

For the reasons set out in the preamble title 40, chapter 1 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63 - [Amended]

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

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

Subpart E- [Amended]

Amend the section titles by revising the title of §63.94, adding §63.97, and reserving §63.98 to read as follows:

Subpart E -- Approval of State Programs and Delegation of Federal Authorities

Sec.

- 63.90 Program overview.
- 63.91 Criteria common to all approval options.
- 63.92 Approval of a State rule that adjusts a section 112 rule.
- 63.93 Approval of State authorities that substitute for a section 112 rule.
- 63.94 Approval of State permit terms and conditions that substitute for a section 112 rule.
- 63.95 Additional approval criteria for accidental release prevention programs.
- 63.96 Review and withdrawal of approval.

63.97 Approval of a State Program that substitutes for section 112 requirements.

63.98 [Reserved]

63.99 Delegated Federal Authorities

2. Amend §63.90 as follows:

a. Redesignate paragraph (c) as paragraph (d), paragraphs (d) and (e) as (e) and (f), respectively, and paragraphs (d)(1)(iii) through (d)(1)(v) as (d)(1)(iv) through (d)(1)(vi), respectively;

b. Add definitions in paragraph (a) in alphabetical order for "alternative requirements," "intermediate change to monitoring," "intermediate change to test method," "major change to monitoring," "major change to test method," "minor change to monitoring," "minor change to test method," "partial approval," "State agency," and "title V operating permit programs." Also, add paragraphs (c) and (d)(1)(iii); and

c. Revise the §63.90 introductory text, the definitions in paragraph (a) for "applicability criteria," "approval," "compliance and enforcement measures," "level of control," and "program," and newly designated paragraphs (d)(1)(ii), (e), and (f).

§63.90 Program Overview

The regulations in this subpart establish procedures consistent with section 112(1) 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 section 112 standards. This subpart also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities delegated through this subpart. This subpart clarifies which General Provisions authorities can be delegated to States. This subpart also establishes procedures for the approval of State rules or programs to establish limitations on the potential to emit pollutants listed or pursuant to section 112(b) of the Act.

(a) * * *

Alternative requirements means the applicability criteria, level of control requirements, compliance and enforcement measures, test methods and monitoring

requirements, work practice standards, and compliance dates for a source or source category that a State submits for approval and, after approval, implements and enforces for affected sources in lieu of otherwise applicable Federal section 112 requirements.

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.

Compliance and enforcement measures means requirements within a rule, program, permit, or other enforceable mechanism relating to compliance and enforcement, including but not necessarily limited to monitoring methods and procedures, recordkeeping, reporting, compliance plans, inspection, 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 parameter monitoring approach in lieu of continuous emission monitoring system (CEMS), (2) decreased frequency for parameter monitoring, (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 or 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 requires a source to limit emissions or to employ design, equipment, work practice, operational, accident prevention or other requirements or techniques (including a prohibition of emissions) for:

(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 section 112(r).

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

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Major change to monitoring means a modification to federally required monitoring that uses unproven technology or procedures or is an entirely new method (sometimes necessary when the required monitoring is unsuitable). A major change to a test method 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 a test method 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, and (5) use of alternative averaging times for reporting purposes.

Major change to test method means a modification to a federally enforceable test method that uses unproven technology or procedures 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 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 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. Examples of minor changes

to a test method include, but are not limited to: (1) 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 (2) 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(b)(2), (3), (4), and (5), and substantially meet the criteria of §63.91(b)(1) 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 §63.91(b) and §§63.94(b), 63.95(b), and/or 63.97(b), as appropriate.

State agency, for the purposes of this rule, 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 NESHAP under the Clean Air Act.

Title V operating permit programs means the 40 CFR part 70 permitting program and the delegated Indian tribal programs under 40 CFR part 71.

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(c) Tribal authority. (1) 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.

(2) A tribal authority's submittal must be consistent with the provisions of part 49 of this chapter.

(d) * * *

(1) * * *

(ii) The authority to add or delete substances or to change threshold quantities from the list of substances in §68.130 of this chapter;

(iii) The authority to add or delete requirements from part 68, subpart G of this chapter;

(iv) The authority to 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.

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

4. Amend §63.91 as follows:

a. Revise paragraph (a) introductory text, the first sentence of (a)(1), (a)(3) through (a)(6), (b) introductory text, (b)(1), (b)(1)(I), (b)(2), (b)(3) introductory text, (b)(3)(iii), (b)(4), (b)(5), and (c);

b. Add paragraphs (d), (e), and (f); and

c. Remove paragraph (b)(6).

