authority of CAA section 112(l)(5) and 40 CFR 63.91, EPA is promulgating direct final approval of Ecology's request, on behalf of NWAPA, PSAPCA, and SWAPCA, for program approval and delegation of authority to implement and enforce specific 40 CFR Parts 61 and 63 subparts, as listed in the tables at the end of this rule. Consistent with RCW 70.94.860, EPA is delegating this authority to Ecology for the purpose of redelegating to NWAPA, PSAPCA, and SWAPCA.

With this delegation (and redelegation from Ecology) NWAPA, PSAPCA, and SWAPCA will have primary implementation and enforcement responsibility, but EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112. In addition, EPA does not delegate any authorities that require implementation through rulemaking in the **Federal Register**, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112. Specifically, the EPA Administrator has the authority to approve certain changes to, or make decisions under, certain requirements in the General Provisions. This authority is in 40 CFR Part 63, Subpart A. EPA is granting NWAPA, PSAPCA, and SWAPCA some of these authorities, and is retaining other authorities, as explained below.

In a memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July, 10, 1998, entitled, "Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies," EPA clarified which of the authorities in the General Provisions may and may not

be delegated to state and local agencies under 40 CFR Part 63, Subpart E. Such delegations, as authorized, would enable the state or local agency to carry out the Administrator's responsibilities in Subpart A. In delegating these authorities, EPA is granting NWAPA, PSAPCA, and SWAPCA the authority to make decisions which are not likely to be nationally significant or to alter the stringency of the underlying standard. The intent is that these agencies will make decisions on a source-by-source basis, *not* on a source category-wide basis.

EPA, Region X, has determined that NWAPA, PSAPCA, and SWAPCA have sufficient resources and expertise to implement certain sections of the General Provisions, and EPA is promulgating direct final authority for these sections. Listed below are the Part 63, Subpart A, sections that EPA is delegating to NWAPA, PSAPCA, and SWAPCA. Also, listed in the footnotes of the Parts 61 and 63 delegation tables at the end of this rule are the authorities which cannot be delegated to any state or local agency; which EPA therefore retains.²

Part 63, Subpart A, General Provisions Authorities Which EPA Is Delegating to NWAPA, PSAPCA, and SWAPCA

Section	Authorities
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) [except 63.6(h)(9)]	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)(2)(iii)	Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors.
63.7(e)(2)(iv) and (h) (2), (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 [except 63.10(f)]	Approval of Adjustments to Time Periods for Submitting Reports.

In delegating 40 CFR 63.9 and 63.10, "Approval of Adjustments to Time Periods for Submitting Reports," these three agencies have the authority to approve adjustments to the timing that reports are due, but do not have the authority to alter the contents of the reports. For Title V sources, semiannual and annual reports are required by Part 70 and nothing herein changes that requirement.

Certain General Provisions authorities are automatically granted to NWAPA, PSAPCA, and SWAPCA as part of their Part 70 operating permits program approval (regardless of whether the operating permits program approval is interim or final). These are 40 CFR 63.6(l)(1), "Extension of Compliance with Emission Standards," and 63.5(e) and (f), "Approval and Disapproval of Construction and Reconstruction."³

Additionally, for 40 CFR 63.6(l)(1), NWAPA, PSAPCA, and SWAPCA do not need to have been delegated a particular standard or have issued a Part 70 operating permit for a particular source to grant that source a compliance extension.

EPA is also promulgating direct final approval of PSAPCA Regulation I, Article 6, and Regulation III, Appendix A; and, SWAPCA Regulation 400-091, -110, -111, -112, -113, and -114 under the authority of section 112(l) of the Act

² For authorities which are not addressed in this rulemaking and not identified in any Part 61 or 63 Subparts as authorities that cannot be delegated, the agencies may assume that the authorities in question are delegated.

³ Sections 112(l) (1) and (3) state that "Extension of Compliance with Emission Standards" and "Approval and Disapproval of Construction and Reconstruction" can be implemented by the "Administrator (or a State with a permit program approved under Title V)." EPA interprets that this

authority does not require delegation through subpart E and, instead, is automatically granted to States as part of their Part 70 operating permits program approval.

in order to recognize these regulations as federally enforceable for purposes of establishing potential-to-emit limitations.

