

**Technical Assistance Document for the Submission of
State/Local/Tribal Requests for Delegation and
Approval of Alternatives to Section 112 Rules,
Programs, or Requirements**

40 CFR 63, Subpart E

U.S. Environmental Protection Agency
Office of Air Quality Planning and Standards
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1. Introduction

What is the purpose of this document?

This document is a non-binding guidance document. It is intended to provide informal assistance to State/Local/Tribal Agencies seeking EPA approval of delegation requests authorized by Section 112 of the Clean Air Act (CAA). It does not substitute for, or expand upon the substance of the requirements contained in section 112 or the subpart E regulations.

Who should use this document?

We, the EPA, designed this document to help State/Local/Tribal agencies (S/L/T or you) understand the rule for Approval of State Programs and Delegation of Federal Authorities for Hazardous Air Pollutants (also known as 40 CFR 63, subpart E), which was extensively revised in 2000. This document was also designed to help S/L/T agencies in preparing a submittal for approval to a CAA section 112 rule, program, or requirement. A separate document has been created to assist the EPA Regional Offices in the evaluation of these submittals. These guidance documents replaces all previous guidance, which is no longer current since the promulgation of the amendments to subpart E.

What information does this document contain?

This document includes an overview of the purpose and history of subpart E, but predominantly contains information to assist you with **seven** primary activities.

- C How to request and receive delegation of Federal section 112 authorities
- C How to request and receive approval of requirements that may differ from the requirements of Federal section 112 standards [many of these standards are part 61 or part 63 National Emission Standards for Hazardous Air Pollutants (NESHAPs) for source categories, also referred to as maximum achievable control technology standards (MACT

standards)]

- C The types of alternative requirements that are approvable
- C The options available to you in requesting approval of alternative requirements
- C How approval under each option is processed
- C What information is required under each approval option
- C How to prepare an equivalency demonstration

How is this document organized?

This chapter provides a brief introduction to this document. Chapter 2 provides important information that applies to all sections of the rule, and it includes a review of the options contained in the regulation that you can use when submitting a request for approval of delegation and/or alternative requirements. In addition, Chapter 2 provides information about the types of alternatives that are approvable.

The remaining chapters of this document correspond to separate sections of the rule. Chapter 3 gives detailed information about §63.91, how to obtain delegation of Federal authorities and the requirements common to all the options for approval of alternative requirements. Chapters 4, 5, 6, and 7 correspond to §§63.92, 63.93, 63.94, and 63.97, respectively. These chapters detail information required and the processes for approval of alternative requirements under rule adjustment, rule substitution, equivalency by permit, and State program approval. Chapter 8 explains the requirements of §63.95 for approval of an alternative accidental release prevention program. Chapter 9 explains the requirements for delegation of part 61 radionuclide NESHAPs. Chapter 10 briefly describes §63.96, the procedures for review and withdrawal of delegation.

Chapter 11 contains a discussion of equivalency demonstrations and how to prepare them. Chapter 12 enumerates the information you need to include in your requests for delegation. Appendix A contains a copy of the rule language for 40 CFR 63, subpart E.

What other places can I look for help?

When using this document, remember that it **does not** replace or amend the final rule and covers only requirements published on or before **9/14/00**. You should read the rule itself carefully, and keep up with new requirements printed after this date by periodically checking the *Federal Register* and the Code of Federal Regulations (CFR) at 40 CFR 63, subpart E. You can download Federal Register notices by going to the Government Printing Office (GPO) website at www.access.gpo.gov/su_docs/aces/aces140.html.

We've included a copy of the final rule in Appendix A (as published in the *Federal Register*, **9/14/00**, **65 FR 55810**), so you can reference the rule while you're using this document.

How do I get copies of this document?

You can obtain a copy of this document at EPA's Unified Air Toxics Website (www.epa.gov/ttn/uatw). Look under Rules and Implementation, or www.epa.gov/ttn/uatw/pcem/pcempg.html.

2. General Information

What is the purpose of subpart E?

40 CFR 63, subpart E implements the provisions of section 112(l) of the Clean Air Act (Act) that provide the opportunity for you, the S/L/T, to implement and enforce Federal section 112 standards. In addition to providing the process and criteria necessary for you to receive delegation of the Federal standards, the rule also establishes several ways in which you can receive approval to implement and enforce requirements that differ from the Federal requirements. While these alternative requirements may differ from the Federal requirements, they must be at least as stringent.

What is a delegation?

A delegation occurs when a responsibility normally taken on by one body is passed on to another. For the purposes of this document, a delegation is the official approval for an S/L/T agency to implement and enforce Federal section 112 requirements. After delegation, the S/L/T becomes the primary agency for implementation and enforcement, but EPA reserves the right to review, and in some cases, override the delegated agency's actions.

Why should I request delegation of section 112 requirements?

There are several advantages to taking delegation of the Federal standards. By taking straight delegation of the Federal standards pursuant to subpart E, you:

- Obtain authority to implement the Federal requirements in your jurisdiction
- Obtain authority to make some decisions about applicability, testing, compliance, monitoring, reporting and recordkeeping
- Are identified as the primary point of contact and enforcement authority
- Will receive reports from sources, which may reduce dual reporting.

