AQP EXHIBIT 4
PENGAD 800-631-6989



**ENVIRONMENTAL PROTECTION AGENCY**

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

**[R06–OAR–2005–NM–0005; FRL–8006–2]**

## New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Albuquerque-Bernalillo County Air Quality Control Board

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

**ACTION:** Direct final rule; delegation of authority.

**SUMMARY:** The Albuquerque-Bernalillo County Air Quality Control Board (ABCAQCB) has submitted updated regulations for receiving delegation of EPA authority for implementation and enforcement of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) for all sources. These regulations apply to certain NSPS promulgated by EPA, as amended through July 1, 2004, and certain NESHAPs promulgated by EPA, as amended through July 1, 2004. The delegation of authority under this notice applies only to sources located in Bernalillo County, New Mexico, and does not extend to sources located in Indian country. EPA is providing notice that it has approved delegation of certain NSPS to ABCAQCB, and taking direct final action to approve the delegation of certain NESHAPs to ABCAQCB.

**DATES:** This rule is effective on February 7, 2006 without further notice, unless EPA receives relevant adverse comment by January 9, 2006. 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:** Submit your comments, identified by Regional Materials in EDocket (RME) ID No. R06–OAR–2005–NM–0005, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/rmepub/*, Regional Materials in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.
- U.S. EPA Region 6 "Contact Us" Web site: *http://epa.gov/region6/r6coment.htm*. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.
- E-mail: Jeff Robinson at *robinson.jeffrey@epa.gov*.
- Fax: Mr. Jeff Robinson, Air Permits Section (6PD–R), at fax number 214–665–7263.
- Mail: Mr. Jeff Robinson, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- Hand or Courier Delivery: Mr. Jeff Robinson, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Regional Materials in EDocket (RME) ID No. R06–OAR–2005–NM–0005. EPA's policy is that all comments received will be included in the public file without change, change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through Regional Material in EDocket (RME), regulations.gov, or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the Federal regulations.gov are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the Regional Materials in EDocket (RME) index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, i.e., CBI 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 in RME or in the official file which is available at the Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The delegation request is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

City of Albuquerque, Environmental Health Department, Air Quality Division, 11850 Sunset Gardens SW., Albuquerque, New Mexico 87121.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeff Robinson, U.S. EPA, Region 6, Multimedia Planning and Permitting Division (6PD), 1445 Ross Avenue, Dallas, TX 75202–2733, telephone (214) 665–6435; fax number 214–665–7263; or electronic mail at *robinson.jeffrey@epa.gov*.

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

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## I. General Information

### *A. Tips for Preparing Your Comments*

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

### *B. Submitting Confidential Business Information (CBI)*

Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

## II. What Does This Notice Do?

EPA is providing notice that it is delegating authority for implementation and enforcement of certain NSPS to ABCAQCB. EPA is also taking direct final action to approve the delegation of certain NESHAPs to ABCAQCB. With this delegation, ABCAQCB has the primary responsibility to implement and enforce the delegated standards. The notice also consolidates the table which specifies the part 63 delegations in New Mexico to the New Mexico Environment Department (NMED) and ABCAQCB. The subpart delegations previously made to the NMED on February 9, 2004, are not open to public comment. 68 FR 69036 (December 11, 2003). See Section VI, below, for a complete discussion of which standards are being delegated and which are not being delegated.

## III. What Is The Authority for Delegation?

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

Section 112(l) of the CAA and 40 CFR Part 63, Subpart E, authorizes EPA to delegate authority to any state or local agency which submits adequate regulatory procedures for implementation and enforcement of emission standards for hazardous air pollutants. The hazardous air pollutant standards are codified at 40 CFR Parts 61 and 63.

## IV. What Criteria Must ABCAQCB's Program Meet To Be Approved?

This notice notifies the public that EPA is updating ABCAQCB's delegation to implement and enforce certain NSPS. EPA previously approved ABCAQCB's program for the delegation of NSPS. 54 FR 52031 (December 20, 1989), 57 FR 48563 (October 27, 1992), and 60 FR 52329 (October 6, 1995). As to the NESHAP standards in Parts 61 and 63, Section 112(l) of the CAA enables EPA to approve State and local air pollution agencies air toxics programs or rules to operate in place of the Federal air toxics program or rules. 40 CFR part 63, Subpart E (Subpart E) governs EPA's approval of State rules or programs under Section 112(l).

