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## Part IV

# Environmental Protection Agency

**40 CFR Parts 9 and 63**

**Hazardous Air Pollutants: Amendments to the Approval of State Programs and Delegation of Federal Authorities; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 9 and 63**

**[FRL–6864–6]**

**RIN 2060–AG60**

## Hazardous Air Pollutants: Amendments to the Approval of State Programs and Delegation of Federal Authorities

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

**ACTION:** Final rule.

**SUMMARY:** This rule modifies the Agency's procedures for delegating hazardous air pollutant (HAP) standards and other requirements to State, local, and territorial agencies, and Indian tribes (S/L/T). Under section 112(l) of the Clean Air Act (Act), EPA is authorized to approve alternative S/L/T HAP standards or programs when such requirements are demonstrated to be no less stringent than EPA's rules. Today's changes to section 112(l) revise our procedures and criteria for approving alternative S/L/T measures.

Today's action amends our existing regulations that implement section 112(l) of the Act. The changes will help S/L/T's by offering a range of options for demonstrating equivalence with the Federal requirements and expediting the approval process.

These changes are in response to requests we received from State and local air pollution control agencies to reconsider our existing regulations in light of implementation difficulties that they anticipate or have experienced. We believe this effort is consistent with the President's regulatory ''reinvention'' initiative. It will result in less burden to S/L/Ts, regulated industries (by avoiding duplicative requirements), and the Federal Government, without sacrificing the emissions reduction and clean air enforcement goals.

This rulemaking also addresses requirements that apply to S/L/Ts, should they choose to obtain delegation or program approval under section 112(l). (Note that obtaining delegation under section 112(l) is voluntary). This rulemaking does not include any requirements that apply directly to stationary sources of HAP or small businesses that emit HAP.

**EFFECTIVE DATE:** This final rule will be effective on October 16, 2000.

**ADDRESSES:** All information used in the development of the proposed and final rules is contained in Docket No. A–97–29. The docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–7548, fax (202) 260–4400. A reasonable fee may be charged for copying.

These documents can also be accessed through the EPA web site at: http://www.epa.gov/ttn/oarpg. For further information and general questions regarding the Technology Transfer Network (TTNWEB), contact Mr. Hersch Rorex at (919) 541–5637 or rorex.hersch@epa.gov, or Mr. Phil Dickerson at (919) 541–4814 or dickerson.phil@epa.gov.

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**SUPPLEMENTARY INFORMATION:**

### Regulated Entities

Entities potentially affected by this rule are S/L/Ts that request approval of rules or programs to be implemented in place of Act section 112 rules, emissions standards, or requirements, or voluntarily request delegation of unchanged section 112 rules. These are the types of entities that EPA is now aware could potentially be regulated by this rule. Other types of entities not included in the list could also be regulated. The procedures and criteria for requesting and receiving approval of these S/L/T rules or programs or voluntarily requesting delegation of section 112 rules are in § 63.90 through § 63.97, excluding § 63.96, of this subpart.

### Outline

The information presented in this preamble is organized as follows:



### I. Purpose and Background

Section 112(l) was added to the 1990 amendments of the Act in recognition of the efforts by many S/L/T, during the 1980's, to develop their own programs to address HAPs. These programs may have requirements that apply to the same sources covered by Federal rules that have been subsequently developed under section 112. S/L/T requirements may differ from the corresponding Federal emission standards but may achieve equivalent or better environmental results. One major purpose of section 112(l) is to provide a mechanism for the approval of S/L/T requirements and programs in lieu of the Federal standards, where such a demonstration can be made. A second goal of the program is to facilitate the delegation of section 112 standards to S/L/T programs who intend to implement

and enforce the Federal requirements as written.

At present, the section 112 rules of major concern are the maximum achievable control technology (MACT) standards developed under sections 112(d) or 112(h) of the Act. However, as the Federal air toxics program matures, we anticipate that other section 112 rules or requirements may also be delegated. For example, area source requirements developed under section 112(k) authority and residual risk standards developed under section 112(f) authority will be issued in the next several years.

In November, 1993, EPA first published rules (58 FR 62262, November 26, 1993) to implement section 112(l). The regulations were codified at 40 CFR Part 63, subpart E. Following promulgation, several S/L/Ts expressed concern that the regulations would be difficult to implement and, in some circumstances, unworkable. Over the past several years we have been working with S/L/T representatives and other external parties to rethink how subpart E might be better structured to accomplish the goals of the Act. We have conducted stakeholder meetings to assess the concerns not only of S/L/Ts, but also of industries affected by the subpart E regulations and environmental/public interest groups. We also considered input from work groups, comprised of representatives from S/L/Ts and EPA, who addressed specific issues. Based on this input, in September, 1997, we placed on the Internet for comment a draft preamble and rule amendments. We then revised the draft and published proposed amendments to subpart E (64 FR 1880, January 12, 1999). We received ten detailed sets of public comments on the proposal. The issues raised by commenters, and our responses, are discussed in sections II, III and IV below.

In a related effort, we have worked closely with the California Air Resources Board (CARB) and the California Air Pollution Control Officers Association (CAPCOA), as well as California industry and environmental groups, to integrate the existing California air toxics programs with the Federal program. The goal of the ''California Initiative'' has been to establish a framework for evaluating alternative requirements, making timely equivalency determinations, and using resources efficiently. The framework will also aid in identifying and correcting circumstances where sources have to comply with duplicative requirements on the same emission points. The framework and guidance is intended to complement and facilitate compliance with subpart E requirements.

The current revisions to subpart E have benefitted greatly from this initiative. We have improved our understanding of the kinds of provisions that can be deemed equivalent to the MACT standards.

## II. Summary of Major Issues

Although the January 1999 proposal to amend subpart E identified options for obtaining delegation and making equivalency determinations, nine of the ten comments received from S/L/Ts argued for even more flexibility in this process. In general, commenters believed that the delegation process was still too burdensome to be useful. They also believed that it did not go far enough toward accommodating existing S/L/T rules and requirements that differ structurally from Federal standards. (An example of the latter would be ''risk-based programs'', which establish emission limitations on specific facilities based on the health risks posed.) S/L/T requested simpler and shorter review processes for each delegation option, and a broader list of regulatory authorities that would be available under each option.

We have streamlined the equivalency review processes to make it easier for S/L/Ts to use these delegation options. In particular, we have eliminated specific steps in the review processes for the Equivalency by Permit (EBP) and State Program Approval (SPA) options, discussed in more detail in section III.

### *A. Enforceable Mechanisms*

The greatest difference between the proposed rule and today's final rule is the variety of enforceable mechanisms that are now available under each equivalency option. Mechanisms such as S/L/T rules, S/L/T permits, or Title V permits can be used in a variety of delegation options so long as (1) they include, in sufficient detail, the terms and conditions necessary to establish equivalency, and (2) those terms and conditions can be made federally enforceable through public review and EPA review and approval. Table 1. summarizes the mechanisms we now allow under each option (these are discussed in more detail in section III).

TABLE 1.—ENFORCEABLE MECHANISMS AVAILABLE UNDER SUBPART E EQUIVALENCY OPTIONS

| Option and authorities allowed | Mechanism |
|---|---|
| 63.92—Rule Adjustment | • Title V permits.<br>• Title V general permits.<br>• Federal New Source Review (NSR) permits.<br>• S/L/T rules. |
| 63.93—Rule Substitution | • Title V permits.<br>• Title V general permits.<br>• Federal NSR permits.<br>• Board and administrative orders.<br>• Permits issued pursuant to permit templates.<br>• S/L/T permits.<br>• S/L/T rules. |
| 63.94—Equivalency by Permit (EBP) Process | • Title V permits.<br>• Title V general permits. |
| 63.97—State Program Approval (SPA) Process | • Title V permits.<br>• Title V general permits.<br>• Federal NSR permits.<br>• Board and administrative orders.<br>• Permit issued pursuant to permit templates.<br>• S/L/T permits.<br>• S/L/T rules. |

*B. S/L/T Risk-Based Programs*

The S/L (S/L is used to represent State and Local Programs in this section instead of S/L/T because comments were submitted by State and Local Programs only) had two major categories of comments regarding substituting their risk-based air toxics requirements for Federal section 112 requirements: One, substituting S/L risk-based programs for Federal requirements was too difficult using the SPA option and, two, S/Ls are concerned that they would not be able to use the subpart E substitution options to demonstrate that their risk-based programs are equivalent to EPA's future risk-based programs such as requirements which would be issued under the residual risk provisions (section 112(f)) and the risk related aspects of the urban air toxics program provisions (section 112(k)) of the Act. We recognize that S/Ls have, in some cases, established risk-based air toxics programs and would like to continue to implement and enforce these programs in lieu of Federal section 112 requirements. We believe we have addressed the major S/L comments and concerns in two rule modifications.

Some S/L contended that the section 112(l) provisions promulgated as 40 CFR Part 63, subpart E in November 1993 did not allow them to retain their existing risk-based programs. Subpart E required that the S/Ls who used the SPA option (§ 63.94) would need to write their risk-based, air toxics' permit terms and conditions in the form of the Federal standards which are technology-based, and therefore difficult for S/Ls to fit risk-based requirements into. S/L argued that this was of little benefit to them because of the work it would take to make the conversions to the form of the Federal standard. We agreed with their concern and have amended the SPA option so as not to require their permit terms and conditions to be in the form of the Federal standard.

The concern of the S/L pertaining to risk-based programs was that we are now developing policies, guidance, and regulations that would be based in part on health and/or risk evaluations (residual risk requirements of section 112(f) and urban air toxics program requirements of section 112(k)), to supplement our MACT program. More specifically, they are worried that subpart E would not allow them to substitute their existing risk-based requirements for our future requirements that are likely to also be based at least in part on risk. The EPA agrees that section 112 authorizes the Administrator to promulgate requirements other than technology-based MACT standards, and that subpart E should permit substitutions of S/L/T risk-based requirements for Federal risk-based requirements. Please note that EPA is currently in the process of developing policies, guidance, and regulations to implement the residual risk and urban air toxic requirements of the Act and we do not at this time know with any specificity what those requirements will be in the coming years. As a result, we may need to further revise subpart E in the future to aid the S/L/Ts in easily substituting their programs for our Federal risk-based program once those programs have been developed.

*C. Other Section 112 Programs*

The Act provides a two-step process for addressing control of HAPs. Over the last 10 years, we have focused on developing Federal control technology-based standards to achieve broad reductions in HAP emissions. We are now moving to the second step of evaluating residual risk to determine whether additional standards are needed to protect public health with an ample margin of safety. Although the process and methodology for these evaluations is still under development, we believe that it is appropriate to provide, through this rule, a mechanism by which S/L/Ts can accept delegation of, and/or substitute their programs for our risk-based program. We believe that we have written these options broadly enough that they will allow substitution of many S/L/T requirements for the Federal standards developed under the residual risk and urban air toxics programs.

*D. Work Practices*

One overarching issue that arose during the California Initiative project is the delegation of authority to approve site-specific changes to work practice authorities. Many MACT standards contain work practice measures such as requirements to keep solvent-soaked cleaning rags in closed containers at aerospace facilities, or to provide operator training for persons spraying varnish on wood products at wood furniture manufacturing facilities. The question is whether the authority to make site-specific decisions about work practices can be delegated to S/L/Ts. Some of the MACT standards do not explicitly say whether S/L/T can make site-specific decisions regarding changes to these work practices. Further, some of these work practices were developed in lieu of emission standards under section 112(h) of the Act, which requires us to retain the authority to approve alternatives. We have addressed this issue by splitting the work practices into (1) those for which we would retain the authority to approve alternatives (which would require us to conduct rulemaking with a public comment period), and (2) those for which we would delegate the authority to approve alternatives (which would not require an EPA rulemaking). For a more-detailed discussion of this subject, see section IV below.

*E. Delegation of Authorities*

Another issue addressed in comments on the proposed rule concerns delegation of the Administrator's authority to approve an individual source's use of alternatives to certain types of requirements in MACT standards, as set forth in 40 CFR Part 63, subpart A (the General Provisions). The proposed rule addressed which source-specific discretionary authorities we may and may not delegate to S/L/Ts through ''straight'' delegation of the General Provisions. In the final rule, we are making a change to the lists of ''delegable'' and ''non-delegable'' authorities. Specifically, we now allow delegation, to S/L/Ts, of the Administrator's authority under § 63.10(f) to make minor changes to reporting and recordkeeping requirements.

We have also clarified that approval of changes to monitoring frequency must be addressed under § 63.8(f), changes to monitoring, not under § 63.10(f). This issue is discussed in detail in section IV.B below.

## III. How Do the Revised Delegation Options Work?

*A. Section 63.91—Criteria for Straight Delegation and Criteria Common to all Approval Options*

The purpose of § 63.91 is twofold: To explain the process for straight delegation, and to describe the common up-front approval criteria that apply to all of the approval options. Straight delegation means the S/L/T will implement and enforce the Federal MACT standards as we have written them, without any changes. The approval process under § 63.91 consists of notice and comment rulemaking in the **Federal Register**, and is described in greater detail in separate guidance. We have made several changes to § 63.91 to clarify our intent and provide additional flexibility. With this preamble we have also provided additional guidance on how these requirements will work. See Appendix 1 to the preamble for a flow chart describing the § 63.91 delegation process.

1. Format Changes To Clarify Intent

We received comments asking us to separate straight delegation requirements from the requirements regarding alternative S/L/T rules or programs. While we did not separate these requirements into other sections of the rule, we have revised the format of § 63.91 to make it easier for readers to find and interpret the requirements they need. Specifically, we have identified which requirements are related to the straight delegation process alone and which requirements are common to all of the approval options. We have reorganized the section, added more descriptive section titles, and made broader use of tables to improve the clarity of the requirements.

2. Approval Criteria for Straight Delegation/Up-front Approval for Alternatives

a. *Straight delegation.* We have clarified our intent that approval of your Title V program should satisfy the § 63.91 approval criteria. In many cases you received your up-front approval under subpart E at the same time you received your Title V program approval. If this is not the case, you should be able to request subpart E delegation with a letter to your EPA Regional office requesting the delegation and referencing your previous Title V showing. The Region would then issue a **Federal Register** notice approving the subpart E delegation.

b. *Alternatives.* Some commenters were concerned that the general approval criteria for the various equivalency demonstration options (*e.g.*, §§ 63.94 or 63.97) may include redundant demonstrations of the § 63.91 general approval criteria. This is not our intent. We have changed the final language in § 63.91(a) to clarify that only one showing of the § 63.91 criteria is needed.

3. Who Accepts Final Delegation

Commenters pointed out that there can be a difference between the agency that submits a request for an equivalency demonstration and the agency that actually accepts delegation of the approved alternative rule. (This may only be a problem in one State.) We believe that the intent of section 112(l) is to approve alternatives as part of a delegation. However, we encourage agencies in this position to work together to avoid duplicative effort. We encourage districts to bundle submittals together before sending them to EPA; we could then issue **Federal Register** notices that combine approvals for multiple entities.

4. Accepting Straight Delegation Via Title V

Commenters asked us to clarify that the straight delegation option should include delegation via a S/L/T Title V operating permit program, and we agreed. In other words, we may delegate to you the authority to implement MACT standards directly through issuance of Title V permits to sources, without the need for you to adopt State rules requiring MACT. Because of the nature of the operating permit program, however, there are several issues related to the use of this mechanism that must be separately addressed and resolved.

The first issue is whether your statutes, regulations, and other requirements contain the appropriate provisions granting authority to implement and enforce the State rule or program upon approval. We have added clarifying rule language in § 63.91. At a minimum, if you request delegation using your permit program, you should submit a letter (1) indicating which statutory, regulatory, or other provisions satisfy § 63.91, and (2) requesting the delegation.

Second, implementing and enforcing MACT standards through the part 70 operating permit program raises timing issues; in particular, the timing of the delegation of a particular MACT standard to you. In order to assure that affected sources are in compliance by the MACT standard's compliance date, their operating permits must be issued and/or modified to reflect the necessary permit terms and conditions for the MACT standards before that date. Both initial notifications and applicability determinations need to be made prior to the compliance date. You must assure us that you will implement and enforce the MACT standards prior to the compliance date.

If you use permits as a mechanism for any of the approval options provided in this rule, you should recognize that implementing MACT standards through Title V permits will require you to thoroughly review permits to ensure that their terms and conditions adequately reflect MACT requirements. The origin of each permit term or condition must be clear. Therefore you must reference the **Federal Register** notice in which we have approved the alternative.

You must also ensure that when permits are renewed or revised, the terms and conditions that implement the MACT standard(s) are carried forward. Later, if for any reason the permit is not renewed, the source must still comply with the Federal MACT standard. If any permits that have already been issued do not adequately reflect MACT requirements, then they must be revised prior to delegation. Also, if Title V permits are used as the approvable mechanism, then the source must always have a Title V permit, even if it later becomes a minor source of HAP emissions.

There may also be cases where the sources covered by a MACT standard are not covered by the Title V program (*e.g.*, area sources that are exempt from the requirement to obtain a Title V permit). You must assure us that you can implement and enforce the MACT standards for those sources who do not have a Title V operating permit.

Another issue you must address before taking straight delegation via Title V permits involves new sources. For example, it could take up to a year for a new source to receive its operating permit, and such a gap in compliance would make your delegation request unapprovable. You need to assure us that new sources will be issued permits as soon as possible, and that you will implement and enforce the MACT standard requirements before issuance of the operating permit.

You can also accept straight delegation of the MACT standards through federally enforceable State operating permits (FESOPs) or through Federal NSR permits, as long as you meet the same conditions discussed above for Title V operating permits. At a minimum, these permits must be federally enforceable.

5. Approval Time Frame for Straight Delegation

Commenters on this option requested that we shorten the time frame for approving straight delegations. We agree that in many cases, the full 180 days would not be needed for the review and approval of the delegation, and publication of the **Federal Register** notice. Our aim is to confer approval as soon as possible. Most EPA Regional offices have established straight delegation procedures, and work closely with S/L/Ts to approve delegation mechanisms in advance. In these cases, straight delegation could be conferred by letter. However, where rulemaking is required, we may need the full 180 days.

In addition, the EPA Regional office has authority to decide when officially to delegate each MACT standard to you. We may delegate a MACT standard to you either (1) for all sources in a source category at once, after all sources in the source category have received permits; or (2) source by source as permits are issued.

6. Subsequent MACT Standard Revisions

Commenters asked for a simple way to implement amendments to MACT standards in cases where we have already delegated alternative MACT requirements to you. We have revised the final regulation to limit the effect, on already-delegated MACT standards, of amendments that decrease the stringency of the MACT standard. When the change is limited to administrative or procedural changes or is clearly less stringent, no changes are required at the S/L/T level unless those agencies or their affected sources request a change.

We have amended the rule (§ 63.91(e)(3)) to require that we notify you of MACT standard amendments that are more stringent and that would affect your delegation. (Note that we are not referring here to residual risk standards issued under section 112(f); only to amendments specific to MACT standards issued under 112(d) or 112(h)). In the absence of such a notification, no action on your part is required. If action is required, we will work with you on a case-by-case basis to determine a time frame to make the changes to your requirements. We believe this flexibility is needed because we cannot forecast the complexity of possible future changes to MACT standards.

Based on our current experience, most amendments to MACT standards are limited and do not result in an increase in stringency. For example, we may amend a MACT standard to allow for the use of an alternative monitoring procedure, which does not increase the stringency of the remaining requirements. In cases where the stringency increases through the addition of emission sources to be controlled or tightening of the standard or monitoring, recordkeeping and reporting requirements (MRR), we often provide a time frame for sources to follow in complying with the new requirements. We expect that this time frame will allow sufficient time to also amend any necessary delegations or equivalency demonstrations.

7. Delegable Authorities

In the proposed rule, we included a list of the subpart A General Provisions authorities that we would agree to delegate to you. We also provided a list of those authorities to be retained by us. We received comments that we should not codify these delegations in the subpart E rule. Commenters argued that delegation issues should be handled through policy guidance rather than through rulemaking, so that any future changes to the policy could be made more easily. However, we believe that it is important to continue listing these authorities in subpart E to clarify what is delegable in a common forum that is readily accessible. These authorities are found in § 63.91(g) of the final rule.

Commenters also suggested that we delegate authority for day-to-day management of many decisions to you, so that we can focus on issues with greater emission reduction impacts. They also asked us to expand the list of authorities that would be delegable, in order to ensure there is a simple and expeditious process for you to approve alternative compliance and enforcement measures. In response to these concerns, the final rule now allows the authority to approve minor reporting and recordkeeping requirements to be delegated, and we have clarified how changes to monitoring frequency should be handled. We have also codified new definitions for major, intermediate, and minor changes to monitoring, as well as major, intermediate, and minor changes to test methods. These issues are discussed in detail in section IV.B below.