In addition to the benefits of straight delegation, when you request approval of alternative requirements, the following opportunities become available to you:

- Tailor requirements to the sources in your jurisdiction
- Implement S/L/T requirements in place of Federal requirements
- Increase the stringency of Federal requirements

How do I get delegation of section 112 requirements?

You must submit a request for delegation of each individual section 112 rule you wish to implement and enforce. However, you can request delegation of multiple Federal section 112 requirements at one time. You must submit information showing that you meet the requirements for straight delegation (§63.91) to implement and enforce the Federal requirements as they are written. You must meet these same requirements plus the additional requirements in either §§63.92, 63.93, 63.94, 63.95, or 63.97 if you wish to implement and enforce requirements that differ from the Federal requirements.

Can I implement just part of a program?

We encourage you to take full delegation whenever possible, but partial delegation is an option available to you. In cases of partial delegation, the portion of requirements delegated must be clearly separable from the portion not delegated. There are two major types of partial delegation, these are:

- You accept the authority to implement and enforce only some of the requirements in a Federal section 112 regulation
- You accept the authority to implement and enforce all the requirements of a Federal section 112 or S/L/T rule to only a defined universe of sources (e.g., major sources).

There are two ways in which you may obtain partial delegation, these are:

- You request partial delegation
- You request full delegation, but are only granted partial delegation due to a portion of your alternative requirements or enforcement authority that is found unapprovable.

If your request for delegation only qualifies for partial delegation, you will be notified and given the opportunity to revise or withdraw your delegation request before the public comment period (see Figures 1-7).

What is the history of section 112 standards delegation?

Prior to 1990, the Clean Air Act (Act) provided the opportunity for the S/L/Ts to implement and enforce the NESHAP program, which required the EPA to establish Federal emission standards for non-criteria, hazardous air pollutants. Provisions set forth in section 112(d)(1) originally allowed you to develop and submit to the Administrator a procedure for implementing and enforcing these emission standards. If found adequate, the Administrator would delegate authority to implement and enforce these standards to you.

The 1990 Amendments to the Act revised section 112 extensively, removed delegation provisions from 112(d)(1), and added section 112(l), which now provides the mechanism for delegating section 112 standards and programs to the S/L/Ts. Section 112(l) explicitly allows approval of S/L/T programs that differ from the Federal program as long as the S/L/T standard is at least as stringent as otherwise applicable Federal section 112 rules.

The 2000 amendments to 40 CFR 63, subpart E that implements section 112(l) revise the procedures and criteria for approving S/L/T measures. These changes include the addition of options for demonstrating equivalence with the Federal requirements, expediting the approval process, clarifying what must be done to obtain delegation, and clarifying which general provisions authorities may be delegated to you.

For which types of requirements can I request delegation?

You may request delegation of the authority to implement and enforce:

- All existing and future Federal rules promulgated in accordance with section 112 of the Act as amended in 1990, as promulgated without changes (straight delegation). To date, delegable rules have been promulgated to implement sections 112(d), (h), and (r), but as others are developed, such as rules implementing sections 112(f) and (k), those will also be available for delegation. Section 63.91 establishes the procedures and criteria necessary for this delegation request.
- An S/L/T rule or program containing requirements different from the Federal regulation that establishes limitations on the potential to emit hazardous air pollutants. Appropriate candidates for alternative approval include S/L/T rules, programs, emission standards, or requirements that pertain to air toxics. In some cases, other alternative rules, such as those developed for volatile organic compounds (VOC), particulate matter (PM), or lead (Pb) developed under section 110 of the Act that indirectly control HAP emissions may be substituted for section 112 requirements.

Sections 63.92, 63.93, 63.94 and 63.97 each present different options for you to use in your request for approval of an alternative rule, program, emission standard, or requirement. These sections are designed to be used in different situations, depending on the type of alternative requirement for which delegation of authority is sought. Each has a different process and criteria applicable to the request.

- Accidental release prevention programs (part 68). Sections 63.91 and 63.95 establish the procedures and criteria applicable to this straight delegation request. The provisions of either §63.92 or §63.93 must also be followed for approval of an accidental release prevention program that differs from the Federally required program.

Which approval option should I use?

The mechanism you choose to use for your request for approval of an alternative rule, program, or requirement should be based on the situation under which you are making this decision. Table 1 presents each option and the conditions under which the use of each is appropriate. Your responses to the following questions will help guide you through Table 1.

- Exactly how will your rule, program, or requirement differ from the Federal requirement?
- How many sources do you intend to cover with your alternative rule, program, or requirement?
- How many source categories do you intend to cover?

Table 1. Which alternative requirement approval option should I use?