### *A. NSPS Criteria*

EPA will approve an air toxics program if we find that:

(1) The State program or local air pollution agency is "no less stringent" than the corresponding Federal program or rule;

(2) The State or local air pollution agency has adequate authority and resources to implement and enforce the program;

(3) The schedule for implementation and compliance is sufficiently expeditious; and

(4) The program otherwise complies with Federal guidance.

### *B. NESHAP Criteria*

In order to obtain approval of its program to implement and enforce Federal section 112 rules as promulgated without changes (straight delegation), only the criteria of 40 CFR 63.91(d) must be met in addition to the requirements listed above as NSPS criteria. Section 63.91(d)(3) provides that interim or final Title V program approval will satisfy the criteria of § 63.91(d) for Part 70 sources. EPA previously approved ABCAQCB's program for the delegation of NESHAPS in 40 CFR part 61. 54 FR 52031 (December 20, 1989), 57 FR 48563 (October 27, 1992), and 60 FR 52329 (October 6, 1995).

## V. How Did ABCAQCB Meet the Approval Criteria?

### *A. NSPS Criteria*

ABCAQCB adopted the Federal requirements via incorporation by reference. As a result, the minimum requirement of CAA Section 111, that their standard is at least as stringent as EPA's rules, has been met. ABCAQCB demonstrated the remaining criteria when EPA previously approved ABCAQCB's program for the delegation of NSPS. 54 FR 52031 (December 20, 1989), 57 FR 48563 (October 27, 1992), and 60 FR 52329 (October 6, 1995).

### *B. NESHAP Criteria*

As part of its Title V submission, ABCAQCB stated that it intended to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 into its regulations. This applied to both existing and future standards as they applied to Part 70 sources. 60 FR 2527–2534 (January 10, 1995), EPA approved ABCAQCB's program for receiving delegation of existing and future standards when it granted final interim approval to ABCAQCB's Title V program. 60 FR 2527–2534 (January 10, 1995), 60 FR 13046–13047 (March 10, 1995). In addition, on November 26, 1996, EPA promulgated full approval of Albuquerque-Bernalillo County's operating permits program. 61 FR 60032. Under 40 CFR 63.91(d)(2), once a state or local air pollution agency has satisfied up-front approval criteria, it needs only to reference the previous demonstration and reaffirm that it still

meets the criteria for any subsequent submittals. ABCAQCB has affirmed that it still meets the up-front approval criteria.

## VI. What Is Being Delegated?

EPA received a request to update the NSPS and NESHAP delegations on April 11, 2005. ABCAQCB requested the EPA to update the delegation of authority for the following:

A. NSPS (40 CFR Part 60 standards) through July 1, 2004;

B. NESHAPs (40 CFR Part 61 standards) through July 1, 2004; and

C. NESHAPs (40 CFR Part 63 standards) through July 1, 2004.

ABCAQCB's request was for delegation of certain NSPS and NESHAP for all sources (both Part 70 and non-Part 70 sources). The request includes revisions of 20.11.63 NMAC, 20.11.64 NMAC, as adopted by the Albuquerque-Bernalillo County Air Quality Control Board. For NSPS, this revision incorporated all NSPS promulgated by EPA (except Subpart AAA—Standards of Performance for New Residential Wood Heaters, Subpart WWW—Standards of Performance for Muncipal Solid Waste Landfills, and Subpart Cc—Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills) as amended in the **Federal Register** through July 1, 2004. The effective date of the Federal delegation for NSPS under Section 111 is the date that this **Federal Register** is published. For the Part 61 NESHAPs, this revision included all NESHAPs promulgated by EPA as amended in the **Federal Register** through July 1, 2004, excluding Subparts B, H, I, K, Q, R, T, and W. For the Part 63 NESHAPs, the request includes the NESHAPs set forth in Table 1 below. The effective date of the Federal delegation for Parts 61 and 63 standards is the effective date of this rule.