8. Enforcement

Throughout this preamble, we state that S/L/T rules or programs may be implemented and enforced in place of, or in lieu of, certain otherwise applicable section 112 Federal rules. This means that your rules and programs can completely, or partially, replace our section 112 Federal rules. Nothing in this language is intended to suggest that your S/L/T enforcement agencies have replaced our Federal authority to enforce modified or substituted rules or programs approved under this section or any other section. On the contrary, we want to be very clear that although we are allowing your rules and programs to replace our Federal rules, we always retain the right to enforce and implement these rules. Even if we delegate the enforcement of unchanged Federal 112 standards to you, we will remain partners with you in that enforcement.

We are aware that a recent Resource Conservation and Recovery Act (RCRA) court decision determined that EPA gave up our authority to enforce when we approved a S/L/T enforcement program ''in lieu of'' the Federal program. However, this decision does not apply to the Act. Although the RCRA decision is being appealed, we believe that even if it is upheld, Section 112(l)(7) of the Act allows us to always enforce our Federal rules, including the S/L/T rules or programs that are substituted for our Federal rules and become the Federal rules.

Even if you take an enforcement action against a particular source for violations of section 112 rules, we may also take an enforcement action, where we deem that appropriate. In most instances, we will be working together as partners, coordinating our efforts so that this ''overfiling'' situation will not arise. However, in cases where the penalties you have obtained do not satisfy our understanding of what is an appropriate penalty, we may seek additional penalties and other relief.

9. More Than One Equivalency Option

There has been some confusion over whether a S/L/T could use more than one equivalency option to take delegation of the sources in a given source category covered by a section 112 rule or requirement. In general, if a S/L/T submits alternative requirements for a subset of the source category under one option, such as rule substitution, it cannot request delegation for the remainder of sources under another option, such as straight delegation. This does not mean that the S/L/T request for equivalency cannot contain a mixture of allowable enforceable mechanisms, however. For example, the equivalency request could be based on a State rule for the majority of requirements and permit or other requirements for the remainder. Once the equivalency request is approved, all sources must comply with the approved requirements.

The exception to the limit on the number of delegation options is if the S/L/T used the EBP option to obtain approval of alternative requirements for a subset of sources in a source category. In this case, the S/L/T must request delegation of all of the remaining sources using just one other approval option, such as straight delegation. See section III.D for more discussion of this issue.

*B. Section 63.92—Approval of S/L/T Requirements That Adjust a Section 112 Rule*

Under the Rule Adjustment option in § 63.92, we can approve your requirements that are structurally very similar to, and clearly at least as stringent as, the Federal rule(s) for which you want to substitute those requirements. Under this option, you may only make an adjustment to a Federal rule that results in emissions limits and other requirements that are clearly no less stringent, for each source, than the Federal rule. There can be no ambiguity regarding the stringency of any of the proposed adjustments.

Section 63.92 includes a list of rule adjustments that may be approved under this option—for example, changing a required emission rate on a required control technology from 95-percent control to 98-percent control, or increasing the monitoring requirements. We consider all of these adjustments to result in requirements that are more stringent than the corresponding Federal requirements. (Note, however, that if the MACT requirement is simply a performance standard (e.g. 95-percent control out of the stack) as opposed to a specific required control technology, and your corresponding requirement is a more stringent performance standard (such as 98-percent control), you do not need to submit your alternative under section 112(l). You are already complying with the MACT standard.)

Under the rule adjustment option you would need to demonstrate that your requirements had undergone public notice and provided an opportunity for public comment in your jurisdiction before you submit it to us. Upon approval, your alternative requirements would be published in the **Federal Register** and incorporated directly or by reference into part 63, without additional notice and opportunity for comment.

As discussed in section II, we have expanded the list of approvable mechanisms under § 63.92 to include Title V permits, Title V general permits, and Federal NSR permits, in addition to rules. We make clear in the rule that permits submitted under § 63.92 must be final permits, not draft permits. Only permits that have already been issued can be used to demonstrate equivalency. Also, once we approve an alternative requirement in a permit or permits, the facility cannot change or withdraw its permit without affecting its equivalency status.

We believe these mechanisms all provide adequate notice and comment opportunities to the public in order to qualify for the relatively streamlined rule adjustment process. We note, however, that just because a mechanism is included under rule adjustment, it is not automatic assurance that you will always be granted equivalency. For example, not every lowest achievable emission rate (LAER) or NSR determination could be classified as an adjustment, unless the control technologies and associated compliance measures were clearly no less stringent than the MACT. When a different control technology also results in different MRR, it may not be obvious that the NSR compliance and enforcement measures are clearly no less stringent. In this case, rule substitution or SPA may be the more appropriate option for your submittal.

As described in the following sections, we have added to the list of allowable ''adjustments'' and shortened the review time frame. See Appendix 1 to the preamble for a flow chart describing the § 63.92 delegation process.

1. Additional Rule Adjustments Allowed

Commenters pointed out that subpart E apparently lacks a mechanism to accommodate minor, nonsubstantive differences (editorial, formatting, clarifications) from the MACT standard. In considering this issue, we determined that the rule adjustment option should logically include such changes as allowable adjustments. An example of a minor, nonsubstantive adjustment may be a change in the name of an administrator under an alternative or a change in the numbering/labeling scheme of the rule. We would expect to process these changes quickly.

We have also added a provision that allows you to submit requirements identical to the provisions approved elsewhere in the same State, which we have previously determined to be equivalent under subpart E. We made this change to accommodate cases where one local agency might receive approval of an alternative based on a permit template under rule substitution, for example, and another local agency wants to adopt the same requirements in its jurisdiction.

2. Approval Time Frame

Commenters asked that we reduce the 90-day approval time frame. In general, we will make every effort to process alternatives as quickly as possible. If the alternative requirement is ''unequivocally no less stringent,'' then we believe a 60-day approval period would be appropriate and we have changed the final rule to reflect the shorter time frame. We have also agreed that the approval can be deemed effective upon signature, rather than waiting for publication in the **Federal Register.** We will provide more information on how this could work in forthcoming guidance.

However, you should recognize that there may be situations where we can not consider your alternative under the rule adjustment option and would have to consider it under the rule substitution option. This could occur in the following situations:

- The information you provide us is not sufficient to determine whether the alternative requirement is ''unequivocally no less stringent,'' or
- The submittal is too complex for us to evaluate within the 60-day time frame of the rule adjustment option.

If we must consider your submittal under the rule substitution option instead of the rule adjustment option, we will inform you of this change and you would not have to resubmit your request (although you may need to submit additional supporting information).

*C. Section 63.93—Approval of S/L/T Requirements That Substitute for a Section 112 Rule*

Under § 63.93, substitution of requirements (which is commonly referred to as the Rule Substitution option), we can approve substitution of one (or more) of your rules or requirements for a Federal rule, where your rule is structurally different from the corresponding Federal rule. Under this section, we also may approve a rule that is different from the Federal rule in ways that do not qualify for approval under § 63.92—that is, in ways that are not ''unambiguously no less stringent.'' This situation might arise when you submit a rule that was written independently of the Federal rule or when, for example, your rule achieves equivalent emissions reductions, but with a combination of levels of control and compliance and enforcement measures not addressed by the Federal rule. Upon receipt of a complete request for approval of a substituted requirement, we would conduct a rulemaking to request public comments. If we approved your requirement we would then publish it in the **Federal Register**, and incorporate it directly or by reference into part 63 as federally enforceable. Any rules or other requirements that you submit under this section must be enforceable under your State law.

You may submit alternatives for an equivalency determination developed from any or a combination of the following mechanisms:

- Title V permits,
- Title V general permits,
- Federal NSR permits,
- Board and administrative orders,
- Permits issued pursuant to templates,
- S/L/T permits, or
- S/L/T rules.

Note that the mechanisms listed above submitted under § 63.93 must be final, not draft. Only permits, permit templates, or board and administrative orders or rules that have already been issued can be used to demonstrate equivalency. Also, once we approve an alternative requirement in a permit or

permits, you cannot modify that requirement.

If new sources apply for permits after equivalency has been approved, you must review those submittals to ensure equivalency with the MACT standard. Also, if a source wishes later to change approved permit terms and conditions at the time of permit renewal, or when making changes at the source, we must, of course, also review those new terms and conditions to ensure equivalency with the MACT standard.

As discussed in section II, we have expanded and clarified the list of approvable mechanisms to provide additional flexibility to you in preparing your equivalency demonstrations. Because there is relatively more oversight in the review and approval process for rule substitution, we believe the complete menu of approvable mechanisms should be allowed under this option.

Commenters raised several issues with respect to the § 63.93 process. The major issues are discussed below, and the remaining issues are addressed in the Technical Document for Promulgation of Standards, found in the project docket. See Appendix 1 to the preamble for a flow chart describing the § 63.93 delegation process.

1. Review Period

Commenters suggested reducing the length of our review period from 180 to 90 days. They argued that EPA's substantive review of submittals should occur before formal submittal, in order to understand and resolve major issues. In this case, the official review should not require extensive amounts of time.

We have not changed the review period in the final rule because we expect to receive submittals under this option that range significantly in their complexity. For less complex equivalency submittals, we would intend to complete our review as quickly as possible to reduce the chance of dual regulation. However, we must reserve the ability to fully review more complex submittals, which could take up to 180 days. Therefore, we believe that the appropriate time frame for review should be determined by the relevant EPA Regional office, considering the complexity of the submittal, the Regional office's experience with similar submittals, and the Regional office's resource load. We expect that EPA Regional offices will want to work with you early in the process, and to process the equivalency determinations as quickly as possible. We encourage both you and the Regional offices to develop a submittal tracking system to ensure that equivalency requests are handled as expeditiously as possible. We also plan to provide additional implementation guidance to facilitate preparation of easily reviewed submittals and EPA review of those packages.

2. Approval Criteria

Commenters suggested that we establish a two-tier system for reviewing equivalency submittals under § 63.93. Specifically, they said we should distinguish between level of control requirements and compliance and enforcement measures. They argued that compliance and enforcement measures are less critical, but require disproportionately greater review resources. While we agree that it can be more difficult to determine the equivalency of compliance and enforcement measures, we do not believe this justifies a lower threshold for the determination. Section 110 of the Act requires that we ensure our rules are adequately implemented and enforced; therefore, it would be difficult to support this distinction. For more detail on how we intend to handle compliance and enforcement measures, please see the preamble to the proposed rule. 64 FR 1880, 1901–1903 (January 12, 1999).

3. Compliance Schedules

Section 63.93(b)(3) specifies that an equivalent alternative must ensure that each affected source is in compliance no later than would be required by the otherwise applicable Federal rule. Commenters suggested that we revise this requirement to instead ensure that the compliance schedule is ''sufficiently expeditious.'' We cannot agree with this suggestion because the compliance date is a ''bright line'' criterion in the equivalency demonstration. We cannot think of a way to define ''sufficiently expeditious'' that would not appear arbitrary and yet would still prevent potential abuses of changes in the deadline.

However, we realize that there may be some cases where a S/L/T rule may contain a compliance date that is only slightly beyond the deadline in the applicable MACT standard. We want to allow flexibility to approve these cases, taking into consideration the length of the time difference between two deadlines, the stringency of the rule, the expected emissions impact, etc. Therefore, we are revising this language to require S/L/T rules to assure compliance by affected sources ''within a time frame that is consistent with the deadlines established in the otherwise applicable Federal rule.'' We expect that this language will provide flexibility in limited situations without allowing large discrepancies in compliance deadlines between S/L/T rules and Federal rules.

*D. Section 63.94—Equivalency by Permit (EBP)*

The EBP option was added to subpart E in the proposed amendments. As proposed, this option would allow you to substitute alternative requirements and authorities that take the form of permit terms and conditions instead of source category regulations. This process provides a means of obtaining delegation without having to go through rulemaking at the S/L/T level to establish source category-specific regulations. See Appendix 1 to the preamble for a flow chart describing the § 63.94 delegation process.

1. Overview of the Equivalency by Permit Process

The EBP process comprises three steps. The first step (*see* 40 CFR 63.94(a) and (b)) is the ''up-front approval'' of your EBP program. The second step (*see* 40 CFR 63.94(c) and (d)) is our review and approval of your alternative section 112 requirements in the form of pre-draft Title V permit terms and conditions. The third step (*see* 40 CFR 63.94(e)) is incorporation of the approved pre-draft terms and conditions into specific Title V permits and the Title V permit issuance process itself. The final approval of the S/L/T alternative requirements that substitute for the Federal standard does not occur for purposes of the Act, § 112(l)(5), until the completion of step three. For a more detailed description of each of these steps, refer to the discussion at section VII.C.2 of the preamble to the proposed rule. *See* 64 FR 1880, 1901–1903 (January 12, 1999).

As we discussed in the proposal, the purpose of step one is three fold: (1) It ensures that you meet the § 63.91(b) criteria for up-front approval common to all approval options; (2) it provides a legal foundation for you to replace the otherwise applicable Federal section 112 requirements with alternative, federally enforceable requirements that will be reflected in final Title V permit terms and conditions; and (3) it delineates the specific sources and Federal emission standards for which you will be accepting delegation under the EBP option.[1]

At step one, we will go through notice and comment rulemaking to approve your EBP program allowing you to write

[1] Note that S/L/Ts may not implement the EBP option for individual sources or source categories that are not identified in step one. S/L/Ts would have to repeat the up-front approval process to add those sources to the EBP program.

source specific title V permit terms and conditions equivalent to Federal section 112 standards. We will amend 40 CFR part 63 to incorporate that approval. Once step one is completed, we have approved your program contingent upon your including, in Title V permits, terms and conditions that are no less stringent than the Federal standard. However, the requirement applicable to the source—and the ''applicable requirement'' for Title V purposes—remains the Federal section 112 requirement until the final Title V permit is issued. This is because we will not be able to confirm that your Title V permit terms and conditions will be no less stringent than the Federal standard until we see them written into the specific Title V permits. Moreover, before final delegation can occur, there must be an enforceable mechanism (in this case the Title V permit) containing the alternative requirements.

The actual determination that the alternative S/L/T requirements are equivalent to (or no less stringent than) the Federal section 112 standard is made during steps two and three, with final delegation of the Federal requirements occurring at the completion of step three. At step two, you submit pre-draft Title V permit terms and conditions to us for approval. At this step, you ask us to evaluate the terms and conditions that will be applicable to the sources identified in step one and to make a judgment as to whether those terms and conditions are as stringent as the Federal standard. We introduce the term ''pre-draft'' to mean a version of the part 70 operating permit prior to the ''draft'' (as defined in 40 CFR part 70) version. By reviewing an early or pre-draft version of the operating permit, we will be able to identify potential issues with the equivalency demonstration and address these issues prior to the normal operating permit review process. By configuring the EBP option this way, we believe we will be able to provide timely review and input to permitting agencies and, therefore, not slow the operating permit issuance process. The submittal must include a complete set of pre-draft permit terms and conditions, an identification of which terms contain alternative requirements and the supporting documentation for the equivalency demonstration. These documents all become part of the administrative record for our approval of the alternative S/L/T requirements under section 112(l)(5).

At step two, we make our equivalency determination, conditional upon our ability to review specific proposed Title V permits at step three to ensure that they incorporate the approved terms and conditions exactly as approved in step two. Steps two and three together satisfy the section 112(l) requirement that we review and affirmatively approve alternative requirements.

At step three, the pre-draft permit terms and conditions approved at step two are written into specific proposed and draft Title V permits, which then go through the regular Title V permit issuance process. Thus, there is an opportunity for EPA and public review of the alternative requirements at step three. All information provided to us during step two as part of your equivalency demonstration must also be made available to the public during the Title V public review period. How the permit terms and conditions are written at step three is integral to our final determination that your requirements are equivalent to the Federal standard and that the permit assures compliance with all applicable requirements.

If the requirements we approve at step two are changed when written into the final Title V permit at step three, the delegation cannot occur and the Federal standard continues to apply. Thus, EPA approval at step two in no way prevents later EPA action to ensure that permit terms and conditions are no less stringent than Federal standards. Such action could include EPA disapproval of specific Title V permits, the granting of a citizen petition requesting EPA to object to a specific Title V permit, permit reopenings after permit issuance, or corrective action at the time of permit renewal.

In summary, your EBP program is approved at step one; the Title V permit terms and conditions that will replace the Federal standard are approved at step two (contingent upon them being written into Title V permits in step three exactly as they were approved at step two); and the actual delegation to you to implement alternative requirements contained in a Title V permit occurs when the enforceable mechanism, the Title V permit, is issued after the EPA and public comment periods.

2. Challenges to an EBP Delegation

As discussed above, under the EBP approach, the actual delegation occurs at step three with the issuance of the Title V permit. Thus, each Title V permit represents an opportunity for the public to challenge the alternative S/L/T requirements for not being as stringent as the Federal standard. This is why all supporting documentation that you submit at step two in support of the equivalency demonstration must also be available to the public during step three, as part of the record for the permit proceedings. In addition to each permit representing an opportunity to challenge EPA's delegation of authority to you to implement a particular section 112 standard through alternative Title V permit terms and conditions, the public may also petition the Administrator to object to each Title V permit on the grounds that it does not assure compliance with the applicable requirements of the Act, in this case the relevant Federal section 112 standard.

Moreover, if the terms and conditions change between the draft and final permit stages, the public and EPA can challenge the permit after permit issuance. The EPA could reopen the permit for failure to assure compliance with all applicable requirements (*i.e.,* the relevant section 112 standard). The public could challenge the permit on the same basis; the public would have the right to do so even if the issue was not raised during the comment period because the grounds for the objection would have arisen after the public comment period. See Act section 505(b)(2); 40 CFR 70.4(b)(3)(xii).

Due to the permit-by-permit nature of delegations under the EBP option and the corresponding opportunity for challenge to the alternative S/L/T requirements with each permit, permitting authorities should weigh carefully the advantages and disadvantages of the EBP approach for particular source categories. The EBP approach may not provide the same certainty about the programmatic sufficiency of alternative S/L/T requirements as compared to approving delegations based on S/L/T rules. Delegations based on S/L/T rules achieve delegation for all sources within a source category in a single action; thus, there is a single opportunity for challenge and judicial review of the rules in State court, and of EPA's delegation action in Federal court.

Finally, the iterative nature of the approach may place greater resource demands on permitting authorities. For these reasons, permitting authorities might consider it more manageable to restrict the EBP approach to source categories with fewer sources, or to issue all Title V permits to sources within the same source category at the same time.

3. Revisions to Alternative S/L/T Requirements in Title V Permits

Under the EBP approach, the delegation to you of the authority to implement Title V terms and conditions in place of the Federal standard occurs during a process in which there is an opportunity for full public review and challenge, and an opportunity for EPA review and objection. The EPA and

public review process is essential because the EBP essentially allows a case-by-case determination of requirements that will substitute for the Federal section 112 standard. Both EPA and public review opportunities must also be available before any change to the Title V permit terms and conditions that are substituting for the Federal standard, since such changes would operate as a substitute for the Federal standard for a particular source. Thus, any revision to the Title V permit terms and conditions that substitute for the Federal standard must be processed as a significant modification under Title V. This is consistent with the current regulations governing revisions to Title V permits, which require that any change to a case-by-case determination of a standard be processed as a major modification with full EPA and public review. *See* 40 CFR 70.7(e)(2)(i)(A)(3).

4. Permit Streamlining

The proposal compared the EBP process to Title V permit streamlining under EPA's White Paper 2. (For guidance on permit streamlining, see our March 5, 1996 policy guidance document entitled ''White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program,'' commonly called White Paper 2, which can be found on our website at http://www.epa.gov/ttn/oarpg/t5wp.html.) Through Title V permit streamlining, a source may choose to consolidate multiple applicable requirements into a single set of applicable requirements that assure compliance with each of the ''subsumed'' requirements to the same extent as would be achieved by having the source comply with each requirement independently. *See* 64 FR 1880, 1904–1905 (January 12, 1999). However, requirements that are subsumed under the streamlined requirements contained in the permit remain applicable. Thus, a source subject to enforcement action for violation of a streamlined applicable requirement could potentially also be subject to enforcement action for violation of one or more subsumed applicable requirements.

Streamlining is different from the EBP process for replacing the Federal section 112 standard with Title V permit terms and conditions pursuant to a section 112(l) delegation. Under the EBP approach, once the final Title V permit is issued and you receive delegation to implement those permit terms and conditions in place of the Federal standard, the Federal standard no longer applies.

The proposal noted that nothing prevents the approved alternative Title V permit terms and conditions from then being streamlined with other applicable requirements under the process and criteria provided in White Paper 2. However, because, under the EBP approach, the only location of the approved S/L/T alternative requirements is the Title V permit, the terms and conditions implementing those requirements must remain tangibly written into the permit.

5. Public Comments on EBP

Issues raised by commenters include expanding the list of approvable mechanisms, removing the limit on the number of permits that can be submitted under this option, accepting delegation for all sources in a source category, and identifying source categories as part of the § 63.91 approval process. These issues are discussed in more detail below.

a. *List of approvable mechanisms.* Commenters raised the issue of allowing the use of S/L/T permits and Title V general permits as part of the EBP option. We agree that Title V general permits should be allowed, as they carry with them the actual terms and conditions that would be imposed on sources through Title V implementation. However, we cannot allow the use of S/L/T permits under this option because we lack the clear understanding we have under Title V of how the S/L/T program will be implemented, and this understanding is a crucial element of the expedited review process under EBP. Therefore, we have limited the use of S/L/T permits to cases where they are based on: (1) An up-front program approval under the SPA option, or (2) under the rule substitution option, where there is an opportunity for you to make a more detailed showing and for EPA and the public to adequately review. The EBP option is limited to the use of Title V permits and Title V general permits.

Commenters also asked if we could expand the list of approvable mechanisms to include permit templates. Their reason for this request is that in some States, the State agency might submit a permit template for an equivalency demonstration, but a local agency would actually be the one to implement the template. They proposed a two-track process for addressing alternative requirements: permit templates (outside the part 70 process), and part 70 permits (Title V permits or Title V general permits).

We cannot approve the use of permit templates under the EBP option because permit templates often do not contain specific requirements needed to determine equivalency and because permit templates are not enforceable until written into actual permits. In addition, the limited time for review under EBP would not be adequate for this more complex situation.

b. *Up-front approval requirements.* Some commenters suggested removing the up-front approval requirements in § 63.94 on the grounds that these requirements are unnecessary and impractical. (These requirements include identification of specific sources, as well as the list of current and future Federal standards, for which you are requesting approval of alternatives under EBP.) The commenters reasoned that you are often unable to forecast future standards and possible specific sources for which you would seek delegation of your standards through the EBP option. They also worried that we were asking for a duplicate demonstration to the Title V demonstrations you have already made.

To clarify, if you have an approved part 70 program, then your submittal need provide only a listing of the sources and source categories that you are covering and your commitment to accept section 112(l) delegation. If source categories are added at a later time, then the submittal can be updated with a repeat of step one. The public must have the opportunity to comment on all source categories that you would propose to handle through an alternative process.

c. *Five-source limit.* Commenters objected to the proposed limit on the number of sources per source category for which you could request alternative requirements through the EBP option. They said the five-source limit was arbitrary, inappropriate, and severely limited the usefulness of the option.

We proposed the limit because we were concerned about the potential burden on the EPA Regional offices asked to review multiple permits under EBP. The EBP process was designed to streamline the review and approval process, and it could be overwhelmed by too many submittals or by submittals on complex MACT standards. Although we believe it is important to limit both the number of sources and the complexity of MACT standards allowed under this option to avoid overburdening the Regional offices, we appreciate the concern that limiting the number of sources may, somewhat arbitrarily, constrain the reasonable use of this option. Upon reflection, we believe the number of sources could be determined through agreement between you and your Regional office, such as through a Memorandum of Agreement

(MOA). We have changed the rule language to provide this flexibility.

d. *Accepting delegation of all sources in the source category.* Commenters said we should remove the requirement that you take delegation for all sources in a source category (including area sources, for example) when you implement EBP alternative requirements through the part 70 permitting process, because it could conflict with partial delegation under § 63.91. They argued that § 63.94(b)(1)(ii) would prevent those permitting authorities with limited resources from using the EBP option.

Commenters also argued that requiring you to take delegation for all sources in a source category could lead to unequal treatment among sources in larger source categories managed through other options. In addition, it would constitute a disincentive to use this option for non-Title V sources, since the more burdensome alternative delegation approaches must be followed. Commenters argued that this would delay the ability to resolve at least some issues through Title V, and could create unequal requirements between equivalent sources depending on whether the source is found at a facility that does or does not yet have a Title V permit.

The focus of delegation under section 112(l) has always been source category-wide rather than source-specific. Therefore, we will continue to require that even though you might use EBP for just a subset of sources in a source category, you must take delegation for all sources under that source category. The EBP option was not intended for larger source categories such as dry cleaners and chrome plating where there is a greater potential for inequity. Our decision to allow flexibility in setting a limit on the number of sources covered under this option, and to provide that the limit be set case-by-case through S/L/T and EPA Regional Office negotiation, will also help to resolve the question of inequity.

We agree that requiring you to accept delegation for all sources in a source category (including non-Title V sources) represents a disincentive for using the EBP approach for complex source categories and source categories with many sources. However, implementing requirements for non-Title V sources would be more appropriately addressed under the SPA option discussed in section G.

*E. Section 63.95. Additional Approval Criteria for Accidental Release Prevention Programs*

We received no comments during the public comment period on the section 112(r), Part 68 provisions contained in §§ 63.90 and 63.95 of the proposed rule. However, further experience with the risk management program and S/L/T's efforts to adopt an approvable program have led us to refine some of the § 63.90 and § 63.95 provisions to ensure a workable S/L/T-Federal partnership in delegating and implementing section 112(r) provisions.

Specifically, in § 63.90(d)(1)(iii) of the proposed subpart E rule, we proposed to retain the authority to add or delete requirements from Part 68, subpart G. Our thinking was that S/L/Ts should not have the authority to require additional and/or different reporting elements including chemicals, data, sources, etc. than what we are requiring in Part 68, subpart G.

In addition, the proposed language in § 63.95(b)(1) did not require S/L/Ts to include in their programs that covered facilities prepare and submit a Risk Management Plan (RMP). In fact, we indicated in the preamble to the proposed rule that EPA would not approve alternative S/L/T RMP requirements. We intended the Federal RMP requirement in Part 68, subpart G to remain in effect even in S/L/Ts with approved programs, so that there would be national consistency in RMP reporting. As explained in the preamble to the proposed rule, we have developed an electronic system for submitting and disseminating RMPs that will reduce paperwork burdens for facilities subject to Part 68 provisions as well as for the S/L/Ts and Federal agencies involved in the RMP program. However, for such an electronic system to work, RMPs must be submitted in a uniform format.

We now realize there are two logistical problems with the proposal's approach to the RMP requirements in Part 68, subpart G. First, many of the Federal RMP provisions in subpart G reference other Part 68 requirements to define what must be reported in an RMP. Except where a S/L/T adopts a risk management program by incorporating *all* of Part 68 by reference, retaining the Federal RMP requirement in a S/L/T with an approved program could create a discrepancy between the S/L/T's regulations and the Federal Part 68 reporting requirements. From a regulated facility's standpoint, it would be asked to prepare an RMP by reference to regulations that, in an approved S/L/T, no longer apply to it. Second, lack of a S/L/T RMP requirement could create enforcement problems. For example, S/L/T agencies would not have an RMP submission requirement to enforce, leaving enforcement of that requirement to us.

To address these problems, we believe that S/L/Ts must include an RMP requirement in the programs submitted for our approval. Further, for each of the section 112(r)-listed chemicals that an S/L/T is regulating, the S/L/T must require reporting of at least the same information in the same format as required under Part 68, subpart G. National consistency in RMP reporting of section 112(r)-listed chemicals is needed to preserve the viability and utility of EPA's electronic system for submitting and managing RMPs. In addition, the stringency of the Federal risk management program is, at least in part, a function of what must be reported in RMPs. For S/L/Ts to show that their programs are at least as stringent as the Federal program with respect to the section 112(r) chemicals they are regulating, their RMP requirement must collect at least the same information the Federal program collects. To avoid any potential discrepancies, the S/L/T would write its RMP provision to correspond with its own associated regulations.

We also recognize that S/L/Ts may want to establish more extensive RMP reporting requirements than the Federal program's. The S/L/Ts will decide if they want to include this additional information in their delegation package to EPA. Any additional information approved as part of the delegation package will be Federally enforceable. The S/L/Ts may seek additional information in RMPs without threatening the integrity of our electronic reporting system. We may or may not be able to include additional data elements in our reporting system; if we are not able to do so, the S/L/T can provide for separate reporting of the relevant information. Those S/L/Ts interested in having their additional reporting requirements included in the system should contact Karen Schneider of EPA's Chemical Emergency Preparedness and Prevention Office at (202) 260–2711. In any event, additional reporting requirements may be submitted to us and made Federally enforceable as part of an approved S/L/T program.

Moreover, we recognize that S/L/Ts may want to regulate more or fewer chemicals than the Federal program regulates. In some cases, S/L/Ts have sought or will seek approval through the section 112(l) process of a full or partial program covering more or fewer chemicals, respectively. We want to encourage S/L/Ts to seek delegation of the Part 68 RMP. As we proposed, we will approve S/L/T programs that cover fewer chemicals than the Federal program covers, so long as the S/L/T

accepts delegation of the entire section 112(r) program for that defined universe. The revised subpart E regulations issued today require that S/L/T programs include provisions corresponding to subparts A through G and § 68.200 of Part 68 for the federally-listed chemicals it regulates. With respect to RMPs, S/L/T programs must require, for Federally-listed chemicals, reporting of at least the same information in the same format as required under subpart G. Those S/L/Ts opting to cover additional chemicals or sources or to require additional reporting may submit such programs to us for approval. Our approval of a S/L/T program with such additional requirements will make those requirements Federally enforceable.

*F. Section 63.96—Review and Withdrawal of Approval*

The review and withdrawal-of-approval process in § 63.96 is intended to be used when we determine that you (the S/L/T) are not adhering to the conditions under which your rule(s), program, or requirements were approved. Although we are not changing the withdrawal process in today's rulemaking, we continue to believe that withdrawal of rule(s), program, or requirements may be considered in cases where S/L/T are not adequately implementing or enforcing their alternative rule(s), program, and/or requirements.

*G. Section 63.97—Approval of a S/L/T Program That Substitutes for Section 112 Requirements*

The SPA option is intended for S/L/Ts with mature air toxics programs with many regulations affecting source categories regulated by Federal section 112 standards. Under the SPA process you can seek approval for your program to be implemented and enforced in lieu of specified existing or future section 112 rules or requirements.

This option can eliminate the redundant review of generic requirements that apply to multiple source categories each time we review your alternative requirements for a new source category. It allows you to bundle regulations or requirements and submit them as a group for more efficient processing, or submit requirements arising from multiple S/L/T rules to substitute for requirements in a single Federal section 112 regulation. This option also covers section 112 requirements that we may develop in the future under other sections besides sections 112(d), 112(f), and 112(h), and it allows you to develop protocols to establish alternative compliance and enforcement strategies.

The SPA process consists of two steps. In the first step, you submit to us, and we then approve, your up-front program. Up-front approval involves assuring that you have adequate authorities and resources to implement and enforce your proposed alternative provisions, as well as informing us which source categories your program covers. The up-front approval takes place via notice and comment rulemaking in the **Federal Register** and may take a maximum of 90 or 180 days to complete, depending on the complexity of your submittal.

In the second step, you submit to us, and we approve, your specific alternative requirements. These alternative requirements may be submitted in the form of rules, permits, or requirements in other enforceable mechanisms for major and/or area sources but, as in § 63.93, they must be enforceable as a matter of S/L/T law before you can submit them for approval. Also, as in § 63.93, in step two of the SPA process, we approve your alternative requirements through notice and comment rulemaking in the **Federal Register.** This process, as proposed, will be completed within 180 days. See Appendix 1 for a flow chart describing the § 63.97 (SPA) delegation process.

In the January, 1999 proposed rule we further described the timing of the internal steps within the 90-day to 180-day maximum time allowed for each approval step. In the final rule, we have deleted those intervals (except for the minimum length of the public comment periods) in order to provide you with greater discretion in the process. (We have made similar changes in §§ 63.91, 63.93, and 63.94.)

Issues raised by commenters included the overall administrative burden of the SPA process, expansion of the list of approval mechanisms, the focus on source categories, the scope of section 112 rules that could be included, and the requirement to identify source categories in advance. These issues are discussed in more detail below.

1. Overall Burden

Commenters believed that the SPA process, as proposed, with two separate steps of EPA (and public) review and approval, contained too much administrative process and review time. They also suggested that even though we had eliminated the need for equivalency with the form of the standard, a source-category by source-category equivalency process is still too cumbersome and complex, and does not really provide a way for demonstrating that risk-based State programs, for example, are equivalent.

Because of these comments, we are considering making some broad changes to the SPA process. There are significant technical, legal, and policy issues which would need to be addressed in order to accommodate providing this additional flexibility. For example, in making technical assessments of whether a S/L risk-based program could or should substitute for the Federal requirements, significant issues in determining equivalency are anticipated. When EPA completes its review of these issues, should the review establish that the additional flexibility can be granted, then an additional notice and comment rulemaking would be needed because such changes to the current subpart E rule would not be a logical outgrowth of what we proposed to date. Therefore, we must propose any such changes separately. We do not want to delay the flexibility that we can now grant in the subpart E rule in order to address these issues. Therefore, in today's final rule, we are promulgating a SPA process similar to the process in the January 12, 1999 proposed rule, but with some additional flexibility and shortened review time.

In addition, we envision addressing the S/L request for additional flexibility in addressing HAP risks and for the ability to continue to implement their existing air toxics programs in other section 112, non-MACT programs. For example, the ''National Air Toxics Program: The Integrated Urban Strategy; Notice'' (**Federal Register,** July 19, 1999, pages 38727–38729) discusses the need for a S/L/T partnership in addressing the risk from air toxics in urban areas. That notice specifically discussed the extent of their existing programs and how the ''mature'' programs may be given the authority to address the section 112(k) (Urban Air Toxics Strategy) requirements. ''Those wanting flexibility note that risk reductions tailored to the local situation can be more effective than national solutions * * *'' We are now working with a stakeholder group to further discuss concerns with flexibility in our granting authority to S/L/T to address HAP risks in ''The Integrated Urban Strategy.'' In developing a final SPA process under section 112(l)(and in developing other associated section 112 programs), we will evaluate existing S/L/T programs' HAP risk reductions relative to HAP risk reductions for Federal section 112 programs.

2. Approval Mechanisms

The final rule contains an expanded list of S/L/T level regulatory

mechanisms that we consider to be approvable under the SPA option. For example, you may submit a mix of requirements in the form of S/L/T rules, S/L/T permits, permits issued pursuant to permit templates, board and administrative orders, Federal NSR permits, Title V general permits, or Title V permits. We feel comfortable allowing a broad list of mechanisms under SPA because the second step of the SPA process provides opportunity for EPA review of specific requirements such as permit terms and conditions. This change reflects comments that State agencies typically use a mixture of requirements in actual practice.

3. Source Category Focus

One commenter said that the SPA option should reflect a source-by-source basis rather than a source category-wide focus, because this would be more consistent with actual regulatory practices. However, we believe that if source-by-source changes are truly desired, then these requests should be made through EBP or through the part 63 General Provisions. The intent of subpart E is to delegate source category-wide rules, with appropriate exceptions (*e.g.,* partial approval). Even in the case of EBP, you must take delegation for the remaining sources in the source category using one of the other delegation options in subpart E. We need to make this exception because the EBP option is designed for a limited number of sources, and there may be other sources in the source category that are not covered by EBP.

4. Scope of Program Coverage

One commenter wanted us to allow the SPA option to be used for all HAP standards. Currently, the SPA option limits the equivalency process to (1) section 112(d), the MACT standards, (2) section 112(f), the residual risk standards, and (3) section 112(h), which are work practice standards. The commenter argued that expanding the SPA option to include any Federal standards controlling HAP emissions, such as section 112(k) (urban program), combination section 111 (new source performance standards or NSPS), section 112 standards, section 129 (solid waste combustion standards), and section 183 (Federal volatile organic compounds control measures), will meet the statutory requirements set forth by section 112(l). We have revised the applicable sections of subpart E to clarify that the delegation options are available for all section 112 authorities, which is consistent with section 112(l). At present, we have only issued standards under section 112(d) and 112(h) authorities, but as the section 112(k) and section 112(f) programs are developed, subpart E will be available for you to request equivalency of alternative rules. Section 112(l) does not provide the authority to address the other programs suggested by the commenter. In any case, sections 129 and 111 already have their own, separate delegation processes.

5. Identifying Source Categories in Advance

One commenter said we should not require S/L/T agencies to identify in advance the source categories and/or section 112 requirements for which they intend to substitute alternative requirements unless they can do so on a general basis. They feel that requiring specific identification of source categories is unnecessary so long as the public has a chance to comment on the specific alternatives developed under the approved program. We believe identification of source categories, to the extent possible, is important information. We do not require that the agency know the identity of all possible future source categories. The S/L/T agency can add source categories at a later time as the need arises, or alternatively, simply list up-front all source categories that might be included. Our key concern is that the public receive adequate notice of the addition of source categories to be considered under this option. We believe that the second **Federal Register** notice on the alternative requirements could also amend the up-front approval. Within this notice, the Region would inform the public that the S/L/T agency is adding one or more source categories.

## IV. How Will EPA Determine Equivalency for S/L/T Alternative NESHAP Requirements?

### *A. Work Practice Standards and Requirements*

One issue that arose during the California Air Toxics Program Integration Initiative is the delegation of authority to approve site-specific alternatives to the MACT-specific work practice requirements. In this discussion, we use the term ''work practices'' to refer to requirements in MACT standards that are developed in lieu of, or to augment, emission standards. A subset of work practices known as ''work practice standards'' are those work practices developed under section 112(h) of the Act. Section 112(h) requires us to develop design, equipment, work practice, or operational standards if it is not feasible to prescribe a HAP emission standard. This section also says that ''if after notice and opportunity for comment, the owner or operator of any source establishes to the satisfaction of the Administrator that an alternative means of emission limitation at least equivalent'' to the section 112(h) standard, then the Administrator can approve the alternative for use by the source. Based on this authority, we cannot delegate the authority to change actual standards developed under section 112(h). However, as a general principle, we believe we can delegate the authority to change some of the associated compliance and enforcement measures (*e.g.,* inspections, monitoring, reporting, and recordkeeping) associated with these standards.

In the California Air Toxics Program Integration Initiative we also determined that some work practices can be both (1) delegated to the S/L/Ts to make decisions on a site-specific basis, and (2) identified as needing less scrutiny during the equivalency demonstration development and review. Our goal was to define work practices in a way that was consistent for both purposes. We view these work practice authorities as somewhat similar to the 40 CFR Subpart A General Provisions' authorities, such as startup, shutdown, and malfunction plans. (Section 63.91(g) of this rule sets out which General Provisions authorities can be delegated to the S/L/Ts, and which we retain). We have tried to incorporate these ideas into the section 112(l) rulemaking as well.

When, in the absence of delegation, a source requests approval of an alternative to MACT requirements that are labeled as work practice standards under section 112(h), we must propose for public comment, and then promulgate, an approval or disapproval of that alternative on a source-specific basis. This can be a time-consuming process and we do not believe it is justified unless the scope of the change affects the section 112(h) standard or is otherwise nationally significant.

Instead, we believe there are work practice compliance measures, such as operator training plans, for which it is more reasonable for the S/L/T to evaluate potential alternative requirements. For example, some MACT standards require sources to develop operator training plans with specific elements to the plan. If a source wanted to use a different approach to operator training, such as a video course, we believe the S/L/T should be able to judge the adequacy of the alternative to achieve the underlying standard, which is to train operators to work in such a way as to minimize emissions.

Under the California Initiative, we have decided to divide work practices into those for which the authority to approve alternatives is delegable (because they are not actually 112(h) emission related standards), and those for which the authority to approve alternatives is not delegable. We cannot delegate standards developed under section 112(h), but we can delegate the authority to approve alternatives to their associated compliance and enforcement requirements. Upon review of existing section 112(d) rules, we found that some requirements have been identified as work practices, or mentioned as being developed under section 112(h), when they are really monitoring requirements or other compliance and enforcement requirements. We intend to clarify that these monitoring requirements are delegable under certain conditions as mentioned in Section II.

We have decided to provide guidance to explain these distinctions between the standards and their compliance and enforcement measures because many of the existing MACT standards were written using different formats and organization structures. This can make it difficult for the uninitiated to determine under which classification individual requirements fall. Currently, we can advise you that plans and training generally are delegable, but other practices that have a more direct impact on emissions are not delegable. We plan to correct those rule structure problems in future rulemaking. For the existing rules, we will focus on providing many examples of work practices for which the authority to approve alternatives is either delegable and non-delegable. Then, if any questions arise regarding work practices, we will work directly with permitting authorities to determine in which category the work practice in question falls. We will provide these examples and a more detailed explanation in forthcoming guidance on work practices. This guidance will also be useful to the Regional Offices in evaluating section 112(l) equivalency submittals that involve work practices.

*B. Changes To Monitoring Frequency and Recordkeeping and Reporting*

Through discussions with stakeholders, we have recognized that the proposed rule was not clear enough regarding the status of delegation of the Administrator's authority to approve changes in monitoring frequency. In particular, there has been confusion regarding whether changes to monitoring frequency are associated with the 40 CFR Part 63 General Provisions authority either: (1) To approve changes that the Administrator may make to monitoring under § 63.8(f) or (2) to waive or make changes that the Administrator may make to recordkeeping and reporting under § 63.10(f).

