

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

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Authority: 42 U.S.C. 7401-7671q.

Section 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 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). 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 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 applicability criteria, level of control requirements, compliance and enforcement measures, and compliance dates for a source or source category

that a State submits for approval under this subpart 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 section 63.91 and the additional criteria of either section 63.92, section 63.93, section 63.94, or section 63.97, as appropriate. For accidental release prevention programs, the criteria of section 63.95 must be met in addition to the criteria of section 63.91.

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, compliance certifications, inspection, entry, sampling, or accidental release prevention oversight.

Level of control means the degree to which a rule, program, or other 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.

Local agency means a local air pollution control agency or, for the purposes of section 63.95, any local agency or entity having responsibility for preventing accidental releases which may occur at a source regulated under section 112(r).

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 paragraph 63.91(b) and paragraph 63.94(b), 63.95(b), and/or 63.97(b), as appropriate.

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.

(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 agency.* [Note to reader: We are developing language to the effect that Tribal agencies may submit requests for approval consistent with the Tribal Air Rule, 40 CFR part 49.]

(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) The authority to add or delete substances from the list of substances established under section 112(r);

(iii) 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;

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

(v) 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, or other requirements approved under this subpart and all resulting part 70 operating permit conditions are enforceable by the Administrator and citizens under the Act.

(f) *Standards not subject to modification or substitution.* With respect to radio nuclide emissions from licensees of the Nuclear Regulatory Commission or licensees of Nuclear Regulatory

Commission Agreement States which are subject to 40 CAR part 61, subparts I, T, or W, a State may request that the EPA approve delegation of implementation and enforcement of the Federal standard pursuant to section 63.91, but no changes or modifications in the form or content of the standard will be approved pursuant to sections 63.92, 63.93, 63.94, or 63.97.

Section 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 a Federal section 112 rule or requirement, the criteria of this section and the criteria of either section 63.92, section 63.93, section 63.94, or section 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. 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 section 63.95 must be met. In the case of accidental release prevention programs which differ from the Federal accidental release prevention program, the requirements of this section, section 63.95, and either section 63.92 or section 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 of any rule, program, or requirement under this subpart and, except as otherwise specified under section 63.92, section 63.93, section 63.94, or section 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. If a request for approval is found to be incomplete, the Administrator will so notify the State and will specify the deficient elements of the State's request.

(2) Within 45 days after receipt of a complete request for approval, the Administrator will seek public comment for a

minimum of 30 days on the State request for approval. The Administrator will require that comments be submitted concurrently to the State.

(3) If, after review of public comments and any State responses to comments submitted to the Administrator within 30 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 section 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 or disapprove the State rule, program, or requirement.

(5) If the Administrator finds that (i) any of the criteria of this section are not met, or (ii) any of the criteria of section 63.92, section 63.93, section 63.94, section 63.95, or section 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 (i) all of the criteria of this section are met, and (ii) all of the criteria of section 63.92, section 63.93, section 63.94, section 63.95, or section 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. When a State rule, program, or requirement is approved by the Administrator under this subpart, applicable part 70 permits shall be revised according to the provisions of section 70.7(f) of this chapter. Operating permit conditions resulting from any otherwise applicable Federal section 112 rules, emission standards, or requirements will not be expressed in the State's part 70 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 section 63.96. In the event approval is withdrawn under section 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 part 70 permits shall be revised according to the provisions of section 70.7(f) of this chapter.

(7) The State should submit rules, programs, or requirements expeditiously for approval under this subpart in order to ensure that they will be acted upon by the Administrator in time for affected sources to meet the compliance dates of the otherwise applicable Federal requirements.

(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 specified 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:

(1) A written finding by the State Attorney General (or for a local agency, the General Counsel with full authority to represent the local agency) 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. At a minimum, the State must have the following legal authorities concerning enforcement:

(i) The State shall have enforcement authorities that meet the requirements of section 70.11 of this chapter.

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

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

(iv) 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 section 70.11 of this chapter.

(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 approved rule, program, or requirement upon approval, which includes:

(i) a description in narrative form of the scope, structure, coverage and processes of the State program;

(ii) a description of the organization and structure of the agency or agencies that will have responsibility for administering the program; and

(iii) a description of the agency staff who will 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.

(6) A demonstration of adequate legal authority to assure

compliance with the rule, program, or requirement upon approval. At a minimum, the State must have the following legal authorities concerning enforcement:

(i) The State shall have enforcement authorities that meet the requirements of section 70.11 of this chapter.

(ii) 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 section 70.11 of this chapter.

