

**DATES:** This deviation is effective on January 10, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415-6743.

**SUPPLEMENTARY INFORMATION:** The Cortez bridge across the Gulf Intracoastal Waterway at Sarasota County, Cortez, is a double leaf bridge with a vertical clearance of 25.5 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 90 feet. On December 13, 2000, Florida Department of Transportation, the drawbridge owner, requested a deviation from the current operating regulation in 33 CFR 117.5 which requires drawbridge to open promptly and fully when a request to open is given. This temporary deviation was requested to allow necessary repairs to the drawbridge in a critical time sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.35 for the purpose of repair completion of the drawbridge. Under this deviation, the Cortez Bridge need only open one leaf from 8 a.m. until 4 p.m. The deviation is effective for one day, on January 10, 2001.

Dated: December 21, 2000.

**Greg E. Shapley,**

*Chief, Bridge Administration, Seventh Coast Guard District.*

[FR Doc. 01-549 Filed 1-8-01; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD07-00-133]

#### **Drawbridge Operation Regulations; Siesta Key Bridge, Across the Gulf Intracoastal Waterway, Mile 71.6, Sarasota County, FL**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Siesta Key bridge across the Gulf Intracoastal Waterway, mile 71.6, Sarasota County, Florida. This deviation allows the drawbridge owner or operator to open only the east span from 8 a.m. until 12 p.m., on January 8, 2001.

This temporary deviation is required to allow the bridge owner to safely complete repairs of the bridge.

**DATES:** This deviation is effective on January 8, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415-6743.

**SUPPLEMENTARY INFORMATION:** The Siesta Key bridge across the Gulf Intracoastal Waterway at Sarasota County, has a vertical clearance of 21 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 90 feet. On December 13, 2000, Florida Department of Transportation, the drawbridge owner, requested a deviation from the current operating regulation in 33 CFR 117.5 which requires drawbridge to open promptly and fully when a request to open is given. This temporary deviation was requested to allow necessary repairs to the drawbridge in a critical time sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.5 for the purpose of repair completion of the drawbridge. Under this deviation, the Siesta Key Bridge need only open the east span from 8 a.m. until 12 p.m. on January 8, 2001.

Dated: December 21, 2000.

**Greg E. Shapley,**

*Chief, Bridge Administration, Seventh Coast Guard District.*

[FR Doc. 01-550 Filed 1-8-01; 8:45 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 63

[FRL-6928-4]

#### **Approval of the Clean Air Act (CAA), Section 112(l) Program and Delegation of Authority to the State of Oklahoma**

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

**ACTION:** Direct final rule and delegation.

**SUMMARY:** The EPA is approving by direct final rulemaking the Oklahoma Department of Environmental Quality's (ODEQ) request for program approval of adequate authorities and resources to implement and enforce Federal National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 CFR parts 61 and 63, as these regulations apply to non-part 70 sources.

The EPA is approving ODEQ's mechanism for receiving delegation of

unchanged NESHAPs as they apply to non-part 70 sources.

Also, EPA is delegating authority to ODEQ to implement and enforce certain Federal NESHAPs hazardous air pollutant regulations which ODEQ has adopted by reference into their State rules as they apply to all sources (*i.e.*, both part 70 and non-part 70 sources). These are NESHAPs found in 40 CFR parts 61 and 63. The EPA is also delegating specified General Provisions to parts 61 and 63 as these regulations apply to all sources.

The EPA is waiving its notification requirements so sources will only need to send notifications and reports to ODEQ.

This action is taken under the authority of CAA section 112(l) and 40 CFR part 63, subpart E.

This action does not apply to areas in Indian Country over which the State of Oklahoma has not demonstrated authority.

**DATES:** This rule is effective on March 12, 2001 without further notice, unless EPA receives adverse comment by February 8, 2001. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Robert M. Todd at the Region 6 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 6, Multimedia Planning and Permitting Division (6PD), 1445 Ross Avenue, Dallas, TX 75202-2733. Anyone wanting to examine these documents should make an appointment at least two working days in advance.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Todd, U.S. EPA, Region 6, Multimedia Planning and Permitting Division (6PD), 1445 Ross Avenue, Dallas, TX 75202-2733, (214) 665-2156.

