

Act (42 U.S.C. 4321 *et seq.*). Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### IV. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

#### List of Subjects in 21 CFR Part 110

Food packaging, Foods.

■ Therefore, in FR Rule Doc. No. 2015–21920, published September 17, 2015, at 80 FR 55908–56168, amendatory instruction 13 in the third column on page 56144 is withdrawn.

Dated: September 7, 2018.

Scott Gottlieb,

Commissioner of Food and Drugs.

[FR Doc. 2018–19855 Filed 9–11–18; 8:45 am]

BILLING CODE 4164–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 60, 61, and 63

[EPA–R06–OAR–2016–0091; FRL–9982–62–Region 6]

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

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

**ACTION:** Final rule; delegation of authority.

**SUMMARY:** The New Mexico Environment Department (NMED) has submitted updated regulations for receiving delegation and approval of a program for the implementation and enforcement of certain New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) for all sources (both Title V and non-Title V sources). These updated regulations apply to certain NSPS promulgated by the EPA and amended between September 24, 2013 and January 15, 2017; certain NESHAP promulgated by the EPA and amended between January 1, 2011 and January 15, 2017; and other NESHAP promulgated by the EPA and amended between August 30, 2013 and January 15, 2017, as adopted by the NMED. The delegation of authority under this action does not apply to sources located in Bernalillo County, New Mexico, or to sources located in areas defined as Indian Country. The

EPA is providing notice that it is updating the delegation of certain NSPS to NMED, and taking final action to approve the delegation of certain NESHAP to NMED.

**DATES:** This rule is effective on October 12, 2018.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2016–0091. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick Barrett (6MM–AP), (214) 665–7227; email: [barrett.richard@epa.gov](mailto:barrett.richard@epa.gov).

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

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#### I. Background

On April 13, 2018, EPA published a direct final rule and accompanying proposal approving the updated delegation of authority for implementation and enforcement of NSPS and NESHAPs for all sources (both part 70 and non-part 70 sources) to the NMED. The direct final rule and proposal were published without prior proposal because EPA anticipated no relevant adverse comments. See 83 FR

15964 and 83 FR 16027, respectively. EPA stated in the direct final rule that if we receive relevant adverse comments by May 14, 2018, we would publish a timely withdrawal in the **Federal Register**, and all public comments received would be addressed in a subsequent final rule based on the proposed rule.

EPA received an adverse comment on May 14, 2018, and accordingly withdrew the direct final rule on June 5, 2018, pursuant to sections 111 and 112 of the CAA. See 83 FR 25936. The comment and our response to that comment follows below.

#### II. Response to Comment

**Comment:** EPA received an anonymous adverse comment in response to the proposed rulemaking. The comment includes several personal observations and statements critical of New Mexico’s ability to maintain and oversee its air quality programs. The commenter recommends that the proposed update to New Mexico’s NESHAP delegation not be approved until EPA investigates the commenter’s allegations and New Mexico has addressed the alleged deficiencies. See Docket for the entire comment.

**EPA’s Response:** We thank the commenter for the comment. Section 112(l) of the Act and EPA’s implementing regulations at 40 CFR part 63, subpart E primarily govern EPA’s actions on State requests for delegation of authority to implement and enforce the NESHAP program. CAA section 112(l)(5)(B) states that EPA shall disapprove a NESHAP program submitted by a State if we find that adequate resources are not available to implement the program. See also 40 CFR 63.91(d)(3)(iii). Several concerns expressed by the commenter relate to the adequacy of resources (including the lack of technically experienced and qualified staff) maintained by the NMED Air Quality Bureau. NMED provided EPA with a response to those comments that included a description of current resources and experience within the Air Quality Bureau. See Docket for NMED’s response. In addition, consistent with 40 CFR 63.91(d)(2), New Mexico’s delegation update request included a reference to its previous demonstration and a reaffirmation that the up-front approval criteria for delegation are still being met. Based on this information as well as discussions with the Compliance and Enforcement Division and the Criminal Investigation Division within EPA Region 6, we have not identified sufficient information to support the necessary finding for disapproval of the requested NESHAP

delegation update. The remainder of the commenter's concerns (*e.g.*, meeting the requirements of EPA's compliance monitoring plan) relate to matters that are more appropriately addressed as part of our oversight responsibilities. EPA oversees NMED's decisions to ensure the delegated authorities are being adequately implemented and enforced. We integrate oversight of the delegated authorities into the existing mechanisms and resources for oversight currently in place. If, during oversight, we determine that NMED made decisions which decreased the stringency of the delegated standards, then NMED would be required to take corrective actions and the source(s) affected by the decisions will be notified, as required by 40 CFR 63.91(g)(1)(ii). Our oversight authorities allow us to initiate withdrawal of the program delegation if the corrective actions taken are insufficient.