(c) *Revisions.* Within 90 days of any State amendment, repeal, or revision of any State rule, program, or requirement supporting an approval, or revisions to the State resources or authorities approved under this subpart, the State must provide the Administrator with a copy of the revised authorities and meet the requirements of either subparagraph (1) or (2) of this paragraph.

(1)(i) The State shall provide the Administrator with a written finding by the State Attorney General (or for a local agency, the General Counsel with full authority to represent the local agency) 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 or

requirements (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 (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 section 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) *[Note to reader: We are developing language to address what States must do when EPA amends, repeals, or otherwise revises a promulgated section 112 rules, emission standard, or requirement for which the State has an approved rule, program, or other requirement under subpart E.]*

Section 63.92 Approval of a State rule that adjusts a section 112 rule.

Under this section a State may seek approval of a State rule with specific adjustments to a Federal section 112 rule.

(a) *Approval process.* (1) If the Administrator finds that the criteria of this section and the criteria of section 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. Rules approved under section 63.95 will be incorporated pursuant to requirements under section 112(r).

(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.

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

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and section 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 rule; 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; and

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

Section 63.93 Approval of State authorities that substitute for a

section 112 rule.

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

(a) *Approval process.* (1) Within 45 days after receipt of a complete request for approval under this section, the Administrator will seek public comment for a minimum of 30 days on the State request for approval. 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 within 30 days of the close of the public comment period, the Administrator finds that the criteria of this section and the criteria of section 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. Authorities approved under section 63.95 will be incorporated pursuant to requirements under section 112(r).

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

Administrator will disapprove the State authorities. 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 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 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 section 63.91 before approval. The State shall provide the Administrator with detailed documentation that the State authorities contain or demonstrate:

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

(2) Levels of control 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 assures that each affected source is in compliance no later than would be required by the otherwise applicable Federal rule; and

(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 section 63.95).

(i) The approved authorities must include a method for determining compliance.

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

(iii) The authorities must establish an obligation to periodically monitor or test for compliance using the method established per section 63.93(b)(4)(i) sufficient to yield reliable data that are representative of the source's compliance status.

Section 63.94 Approval of State permit terms and conditions that substitute for section 112 emission standards.

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 emissions standards promulgated under

section 112(d), section 112(f), or section 112(h), for those affected sources permitted by the State under part 70 of this chapter.

(a) *Upfront 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 section 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 section 63.91 have not been met, the Administrator will 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 program approvable.

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

(b) *Criteria for upfront approval.* Any request for program approval under this section shall meet all of the criteria of this paragraph and section 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(c) 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 of this chapter. The State shall request delegation 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 part 70 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 part 70 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 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 part 70 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 part 70 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 part 70 permit.

(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 or disapprove the State's alternative requirements.

(6) Nothing in this section precludes the State from submitting alternative requirements in the form of part 70 permit terms and conditions for approval under this paragraph at the same time the State submits its program to the Administrator for

upfront 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 section 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 upfront approval, the State may submit alternative requirements in the form of part 70 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 part 70 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 alternative 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 section

63.93(b) of this subpart, 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 part 70 permits.

(1) After approval of the State's alternative requirements under this section, the State shall incorporate the approved permit terms and conditions into part 70 permits for the affected sources. The State shall issue or revise the part 70 permits according to the provisions part 70 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 comments 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.

Section 63.95 Additional approval criteria for accidental release prevention programs.

(a) A State submission for approval of an Accidental Release

Prevention (ARP) program must meet the criteria and be in accordance with the procedures of this section, section 63.91, and, where appropriate, either section 63.92 or section 63.93.

(b) The State ARP program application shall contain the following elements consistent with the procedures in section 63.91 and, where appropriate, either section 63.92 or section 63.93 of this subpart:

(1) A demonstration of the State's authority and resources to implement and enforce regulations which are at least as stringent as regulations promulgated under section 112(r) that specify substances, related thresholds and a risk management program,

(2) Procedures for:

(i) Registration of stationary sources, as defined in section 112(r)(2)(C) of the Act, which clearly identifies the State entity to receive the registration;

(ii) Receiving and reviewing risk management plans;

(iii) Making available to the public any risk management plan submitted to the State pursuant to provisions specified in section 112(r) which are consistent with section 114(c) of the Act;

(iv) Providing technical assistance to subject sources,

including small businesses;

(3) A demonstration of the State's authority to enforce all accidental release prevention requirements including a risk management plan auditing strategy;

(4) A description of the coordination mechanisms the State implementing agency will use with:

(i) The Chemical Safety and Hazard Investigation Board, particularly during accident investigation. This requirement will not take effect until the Chemical Safety and Hazard Investigation Board is convened; and

(ii) The State Emergency Response Commission, and the Local Emergency Planning Committees; and

(iii) The air permitting program with respect to sources subject to both section 112(r) of the Act and permit requirements under part 70 of this chapter.