After a state or local agency has been delegated the authority to implement and enforce a NESHAP, the delegated agency (in this case, NWAPA, PSAPCA, and SWAPCA) becomes the primary point of contact with respect to that NESHAP. Pursuant to 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii), EPA Region X waives the requirement that notifications and reports for delegated standards be submitted to EPA in addition to NWAPA, PSAPCA, and SWAPCA. Therefore, notifications and reports required by the NESHAPs must be submitted to NWAPA, PSAPCA, and SWAPCA, and sources within those jurisdictions will not need to send a copy to EPA.

In delegating the authority to implement and enforce these rules and in granting a waiver of EPA notification requirements, EPA requires that these delegated agencies input all source information into the Aerometric Information Retrieval System (AIRS) for both point and area sources. This information must be entered into the AIRS system by September 30, 1999, and must be updated by September 30 every year thereafter. Additionally, these delegated agencies must also report to EPA, Region X, all MACTRAX information upon request, which is typically semiannually. (MACTRAX provides summary data for each implemented NESHAP that EPA uses to evaluate the Air Toxics Program.) EPA also expects NWAPA, PSAPCA, and SWAPCA to provide any additional compliance related information to EPA, Region X, as agreed upon in the Compliance Assurance Agreement.

Finally, in receiving delegation for specific General Provisions authorities, NWAPA, PSAPCA, and SWAPCA must submit to EPA, Region X, copies of determinations issued pursuant to these authorities. Such determinations include: applicability determinations (63.1); approval/disapprovals of construction and reconstruction [63.5 (e) and (f)]; approval/disapprovals of compliance extensions [63.6(l)(1)]; approval of shorter sampling times and volumes [63.7(e)(2)(iii)]; waiver of performance testing [63.7(e)(2)(iv) and (h)(2), (3)]; approval of adjustments to time periods for submitting reports (63.9 and 63.10); approvals/disapprovals of minor [63.7(e)(2)(I)] or intermediate [63.7(e)(2)(ii) and (f)] alternative test methods; and approvals/disapprovals of minor or intermediate alternative monitoring methods [63.8(f)]. NWAPA, PSAPCA, and SWAPCA must also

forward to EPA, Region X, copies of any notifications received pursuant to 63.6(h)(7)(ii) pertaining to the use of a continuous opacity monitoring system. Additionally, EPA's Emission Measurement Center of the Emissions Monitoring and Analysis Division must receive copies of any approved intermediate changes to test methods or monitoring. (For definitions of *major*, *intermediate* and *minor* alternative test methods or monitoring methods, see the July 10, 1998, memorandum from John Seitz, referenced above.) NWAPA, PSAPCA, and SWAPCA should forward these intermediate test methods or monitoring changes via mail or facsimile to: Chief, Source Categorization Group A, U.S. EPA (MD-19), Research Triangle Park, NC 27711, Facsimile telephone number: (919) 541-1039.

B. Delegation Mechanism for Future Standards

Under the authority of CAA section 112(l)(5) and 40 CFR 63.91, EPA is promulgating direct final approval of NWAPA, PSAPCA, and SWAPCA's mechanism for streamlining future delegation of those federal NESHAP regulations that are adopted unchanged into local law. In this respect, NWAPA, PSAPCA, and SWAPCA will only need to send a letter of request to Ecology, and Ecology will forward that request to EPA for those future NESHAP regulations which the local agencies have adopted by reference. EPA will respond to this request by sending a letter back to Ecology (and sending a copy to the local air agency) delegating the NESHAP standards requested. Consistent with RCW 70.94.860, Ecology will forward the letter to the local agency, thus redelegating the future NESHAPs to that agency. No further formal response from Ecology or the local agency will be necessary, and if no negative response is received from Ecology or the local agency within 10 days, the delegation becomes final. A notice of the delegation will be published in the **Federal Register** to inform the public that the delegation has taken place and to indicate where source notifications and reports should be sent. Furthermore, NWAPA, PSAPCA, and SWAPCA shall update their incorporations by reference of 40 CFR Parts 61 and 63 standards and request updated delegation annually, as current standards are revised and new standards are promulgated.

