

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.

[65 FR 55840, Sept. 14, 2000]

**§ 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

**§ 63.94**

**40 CFR Ch. I (7–1–07 Edition)**

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.

[65 FR 55841, Sept. 14, 2000]

**§ 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.