

additional evidence. Any personal hearing granted as a result of a request so referred or any additional evidence so referred may be treated by that agency as the basis for a reopened claim, if appropriate. If the Board denied a benefit sought in the pending appeal and any evidence so referred which was received prior to the date of the Board's decision, or testimony presented at a hearing resulting from a request for a hearing so referred, together with the evidence already of record, is subsequently found to be the basis of an allowance of that benefit, the effective date of the award will be the same as if the benefit had been granted by the Board as a result of the appeal which was pending at the time that the hearing request or additional evidence was received.

(ii) *Good cause shown.* If good cause is shown, the request for a change in representation or for a personal hearing will be honored. Any pertinent evidence submitted by the appellant or representative will be accepted, subject to the requirements of paragraph (c) of this section if a simultaneously contested claim is involved.

(2) *If the Board obtains evidence or considers law not considered by the agency of original jurisdiction.* The motion described in paragraph (b)(1) of this section is not required to submit evidence in response to the notice described in paragraph (b) or (c) of Rule 903 (paragraph (b) or (c) of § 20.903 of this part).

\* \* \* \* \*

(Authority: 38 U.S.C. 7104, 7105, 7105A).

[FR Doc. 02-1536 Filed 1-22-02; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 61 and 63

[FRL -7126-3]

#### Approval of the Clean Air Act, Section 112(l), Delegation of Authority to the Idaho Department of Environmental Quality

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency, Region 10 (EPA) approves the Idaho Department of Environmental Quality's (IDEQ) request for program approval and delegation of authority to implement and enforce specific National Emission Standards for Hazardous Air Pollutants (NESHAPs) as

they apply to major sources in Idaho required to obtain an operating permit under Title V of the federal Clean Air Act (CAA or Act). Pursuant to the authority of section 112(l) of the Act, this approval is based on EPA's finding that Idaho State law, regulations, and resources meet the requirements for program approval and delegation of authority specified in regulations pertaining to the criteria for straight delegation common to all approval options, and in applicable EPA guidance.

The purpose of this delegation is to acknowledge IDEQ's ability to implement a NESHAP program and to transfer primary implementation and enforcement responsibility from EPA to IDEQ for Title V sources, also referred to as "major sources." Although EPA will look to IDEQ as the lead for implementing the NESHAPs delegated to IDEQ at major sources in Idaho, EPA retains authority under section 112(l)(7) of the Act to enforce any applicable emission standard or requirement for major sources, if needed. EPA also retains authority to implement and enforce these standards for non-Title V sources. With program approval, IDEQ may choose to request newly promulgated or updated standards and expand its program to include non-Title V sources by way of a streamlined request and approval process, described below.

Concurrent with this direct final rule, EPA is publishing a proposed rule in today's **Federal Register**. If no adverse comments are received in response to the direct final rule, no further activity is contemplated. If EPA receives adverse comments, this direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** This direct final rule is effective on March 25, 2002 without further notice, unless EPA receives adverse comment by February 22, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be submitted to the address below:

Tracy Oliver, Office of Air Quality (OAQ-107), EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-1172.

Copies of delegation requests and other supporting documentation are

available for public inspection at US EPA, Region 10 office during normal business hours. Please contact Tracy Oliver to make an appointment.

#### FOR FURTHER INFORMATION CONTACT:

Tracy Oliver, Office of Air Quality (OAQ-107), EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-1172.

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#### I. Background and Purpose

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

Section 112(l) of the Act enables EPA to approve state and local air toxics programs or rules such that these entities can accept delegation of authority for implementation and enforcement. Typically, a state or local agency requests delegation based on federal rules adopted unchanged into state or local rules.

On June 18, 2001, IDEQ requested program approval and delegation of authority to implement and enforce certain NESHAPs as they apply to "major sources" <sup>1</sup> required to obtain an operating permit under Title V of the Act. A "major source" of hazardous air pollutants is defined in the Act as any stationary source—or group of stationary sources in a contiguous area and under common control—that emit, or have the potential to emit: (1) 10 tons per year or more of any hazardous air pollutant; or (2) 25 tons or more of any combination of hazardous air pollutants.