§63.91 Criteria common to all approval options.

(a) Approval process. To obtain approval under this subpart of a rule, program, or requirement that is different from the Federal section 112 rule or requirement, the criteria of this section and the criteria of either §63.92, §63.93, §63.94, or §63.97 must be met. For approval of State programs to implement and enforce Federal section 112 rules as promulgated without changes (except for accidental release programs), only the criteria of this section must be met. This includes State requests for up-front approval of

their mechanism for taking delegation of future unchanged Federal section 112 standards and requirements as well as approval to implement and enforce unchanged Federal section 112 standards and requirements on a rule-by-rule basis. To obtain partial approval under this subpart, a State request must meet the criteria in paragraph (d) of this section. This includes State requests for up-front approval of their mechanism for taking delegation of future unchanged Federal section 112 standards and requirements as well as approval to implement and enforce unchanged Federal section 112 standards and requirements on a rule-by-rule basis. For approval of State rules or programs to implement and enforce the Federal accidental release prevention program as promulgated without changes, the requirements of this section and §63.95 and either §63.92 or §63.93 must be met. The Administrator may, under the authority of section 112(1) and this subpart, also approve a State program designed to establish limits on the potential to emit of pollutants listed pursuant to section 112(b) of the Act. For a State's 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 the following:

- (1) Upon receipt of a request for approval, the Administrator will review the request for approval and

notify the State within 30 days of receipt whether the request for approval is complete according to the criteria in this subpart. * * *

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(3) If, after review of public comments and any State responses to comments submitted to the Administrator within 21 days of the close of the public comment period, the Administrator finds that the criteria of this subpart are met, the Administrator will approve the State rule, program, or requirement, publish it in the Federal Register, and incorporate it directly or by reference, in the appropriate subpart of part 63. Authorities approved under §63.95 will be incorporated pursuant to requirements under section 112(r).

(4) Within 180 days of receiving a complete request for approval, the Administrator will either approve, partially approve, or disapprove the State rule, program, or requirement.

(5) If 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 disapprove the State rule, program, or requirement. If a State rule, program, or requirement is disapproved, 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) If 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 the State rule, program, or requirement. This approval delegates to the State the authority to implement and enforce the approved rule, program, or requirement in lieu of the otherwise applicable Federal rules, emission standards or requirements. The approved State rule, program, or requirement shall be federally enforceable from the date of publication of approval, except for §63.94 where the approved State permit terms and conditions shall be federally enforceable on the date of issuance or revision of the title V permit. In the case of a partial approval under paragraph (d)(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 remain in full force and effect. For partial approvals under paragraph (d)(2) 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. 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. When a State program is approved, partially or in whole, operating permit conditions resulting from any otherwise applicable Federal section 112 rules, emission standards or requirements will not be expressed in the State's title V permits or otherwise implemented or enforced by the State or by the EPA unless and until authority to enforce the approved State rule, program, or requirement is withdrawn from the State under §63.96. In the event 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.

(b) Criteria for approval. Any request for approval under this subpart shall meet all section 112(1) approval criteria specified by the otherwise applicable Federal rule, emission standard, or requirements, all of the approval criteria of this section, and any additional approval criteria in the section in this subpart under which the State's request for approval is made. 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. The State shall provide the Administrator with the following items:

(1) 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:

(i) The State shall have enforcement authorities that meet the requirements of section 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.

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(2) 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.

(3) 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 (d) of this section or pursuant to part 49 of this chapter), which includes:

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

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

(5) 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.

(c) Revisions. Within 90 days of any State amendment, repeal or revision of any State rule, program, or requirement supporting an approval, the State must provide the Administrator with a copy of the revised authorities and

meet the requirements of either paragraph (c)(1) or (c)(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, 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, or requirement according to the provisions of paragraph (c)(2).

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

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

(ii) If the Administrator disapproves the revised rule, program, or requirement, the Administrator will initiate procedures under §63.96 to withdraw approval of any previously approved rule, program, or 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, or requirement, the previously approved rule, program, or requirement remains federally enforceable and the revised rule, program, or requirement is not federally enforceable.

(3)(i) If the EPA amends, or otherwise revises a promulgated section 112 rule, emission standard, or requirement for which the State has received delegation to implement and enforce unchanged or for which the State has an approved alternative rule, program, or other requirement under this subpart E, then the State shall submit to the EPA a revised equivalency demonstration within 90 days.