Section 63.10(b) states that recordkeeping involves maintaining ''files of all information required * * * recorded in a form suitable and readily available for expeditious inspection and review,'' (which is not the kind of requirement that we expect should be modified by us or you), but does not discuss the frequency of recording monitoring measurements. Because the concepts of recordkeeping and reporting are separate from the concept of monitoring frequency, it is appropriate to allow delegation of authority to approve certain changes to recordkeeping and reporting under § 63.10(f). (However, we note that recordkeeping and reporting requirements under Title V of the Act must still apply to all major sources—*i.e.,* that the records must be kept for 5 years and reports must be submitted at least twice per year.) If a MACT standard requires more frequent reporting than twice per year for major sources, this may be modified to no less than twice per year, on a site-specific basis, when justified, as discussed below.

The issue of monitoring frequency is appropriately addressed under § 63.8(f). In other stationary source rules and guidance (including those for 40 CFR Part 64, the Compliance Assurance Monitoring Rule), we clearly state that we consider monitoring frequency one of the four critical elements of monitoring. (These elements are indicator(s) of performance, measurement technique, monitoring frequency, and averaging time.) Because of the potential ambiguity of this issue in our proposal, we are making revisions to the final rule to clarify this. Also, we will be proposing to add a definition of monitoring to 40 CFR 63.2 (the 40 CFR Part 63 General Provisions) to include the four critical elements of monitoring. Our other revisions are discussed below.

The stakeholder discussions have also revealed the need for us to provide additional specificity on the types of changes to monitoring frequency that would be considered major, intermediate, and minor for the purposes of delegation of approval/disapproval authority to S/L/Ts (see § 63.91). We are providing this specificity by revising the definitions for major, intermediate, and minor changes to monitoring in § 63.90(a) to include specific examples of monitoring frequency changes. Major changes involving a continuous emission monitoring system (CEMS), continuous opacity monitoring system (COMS), predictive emission monitoring system (PEMS), or continuous parameter monitoring system (CPMS) as well as monitoring frequency changes involving leak detection and repair protocols (LDAR) will not be delegated to S/L/Ts. The categorization as major changes for changes in monitoring frequency for these monitoring approaches does not distinguish between those with an enforceable emission or operating limit and those with only a corrective action and reporting obligation.

The S/L/Ts at the discretion of the EPA Regional Office, may be delegated the authority to approve minor and/or intermediate changes to monitoring. Changes to monitoring frequency that fall into the category of intermediate changes to monitoring are those that are associated with non-continuous monitoring such as periodic parameter recordings, visual inspections of design features or work practices, and periodic portable analyzer emission checks. An increase in frequency for any type of data collection will be considered a minor change to monitoring. Indeed, you need not have received delegation of this authority to require an increase in frequency of monitoring, recordkeeping, or reporting, since that increase in requirements continues to satisfy the frequency required by the MACT standard. Such a more frequent requirement does not become Federally enforceable, without delegation, unless it is incorporated into a Federally enforceable instrument like a Title V permit or Federally enforceable state operating permit.

Consistent with all alternative test method and monitoring decision making, approvals of changes to monitoring frequency must meet the criteria in our existing guidance, the February 26, 1993, memorandum from Gilbert H. Wood to the EPA's Emission Measurement Branch entitled ''Handling Requests for Minor/Major Modifications/Alternative Testing and Monitoring Methods or Procedures Approvals and Disapprovals.'' Specifically, the delegated authority or EPA must make a determination that ''the change in the testing or monitoring method or procedure will provide a determination of compliance status at the same or higher stringency as the method or procedure specified in the applicable regulation.''

Regarding changes in monitoring frequency, we believe a special case that merits discussion here is the request for a decrease in monitoring frequency

supported with a significant amount of data demonstrating ongoing compliance with the applicable requirement. This type of data support along with the consideration of other factors may be adequate to justify the decrease in frequency. The amount of data we would consider adequate for this type of justification is 2 to 3 years worth with few or no exceedances of any associated applicable requirement or associated performance indicator, as well as steady-state operations. Other factors to be considered are (1) the compliance margin at which the source is operating and (2) the likelihood of continued steady-state operation of the control or process being monitored. A reasonable margin of compliance would be monitored results considerably below the applicable requirement or some such similar record relative to another type of performance indicator. The likelihood and degree of control failure versus the time period over which failure may occur should also be considered in relation to the monitoring frequency.

Once the delegated authority has determined that a decrease in frequency is reasonable, then the delegated authority must decide the magnitude of the decrease. Examples of acceptable step decreases might be from once per hour to once per shift, from once per shift to daily, from daily to weekly, or from weekly to monthly.

We believe that sources with significant data demonstrating operation well within the monitoring limit may merit a decrease in monitoring frequency; conversely, we believe that sources with significant or repeated operation exceeding the monitoring limit should be required to monitor more frequently. We expect S/L/Ts that have been delegated the authority to approve minor and intermediate changes to monitoring to require more frequent monitoring under these circumstances. Accordingly, the Regions will establish a requirement in their memoranda of agreement that delegated S/L/Ts periodically submit documentation of the cases where they have required more frequent monitoring.

As noted previously, commenters had requested that we consider delegating S/L/Ts the authority to approve certain changes to recordkeeping and reporting. We have determined that this is appropriate and have added definitions of major and minor changes to § 63.90(a). Recordkeeping and reporting changes are delegable so long as they are minor, as defined. We do not intend to delegate that all recordkeeping or reporting be waived, except in the circumstance where a compliance extension for the installation of controls has been granted. We do not allow alternative recordkeeping or reporting to essentially waive these requirements by so severely altering the contents of reports or records that their usefulness has been compromised.

We are willing to delegate the authority to approve small changes to recordkeeping and reporting where good cause if shown. By ''good cause'' we mean instances such as a facility shutdown, when there are no emissions, so it would make no sense to maintain the records of monitoring data, when all values would be zero, or some other meaningless value. We do not expect many changes to recordkeeping or reporting as we do not foresee many instances in which changes to the frequency of monitoring would necessitate a change to recordkeeping or reporting. Merely because a less frequent monitoring schedule has been approved, as cited in the example above, will not always, or even frequently, necessitate a change in recordkeeping or reporting. We consider any change to the record retention period, or the duty to maintain records on site and readily available, a major change which is not delegable.

Consistent with our previous guidance in the July 10, 1998, memo from John S. Seitz on ''Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies,'' delegated authorities must forward copies of any approved intermediate changes to both monitoring and test methods to the Emission Measurement Center of the Emissions Monitoring and Analysis Division via mail or facsimile at the address below:

Chief, Source Measurement and Technology Group, U.S. EPA (MD–19), Research Triangle Park, NC 27711, Facsimile Telephone Number: (919) 541–1039

Similarly, you must maintain a record of any alternatives to recordkeeping and reporting that you have approved and must report semi-annually, or more frequently, as may be agreed upon by the Region and you, to your Regional office providing a copy of this record or other similar summary. A copy must also be forwarded to:

Chief, Stationary Source Enforcement Branch, U.S. EPA (Mail Code 2242A), Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Facsimile Number: (202)564–0068

We reserve the right to review or disapprove the MRR alternatives you submit. If the Region disapproves your approved alternative, it is not retroactive for enforcement. That is, the source is not in jeopardy or in violation for the period of time that they acted in accordance with what you approved. Rather the source must, after notice of EPA's disapproval, revert to whatever MRR requirement they had before you approved the alternative. (That could be the original MACT requirement, your Subpart E alternative rule or permit or other mechanism, or, if there was one, a non-disapproved alternative that you approved previously.)

As an example of the last suggestion, if you had previously approved a less frequent monitoring requirement, such that the source must monitor every two hours instead of every one hour, and EPA had approved or had not disapproved of that alternative, then the source could legally monitor every two hours. If you subsequently approved less frequent monitoring to every eight hours, but EPA disapproved that alternative, the source must, after it receives notice of EPA's disapproval, revert to monitoring no less frequently than every 2 hours. Your sources should not feel that they risk enforcement penalties unless EPA approves the alternative. Rather they should act in keeping with your approved alternative safe in the knowledge that until such time as the alternative MRR is disapproved, it is completely legal to follow your approved alternative.

We wish to retain this flexible mechanism for disapproving potential S/L/T MRR alternatives. This will ensure adequate compliance measures without the need to withdraw your entire program on the basis of one minor MRR disagreement. This is in keeping with the flexible withdrawal options discussed in section III.F.

We will use this information on approved changes to monitoring, test methods, and recordkeeping and reporting to compile databases of decisions that will be accessible for reference in making future decisions. The EPA Regional offices will ensure that: (1) Initial approvals made by an S/L/T of intermediate changes to monitoring, testing, recordkeeping, and reporting are evaluated, and (2) S/L/T-issued intermediate changes to test methods and monitoring, all EPA Regional office-issued intermediate changes to test methods, and all alternatives to recordkeeping and reporting are forwarded to the addresses above. We will continue to post EPA Regional office approvals of changes in monitoring, recordkeeping, and reporting on the Applicability Determination Index (ADI), which can

be found at http://es.epa.gov/oeca/eptdd/adi.html. For electronic file transfer procedures for ADI updates, please contact Belinda Breidenbach in the Office of Compliance at 202–564–7022.

The EPA Regional Offices will provide firm guidelines for decision making in the process of delegating Part 63 General Provisions authorities to the S/L/T. More specifically, delegation documents can draw on the language of this preamble; the July 10, 1998, memo from John S. Seitz, the February 26, 1993, memorandum from Gilbert H. Wood, and other guidance materials to provide S/L/T with guidance to ensure consistency in approvals.

*C. Equivalency for S/L/T Requirements Established Under New Source Review/Prevention of Significant Deterioration (NSR/PSD)*

Several commenters pointed out that we should be able to accept SIP-approved rules and associated compliance and enforcement measures without the need for demonstrating equivalency with the compliance and enforcement measures in the MACT standard. We cannot legally allow a blanket acceptance of SIP-approved rules and/or other S/L/T rules without adequate process under subpart E to ensure equivalence with the MACT standard. Furthermore, it is our experience that SIP-approved rules are not always equivalent to MACT standards. In some cases, SIP-approved rules exempt some compounds, such as methylene chloride, that are regulated by MACT standards. Nevertheless, we are committed to making every effort to expedite the review process when standards set under NSR are submitted. For example, we have shortened review time frames, expanded the list of approvable mechanisms, and provided additional flexibility in the subpart E equivalency process. We have also expanded the list of approvable mechanisms under the § 63.92 rule adjustment process to include Federal NSR permits, because we agree with the commenters that they can be clearly more stringent than MACT. In these cases, rule adjustment offers the most appropriate and timely option. In some cases, however, the NSR finding may not clearly be more stringent. For example, if the NSR finding adopts some novel technology with significantly different MRR needed to ensure compliance, the rule adjustment mechanism may be insufficient to ensure the needed equivalency. In this case, the S/L/T should consider either rule substitution or permit streamlining. Again, we will commit to making every effort to expedite the review process.

*D. Title V Permit Renewal Issues*

Commenters suggested specific changes to part 70 to ensure the expeditious implementation of alternative requirements under subpart E or subpart A (General Provisions). These suggested changes include:

- For sources with an approved part 70 permit addressing the Federal standard, alternative requirements approved using the permit or permit template mechanism should be incorporated into the part 70 permit as an administrative amendment, and alternative requirements approved using the rule equivalency mechanism should be incorporated into the part 70 permit as a minor amendment.
- For sources without an approved part 70 permit, approved alternative requirements should be incorporated into the permit in the same way as any other Federal NESHAP requirement; however, we should ensure that the review and approval of the alternative requirement is limited to whether the permit condition accurately reflects the alternative requirement approved under subpart E.

We interpret the comments to recommend certain changes to include in the part 70 revisions that we are developing, rather than how we should interpret the current part 70 rule. Generally, we expect to take the approach in the part 70 revisions that the part 70 permit process need not require our review and public review if a prior process has already provided it. Accordingly, if alternative part 63 requirements have been reviewed and approved by us by the start of the permit revision process, then the part 70 revisions would likely incorporate the alternative requirements into the permit through one of the permit revision processes without our review and public review, *i.e.*, the administrative, notice-only, or *de minimis* revision tracks. Conversely, if the alternative part 63 requirements have not been reviewed and approved prior to the permit process, and significant judgment would be involved in determining if the alternative requirements are consistent with promulgated part 63 requirements, then the part 70 revisions may require one of the permit revision tracks that have EPA and public review, that is, either the significant or minor revision tracks. In developing the final part 70 revisions, we plan to address the incorporation of alternative part 63 requirements into the permit, consistent with the approach described above.

## V. What Are the Requirements To Review this Action in Court?

Under Section 307(b)(1) of the Act, judicial review of this final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by November 13, 2000. Any such judicial review is limited to only those objections which are raised with reasonable specificity in timely comments. Under Section 307(b)(2) of the Act, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

## VI. Administrative Requirements

*A. Docket*

The docket for this regulatory action is A–97–29, the same docket as the proposed rule, and a copy of today's final rule will be included in the docket. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) (Section 307(d)(7)(A) of the Act). The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this rule.

*B. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB), and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Although this final rule will not have an annual effect on the economy of $100 million or more, and therefore is not considered economically significant, we have determined that this rule is a ''significant regulatory action'' because it contains novel policy issues. This action was submitted to OMB for review as required by Executive Order 12866. All written comments from OMB to the EPA and any written EPA response to any of those comments are included in the docket listed at the beginning of this notice under **ADDRESSES.** In addition, consistent with Executive Order 12866, the EPA consulted extensively with S/L/Ts, the parties that will be most directly affected by this rule. Moreover, the Agency has also sought involvement from industry and public interest groups as described herein.

*C. Executive Order 13132 (Federalism)*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it amends a voluntary program. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Nevertheless, in developing this rule, EPA consulted with States to enable them to provide meaningful and timely input in the development of this rule. Discussion of the concerns raised by States and EPA's responses to those concerns is provided throughout this preamble.

*D. Consultation and Coordination With Indian Tribal Governments Under Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Because this rule implements a voluntary program, it imposes no direct compliance costs on these communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*E. Paperwork Reduction Act*

The OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0264. We have subsequently prepared a request (ICR 1643.04, which contains the basis for the burden estimates below) to extend the collection for an additional 3 years. You may get a copy of the Information Collection Request (ICR) from Sandy Farmer by mail at OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2822A), Ariel Rios Building, 1200 Pennsylvania Avenue, Northwest, Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202)260–2740.

This information is needed and used by us to determine if the S/L/T government submitting an application has met the criteria established in the 40 CFR Part 63, subpart E amended rule. This information is necessary for the Administrator to determine the acceptability of approving the affected entity's rules or programs in lieu of the Federal rules or programs. The collection of information is authorized under 42 U.S.C. 7401–7671q.

The total 3-year burden of the collection is estimated at 390,600 hours. The estimated average annual burden is 130,200 hours, 1,025 hours per respondent, and 29 hours per response. We have estimated that 127 State/local agencies will request delegation of 35 MACT standards each using the various delegation options. In addition, the 127 agencies will use the accidental release prevention program on a one-time only basis during the first two years of the collection. The cost burden of this response is limited to the labor costs of agency personnel to comply with the notification, reporting, and record keeping elements of this rule. These costs are estimated at $16.0 million for the 3-year collection period and $5.3 million on average for each year of the collection period. There are no capital, startup, or operation costs associated with this rule.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions, process and maintain information, and disclose and provide information; to adjust the existing ways to comply with any previously applicable instructions and requirements; to train personnel to respond to a collection of information; to search existing data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

We are amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to revise the list of information requirements contained in

this final rule. This amendment updates the table to list the information requirements being promulgated today.

We will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

*F. Regulatory Flexibility Act (RFA)*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The EPA believes that there will be little or no impact on small entities as a result of the promulgation of these rule revisions. State and local governments are the only entities affected by this action and EPA expects that most or all of the governments which would have the authority to accept delegation under section 112(l) of the Act are those whose populations exceed 50,000 persons and are thus, not considered ''small.'' Furthermore, this final rule revision adds additional flexibility to the existing rule for State and local governments and therefore does not impose new burdens. Accordingly, because few or none of the affected entities are expected to be small entities and because the regulatory impacts will be insignificant, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

*G. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on S/L/T governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to S/L/T governments, in the aggregate, or to the private sector of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for S/L/T governments or the private sector. Because the rule is estimated to result in the expenditure by S/L/T governments of significantly less than $100 million in any 1 year, we have not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, we are not required to develop a plan with regard to small governments. Moreover, this action amends a rule that is voluntary for S/L/T governments, so it does not impose any mandates on those entities. Therefore, the requirements of the Unfunded Mandates Reform Act do not apply to this section. Nonetheless, the EPA has encouraged significant involvement by State and local governments as detailed throughout this preamble.

*H. Protection of Children From Environmental Health Risks and Safety Risks Under Executive Order 13045*

Executive Order 13045 applies to any rule that EPA determines (1) economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonable alternatives considered by the Agency.

This rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs the Agency to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards (VCS).

This rule does not involve technical standards. Therefore, we are not considering the use of any VCS.

The section 112(l) rule is merely a procedural screen through which substantive air toxics standards are delegated and is not susceptible to the use of VCS. If any of the Federal air toxics standards delegated through section 112(l) have VCS, then the section 112(l) rule will assure that the comparable S/L/T standard has equivalent requirements. The section 112(l) rule itself, however, is not a vehicle for the application of VCS.

*J. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**VII. Statutory Authority.**

The statutory authority for this action is provided by sections 101, 112, 114, 116, and 301 of the Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601). This rulemaking is also subject to section 307(d) of the Act (42 U.S.C. 7407(d)).

**List of Subjects**

*40 CFR Part 9*

Environmental protection, reporting and recordkeeping requirements.