Pursuant to the authority of section 112(l) of the Act, EPA is approving IDEQ's NESHAP program and delegating authority to implement and enforce certain NESHAPs adopted unchanged into state law, as they apply to major sources. The purpose of this action is to acknowledge IDEQ's ability to implement and enforce a NESHAP program and to transfer primary responsibility from EPA to IDEQ for certain NESHAPs as they apply to Title V sources. Although EPA will look to IDEQ as the lead to implement and enforce delegated NESHAPs at Title V sources in Idaho, EPA retains authority under section 112(l)(7) of the Act to enforce any applicable emission standard or requirement for these sources, if needed. EPA also retains authority to implement and enforce these standards for non-Title V sources. With today's NESHAP program approval, IDEQ may update its delegation status in the future by way of a streamlined process. This will simplify the delegation of additional, newly promulgated, or revised standards as they apply to Title V sources, as well as non-Title V sources.

#### *a. What Are the Requirements for NESHAP Delegation?*

EPA may delegate authority for NESHAPs if the requesting agency is able to satisfy requirements of 40 CFR

63.91(b), including the ability to demonstrate:

(1) The state or local program is not less stringent than the corresponding federal program or rule;

(2) The state or local has adequate authority and resources to implement and enforce the program;

(3) The schedule for compliance is sufficiently expeditious;

(4) The program is otherwise in compliance with federal guidance.

Once approval is granted, the agency's air toxics program can be implemented and enforced by the requesting agency. EPA also retains enforcement authority.

If—as in this case—an agency with an approved operating permit program under Title V of the Act is requesting NESHAP delegation for major sources only, it is presumed that they already meet section 112(l) delegation requirements for major sources. This is because the authority and enforcement requirements for Part 70 program approval are equivalent to the authority and enforcement requirements for section 112(l) delegation found in 40 CFR 63.91(d). And, the approval of a Title V program already confers the responsibility to implement and enforce all requirements applicable to sources subject to the Title V program, including section 112.

In addition to meeting the delegation criteria implicit in Title V program approval, IDEQ has submitted documents to demonstrate it satisfies 40 CFR 63.91(d) approval requirements for delegation for all sources. Because IDEQ has satisfied these requirements, it will only need to reference this demonstration and reaffirm that it continues to meet these criteria if it asks for delegation of new and updated standards, or requests broader applicability of its delegation to include non-Title V sources. These changes can be made in IDEQ's delegation status by way of a streamlined request and approval process, described below.

#### *b. What Is the History of This Delegation?*

On September 15, 1995, IDEQ requested delegation of authority to implement and enforce specific NESHAP regulations that IDEQ had adopted unchanged into Idaho law as they apply to major sources. On December 14, 1995, IDEQ also requested approval of its mechanism for receiving automatic delegation of future NESHAP standards, as promulgated.

On June 17, 1995, EPA proposed interim approval of IDEQ's request for delegation under section 112(l) of the Act and requested public comment on the action. EPA also proposed approval

of a mechanism for IDEQ to receive delegation of future NESHAPs. (See 61 FR 30570) No comments were received on EPA's proposed action, and on December 6, 1996, EPA promulgated final interim approval of the delegation. (See 61 FR 64622) EPA granted interim rather than full approval because it determined that IDEQ's enforcement authorities substantially, but not fully, met the requirements of 40 CFR 70.11.

In granting Idaho interim approval of its NESHAPs program for major sources, EPA delegated authority for implementing and enforcing the following NESHAPs as they applied to Title V sources: (1) 40 CFR Part 61, subparts A, C, D, E, F, J, L through P, V, Y, BB, and FF; and (2) 40 CFR Part 63, subparts A, D, L, and M. EPA granted interim approval of a streamlined mechanism for receiving future delegation of NESHAPs which were adopted unchanged into Idaho law and as they applied to Title V sources.