#### **SUPPLEMENTARY INFORMATION:**

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**1. What Is EPA Approving? Why?**

We, the EPA, are approving ODEQ's air toxics program for non-part 70 sources and their mechanism for receiving future delegation of unchanged Federal NESHAP regulations for non-part 70 sources. The State submittal meets all section 112(l) requirements because:

- The State program is no less stringent than the Federal program. The ODEQ's rules at Oklahoma Administrative Code, subchapter 41, Control of Emissions of Hazardous and Toxic Air Contaminants, part 3, Hazardous Air Contaminants, section 252:100-41-15, adopt certain Federal

NESHAP regulations by reference, as more fully discussed in this action.

- The ODEQ has demonstrated adequate authority and resources to implement and enforce the standards.
- The schedule for implementation and compliance is sufficiently expeditious.
- The program otherwise complies with Federal guidance.

A more detailed analysis of the State's submittal pursuant to § 63.91 is in the Technical Support Document included in the docket of this rulemaking. The mechanism for future delegation of unchanged standards is described in question twelve below.

**2. What Is EPA Delegating to ODEQ?**

We are delegating:

*Specific Standards*

We are approving ODEQ's request for delegation of authority to implement and enforce specific 40 CFR parts 61 and 63, subparts for all sources, as they exist July 1, 1999. A notable exception is that we are not delegating those standards under part 61 dealing with radionuclides.

(Two tables outlining the standards requested by ODEQ and delegated by this action are found under the response to question eight, below.)

*General Provisions*

We are approving in part ODEQ's request for delegation of authority to implement and 40 CFR part 61, subpart A and part 63, subpart A, General Provisions (for all sources). The ODEQ's rules are unchanged from the Federal provisions.

We have determined that ODEQ has sufficient resources and expertise to implement certain sections of the General Provisions. A July 10, 1998, memorandum from John Seitz<sup>1</sup> clarified which of the part 63 General Provisions authorities may be delegated to State agencies. On September 14, 2000 our rules were revised to outline the delegable authorities at 40 CFR 63.91(g). A guidance document<sup>2</sup> from EPA's Office of Enforcement and Compliance clarified the part 61 discretionary authorities which were appropriate to delegate to State agencies. Granting ODEQ authority to make decisions that are not likely to be nationally significant or which do not alter the stringency of the underlying standard is in keeping with these authorities. The ODEQ should make decisions on a source-by-source basis, not on a source category basis.

Listed below are the part 61, subpart A, sections that we cannot delegate to ODEQ. We are delegating all other part 61, General Provision authorities to ODEQ.

**40 CFR PART 61, SUBPART A, GENERAL PROVISIONS, AUTHORITIES WHICH MAY NOT BE DELEGATED**

Section	Authorities
61.04(b) .....	Addresses of State and Local Implementing Agencies.
61.12(d)(1) .....	
61.13(h) .....	Compliance with Standards and Maintenance Requirements, Alternate Means of Emission Limitation.
61.14(g) .....	Major Change to an Emissions Test.
61.16 .....	Major modifications to Monitoring Requirements.
	Availability of Information Procedures.

Listed below are the part 63, subpart A, sections that we are delegating to ODEQ. Also, listed in the footnotes of the part 63 delegation table at the end of this rule are the authorities that cannot be delegated to any State or local agency which we therefore retain.

**PART 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES DELEGATED TO ODEQ**

Section	Authorities
63.1 .....	Applicability Determinations.
63.6(e) .....	
63.6(f) .....	
63.6(h) [except 63.6(h)(9)] .....	
63.7(c)(2)(i) and (d) .....	Operation and Maintenance Requirements—Responsibility for Determining Compliance.
63.7(e)(2)(i) .....	Compliance with Non-Opacity Standards—Responsibility for Determining Compliance.
63.7(e)(2)(ii) and (f) .....	Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance
63.7(e)(2)(iii) .....	Approval of Site-Specific Test Plans.
	Approval of Minor Alternatives to Test Methods.
	Approval of Intermediate Alternatives to Test Methods.
	Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors.
63.7(e)(2)(iv) and (h)(2), (h)(3) .....	Waiver of Performance Testing.

<sup>1</sup>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."

<sup>2</sup>"How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring." EPA 305-B-99-004, February 1999.