**Appendix 1 to Preamble**

BILLING CODE 6560–50–U

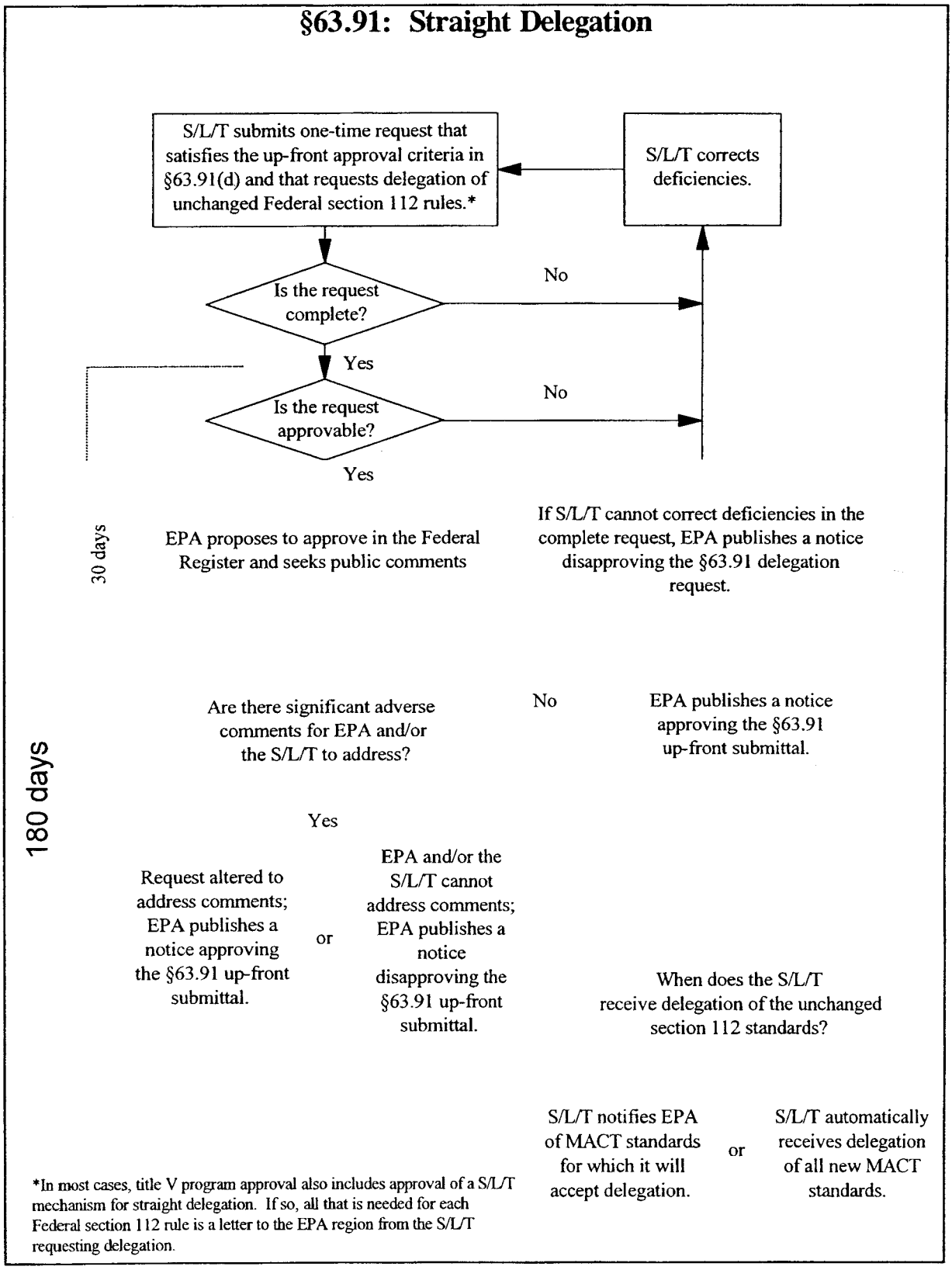
*40 CFR Part 63*

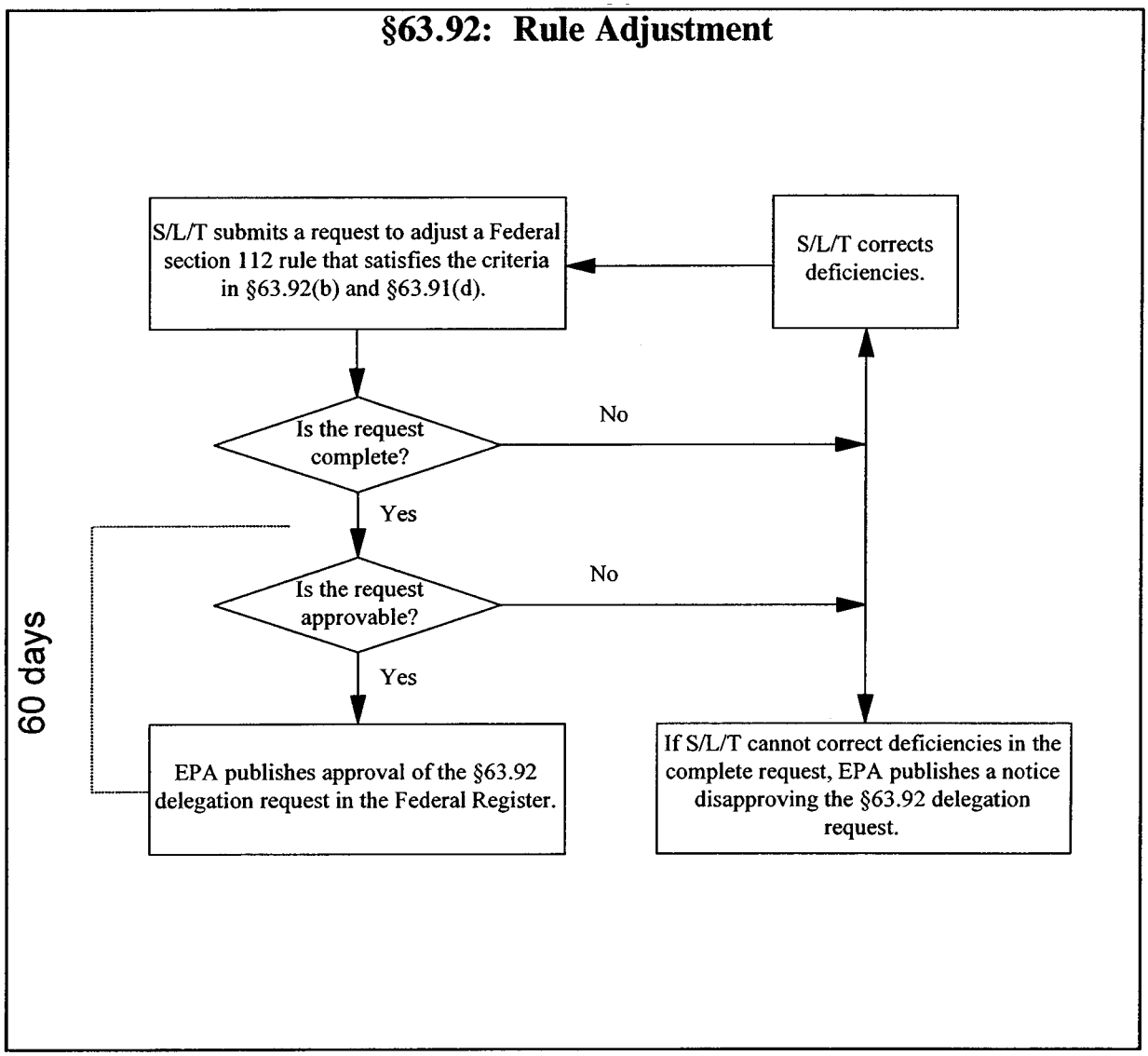
Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

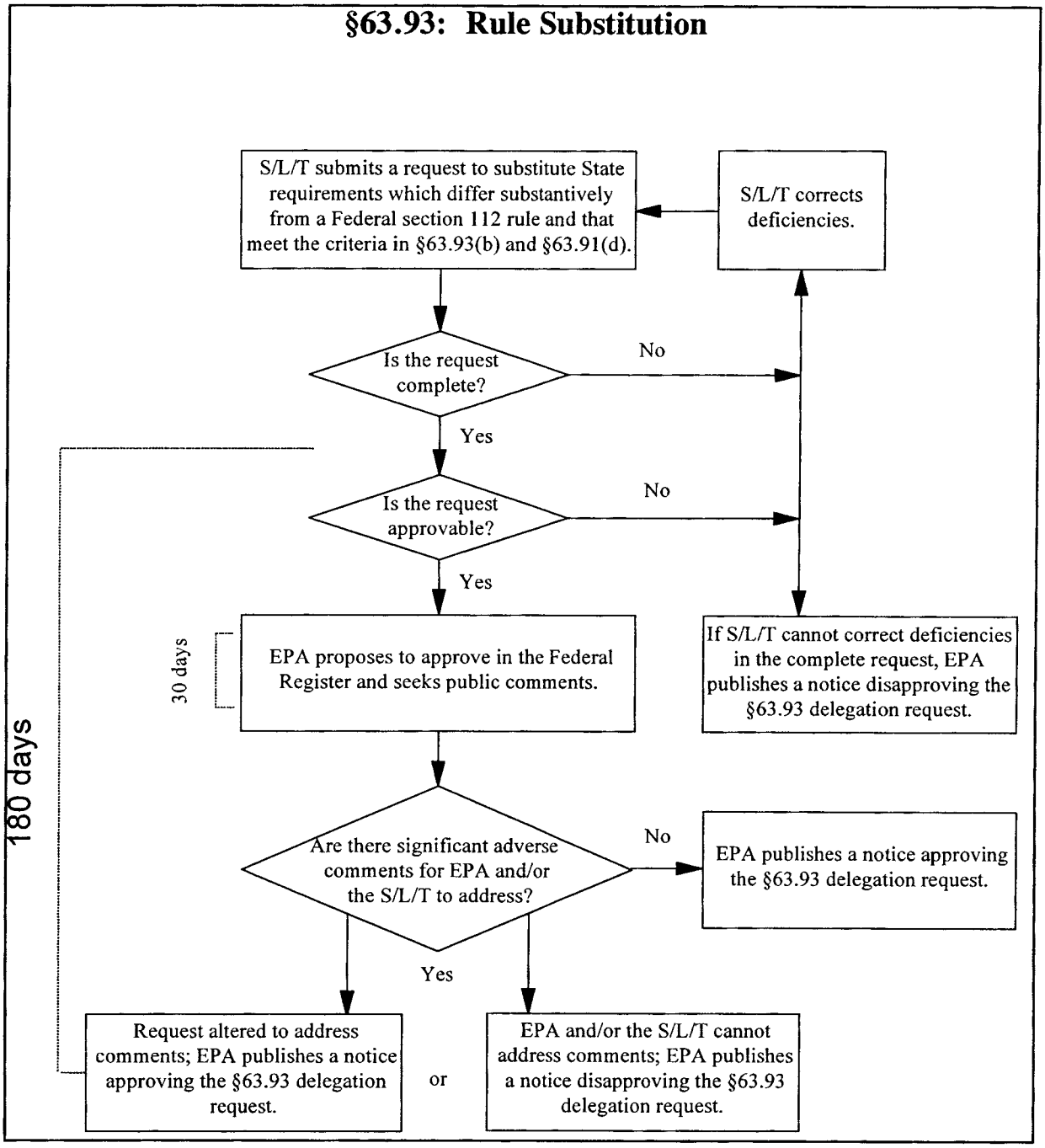
Dated: August 30, 2000.

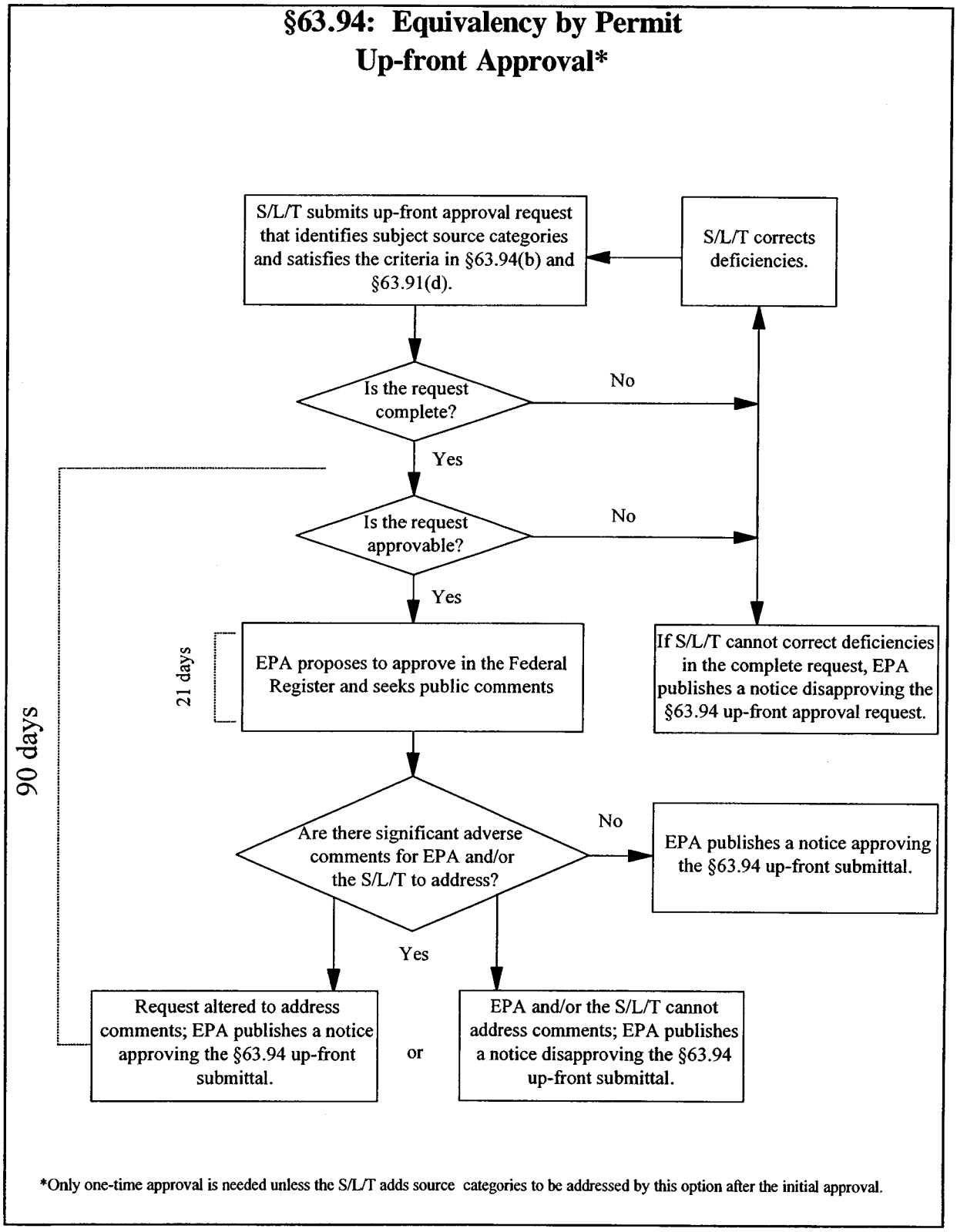
**Carol M. Browner,**

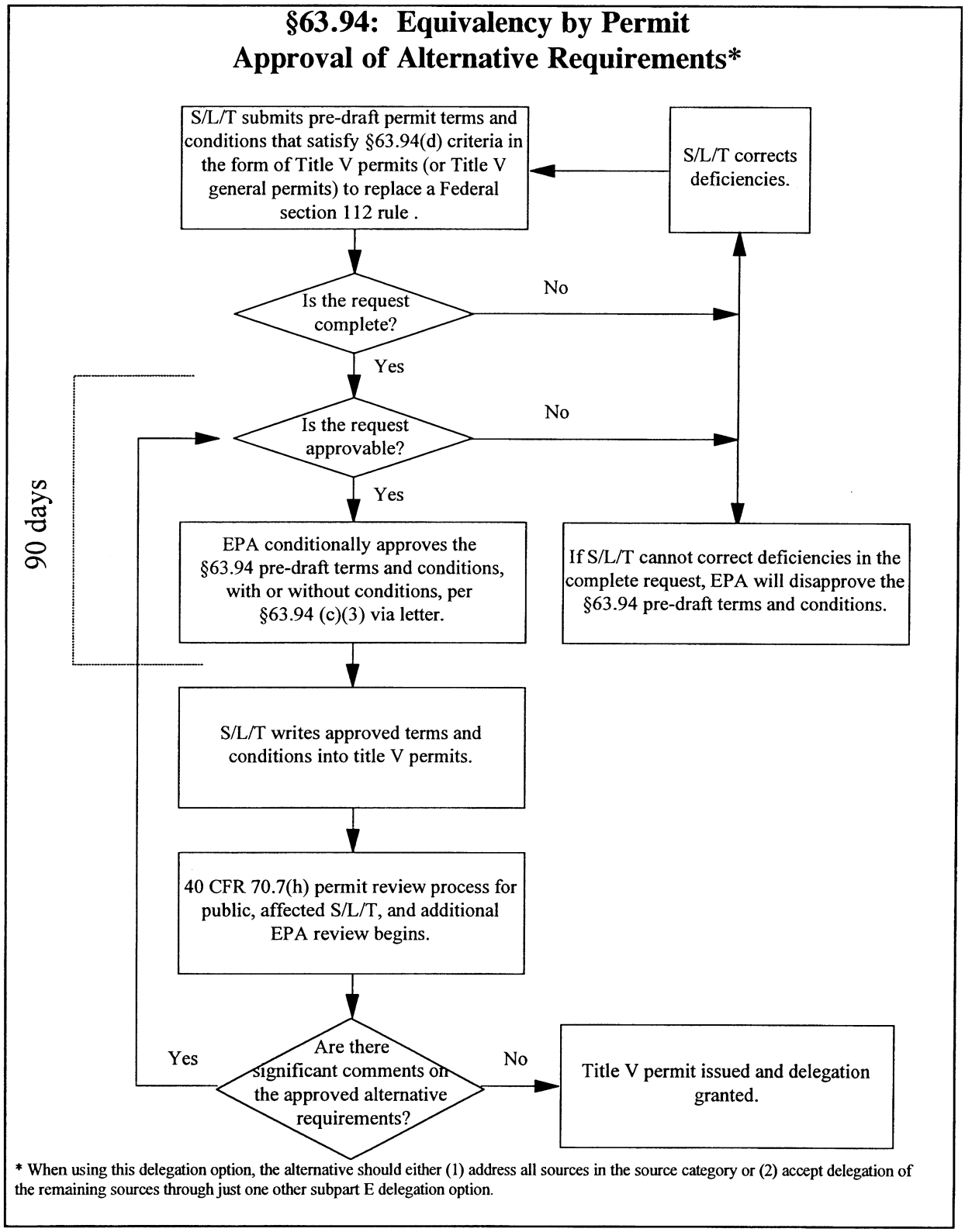
*Administrator.*


§63.91: Straight Delegation
S/L/T submits one-time request that satisfies the up-front approval criteria in §63.91(d) and that requests delegation of unchanged Federal section 112 rules.*
S/L/T corrects deficiencies.
Is the request complete?
No
Yes
Is the request approvable?
No
Yes
30 days
EPA proposes to approve in the Federal Register and seeks public comments
If S/L/T cannot correct deficiencies in the complete request, EPA publishes a notice disapproving the §63.91 delegation request.
180 days
Are there significant adverse comments for EPA and/or the S/L/T to address?
No
EPA publishes a notice approving the §63.91 up-front submittal.
Yes
Request altered to address comments; EPA publishes a notice approving the §63.91 up-front submittal.
or
EPA and/or the S/L/T cannot address comments; EPA publishes a notice disapproving the §63.91 up-front submittal.
When does the S/L/T receive delegation of the unchanged section 112 standards?
S/L/T notifies EPA of MACT standards for which it will accept delegation.
or
S/L/T automatically receives delegation of all new MACT standards.
*In most cases, title V program approval also includes approval of a S/L/T mechanism for straight delegation. If so, all that is needed for each Federal section 112 rule is a letter to the EPA region from the S/L/T requesting delegation.

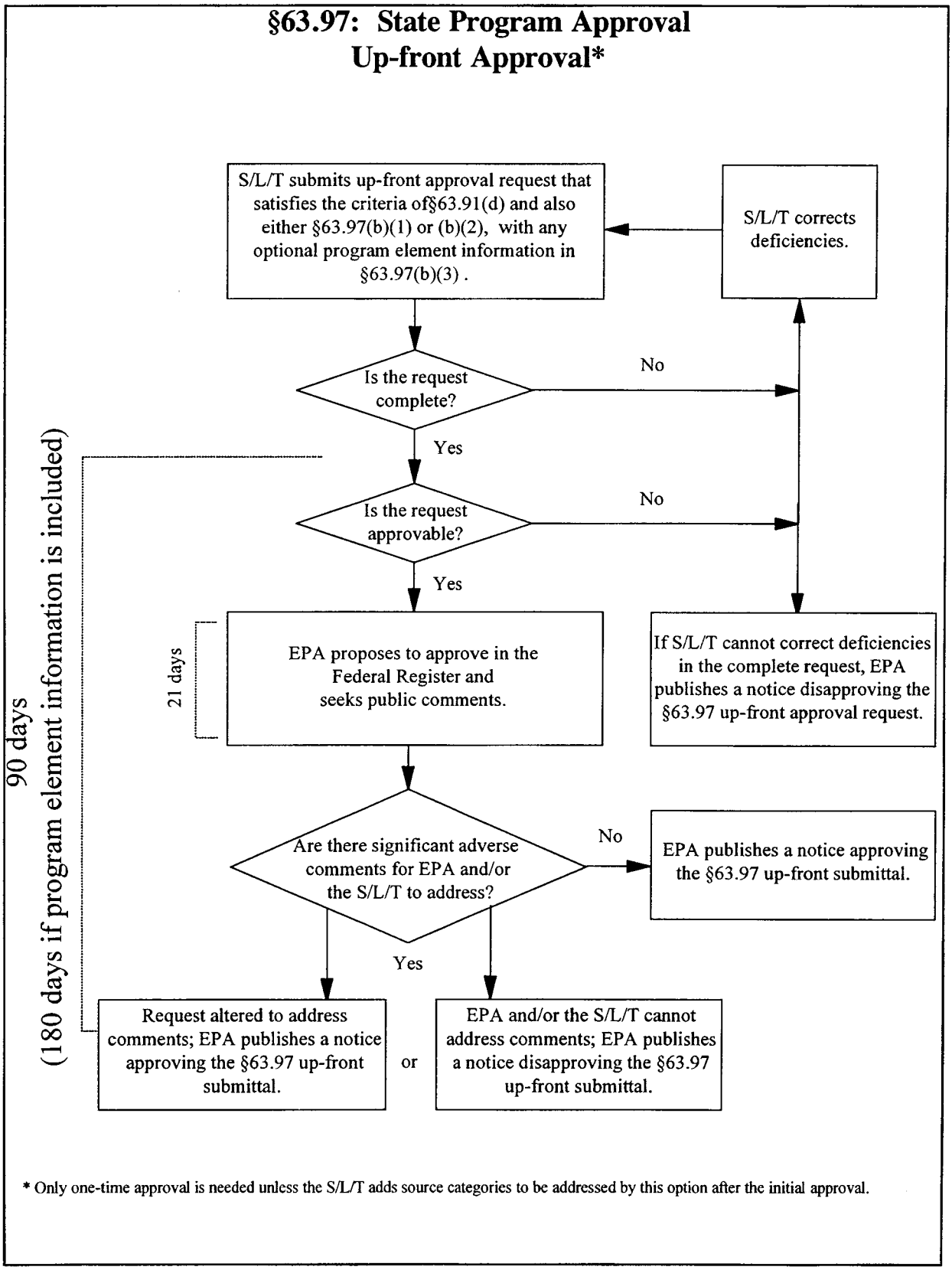

§63.92: Rule Adjustment
S/L/T submits a request to adjust a Federal section 112 rule that satisfies the criteria in §63.92(b) and §63.91(d).
S/L/T corrects deficiencies.
Is the request complete?
No
Yes
Is the request approvable?
No
Yes
60 days
EPA publishes approval of the §63.92 delegation request in the Federal Register.
If S/L/T cannot correct deficiencies in the complete request, EPA publishes a notice disapproving the §63.92 delegation request.