TABLE 1.—40 CFR PART 63 NESHAPS FOR SOURCE CATEGORIES DELEGATED TO ABCAQCB

| Subpart | Source category |
|---|---|
| A | General Provisions. |
| D | Early Reductions. |
| 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. |
| J | Polyvinyl Chloride and Copolymers Production. |
| L | Coke Oven Batteries. |
| M | Perchloroethylene Dry Cleaning. |
| N | Chromium Electroplating and Chromium Anodizing Tanks. |
| O | Ethylene Oxide Sterilizers. |
| Q | Industrial Process Cooling Towers. |
| R | Gasoline Distribution. |
| S | Pulp and Paper Industry. |
| T | Halogenated Solvent Cleaning. |
| U | Group I Polymers and Resins. |
| W | Epoxy Resins Production and Non-Nylon Polyamides Production. |
| X | Secondary Lead Smelting. |
| Y | Marine Tank Vessel Loading. |
| AA | Phosphoric Acid Manufacturing Plants. |
| BB | Phosphate Fertilizers Production Plants. |
| CC | Petroleum Refineries. |
| DD | Off-Site Waste and Recovery Operations. |
| EE | Magnetic Tape Manufacturing. |
| GG | Aerospace Manufacturing and Rework Facilities. |
| HH | Oil and Natural Gas Production Facilities. |
| II | Shipbuilding and Ship Repair Facilities. |
| JJ | Wood Furniture Manufacturing Operations. |
| KK | Printing and Publishing Industry. |
| LL | Primary Aluminum Reduction Plants. |
| MM | Chemical Recovery Combustion Sources at Kraft, Soda, Sulfide, and Stand-Alone Semichemical Pulp Mills. |
| 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 Plants. |
| DDD | Mineral Wool Production. |
| EEE | Hazardous Waste Combustors. |
| GGG | Pharmaceuticals Production. |
| HHH | Natural Gas Transmission and Storage Facilities. |
| III | Flexible Polyurethane Foam Production. |
| JJJ | Group IV Polymers and Resins. |
| LLL | Portland Cement Manufacturing. |
| MMM | Pesticide Active Ingredient Production. |
| NNN | Wool Fiberglass Manufacturing. |
| OOO | Amino/Phenolic Resins. |
| PPP | Polyether Polyols Production. |

TABLE 1.—40 CFR PART 63 NESHAPS FOR SOURCE CATEGORIES DELEGATED TO ABCAQCB—Continued

| Subpart | Source category |
|---|---|
| QQQ | Primary Copper Smelting. |
| RRR | Secondary Aluminum Production. |
| TTT | Primary Lead Smelting. |
| UUU | Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Plants. |
| VVV | Publicly Owned Treatment Works (POTW). |
| XXX | Ferroalloys Production: Ferromanganese and Silicomanganese. |
| AAAA | Municipal Solid Waste Landfills. |
| CCCC | Nutritional Yeast Manufacturing. |
| EEEE | Organic Liquid Distribution. |
| FFFF | Miscellaneous Organic Chemical Manufacturing. |
| GGGG | Solvent Extraction for Vegetable Oil Production. |
| HHHH | Wet Formed Fiberglass Mat Production. |
| IIII | Auto & Light Duty Truck. |
| JJJJ | Paper & Other Web Coating. |
| KKKK | Surface Coating of Metal Cans. |
| MMMM | Surface Coating of Miscellaneous Metal Parts and Products. |
| NNNN | Surface Coating of Large Appliances. |
| OOOO | Printing, Coating, and Dyeing of Fabrics and Other Textiles. |
| PPPP | Plastic Parts. |
| QQQQ | Surface Coating of Wood Building Products. |
| RRRR | Surface Coating of Metal Furniture. |
| SSSS | Surface Coating of Metal Coil. |
| TTTT | Leather Finishing Operations. |
| UUUU | Cellulose Production Manufacture. |
| VVVV | Boat Manufacturing. |
| WWWW | Reinforced Plastic Composites Production. |
| XXXX | Tire Manufacturing. |
| YYYY | Stationary Combustion Turbines. |
| ZZZZ | Reciprocating Internal Combustion Engines. |
| AAAAA | Lime Manufacturing Plants. |
| BBBBB | Semiconductor Manufacturing. |
| CCCCC | Coke Ovens: Pushing, Quenching and Battery Stacks. |
| EEEEE | Iron and Steel Foundries. |
| FFFFF | Integrated Iron and Steel. |
| GGGGG | Site Remediation. |
| HHHHH | Miscellaneous Coating Manufacturing. |
| IIIII | Mercury Cell Chlor-Alkali Plants. |
| JJJJJ | Brick and Structural Clay Products. |
| KKKKK | Clay Ceramics Manufacturing. |
| LLLLL | Asphalt Roofing and Processing. |
| MMMMM | Flexible Polyurethane Foam Fabrication Operation. |
| NNNNN | Hydrochloric Acid Production. |
| PPPPP | Engine Test Cells/Stands. |
| QQQQQ | Friction Products Manufacturing. |
| RRRRR | Taconite Iron Ore Processing. |
| SSSSS | Refractory Products Manufacturing. |
| TTTTT | Primary Magnesium Refining. |

## VII. What Is Not Being Delegated?

As mentioned above, ABCAQCB has not requested and has not been delegated the authority for the following standards:

40 CFR part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters);

40 CFR part 60, Subpart WWW, (Standards of Performance for Municipal Solid Waste Landfills);

40 CFR part 60, Subpart Cc, (Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills);

40 CFR part 61, Subpart B (National Emission Standards for Radon Emissions from Underground Uranium Mines);

40 CFR part 61, Subpart H (National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities);

40 CFR part 61, Subpart I (National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H);

40 CFR part 61, Subpart K—(National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants);

40 CFR part 61, Subpart Q (National Emission Standards for Radon Emissions from Department of Energy facilities);

40 CFR part 61, Subpart R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks);

40 CFR part 61, Subpart T (National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings); and

40 CFR part 61, Subpart W (National Emission Standards for Radon Emissions from Operating Mill Tailings).

It should be noted that the ABCAQCB adopted 40 CFR part 63, Subpart J (Polyvinyl Chloride and Copolymers Production) unchanged and requested delegation of the standard. The standard was vacated and remanded to EPA by the United States Court of Appeals for the District of Columbia Circuit on June 18, 2004, and EPA's petition for rehearing was denied on April 15, 2005.

Because the Court vacated Subpart J, that standard is not being delegated at this time to ABCAQCB.

In addition, EPA cannot delegate to a State any of the Category II Subpart A authorities set forth in 40 CFR 63.91(g)(2). These include the following provisions: § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. Also, some MACT standards have certain provisions that cannot be delegated to the States (e.g., 40 CFR 63.106(b)). Therefore, any MACT standard that EPA is delegating to ABCAQCB that provides that certain authorities cannot be delegated are retained by EPA and not delegated. 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, Section 112(r), the accidental release program authority, is not being delegated by this approval.

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

Also, this delegation does not extend to sources or activities located outside of Bernalillo County because the Albuquerque-Bernalillo County Air Quality Control Board only has jurisdiction to administer and enforce provisions of the New Mexico Air Quality Control Act in Bernalillo County (excluding Indian country). The Albuquerque-Bernalillo County Air Quality Control Board and the Albuquerque Environmental Health Department was previously delegated the authority to implement and enforce certain NSPS and NESHAPs by EPA. See 60 FR 52329 (October 6, 1995).

## VIII. How Will Applicability Determinations Under Section 112 Be Made?

In approving this delegation, ABCAQCB will obtain concurrence from EPA on any matter involving the interpretation of section 112 of the CAA or 40 CFR part 63 to the extent that implementation, administration, or enforcement of these sections have not been covered by EPA determination or guidance.

## IX. What Authority Does EPA Have?

We retain the right, as provided by CAA Section 112(l)(7), to enforce any applicable emission standard or requirement under Section 112. EPA also has the authority to make certain decisions under the General Provisions (subpart A) of Part 63. We are granting ABCAQCB some of these authorities, and retaining others, as explained in sections VI and VII above. In addition, EPA may review and disapprove of State determinations and subsequently require corrections. (*See* 40 CFR 63.91(g) and 65 FR 55810, 55823, September 14, 2000.)

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

## X. What Information Must ABCAQCB Provide to EPA?

In delegating the authority to implement and enforce these rules and in granting a waiver of EPA notification requirements, we require ABCAQCB to input all source information into the Aerometric Information Retrieval System (AIRS) for both point and area sources. ABCAQCB must enter this information into the AIRS system and update the information by September 30 of every year. ABCAQCB 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, ABCAQCB must submit to EPA Region 6 on a semi-annual basis, copies of determinations issued under these authorities. For Part 63 standards, these determinations include: Applicability determinations (§ 63.1); approval/disapprovals of construction and reconstruction (§ 63.5(e) and (f)); notifications regarding the use of a continuous opacity monitoring system (§ 63.6(h)(7)(ii)); finding of compliance (§ 63.6(h)(8)); approval/disapprovals of compliance extensions (§ 63.6(i)); approvals/disapprovals of minor (§ 63.7(e)(2)(i)) or intermediate (§ 63.7(e)(2)(ii) and (f)) alternative test methods; 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)); approvals/disapprovals of minor or intermediate alternative monitoring methods (§ 63.8(f)); approval of adjustments to time periods for submitting reports (§§ 63.9 and 63.10); and approvals/disapprovals of minor alternatives to recordkeeping and reporting (§ 63.10(f)).