You should use . . .	If you want to . . .	If your alternative requirements . . .	And . . .
Straight delegation (§63.91)	assume the authority to implement and enforce federal section 112 requirements as they are written	do not exist (i.e., you do not wish to institute requirements that differ from the federal section 112 requirements)	
Rule adjustment (§63.92)	substitute your rule for a Federal Section 112 regulation	are structurally very similar to those in the corresponding Federal rule	your alternative requirements are clearly at least as stringent as those of the Federal rule
Rule substitution (§63.93)	substitute your rule for a Federal Section 112 regulation	are structurally different from the corresponding Federal rule	your alternative requirements are not clearly as stringent or are more complex than the Federal rule
Equivalency by permit (§63.94)	substitute alternative requirements in the form of permit terms and conditions	will affect few sources (e.g., there are only a few sources in the source category)	you agree to accept delegation for all sources in the category
State program approval (§63.97)	have the authority to implement some or all Federal emission standards through title V permits	will be incorporated into the Federal emission standards using permit terms and conditions	you have a mature air toxics program with many regulations affecting source categories regulated by Federal section 112 rules or requirements
Accidental Release Prevention Programs (§63.95)	take delegation of unchanged federal requirements or substitute alternative requirements in an accidental release prevention program	pertain to any portion of an accidental release prevention program	you follow the procedures of §63.91 for delegation of unchanged federal requirements and either §63.92 or §63.93 for substitution of alternative requirements

For which types of requirements can I substitute an alternative?

In general, when you receive delegation, you are allowed to approve certain minor and intermediate changes to compliance assurance measures on a source-specific basis. However, if you wish to develop alternative requirements that go beyond the minor and intermediate changes (explained further in §63.91 and chapter 3 of this document) or that apply to a whole source category, you must obtain approval of those alternative requirements through §63.91 and either §§63.92, 63.93, 63.94, or 63.97.

For these latter types of changes, the alternative requirements will be approved if, taken as a whole, they meet the following criteria:

- Affect at least all the same emission sources
- Provide for at least as stringent a level of control
- Provide at least as stringent compliance and enforcement measures as considered in the package as a whole
- Will result in emission reductions at least equal to the Federal requirements.

Some guidelines appear in the proposed and final subpart E rules and the preambles and are explained in greater detail here to help you distinguish the types of adjustments that will be considered equivalent to the Federal requirements.

What issues should I consider when developing alternative requirements?

The major issue you must consider while developing alternative requirements is equivalence to the corresponding Federal standard. Your alternatives must be holistically equivalent to the Federal requirements. This means that the aggregate of your alternative requirements must be equivalent in emissions reduction and level of control as that of the aggregate of the Federal requirements. This is true whether you are developing an entirely new rule or replacing only some parts of the Federal rule, program, or requirement with alternative requirements.

Chapter 10 provides detailed information about equivalency demonstrations and presents some guidelines to use in determining the equivalency of alternative requirements. However, it is useful to touch upon the major categories of requirements for which you may wish to substitute alternatives. These groups include the following:

- Emission limitations
- Work practices
- Performance and compliance testing
- Equipment standards
- Compliance assurance measures
- General provisions

Emission limitations

Any alternative emission limits must be equivalent to the Federal rule's emission limits at the same level of production. If your

emission limits are in a different form from the Federal standard, you may need to include background information that shows equivalent emission reductions with the alternative emission limit.

In some cases a more stringent emission limit may be accompanied by less stringent compliance assurance measures. Since equivalency is determined on a holistic basis, some counterbalances such as this may be made.

Work Practices

“Work practices” refers to requirements in the Federal section 112 standards that are developed in lieu of emission standards according to the specific requirements of section 112(h). All elements of your alternative work practice and any associated compliance assurance measures must be equivalent, as a whole, to the corresponding Federal requirements.

You may request approval of an alternative work practice and its associated compliance measures. For approval, the elements of the alternative work practice and any associated compliance measures (which you should enter into the equivalency demonstration table) must be equivalent, as a whole, to the corresponding Federal requirements. This means that the alternative control strategy should result in at least equivalent emissions reductions or guarantee the same level of control as that of the corresponding Federal requirements.

Testing

There are two possible situations under which you may develop an alternative test method. In one situation, you may wish to follow the requirements of a Federal rule or requirement, but seek to use a different test method than that specified. In this case your alternative test method must be equivalent to the test method required by the Federal rule. The alternative test method must perform as well and as accurately as the Federally required test method in evaluating the control equipment or control strategy.

The other situation in which you may wish to use an alternative test method is if you are seeking approval of an alternative rule or

program. In this case, a test method other than that of the corresponding Federal rule may be more appropriate to your rule or program. In this situation, the alternative rule and its associated performance test method must be holistically equivalent to the corresponding Federal rule and test method. The test method must ensure that the control equipment or control strategy performs well enough to achieve the same emissions reductions required by the Federal rule.

Equipment Standards

You may wish to substitute the use of a different equipment standard for a Federal standard. Provide any data available to show that an alternative control device/emission control practice achieves at least equal emission reductions as that of the Federally required equipment.

Compliance Assurance Measures *(Monitoring, Reporting, and Recordkeeping)*

You are given the authority to make small changes to monitoring, reporting, and recordkeeping when you receive delegation of a standard. However, we may review and disapprove the alternatives you have approved in some cases. Sources subject to your approved alternatives would revert to the compliance assurance measures previously enforced in those instances.

In general, you will not be approved an alternative monitoring, recordkeeping, or reporting requirement if it is classified as a “major change”*. In addition, if you submit an alternative emissions, equipment, or work practice standard, the monitoring, recordkeeping, and reporting requirements for the alternative standard should be equivalent, holistically, to the corresponding Federal requirements.