On July 9, 1998, May 25, 1999, and March 15, 2001, the State of Idaho submitted to EPA materials addressing the Part 70 enforcement authority issues which had previously prevented full approval of its Title V program and NESHAP delegation, as well as all other issues that previously precluded full approval of Idaho's Title V program. These submittals requested full approval of Idaho's air operating permits program, transmitted the State's revised Title V statutes and rules, and discussed changes made to the State's operating permits program since interim approval was granted.

Based on EPA's review of the Title V program revisions submitted by the State of Idaho, EPA proposed full approval of Idaho's operating permits program on August 13, 2001. EPA determined that the State corrected the deficiencies and requested public comments on the proposed action. (See 66 FR 42490) On October 4, 2001, EPA promulgated final approval of Idaho's Title V program. (See 66 FR 50574)

On June 18, 2001, IDEQ requested final full delegation of authority for specific NESHAPs as they apply to Title V sources. This request was for delegation of Part 61 and 63 subparts in effect on July 1, 2000 and adopted unchanged into Idaho rules on March 30, 2001.

#### *c. How Has IDEQ Satisfied the Requirements for NESHAP Delegation?*

40 CFR 63.91 contains requirements that an Agency must meet for NESHAP delegation. If this request is for authority to implement and enforce the standards for all sources, the agency must demonstrate that it has adequate

<sup>1</sup> For the purposes of this action: (1) A source that is required to obtain an operating permit under Title V of the federal Clean Air Act may be considered a "major source," as defined in 40 CFR Part 70.2; (2) "Title V source" and "major source" may be considered equivalent; and (3) "Title V program" and "Part 70 permit program" may be considered equivalent.

enforcement authority, legal authority, resources, and schedule for expeditious compliance. If the State already has an approved Title V program and the request is for Title V sources only, it is presumed that they have already met the requirements needed to implement and enforce NESHAPs for these sources.

Idaho's Title V approval was promulgated as an interim approval in 1997 because EPA determined that Idaho's authorities did not meet all of the requirements in 40 CFR part 70. Its request for NESHAP delegation also received interim approval because EPA determined that Idaho's enforcement authorities did not meet all of the requirements in 40 CFR 70.11, as required by 40 CFR 63.91(5)(6).

In the **Federal Register** notice that granted interim approval, EPA outlined several changes Idaho needed to make before it could receive final approval. The three changes that affected NESHAP delegation pertained to maximum criminal penalties, false statements and tampering, and the environmental audit statute. (See 61 FR 62622) These issues were all adequately addressed by Idaho in their subsequent Title V program application, which was approved by EPA. (See 66 FR 42490 and 66 FR 50574).

IDEQ has shown by way of Title V program approval, that IDEQ has adequate statutes, rules, authority, and program capacity to: (1) meet the requirements of Part 70.11 to address violations; (2) request information from regulated sources regarding compliance status; and (3) inspect sources and records to determine compliance status. These requirements of Title V are also requirements for section 112(l) delegation. Also, as a condition of its Title V program approval, EPA has determined that IDEQ has the ability to implement and enforce all applicable requirements for sources subject to the part 70 permit program, including section 112 requirements. As a result, EPA finds that IDEQ meets the requirements for NESHAP delegation for major sources. (See 40 CFR 63.91(d)(3))

With regard to program approval, in addition to demonstrating the enforcement authorities described above, Idaho met the following criteria for approval listed in 63.91(b):

(1) A copy of state statutes, regulations, and requirements that grant authority to implement a NESHAP program upon approval;

(2) a demonstration that the agency has the capacity to implement a NESHAP program, supported by a description of their program, a description of the implementing agency

(including such things as budget and staffing);

(3) a schedule demonstrating expeditious implementation upon approval;

(4) a plan that ensures expeditious compliance by all sources subject to the delegated standards upon approval.

All of these requirements were met with IDEQ's submittal. These documents are available for public review and inspection at the address listed above.

## II. EPA Action

### *a. What Specific Emission Standards Is EPA Delegating to IDEQ?*

EPA is delegating certain part 61 and 63 Subparts to IDEQ based on its ability to carry out implementation and enforcement responsibilities for Title V sources subject to these standards. The following subparts—also summarized in the part 61 and 63 tables at the end of this rule—are delegated: (1) 40 CFR part 61 Subparts A, C, D, E, F, J, L, M, N, O, P, T, V, Y, and BB in effect July 1, 2000; (2) 40 CFR part 63 Subparts A, D, F, G, H, I, L, M, N, O, Q, R, S, T, U, W, X, Y, AA, BB, CC, DD, HH, EE, GG, II, JJ, KK, LL, OO, PP, QQ, RR, TT, UU, VV, WW, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, RRR, TTT, VVV, and XXX in effect July 1, 2000.

### *b. What Specific Standards Does EPA Not Delegate?*

EPA does not delegate all the 40 CFR part 61 subparts pertaining to radon or radionuclides. Typically, EPA delegates all standards adopted (and requested) by an air agency and in effect as of a certain date, regardless of whether or not there are any applicable sources within that agency's jurisdiction. As an exception, EPA is not delegating several 40 CFR part 61 subparts pertaining to radon or radionuclides which include: subparts B, Q, H, I, K, R, and W. EPA has determined that there are either no sources in Idaho (and that no new sources are likely to emerge), or if there are sources, the IDEQ does not have sufficient expertise to implement these NESHAPs.

Additionally, EPA is not delegating the regulations that implement CAA sections 112(g) and 112(j), codified at 40 CFR part 63, Subpart B, to IDEQ. EPA has determined 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) of the Act do not need approval under section 112(l).

### *c. What General Provisions Authorities Are Automatically Granted as Part of Idaho's Title V Operating Permits Program Approval?*

Certain General Provisions authorities are automatically granted to IDEQ as part of its part 70 operating permits program approval. These are 40 CFR 63.6(i)(1), "Extension of Compliance with Emission Standards," and 63.5(e) and (f), "Approval and Disapproval of Construction and Reconstruction." <sup>2</sup> Additionally, for 40 CFR 63.6(i)(1), IDEQ does 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. However, IDEQ must have authority to implement and enforce the particular standard against the source in order to grant that source a compliance extension.

### *d. What General Provisions Authorities Is EPA Delegating in This Action?*

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. Based on this memo, EPA is delegating to IDEQ the part 63, subpart A, sections that are listed below.

<sup>2</sup> Sections 112(i)(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 its Title V operating permits program approval provided the State has authority to implement those NESHAP standards in the Title V permit.

Delegation of these General Provisions authorities will enable IDEQ to carry out the EPA Administrator's responsibilities in these sections of subpart A. In

delegating these authorities, EPA grants IDEQ the authority to make decisions which are not likely to be nationally significant or 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.

TABLE 1.—PART 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES WHICH EPA DELEGATES TO IDEQ

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,” IDEQ has the authority to approve adjustments to the timing of the reports that 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 will change that requirement.

*e. What General Provisions Authorities Are Not Delegated?*

In general, EPA does not delegate any authorities that require implementation through rulemaking in the **Federal Register**, or where Federal oversight is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112. The types of authorities that EPA retains are: equivalency determinations, approval of alternative test methods, decisions where federal oversight is needed to ensure national consistency, and any decision that requires rulemaking to implement. The authorities listed in the table below (also mentioned in the footnotes of the parts 61 and 63 delegation tables at the end of this rule) are the specific General Provisions authorities that cannot be delegated to any state or local agency, which EPA therefore retains sole authority to implement.<sup>3</sup>

TABLE 2.—PART 61 AND 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES WHICH EPA CANNOT DELEGATE TO STATE AND LOCAL AGENCIES.