C. Opportunity for Public Comment

The public was provided the opportunity to comment on the proposed interim approval of the

request for delegation of certain 40 CFR Parts 61 and 63 standards, as apply to Part 70 sources, on February 16, 1996 (see 61 FR 6184). EPA received public comments on that proposal and responded to them in the August 26, 1996, **Federal Register** (see 61 FR 43675). The public has not been given an opportunity to comment on requests submitted since the February 16, 1996, **Federal Register** and on delegation of these standards as they apply to non-Part 70 sources. However, the Agency views the approval of these requests as a noncontroversial action and anticipates no adverse comments. Therefore, EPA is publishing this direct final rule without prior proposal. However, in the Proposed Rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal for this action should relevant adverse comments be filed. This action will be effective February 1, 1999 without further notice unless the Agency receives relevant adverse comments by December 31, 1998.

If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 1, 1999 and no further action will be taken on the proposed rule.

III. Summary of Action

Pursuant to the authority of CAA section 112(l) of the Act and 40 CFR Part 63 subpart E, EPA is promulgating direct final approval of Ecology's request, on behalf of NWAPA, PSAPCA, and SWAPCA, for program approval and delegation of authority to implement and enforce specific 40 CFR Parts 61 and 63 federal NESHAP regulations (as apply to both Part 70 and non-Part 70 sources) which have been adopted into local law. EPA is delegating this authority to Ecology for the purpose of redelegating it to NWAPA, PSAPCA, and SWAPCA. Additionally, EPA is promulgating direct final approval of the mechanism by which NWAPA, PSAPCA, and SWAPCA will receive delegation of future NESHAP regulations that are adopted unchanged into local law; and is waiving the requirement for sources to send copies of notifications and

reports to EPA. Finally, EPA is promulgating direct final approval of PSAPCA and SWAPCA's potential-to-emit regulations as federally enforceable.

IV. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

This rule is not subject to E.O. 13045, entitled, "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the

Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government entities with jurisdiction over populations of less than 50,000.

Delegation of authority to implement and enforce unchanged federal standards under section 112(l) of the CAA does not create any new requirements but simply transfers primary implementation authorities to the State (or local) agency. Therefore, because this action does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

E. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate, or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA

to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the delegation action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

G. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements [see section 307(b)(2)].

List of Subjects

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl Chloride.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 29, 1998.

Chuck Clarke,

Regional Administrator, Region X.

Title 40, chapter I, parts 61 and 63 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7413, 7414, 7416, 7601 and 7602.

Subpart A—General Provisions

2. Section 61.04 is amended in paragraph (a) by revising the “Region X” address; by revising paragraph (b)(WW) (ii), (iii), and (vii), by removing paragraph (b)(WW)(viii); and by

designating the existing paragraph (c) and table as (c)(8), adding a new (c) introductory text, adding and reserving paragraphs (c) (1) through (7) and (9), and by adding paragraph (c)(10) to read as follows:

§ 61.04 Address.

(a) * * *

Region X (Alaska, Idaho, Oregon, Washington), Director, Office of Air Quality, U.S. Environmental Protection Agency, 1200 Sixth Avenue (OAQ-107), Seattle, WA 98101.

(b) * * *

(WW)(i) * * *

(ii) Northwest Air Pollution Authority (NWAPA), 1600 South Second Street, Mount Vernon, WA 98273-5202.

Note: For a table listing NWAPA's delegation status, see paragraph (c)(10) of this section.

(iii) Puget Sound Air Pollution Control Agency (PSAPCA), 110 Union Street, Suite 500, Seattle, WA 98101-2038.

Note: For a table listing PSAPCA's delegation status, see paragraph (c)(10) of this section.

* * * * *

(vii) Southwest Air Pollution Control Authority (SWAPCA), 1308 NE 134th Street, Vancouver, WA 98685-2747.