§63.93: Rule Substitution
S/L/T submits a request to substitute State requirements which differ substantively from a Federal section 112 rule and that meet the criteria in §63.93(b) and §63.91(d).
S/L/T corrects deficiencies.
Is the request complete?
No
Yes
Is the request approvable?
No
Yes
30 days
EPA proposes to approve in the Federal Register and seeks public comments.
If S/L/T cannot correct deficiencies in the complete request, EPA publishes a notice disapproving the §63.93 delegation request.
Are there significant adverse comments for EPA and/or the S/L/T to address?
No
EPA publishes a notice approving the §63.93 delegation request.
Yes
Request altered to address comments; EPA publishes a notice approving the §63.93 delegation request.
or
EPA and/or the S/L/T cannot address comments; EPA publishes a notice disapproving the §63.93 delegation request.
180 days

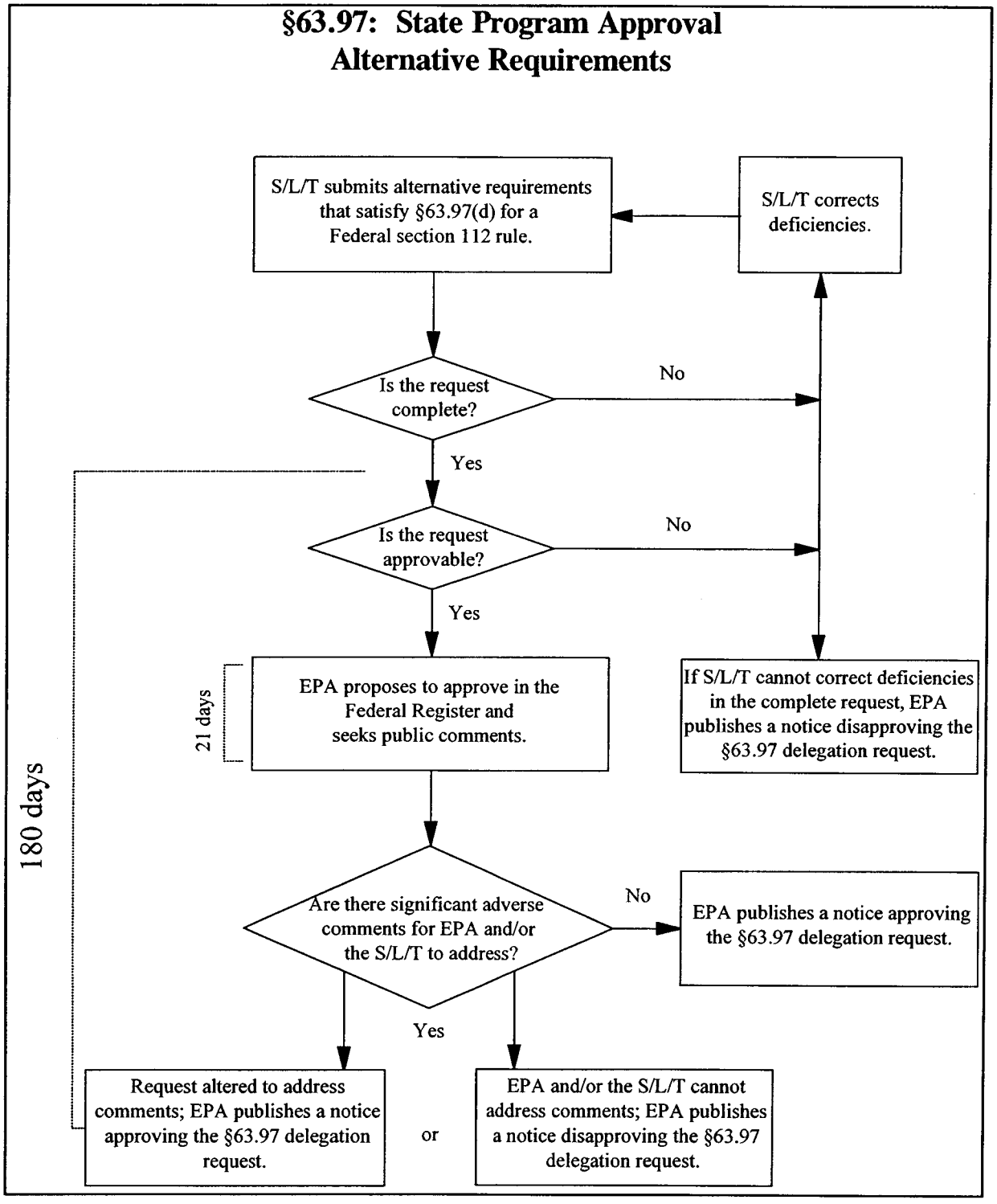

§63.94: Equivalency by Permit
Up-front Approval*
S/L/T submits up-front approval request that identifies subject source categories and satisfies the criteria in §63.94(b) and §63.91(d).
S/L/T corrects deficiencies.
Is the request complete?
No
Yes
Is the request approvable?
No
Yes
21 days
EPA proposes to approve in the Federal Register and seeks public comments
If S/L/T cannot correct deficiencies in the complete request, EPA publishes a notice disapproving the §63.94 up-front approval request.
90 days
Are there significant adverse comments for EPA and/or the S/L/T to address?
No
EPA publishes a notice approving the §63.94 up-front submittal.
Yes
Request altered to address comments; EPA publishes a notice approving the §63.94 up-front submittal.
or
EPA and/or the S/L/T cannot address comments; EPA publishes a notice disapproving the §63.94 up-front submittal.
*Only one-time approval is needed unless the S/L/T adds source categories to be addressed by this option after the initial approval.




* When using this delegation option, the alternative should either (1) address all sources in the source category or (2) accept delegation of the remaining sources through just one other subpart E delegation option.




* Only one-time approval is needed unless the S/L/T adds source categories to be addressed by this option after the initial approval.




BILLING CODE 6560–50–C

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

## PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by removing entry ''63.91–63.96'' and adding ''63.91–63.97'' under the indicated heading to read as follows:

### § 9.1 OMB approvals under the Paperwork Reduction Act.

| 40 CFR citation | OMB Control No. |
|---|---|
| National Emission Standards for Hazardous Air Pollutants for Source Categories | |
| * * * * * | |
| 63.91–63.97 | 2060–0264 |
| * * * * * | |

## PART 63—[AMENDED]

1. The [3] authority citation for part 63 continues to read as follows:

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

## Subpart E—[Amended]

2. Part 63 is amended by revising §§ 63.90–63.97 of subpart E to read as follows:

### § 63.90 Program overview.

The regulations in this subpart establish procedures consistent with section 112(l) of the Clean Air Act (Act) (42 U.S.C. 7401–7671q). This subpart establishes procedures for the approval of State rules, programs, or other requirements such as permit terms and conditions to be implemented and enforced in place of certain otherwise applicable section 112 Federal rules, emission standards, or requirements (including section 112 rules promulgated under the authority of the Act prior to the 1990 Amendments to the Act). The authority to implement and enforce section 112 Federal rules as promulgated without changes may be delegated under procedures established in this subpart. In this process, States may seek approval of a State mechanism for receiving delegation of existing and future unchanged Federal section 112 standards. This subpart clarifies which part 63, subpart A General Provisions authorities can be delegated to States. This subpart also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities delegated through this subpart. This subpart also establishes procedures for the approval of State rules or programs to establish limitations on the potential to emit pollutants listed in or pursuant to section 112(b) of the Act.

(a) *Definitions.* The following definitions apply to this subpart.

*Alternative requirements* means the requirements, rules, permits, provisions, methods, or other enforceable mechanisms that a State submits for approval under this subpart or subpart A and, after approval, replaces the otherwise applicable Federal section 112 requirements, provisions, or methods.

*Applicability criteria* means the regulatory criteria used to define all affected sources subject to a specific section 112 rule.

*Approval* means a determination by the Administrator that a State rule, program, or requirement meets the criteria of § 63.91 and the additional criteria of either § 63.92, § 63.93, § 63.94, or § 63.97 as appropriate. For accidental release prevention programs, the criteria of § 63.95 must be met in addition to the criteria of § 63.91. This is considered a ''full approval'' for the purposes of this subpart. Partial approvals may also be granted as described in this subpart. Any approved requirements become applicable requirements under § 70.2 of this chapter.

*Compliance and enforcement measures* means requirements relating to compliance and enforcement, including but not necessarily limited to monitoring methods and procedures, recordkeeping, reporting, plans, inspection, maintenance, and operation requirements, pollution prevention requirements, noticing, field inspections, entry, sampling, or accidental release prevention oversight.

*Intermediate change to monitoring* means a modification to federally required monitoring involving ''proven technology'' (generally accepted by the scientific community as equivalent or better) that is applied on a site-specific basis and that may have the potential to decrease the stringency of the associated emission limitation or standard. Though site-specific, an intermediate change may set a national precedent for a source category and may ultimately result in a revision to the federally required monitoring. Examples of intermediate changes to monitoring include, but are not limited to:

(1) Use of a continuous emission monitoring system (CEMS) in lieu of a parameter monitoring approach;

(2) Decreased frequency for non-continuous parameter monitoring or physical inspections;

(3) Changes to quality control requirements for parameter monitoring; and

(4) Use of an electronic data reduction system in lieu of manual data reduction.

*Intermediate change to test method* means a within-method modification to a federally enforceable test method involving ''proven technology'' (generally accepted by the scientific community as equivalent or better) that is applied on a site-specific basis and that may have the potential to decrease the stringency of the associated emission limitation or standard. Though site-specific, an intermediate change may set a national precedent for a source category and may ultimately result in a revision to the federally enforceable test method. In order to be approved, an intermediate change must be validated according to EPA Method 301 (Part 63, Appendix A) to demonstrate that it provides equal or improved accuracy and precision. Examples of intermediate changes to a test method include, but are not limited to:

(1) Modifications to a test method's sampling procedure including substitution of sampling equipment that has been demonstrated for a particular sample matrix, and use of a different impinger absorbing solution;

(2) Changes in sample recovery procedures and analytical techniques, such as changes to sample holding times and use of a different analytical finish with proven capability for the analyte of interest; and

(3) ''Combining'' a federally required method with another proven method for application to processes emitting multiple pollutants.

*Level of control* means the degree to which a rule, program, or requirement limits emissions or employs design, equipment, work practice, or operational standards, accident prevention, or other requirements or techniques (including a prohibition of emissions) for:

[3] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

(1)(i) Each hazardous air pollutant, if individual pollutants are subject to emission limitations, and

(ii) The aggregate total of hazardous air pollutants, if the aggregate grouping is subject to emission limitations, provided that the rule, program, or requirement would not lead to an increase in risk to human health or the environment; and

(2) Each substance regulated under part 68 of this chapter.

(3) Test methods and associated procedures and averaging times are integral to the level of control.

*Local agency* means a local air pollution control agency or, for the purposes of § 63.95, any local agency or entity having responsibility for preventing accidental releases which may occur at a source regulated under part 68 of this chapter.

*Major change to monitoring* means a modification to federally required monitoring that uses ''unproven technology or procedures'' (not generally accepted by the scientific community) or is an entirely new method (sometimes necessary when the required monitoring is unsuitable). A major change to monitoring may be site-specific or may apply to one or more source categories and will almost always set a national precedent. Examples of major changes to monitoring include, but are not limited to:

(1) Use of a new monitoring approach developed to apply to a control technology not contemplated in the applicable regulation;

(2) Use of a predictive emission monitoring system (PEMS) in place of a required continuous emission monitoring system (CEMS);

(3) Use of alternative calibration procedures that do not involve calibration gases or test cells;

(4) Use of an analytical technology that differs from that specified by a performance specification;

(5) Decreased monitoring frequency for a continuous emission monitoring system, continuous opacity monitoring system, predictive emission monitoring system, or continuous parameter monitoring system;

(6) Decreased monitoring frequency for a leak detection and repair program; and

(7) Use of alternative averaging times for reporting purposes.

*Major change to recordkeeping/reporting* means:

(1) A modification to federally required recordkeeping or reporting that:

(i) May decrease the stringency of the required compliance and enforcement measures for the relevant standards;

(ii) May have national significance (*e.g.*, might affect implementation of the applicable regulation for other affected sources, might set a national precedent); or

(iii) Is not site-specific.

(2) Examples of major changes to recordkeeping and reporting include, but are not limited to:

(i) Decreases in the record retention for all records;

(ii) Waiver of all or most recordkeeping or reporting requirements;

(iii) Major changes to the contents of reports; or

(iv) Decreases in the reliability of recordkeeping or reporting (*e.g.*, manual recording of monitoring data instead of required automated or electronic recording, or paper reports where electronic reporting may have been required).

*Major change to test method* means a modification to a federally enforceable test method that uses ''unproven technology or procedures'' (not generally accepted by the scientific community) or is an entirely new method (sometimes necessary when the required test method is unsuitable). A major change to a test method may be site-specific, or may apply to one or more sources or source categories, and will almost always set a national precedent. In order to be approved, a major change must be validated according to EPA Method 301 (Part 63, Appendix A). Examples of major changes to a test method include, but are not limited to:

(1) Use of an unproven analytical finish;

(2) Use of a method developed to fill a test method gap;

(3) Use of a new test method developed to apply to a control technology not contemplated in the applicable regulation; and

(4) Combining two or more sampling/analytical methods (at least one unproven) into one for application to processes emitting multiple pollutants.

*Minor change to monitoring* means:

(1) A modification to federally required monitoring that:

(i) Does not decrease the stringency of the compliance and enforcement measures for the relevant standard;

(ii) Has no national significance (*e.g.*, does not affect implementation of the applicable regulation for other affected sources, does not set a national precedent, and individually does not result in a revision to the monitoring requirements); and

(iii) Is site-specific, made to reflect or accommodate the operational characteristics, physical constraints, or safety concerns of an affected source.

(2) Examples of minor changes to monitoring include, but are not limited to:

(i) Modifications to a sampling procedure, such as use of an improved sample conditioning system to reduce maintenance requirements;

(ii) Increased monitoring frequency; and

(iii) Modification of the environmental shelter to moderate temperature fluctuation and thus protect the analytical instrumentation.

*Minor change to recordkeeping/reporting means:*

(1) A modification to federally required recordkeeping or reporting that:

(i) Does not decrease the stringency of the compliance and enforcement measures for the relevant standards;

(ii) Has no national significance (*e.g.*, does not affect implementation of the applicable regulation for other affected sources, does not set a national precedent, and individually does not result in a revision to the recordkeeping or reporting requirement); and

(iii) Is site-specific.

(2) Examples of minor changes to recordkeeping or reporting include, but are not limited to:

(i) Changes to recordkeeping necessitated by alternatives to monitoring;

(ii) Increased frequency of recordkeeping or reporting, or increased record retention periods;

(iii) Increased reliability in the form of recording monitoring data, *e.g.*, electronic or automatic recording as opposed to manual recording of monitoring data;

(iv) Changes related to compliance extensions granted pursuant to § 63.6(i);

(v) Changes to recordkeeping for good cause shown for a fixed short duration, *e.g.*, facility shutdown;

(vi) Changes to recordkeeping or reporting that is clearly redundant with equivalent recordkeeping/reporting requirements; and

(vii) Decreases in the frequency of reporting for area sources to no less than once a year for good cause shown, or for major sources to no less than twice a year as required by title V, for good cause shown.

*Minor change to test method* means:

(1) A modification to a federally enforceable test method that:

(i) Does not decrease the stringency of the emission limitation or standard;

(ii) Has no national significance (*e.g.*, does not affect implementation of the

applicable regulation for other affected sources, does not set a national precedent, and individually does not result in a revision to the test method); and

(iii) Is site-specific, made to reflect or accommodate the operational characteristics, physical constraints, or safety concerns of an affected source.

(2) Examples of minor changes to a test method include, but are not limited to:

(i) Field adjustments in a test method's sampling procedure, such as a modified sampling traverse or location to avoid interference from an obstruction in the stack, increasing the sampling time or volume, use of additional impingers for a high moisture situation, accepting particulate emission results for a test run that was conducted with a lower than specified temperature, substitution of a material in the sampling train that has been demonstrated to be more inert for the sample matrix; and

(ii) Changes in recovery and analytical techniques such as a change in quality control/quality assurance requirements needed to adjust for analysis of a certain sample matrix.

*Partial approval* means that the Administrator approves under this subpart:

(1) A State's legal authorities that fully meet the criteria of § 63.91(d)(3)(ii)–(v), and substantially meet the criteria of § 63.91(d)(3)(i) as appropriate; or

(2) A State rule or program that meets the criteria of §§ 63.92, 63.93, 63.94, 63.95, or 63.97 with the exception of a separable portion of that State rule or program which fails to meet those criteria. A separable portion of a State rule or program is defined as a section(s) of a rule or a portion(s) of a program which can be acted upon independently without affecting the overall integrity of the rule or program as a whole.

*Program* means, for the purposes of an approval under this subpart, a collection of State authorities, resources, and other requirements that satisfy the criteria of this subpart and subpart A.

*State agency,* for the purposes of this subpart, includes State and local air pollution agencies, Indian tribes as defined in § 71.2 of this chapter, and territories of the United States to the extent they are or will be delegated Federal section 112 rules, emission standards, or requirements.

*Stringent or stringency* means the degree of rigor, strictness or severity a statute, rule, emission standard, or requirement imposes on an affected source as measured by the quantity of emissions, or as measured by parameters relating to rule applicability and level of control, or as otherwise determined by the Administrator.

*Title V operating permit programs* means the part 70 permitting program and the delegated Indian tribal programs under part 70 of this chapter.

(b) *Local agency coordination with State and territorial agencies.* Local agencies submitting a rule or program for approval under this subpart shall consult with the relevant State or Territorial agency prior to making a request for approval to the Administrator. A State or Territorial agency may submit requests for approval on behalf of a local agency after consulting with that local agency.

(c) *Tribal authority.*

A tribal authority may submit a rule or program under this subpart, provided that the tribal authority has received approval, under the provisions of part 49 of this chapter, for administering Federal rules under section 112 of the Act.

(d) *Authorities retained by the Administrator.*

(1) The following authorities will be retained by the Administrator and will not be delegated:

(i) The authority to add or delete pollutants from the list of hazardous air pollutants established under section 112(b);

(ii) [Reserved]

(iii) [Reserved]

(iv) The authority to add source categories to or delete source categories from the Federal source category list established under section 112(c)(1) or to subcategorize categories on the Federal source category list after proposal of a relevant emission standard;

(v) The authority to revise the source category schedule established under section 112(e) by moving a source category to a later date for promulgation; and

(vi) Any other authorities determined to be nondelegable by the Administrator.

(2) Nothing in this subpart shall prohibit the Administrator from enforcing any applicable rule, emission standard or requirement established under section 112.

(3) Nothing in this subpart shall affect the authorities and obligations of the Administrator or the State under title V of the Act or under regulations promulgated pursuant to that title.

(e) *Federally-enforceable requirements.* All rules, programs, State or local permits, or other requirements approved under this subpart and all resulting part 70 operating permit conditions are enforceable by the Administrator and by citizens under the Act.

(f) *Standards not subject to modification or substitution.* With respect to radionuclide emissions from licensees of the Nuclear Regulatory Commission or licensees of Nuclear Regulatory Commission Agreement States which are subject to part 61, subparts I, T, or W of this chapter, a State may request that the EPA approve delegation of implementation and enforcement of the Federal standard pursuant to § 63.91, but no changes or modifications in the form or content of the standard will be approved pursuant to § 63.92, § 63.93, § 63.94, or § 63.97.

(g) *Selection of delegation options.*

(1) With the exception of paragraphs (g)(2) and (g)(3) of this section, States may only submit requests for approval of alternative requirements for a section 112 Federal rule, emission standard, or other requirement under a single delegation option under this subpart.

(2) In the case of § 63.94 submittals, if the identified sources in any source category comprise a subset of the sources in that category, the State must accept delegation under one other section of this subpart for the remainder of the sources in that category that are required to be permitted by the State under part 70 of this chapter.

