

**Environmental Protection Agency**

**§ 63.91**

standards, or requirements in that category under another section of this subpart.

[65 FR 55835, Sept. 14, 2000]

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

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

(1) *Unchanged Federal section 112 rules (“straight delegation”).* To obtain approval of State programs to implement and enforce Federal section 112 rules as promulgated without changes (except for accidental release programs, described in paragraph (a)(4) of this section), only the criteria of paragraph (d) of this section must be met. This includes State requests for one-time approval of their mechanism for taking delegation of future unchanged Federal section 112 rules, emission standards, and requirements as well as approval to implement and enforce unchanged Federal section 112 rules, emission standards, and requirements on a rule-by-rule basis.

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

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

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

(5) *Limits on the potential to emit section 112 pollutants.* The Administrator may, under the authority of section 112(1) and this subpart, also approve a State program designed to establish limits on the potential to emit hazardous air pollutants listed pursuant to section 112 of the Act.

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

If . . .	Then . . .	And then . . .
(1) A request for approval is received . . . . .	the Administrator will review the request for approval and determine whether the request is complete according to the criteria in this subpart.	if a request is incomplete, the Administrator will notify the State of the specific deficient elements of the request.
(2) A complete request for approval is received.	the Administrator will seek public comment for a minimum of 30 days through a <b>Federal Register</b> notice on the State’s request for approval.	the Administrator will require that comments be submitted concurrently to the State.
(3) A complete request for approval is received and there has been a period of public comment.	the Administrator will either approve, partially approve, or disapprove the State rule, program, or requirement within 180 days of receipt of a complete request.	

§ 63.91

40 CFR Ch. I (7–1–06 Edition)

If . . .	Then . . .	And then . . .
(4) The Administrator finds that all of the criteria of this section are met and all of the criteria of § 63.92, § 63.93, § 63.94, § 63.95, or § 63.97 are met.	the Administrator will approve or partially approve the State rule, program, or requirement.	the Administrator will publish it in the <b>Federal Register</b> , and incorporate it directly or by reference, in the appropriate subpart of part 63. Requirements approved under § 63.95 will be incorporated pursuant to requirements under part 68 of this chapter.
(5) The Administrator finds that any of the criteria of this section are not met, or any of the criteria of § 63.92, § 63.93, § 63.94, § 63.95, or § 63.97 under which the request for approval was made are not met.	the Administrator will notify the State of any revisions or additions necessary to obtain approval.	any resubmittal by a State of a request for approval will be considered a new request under this subpart.
(6) A State rule, program, or requirement is disapproved.	unless the State can revise the submittal to meet the criteria, the Administrator will disapprove the State rule, program, or requirement.	the Administrator will publish the disapproval in the <b>Federal Register</b> .

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

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

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

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

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

(i) Each permit shall specify the origin of the alternative conditions per

§ 70.6 (a)(i) of this chapter and specifically reference the FEDERAL REGISTER notice or other EPA approval mechanism in the permit.

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

(3) If approval is withdrawn under § 63.96, all otherwise applicable Federal rules and requirements shall be enforceable in accordance with the compliance schedule established in the withdrawal notice and relevant title V permits shall be revised according to the provisions of § 70.7(f) of this chapter.

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

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

(3) Interim or final title V program approval will satisfy the criteria set

## Environmental Protection Agency

## § 63.91

forth in § 63.91(d), up-front approval criteria. Alternatively, the State must provide the following items in paragraphs (d)(3)(i) through (v) of this section to the Administrator:

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Electronic documents. Submission of electronic documents shall comply with the requirements of 40 CFR part 3—(Electronic reporting).

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

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

§ 63.91

40 CFR Ch. I (7–1–06 Edition)

State with approved rules, the approved program, the approved permit, or other requirements (as applicable) and each applicable section 112 rule, emission standard, or requirement.

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

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

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

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

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

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

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

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

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

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

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

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

any such authorities at their discretion.

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

Category I Authorities

- (A) Section 63.1, Applicability Determinations
- (B) Section 63.6(e), Operation and Maintenance Requirements—Responsibility for Determining Compliance

## Environmental Protection Agency

## § 63.92

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

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

ing requirements, the State (or EPA Regional Office) must require the source to revert to the original monitoring, testing, recordkeeping, and reporting requirements, or more stringent requirements, if justified.

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

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

### Category II Authorities

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

[65 FR 55837, Sept. 14, 2000, as amended at 70 FR 59887, Oct. 13, 2005]

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

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

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

(2) If the Administrator finds that any one of the State adjustments to the Federal rule is in any way ambiguous with respect to the stringency of