## PART 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES DELEGATED TO ODEQ—Continued

Section	Authorities
63.8(c)(1) and (e)(1) .....	Approval of Site-Specific Performance Evaluation (monitoring) Test Plans.
63.8(f) .....	Approval of Minor Alternatives to Monitoring.
63.8(f) .....	Approval of Intermediate Alternatives to Monitoring.
63.9 and 63.10 .....	Approval of Adjustments to Time Periods for Submitting Reports.
63.10(f) .....	Approval of Minor Alternatives to Recordkeeping and Reporting.

For part 70 sources, semiannual and annual reports are required and this does not change that requirement. Decisions ODEQ makes, such as State applicability determinations, approval of alternatives to test methods, approval of alternatives to monitoring and approval of alternatives to recordkeeping requirements are not binding on EPA.

### 3. What Will Happen to ODEQ's Prior Delegation of Part 61 Standards?

In 1982, the Administrator of EPA's Dallas Regional Office delegated some authority to implement and enforce New Source Performance Standards (NSPS) and NESHAPs to ODEQ. (47 FR 17285, April 22, 1982) These standards and authorities are found in 40 CFR parts 60 and 61, respectively. Today's action will rescind and replace the NESHAP portion of that agreement only. The NSPS portion of the 1982 delegation agreement as supplemented on October 8, 1999 is not affected by this rulemaking. This delegation will cover more part 61 standards, more sources, and grant more discretionary authority to ODEQ, as discussed in the General Provision section of this document.

### 4. What Is the Legal Authority for EPA's Action?

Section 112(l) of the CAA enables EPA to approve State air toxics programs or rules to operate in place of the Federal air toxics program or rules. 40 CFR part 63, subpart E (65 FR 55810 September 14, 2000) governs EPA's approval of State rules or programs under section 112(l).

Approval of an air toxics program is granted by EPA if we find that:

- (1) The State program is "no less stringent" than the corresponding Federal program or rule,
- (2) The State has adequate authority and resources to implement the program,
- (3) The schedule for implementation and compliance is sufficiently expeditious, and
- (4) The program otherwise complies with Federal guidance. Any request for subpart E approval that does not change

the Federal section 112 rules must meet the criteria in 40 CFR 63.91.

The request may specify the mechanism that the State will use in the future to receive delegation of unchanged Federal section 112 standards without additional Federal rulemaking.

The procedure and criteria for requesting and receiving approval of programs or requesting delegation under section 112(l) of the CAA was initially published on November 26, 1993 in 58 FR 62262. The regulations were codified at 40 CFR part 63, subpart E. The EPA's procedures for delegating NESHAPs were modified on September 14, 2000 in 65 FR 55810. The revisions were to provide more options and expedite the approval process. These revisions did not affect the criteria and procedures for program approval and straight delegation to Oklahoma, and the State's request and our review is consistent with the regulations as revised.

### 5. What Responsibility Does This Give ODEQ?

With this delegation, ODEQ has the primary responsibility to implement and enforce the delegated standards.

This action does not apply to areas of Indian Country over which the State of Oklahoma has not demonstrated authority. States do not have jurisdiction over Indian Country (as defined in 18 U.S.C. 1151, and referenced in 40 CFR 51.1(i)) unless specifically granted by Congress. Since the State of Oklahoma has not submitted a demonstration of authority over the Indian Country, we are limiting our approval to those areas that do not constitute Indian Country. For a more detailed discussion of Tribal authority under the Act, see 59 FR 43956, August 25, 1994 and 63 FR 7254, February 12, 1998.

### 6. What Authority Does EPA Have?

We retain the right, as allowed by CAA section 112(l)(7), to enforce any applicable emission standard or requirement under section 112.

The EPA Administrator has the authority to approve certain changes to, or make decisions under the General Provisions to parts 61 and 63. This

authority is in 40 CFR part 61, subpart A and 40 CFR part 63, subpart A. We are granting ODEQ some of these authorities, and retaining others, as explained with the General Provisions description. And as stated earlier, EPA is not bound by State determinations.

In addition, no authorities are delegated that require rulemaking in the **Federal Register** to implement, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112.

Also, we retain any authority in an individual emission standard that may not be delegated according to provisions of the standard.

### 7. What Is EPA's Oversight of This Delegation to ODEQ?

The EPA must oversee ODEQ's decisions to ensure the delegated authorities are being adequately implemented and enforced. We will integrate oversight of the delegated authorities into the existing mechanisms and resources for oversight currently in place.