To enable Federal review of your alternative test and monitoring methods, you must submit copies of approved alternative test methods and monitoring provisions, along with copies of the superseded requirements, to the Emission Measurement Center at:

Chief, Source Measurement and Technology Group
U.S. EPA (MD-19)

Research Triangle Park, NC 27711
FAX: (919) 541-1039.

Similarly, you must submit a record of alternatives you approve for recordkeeping and reporting to your regional office and the following address at least semi-annually:

Chief, Stationary Source Enforcement Branch
U.S. EPA (Mail Code 2242A)
401 M St SW
Washington, D.C. 20460
FAX: (202) 564-0068

We will compile a database of EPA approved alternatives and approvals made by reviewing agencies for use in future decision making. This will be available on the Applicability Determination Index (ADI), which can be found at <http://es.epa.gov/oeca/eptdd/adi.html>.

* See §63.90 for definition of major change for monitoring and recordkeeping/reporting

General Provisions

What are the General Provisions (GP)?

The GP are general information and requirements that apply to all the section 112 standards of part 63 or part 61, unless specifically overridden by a particular standard. Located in subpart A of part 63 or subpart A of part 61 of 40 CFR, the GP are critical administrative and compliance-related elements that supplement the requirements for specific source categories in parts 63 and 61.

Since all the part 61 and part 63 standards contain some elements of the GP standards, you must demonstrate in your equivalency submittal that alternative rules, emission standards, or requirements contain standards similar and equivalent to the GP. This equivalency demonstration should be made in the same way as that for the specific section 112 standard.

Two previously issued guidance memos have summarized the procedure that will be used for the equivalency demonstration. These are:

- July 10, 1998 Seitz memo, “Delegation of 40 CFR part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies”
- February 26, 1993, Gilbert H. Wood memo “Handling Requests for Minor/Major Modifications/Alternative Testing and Monitoring Methods or Procedures Approvals and Disapprovals.”

In addition, the EPA Regional Offices will provide firm guidelines for decision making in the process of delegating part 63 and part 61 General Provisions authorities to the S/L/T agencies. However, the guidance in the July 10, 1998 memo will be superseded by the subpart E revisions.

3. Straight Delegation (§63.91)

What is straight delegation?

Straight delegation means you, the S/L/T, will accept responsibility for implementation and enforcement of the Federal section 112 standards as they are written, without any changes.

Section 63.91 contains the requirements that must be followed for straight delegation. Meeting these administrative requirements allows you to show that you have adequate authority to implement and enforce the Federal standard.

Section 63.91 also contains criteria that are common to all the options for approval of alternative requirements. The same administrative requirements of §63.91 necessary for straight delegation must also be followed for approval of an S/L/T rule with requirements that differ from the Federal standard. These criteria must be followed in addition to the criteria for approval of the alternative requirements contained in §§63.92, 63.93, 63.94, 63.95 or 63.97.

What authority will I have under straight delegation?

In addition to implementing and enforcing the Federal standard(s) as they are, other authorities may be delegated to you at your EPA Regional Office's discretion. The following authorities may be delegated to you under straight delegation:

- Responsibility for determining applicability
- Responsibility for determining compliance with operation and maintenance requirements
- Responsibility for determining compliance with non-opacity, opacity, and visible emission standards
- Approval of site-specific test plans
- Approval of minor and intermediate alternatives to test methods*
- Approval of necessary shorter sampling times and volumes

- Granting waivers of performance testing
- Approval of site-specific monitoring test plans
- Approval of minor and intermediate alternatives to monitoring*
- Approval of adjustments to time periods for submitting

- reports
- Approval of minor alternatives to recordkeeping and reporting

With Title V program approval you will also be delegated:

- Responsibility for approving compliance extensions
- Authority to approve construction and reconstruction applications.

*See §63.90 for definitions of these minor and intermediate alternatives

How do I get delegation of unchanged Federal section 112(I) standards?

To receive delegation of Federal section 112 standards, you must request delegation for those specific standard(s) in writing and your request must be approved by the Administrator. Section 63.91 requires that you submit the following 5 items to the Administrator:

1. A written finding by the State Attorney General (or General Counsel for Local or Tribal agencies) that you have the following authorities:
 - Enforcement authorities that meet the requirements of 40 CFR 70.11
 - Authority to request compliance information
 - Authority to inspect sources and records
 - Retained enforcement authority if you have delegated authorities to a Local agency, unless that agency has authorities that meet the criteria of section 70.11OR
 - Interim or final Title V program approval
2. A copy of the State statute, regulation, or requirement that grants you authority to implement and enforce the rule, program, or requirement upon approval.

3. A demonstration that you have adequate resources to implement and enforce the rule, program or requirement upon approval, including the following items:
 - A description of the scope, structure, coverage, and processes of your agency's program.
 - A description of the organization and structure of your agency
 - A description of your capacity to carry out the S/L/T program, including the number, occupation and general duties of employees.
4. An implementation schedule for the rule, program or requirement after approval
5. A plan to assure compliance by all subject sources, including a description of your compliance and enforcement program and inspection strategy.

