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is subject to an enforceable commitment, the owner or operator shall comply with an applicable standard issued under section 112(d) of the Act by the compliance date specified in such standard and will be subject to enforcement action under section 113 of the Act.

(f) A violation of an alternative emission limitation or other requirement established by permit under §63.79 (a) or (b) for the source is enforceable pursuant to the authority of section 113 of the Act notwithstanding any demonstration of continuing 90 percent (95 percent for hazardous air pollutants which are particulates) emission reduction over the entire source.

§63.81 Rules for special situations.

(a) If more than one standard issued under section 112(d) of the Act would be applicable to a source as defined under §63.73, then the date of proposal referred to in §§63.72(a)(2), 63.72(c), 63.74(d)(4), 63.75(c), and 63.77(c) is the date the first applicable standard is proposed.

(b) Sources emitting radionuclides are not required to reduce radionuclides by 90 (95) percent. Radionuclides may not be increased from the source as a result of the early reductions demonstration.

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

§63.90 Program overview.

The regulations in this subpart establish procedures consistent with section 112(l) 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 such as permit terms and conditions 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). The 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 clarifies which part 63, subpart A General Provisions authorities can be delegated to States. 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 requirements, rules, permits, provisions, methods, or other enforceable mechanisms that a State submits for approval under this subpart or subpart A and, after approval, replaces the otherwise applicable Federal section 112 requirements, provisions, or methods.

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 §63.91 and the additional criteria of either §63.92, §63.93, §63.94, or §63.97 as appropriate. For accidental release prevention programs, the criteria of §63.95 must be met in addition to the criteria of §63.91. This is considered a ''full approval'' for the purposes of this subpart. Partial approvals may also be granted as described in this subpart. Any approved requirements become applicable requirements under §70.2 of this chapter.

Compliance and enforcement measures means requirements relating to compliance and enforcement, including but not necessarily limited to monitoring methods and procedures, recordkeeping, reporting, plans, inspection, maintenance, and operation requirements, pollution prevention requirements, noticing, field inspections, entry, sampling, or accidental release prevention oversight.

Intermediate change to monitoring means a modification to federally required monitoring involving ''proven

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technology'' (generally accepted by the scientific community as equivalent or better) that is applied on a site-specific basis and that may have the potential to decrease the stringency of the associated emission limitation or standard. Though site-specific, an intermediate change may set a national precedent for a source category and may ultimately result in a revision to the federally required monitoring. Examples of intermediate changes to monitoring include, but are not limited to:

(1) Use of a continuous emission monitoring system (CEMS) in lieu of a parameter monitoring approach;

(2) Decreased frequency for non-continuous parameter monitoring or physical inspections;

(3) Changes to quality control requirements for parameter monitoring; and

(4) Use of an electronic data reduction system in lieu of manual data reduction.

Intermediate change to test method means a within-method modification to a federally enforceable test method involving ''proven technology'' (generally accepted by the scientific community as equivalent or better) that is applied on a site-specific basis and that may have the potential to decrease the stringency of the associated emission limitation or standard. Though site-specific, an intermediate change may set a national precedent for a source category and may ultimately result in a revision to the federally enforceable test method. In order to be approved, an intermediate change must be validated according to EPA Method 301 (Part 63, Appendix A) to demonstrate that it provides equal or improved accuracy and precision. Examples of intermediate changes to a test method include, but are not limited to:

(1) Modifications to a test method's sampling procedure including substitution of sampling equipment that has been demonstrated for a particular sample matrix, and use of a different impinger absorbing solution;

(2) Changes in sample recovery procedures and analytical techniques, such as changes to sample holding times and use of a different analytical finish with proven capability for the analyte of interest; and

(3) ''Combining'' a federally required method with another proven method for application to processes emitting multiple pollutants.

Level of control means the degree to which a rule, program, or requirement limits emissions or employs design, equipment, work practice, or operational standards, 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 part 68 of this chapter.

