

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 60**

[CO-001-0056 and CO-001-0057; FRL-6951-1]

**Standards of Performance for New Stationary Sources; Supplemental Delegation of Authority to the State of Colorado**

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

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

**SUMMARY:** The purpose of this document is to inform the public that, on September 8, 2000, EPA updated its delegation of authority to the State of Colorado for implementation and enforcement of the Federal new source performance standards (NSPS) as in effect on July 1, 1996 and for the NSPS for hospital/medical/infectious waste incinerators for which construction is commenced after June 20, 1996 (40 CFR 60, subpart Ec, promulgated on September 15, 1997, 62 FR 48382). EPA granted delegation in response to requests dated June 27, 1997 and December 16, 1998 from the State of Colorado. EPA is also updating the table in 40 CFR part 60 regarding the NSPS delegation status for EPA Region VIII States. Last, EPA is updating the EPA Region VIII address and the State of Colorado's address listed in 40 CFR part 60.

**EFFECTIVE DATE:** This action will be effective April 5, 2001. The delegation of authority to Colorado became effective on September 8, 2000.

**ADDRESSES:** Copies of the documents relative to this delegation are available for inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Copies of the State documents relevant to this delegation are available for public inspection at the Air Pollution Control Division, Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222-1530.

**FOR FURTHER INFORMATION CONTACT:** Vicki Stamper, EPA Region VIII, (303) 312-6445.

**SUPPLEMENTARY INFORMATION:****I. What Is the Purpose of This Document?**

EPA provides notice that, on September 8, 2000, we delegated authority to the State of Colorado to

implement and enforce the NSPS of 40 CFR part 60 as in effect on July 1, 1996. EPA also delegated authority to Colorado to implement and enforce the NSPS for hospital/medical/infectious waste incinerators for which construction is commenced after June 20, 1996 in 40 CFR part 60, subpart Ec (as promulgated on September 15, 1997 at 62 FR 48382). In addition, EPA is updating the table in 40 CFR 60.4 regarding the NSPS delegation status for Region VIII States. Last, EPA is updating the EPA Region VIII address and the State of Colorado's address listed in 40 CFR 60.4.

EPA considers these changes to 40 CFR 60.4 to be minor amendments. Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. Because these regulatory changes are minor in nature, EPA has determined that there is good cause for making today's changes to 40 CFR 60.4 final without prior proposal and opportunity for comment. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

**II. What Is EPA's Authority for Granting Delegation?**

Sections 110, 111(c)(1) and 301, of the Clean Air Act (Act), as amended, authorize EPA to delegate authority to implement and enforce the NSPS standards set out in 40 CFR part 60.

**III. How Was the Delegation of Authority Granted by EPA?**

On June 27, 1997 and December 16, 1998, the State of Colorado submitted requests for delegation of authority for the NSPS in effect as of July 1, 1996 and for 40 CFR part 60, subpart Ec, as promulgated on September 15, 1997 (62 FR 48382). These delegation requests were submitted subsequent to the State revising its adoption of the Federal NSPS by reference in Colorado's Regulation No. 6. With this adoption of the NSPS, the State adopted two new NSPS subparts: hospital/medical/infectious waste incinerators for which construction is commenced after June 20, 1996 (Subpart Ec) and municipal solid waste landfills (Subpart WWW).

EPA granted delegation of authority to the State of Colorado to implement and enforce the NSPS in the following letter dated September 8, 2000:

Ref: 8P-AR

Honorable Bill Owens  
*Governor of Colorado*, 136 State Capitol,  
Denver, Colorado 80203-1792

Dear Governor Owens:

On June 27, 1997 and on December 16, 1998, Margie Perkins, Director of the Colorado Air Pollution Control Division, requested delegation of authority for revisions to the New Source Performance Standards (NSPS) in Colorado's Regulation No. 6. The State revised its NSPS to adopt standards for two additional source categories. The State also updated its incorporation by reference of all the NSPS to reflect the July 1, 1996 version of the Federal regulations.