Note: For a table listing SWAPCA's delegation status, see paragraph (c)(10) of this section.

* * * * *

(c) The following tables list, by Region, the specific Part 61, National Emission Standards for Hazardous Air Pollutants that have been delegated to state and local agencies.

(1)a-(7) [Reserved].

(8) * * *

(9) (Reserved)

(10) The following table lists the specific Part 61 standards that have been delegated unchanged to state and local air pollution control agencies in Region X. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR PART 61 STANDARDS—REGION X

Subpart	ADEC ¹	IDEQ ²	ODEQ ³	LRAPA ⁴	Ecol- ogy ⁵	BCAA ⁶	NWAPA ⁷	OAPCA ⁸	PSAPCA ⁹	SCAPCA ¹⁰	SWAPCA ¹¹	YRCAA ¹²
A ¹³ General Provisions	X	.....	X	.....	X	.....
B Radon from Underground Uranium Mines
C Beryllium	X	.....	X	.....	X	.....
D Beryllium Rocket Motor Firing	X	.....	X	.....	X	.....
E Mercury	X	.....	X	.....	X	.....
F Vinyl Chloride	X	.....	X	.....	X	.....
H Emissions of Radionuclides other than Radon from Dept of Energy facilities
I Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licenses and not covered by Subpart H
J Equipment Leaks of Benzene	X	.....	X	.....	X	.....
K Radionuclides from Elemental Phosphorus Plants
L Benzene from Coke Recovery
M Asbestos	X	.....	X	.....	X	.....
N Arsenic from Glass Plants	X	.....	X	.....	X	.....
O Arsenic from Primary Copper Smelters	X	.....	X	.....	X	.....
P Arsenic from Arsenic Production Facilities	X	.....	X	.....	X	.....
Q Radon from Dept of Energy facilities	X	.....	X	.....	X	.....
R Radon from Phosphogypsum Stacks
T Radon from Disposal of Uranium Mill Tailings
V Equipment Leaks	X	.....	X	.....	X	.....
W Radon from Operating Mill Tailings
Y Benzene from Benzene Storage Vessels	X	.....	X	.....	X	.....
BB Benzene from Benzene Transfer Operations	X	.....	X	.....	X	.....
FF Benzene Waste Operations	X	.....	X	.....	X	.....

¹ Alaska Department of Environmental Conservation² Idaho Division of Environmental Quality³ Oregon Department of Environmental Quality⁴ Lane Regional Air Pollution Authority⁵ Washington Department of Ecology⁶ Benton Clean Air Authority⁷ Northwest Air Pollution Authority (5/14/98)⁸ Olympic Air Pollution Control Authority⁹ Puget Sound Air Pollution Control Agency (7/1/97)¹⁰ Spokane County Air Pollution Control Authority¹¹ Southwest Air Pollution Control Authority (8/1/96)¹² Yakima Regional Clean Air Authority¹³ Authorities which may not be delegated include: 40 CFR 61.04(b); 61.12(d)(1); 61.13(h)(1)(ii) for approval of major alternatives to test methods; 61.14(g)(1)(ii) for approval of major alternatives to monitoring; 61.16; 61.53(c)(4); any sections in the subparts pertaining to approval of alternative standards (i.e., alternative means of emission limitations), or approval of major alternatives to test methods or monitoring; and all authorities identified in the subparts (i.e., under "Delegation of Authority") that cannot be delegated.

Note to paragraph (c)(10): Dates in parenthesis indicate the effective date of the federal rules that have been adopted by and delegated to the state or local air pollution control agency. Therefore, any amendments made to these delegated rules after this effective date are not delegated to the agency.

PART 63—[AMENDED]

1. The authority citation for Part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.13 is amended in paragraph (a) by revising the “Region X” address to read as follows:

§ 63.13 Addresses of State air pollution control agencies and EPA Regional Offices.

(a) * * *

EPA Region X (Alaska, Idaho, Oregon, Washington), Director, Office of Air Quality, 1200 Sixth Avenue (OAQ-107), Seattle, WA 98101.