(3) 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 § 63.95, any local agency or entity having responsibility for preventing accidental releases which may occur at a source regulated under part 68 of this chapter.

Major change to monitoring means a modification to federally required monitoring that uses ''unproven technology or procedures'' (not generally accepted by the scientific community) or is an entirely new method (sometimes necessary when the required monitoring is unsuitable). A major change to monitoring may be site-specific or may apply to one or more source categories and will almost always set a national precedent. Examples of major changes to monitoring include, but are not limited to:

(1) Use of a new monitoring approach developed to apply to a control technology not contemplated in the applicable regulation;

(2) Use of a predictive emission monitoring system (PEMS) in place of a required continuous emission monitoring system (CEMS);

(3) Use of alternative calibration procedures that do not involve calibration gases or test cells;

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(4) Use of an analytical technology that differs from that specified by a performance specification;

(5) Decreased monitoring frequency for a continuous emission monitoring system, continuous opacity monitoring system, predictive emission monitoring system, or continuous parameter monitoring system;

(6) Decreased monitoring frequency for a leak detection and repair program; and

(7) Use of alternative averaging times for reporting purposes.

Major change to recordkeeping/reporting means:

(1) A modification to federally required recordkeeping or reporting that:

(i) May decrease the stringency of the required compliance and enforcement measures for the relevant standards;

(ii) May have national significance (e.g., might affect implementation of the applicable regulation for other affected sources, might set a national precedent); or

(iii) Is not site-specific.

(2) Examples of major changes to recordkeeping and reporting include, but are not limited to:

(i) Decreases in the record retention for all records;

(ii) Waiver of all or most recordkeeping or reporting requirements;

(iii) Major changes to the contents of reports; or

(iv) Decreases in the reliability of recordkeeping or reporting (e.g., manual recording of monitoring data instead of required automated or electronic recording, or paper reports where electronic reporting may have been required).

Major change to test method means a modification to a federally enforceable test method that uses ''unproven technology or procedures'' (not generally accepted by the scientific community) or is an entirely new method (sometimes necessary when the required test method is unsuitable). A major change to a test method may be site-specific, or may apply to one or more sources or source categories, and will almost always set a national precedent. In order to be approved, a major change must be validated according to EPA Method 301 (part 63, appendix A). Examples of major changes to a test method include, but are not limited to:

(1) Use of an unproven analytical finish;

(2) Use of a method developed to fill a test method gap;

(3) Use of a new test method developed to apply to a control technology not contemplated in the applicable regulation; and

(4) Combining two or more sampling/analytical methods (at least one unproven) into one for application to processes emitting multiple pollutants.

Minor change to monitoring means:

(1) A modification to federally required monitoring that:

(i) Does not decrease the stringency of the compliance and enforcement measures for the relevant standard;

(ii) Has no national significance (e.g., does not affect implementation of the applicable regulation for other affected sources, does not set a national precedent, and individually does not result in a revision to the monitoring requirements); and

(iii) Is site-specific, made to reflect or accommodate the operational characteristics, physical constraints, or safety concerns of an affected source.

(2) Examples of minor changes to monitoring include, but are not limited to:

(i) Modifications to a sampling procedure, such as use of an improved sample conditioning system to reduce maintenance requirements;

(ii) Increased monitoring frequency; and

(iii) Modification of the environmental shelter to moderate temperature fluctuation and thus protect the analytical instrumentation.

Minor change to recordkeeping/reporting means:

(1) A modification to federally required recordkeeping or reporting that:

(i) Does not decrease the stringency of the compliance and enforcement measures for the relevant standards;

(ii) Has no national significance (e.g., does not affect implementation of the applicable regulation for other affected sources, does not set a national precedent, and individually does not result in a revision to the recordkeeping or reporting requirement); and

(iii) Is site-specific.