### III. What does this action do?

The EPA is providing notice that it is approving NMED's request updating the delegation for the implementation and enforcement of certain NSPS. The EPA is also taking final action to approve NMED's request updating the delegation of certain NESHAP. With this delegation, NMED has the primary responsibility to implement and enforce the delegated standards. *See* sections VII and VIII, below, for a discussion of which standards are being delegated and which are not being delegated.

### IV. What is the authority for delegation?

Upon the EPA's finding that the procedures submitted by a State for the implementation and enforcement of standards of performance for new sources located in the State are adequate, Section 111(c)(1) of the Clean Air Act (CAA) authorizes the EPA to delegate its authority to implement and enforce such standards. The new source performance standards are codified at 40 CFR part 60.

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

### V. What criteria must New Mexico's programs meet to be approved?

In order to receive delegation of NSPS, a State must develop and submit to the EPA a procedure for

implementing and enforcing the NSPS in the state, and their regulations and resources must be adequate for the implementation and enforcement of the NSPS. The EPA initially approved New Mexico's program for the delegation of NSPS on June 6, 1986 (51 FR 20648). The EPA reviewed the laws of the State and the rules and regulations of the New Mexico Environmental Improvement Division (now the NMED) and determined the State's procedures, regulations and resources adequate for the implementation and enforcement of the Federal standards. The NSPS delegation was most recently updated on February 2, 2015 (80 FR 5475). This action notifies the public that the EPA is updating NMED's delegation to implement and enforce certain additional NSPS.

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

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

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

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

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

In carrying out its responsibilities under section 112(l), the EPA promulgated regulations at 40 CFR part 63, subpart E setting forth criteria for the approval of submitted programs. For example, in order to obtain approval of a program to implement and enforce Federal section 112 rules as promulgated without changes (straight delegation), a State must demonstrate that it meets the criteria of 40 CFR 63.91(d). 40 CFR 63.91(d)(3) provides that interim or final title V program approval will satisfy the criteria of 40 CFR 63.91(d).<sup>1</sup>

<sup>1</sup> Some NESHAP standards do not require a source to obtain a title V permit (*e.g.*, certain area sources that are exempt from the requirement to obtain a title V permit). For these non-title V sources, the EPA believes that the State must assure the EPA that it can implement and enforce the NESHAP for such sources. *See* 65 FR 55810, 55813 (Sept. 14, 2000).

The NESHAP delegation was most recently approved on February 2, 2015 (80 FR 5475).

### VI. How did NMED meet the NSPS and NESHAP program approval criteria?

As to the NSPS standards in 40 CFR part 60, NMED adopted the Federal standards via incorporation by reference. The NMED regulations are, therefore, at least as stringent as the EPA's rules. *See* 40 CFR 60.10(a). Also, in the EPA initial approval of NSPS delegation, we determined that the State developed procedures for implementing and enforcing the NSPS in the State, and that the State's regulations and resources are adequate for the implementation and enforcement of the Federal standards. *See* 51 FR 20648 (June 6, 1986).

As to the NESHAP standards in 40 CFR parts 61 and 63, as part of its Title V submission NMED stated that it intended to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 standards into its regulations. This commitment applied to both existing and future standards as they applied to part 70 sources. The EPA's final interim approval of New Mexico's Title V operating permits program delegated the authority to implement certain NESHAP, effective December 19, 1994 (59 FR 59656). On November 26, 1996, the EPA promulgated final full approval of the State's operating permits program, effective January 27, 1997 (61 FR 60032). These interim and final title V program approvals satisfy the upfront approval criteria of 40 CFR 63.91(d). Under 40 CFR 63.91(d)(2), once a state has satisfied the up-front approval criteria, it needs only to reference the previous demonstration and reaffirm that it still meets the criteria for any subsequent submittals for delegation of the section 112 standards. NMED has affirmed that it still meets the up-front approval criteria. With respect to non-Title V sources, the EPA has previously approved delegation of NESHAP authorities to NMED after finding adequate authorities to implement and enforce the NESHAP for non-Title V sources. *See* 68 FR 69036 (December 11, 2003).

### VII. What is being delegated?

By letter dated January 22, 2016, the EPA received a request from NMED to update its NSPS delegation and NESHAP delegation. With certain exceptions noted in section VIII below, NMED's request included NSPS in 40 CFR part 60, as amended between September 24, 2013 and September 15, 2015; NESHAP in 40 CFR part 61, as

amended between January 1, 2011 and September 15, 2015; and NESHAP in 40 CFR part 63, as amended between August 30, 2013 and September 15, 2015.

By letter dated June 9, 2017, the EPA received a request from NMED to update its NSPS delegation and NESHAP delegation. With certain exceptions noted in section VIII below, NMED's request included NSPS in 40 CFR part 60, as amended between September 15, 2015 and January 15, 2017; NESHAP in 40 CFR part 61, as amended between September 15, 2015 and January 15, 2017; and NESHAP in 40 CFR part 63, as amended between September 15, 2015 and January 15, 2017. This action is being taken in response to NMED's requests noted above.

#### VIII. What is not being delegated?

All authorities not affirmatively and expressly delegated by this action are not delegated. These include the following part 60, 61 and 63 authorities listed below:

- 40 CFR part 60, subpart AAA (Standards of Performance for New Residential Wood Heaters);
- 40 CFR part 60, subpart QQQQ (Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces);
- 40 CFR part 61, subpart B (National Emission Standards for Radon Emissions From Underground Uranium Mines);
- 40 CFR part 61, subpart H (National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities);
- 40 CFR part 61, subpart I (National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H);
- 40 CFR part 61, subpart K (National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants);
- 40 CFR part 61, subpart Q (National Emission Standards for Radon Emissions From Department of Energy facilities);
- 40 CFR part 61, subpart R (National Emission Standards for Radon Emissions From Phosphogypsum Stacks);
- 40 CFR part 61, subpart T (National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings);
- 40 CFR part 61, subpart W (National Emission Standards for Radon Emissions From Operating Mill Tailings); and

- 40 CFR part 63, subpart J (National Emission Standards for Polyvinyl Chloride and Copolymers Production).

In addition, the EPA regulations provide that we cannot delegate to a State any of the Category II authorities set forth in 40 CFR 63.91(g)(2). These include the following provisions: § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. Also, some Part 61 and Part 63 standards have certain provisions that cannot be delegated to the States. Furthermore, no authorities are 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. Finally, this action does not delegate any authority under section 112(r), the accidental release program.

All inquiries and requests concerning implementation and enforcement of the excluded standards in the State of New Mexico should be directed to the EPA Region 6 Office.

In addition, this delegation to NMED to implement and enforce certain NSPS and NESHAP authorities does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. Under this definition, the 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, the EPA will continue to implement the NSPS and NESHAP in Indian country because NMED has not submitted information to demonstrate authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

#### IX. How will statutory and regulatory interpretations be made?

In approving the NSPS delegation, NMED will obtain concurrence from the EPA on any matter involving the interpretation of section 111 of the CAA or 40 CFR part 60 to the extent that implementation or enforcement of these provisions have not been covered by prior EPA determinations or guidance. See 51 FR 20649 (June 6, 1986).

In approving the NESHAP delegation, NMED will obtain concurrence from the EPA on any matter involving the

interpretation of section 112 of the CAA or 40 CFR parts 61 and 63 to the extent that implementation or enforcement of these provisions have not been covered by prior EPA determinations or guidance.

#### X. What authority does the EPA have?

We retain the right, as provided by CAA section 111(c)(2), to enforce any applicable emission standard or requirement under section 111.

We retain the right, as provided by CAA section 112(l)(7) and 40 CFR 63.90(d)(2), to enforce any applicable emission standard or requirement under section 112. In addition, the EPA may enforce any federally approved State rule, requirement, or program under 40 CFR 63.90(e) and 63.91(c)(1)(i). The EPA also has the authority to make decisions under the General Provisions (subpart A) of parts 61 and 63. We are delegating to NMED some of these authorities, and retaining others, as explained in sections V and VI above. In addition, the EPA may review and disapprove State determinations and subsequently require corrections. See 40 CFR 63.91(g)(1)(ii). EPA also has the authority to review NMED's implementation and enforcement of approved rules or programs and to withdraw approval if we find inadequate implementation or enforcement. See 40 CFR 63.96.

Furthermore, we retain any authority in an individual emission standard that may not be delegated according to provisions of the standard. Also, listed in footnote 2 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.

Finally, we retain the authorities stated in the original delegation agreement. See 51 FR 20648–20650 (June 6, 1986).

#### XI. What information must NMED provide to the EPA?

NMED must provide any additional compliance related information to EPA, Region 6, Office of Enforcement and Compliance Assurance, within 45 days of a request under 40 CFR 63.96(a). In receiving delegation for specific General Provisions authorities, NMED must submit to EPA Region 6, on a semi-annual basis, copies of determinations issued under these authorities. See 40 CFR 63.91(g)(1)(ii). For 40 CFR part 63 standards, these determinations include: Section 63.1, Applicability Determinations; Section 63.6(e), Operation and Maintenance Requirements—Responsibility for Determining Compliance; Section

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

## XII. What is the EPA's oversight role?

The EPA oversees NMED'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 NMED made decisions that decreased the stringency of the delegated standards, then NMED shall be required to take corrective actions and the source(s) affected by the decisions will be notified. See 40 CFR 63.91(g)(1)(ii) and 63.91(b). Our oversight authorities allow us to initiate withdrawal of the program delegation if the corrective actions taken are insufficient.

## XIII. Should sources submit notices to the EPA or NMED?

Sources located outside the boundaries of Bernalillo County and outside of Indian country should submit all information required pursuant to the delegated authorities in the Federal NSPS and NESHAP (40 CFR parts 60, 61 and 63) directly to the NMED at the following address: New Mexico Environment Department, P.O. Box 5469, Santa Fe, New Mexico 87502–5469. The NMED is the primary point of contact with respect to delegated NSPS and NESHAP authorities. Sources do not need to send a copy to the EPA. The EPA Region 6 waives the requirement that notifications and reports for

delegated authorities be submitted to the EPA in addition to NMED in accordance with 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii).<sup>2</sup> For those authorities not delegated, sources must continue to submit all appropriate information to the EPA.

## XIV. How will unchanged authorities be delegated to NMED in the future?

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

## XV. Final Action

We are approving the request by the NMED for the updated delegation of certain NSPS to NMED, and taking final action to approve the delegation of certain NESHAP to NMED, for all sources (both Title V and non-Title V sources). These updated regulations apply to certain NSPS promulgated by the EPA at 40 CFR part 60, as amended between September 24, 2013 and January 15, 2017; certain NESHAP promulgated by the EPA at 40 CFR part 61, as amended between January 1, 2011 and January 15, 2017; and other NESHAP promulgated by the EPA at 40 CFR part 63, as amended between August 30, 2013 and January 15, 2017, as adopted by the NMED (See the amendatory language at the end of this document for the specific standards delegated). The delegation of authority under this action does not apply to sources located in Bernalillo County,

New Mexico, or to sources located in areas defined as Indian Country.

## XVI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The delegation is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state request to receive delegation of certain Federal standards, and does not alter the relationship or the distribution of power and

<sup>2</sup> This waiver only extends to the submission of copies of notifications and reports; EPA does not waive the requirements in delegated standards that require notifications and reports be submitted to an electronic database (e.g., 40 CFR part 63, subpart HHHHHH).

responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing delegation submissions, EPA’s role is to approve submissions, provided that they meet the criteria of the Clean Air Act. This action is not subject to the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA. 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.*).

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**. 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).

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 November 13, 2018. 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 60*

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

*40 CFR Part 61*

Environmental protection, Administrative practice and procedure, Air pollution control, Arsenic, Benzene, Beryllium, Hazardous substances, Intergovernmental relations, 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.

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

Dated: September 6, 2018.

**Wren Stenger,**

*Director, Multimedia Division, Region 6.*

40 CFR parts 60, 61, and 63 are amended as follows:

**PART 60—[AMENDED]**

■ 1. The authority citation for part 60 continues to read as follows:

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

**Subpart A—General Provisions**

■ 2. Section 60.4 is amended by revising paragraphs (b)(33) and (e)(1) to read as follows:

**§ 60.4 Address.**

\* \* \* \* \*

(b) \* \* \*

(33) State of New Mexico: New Mexico Environment Department, P.O. Box 5469, Santa Fe, New Mexico 87502–5469. Note: For a list of

delegated standards for New Mexico (excluding Bernalillo County and Indian country), see paragraph (e)(1) of this section.

\* \* \* \* \*

(e) \* \* \*

(1) *New Mexico.* The New Mexico Environment Department has been delegated all part 60 standards promulgated by the EPA, except subpart AAA—Standards of Performance for New Residential Wood Heaters; and subpart QQQQ—Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces, as amended in the **Federal Register** through January 15, 2017.

\* \* \* \* \*

**PART 61—[AMENDED]**

■ 3. The authority citation for part 61 continues to read as follows:

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

**Subpart A—General Provisions**

■ 4. Section 61.04 is amended by revising paragraphs (b)(33) and (c)(6)(iii) to read as follows:

**§ 61.04 Address.**

(b) \* \* \*

(33) *State of New Mexico:* New Mexico Environment Department, P.O. Box 5469, Santa Fe, New Mexico 87502–5469. For a list of delegated standards for New Mexico (excluding Bernalillo County and Indian country), see paragraph (c)(6) of this section.

\* \* \* \* \*

(c) \* \* \*

(6) \* \* \*

(iii) *New Mexico.* The New Mexico Environment Department (NMED) has been delegated the following part 61 standards promulgated by the EPA, as amended in the **Federal Register** through January 15, 2017. The (X) symbol is used to indicate each subpart that has been delegated. The delegations are subject to all of the conditions and limitations set forth in Federal law and regulations.

DELEGATION STATUS FOR NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (PART 61 STANDARDS) FOR NEW MEXICO  
[Excluding Bernalillo County and Indian Country]

Subpart	Source category	NMED <sup>1</sup>
A .....	General Provisions .....	X
B .....	Radon Emissions From Underground Uranium Mines .....	.....
C .....	Beryllium .....	X
D .....	Beryllium Rocket Motor Firing .....	X
E .....	Mercury .....	X
F .....	Vinyl Chloride .....	X
G .....	(Reserved) .....	.....
H .....	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities .....	.....

DELEGATION STATUS FOR NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (PART 61 STANDARDS)  
FOR NEW MEXICO—Continued  
[Excluding Bernalillo County and Indian Country]

Subpart	Source category	NMED <sup>1</sup>
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licenses and Not Covered by Subpart H.	
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X
K	Radionuclide Emissions From Elemental Phosphorus Plants	
L	Benzene Emissions From Coke By-Product Recovery Plants	X
M	Asbestos	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants	X
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities	X
Q	Radon Emissions From Department of Energy Facilities	
R	Radon Emissions From Phosphogypsum Stacks	
S	(Reserved)	
T	Radon Emissions From the Disposal of Uranium Mill Tailings	
U	(Reserved)	
V	Equipment Leaks (Fugitives Emission Sources)	X
W	Radon Emissions From Operating Mill Tailings	
X	(Reserved)	
Y	Benzene Emissions From Benzene Storage Vessels	X
Z-AA	(Reserved)	
BB	Benzene Emissions From Benzene Transfer Operations	X
CC-EE	(Reserved)	
FF	Benzene Waste Operations	X

<sup>1</sup> Program delegated to New Mexico Environment Department (NMED).

**PART 63—[AMENDED]**

■ 5. 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**

■ 6. Section 63.99 is amended by revising paragraph (a)(32)(i) to read as follows:

**§ 63.99 Delegated Federal authorities.**

- (a) \* \* \*
- (32) \* \* \*

(i) The following table lists the specific part 63 standards that have been delegated unchanged to the New Mexico Environment Department for all sources. The “X” symbol is used to indicate each subpart that has been delegated. The delegations are subject to all of the conditions and limitations set forth in Federal law and regulations.

Some authorities cannot be delegated and are retained by the EPA. These include certain General Provisions authorities and specific parts of some standards. Any amendments made to these rules after January 15, 2017 are not delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF NEW MEXICO  
[Excluding Indian Country]

Subpart	Source category	NMED <sup>1,2</sup>	ABCAQCB <sup>1,3</sup>
A	General Provisions	X	X
D	Early Reductions	X	X
F	Hazardous Organic NESHA (HON)—Synthetic Organic Chemical Manufacturing Industry (SOCMI).	X	X
G	HON—SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater	X	X
H	HON—Equipment Leaks	X	X
I	HON—Certain Processes Negotiated Equipment Leak Regulation	X	X
J	Polyvinyl Chloride and Copolymers Production	(4)	(4)
K	(Reserved)		
L	Coke Oven Batteries	X	X
M	Perchloroethylene Dry Cleaning	X	X
N	Chromium Electroplating and Chromium Anodizing Tanks	X	X
O	Ethylene Oxide Sterilizers	X	X
P	(Reserved)		
Q	Industrial Process Cooling Towers	X	X
R	Gasoline Distribution	X	X
S	Pulp and Paper Industry	X	X
T	Halogenated Solvent Cleaning	X	X
U	Group I Polymers and Resins	X	X
V	(Reserved)		
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X	X
X	Secondary Lead Smelting	X	X
Y	Marine Tank Vessel Loading	X	X

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF NEW MEXICO—Continued  
 [Excluding Indian Country]

Subpart	Source category	NMED <sup>1 2</sup>	ABCAQCB <sup>1 3</sup>
Z	(Reserved)		
AA	Phosphoric Acid Manufacturing Plants	X	X
BB	Phosphate Fertilizers Production Plants	X	X
CC	Petroleum Refineries	X	X
DD	Off-Site Waste and Recovery Operations	X	X
EE	Magnetic Tape Manufacturing	X	X
FF	(Reserved)		
GG	Aerospace Manufacturing and Rework Facilities	X	X
HH	Oil and Natural Gas Production Facilities	X	X
II	Shipbuilding and Ship Repair Facilities	X	X
JJ	Wood Furniture Manufacturing Operations	X	X
KK	Printing and Publishing Industry	X	X
LL	Primary Aluminum Reduction Plants	X	X
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfide, and Stand-Alone Semichemical Pulp Mills.	X	X
NN	Wool Fiberglass Manufacturing Area Sources	X	
OO	Tanks-Level 1	X	X
PP	Containers	X	X
QQ	Surface Impoundments	X	X
RR	Individual Drain Systems	X	X
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	X	X
TT	Equipment Leaks—Control Level 1	X	X
UU	Equipment Leaks—Control Level 2 Standards	X	X
VV	Oil—Water Separators and Organic—Water Separators	X	X
WW	Storage Vessels (Tanks)—Control Level 2	X	X
XX	Ethylene Manufacturing Process Units Heat Exchange Systems and Waste Operations.	X	X
YY	Generic Maximum Achievable Control Technology Standards	X	X
ZZ-BBB	(Reserved)		
CCC	Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration	X	X
DDD	Mineral Wool Production	X	X
EEE	Hazardous Waste Combustors	X	X
FFF	(Reserved)		
GGG	Pharmaceuticals Production	X	X
HHH	Natural Gas Transmission and Storage Facilities	X	X
III	Flexible Polyurethane Foam Production	X	X
JJJ	Group IV Polymers and Resins	X	X
KKK	(Reserved)		
LLL	Portland Cement Manufacturing	X	X
MMM	Pesticide Active Ingredient Production	X	X
NNN	Wool Fiberglass Manufacturing	X	X
OOO	Amino/Phenolic Resins	X	X
PPP	Polyether Polyols Production	X	X
QQQ	Primary Copper Smelting	X	X
RRR	Secondary Aluminum Production	X	X
SSS	(Reserved)		
TTT	Primary Lead Smelting	X	X
UUU	Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Plants.	X	X
VVV	Publicly Owned Treatment Works (POTW)	X	X
WWW	(Reserved)		
XXX	Ferroalloys Production: Ferromanganese and Silicomanganese	X	X
AAAA	Municipal Solid Waste Landfills	X	X
CCCC	Nutritional Yeast Manufacturing	X	X
DDDD	Plywood and Composite Wood Products	X <sup>5</sup>	X <sup>5</sup>
EEEE	Organic Liquids Distribution	X	X
FFFF	Misc. Organic Chemical Production and Processes (MON)	X	X
GGGG	Solvent Extraction for Vegetable Oil Production	X	X
HHHH	Wet Formed Fiberglass Mat Production	X	X
IIII	Auto and Light Duty Truck (Surface Coating)	X	X
JJJJ	Paper and other Web (Surface Coating)	X	X
KKKK	Metal Can (Surface Coating)	X	X
MMMM	Misc. Metal Parts and Products (Surface Coating)	X	X
NNNN	Surface Coating of Large Appliances	X	X
OOOO	Fabric Printing Coating and Dyeing	X	X
PPPP	Plastic Parts (Surface Coating)	X	X
QQQQ	Surface Coating of Wood Building Products	X	X
RRRR	Surface Coating of Metal Furniture	X	X
SSSS	Surface Coating for Metal Coil	X	X
TTTT	Leather Finishing Operations	X	X