(3) If the Administrator partially approves the State request per § 63.91(f), the State may submit a request for the remaining section 112 rules, emission standards, or requirements in that category under another section of this subpart.

### § 63.91 Criteria for straight delegation and criteria common to all approval options.

(a) *Applicable approval criteria.* A State must satisfy the criteria in paragraph (d) of this section for up-front approval to obtain delegation of the Federal section 112 rules, emission standards, or requirements. Once a State has demonstrated it meets the criteria in paragraph (d) of this section, it only needs to reference that demonstration and reaffirm that it still meets the criteria in future submittals. In addition, a State must satisfy the applicable approval criteria in §§ 63.92, 63.93, 63.94, 63.95, or 63.97, as specified in the following paragraphs.

(1) *Unchanged Federal section 112 rules (''straight delegation'').* To obtain approval of State programs to implement and enforce Federal section 112 rules as promulgated without changes (except for accidental release programs, described in paragraph (a)(4) of this section), only the criteria of paragraph (d) of this section must be met. This includes State requests for

one-time approval of their mechanism for taking delegation of future unchanged Federal section 112 rules, emission standards, and requirements as well as approval to implement and enforce unchanged Federal section 112 rules, emission standards, and requirements on a rule-by-rule basis.

(2) *State rules, programs, or requirements that are different from the Federal rule.* To obtain approval under this subpart of a rule, program, or requirement that is different from the Federal section 112 rule, emission standard, or requirement, the criteria of paragraph (d) of this section and the criteria of either § 63.92, § 63.93, § 63.94, or § 63.97 must be met.

(3) *Separable portions of State rules, programs, or requirements (''partial approval'').* To obtain partial approval under this subpart, a State request must meet the criteria in paragraphs (d) and (f) of this section.

(4) *Programs under part 68 of this chapter, prevention of accidental releases.* For approval of State rules or programs to implement and enforce the Federal accidental release prevention program in part 68 of this chapter, as promulgated without changes, the provisions of paragraph (d) of this section, and § 63.95 must be met. For approval of alternative requirements, the provisions of either § 63.92 or § 63.93 must also be met.

(5) *Limits on the potential to emit section 112 pollutants.* The Administrator may, under the authority of section 112(l) and this subpart, also approve a State program designed to establish limits on the potential to emit hazardous air pollutants listed pursuant to section 112 of the Act.

(b) *Approval process.* When a State submits an initial request for approval, and except as otherwise specified under § 63.92, § 63.93, § 63.94, § 63.95, or § 63.97, for a State's subsequent requests for approval, the approval process will be as shown in the following table:

| If . . . | Then . . . | And then . . . |
|---|---|---|
| (1) A request for approval is received ..... | the Administrator will review the request for approval and determine whether the request is complete according to the criteria in this subpart. | if a request is incomplete, the Administrator will notify the State of the specific deficient elements of the request. |
| (2) A complete request for approval is received | the Administrator will seek public comment for a minimum of 30 days through a **Federal Register** notice on the State's request for approval. | the Administrator will require that comments be submitted concurrently to the State. |
| (3) A complete request for approval is received and there has been a period of public comment. | the Administrator will either approve, partially approve, or disapprove the State rule, program, or requirement within 180 days of receipt of a complete request. | |
| (4) The Administrator finds that all of the criteria of this section are met and all of the criteria of § 63.92, § 63.93, § 63.94, § 63.95, or § 63.97 are met. | the Administrator will approve or partially approve the State rule, program, or requirement. | the Administrator will publish it in the **Federal Register**, and incorporate it directly or by reference, in the appropriate subpart of part 63. Requirements approved under § 63.95 will be incorporated pursuant to requirements under part 68 of this chapter. |
| (5) The Administrator finds that any of the criteria of this section are not met, or any of the criteria of § 63.92, § 63.93, § 63.94, § 63.95, or § 63.97 under which the request for approval was made are not met. | the Administrator will notify the State of any revisions or additions necessary to obtain approval. | any resubmittal by a State of a request for approval will be considered a new request under this subpart. |
| (6) A State rule, program, or requirement is disapproved. | unless the State can revise the submittal to meet the criteria, the Administrator will disapprove the State rule, program, or requirement. | the Administrator will publish the disapproval in the **Federal Register**. |

(c) *Enforcement.*

(1) Approval of the alternative rule, program, or requirement delegates to the State the authority to implement and enforce the approved rule, program, or requirement in lieu of the otherwise applicable Federal section 112 rule, emission standard, or requirement.

(i) The approved State rule, program, or requirement shall be federally enforceable from the date the Administrator signs the approval, with two exceptions. For States that implement unchanged Federal requirements (§ 63.91, straight delegation) via their title V permit program, and for States using the equivalency by permit option (63.94), the approved requirements shall be federally enforceable on the date of issuance or revision of the title V permit.

(ii) In the case of a partial approval under paragraph (f)(1) of this section, only those authorities of the State request found to meet the requirements of this section will be approved; the remaining Federal authorities will be implemented and enforced by EPA.

(iii) For partial approvals under paragraph (f)(3) of this section, only the portion of the State rule that is approved will be federally enforceable; the remainder continues to be State enforceable only.

(2) When a State rule, program, or requirement is approved by the Administrator under this subpart, applicable title V permits shall be revised according to the provisions of § 70.7(f) of this chapter.

(i) Each permit shall specify the origin of the alternative conditions per § 70.6 (a)(i) of this chapter and specifically reference the **Federal Register** notice or other EPA approval mechanism in the permit.

(ii) When approved alternative requirements are incorporated in a permit, those requirements must be clearly identified and carried forward in any subsequent permit revisions or renewals. If the permit is not renewed, or if a revision or renewal does not carry the alternate requirements forward, then the Federal section 112 requirements become the applicable requirements.

(3) If approval is withdrawn under § 63.96, all otherwise applicable Federal rules and requirements shall be enforceable in accordance with the compliance schedule established in the

withdrawal notice and relevant title V permits shall be revised according to the provisions of § 70.7(f) of this chapter.

(d) *Criteria for approval.*

(1) Any request for approval under this subpart shall meet all section 112(l) approval criteria specified by the otherwise applicable Federal section 112 rule, emission standard, or requirement, all of the approval criteria of this section, and any additional approval criteria in §§ 63.92, 63.93, 63.94, 63.95, or 63.97.

(2) Once a State has satisfied the § 63.91(d) up-front approval requirements, it only needs to reference the previous demonstration and reaffirm that is still meets the criteria for any subsequent equivalency submittals.

(3) Interim or final title V program approval will satisfy the criteria set forth in § 63.91(d), up-front approval criteria. Alternatively, the State must provide the following items in paragraphs (d)(3)(i) through (v) of this section to the Administrator:

(i) A written finding by the State Attorney General (or for a local agency or tribal authority, the General Counsel with full authority to represent the local agency or tribal authority) that the State has the necessary legal authority to implement and to enforce the State rule, program, or requirement upon approval and to assure compliance by all sources within the State with each applicable section 112 rule, emission standard, or requirement. For full approval, the State must have the following legal authorities concerning enforcement and compliance assurance:

(A) The State shall have enforcement authorities that meet the requirements of § 70.11 of this chapter, except that tribal authorities shall have enforcement authorities that meet the requirements of part 49 of this chapter, the Tribal Air Rule.

(B) The State shall have authority to request information from regulated sources regarding their compliance status.

(C) The State shall have authority to inspect sources and any records required to determine a source's compliance status.

(D) If a State delegates authorities to a local agency, the State must retain enforcement authority unless the local agency has authorities that meet the requirements of § 70.11 of this chapter.

(ii) A copy of State statutes, regulations, and requirements that contain the appropriate provisions granting authority to implement and enforce the State rule, program, or requirement upon approval.

(iii) A demonstration that the State has adequate resources to implement and enforce all aspects of the rule, program, or requirement upon approval (except for authorities explicitly retained by the Administrator, such as those pursuant to paragraph (f) of this section or pursuant to part 49 of this chapter), which includes:

(A) A description in narrative form of the scope, structure, coverage, and processes of the State program.

(B) A description of the organization and structure of the agency or agencies that will have responsibility for administering the program.

(C) A description of the agency's capacity to carry out the State program, including the number, occupation, and general duties of the employees.

(iv) A schedule demonstrating expeditious State implementation of the rule, program, or requirement upon approval.

(v) A plan that assures expeditious compliance by all sources subject to the State rule, program, or requirement upon approval. The plan should include, at a minimum, a complete description of the State's compliance tracking and enforcement program, including but not limited to inspection strategies.

(4) If any of the State documents that are required to support an approval under this subpart are readily available to the EPA and to the public, the State may cite the relevant portions of the documents or indicate where they are available (*e.g.*, by providing an Internet address) rather than provide copies.

(e) *Revisions.* Within 90 days of any State amendment, repeal, or revision of any State rule, program, permit, or other requirement approved as an alternative to a Federal requirement or part of the authority necessary for the up-front approval, the State must provide the Administrator with a copy of the revised authorities and meet the requirements of either paragraph (e)(1) or (e)(2) of this section.

(1)(i) The State shall provide the Administrator with a written finding by the State Attorney General (or for a local agency or tribal authority, the General Counsel with full authority to represent the local agency or tribal authority) that the State's revised legal authorities are adequate to continue to implement and to enforce all previously approved State rules and the approved State program (as applicable) and adequate to continue to assure compliance by all sources within the State with approved rules, the approved program, the approved permit, or other requirements (as applicable) and each applicable section 112 rule, emission standard, or requirement.

(ii) If the Administrator determines that the written finding is not adequate, the State shall request approval of the revised rule, program, permit, or other requirement according to the provisions of paragraph (e)(2) of this section.

(2) The State shall request approval under this subpart for any revised rule, program, permit, or other requirement.

(i) If the Administrator approves the revised rule, program, permit, or other requirement, the revision will replace the previously approved rule, program, permit, or other requirement.

(ii) If the Administrator disapproves the revised rule, program, permit, or other requirement, the Administrator will initiate procedures under § 63.96 to withdraw approval of any previously approved rule, program, permit, or other requirement that may be affected by the revised authorities.

(iii) Until such time as the Administrator approves or withdraws approval of a revised rule, program, permit, or other requirement, the previously approved rule, program, permit, or requirement remains federally enforceable and the revision is not federally enforceable.

(3) If the EPA amends, or otherwise revises a promulgated section 112 rule or requirement in a way that increases its stringency, the EPA will notify any State which has received delegation under this subpart of the need to revise their equivalency demonstration.

(i) The EPA Regional Office will consult with the affected State(s) to set a time frame for the State(s) to submit a revised equivalency demonstration.

(ii) The revised equivalency demonstration will be reviewed and approved or disapproved according to the procedures set forth in this section and § 63.91, § 63.92, § 63.93, § 63.94, § 63.95, or § 63.97, whichever are applicable.

(f) *Partial approval.* The partial approval process under this subpart is described in the following table:

| If . . . | Then . . . | And . . . |
|---|---|---|
| (1) A State's legal authorities submitted under this subpart substantially meet the requirements of paragraph (d)(3)(i) of this section, but are not fully approvable. | the Administrator may grant a partial approval with the State's consent. | The EPA will continue to implement and enforce those authorities under paragraph (d)(3)(i) of this section that are not approved. |
| (2) Any of the other requirements in paragraphs (d)(3)(ii)–(v) of this section are not approvable. | the Administrator will disapprove the submittal | |
| (3) A rule, requirement, or program submitted under this subpart meets the requirements of § 63.92, § 63.93, § 63.94, § 63.95, or § 63.97 as appropriate, with the exception of a separable portion of that rule, requirement, or program. | the Administrator may remove that separable portion with the State's consent. | the Administrator may then grant a partial approval of the portion of the rule, requirement, or program that meets the requirements of this subpart. |
| (4) the Administrator determines that there are too many areas of deficiency or that separating the responsibilities between Federal and State government would be too cumbersome and complex. | the Administrator may disapprove the submittal in its entirety. | |

(g) *Subpart A, Delegable authorities.* A State may exercise certain authorities granted to the Administrator under subpart A, but may not exercise others, according to the following criteria:

(1) A State may ask the appropriate EPA Regional Office to delegate any of the authorities listed as ''Category I'', in paragraph (g)(1)(i) of this section. The EPA Regional Office will delegate any such authorities at their discretion.

(i) ''Category I'' shall consist of the following authorities:

Category I Authorities

(A) Section 63.1, Applicability Determinations
(B) Section 63.6(e), Operation and Maintenance Requirements—Responsibility for Determining Compliance
(C) Section 63.6(f), Compliance with Non-Opacity Standards—Responsibility for Determining Compliance
(D) Section 63.6(h), Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance
(E) Sections 63.7(c)(2)(i) and (d), Approval of Site-Specific Test Plans
(F) Section 63.7(e)(2)(i), Approval of Minor Alternatives to Test Methods
(G) Section 63.7(e)(2)(ii) and (f), Approval of Intermediate Alternatives to Test Methods
(H) Section 63.7(e)(iii), Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors
(I) Sections 63.7(e)(2)(iv), (h)(2), and (h)(3), Waiver of Performance Testing
(J) Sections 63.8(c)(1) and (e)(1), Approval of Site-Specific Performance Evaluation (Monitoring) Test Plans
(K) Section 63.8(f), Approval of Minor Alternatives to Monitoring
(L) Section 63.8(f), Approval of Intermediate Alternatives to Monitoring
(M) Section 63.9 and 63.10, Approval of Adjustments to Time Periods for Submitting Reports
(N) Section 63.10(f), Approval of Minor Alternatives to Recordkeeping and Reporting

(ii) The State must maintain a record of all approved alternatives to all monitoring, testing, recordkeeping, and reporting requirements and provide this list of alternatives to its EPA Regional Office at least semi-annually, or on a more frequent basis if requested by the Regional Office. The Regional Office may audit the State-approved alternatives and disapprove any that it determines are inappropriate, after discussion with the State. If changes are disapproved, the State must notify the source that it must revert to the original applicable monitoring, testing, recordkeeping, and/or reporting requirements (either those requirements of the original section 112 requirement, the alternative requirements approved under this subpart, or the previously approved site-specific alternative requirements). Also, in cases where the source does not maintain the conditions which prompted the approval of the alternatives to the monitoring, testing, recordkeeping, and/or reporting requirements, the State (or EPA Regional Office) must require the source to revert to the original monitoring, testing, recordkeeping, and reporting requirements, or more stringent requirements, if justified.

(2)(i) A State may not ask the appropriate EPA Regional Office to delegate any of the authorities listed as ''Category II'' in paragraph (g)(2)(ii) of this section.

(ii) ''Category II'' shall consist of the following authorities:

Category II Authorities

(A) Section 63.6(g), Approval of Alternative Non-Opacity Emission Standards
(B) Section 63.6(h)(9), Approval of Alternative Opacity Standards
(C) Sections 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods
(D) Section 63.8(f), Approval of Major Alternatives to Monitoring
(E) Section 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting

### § 63.92 Approval of State requirements that adjust a section 112 rule.

Under this section a State may seek approval of State requirements that make pre-approved adjustments to a Federal section 112 rule, emission standard, or requirement that are unambiguously no less stringent than the Federal rule, emission standard, or requirement.

(a) *Approval process.*

(1) If the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the Administrator will approve the State requirements, publish them in the **Federal Register**, and incorporate them, directly or by reference, in the appropriate subpart of part 63, without additional notice and opportunity for comment. Requirements approved under § 63.95 will be incorporated pursuant to requirements under part 68 of this chapter.

(2) If the Administrator finds that any one of the State adjustments to the Federal rule is in any way ambiguous with respect to the stringency of applicability, level of control, compliance and enforcement measures, or the compliance date for any affected source or emission point, the Administrator will either disapprove the

State request or consider the request under § 63.93.

(3) Within 60 days of receiving a complete request for approval under this section, the Administrator will either approve or disapprove the State request. If approved, the change will be effective upon signature of the **Federal Register** notice.

(4) Requirements submitted for approval under this section shall include either title V permits, title V general permits, Federal new source review permits, or State rules. Permits must already be issued to be used under this section.

(5) If the State uses a permit as the basis of alternative requirements under this section, the relevant permit terms and conditions must remain applicable to the source, even if the source takes steps that would otherwise release it from an obligation to have a permit.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with:

(1) A demonstration that the public within the State has had adequate notice and opportunity to submit written comment on the State requirements, and

(2) A demonstration that each State adjustment to the Federal rule individually results in requirements that:

(i) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to applicability;

(ii) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to level of control for each affected source and emission point;

(iii) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to compliance and enforcement measures for each affected source and emission point; and

(iv) Assure compliance by every affected source no later than would be required by the otherwise applicable Federal rule.

(3) State adjustments to Federal section 112 rules which may be part of an approved rule under this section are:

(i) Lowering a required emission rate or *de minimis* level;

(ii) Adding a design, work practice, operational standard, emission rate or other such requirement;

(iii) Increasing a required control efficiency;

(iv) Increasing the frequency of required reporting, testing, sampling or monitoring;

(v) Adding to the amount of information required for records or reports;

(vi) Decreasing the amount of time to come into compliance;

(vii) Subjecting additional emission points or sources within a source category to control requirements;

(viii) Any adjustments allowed in a specific section 112 rule;

(ix) Minor editorial, formatting, and other nonsubstantive changes; or

(x) Identical alternative requirements previously approved by the Administrator in another local agency within the same State, if previously noticed that the alternative requirements would be applicable in the jurisdiction seeking approval under this section.

### § 63.93 Approval of State requirements that substitute for a section 112 rule.

Under this section a State may seek approval of State requirements which differ from a Federal section 112 rule for which they would substitute, such that the State requirements do not qualify for approval under § 63.92.

(a) *Approval process.*

(1) After receiving a complete request for approval under this section and making a preliminary determination on its equivalence, the Administrator will seek public comment on the State's request for a minimum of 30 days through a **Federal Register** notice. The Administrator will require that comments be submitted concurrently to the State.

(2) If, after review of public comments and any State responses to comments submitted to the Administrator, the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the Administrator will approve the State requirements under this section, publish the approved requirements in the **Federal Register**, and incorporate them directly or by reference, in the appropriate subpart of part 63. Requirements approved under § 63.95 will be incorporated pursuant to requirements under part 68 of this chapter.

(3) If the Administrator finds that any of the requirements of this section or § 63.91 have not been met, the Administrator may partially approve or disapprove the State requirements. For any partial approvals or disapprovals, the Administrator will provide the State with the basis for the partial approval or disapproval and what actions that State can take to make the requirements approvable.

(4) Requirements submitted for approval under this section shall include either: State rules, title V permits, title V general permits, Federal new source review permits, board and administrative orders, permits issued pursuant to permit templates, or State operating permits. Permits must already be issued to be used under this section.

(5) If the State uses a permit as the basis of alternative requirements under this section, the relevant permit terms and conditions must remain applicable to the source even if it takes steps that would otherwise release it from an obligation to have a permit.

(6) Within 180 days of receiving a complete request for approval under this section, the Administrator will either approve, partially approve, or disapprove the State request.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with detailed documentation that the State requirements contain or demonstrate:

(1) Applicability criteria that are no less stringent than those in the respective Federal rule;

(2) Levels of control (including associated performance test methods) and compliance and enforcement measures that result in emission reductions from each affected source or accidental release prevention program requirements for each affected source that are no less stringent than would result from the otherwise applicable Federal rule;

(3) A compliance schedule that requires each affected source to be in compliance within a time frame consistent with the deadlines established in the otherwise applicable Federal rule; and

(4) At a minimum, the approved State requirements must include the following compliance and enforcement measures. (For requirements addressing the accidental release prevention program, minimum compliance and enforcement provisions are described in § 63.95.)

(i) The approved requirements must include monitoring or another method for determining compliance.

(ii) If a standard in the approved rule is not instantaneous, a maximum averaging time must be established.

(iii) The requirements must establish an obligation to periodically monitor for compliance using the monitoring or another method established in paragraph (b)(4)(i) of this section sufficient to yield reliable data that are representative of the source's compliance status.

### § 63.94 Approval of State permit terms and conditions that substitute for a section 112 rule.

Under this section a State may seek approval of State permit terms and

conditions to be implemented and enforced in lieu of specified existing and future Federal section 112 rules, emission standards, or requirements promulgated under section 112, for those affected sources permitted by the State under part 70 of this chapter. The State may not seek approval under this section for permit terms and conditions that implement and enforce part 68 requirements.

(a) *Up-front approval process.*

(1) A State must submit a request that meets the requirements of paragraph (b) of this section. After receiving a complete request for approval of a State program under this section and making a preliminary determination of equivalence, the Administrator will seek public comment for 21 days through a **Federal Register** notice. The Administrator will require that comments be submitted concurrently to the State.

(2) If, after review of all public comments, and State responses to comments submitted to the Administrator, the Administrator finds that the criteria of paragraph (b) of this section and the criteria of § 63.91 are met, the Administrator will approve the State program. The approved program will be published in the **Federal Register** and incorporated directly or by reference in the appropriate subpart of part 63.