Section	Authorities
61.04(b) .....	Waiver of Record-keeping
61.12(d)(1) .....	Approval of Alternative Means of Emission Limitation
61.13(h)(1)(ii) .....	Approval of Major Alternatives to Test Methods
61.14(g)(1)(ii) .....	Approval of Major Alternatives to Monitoring
61.16 .....	Availability of Information
61.53(c)(4) .....	List of Approved Design, Maintenance, and Housekeeping Practices for Mercury Chlor-alkali Plants
63.6(g) .....	Approval of Alternative Non-Opacity Emission Standards
63.6(h)(9) .....	Approval of Alternative Opacity Standard
63.7(e)(2)(ii) and (f) ...	Approval of Major Alternative to Test Methods
63.8(f) .....	Approval of Major Alternatives to Monitoring
63.10(f) .....	Waiver of Record-keeping—all

### III. Implications

*a. How Will This Delegation Affect the Regulated Community?*

Once a state or local agency has been delegated the authority to implement and enforce a NESHAP, the delegated agency (in this case, IDEQ) becomes the primary point of contact with respect to that NESHAP. As a result of today's action, Title V sources in Idaho should direct questions and compliance issues to IDEQ.

For those authorities that are NOT delegated—those noted in Table 2 or any section of 40 CFR 61 and 63 that specifically indicates that authority may not be delegated—affected Title V sources should continue to work with EPA as their primary contact and submit materials directly to EPA for Administrator decision. In these specific cases, the delegated agency should be copied on all submittals, questions, and requests.

EPA continues to have primary responsibility to implement and enforce Federal regulations that do not have current state or local agency delegations. In this action, Idaho is receiving delegation for NESHAPs as they apply to Title V sources only. Therefore, EPA is the only agency that can implement and enforce NESHAPs as they apply to Idaho's area sources (non-Title V sources).

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

Sources subject to delegated NESHAPs (specified in the part 61 and part 63 tables at the end of the rule) will now send required notifications and reports to IDEQ for their action, and send copies to EPA. Sources should

<sup>3</sup> For authorities in 40 CFR parts 61 and 63 that are not addressed in this rulemaking and not otherwise identified as authorities that cannot be delegated, one may assume that they are delegated.

continue to send to EPA—with a copy to IDEQ—notifications, reports, and requests required by authorities not delegated to IDEQ in this action.

*c. How Will This Delegation Affect Indian Country?*

This delegation to IDEQ to implement and enforce NESHAPs does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. "Indian country" is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Consistent with previous federal program approvals or delegations, EPA will continue to implement the NESHAPs in Indian country because IDEQ has not adequately demonstrated its authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

*d. What Will Be IDEQ's Reporting Requirements to EPA?*

In delegating the authority to implement and enforce these rules, EPA requires that IDEQ submit the following to EPA:

(1) IDEQ must input all minimum reportable requirements into the AIRS Facility Subsystem (AFS) of the Aerometric Information Retrieval System (AIRS) for both point and area sources. IDEQ must enter the information into the AIRS/AFS system by September 30 of each year;

(2) IDEQ must report to EPA all reportable requirements for MACTRAX semiannually (MACTRAX provides the summary data for each implemented NESHAP that EPA uses to evaluate the Air Toxics Program);

(3) IDEQ must also provide any additional compliance related information to EPA as agreed upon in the Compliance Assurance Agreement between EPA and IDEQ;

(4) IDEQ must submit to EPA copies of determinations issued pursuant to

delegated General Provisions authorities, listed in Table 1 above;

(5) IDEQ must also forward to EPA copies of any notifications received pursuant to 40 CFR 63.6(h)(7)(ii) pertaining to the use of a continuous opacity monitoring system; and

(6) IDEQ must submit to EPA's Emission Measurement Center of the Emissions Monitoring and Analysis Division 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). These intermediate test methods or monitoring changes should be sent 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.

*e. How Will IDEQ Receive Delegation of Future and Revised Standards?*

IDEQ will receive delegation of future standards by the following process:

(1) IDEQ will send a letter to EPA requesting delegation for future NESHAP standards adopted by reference into Idaho regulations;

(2) EPA will send a letter of response back to IDEQ granting this delegation request (or explaining why EPA cannot grant the request);

(3) IDEQ does not need to send a response back to EPA;

(4) If EPA does not receive a negative response from IDEQ within 10 days of EPA's letter to IDEQ, then the delegation will be final 10 days after the date of the letter from EPA; and

(5) Periodically, EPA will publish a notice in the **Federal Register** informing the public of the updated delegation.

