

## Environmental Protection Agency

## § 63.94

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.

(a) *Up-front approval process.*(1) A State must submit a request that meets the requirements of paragraph (b) of this section. After receiving a complete request for approval of a State program under this section and making a preliminary determination of equivalence, the Administrator will

seek public comment for 21 days through a FEDERAL REGISTER notice. 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, the Administrator finds that the criteria of paragraph (b) of this section and the criteria of § 63.91 are met, the Administrator will approve the State program. The approved program will be published in the FEDERAL REGISTER and incorporated directly or by reference in the appropriate subpart of part 63.

(3) If the Administrator finds that any of the criteria of paragraph (b) of this section or § 63.91 have not been met, the Administrator will partially approve or disapprove the State program. For any partial approvals or disapprovals, the Administrator will provide the State with the basis for the partial approval or disapproval and what action the State can take to make the programs approvable.

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

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

(1)(i) To the extent possible, 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;

(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 for the remainder of the sources in that category under another section of this subpart.

(iii) Prior to submitting a request for one or more sources within a source

category, the State shall consult with their EPA Regional Office regarding the number of sources in a category eligible for submittal under this option. Based on the Regional Office's decision, the State shall limit the number of sources for which it submits permit requirements.

(2) To the extent possible, 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) If, after approval of the initial list of source categories identified in paragraph (b)(2) of this section, the State adds source categories for approval under this option, the State shall submit an addendum to the up-front approval submission, and identify the addition to the lists. The Administrator will follow the process outlined in paragraph (a) of this section for up-front approval.

(4) A one-time demonstration that the State has an approved title V operating permit program and that the program permits the affected sources.

(c) *Approval process for alternative requirements.* (1) After promulgation of a Federal section 112 rule, emission standard, or requirement for which the State has up-front approval to implement and enforce alternative requirements in the form of title V permit terms and conditions, the State shall provide the Administrator with pre-draft title V 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 rule, emission standard, or requirement.

(2) [Reserved]

(3) If, the Administrator receives a complete request and finds the pre-draft title V permit terms and conditions submitted by the State meet the criteria of paragraph (d), the Administrator will approve the State's alternative requirements (by approving the pre-draft permit terms and conditions) and notify the State in writing of the approval.

(4) The Administrator may approve the State's alternative requirements on the condition that the State makes certain changes to the pre-draft title V permit terms and conditions and includes the changes in the complete pre-draft, proposed, and final title V permits for the affected sources. If the Administrator approves the alternative requirements on the condition that the State makes certain changes to them, the State shall make those changes or the alternative requirements will not be federally enforceable when they are included in the final permit, even if the Administrator does not object to the proposed permit. Until the Administrator affirmatively approves the State's alternative requirements (by approving the pre-draft permit terms and conditions) under this paragraph, and those requirements (permit terms) are incorporated into the final title V permit for any affected source, the otherwise applicable Federal emission standard(s) remain the federally enforceable and applicable requirements for that source.

(5) If, after evaluating the pre-draft title V 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.

(6) Within 90 days of receiving a complete request for approval under this paragraph, the Administrator will either approve, partially approve, or disapprove the State's alternative requirements.

(7) Nothing in this section precludes the State from submitting alternative requirements in the form of title V permit terms and conditions or title V general 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 § 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.

(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 rule, 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 in the form of pre-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, renewal, or revision of the title V permit. The State shall submit permit terms and conditions that reflect all of the requirements of the otherwise applicable Federal section 112 rule, emission standard, or requirement. 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 section 112 rule, emission standard, or requirement (including any applicable requirements in subpart A or other subparts or appendices). The State shall provide this identification in a side-by-side comparison of the State's requirements in the form of permit terms and conditions and the requirements of the Federal section 112 rule, emission standard, or requirement.

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(3) The State shall provide the Administrator with detailed documentation that demonstrates that the alternative requirements meet the criteria specified in § 63.93(b), *i.e.*, that the alternative requirements are at least as stringent as the otherwise applicable Federal requirements.

(e) *Incorporation of permit terms and conditions into title V permits.* (1) After approval of the State's alternative requirements under this section, the State shall incorporate the approved permit terms and conditions into title V permits for the affected sources. The State shall issue or revise the title V permits according to the provisions contained in § 70.7 of this chapter. The alternative permit terms and conditions may substitute for the Federal requirements once they are contained in a valid title V permit. If the State does not write the alternative conditions, exactly as approved, into the permit, EPA may reopen the permit for cause per § 70.7(g) of this chapter, and the delegation may not occur.

(2) In the notice of pre-draft permit availability, and in each pre-draft, proposed, and final permit, the State shall indicate prominently that the permit contains alternative section 112 requirements. In the notice of pre-draft permit availability, the State shall specifically solicit public comment on the alternative requirements. In addition, the State shall attach all documents supporting the approved equivalency determination for those alternative requirements to each pre-draft, proposed, and final permit.

[65 FR 55841, Sept. 14, 2000]

#### **§ 63.95 Additional approval criteria for accidental release prevention programs.**

(a) A State submission for approval of a part 68 program must meet the criteria and be in accordance with the procedures of this section, § 63.91, and, where appropriate, either § 63.92 or § 63.93.

(b) The State part 68 program application shall contain the following elements consistent with the procedures in § 63.91 and, where appropriate, either § 63.92 or § 63.93 of this subpart, for at least the chemicals listed in part 68 subpart F ("federally-listed chemi-

cals") that an approvable State Accidental Release Prevention program is regulating:

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

(ii) A requirement that any source subject to the State's part 68 program submit a Risk Management Plan (RMP) that reports at least the same information in the same format as required under part 68, subpart G of this chapter.

(2) A State's RMP program may require reporting of information not required by the Federal program, and these requirements (like any other additional State requirements) will become federally enforceable upon approval. The extent to which EPA will be able to help a State collect and report additional information through EPA's electronic RMP submission system will be determined on a case-by-case basis.

(3) Procedures for reviewing risk management plans and providing technical assistance to stationary sources, including small businesses.

(4) A demonstration of the State's authority to enforce all part 68 requirements must be made, including an auditing strategy that complies with § 68.220 of this chapter.

(c) A State may request approval for a program that covers all of the federally-listed chemicals (a "complete program") or a program covering less than all of the federally-listed chemicals (a "partial program") as long as the State takes delegation of the full part 68 program for the federally-listed chemicals it regulates.

[65 FR 55843, Sept. 14, 2000]

#### **§ 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 or program and the State shall provide that information within 45 days of the Administrator's request: