

only some of the testing, monitoring, reporting, and recordkeeping requirements are delegable in subpart A, EPA has identified what authorities can be delegated in the subpart E revisions (65 FR 55810, September 14, 2000). Section 63.91(g)(1)(i) clarifies what "Category I" changes, including minor and intermediate changes to testing, monitoring, recordkeeping, and reporting requirements, may be considered and approved by S/L/Ts if you receive delegation for these authorities from your EPA Regional Office. For more discussion of delegable authorities, see 65 FR 55811 through 55814, September 14, 2000.

There are similar discretionary authorities, as mentioned above, in each NESHAP that may also be delegated to you. Please note, each NESHAP being revised in today's rulemaking will describe those authorities that will be retained by EPA. All other authorities in those NESHAP are delegable to S/L/Ts.

#### *C. What Is the Purpose of This Rulemaking?*

As a part of a larger regulatory and policy effort to clarify and streamline delegation of part 63 requirements, we agreed to clarify which portions of the existing 40 CFR part 63 NESHAP contain authorities that can be delegated to you. In order to achieve this objective, we are making slight changes to many of the existing NESHAP. These changes are clarifications that will allow you to approve alternatives to the delegable authorities, including category I authorities listed in § 63.91(g)(i), instead of requiring a rulemaking by the EPA to approve the site-specific alternatives. Many NESHAP lack a clear delegation section that this final rule remedies. We are also taking this opportunity to make the format of the existing NESHAP more consistent.

#### *D. What Are the Types of Changes We Are Making?*

Many of the existing NESHAP were promulgated before we developed a consistent rule format, so each one has slightly different content and order. In addition, the way that the delegable authorities were identified and delegated varies. Due to these variations, each NESHAP in this rulemaking needs one or more clarifications, listed below, to ease delegation:

- Addition or modification of a section (implementation and enforcement) in each NESHAP describing the authorities that can be delegated to you and those that must be retained by us;

- Reorganization of the standards sections in NESHAP to separate compliance assurance measures, such as monitoring, recordkeeping, or reporting provisions, from actual standards; or

- Minor rephrasing of work practices and other standards developed under the authority of section 112(h) of the Act to allow approval of delegable testing, monitoring, reporting, and recordkeeping authorities by S/L/Ts and without rulemaking by us.

#### *E. Once NESHAP Are Delegated, Does the S/L/Ts' Enforcement Authority Replace EPA's Authority?*

Throughout this preamble, we state that once NESHAP are delegated to you, then you will have the authority to implement and enforce those rules for sources in your jurisdiction. However, nothing in this preamble is intended to suggest that your enforcement agencies have replaced our Federal authority to enforce and implement those rules. We remain partners with you in enforcing the NESHAP.

#### *F. Does Today's Rulemaking Affect Prior Delegations of These Part 63 NESHAP (MACT Standards)?*

In many cases, you already accepted delegation of these NESHAP and, consequently, you are currently implementing and enforcing them. We do not believe that today's rulemaking adversely affects existing delegations of these NESHAP to you. For the most part, today's rulemaking clarifies which of the authorities in each existing NESHAP can, and cannot, be delegated to you.

In all prior delegations, specific authorities in each NESHAP were generally not identified as being delegated. Instead, the NESHAP have been generally delegated in their entirety. For example, when our Regional Offices delegate a NESHAP or MACT standard through straight delegation (see 65 FR 55810, September 14, 2000) to a S/L/T, they reference the whole NESHAP, such as subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, in any rulemaking or documents. They usually do not reference a particular authority within the NESHAP, such as § 63.324(d), "[E]ach owner or operator of a dry cleaning facility shall keep receipts of perchloroethylene purchases ..." in any delegation. Therefore, we believe that today's rulemaking will not affect your existing part 63 NESHAP delegation.

However, potential issues may have occurred where you have already acted on the authorities you believed you had been delegated. For example, in subpart

HH, the delegation of authority paragraph in § 63.776 does not withhold the delegation of any of the standards' sections. Therefore, you may have exercised the authority to approve alternative emissions controls or limitations in this example. As mentioned above, you cannot approve alternatives to NESHAP's emissions controls or limitations because they must be established through national rulemaking. Only we can approve alternatives to emissions controls or limitations through national rulemaking.

If you have inadvertently approved alternatives to NESHAP's emissions controls or limitations for a specific source, then the appropriate EPA Regional Office must be notified of this approval. Our Regional Office will then work with you and our Office of Air Quality Planning and Standards, Office of Enforcement and Compliance Assurance, and Office of General Counsel to reevaluate the alternative through the process in § 63.6 or the provisions in 40 CFR part 63, subpart E. If you have any questions regarding inadvertent approvals, please contact your appropriate EPA Regional Office.

#### *G. What Public Comments Were Received on the Proposal?*

On January 16, 2002 (67 FR 2286), the proposed rule was published in the **Federal Register** and we requested written comments on the proposal. We received 4 sets of written comments on the package from the State and Territorial Air Pollution Program and Association of Local Air Pollution Control (STAPPA/ALAPCO), State of Missouri Department of Natural Resources Air Pollution Control Program (APCP), South Coast Air Quality Management District, and Safety-Kleen Corporation. Although the comments were mostly general in nature, some were specific to certain NESHAP. The Missouri APCP's comments included support for EPA's approach to clarify which authorities can be delegated and noted that the "APCP had taken a similar approach to rulemaking." Copies of the comments are available in the public docket for the regulation (docket A-2000-57).

## **II. Overview of Changes**

The EPA has made a number of changes to the proposed rule in response to the comments we received. The comments on the proposal were limited to a relatively small subset of authorities in a few NESHAP. Accordingly, EPA believes that it is not necessary to repeat the comprehensive discussion contained in the preamble to