This demonstration only needs to be made once, so that in future requests for straight delegation of Federal section 112 standards, you only need to reference this demonstration and reaffirm that you still meet these criteria.

What is the approval process?

The steps to the initial approval process for straight delegation are as follows:

1. You submit a request for approval to your Regional Administrator
2. We review it for completeness
3. If incomplete, we will notify you of necessary revisions and process any revised request as a new request for approval
4. After receipt of a complete request, we will determine whether the approval criteria have been met
5. If the approval criteria are not met, we will notify you of necessary revisions and process any revised request as a new request for approval, or we may publish a notice of disapproval in the Federal Register
6. If the approval criteria are met, we will propose to approve and seek public comment for 30 days through a Federal Register notice
7. If there are no significant adverse comments, or significant comments are adequately addressed, we will publish a notice of approval in the Federal Register and incorporate a reference into §63.99 and §63.14
8. If there are significant adverse comments which are not adequately addressed, we will publish a notice of disapproval in the Federal Register.
9. We will either approve, partially approve, or disapprove the request within 180 days of receipt of a complete application

A flow chart for this process is shown in Figure 1.

§63.91: Straight Delegation

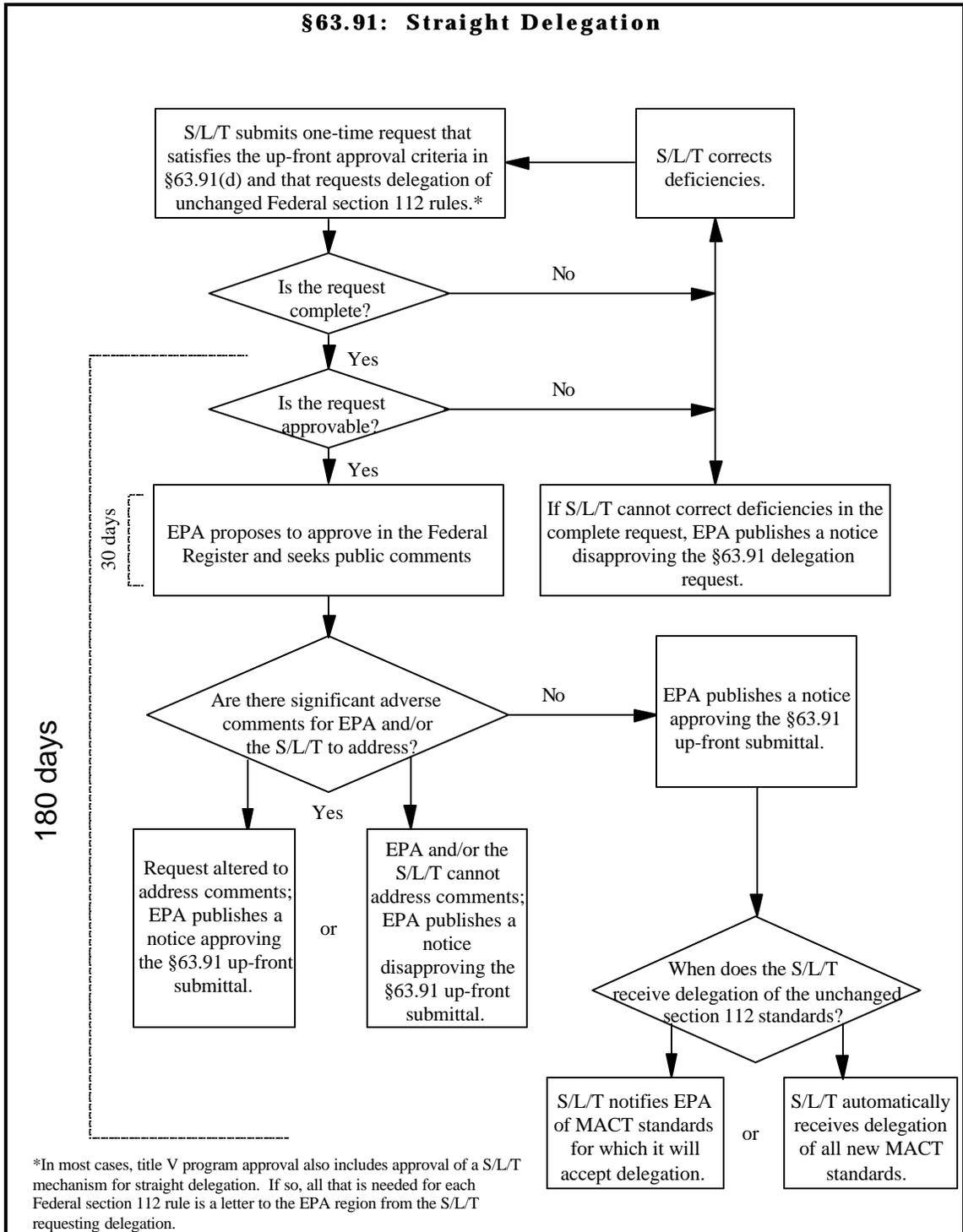


Figure 1. Approval process for straight delegation

Do I need to repeat this demonstration to request delegation of additional unchanged Federal section 112(I) standards?