(3) If the Administrator finds that any of the criteria of paragraph (b) of this section or § 63.91 have not been met, the Administrator will partially approve or disapprove the State program. For any partial approvals or disapprovals, the Administrator will provide the State with the basis for the partial approval or disapproval and what action the State can take to make the programs approvable.

(4) Within 90 days of receiving a complete request for approval under this section, the Administrator will either approve, partially approve, or disapprove the State request.

(b) *Criteria for up-front approval.* Any request for program approval under this section shall meet all of the criteria of this paragraph and § 63.91 before approval. The State shall provide the Administrator with:

(1)(i) To the extent possible, an identification of all specific sources in source categories listed pursuant to subsection 112(c) for which the State is seeking authority to implement and enforce alternative requirements under this section;

(ii) If the identified sources in any source category comprise a subset of the sources in that category within the State's jurisdiction, the State shall request delegation for the remainder of the sources in that category that are required to be permitted by the State under part 70 of this chapter. The State shall request delegation for the remainder of the sources in that category under another section of this subpart.

(iii) Prior to submitting a request for one or more sources within a source category, the State shall consult with their EPA Regional Office regarding the number of sources in a category eligible for submittal under this option. Based on the Regional Office's decision, the State shall limit the number of sources for which it submits permit requirements.

(2) To the extent possible, an identification of all existing and future section 112 emission standards for which the State is seeking authority under this section to implement and enforce alternative requirements.

(3) If, after approval of the initial list of source categories identified in paragraph (b)(2) of this section, the State adds source categories for approval under this option, the State shall submit an addendum to the up-front approval submission, and identify the addition to the lists. The Administrator will follow the process outlined in paragraph (a) of this section for up-front approval.

(4) A one-time demonstration that the State has an approved title V operating permit program and that the program permits the affected sources.

(c) *Approval process for alternative requirements.*

(1) After promulgation of a Federal section 112 rule, emission standard, or requirement for which the State has up-front approval to implement and enforce alternative requirements in the form of title V permit terms and conditions, the State shall provide the Administrator with pre-draft title V permit terms and conditions that are sufficient, in the Administrator's judgement, to allow the Administrator to determine equivalency. The permit terms and conditions shall reflect all of the requirements of the otherwise applicable Federal section 112 rule, emission standard, or requirement.

(2) [Reserved]

(3) If, the Administrator receives a complete request and finds the pre-draft title V permit terms and conditions submitted by the State meet the criteria of paragraph (d), the Administrator will approve the State's alternative requirements (by approving the pre-draft permit terms and conditions) and notify the State in writing of the approval.

(4) The Administrator may approve the State's alternative requirements on the condition that the State makes certain changes to the pre-draft title V permit terms and conditions and includes the changes in the complete pre-draft, proposed, and final title V permits for the affected sources. If the Administrator approves the alternative requirements on the condition that the State makes certain changes to them, the State shall make those changes or the alternative requirements will not be federally enforceable when they are included in the final permit, even if the Administrator does not object to the proposed permit. Until the Administrator affirmatively approves the State's alternative requirements (by approving the pre-draft permit terms and conditions) under this paragraph, and those requirements (permit terms) are incorporated into the final title V permit for any affected source, the otherwise applicable Federal emission standard(s) remain the federally enforceable and applicable requirements for that source.

(5) If, after evaluating the pre-draft title V permit terms and conditions that were submitted by the State, the Administrator finds that the criteria of paragraph (d) of this section have not been met, the Administrator will disapprove the State's alternative requirements and notify the State in writing of the disapproval. In the notice of disapproval, the Administrator will specify the deficient or nonapprovable elements of the State's alternative requirements.

(6) Within 90 days of receiving a complete request for approval under this paragraph, the Administrator will either approve, partially approve, or disapprove the State's alternative requirements.

(7) Nothing in this section precludes the State from submitting alternative requirements in the form of title V permit terms and conditions or title V general permit terms and conditions for approval under this paragraph at the same time the State submits its program to the Administrator for up-front approval under paragraph (a) of this section, provided that the Federal emission standards for which the State submits alternative requirements are promulgated at the time of the State's submittal. If the Administrator finds that the criteria of § 63.91 and the criteria of paragraphs (b) and (d) of this section are met, the Administrator will approve both the State program and the permit terms and conditions within 90 days of receiving a complete request for approval.

(d) *Approval criteria for alternative requirements.*

Any request for approval under this paragraph shall meet the following criteria. Taken together, the criteria in this paragraph describe the minimum contents of a State's equivalency demonstration for a promulgated Federal section 112 rule, emission standard, or requirement. To be approvable, the State submittal must contain sufficient detail to allow the Administrator to make a determination of equivalency between the State's alternative requirements and the Federal requirements. Each submittal of alternative requirements in the form of pre-draft permit terms and conditions for an affected source shall:

(1) Identify the specific, practicably enforceable terms and conditions with which the source would be required to comply upon issuance, renewal, or revision of the title V permit. The State shall submit permit terms and conditions that reflect all of the requirements of the otherwise applicable Federal section 112 rule, emission standard, or requirement. The State shall identify for the Administrator the specific permit terms and conditions that contain alternative requirements.

(2) Identify specifically how the alternative requirements in the form of permit terms and conditions are the same as or differ from the requirements in the otherwise applicable Federal section 112 rule, emission standard, or requirement (including any applicable requirements in subpart A or other subparts or appendices). The State shall provide this identification in a side-by-side comparison of the State's requirements in the form of permit terms and conditions and the requirements of the Federal section 112 rule, emission standard, or requirement.

(3) The State shall provide the Administrator with detailed documentation that demonstrates that the alternative requirements meet the criteria specified in § 63.93(b), *i.e.,* that the alternative requirements are at least as stringent as the otherwise applicable Federal requirements.

(e) *Incorporation of permit terms and conditions into title V permits.*

(1) After approval of the State's alternative requirements under this section, the State shall incorporate the approved permit terms and conditions into title V permits for the affected sources. The State shall issue or revise the title V permits according to the provisions contained in § 70.7 of this chapter. The alternative permit terms and conditions may substitute for the Federal requirements once they are contained in a valid title V permit. If the State does not write the alternative conditions, exactly as approved, into the permit, EPA may reopen the permit for cause per § 70.7(g) of this chapter, and the delegation may not occur.

(2) In the notice of pre-draft permit availability, and in each pre-draft, proposed, and final permit, the State shall indicate prominently that the permit contains alternative section 112 requirements. In the notice of pre-draft permit availability, the State shall specifically solicit public comment on the alternative requirements. In addition, the State shall attach all documents supporting the approved equivalency determination for those alternative requirements to each pre-draft, proposed, and final permit.

### § 63.95 Additional approval criteria for accidental release prevention programs.

(a) A State submission for approval of a part 68 program must meet the criteria and be in accordance with the procedures of this section, § 63.91, and, where appropriate, either § 63.92 or § 63.93.

(b) The State part 68 program application shall contain the following elements consistent with the procedures in § 63.91 and, where appropriate, either § 63.92 or § 63.93 of this subpart, for at least the chemicals listed in part 68 subpart F (''federally-listed chemicals'') that an approvable State Accidental Release Prevention program is regulating:

(1)(i) A demonstration of the State's authority and resources to implement and enforce regulations that are no less stringent than the regulations of part 68, subparts A through G and § 68.200 of this chapter; and

(ii) A requirement that any source subject to the State's part 68 program submit a Risk Management Plan (RMP) that reports at least the same information in the same format as required under part 68, subpart G of this chapter.

(2) A State's RMP program may require reporting of information not required by the Federal program, and these requirements (like any other additional State requirements) will become federally enforceable upon approval. The extent to which EPA will be able to help a State collect and report additional information through EPA's electronic RMP submission system will be determined on a case-by-case basis.

(3) Procedures for reviewing risk management plans and providing technical assistance to stationary sources, including small businesses.

(4) A demonstration of the State's authority to enforce all part 68 requirements must be made, including an auditing strategy that complies with § 68.220 of this chapter.

(c) A State may request approval for a program that covers all of the federally-listed chemicals (a ''complete program'') or a program covering less than all of the federally-listed chemicals (a ''partial program'') as long as the State takes delegation of the full part 68 program for the federally-listed chemicals it regulates.

### § 63.96 Review and withdrawal of approval.

(a) Submission of information for review of approval. (1) The Administrator may at any time request any of the following information to review the adequacy of implementation and enforcement of an approved rule or program and the State shall provide that information within 45 days of the Administrator's request:

(i) Copies of any State statutes, rules, regulations or other requirements that have amended, repealed or revised the approved State rule or program since approval or since the immediately previous EPA review;

(ii) Information to demonstrate adequate State enforcement and compliance monitoring activities with respect to all approved State rules and with all section 112 rules, emission standards or requirements;

(iii) Information to demonstrate adequate funding, staff, and other resources to implement and enforce the State's approved rule or program;

(iv) A schedule for implementing the State's approved rule or program that assures compliance with all section 112 rules and requirements that the EPA has promulgated since approval or since the immediately previous EPA review,

(v) A list of part 70 or other permits issued, amended, revised, or revoked since approval or since immediately previous EPA review, for sources subject to a State rule or program approved under this subpart.

(vi) A summary of enforcement actions by the State regarding violations of section 112 requirements, including but not limited to administrative orders and judicial and administrative complaints and settlements.

(2) Upon request by the Administrator, the State shall demonstrate that each State rule, emission standard or requirement applied to an individual source is no less stringent as applied than the otherwise applicable Federal rule, emission standard or requirement.

(b) Withdrawal of approval of a state rule or program.

(1) If the Administrator has reason to believe that a State is not adequately

implementing or enforcing an approved rule or program according to the criteria of this section or that an approved rule or program is not as stringent as the otherwise applicable Federal rule, emission standard or requirements, the Administrator will so inform the State in writing and will identify the reasons why the Administrator believes that the State's rule or program is not adequate. The State shall then initiate action to correct the deficiencies identified by the Administrator and shall inform the Administrator of the actions it has initiated and completed. If the Administrator determines that the State's actions are not adequate to correct the deficiencies, the Administrator will notify the State that the Administrator intends to withdraw approval and will hold a public hearing and seek public comment on the proposed withdrawal of approval. The Administrator will require that comments be submitted concurrently to the State. Upon notification of the intent to withdraw, the State will notify all sources subject to the relevant approved rule or program that withdrawal proceedings have been initiated.

(2) Based on any public comment received and any response to that comment by the State, the Administrator will notify the State of any changes in identified deficiencies or actions needed to correct identified deficiencies. If the State does not correct the identified deficiencies within 90 days after receiving revised notice of deficiencies, the Administrator shall withdraw approval of the State's rule or program upon a determination that:

(i) The State no longer has adequate authorities to assure compliance or resources to implement and enforce the approved rule or program, or

(ii) The State is not adequately implementing or enforcing the approved rule or program, or

(iii) An approved rule or program is not as stringent as the otherwise applicable Federal rule, emission standard or requirement.

(3) The Administrator may withdraw approval for part of a rule, for a rule, for part of a program, or for an entire program.

(4) Any State rule, program or portion of a State rule or program for which approval is withdrawn is no longer Federally enforceable. The Federal rule, emission standard or requirement that would have been applicable in the absence of approval under this will be the federally enforceable rule, emission standard or requirement.

(i) Upon withdrawal of approval, the Administrator will publish an expeditious schedule for sources subject to the previously approved State rule or program to come into compliance with applicable Federal requirements. Such schedule shall include interim emission limits where appropriate. During this transition, sources must be operated in a manner consistent with good air pollution control practices for minimizing emissions.

(ii) Upon withdrawal, the State shall reopen, under the provisions of § 70.7(f) of this chapter, the part 70 permit of each source subject to the previously approved rules or programs in order to assure compliance through the permit with the applicable requirements for each source.

(iii) If the Administrator withdraws approval of State rules applicable to sources that are not subject to part 70 permits, the applicable State rules are no longer Federally enforceable.

(iv) If the Administrator withdraws approval of a portion of a State rule or program, other approved portions of the State rule or program that are not withdrawn shall remain in effect.

(v) Any applicable Federal emission standard or requirement shall remain enforceable by the EPA as specified in section 112(l)(7) of the Act.

(5) If a rule approved under § 63.93 is withdrawn under the provisions of § 63.96(b)(2) (i) or (ii), and, at the time of withdrawal, the Administrator finds the rule to be no less stringent than the otherwise applicable Federal requirement, the Administrator will grant equivalency to the previously approved State rule under the appropriate provisions of this part.

(6) A State may submit a new rule, program or portion of a rule or program for approval after the Administrator has withdrawn approval of the State's rule, program or portion of a rule or program. The Administrator will determine whether the new rule or program or portion of a rule or program is approvable according to the criteria and procedures of § 63.91 and either of § § 63.92, 63.93 or 63.94.

(7) A State may voluntarily withdraw from an approved State rule, program or portion of a rule or program by notifying the EPA and all affected sources subject to the rule or program and providing notice and opportunity for comment to the public within the State.

(i) Upon voluntary withdrawal by a State, the Administrator will publish a timetable for sources subject to the previously approved State rule or program to come into compliance with applicable Federal requirements.

(ii) Upon voluntary withdrawal, the State must reopen and revise the part 70 permits of all sources affected by the withdrawal as provided for in this section and § 70.7(f), and the Federal rule, emission standard, or requirement that would have been applicable in the absence of approval under this subpart will become the applicable requirement for the source.

(iii) Any applicable Federal section 112 rule, emission standard or requirement shall remain enforceable by the EPA as specified in section 112(l)(7) of the Act.

(iv) Voluntary withdrawal shall not be effective sooner than 180 days after the State notifies the EPA of its intent to voluntarily withdraw.

### § 63.97 Approval of a State program that substitutes for section 112 requirements.

Under this section, a State may seek approval of a State program to be implemented and enforced in lieu of specified existing or future Federal emission standards or requirements promulgated under section 112. A State may not seek approval under this section for a program that implements and enforces part 68 requirements.

(a) *Up-front approval process.*

(1) After receiving a complete request for approval of a State program submitted under paragraph (b)(1) or (b)(2) of this section and making a preliminary determination on whether to approve it, the Administrator will seek public comment for 21 days through a **Federal Register** notice. At its discretion, the State may include in this submittal a request for approval of specific alternative requirements under paragraph (b)(3) of this section.

(2) [Reserved]

(3) The Administrator will require that comments be submitted concurrently to the State.

(4) If, after review of all public comments and State responses to comments submitted to the Administrator, the Administrator finds that the criteria of paragraph (b) of this section and the criteria of § 63.91 are met, the Administrator will approve or partially approve the State program. The approved State program will be published in the **Federal Register** and incorporated, directly or by reference, in the appropriate subpart of part 63.

(5) If the Administrator finds that any of the criteria of paragraph (b) of this section or § 63.91 have not been met, the Administrator will partially approve or disapprove the State program.

(6) The Administrator will either approve, partially approve, or disapprove the State request:

(i) Within 90 days after receipt of a complete request for approval of a State program submitted under paragraph (b)(1) or (b)(2) of this section; or

(ii) Within 180 days after receipt of a complete request for approval of a State

program submitted under paragraphs (b)(1) or (b)(2) and paragraph (b)(3) of this section.

(b) *Criteria for up-front approval.* Any request for program approval under this section shall meet all of the criteria of this paragraph and § 63.91 before approval.

(1) For every request for program approval under this section, the State shall provide the Administrator, to the extent possible, with an identification of the initial specific source categories listed pursuant to section 112(c) and an identification of all existing and future section 112 emission standards or other requirements for which the State is seeking authority to implement and enforce alternative requirements under this section.

(2) If, after approval of the initial list of specific source categories identified in paragraph (b)(1) of this section, the State adds source categories for approval under this option, the State shall submit an addendum to the approval submission, and identify the addition to the list.

(3) In addition, the State may provide the Administrator with one or more of the following program elements for approval under this paragraph:

(i) Alternative requirements in State rules, regulations, or general permits (or other enforceable mechanisms) that apply generically to one or more categories of sources and for which the State seeks approval to implement and enforce in lieu of specific existing Federal section 112 emission standards or requirements. The Administrator may approve or disapprove the alternative requirements in these rules, regulations, or permits when approving or disapproving the State's up-front submittal under this paragraph. After approval of the alternative generic rules, regulations or general permits, and after new Federal emission standards or requirements are promulgated, the State may extend the applicability of approved generic alternative requirements to additional source categories by repeating the approval process specified in paragraph (a) of this section. To be approvable, any request for approval of generic alternative requirements during the up-front approval process shall meet the criteria in paragraph (d) of this section.

(ii) A description of the mechanisms that are enforceable as a matter of State law that the State will use to implement and enforce alternative requirements for area sources. The mechanisms that may be approved under this paragraph include title V permits, title V general permits, Federal new source review permits, board and administrative orders, permits issued pursuant to permit templates, state permits, and State rules that apply to categories of sources. The State shall demonstrate to the Administrator that the State has adequate resources and authorities to implement and enforce alternative section 112 requirements using the State mechanisms.

(c) *Approval process for alternative requirements.*

(1) After promulgation of a Federal emission standard or requirement for which the State has program approval under this section to implement and enforce alternative requirements, the State shall provide the Administrator with alternative requirements that are sufficient, in the Administrator's judgement, to allow the Administrator to determine equivalency under paragraph (d) of this section. The alternative requirements shall reflect all of the requirements of the otherwise applicable Federal section 112 rule, emission standard, or requirement, including any alternative requirements that the State is seeking to implement and enforce. Alternative requirements submitted for approval under this paragraph shall be contained in rules, regulations, general permits, or other mechanisms that apply to and are enforceable under State law for categories of sources. State policies are not approvable under this section unless they are incorporated into specific, enforceable, alternative requirements in rules, permits, or other mechanisms that apply to categories of sources.

(2) [Reserved]

(3) After receiving a complete request for approval under this section and making a preliminary determination on its equivalence, the Administrator will seek public comment for a minimum of 21 days through a **Federal Register** notice. The Administrator will require that comments be submitted concurrently to the State.

(4) If, after review of public comments and any State responses to comments submitted to the Administrator, the Administrator finds that the criteria of paragraph (d) of this section and the criteria of § 63.91 are met, the Administrator will approve the State's alternative requirements. The approved alternative requirements will be published in the **Federal Register** and incorporated, directly or by reference, in the appropriate subpart of part 63.

(5) If the Administrator finds that any of the requirements of paragraph (d) of this section or § 63.91 have not been met, the Administrator will partially approve or disapprove the State's alternative requirements. For any partial approvals or disapprovals, the Administrator will provide the State with the basis for the partial approval or disapproval and what action the State can take to make the alternative requirements approvable.

(6) Within 180 days of receiving a complete request for approval under this paragraph, the Administrator will either approve, partially approve, or disapprove the State request.

(7) Nothing in this section precludes the State from submitting alternative requirements for approval under this paragraph at the same time the State submits its program to the Administrator for up-front approval under paragraph (a) of this section, provided that the Federal rules, emission standards, or requirements for which the State submits alternative requirements are promulgated at the time of the State's submittal. If the Administrator finds that the criteria of § 63.91 and the criteria of paragraphs (b) and (d) of this section are met, the Administrator will approve both the State program and the alternative requirements within 180 days of receiving a complete request for approval. Alternatively, following up-front approval, the State may submit alternative requirements for approval under this paragraph at any time after promulgation of the Federal emission standards or requirements.

(d) *Approval criteria for alternative requirements.* Any request for approval under this paragraph shall meet the following criteria. Taken together, the criteria in this paragraph describe the minimum contents of a State's equivalency demonstration for a promulgated Federal section 112 rule, emission standard, or requirement. To be approvable, the State submittal must contain sufficient detail to allow the Administrator to make a determination of equivalency between the State's alternative requirements and the Federal requirements. Each submittal of alternative requirements for a category of sources shall:

(1) Include copies of all State rules, regulations, permits, or other enforceable mechanisms that contain the alternative requirements for which the State is seeking approval. These documents shall also contain requirements that reflect all of the requirements of the otherwise applicable Federal section 112 rules, emission standards or requirements for which the State is not submitting alternatives. The State shall identify for the Administrator the specific requirements with which sources in a source category are required to comply, including the specific alternative requirements.

(2) Identify specifically how the alternative requirements are the same as or differ from the requirements in the otherwise applicable Federal rule, emission standards, or requirements (including any applicable requirements in subpart A or other subparts or appendices). The State shall provide this identification in a side-by-side comparison of the State's requirements and the requirements of the Federal rule, emission standards, or requirements.

(3) The State shall provide the Administrator with detailed documentation that demonstrates the State's belief that the alternative requirements meet the criteria specified in § 63.93(b) of this subpart, *i.e.,* that the alternative requirements are at least as stringent as the otherwise applicable Federal requirements.

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