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF NEW MEXICO—Continued  
 [Excluding Indian Country]

Subpart	Source category	NMED <sup>1 2</sup>	ABCAQCB <sup>1 3</sup>
UUUU	Cellulose Production Manufacture	X	X
VVVV	Boat Manufacturing	X	X
WWWWW	Reinforced Plastic Composites Production	X	X
XXXX	Rubber Tire Manufacturing	X	X
YYYY	Combustion Turbines	X	X
ZZZZ	Reciprocating Internal Combustion Engines (RICE)	X	X
AAAAA	Lime Manufacturing Plants	X	X
BBBBB	Semiconductor Manufacturing	X	X
CCCCC	Coke Ovens: Pushing, Quenching and Battery Stacks	X	X
DDDDD	Industrial/Commercial/Institutional Boilers and Process Heaters	X <sup>6</sup>	X <sup>6</sup>
EEEEE	Iron Foundries	X	X
FFFFF	Integrated Iron and Steel	X	X
GGGGG	Site Remediation	X	X
HHHHH	Miscellaneous Coating Manufacturing	X	X
IIIII	Mercury Cell Chlor-Alkali Plants	X	X
JJJJJ	Brick and Structural Clay Products Manufacturing	X <sup>7</sup>	(7)
KKKKK	Clay Ceramics Manufacturing	X <sup>7</sup>	(7)
LLLLL	Asphalt Roofing and Processing	X	X
MMMMM	Flexible Polyurethane Foam Fabrication Operation	X	X
NNNNN	Hydrochloric Acid Production, Fumed Silica Production	X	X
OOOOO	(Reserved)		
PPPPP	Engine Test Facilities	X	X
QQQQQ	Friction Products Manufacturing	X	X
RRRRR	Taconite Iron Ore Processing	X	X
SSSSS	Refractory Products Manufacture	X	X
TTTTT	Primary Magnesium Refining	X	X
UUUUU	Coal and Oil-Fired Electric Utility Steam Generating Units	X <sup>8</sup>	X <sup>8</sup>
VVVVV	(Reserved)		
WWWWW	Hospital Ethylene Oxide Sterilizers	X	X
XXXXX	(Reserved)		
YYYYY	Electric Arc Furnace Steelmaking Area Sources	X	X
ZZZZZ	Iron and Steel Foundries Area Sources	X	X
AAAAAA	(Reserved)		
BBBBBB	Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities	X	X
CCCCCC	Gasoline Dispensing Facilities	X	X
DDDDDD	Polyvinyl Chloride and Copolymers Production Area Sources	X	X
EEEEEE	Primary Copper Smelting Area Sources	X	X
FFFFFF	Secondary Copper Smelting Area Sources	X	X
GGGGGG	Primary Nonferrous Metals Area Source: Zinc, Cadmium, and Beryllium	X	X
HHHHHH	Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources	X	X
IIIIII	(Reserved)		
JJJJJJ	Industrial, Commercial, and Institutional Boilers Area Sources	X	X
KKKKKK	(Reserved)		
LLLLLL	Acrylic and Modacrylic Fibers Production Area Sources	X	X
MMMMMM	Carbon Black Production Area Sources	X	X
NNNNNN	Chemical Manufacturing Area Sources: Chromium Compounds	X	X
OOOOOO	Flexible Polyurethane Foam Production and Fabrication Area Sources	X	X
PPPPPP	Lead Acid Battery Manufacturing Area Sources	X	X
QQQQQQ	Wood Preserving Area Sources	X	X
RRRRRR	Clay Ceramics Manufacturing Area Sources	X	X
SSSSSS	Glass Manufacturing Area Sources	X	X
TTTTTT	Secondary Nonferrous Metals Processing Area Sources	X	X
UUUUUU	(Reserved)		
VVVVVV	Chemical Manufacturing Area Sources	X	X
WWWWWW	Plating and Polishing Operations Area Sources	X	X
XXXXXX	Metal Fabrication and Finishing Area Sources	X	X
YYYYYY	Ferroalloys Production Facilities Area Sources	X	X
ZZZZZZ	Aluminum, Copper, and Other Nonferrous Foundries Area Sources	X	X
AAAAAAA	Asphalt Processing and Asphalt Roofing Manufacturing Area Sources	X	X
BBBBBBB	Chemical Preparation Industry Area Sources	X	X
CCCCCCC	Paints and Allied Products Manufacturing Area Sources	X	X
DDDDDDD	Prepared Feeds Areas Sources	X	X
EEEEEEE	Gold Mine Ore Processing and Production Area Sources	X	X
FFFFFFF—	(Reserved)		
GGGGGGG.			
HHHHHHH	Polyvinyl Chloride and Copolymers Production Major Sources	X	X