After approval is attained once, you may not need to go through this process again for straight delegation of other section 112 standards. For delegation of additional standards, submit a request including the following information:

1. The names of the standards you are requesting delegation of
2. A copy of the initial straight delegation approval
3. A statement that the criteria met in the initial delegation approval have not changed

To further streamline the process for straight delegation, you should take the following actions:

- List all standards for which you seek delegation in the initial demonstration.
- Note whether you wish future standards to be delegated to you automatically (if you have the appropriate authority), or if you will request delegation on a case-by-case basis. If you request additional delegations on a case-by-case basis, EPA may use a direct final rulemaking to streamline delegation of these section 112 requirements.

4. Rule Adjustment (§63.92)

What is rule adjustment?

Rule adjustment is an option you can use to seek approval of an alternative rule, emission standard, or requirement that is clearly at least as stringent as and very similar in structure to the corresponding Federal rule.

This option can be used to accommodate specific, minor adjustments to the Federal rule. Another approval option should be used if there is any ambiguity with respect to the stringency of the alternative or if any requirement differs in form from the Federal rule.

You may seek approval of your alternative rule, emission standard, or requirement through rule adjustment only after the corresponding Federal standard is promulgated.

What types of adjustments are allowable?

Section 63.92 of 40 CFR 63 lists specific adjustments that are allowed under this option. These are:

- Lowering a required emission rate or de minimis level
- Adding a design, work practice, operation standards, emission rate, or similar requirement
- Increasing a required control efficiency when a standard specifies a control device (e.g., 98% HAP control efficiency rather than 95% HAP control efficiency)
- Increasing the frequency of required reporting, testing, sampling, or monitoring
- Adding information required for records or reports
- Decreasing the amount of time to come into compliance
- Adding control requirements to additional emission points or sources within a source category
- Minor editorial, formatting, and other nonsubstantive changes (e.g., changing the name of an administrator, changing numbering/labeling scheme)
- Identical alternative requirements from a state-wide rule that have already been approved for another agency within the same state
- Any adjustments allowed in a specific section 112 rule

How do I get approval of a rule adjustment?

You must submit two main items for rule adjustment approval. These are:

1. The terms and conditions of your alternative rule, emission standard, or requirements in any of the following forms:
 - S/L/T rules
 - Issued Title V permits
 - Issued Title V general permits
 - Issued Federal New Source Review (NSR) permits.
2. A demonstration that your alternative rule, emission standard, or requirement is equivalent to the Federal rule.

An equivalency demonstration is required under each alternative approval option, but is particularly important to rule adjustment in that your alternative must be clearly equivalent to or more stringent than the Federal rule, or it will be disapproved under rule adjustment and considered under one of the other options.

An example equivalency demonstration is displayed in Chapter 10.

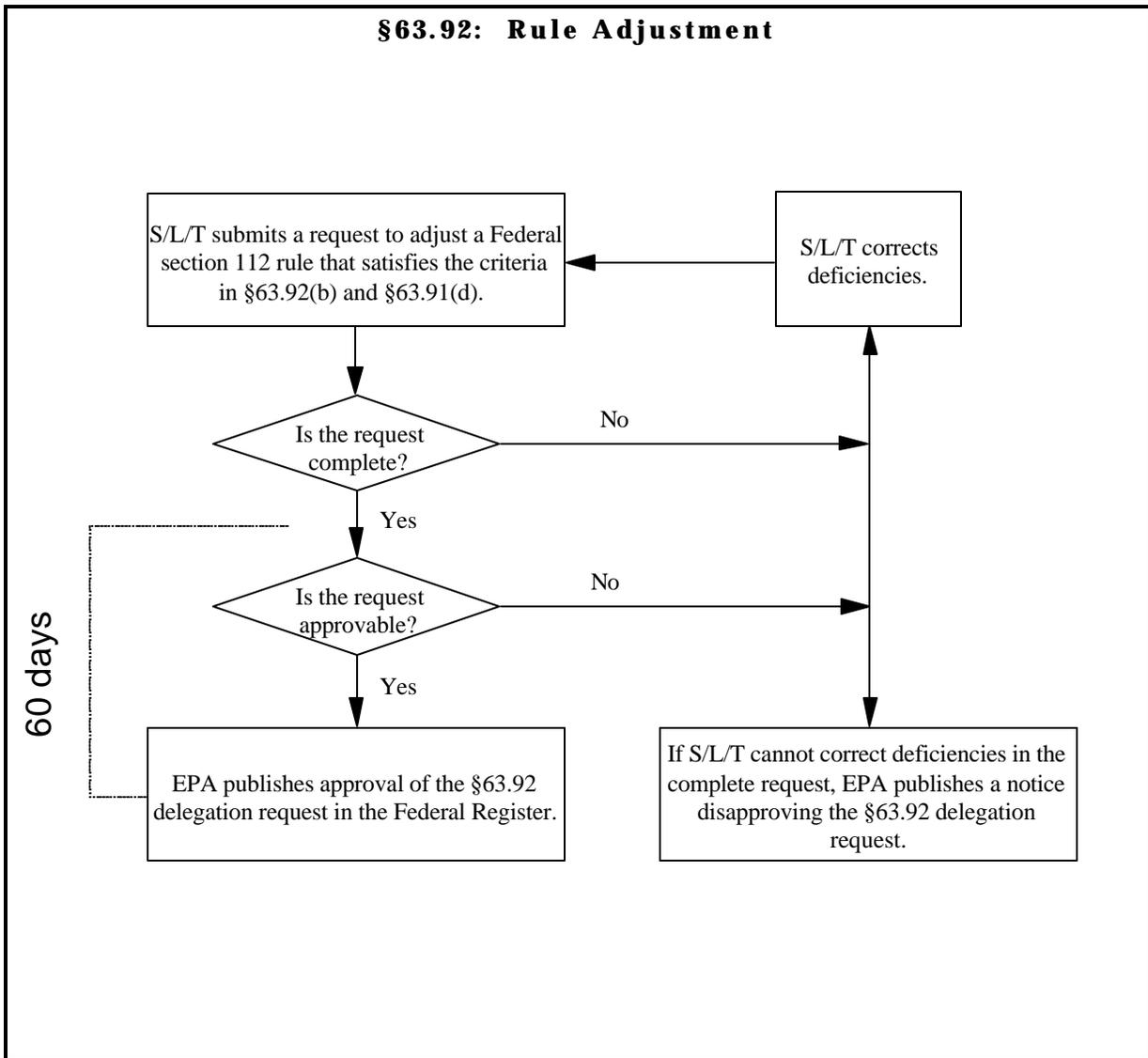
What is the process for approval of a rule adjustment?