* * * * *

3. Section 63.99 is amended by adding and reserving paragraphs (a)(29) through (a)(46), and adding (a)(47) to read as follows:

§ 63.99 Delegated Federal Authorities.

(a) * * *

(29)–(46) [Reserved]

(47) Washington.

(i) The following table lists the specific Part 63 standards that have been delegated unchanged to state and local air pollution control agencies in Washington. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—WASHINGTON

Subpart		E c o l o g y ¹	B C A A ²	N W A P A ³	O A P C A ⁴	P S A P C A ⁵	S C A P C A ⁶	S W A P C A ⁷	Y R C A A ⁸
A	General Provisions ⁹			X		X		X	
D	Early Reductions			X		X		X	
F	HON-SOCMI			X		X		X	
G	HON-Process Vents			X		X		X	
H	HON-Equipment Leaks			X		X		X	
I	HON-Negotiated Leaks			X		X		X	
L	Coke Oven Batteries			X		X		X	
M	Perc Dry Cleaning			X		X		X	
N	Chromium Electroplating			X		X		X	
O	Ethylene Oxide Sterilizers			X		X		X	
Q	Industrial Process Cooling Towers			X		X		X	
R	Gasoline Distribution			X		X		X	
T	Halogenated Solvent Cleaning			X		X		X	
U	Polymers and Resins I			X		X			
W	Polymers and Resins II-Epoxy			X		X		X	
X	Secondary Lead Smelting			X		X		X	
Y	Marine Tank Vessel Loading			X		X		X	
CC	Petroleum Refineries			X		X		X	
DD	Off-Site Waste and Recovery			X		X		X	
EE	Magnetic Tape Manufacturing			X		X		X	
GG	Aerospace Manufacturing & Rework			X		X		X	
II	Shipbuilding and Ship Repair			X		X		X	
JJ	Wood Furniture Manufacturing Operations			X		X		X	
KK	Printing and Publishing Industry			X		X		X	
OO	Tanks—Level 1			X		X			
PP	Containers			X		X			
QQ	Surface Impoundments			X		X			
RR	Individual Drain Systems			X		X			
VV	Oil-Water Separators and Organic-Water Separators.			X		X			
JJJ	Polymers and Resins IV			X		X		X	

¹ Washington Department of Ecology

² Benton Clean Air Authority

³ Northwest Air Pollution Authority (5/14/98)

⁴ Olympic Air Pollution Control Authority

⁵ Puget Sound Air Pollution Control Agency (7/1/97)

⁶ Spokane County Air Pollution Control Authority

⁷ Southwest Air Pollution Control Authority (8/1/96)

⁸ Yakima Regional Clean Air Authority

⁹ Authorities which may not be delegated include: 40 CFR 63.6(g); 63.6(h)(9); 63.7(e)(2)(ii) and (f) for approval of major alternatives to test methods; 63.8(f) for approval of major alternatives to monitoring; 63.10(f); and all authorities identified in the subparts (i.e., under “Delegation of Authority”) that cannot be delegated. For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July, 10, 1998, entitled, “Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies.”

Note to paragraph (a)(47): Dates in parenthesis indicate the effective date of the federal rules that have been adopted by and delegated to the state or local air pollution control agency. Therefore, any amendments made to these delegated rules after this effective date are not delegated to the agency.

[FR Doc. 98-31240 Filed 11-30-98; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICE

42 CFR Part 50

Rin 0930-2A00

Simplification of Grant Appeals Process

AGENCY: Health and Human Services Department.

ACTION: Final rule.

SUMMARY: Pursuant to 42 CFR part 50, subpart D, the Indian Health Service (IHS) and the Substance Abuse and Mental Health Services Administration (SAMHSA) (formerly, the Alcohol, Drug Abuse and Mental Health Administration) have provided an informal level of appeal on those grant related disputes subject to the departmental appeal procedures codified at 45 CFR part 16.¹ The Department of Health and Human Services is amending its regulations to remove IHS and ADAMHA (now SAMHSA) from the list of agencies to which those informal appeal procedures apply and thus permit aggrieved grantees direct access to the Departmental Appeals Board and that Board's original jurisdiction.