Subsequent to states adopting NSPS regulations, EPA delegates the authority for the implementation and enforcement of those NSPS, so long as the State's regulations are equivalent to the Federal regulations. EPA reviewed the pertinent statutes and regulations of the State of Colorado and determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS by the State of Colorado. Therefore, pursuant to Section 111(c) of the Clean Air Act (Act), as amended, and 40 CFR Part 60, EPA hereby delegates its authority for the implementation and enforcement of two NSPS to the State of Colorado as follows:

(A) Responsibility for all sources located, or to be located, in the State of Colorado subject to the standards of performance for new stationary sources promulgated in 40 CFR Part 60. The categories of new stationary sources covered by this delegation are as follows: hospital/medical/infectious waste incinerators for which construction is commenced after June 20, 1996 (Subpart Ec) and municipal solid waste landfills (Subpart WWW).

(B) Not all authorities of NSPS can be delegated to states under Section 111(c) of the Act, as amended. The EPA Administrator retains authority to implement those sections of the NSPS that require: (1) approving equivalency determinations and alternative test methods, (2) decision making to ensure national consistency, and (3) EPA rulemaking to implement. Therefore, of the NSPS of 40 CFR Part 60 being delegated in this letter, the following sections are not delegated to the State of Colorado:

(i) 40 CFR 60.56c(i) establishing operating parameters when using controls other than those listed in 40 CFR 60.56c(d) (Subpart Ec);

(ii) Alternative methods of demonstrating compliance under 40 CFR 60.8 (Subpart Ec); and (iii) 40 CFR 60.754(a)(5), pertaining to municipal solid waste landfills (Subpart WWW).

(C) As 40 CFR Part 60 is updated, Colorado should revise its regulations accordingly and in a timely manner.

This delegation is based upon and is a continuation of the same conditions as those stated in EPA's original delegation letter of August 27, 1975, except that condition 3, relating to Federal facilities, was voided by the Clean Air Act Amendments of 1977. Please also note that EPA retains concurrent enforcement authority as stated in condition 2. In addition, if at any time there is a

conflict between a State and Federal NSPS regulation, the Federal regulation must be applied if it is more stringent than that of the State, as stated in condition 10. EPA published its August 27, 1975 delegation letter in the notices section of the October 31, 1975 **Federal Register** (40 FR 50748), along with an associated rulemaking notifying the public that certain reports and applications required from operators of new or modified sources shall be submitted to the State of Colorado (40 FR 50718). Copies of the **Federal Register** are enclosed for your convenience.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of Colorado will be deemed to accept all the terms of this delegation. EPA will publish an information notice in the **Federal Register** in the near future to inform the public of this delegation, in which this letter will appear in its entirety.

If you have any questions on this matter, please contact me or have your staff contact Richard Long, Director of our Air and Radiation Program, at (303) 312-6005.

Sincerely yours,  
William P. Yellowtail,  
*Regional Administrator.*

Enclosures.

cc: Margie Perkins, Director, Colorado Air Pollution Control Division.

#### **IV. How Do I Know Which NSPS Subparts Have Been Delegated by EPA to the States?**

We publish a table in 40 CFR 60.4 for Region VIII States that identifies, for each State, the NSPS subparts for which EPA has delegated authority to implement. In this document, we update that table to reflect the NSPS subparts delegated to Colorado.

#### **V. What Are the Administrative Requirements Associated With This Document?**

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. This action merely notifies the public of our delegation to Colorado and makes minor regulatory amendments. Thus, it 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 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 (Public Law 104-4). This rule also does 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 power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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), because it merely notifies the public of our delegation to the State to implement a Federal standard and makes minor regulatory changes. Thus, the rule 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 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State delegation requests, EPA's role is to delegate authority to implement Federal standards, provided that the State meets 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 not grant a delegation request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a delegation request, to use VCS in place of a State rule 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Taking" issued under the executive order. 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. section 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. section 804(2). This rule will be effective April 5, 2001.

