

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

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

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

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

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

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

(b) Withdrawal of approval of a state rule or program. (1) If the Administrator has reason to believe that a State is not adequately implementing or enforcing an approved rule or program according to the criteria of this section or that an approved rule or program is not as stringent as the otherwise applicable Federal rule, emission standard or requirements, the Administrator will so inform the State in writing and will identify the reasons why the Administrator believes that the State's rule or program is not adequate. The State shall then initiate action to correct the deficiencies identified by the Administrator and shall inform the Administrator of the actions it has initiated and completed. If the Administrator determines that the State's actions are not adequate to correct the deficiencies, the Administrator

will notify the State that the Administrator intends to withdraw approval and will hold a public hearing and seek public comment on the proposed withdrawal of approval. The Administrator will require that comments be submitted concurrently to the State. Upon notification of the intent to withdraw, the State will notify all sources subject to the relevant approved rule or program that withdrawal proceedings have been initiated.

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

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

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

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

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

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

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

a manner consistent with good air pollution control practices for minimizing emissions.

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

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

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

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

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

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

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

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

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

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

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

[65 FR 55843, Sept. 14, 2000]

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

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

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

(2) [Reserved]

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

(4) If, after review of all public comments and State responses to comments submitted to the Administrator, the Administrator finds that the criteria of paragraph (b) of this section and the criteria of § 63.91 are met, the Administrator will approve or partially approve the State program. The approved State program will be published

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in the FEDERAL REGISTER and incorporated, directly or by reference, in the appropriate subpart of part 63.

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

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

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

(ii) Within 180 days after receipt of a complete request for approval of a State program submitted under paragraphs (b)(1) or (b)(2) and paragraph (b)(3) of this section.

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

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

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

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

(i) Alternative requirements in State rules, regulations, or general permits (or other enforceable mechanisms) that apply generically to one or more categories of sources and for which the State seeks approval to implement and enforce in lieu of specific existing Federal section 112 emission standards or requirements. The Administrator may

approve or disapprove the alternative requirements in these rules, regulations, or permits when approving or disapproving the State's up-front submittal under this paragraph. After approval of the alternative generic rules, regulations or general permits, and after new Federal emission standards or requirements are promulgated, the State may extend the applicability of approved generic alternative requirements to additional source categories by repeating the approval process specified in paragraph (a) of this section. To be approvable, any request for approval of generic alternative requirements during the up-front approval process shall meet the criteria in paragraph (d) of this section.

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

(c) *Approval process for alternative requirements.* (1) After promulgation of a Federal emission standard or requirement for which the State has program approval under this section to implement and enforce alternative requirements, the State shall provide the Administrator with alternative requirements that are sufficient, in the Administrator's judgement, to allow the Administrator to determine equivalency under paragraph (d) of this section. The alternative requirements shall reflect all of the requirements of the otherwise applicable Federal section 112 rule, emission standard, or requirement, including any alternative requirements that the State is seeking to implement and enforce. Alternative requirements submitted for approval under this paragraph shall be contained in rules, regulations, general