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 ABCAQCB should forward these intermediate test methods or monitoring changes via mail or facsimile to: Chief, Source Categorization Group A, EPA (MD–19), Research Triangle Park, NC 27711, Facsimile telephone number: (919) 541–1039.

## XI. What Is EPA's Oversight of This Delegation to ABCAQCB?

EPA must oversee ABCAQCB'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 ABCAQCB made decisions that decreased the stringency of the delegated standards, then ABCAQCB shall 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). We will initiate withdrawal of the program or

rule if the corrective actions taken are insufficient.

## XII. Should Sources Submit Notices to EPA or ABCAQCB?

All of the information required pursuant to the Federal NSPS and NESHAP (40 CFR parts 60, 61, and 63) should be submitted by sources located inside the boundaries of Bernalillo County (excluding Indian country), directly to the City of Albuquerque, Environmental Health Department, Air Quality Division, P.O. Box 1293, Albuquerque, New Mexico 87103. The ABCAQCB c/o the City of Albuquerque, Environmental Health Department, Air Quality Division is the primary point of contact with respect to delegated NSPS and NESHAPs in Bernalillo County (excluding Indian country). Sources do not need to send a copy to EPA. EPA Region 6 waives the requirement that notifications and reports for delegated standards be submitted to EPA in addition to ABCAQCB in accordance with 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii).

## XIII. How Will Unchanged Authorities Be Delegated to ABCAQCB in the Future?

In the future, ABCAQCB will only need to send a letter of request to EPA, Region 6, for those NSPS and NESHAP regulations that ABCAQCB 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** notice will be published to inform the public and affected sources of the delegation, indicating where source notifications and reports should be sent, and to amend the relevant portions of the Code of Federal Regulations showing which NSPS and NESHAP standards have been delegated to ABCAQCB.

## XIV. What Is the Relationship Between RCRA and the Hazardous Waste Combustor MACT?

As part of today's rule, we are delegating, under the CAA, implementation and enforcement authority for the Hazardous Waste Combustor (HWC) MACT (Subpart EEE) to ABCAQCB. 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 ABCAQCB. 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).[1] See the HWC MACT rule preamble discussion (64 FR 52828, 52839–52843 (September 30, 1999)), and the RCRA Site-Specific Risk Assessment Policy for HWC Facilities dated June 2000 for more information on the interrelationship of the MACT rule with the RCRA Omnibus provision and site specific risk assessments.

## XV. 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 applied to Part 70 sources, on January 10, 1995. The proposal was part of EPA's proposed approval of the Albuquerque-Bernalillo County Air Quality Control Board's Operating Permits Program. 60 FR 2527. The EPA did not receive adverse public comments on the proposed delegation of Section 112 standards. 60 FR 13046 (March 10, 1995). In this action, the public is given the opportunity to comment on the approval of ABCAQCB request for delegation of authority to implement and enforce certain Section 112 standards for all sources (both Part 70 and non-Part 70 sources) which have been adopted by reference into New Mexico's state regulations. 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 February 7, 2006 without further notice unless the Agency receives relevant adverse comments by January 9, 2006.

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. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## 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 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of

[1] 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 to regulate air emissions, 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 standards for air emissions from these units will no longer apply, with the exception of Section 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.

power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). 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 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. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a delegation submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA to use VCS in place of a delegation submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 7, 2006. 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, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements.

*40 CFR Part 61*

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

*40 CFR Part 63*

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

**Authority:** This action is issued under the authority of Sections 111 and 112 of the Clean Air Act, as amended, 42 U.S.C. 7411 and 7412.

Dated: November 29, 2005.

**Carl E. Edlund,**

*Acting Regional Administrator, 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:

■ A. by adding paragraph (b)(GG)(i) and adding and reserving paragraph (b)(GG)(ii); and

■ B. by adding paragraph (e)(3) to read as follows:

**§ 60.4 Address.**

(b) * * *

(GG) * * *

(i) Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, New Mexico 87103.

(ii) [Reserved.]