(ii) The revised equivalency demonstration will be reviewed and approved or denied 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.

(d) Partial approval.

(1) If a State's legal authorities submitted under this subpart substantially meet the requirements of

paragraph (b)(1) of this section, but are not fully approvable, the Administrator may grant a partial approval with the State's consent. The State should specify which authorities in paragraph(b)(1) of this section are not fully approvable. The EPA will continue to implement and enforce those authorities under paragraph (b)(1) of this section that are not approved. If a State fails to satisfy any of the other requirements in paragraph (b) of this section, the submittal will be disapproved.

(2) If a rule 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 or program, a State may remove that separable portion of its rule or program. The State must specify which aspect of the rule or program is deficient. Alternatively, 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 or program that meets the requirements of this subpart.

(3) If EPA 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, then the EPA may disapprove the submittal in its entirety. The EPA is under no duty to approve rules or programs in part. The EPA reserves the right to disapprove

rules and programs entirely if, in the EPA's judgement, partial approval is not workable.

(e) Delegable Authorities. A State may exercise certain discretionary authorities granted to the Administrator under subpart A of this part, but may not exercise others, according to the following criteria:

(1)(i) A State may ask the appropriate EPA Regional Office to delegate any of the authorities listed as "Category I", in paragraph (e)(1)(ii) of this section, below. The EPA Regional Office will delegate any such authorities at their discretion. The EPA Regional Office may request to review an opportunity to review any State decision pursuant to the authorities listed in paragraph (e)(1)(ii) of this section.

(ii) "Category I" shall consist of the following 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, and

(M) Section 63.9 and 63.10, Approval of Adjustments to Time Periods for Submitting Reports.

(2)(I) A State may not exercise any of the discretionary authorities listed as "Category II" in §63.91(e)(3)(ii) below.

(ii) "Category II" shall consist of the following 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 Alternative Test Methods, and

(D) Section 63.10(f), Waiver of Recordkeeping -- all.

(f) Relationship to Other Standards. No rule shall be approved under the provisions of this subpart that would override the requirements of any other applicable program or rule under the Clean Air Act or under State law.

5. Amend §63.92 by revising the first sentence of paragraph (a)(1) and paragraph (a)(2) to read as follows:
§63.92 Approval of a State rule that adjusts a section 112 rule.

* * * * *

(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 rule, publish it in the Federal Register and incorporate it, directly or by reference, in the appropriate subpart of part 63, without additional notice and opportunity for comment. * * *

(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, the stringency of the level of control, the stringency of the compliance and enforcement measures, or the stringency of the compliance dates for any affected source or emission point, the Administrator will disapprove the State rule.

* * * * *

6. Amend §63.93 by revising the first sentence of paragraph (a)(2), paragraphs (a)(3), (a)(4), (a)(5), (b)(4) introductory text, and (b)(4)(ii) to read as follows:

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

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(a) * * *

(2) If, after review of public comments and any State responses to comments submitted to the Administrator within 21 days of the close of the public comment period, the Administrator finds that the criteria of this section and the criteria of §63.91 are met, the Administrator will approve the State authorities under this section, publish the approved authorities in the Federal Register, and incorporate them directly or by reference, in the appropriate subpart of part 63. * * *

(3) If the Administrator finds that any of the requirements of this section or §63.91 have not been met, the Administrator will partially approve or disapprove the

State authorities. For any disapprovals, the Administrator will provide the State with the basis for the disapproval and what actions the State can take to make the authorities approvable.

(4) Authorities submitted for approval under this section shall include State rules or other requirements enforceable under State law that would substitute for a section 112 rule.

(5) 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) * * *

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

* * *

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

* * * * *

7. Revise §63.94 to read as follows:

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

Under this section a State may seek approval of a State program to be implemented and enforced in lieu of specified existing and future Federal emission standards or requirements promulgated under section 112(d), section 112(f) or section 112(h), for those affected sources permitted by the State under part 70 or part 71 of this chapter.

(a) Up-front approval process.

(1) Within 21 days after receipt of a complete request for approval of a State program under this section the Administrator will seek public comment for 21 days on the State request for approval. 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 within 14 days of the close of the public comment period, 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 disapprovals, the Administrator will provide the State with the basis for the 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) An identification of all specific sources in source categories listed pursuant to subsection 112© for which the State is seeking authority to implement and enforce alternative requirements under this section. The State's list may not exceed five sources in any single source category.

(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 or

part 71 of this chapter. The State shall request delegation for the remainder of the sources in that category under another section of this subpart.

(2) 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) A 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 emission standard for which the State has program approval to implement and enforce alternative requirements in the form of title V permit terms and conditions, the State shall provide the Administrator with draft 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 emission standard(s) including any alternative requirements that the State is seeking to implement and enforce.

(2) The Administrator will notify the State within 30 days of receipt of a request for approval of alternative requirements under this paragraph as to whether the request

for approval is complete according to the criteria in paragraph (d) of this section. If a request for approval is incomplete, in his or her notification to the State, the Administrator will specify the deficient elements of the State's request.

(3) If, after evaluation of the draft permit terms and conditions that were submitted by the State, the Administrator finds that the criteria of paragraph (d) of this section have been met, the Administrator will approve the State's alternative requirements (by approving the draft permit terms and conditions) and notify the State in writing of the approval. The Administrator may approve the State's alternative requirements on the condition that the State makes certain changes to the draft permit terms and conditions and includes the changes in the complete 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. Unless and until the Administrator affirmatively approves the State's alternative requirements (by approving the 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 federally applicable requirements for that source. The approved alternative requirements become federally enforceable for that affected source from the date of issuance (or revision) of the source's title V permit. The Federal emission standard(s) remain in full force and effect for any covered source that does not have an alternative permit approved by the Administrator.

(4) If, after evaluation of the draft 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. If the Administrator disapproves the State's alternative requirements, the otherwise applicable Federal emission standard(s) remain the applicable, federally enforceable requirements for those affected sources.

(5) 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.

(6) Nothing in this section precludes the State from submitting alternative requirements in the form of title V 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. Alternatively, following up-front approval, the State may submit alternative requirements in the form of title V permit terms and conditions for approval under this paragraph at any time after promulgation of the Federal emission standards.

(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 emission standard. 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 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 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 emission standard(s) including any alternative requirements that the State is seeking to implement and enforce. 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 emission standard(s) (including any applicable requirements in subpart A or other subparts or appendices of this part). 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 emission standard(s).

(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), 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 or §71.7 of this chapter.

(2) In the notice of draft permit availability, and in each draft, proposed, and final permit, the State shall indicate prominently that the permit contains alternative section 112 requirements. In the notice of 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 draft, proposed, and final permit.

8. Revise §63.95 to read as follows:

§63.95 Additional approval criteria for accidental release prevention programs.

(a) A State submission for approval of a 40 CFR 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:

(1) A demonstration of the State's authority and resources to implement and enforce regulations that are no less stringent than the regulations 40 CFR part 68, subparts A through F and §68.200;

(2) Procedures for:

(i) Reviewing risk management plans; and

(ii) Providing technical assistance to stationary sources, including small businesses.

(3) A demonstration of the State's authority to enforce all part 68 requirements including an auditing strategy that complies with 40 CFR part 68.220.

(c) A State may request approval for a complete or partial program.

9. Amend §63.96 by revising paragraphs (a)(1) introductory text, (a)(1)(I) through (a)(1)(v), (a)(2), the first sentence of (b)(1), the last sentence of (b)(2), (b)(2)(ii), (b)(2)(iii), (b)(3), the first sentence of (b)(4), the first sentence of (b)(4)(i), (b)(4)(ii) through (b)(4)(iv), (b)(6), (b)(7), (b)(7)(i), and (b)(7)(ii) to read as follows:

§63.96 Review and withdrawal of approval.

(a) * * *

(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, program, or other section 112 requirement and the State shall provide that information within 45 days of the Administrator's request:

(i) Copies of any State statutes, rules, regulations, authorities, or other requirements that have amended, repealed or revised the approved State rule, program, or requirement 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, programs, or requirements 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, program, or requirement;

(iv) A schedule for implementing the State's approved rule, program, or requirement 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 title V or other permits issued, amended, revised, or revoked since approval or since the immediately previous EPA review, for sources subject to a State rule, program, or requirement approved under this subpart.

* * * * *

(2) Upon request by the Administrator, the State shall demonstrate that each State rule, program, or requirement applied to an affected source or category of sources is achieving equivalent or greater emission reductions as the otherwise applicable Federal rule, emission limitation, or standard.

(b) * * *

(1) If the Administrator has reason to believe that a State is not adequately implementing or enforcing an approved rule, program, or requirement according to the criteria of this subpart or that an approved rule, program,

or requirement is not achieving emission reductions that are equivalent to or greater than 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, program, or requirement is not adequate. * * *

(2) * * * 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, program, or requirement upon a determination that:

* * * * *

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

(iii) An approved rule, program, or requirement is not achieving emission reductions that are equivalent to or greater than the otherwise applicable Federal rule.

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

(4) Any State rule, program, or requirement, or portion thereof for which approval is withdrawn is no longer federally enforceable. * * *

(i) Upon withdrawal of approval, the Administrator will publish an expeditious schedule for sources subject to the

previously approved State rule, program, or requirement to come into compliance with applicable Federal requirements. *

* *

(ii) Upon withdrawal, the State shall reopen, under the provisions of §70.7(f) or §71.7(1) of this chapter, the title V permit of each source subject to the previously approved rules, programs, or requirements in order to assure compliance through the permit with the applicable requirements for each source.

(iii) If the Administrator withdraws approval of State rules, programs, or requirements applicable to sources that are not subject to title V permits, the applicable State rules, programs, or requirements are no longer federally enforceable.

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

* * * * *

(6) A State may submit a new rule, program, or requirement, or portion thereof for approval after the Administrator has withdrawn approval of the State's rule, program, or requirement, or portion of a rule, program, or requirement. The Administrator will determine whether the new rule, program, or requirement or portion thereof is

approvable according to the criteria and procedures of §63.91 and §63.92, §63.93 or §63.94, §63.95, or §63.97, as appropriate.

(7) A State may voluntarily withdraw from an approved State rule, program, or requirement or portion thereof by notifying the Administrator and all affected sources subject to the rule, program, or requirement 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, program, or requirement to come into compliance with applicable Federal requirements.

(ii) Upon voluntary withdrawal, the State must reopen and revise the title V permits of all sources affected by the withdrawal as provided for in this section and §70.7(f) and §71.7(f) of this chapter, 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.

* * * * *

10. Add §63.97 and add and reserve §63.98 to read as follows:

§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 sections 112(d), 112(f), or 112(h). A State may not seek approval under this section for a program that implements and enforces section 112(r) requirements.

(a) Up-front approval process.

(1) Within 21 days after receipt of a complete request for approval of a State program submitted only under paragraph (b)(1) of this section, the Administrator will seek public comment for 21 days on the State request.

(2) Within 45 days after receipt of a complete request for approval of a State program submitted under both paragraphs (b)(1) and (b)(2) of this section, the Administrator will seek public comment for a minimum of 21 days on the State request.

(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 within (i) 14 days of the close of the public comment period in the case of submittals only under paragraph (b)(1), or (ii) 30 days of the close of the public comment period in the case

of submittals under both paragraphs (b)(1) and (b)(2), 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) of this section; or

(ii) Within 180 days after receipt of a complete request for approval of a State program submitted under both paragraphs (b)(1) and (b)(2) 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 with an

identification of the 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) 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 she approves or disapproves the State's up-front submittal under this paragraph. In the future, 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 mechanism(s) that is (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, but are not limited to, rules, regulations, and general permits 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 mechanism(s).

(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 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 and until they are incorporated into specific, enforceable, alternative requirements in rules, permits, or other mechanisms that apply to categories of sources.

(2) The Administrator will notify the State within 30 days of receipt of a request for approval under this paragraph as to whether the request for approval is complete according to the criteria in paragraph (d) of this section. If a request for approval is incomplete, in his or her notification to the State, the Administrator will specify the deficient elements of the State's request.

(3) Within 45 days after receipt of a complete request for approval under this paragraph, the Administrator will seek public comment for a minimum of 21 days on the State request for approval. 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 within 21 days of the close of the public comment period, 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 disapprovals, the Administrator will provide the State with the basis for the 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 emission standards or requirements for which the State submits alternative requirements are promulgated at the time of the State's submittal. If the State submits alternative requirements for approval at the same time the State submits

its program for approval, the Administrator will have 45 days, rather than 30 days, after receiving a complete request for approval to seek public comment on the State request. 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 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, implementation plans, 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 emission standard(s) or requirement(s) 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 emission standard(s) or requirement(s) (including any applicable requirements in subpart A or other subparts or appendices of this part). The State shall provide this identification in a side-by-side comparison of the State's requirements and the requirements of the Federal emission standard(s) or requirement(s).

(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.

§63.98 [Reserved].