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(2) Examples of minor changes to recordkeeping or reporting include, but are not limited to:

(i) Changes to recordkeeping necessitated by alternatives to monitoring;

(ii) Increased frequency of recordkeeping or reporting, or increased record retention periods;

(iii) Increased reliability in the form of recording monitoring data, e.g., electronic or automatic recording as opposed to manual recording of monitoring data;

(iv) Changes related to compliance extensions granted pursuant to § 63.6(i);

(v) Changes to recordkeeping for good cause shown for a fixed short duration, e.g., facility shutdown;

(vi) Changes to recordkeeping or reporting that is clearly redundant with equivalent recordkeeping/reporting requirements; and

(vii) Decreases in the frequency of reporting for area sources to no less than once a year for good cause shown, or for major sources to no less than twice a year as required by title V, for good cause shown.

Minor change to test method means:

(1) A modification to a federally enforceable test method that:

(i) Does not decrease the stringency of the emission limitation or standard;

(ii) Has no national significance (e.g., does not affect implementation of the applicable regulation for other affected sources, does not set a national precedent, and individually does not result in a revision to the test method); and

(iii) Is site-specific, made to reflect or accommodate the operational characteristics, physical constraints, or safety concerns of an affected source.

(2) Examples of minor changes to a test method include, but are not limited to:

(i) Field adjustments in a test method's sampling procedure, such as a modified sampling traverse or location to avoid interference from an obstruction in the stack, increasing the sampling time or volume, use of additional impingers for a high moisture situation, accepting particulate emission results for a test run that was conducted with a lower than specified temperature, substitution of a material in the sampling train that has been demonstrated to be more inert for the sample matrix; and

(ii) Changes in recovery and analytical techniques such as a change in quality control/quality assurance requirements needed to adjust for analysis of a certain sample matrix.

Partial approval means that the Administrator approves under this subpart:

(1) A State's legal authorities that fully meet the criteria of § 63.91(d)(3)(ii)–(v), and substantially meet the criteria of § 63.91(d)(3)(i) as appropriate; or

(2) A State rule or program that meets the criteria of § 63.92, § 63.93, § 63.94, § 63.95, or § 63.97 with the exception of a separable portion of that State rule or program which fails to meet those criteria. A separable portion of a State rule or program is defined as a section(s) of a rule or a portion(s) of a program which can be acted upon independently without affecting the overall integrity of the rule or program as a whole.

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 this subpart and subpart A.

State agency, for the purposes of this subpart, includes State and local air pollution agencies, Indian tribes as defined in § 71.2 of this chapter, and territories of the United States to the extent they are or will be delegated Federal section 112 rules, emission standards, or requirements.

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.

Title V operating permit programs means the part 70 permitting program and the delegated Indian tribal programs under part 70 of this chapter.

(b) *Local agency coordination with State and territorial agencies.* Local agencies submitting a rule or program for approval under this subpart shall

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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 authority.* A tribal authority may submit a rule or program under this subpart, provided that the tribal authority has received approval, under the provisions of part 49 of this chapter, for administering Federal rules under section 112 of the Act.

(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)–(iii) [Reserved]

(iv) The authority to add source categories to or 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;

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

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

(f) *Standards not subject to modification or substitution.* With respect to radionuclide emissions from licensees of the Nuclear Regulatory Commission or licensees of Nuclear Regulatory Commission Agreement States which are subject to part 61, subparts I, T, or W of this chapter, a State may request that the EPA approve delegation of implementation and enforcement of the Federal standard pursuant to §63.91, but no changes or modifications in the form or content of the standard will be approved pursuant to §63.92, §63.93, §63.94, or §63.97.

(g) *Selection of delegation options.* (1) With the exception of paragraphs (g)(2) and (g)(3) of this section, States may only submit requests for approval of alternative requirements for a section 112 Federal rule, emission standard, or other requirement under a single delegation option under this subpart.

(2) In the case of §63.94 submittals, if the identified sources in any source category comprise a subset of the sources in that category, the State must accept delegation under one other section of this subpart for the remainder of the sources in that category that are required to be permitted by the State under part 70 of this chapter.

(3) If the Administrator partially approves the State request per §63.91(f), the State may submit a request for the remaining section 112 rules, emission 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

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