DATES: The regulation is effective December 31, 1998.

FOR FURTHER INFORMATION: For the Indian health Service, Ms. M. Kay Carpentier, (301) 443-5204; for the Substance Abuse and Mental Health Services Administration, Thomas M. Reynolds, (301) 443-0179.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking (NPRM) was published in the **Federal Register** on February 25, 1998 (Vol. 63, No. 37, pages 9499-9500). That Notice proposed to amend 42 CFR part 50, subpart D, to eliminate the requirement that grantees must exhaust their appeal rights at the IHS or SAMHSA level prior to bringing a grant dispute before the Departmental

Appeals Board. Accordingly, this proposed change would permit affected grantees immediate access to the Departmental Appeals Board. No comments were received.

Consequently, the Department is amending 42 CFR part 50, subpart D, to remove IHS and ADAMHA (now SAMHSA) from the list of agencies to which the regulations apply as proposed by the NPRM. As a result, grantees wishing to appeal IHS's and SAMHSA's eligible adverse determinations will be entitled to appeal such determinations directly to the Departmental Appeals Board. In addition, 42 CFR part 50, subpart D, is revised to reflect organizational changes in the Department, particularly that pertaining to the public Health Service.

Economic Impact

This rule does not have cost implications for the economy of \$100 million or otherwise meet the criteria for a major rule under Executive Order 12291, and therefore does not require a regulation impact analysis. Further, this regulation will not have a significant impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under section 6(a)(3) of that Order and so has been exempted from review by the Office of Management and Budget under that Order.

Paperwork Reduction Act

There are no new paperwork requirements subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1980.

List of Subjects in 42 CFR Part 50

Administrative practice and procedure, Grant programs—Health, Health care.

Approved: November 20, 1998.

Donna E. Shalala,
Secretary.

For the reasons set forth in the preamble, sub part D of part 50 of Title 52 of the Code of Federal Regulations is amended as follows:

PART 50—[AMENDED]

1. The authority citation for part 42, Subpart D, continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); 45 CFR 16.3(c).

2. Section 50.401 is revised to read as follows:

§ 50.401 What is the purpose of this subpart?

This subpart establishes an informal procedure for the resolution of certain postaward grant and cooperative agreement disputes within the agencies and offices identified in § 50.402.

3. Section 50.402 is revised to read as follows:

§ 50.402 To what programs do these regulations apply?

This subpart applies to all grant and cooperative agreement programs, except block grants, which are administered by the National Institutes of Health; the Health Resources and Services Administration; the Centers for Disease Control and Prevention; the Agency for Toxic Substances and Disease Registry; the Food and Drug Administration; and the Office of the Assistant Secretary for Public Health and Science. For purposes of this regulation, the entities are hereinafter referred to as "agencies."

4. The third sentence of § 50.403 is revised to read as follows:

§ 50.403 What is the policy basis for these procedures?

* * * This subpart provides such an informal preliminary procedure for resolution of disputes in order to preclude submission of cases to the Departmental Appeals Board before an agency identified in § 50.402 has had an opportunity to review decisions of its officials and to settle disputes with grantees.

5. In § 50.404, paragraph (a) introductory text and the first sentence of paragraph (b) are revised to read as follows:

§ 50.404 What disputes are covered by these procedures?

(a) These procedures are applicable to the following adverse determinations under discretionary project grants and cooperative agreements (both referred to in this subpart as grants) issued by the agencies identified at § 50.402;

* * * * *

(b) A determination subject to this subpart may not be reviewed by the review committee described in § 50.405 unless an officer or employee of the agency has notified the grantee in writing of the adverse determination.

* * *

6. In § 50.405, the second sentence is removed and the first sentence is revised to read as follows:

¹ Section 161 of the ADAMHA Reorganization Act, Pub. L. 102-321 (July 10, 1992), provides that references in any regulations to ADAMHA shall be deemed to refer to SAMHSA and, accordingly, the informal level of appeal was available to SAMHSA's grantees.