<sup>1</sup> Authorities which may not be delegated include: § 63.6(g), Approval of Alternative Non-Opacity Emission Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting; and all authorities identified in the subparts (e.g., under "Delegation of Authority") that cannot be delegated.



<sup>2</sup>Program delegated to New Mexico Environment Department (NMED) for standards promulgated by the EPA, as amended in the **Federal Register** through January 15, 2017.

<sup>3</sup>Program delegated to Albuquerque-Bernalillo County Air Quality Control Board (ABCAQCB) for standards promulgated by the EPA, as amended in the **Federal Register** through September 13, 2013.

<sup>4</sup>The NMED was previously delegated this subpart on February 9, 2004 (68 FR 69036). The ABCAQCB has adopted the subpart unchanged and applied for delegation of the standard. The subpart was vacated and remanded to the EPA by the United States Court of Appeals for the District of Columbia Circuit. See *Mossville Environmental Action Network v. EPA*, 370 F. 3d 1232 (D.C. Cir. 2004). Because of the D.C. Court's holding this subpart is not delegated to NMED or ABCAQCB at this time.

<sup>5</sup>This subpart was issued a partial vacatur by the United States Court of Appeals for the District of Columbia Circuit. See 72 FR 61060 (October 29, 2007).

<sup>6</sup>Final Rule. See 76 FR (March 21, 2011), as amended at 78 FR 7138 (January 31, 2013); 80 FR 72807 (November 20, 2015). Note that the ABCAQCB has not yet applied for updated delegation of these standards.

<sup>7</sup>Final Promulgated Rule adopted by the EPA. See 80 FR 65470 (October 26, 2015). Note that Part 63 Subpart KKKKK was amended to correct minor typographical errors. See 80 FR 75817 (December 4, 2015). Note that the ABCAQCB has not yet applied for updated delegation of these standards.

<sup>8</sup>Final Rule. See 77 FR 9304 (February 16, 2012), as amended 81 FR 20172 (April 6, 2016). Final Supplemental Finding that it is appropriate and necessary to regulate HAP emissions from Coal- and Oil-fired EUSGU Units. See 81 FR 24420 (April 25, 2016). Note that the ABCAQCB has not yet applied for updated delegation of these standards.

\* \* \* \* \*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2017-0705; FRL-9982-22]

#### Metschnikowia Fructicola Strain NRRL Y-27328; Exemption From the Requirement of a Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of *Metschnikowia fructicola* strain NRRL Y-27328 in or on the stone fruit group (group 12-12); the small fruit vine climbing subgroup, except fuzzy kiwifruit (subgroup 13-07F); and the low growing berry subgroup (subgroup 13-07G) when used in accordance with label directions and good agricultural practices. Interregional Research Project Number 4 (IR-4) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Metschnikowia fructicola* strain NRRL Y-27328 under FFDCA.

**DATES:** This regulation is effective September 12, 2018. Objections and requests for hearings must be received on or before November 13, 2018, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the

#### SUPPLEMENTARY INFORMATION).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) EPA-HQ-OPP-2017-0705, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the

Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

#### FOR FURTHER INFORMATION CONTACT:

Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: [BPPDFRNotices@epa.gov](mailto:BPPDFRNotices@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. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

###### B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at <http://www.ecfr>.

[gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfr/browse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfr/browse/Title40/40tab_02.tpl).

###### C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID EPA-HQ-OPP-2017-0705 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 13, 2018. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2017-0705, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please