(c) A State may request approval for a complete or partial program. A partial accidental release prevention program must include the core program elements listed in paragraph (b) of this section.

Section 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, 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 part 70 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;

(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 limitation, standard, permit term or condition, or other 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) *Withdrawal of approval of a state rule, program, or requirement.* (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, 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. 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, program, or requirement 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, program, or requirement upon a determination that:

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

(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. The Federal rule, emission standard, or requirement that would have been applicable in the absence of approval under this subpart 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, program, or requirement 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 section 70.7(f) of this chapter, the part 70 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 part 70 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.

(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 section 63.93 is withdrawn under the provisions of section 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 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 section 63.91 and section 63.92, section 63.93, section 63.94, section 63.95, or section 63.97, as appropriate.

(7) A State may voluntarily withdraw from an approved State rule, program, requirement, or portion thereof, by notifying the EPA 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 part 70 permits of all sources affected by the withdrawal as provided for in this section and section 70.7(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.

(iii) Any applicable Federal section 112 rule, emission standard, or requirement shall remain enforceable by the EPA as specified in section 112(1)(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.

Section 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), 112(h), 112(m), 112(n), 112(k), or 112(c)(6). A State may not seek approval under this section for a program that implements and enforces section 112(r) requirements.

(a) *Upfront approval process.*

(1) Within 21 days after receipt of a complete request for approval of a State program 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 under paragraphs (b)(1) and (b)(2) of this section, the Administrator will seek public comment for a minimum of 30 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 under paragraph (b)(1), or (ii) 30 days of the close of the public comment period in the case of submittals under paragraphs (b)(1) and (b)(2), the Administrator finds that the criteria of paragraph (b) of this section and the criteria of section 63.91 are met, the Administrator will 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 section 63.91 have not been met, the Administrator will disapprove the State program.

(6) The Administrator will either approve or disapprove the

State request:

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

(ii) Within 180 days after receipt of a complete request for approval of a State program under paragraphs (b)(1) and (b)(2) of this section.

(b) *Criteria for upfront approval.* Any request for program approval under this section shall meet all of the criteria of this paragraph and section 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/or 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 upfront 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). To be approvable, any request for approval of generic alternative requirements during the upfront approval process shall meet the criteria in paragraph (d) of this section.

(ii) A description of the mechanism(s) that is 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).

(iii) *[Note to reader: We are considering developing language for a program element for protocols for establishing alternative compliance and enforcement strategies using compliance evaluation studies.]*

(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. 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 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 30 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 30 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 section 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 section 63.91 have not been met, the Administrator will 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 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 upfront 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 section 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 upfront 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 contain requirements that reflect all of the requirements of the otherwise applicable Federal section 112 emission standard(s) or requirement(s), including any alternative requirements that the State is seeking to implement and enforce. 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 alternative 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 section 63.93(b) of this subpart, i.e., that the alternative requirements are at least as stringent as the otherwise applicable Federal requirements.

Section 63.98 [Reserved]

Sec. 63.99 Delegated Federal Authorities.

(a) This section lists the specific source categories that have been delegated to the air pollution control agencies in each State under the procedures described in this subpart.

(1)-(4) [Reserved]

(5) California

(i) [Reserved]

(ii) Affected sources must comply with the California Regulatory Requirements Applicable to the Air Toxics Program, March 1, 1996 (incorporated by reference as specified in Sec. 63.14) as described below.

(A) The material incorporated in Chapter 1 of the California Regulatory Requirements Applicable to the Air Toxics Program pertains to the perchloroethylene dry cleaning source category, and has been approved under the procedures in Sec. 63.93 to be implemented and enforced in place of Subpart M--National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as it applies to area sources only, as defined in Sec. 63.320(h).

(1) Authorities not delegated.

(i) California is not delegated the Administrator's authority

to implement and enforce those provisions of subpart M which apply to major sources, as defined in Sec. 63.320(g). Dry cleaning facilities which are major sources remain subject to subpart M.

(ii) California is not delegated the Administrator's authority of Sec. 63.325 to determine equivalency of emissions control technologies. Any source seeking permission to use an alternative means of emission limitation, under sections 93109(a)(17), 93109(g)(3)(A)(5), 93109(g)(3)(B)(2)(iii), and 93109(h) of the California Airborne Toxic Control Measure, must also receive approval from the Administrator before using such alternative means of emission limitation for the purpose of complying with section 112.