If, during oversight, we determine that ODEQ made decisions that decreased the stringency of the delegated standards, then ODEQ should take corrective actions and the source(s) affected by the decisions would be notified. We will initiate withdrawal of the program if the corrective actions taken are insufficient.

### 8. What Is the History of ODEQ's Delegation Request?

On March 10, 1995, we proposed to approve the State's program and mechanism for gaining delegation of unchanged section 112 standards for part 70 sources (60 FR 13092). This was included in our proposal to approve ODEQ's request for interim approval of the part 70 Operating Permit Program. On February 5, 1996, we issued final approval of the State's air toxics program and delegation mechanism for all section 112 standards under the authority of CAA section 112(1)(5) and 40 CFR 63.91 (61 FR 4224). This applies only to sources covered by the part 70 program.

We received delegation requests from ODEQ dated June 26, 1998, and May 5, 2000. These requests are for delegation of the 40 CFR parts 61 and 63 NESHAP standards adopted unchanged into Oklahoma Administrative Code Title 252 Chapter 100 Air Pollution Control Subchapter 41 Control of Emission of Hazardous and Toxic Air Contaminants.

The ODEQ requested delegation of the general provisions and emission standards listed in the tables below. These requests were made according to the requirements of 40 CFR part 63, subpart E. 58 FR 62262, November 26, 1993. This regulation, which governs EPA's approval of State rules or programs was recently revised to better

serve the needs of State and Local agencies that want to implement NESHAPs in their areas. 65 FR 55810, September 14, 2000. These revisions did not affect the criteria and procedures for program approval and straight delegation to Oklahoma, and the State's request and our review is consistent with the regulations as revised.

TABLE 1.—NESHAP—40 CFR PART 61

Subpart	NESHAP
A	General Provisions.
C	Beryllium.
D	Beryllium Rocket Motor Firing.
E	Mercury.
F	Vinyl Chloride.
J	Equipment Leaks of Benzene.
L	Benzene Emissions from Coke By-Product Recovery Plants.
M	Asbestos.
N	Inorganic Arsenic Emissions from Glass Manufacturing Plants.
O	Inorganic Arsenic Emissions from Primary Copper Smelters.
P	Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities.
V	Equipment Leaks.
Y	Benzene Emissions from Benzene Storage Vessels.
BB	Benzene Emissions from Benzene Transfer Operations.
FF	Benzene Emissions from Benzene Waste Operations.

TABLE 2.—NESHAPs FOR SOURCE CATEGORIES—40 CFR PART 63

Subpart	Emission standard
A	General Provisions.
F	Hazardous Organic NESHAP (HON)—Synthetic Organic Chemical Manufacturing Industry (SOCMI).
G	HON—SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater.
H	HON—Equipment Leaks.
I	HON—Certain Processes Negotiated Equipment Leak Regulation.
L	Coke Oven Batteries.
M	Perchloroethylene Dry Cleaning.
N	Chromium Electroplating.
O	Ethylene Oxide Sterilizers.
Q	Industrial Process Cooling Towers.
R	Gasoline Distribution.
S	Pulp and Paper Industry.
T	Halogenated Solvent Cleaning.
U	Polymers and Resins I.
W	Polymers and Resins II—Epoxy Resins and Non-Nylon Polyamides.
X	Secondary Lead Smelting.
Y	Marine Tank Vessel Loading.
CC	Petroleum Refineries.
DD	Off-Site Waste and Recovery.
EE	Magnetic Tape Manufacturing.
GG	Aerospace Manufacturing and Rework.
HH	Oil and Natural Gas Production.
II	Shipbuilding and Ship Repair.
JJ	Wood Furniture Manufacturing.
KK	Printing and Publishing Industry.
LL	Primary Aluminum Reduction Plants.
OO	Tanks—Level 1.
PP	Containers.
QQ	Surface Impoundments.
RR	Individual Drain Systems.
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.
TT	Equipment Leaks—Control Level 1.
UU	Equipment Leaks—Control Level 2 Standards.
VV	Oil-Water Separators and Organic-Water Separators.
WW	Storage Vessels (Tanks)—Control Level 2.
YY	Generic Maximum Achievable Control Technology Standards.
CCC	Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration.