*f. How Frequently Should IDEQ Update Its Delegation?*

IDEQ should update its 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. Preferably, IDEQ should adopt federal regulations effective as of the most recent publication date of 40 CFR parts 61 and 63, which is July first of each year.

**IV. Summary**

EPA approves IDEQ's request for program approval and delegation of authority to implement and enforce specific NESHAPs as they apply to major sources required to obtain a part 70 operating permit in Idaho. Pursuant to the authority of section 112(l) of the

Act, this approval is based on EPA's finding that Idaho state law, regulations, and resources meet the requirements for program approval and delegation of authority specified in 40 CFR 63.91 and applicable EPA guidance.

The purpose of this delegation is to acknowledge IDEQ's ability to implement a NESHAP program and to transfer primary implementation and enforcement responsibility from EPA to IDEQ for major sources. Although EPA will look to IDEQ as the lead for implementing delegated NESHAPs at major sources in Idaho, EPA retains authority under Section 112(l)(7) of the Act to enforce any applicable emission standard or requirement for major sources, if needed. EPA also retains authority to implement and enforce these standards for non-major sources. With program approval, IDEQ may choose to request newly promulgated or updated standards and expand its program to include non-major sources by way of a streamlined process.

Sources subject to delegated NESHAPs (specified in the part 61 and part 63 tables at the end of the rule) will now send required notifications and reports to IDEQ for their action, and send a copy to EPA. Sources should continue to send notifications, reports, requests, etc. pursuant to Authorities not delegated to Idaho to EPA for our action, and send a copy to IDEQ.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant full delegation of NESHAP standards to IDEQ for major sources should adverse comments be filed. This rule will be effective March 25, 2002 without further notice unless the Agency receives adverse comments by February 22, 2002.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the 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. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 25, 2002 and no further action will be taken on the proposed rule.

## V. 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 12866, entitled "Regulatory Planning and Review."

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

### b. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule does not have federalism implications. 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, as specified in Executive Order 13132, because it merely approves a state program and rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this rule.

Although Section 6 of the Executive Order does not apply to this rule, EPA did consult with representatives of state government in developing this rule, and this rule is in response to the State's delegation request.

### c. Executive Order 13084

Under Executive Order 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 Executive Order 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 March 25, 2002. 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, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 13, 2001.

**L. John Iani,**

*Regional Administrator, Region 10.*

Title 40, chapter I, 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 by revising the table in paragraph (c)(10) to read as follows:

##### § 61.04 Address.

\* \* \* \* \*

(c) \* \* \*

(10) \* \* \*

DELEGATION STATUS FOR PART 61 STANDARDS—REGION 10

Subpart	AK	ID	Oregon		Washington							
	A D E C <sup>1</sup>	I D E Q <sup>2</sup>	O D E Q <sup>3</sup>	L R A P A <sup>4</sup>	E c c o l o g y <sup>5</sup>	B C A A <sup>6</sup>	N W A P A <sup>7</sup>	O A P C A <sup>8</sup>	P S C A A <sup>9</sup>	S C A P C A <sup>10</sup>	S W A P C A <sup>11</sup>	Y R C A A <sup>12</sup>
A. General Provisions <sup>13</sup>	X	X <sup>2</sup>			X	X	X	X	X	X	X	X
B. Radon from Underground Uranium Mines												
C. Beryllium		X <sup>2</sup>			X	X	X	X	X	X	X	X
D. Beryllium Rocket Motor Firing		X <sup>2</sup>			X	X	X	X	X	X	X	X
E. Mercury	X	X <sup>2</sup>			X	X	X	X	X	X	X	X
F. Vinyl Chloride		X <sup>2</sup>			X	X	X	X	X	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 Licensees and not covered by Subpart H												
J. Equipment Leaks of Benzene	X	X <sup>2</sup>			X	X	X	X	X	X	X	X
K. Radionuclides from Elemental Phosphorus Plants												
L. Benzene from Coke Recovery		X <sup>2</sup>			X	X	X	X	X	X	X	X
M. Asbestos	X <sup>1</sup>	X <sup>2</sup>			X <sup>5</sup>	X <sup>6</sup>	X	X <sup>8</sup>	X	X	X	X
N. Arsenic from Glass Plants		X <sup>2</sup>			X	X	X	X	X	X	X	X
O. Arsenic from Primary Copper Smelters		X <sup>2</sup>			X	X	X	X	X	X	X	X
P. Arsenic from Arsenic Production Facilities		X <sup>2</sup>			X	X	X	X	X	X	X	X
Q. Radon from Dept of Energy facilities												
R. Radon from Phosphogypsum Stacks												
T. Radon from Disposal of Uranium Mill Tailings		X <sup>2</sup>										
V. Equipment Leaks	X	X <sup>2</sup>			X	X	X	X	X	X	X	X
W. Radon from Operating Mill Tailings												
Y. Benzene from Benzene Storage Vessels	X	X <sup>2</sup>			X	X	X	X	X	X	X	X
BB. Benzene from Benzene Transfer Operations		X <sup>2</sup>			X	X	X	X	X	X	X	X
FF. Benzene Waste Operations	X				X	X	X	X	X	X	X	X