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 May 7, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 60**

Air pollution control, Aluminum, ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Drycleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires, Urethane, Vinyl, Waste treatment and disposal, Wool, Zinc.

Dated: February 26, 2001.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

Part 60, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 60—AMENDED**

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

**Authority:** 42 U.S.C. 7401, 7411, 7414, 7416, and 7601 as amended by the Clean Air Act Amendments of 1990, Pub. L. 101-549, 104 Stat. 2399 (November 15, 1990; 402, 409, 415 of the Clean Air Act as amended, 104 Stat. 2399, unless otherwise noted).

**Subpart A—General Provisions**

2. Section 60.4 is amended by:

a. Revising the address listed for “Region VIII” in paragraph (a) to read as follows;

b. Revising the address listed “State of Colorado” in paragraph (b)(G) to read as follows; and

c. Amending the table entitled “Delegation Status of New Source Performance Standards [(NSPS) for Region VIII]” by revising the entries for “Ec—Hospital/Medical/Infectious Waste Incinerators” and “WWW—Municipal Solid Waste Landfills” to read as follows:

**§ 60.4 Address.**

(a) \* \* \*  
Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah,

Wyoming), Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, 999 18th Street, Suite 300, Denver, CO 80222-2466.

\* \* \* \* \*

(b) \* \* \*

(G) State of Colorado, Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80222-1530.

\* \* \* \* \*

(c) \* \* \*

**DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS**  
([NSPS) for Region VIII])

Subpart	CO	MT-A <sup>1</sup>	ND	SD-A <sup>1</sup>	UTA <sup>1</sup>	WY
Ec—Hospital/Medical/Infectious Waste Incinerators .....	(*)		(*)	(*)		
WWW—Municipal Solid Waste Landfills .....	(*)		(*)	(*)	(*)	(*)

(\*) Indicates approval of State regulation.

<sup>1</sup> Indicates approval of State regulation as part of the State Implementation Plan (SIP).

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 991008273-0070-02; I.D. 022801B]

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS closes the commercial hook-and-line fishery for Gulf king mackerel in the exclusive economic zone (EEZ) in the southern Florida west coast subzone. This closure is necessary to protect the overfished Gulf king mackerel resource.

**DATES:** The closure is effective 12:01 a.m., local time, March 2, 2001, through June 30, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mark Godcharles, telephone: 727-570-

5305, fax: 727-570-5583, e-mail: Mark.Godcharles@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

**INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on February 19, 1998 (63 FR 8353), NMFS implemented a commercial quota of 2.34 million lb (1.06 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. On April 27, 2000, NMFS divided the Florida west coast subzone of the eastern zone into northern and southern subzones and established a separate quota for the southern Florida west coast subzone of 1,082,250 lb (490,900 kg) (65 FR 16336, March 28, 2000). That quota was further divided into two equal quotas of 541,125 lb (245,450 kg) for vessels in each of two groups fishing with hook-

and-line gear and run-around gillnets (50 CFR 622.42(c)(1)(i)(A)(2)(i)).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the Federal Register. NMFS has determined that the commercial quota of 541,125 lb (245,450 kg) for Gulf group king mackerel for vessels using hook-and-line gear in the southern Florida west coast subzone was reached on March 1, 2001. Accordingly, the commercial hook-and-line fishery for king mackerel in the southern Florida west coast subzone is closed at 12:01 a.m., local time, March 2, 2001, through June 30, 2001, the end of the fishing year.

The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4' N. lat. (a line directly east from the Miami-Dade County, FL, boundary). The Florida west coast subzone is further divided into northern and southern subzones. The southern subzone is that part of the Florida west coast subzone that from November 1 through March 31 extends south and west from 25°20.4' N. lat. to 26°19.8' N. lat. (a line directly west from the Lee/Collier County, FL, boundary), i.e., the area off Collier and Monroe Counties. From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone which is