TABLE 2.—NESHAPS FOR SOURCE CATEGORIES—40 CFR PART 63—Continued

Subpart	Emission standard
DDD .....	Mineral Wool Production.
EEE .....	Hazardous Waste Combustors.
GGG .....	Pharmaceuticals Production.
HHH .....	Natural Gas Transmission and Storage.
III .....	Flexible Polyurethane Foam Production.
JJJ .....	Polymers and Resins, Group IV.
LLL .....	Portland Cement Manufacturing.
MMM .....	Pesticide Active Ingredient Production.
NNN .....	Wool Fiberglass Manufacturing.
PPP .....	Polyether Polyols Production.
TTT .....	Primary Lead Smelting.
XXX .....	Ferroalloys Production.

The State has asked for delegation of these standards, and we are delegating them to ODEQ, as they existed on July 1, 1999. Please see question twelve below for a discussion of how we will delegate future standards and revisions to the State.

#### 9. What Other Authorities Does ODEQ Have?

Certain General Provisions authorities are automatically granted to ODEQ 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(i)(1), "Extension of Compliance with Emission Standards," and 63.5(e) and (f), "Approval and Disapproval of Construction and Reconstruction."<sup>3</sup>

Additionally, ODEQ's authority to grant a source a compliance extension under 40 CFR 63.6(i)(1) is not limited to delegated standards or part 70 permitted sources.

#### 10. Should Sources Submit Notices to EPA or ODEQ?

Sources within ODEQ's jurisdiction must submit notifications and reports required by the delegated NESHAPs to ODEQ, and sources do not need to send a copy to EPA. The ODEQ is the primary point of contact with respect to delegated NESHAPs. EPA Region 6 waives the requirement that notifications and reports for delegated standards be submitted to EPA in addition to ODEQ per 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii).

#### 11. What Information Must ODEQ Provide to EPA?

In delegating the authority to implement and enforce these rules and in granting a waiver of EPA notification

<sup>3</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)."

requirements, we require ODEQ to input all source information into the Aerometric Information Retrieval System (AIRS) for both point and area sources. The ODEQ must enter this information into the AIRS system and update the information by September 30 of every year. Additionally, ODEQ must also report to EPA, Region 6, all MACTRAX information on our request, which is typically semiannually. (MACTRAX provides summary data for each implemented NESHAP that EPA uses to evaluate the Air Toxics Program.) The ODEQ must provide any additional compliance related information to EPA, Region 6, Office of Compliance Assurance as necessary.

In receiving delegation for specific General Provisions authorities, ODEQ must submit to EPA, Region 6, copies of determinations issued under these authorities. For part 61, these determinations include: applicability determinations (section 61.01); determinations of construction or modification (section 61.06); approvals of construction or modification (section 61.08); Waiver of Compliance (section 61.11); Operation and Maintenance Requirements (section 61.12(c)); Waiver of Emission Test (section 61.13(h)(1)(iii) and (i)(1), (2)); Approval of Minor Alternatives to Monitoring (section 61.14(g) except section 61.14(g)(1)(ii)). For part 63, these determinations include: applicability determinations (§ 63.1); approval/disapprovals of construction and reconstruction (§ 63.5(e) and (f)); approval/disapprovals of compliance extensions (§ 63.6(i)(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; approvals/disapprovals of minor or intermediate

alternative monitoring methods (§ 63.8(f)); and approvals/disapprovals of minor alternatives to recordkeeping and reporting (§ 63.10(f)). The ODEQ must also forward to EPA, Region 6, copies of any notifications received under § 63.6(h)(7)(ii) regarding 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. (Please note that intermediate changes to test methods must be demonstrated as equivalent through the procedures set out in EPA method 301.) This information on approved intermediate changes to test methods and monitoring will be used to compile a database of decisions that will be accessible to State and local agencies and EPA Regions for reference in making future decisions. (For definitions of major, intermediate and minor alternative test methods or monitoring methods, see 40 CFR 63.90). The ODEQ 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.

#### 12. How Will Unchanged Authorities Be Delegated to ODEQ in the Future?

In the future, for all sources, ODEQ will only need to send a letter of request to EPA, Region 6, for those NESHAP regulations that the State has adopted by reference with proof of its regulatory authority. We will respond in writing to the request stating that the request for delegation is either granted or denied. If a request is approved, the effective date of the delegation will be the date of our response letter. A document of the delegation will be published in the **Federal Register** to inform the public and affected sources of the delegation

and to indicate where source notifications and reports should be sent.

Furthermore, ODEQ intends to update their adoptions 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.