<sup>1</sup> Alaska Department of Environmental Conservation (1/18/97)

**Note:** Alaska received delegation for § 61.145 and § 61.154 of Subpart M (Asbestos), along with other sections and appendices which are referenced in § 61.145, as § 61.145 applies to sources required to obtain an operating permit under Alaska's regulations. Alaska has not received delegation for Subpart M for sources not required to obtain an operating permit under Alaska's regulations.

<sup>2</sup> Idaho Department of Environmental Quality (7/1/00)

**Note:** Delegation of these Part 61 subparts applies only to those sources in Idaho required to obtain an operating permit under Title V of the Clean Air Act.

<sup>3</sup> Oregon Department of Environmental Quality

<sup>4</sup> Lane Regional Air Pollution Authority

<sup>5</sup> Washington Department of Ecology (7/1/00)

**Note:** Delegation of Part 63 Subpart M applies only to sources required to obtain an operating permit under Title V of the Clean Air Act, including Hanford. (Pursuant to RCW 70.105.240, only Ecology can enforce regulations at Hanford)

<sup>6</sup> Benton Clean Air Authority (7/1/00)

**Note:** Delegation of Part 63 Subpart M applies only to sources required to obtain an operating permit under Title V of the Clean Air Act, excluding Hanford.

<sup>7</sup> Northwest Air Pollution Authority (7/1/99)

<sup>8</sup> Olympic Air Pollution Control Authority (July 1, 2000)

**Note:** Delegation of Part 63 Subpart M applies only to sources required to obtain an operating permit under Title V of the Clean Air Act

<sup>9</sup> Puget Sound Clean Air Agency (7/1/99)

<sup>10</sup> Spokane County Air Pollution Control Authority (7/1/00)

<sup>11</sup> Southwest Air Pollution Control Authority (8/1/98)

<sup>12</sup> Yakima Regional Clean Air Authority (7/1/00)

<sup>13</sup> Authorities which are not delegated include: §§ 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. 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 (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, 7412, 7413, 7414, 7416, 7601 and 7602.

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

2. Section 63.99 is amended by adding paragraph (a)(12) to read as follows:



**§ 63.99 Delegated federal authorities.**

\* \* \* \* \*

(a) \* \* \*  
(12) Idaho.