* * * * *

(e) * * *

(3) *Albuquerque-Bernalillo County Air Quality Control Board.* The Albuquerque-Bernalillo County Air Quality Control Board has been delegated all Part 60 standards promulgated by EPA, except Subpart AAA—Standards of Performance for New Residential Wood Heaters; Subpart WWW—Standards of Performance for Municipal Solid Waste Landfills; Subpart Cc—Emissions Guidelines and Compliance Times for Municipal Solid Waste Landfills, as amended in the **Federal Register** through July 1, 2004.

## PART 61—[AMENDED]

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

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

### Subpart A—General Provisions

■ 2. Section 61.04 is amended:

■ A. by adding paragraph (b)(GG)(i) and adding and reserving paragraph (b)(GG)(ii); and

■ B. by revising paragraph (c)(6) to read as follows:

**§ 61.04 Address.**

(b) * * *

(GG) * * *

(i) Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, New Mexico 87103.

(ii) [Reserved.]

* * * * *

(c) * * *

(6) The following lists the specific Part 61 standards that have been delegated unchanged to the air pollution control agencies in Region 6.

(i) [Reserved.]

(ii) *Louisiana.* The Louisiana Department of Environmental Quality (LDEQ) has been delegated the following Part 61 standards promulgated by EPA, as amended in the **Federal Register** through July 1, 2002. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR PART 61 STANDARDS STATE OF LOUISIANA [1]

| Subpart | LDEQ [2] |
|---|---|
| A General Provisions | X |
| C Beryllium | X |
| D Beryllium Rocket Motor Firing | X |
| E Mercury | X |
| J Equipment Leaks of Benzene | X |
| 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 |
| V Equipment Leaks | X |
| Y Benzene Emissions from Benzene Storage Vessels | X |
| BB Benzene Emissions from Benzene Transfer Operations | X |
| FF Benzene Emissions from Benzene Waste Operations | X |

[1] Program delegated to Louisiana Department of Environmental Quality (LDEQ).
[2] Authorities which may not be delegated include: §61.04(b), Addresses of State and Local Implementing Agencies; §61.12(d)(1), Compliance with Standards and Maintenance Requirements, Alternate Means of Emission Limitation; §61.13(h), Major Change to an Emissions Test; §61.14(g), Major Modifications to Monitoring Requirements; §61.16, Availability of Information Procedures; §61.53(c)(4), List of Approved Design, Maintenance, and Housekeeping Practices for Mercury Chlor-Alkali Plants; and all authorities identified within specific subparts (e.g., under "Delegation of Authority") that cannot be delegated.

(iii) *New Mexico.* The New Mexico Environment Department (NMED) has been delegated the following part 61 standards promulgated by EPA, as amended in the **Federal Register** through September 1, 2001. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (PART 61 STANDARDS) FOR NEW MEXICO

[Excluding Bernalillo County and Indian Country] [1]

| Subpart | Source category | New Mexico |
|---|---|---|
| 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 | |
| I | Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees 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 (Fugitive 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 |

[1] Program delegated to New Mexico Environment Department (NMED).

(iv)–(v) [Reserved.]

(vi) *Albuquerque-Bernalillo County, New Mexico.* The Albuquerque-Bernalillo County Air Quality Control Board (ABCAQCB) has been delegated the following Part 61 standards promulgated by EPA, as amended in the **Federal Register** through July 1, 2004. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (PART 61 STANDARDS) FOR ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

[Excluding Indian Country] [1]

| Subpart | Source category | ABCAQCB |
|---|---|---|
| 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 | |
| I | Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H. | |
| J | Equipment Leaks (Fugitive Emission Sources) of Benxene | 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 (Fugitive 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 |

[1] Program delegated to Albuquerque-Bernalillo County Air Quality Control Board (ABCAQCB).

## 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 revising paragraph (a)(31) to read as follows:

**§ 63.99 Delegated Federal authorities.**

(a) * * *

*(31) New Mexico.*

(i) The following table lists the delegation status of specific part 63 subparts that have been delegated unchanged to state and local air pollution agencies in New Mexico. The "X" symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF NEW MEXICO

[Excluding Indian Country]

| Subpart | Source category | NMED [1 2] | ABCAQCB [1 3] |
|---|---|---|---|
| A | General Provisions [3] | X | X |
| D | Early Reductions | X | X |
| F | Hazardous Organic NESHAP (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] X | ([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 |