### 13. What Is the Relationship Between the Resource Conservation and Recovery Act (RCRA) and the Hazardous Waste Combustor (HWC) MACT? How Does This Affect Delegation of This Standard to ODEQ?

As part of today's rule, we are delegating, under the CAA, implementation and enforcement authority for the Hazardous Waste Combustor MACT to ODEQ. Many of the sources subject to the HWC MACT are also subject to the RCRA permitting requirements. We expect air emissions and related operating requirements found in the HWC MACT will be included in part 70 permits issued by ODEQ. However, RCRA permits will still be required for all other aspects of the combustion unit and the facility that are governed by RCRA (e.g., corrective action, general facility standards, other combustor-specific concerns such as materials handling, risk-based emissions limits and operating requirements, as appropriate and other hazardous waste management units).<sup>4</sup> See the HWC MACT rule preamble discussion on the interrelationship of the MACT rule with the RCRA Omnibus provision and site specific risk assessments at 64 FR 52828, pages 52839–52843, September 30, 1999, and the RCRA Site-Specific Risk Assessment Policy for Hazardous

<sup>4</sup> EPA promulgated the HWC MACT (40 CFR part 63, subpart EEE) under the joint authority of the (CAA) and (RCRA). Before this rule went into effect, the air emissions from these sources were primarily regulated under the authority of RCRA. See 40 CFR parts 264, 265, 266, and 270. With the release of HWC MACT, the air emissions are now regulated under both CAA and RCRA. Even though both statutes give EPA the authority, we determined that having the emissions standards and permitting requirements in both sets of implementing regulations would be duplicative. For this reason, using the authority provided by section 1006(b) of RCRA, EPA deferred the RCRA requirements for the HWC emission controls to the CAA requirements of 40 CFR part 63, subpart EEE. After a facility has demonstrated compliance with the HWC MACT, the RCRA waste management standards for air emissions from these units will no longer apply, with the exception of 3005(c)(3) of RCRA, which requires that each RCRA permit contain the terms and conditions necessary to protect human health and the environment. Under this provision of RCRA, if a regulatory authority determines that more stringent conditions than the HWC MACT are necessary to protect human health and the environment for a particular facility, then that regulatory authority may impose those conditions in the facility's RCRA permit.

Waste Combustion Facilities dated June, 2000 for more information.

## II. Final Action

The public was provided the opportunity to comment on the proposed approval of the program and mechanism for delegation of section 112 standards, as apply to part 70 sources, on March 10, 1995. 60 FR 13088. The EPA received public comments on that proposal and responded to them in the February 5, 1996, **Federal Register**. 61 FR 4220. In this action, the public is given an opportunity to comment on the program and mechanism for the State to gain 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 rule without prior proposal. However, in the Proposed Rules section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the program and delegation of authority described in this action if adverse comments are received. This action will be effective March 9, 2001 without further notice unless the Agency receives relevant adverse comments by February 7, 2001.

If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

## III. Administrative Requirements

### A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

### B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 **Federal Register** 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not economically significant and does not involve decisions intended to mitigate environmental health or safety risks.

### C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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 officials 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."

Today's 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. Executive Order 13132

Federalism (64 **Federal Register** 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. The 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 State officials in developing this rule, and this rule is in response to the State's delegation request.

#### *E. Regulatory Flexibility*

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies 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 governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because 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. Therefore, because this action does not impose any new requirements, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities.

#### *F. 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 costs to State, local, or tribal governments in the aggregate; or to the 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.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated 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 requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### *G. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

#### *H. Executive Order 12898*

This rule does not involve special consideration of Environmental Justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

#### *I. Executive Order 12988*

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize

potential litigation, and provide a clear legal standard for affected conduct.

#### **J. Executive Order 12630**

The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney Generals Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

#### **K. Paperwork Reduction**

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **L. 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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective March 12, 2001 unless EPA receives adverse written comments by February 8, 2001.

#### **M. 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 12, 2001. 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 in 40 CFR Part 63**

Environmental protection, Air pollution control, Hazardous substances, Intergovernmental relations,

Reporting and recordkeeping requirements.

Dated: December 21, 2000.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

Title 40, chapter I, part 63 of the CFR is amended as follows:

**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 63.99 is amended by adding paragraph (a)(36) to read as follows:

**§ 63.99 Delegated Federal Authorities**

(a) \* \* \*

(36) Oklahoma.

(i) The following table lists the specific part 63 standards that have been delegated unchanged to the State of Oklahoma for all sources. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—OKLAHOMA

Subpart		ODEQ <sup>1</sup>
A	General Provisions <sup>2</sup>	X
D	Early Reductions.	
F	HON—SOCMI	X
G	HON—SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater	X
H	HON—Equipment Leaks	X
I	HON—Certain Processes Negotiated Equipment Leak Regulation	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 Industry	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
CC	Petroleum Refineries	X
DD	Off-Site Waste and Recovery	X
EE	Magnetic Tape Manufacturing	X
GG	Aerospace Manufacturing and Rework	X
HH	Oil and Natural Gas Production	X
II	Shipbuilding and Ship Repair	X
JJ	Wood Furniture Manufacturing Operations	X
KK	Printing and Publishing Industry	X
LL	Primary Aluminum Reduction Plants	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 a Process.	X
TT	Equipment Leaks—Level 1	X
UU	Equipment Leaks—Level 2 Standards	X
VV	Oil-Water Separators and Organic-Water Separators	X
WW	Storage Vessels (Tanks)—Control Level 2	X
YY	Generic Maximum Achievable Control Technology Standards	X
CCC	Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration	X
DDD	Mineral Wool Production	X
EEE	Hazardous Waste Combustors	X
GGG	Pharmaceuticals Production	X
HHH	Natural Gas Transmission and Storage	X
III	Flexible Polyurethane Foam Production	X
JJJ	Polymers and Resins, Group IV	X
LLL	Portland Cement Manufacturing	X
MMM	Pesticide Active Ingredient Production	X
NNN	Wool Fiberglass Manufacturing	X
PPP	Polyether Polyols Production	X
TTT	Primary Lead Smelting	X
XXX	Ferroalloys Production	X

<sup>1</sup> Oklahoma Department of Environmental Quality.

<sup>2</sup> Authorities which may not be delegated include: 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; and all authorities identified in the subparts (i.e., under "Delegation of Authority") that cannot be delegated.



[FR Doc. 01-110 Filed 1-8-01; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180**

[OPP-301097; FRL-6760-2]

RIN 2070-6760-2

**Spinosad; Pesticide Tolerances for Emergency Exemptions**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for residues of spinosad in or on alfalfa forage, alfalfa hay, sugar beets, sugar beet tops, sugar beet molasses, grass forage, grass hay, peanuts, and peanut hay and, modifies tolerances for livestock commodities on a time-limited basis. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on alfalfa, sugar beets, pastureland and rangeland, and peanuts. This regulation establishes maximum permissible levels for residues of spinosad on these food commodities. These tolerances will expire and are revoked on December 31, 2002.

**DATES:** This regulation is effective January 9, 2001. Objections and requests for hearings, identified by docket control number OPP-301097, must be received by EPA on or before March 12, 2001.

**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 VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP-301097 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703)308-9367; and e-mail address: ertman.andrew@epa.gov.

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

You may be potentially 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:

Cat-egories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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 "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgrstr/>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-301097. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents.

The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

**II. Background and Statutory Findings**

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the insecticide spinosad, in or on the following commodities: alfalfa, forage at 4.0 parts per million (ppm); alfalfa, hay at 4.0 ppm; beet, sugar at 0.020 ppm; beet, sugar, tops at 10.0 ppm; beet, sugar, molasses at 0.250 ppm; grass, forage at 7.0 ppm; grass, hay at 7.0 ppm; peanut at 0.020 ppm; and peanut, hay at 10.0 ppm.

Furthermore, tolerances for livestock commodities are being modified, on a time-limited basis, as follows: meat of cattle, horses, goats, hogs, and sheep from 0.15 to 0.60 ppm; fat of cattle, horses, goats, hogs, and sheep from 3.5 to 15.0 ppm; meat byproducts (mbyp) of cattle, horses, goats, hogs, and sheep from 1.0 ppm to 3.50 ppm; milk, whole from 0.5 to 2.0 ppm; milk, fat from 5.0 ppm to 20.0 ppm; eggs from 0.02 to 0.030 ppm; and poultry, fat from 0.2 ppm to 0.30 ppm. These tolerances will expire and are revoked on December 31, 2002. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of Federal Insecticide, Fungicide, and Rodenticide Act FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having