As with all the options for approval of alternative programs, you must meet the criteria for straight delegation in §63.91(d). The additional steps to the approval process for rule adjustment are as follows:

1. You submit a request for approval to your Regional Administrator
2. We review it for completeness
3. If incomplete, we will notify you of necessary revisions and process any revised request as a new request for approval
4. After receipt of a complete request, we will determine whether the approval criteria have been met
5. If the approval criteria are not met, we will notify you of necessary revisions and process any revised request as a new request for approval, or we may publish a notice of disapproval in the Federal Register
6. If the approval criteria are met, we will publish a notice of approval in the Federal Register and incorporate a reference into §63.99
7. We will either approve, partially approve, or disapprove the request within 60 days of receipt of a complete application

A flow chart for this process is shown in Figure 2.

Figure 2. Approval process for rule adjustment



5. Rule Substitution (§63.93)

What is rule substitution?

Rule substitution is an option you can use to seek approval of one or more alternative rules, emission standards, or requirements that are not clearly equivalent to, or the form of the standard differs from that of the corresponding Federal rule. A rule may also be approved under this option if it does not qualify for approval under rule adjustment (§63.92).

You may seek approval of your alternative rule, emission standard, or requirement through rule substitution after promulgation of the final Federal rule.

How do I get approval of a rule substitution?

The two major items that you must submit for rule substitution approval are:

1. The terms and conditions of your alternative rule, emission standard, or requirements in any combination of the following forms:
 - S/L/T rules, regulations, guidance*
 - State permits*
 - Issued Title V permits
 - Issued Title V general permits
 - Issued Federal New Source Review (NSR) permits
 - Issued board and administrative orders
 - Permits issued pursuant to permit templates.
2. A demonstration that your alternative rule, emission standards, or requirement is equivalent to the Federal rule.

* guidance and State permits become Federally enforceable and may not be modified without EPA approval if used to demonstrate equivalency

An equivalency demonstration is required under each alternative approval option (an example equivalency demonstration is displayed in Chapter 10). Holistically, your alternative must be equivalent to or more stringent than the Federal rule, or it will be disapproved.