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF NEW MEXICO—Continued

[Excluding Indian Country]

| Subpart | Source category | NMED [1 2] | ABCAQCB [1 3] |
|---|---|---|---|
| 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 |
| 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 |
| NN | (Reserved) | | |
| 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 | (Reserved) | | |
| 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 |
| CCCC | Nutritional Yeast Manufacturing | X | X |
| EEEE | Organic Liquids Distribution | | X |
| GGGG | Solvent Extraction for Vegetable Oil Production | X | X |
| HHHH | Wet Formed Fiberglass Mat Production | X | X |
| JJJJ | Paper and other Web (Surface Coating) | | X |
| KKKK | Metal Can (Surface Coating) | | X |
| NNNN | Surface Coating of Large Appliances | X | X |
| OOOO | Fabric Printing Coating and Dyeing | | X |
| PPPP | Plastic Parts (Surface Coating) | | X |
| QQQQ | Surface Coating of Wood Building Products | | X |
| RRRR | Surface Coating of Metal Furniture | | 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 [1 2] | ABCAQCB [1 3] |
|---|---|---|---|
| UUUU | Cellulose Production Manufacture | X | X |
| VVVV | Boat Manufacturing | X | X |
| WWWW | Reinforced Plastic CompositesProduction | | X |
| XXXX | Tire Manufacturing | X | X |
| YYYY | Combustion Turbines | | X |
| AAAAA | Lime Manufacturing Plants | | X |
| BBBBB | Semiconductor Manufacturing | | X |
| CCCCC | Coke Ovens: Pushing, Quenching and Battery Stacks | X | X |
| DDDDD | Industrial/Commerical/Institutional Boilers and Process Heaters | | |
| EEEEE | Iron Foundries | | X |
| FFFFF | Integrated Iron and Steel | | X |
| GGGGG | Site Remediation | | X |
| HHHHH | Miscellaneous Coating Manufacturing | | X |
| IIIII | Mercury Cell Chlor-Alkali Plants | | X |
| JJJJJ | Brick and Structural Clay Products Manufacturing | | X |
| KKKKK | Clay Ceramics Manufacturing | | X |
| LLLLL | Asphalt Roofing and Processing | | X |
| MMMMM | Flexible Polyurethane Foam Fabrication Operation | | X |
| NNNNN | Hydrochloric Acid Production, Fumed Silica Production | | X |
| PPPPP | Engine Test Facilities | | X |
| QQQQQ | Friction Products Manufacturing | | X |
| RRRRR | Taconite Iron Ore Processing | | X |
| SSSSS | Refractory Products Manufacture | | X |
| TTTTT | Primary Magnesium Refining | | X |

[1] Authorities that cannot be delegated include §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. In addition, all authorities identified in the certain subparts that EPA has designated that cannot be delegated.

[2] Program delegated to New Mexico Environment Department (NMED) for standards promulgated by EPA, as amended in the **Federal Register** through September 1, 2002.

[3] Program delegated to Albuquerque-Bernalillo County Air Quality Control Board (ABCAQCB) for standards promulgated by EPA, as amended in the **Federal Register** through July 1, 2004.

[4] This standard was originally delegated to NMED on February 9, 2004. The ABCAQCB has adopted the subpart unchanged and applied for delegation of the standard. The standard was vacated and remanded to EPA by the United States Court of Appeals for the District of Columbia Circuit on June 18, 2004, and EPA's petition for rehearing was denied on April 15, 2005. The standard is not being delegated at this time to ABCAQCB.

* * * * *

[FR Doc. 05–23810 Filed 12–8–05; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 205, 226, and 252

**[DFARS Case 2003–D029]**

### Defense Federal Acquisition Regulation Supplement; Socioeconomic Programs

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to socioeconomic considerations in DoD contracting. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**EFFECTIVE DATE:** December 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; facsimile (703) 602–0350. Please cite DFARS Case 2003–D029.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm.*

This final rule is a result of the DFARS Transformation initiative. The DFARS changes include—

- Deletion of text at 226.103 containing internal DoD procedures for funding of incentive payments to contractors under the clause at 252.226–7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/pgi.*
- Relocation of text on contracting with historically black colleges and universities and minority institutions (HBCU/MI) from Subpart 226.70 to Subpart 226.3, for consistency with the location of FAR policy on this subject. The relocated text is substantially unchanged, but excludes information on HBCU/MI percentage goals and infrastructure assistance (226.7000 and 226.7002) that is considered unnecessary for inclusion in the DFARS.
- Deletion of Subpart 226.72, Base Closures and Realignments, as the text