(i) The following table lists the specific part 63 subparts that have been delegated unchanged to the Idaho Department of Environmental Quality. The (X) symbol indicates that all or part of the subpart is delegated, subject to the conditions and limits in EPA's action:

**DELEGATION STATUS OF PART 63  
NESHAPS—STATE OF IDAHO<sup>1</sup>**

Subpart	IDEQ
A. General Provisions .....	X
D. Early Reductions .....	X
F. HON—SOCMI .....	X
G. HON—Process Vents .....	X
H. HON—Equipment Leaks .....	X
I. HON—Negotiated Leaks .....	X
L. Coke Oven Batteries .....	X
M. Perchloroethylene Dry Cleaning ...	X
N. Chromium Electroplating .....	X
O. Ethylene Oxide Sterilizers .....	X
Q. Industrial Process Cooling Towers	X
R. Gasoline Distribution .....	X
S. Pulp and Paper .....	X
T. Halogenated Solvent Cleaning .....	X
U. Polymers and Resins I .....	X
W. Polymers and Resins II—Epoxy ...	X
X. Secondary Lead Smelting .....	X
Y. Marine Tank Vessel Loading .....	X
AA. Phosphoric Acid Manufacturing Plants .....	X
BB. Phosphate Fertilizers Production Plants .....	X
CC. Petroleum Refineries .....	X
DD. Off-Site Waste and Recovery .....	X
EE. Magnetic Tape Manufacturing .....	X
GG. Aerospace Manufacturing & Re- work .....	X
HH. Oil and Natural Gas Production Facilities .....	X
II. Shipbuilding and Ship Repair .....	X
JJ. Wood Furniture Manufacturing Operations .....	X
KK. Printing and Publishing Industry ..	X
LL. Primary Aluminum .....	X
OO. Tanks—Level 1 .....	X
PP. Containers .....	X
QQ. Surface Impoundments .....	X
RR. Individual Drain Systems .....	X
SS. Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or Process .....	X
TT. Equipment Leaks—Control Level 1 .....	X
UU. Equipment Leaks—Control Level 2 .....	X
VV. Oil-Water Separators and Or- ganic-Water Separators .....	X
WW. Storage Vessels (Tanks)—Con- trol Level 2 .....	X
YY. Source Categories: Generic MACT .....	X
CCC. Steel Pickling—HCl Process Facilities and Hydrochloric Acid Re- generation Plants .....	X
DDD. Mineral Wool Production .....	X

**DELEGATION STATUS OF PART 63  
NESHAPS—STATE OF IDAHO<sup>1</sup>  
Continued**

Subpart	IDEQ
EEE. Hazardous Waste Combustors	X
GGG. Pharmaceuticals Production ....	X
HHH. Natural Gas Transmission and Storage Facilities .....	X
III. Flexible Polyurethane Foam Pro- duction .....	X
JJJ. Polymers and Resins IV .....	X
LLL. Portland Cement Manufacturing	X
MMM. Pesticide Active Ingredient Production .....	X
NNN. Wool Fiberglass Manufacturing	X
OOO. Manufacture of Amino Phenolic Resins .....	X
PPP. Polyether Polyols Production ....	X
RRR. Secondary Aluminum Produc- tion .....	X
TTT. Primary Lead Smelting .....	X
VVV. Publicly Owned Treatment Works .....	X
XXX. Ferrous Alloys Production: Ferromanganese & Silicomanganese .....	X

<sup>1</sup>Delegation is for major sources only and subject to all federal law, regulations, policy and guidance.

(ii) [Reserved]

\* \* \* \* \*

[FR Doc. 02–1119 Filed 1–22–02; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION  
AGENCY**

**40 CFR Part 180****[OPP–301209; FRL–6818–7]****RIN 2070–AB78****Mepiquat; Pesticide Tolerance**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of mepiquat (N,N-dimethylpiperidinium) in or on cottonseed at 2.0 parts per million (ppm); cotton, gin byproducts at 6.0 ppm; and meat byproducts of cattle, goat, hog, horse and sheep at 0.1 ppm. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

**DATES:** This regulation is effective January 23, 2002. Objections and requests for hearings, identified by docket control number OPP–301209, must be received by EPA on or before March 25, 2002.

**ADDRESSES:** Written objections and hearing requests may be submitted by

mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301209 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6742; e-mail address: mcneilly.dennis@epa.gov.

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311  32532	Crop production Animal production Food manufac- turing Pesticide manufac- turing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select “Laws and Regulations,” “Regulations and Proposed Rules,” and then look up the entry for this document under the