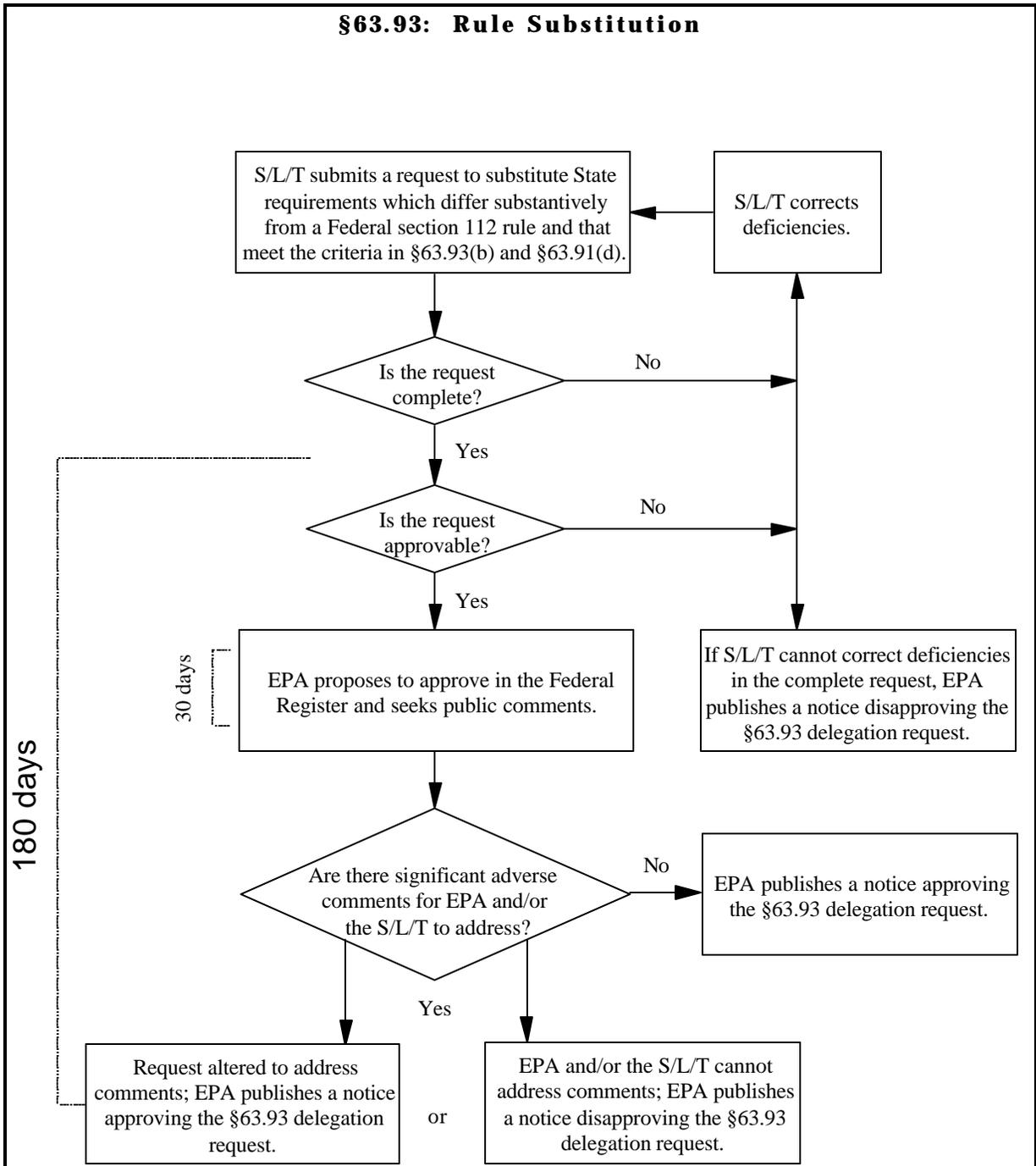
What is the process for approval of a rule substitution?

As with all the options for approval of alternative programs, you must meet the criteria for straight delegation in §63.91(d). The additional steps to the approval process for rule substitution are as follows:

1. You submit a request for approval to your Regional Administrator
2. We review it for completeness
3. If incomplete, we will notify you of necessary revisions and process any revised request as a new request for approval
4. After receipt of a complete request, we will determine whether the approval criteria have been met
5. If the approval criteria are not met, we will notify you of necessary revisions and process any revised request as a new request for approval, or we may publish a notice of disapproval in the Federal Register
6. If the approval criteria are met, we will propose to approve and seek public comment for a minimum of 30 days through a Federal Register notice
7. If there are no significant adverse comments, or significant comments are adequately addressed, we will publish a notice of approval or partial approval in the Federal Register and incorporate a reference into §63.99 and §63.14
8. If there are significant adverse comments that are not adequately addressed, we will publish a notice of disapproval in the Federal Register
9. We will either approve, partially approve, or disapprove the request within 180 days of receipt of a complete application.

A flow chart for this process is shown in Figure 3.

Figure 3. Approval process for rule substitution



How do I show equivalency when my requirements differ in form from the Federal requirements?

Since rule substitution will allow you to require equipment and other practices that are different from those of the corresponding Federal regulation, you must demonstrate that emission reductions will be at least equivalent using these alternatives.

Some examples of information to include in your equivalency package that could demonstrate this are:

- Diagrams of the alternative emission control technology and its operation
- Data quantifying emission reductions achieved by the alternative compared to the required technology or practice.

More detailed information about equivalency demonstrations is presented in Chapter 10.

6. Equivalency by Permit (§63.94)

What is equivalency by permit?

Equivalency by permit (EBP) is an option you can use to seek approval of S/L/T permit terms and conditions that you would implement and enforce instead of a specified Federal section 112 rule, emission standard, or requirement. This option allows you to get delegation without going through a rulemaking at the S/L/T level and does not require you to establish source category regulations. You can use this option only for sources permitted under part 70.

You may seek approval of your alternative permit terms and conditions through EBP for promulgated and future Federal standards, with the exception of part 68 requirements for accidental release prevention programs.

What are the limits to EBP?

EBP is a practical delegation mechanism in many instances, however its usefulness is limited by several factors. One possible impediment is that you must accept delegation for all sources in a source category when using this option, even if you only want to substitute alternative requirements for one source. In addition, to avoid potential overburden on reviewing agencies, this option may only be used for a small number of sources, agreed upon by you and your regional office. Also, EBP is designed for less complex rules. For example, we anticipate that the complex part 63 standards, such as the Hazardous Organic NESHAP (HON), would be unlikely candidates for substitution under this option.

Table 2. Summary of Benefits and Limits of the EBP Option

The benefits of EBP are that you...	The limits to EBP are that it can only be used for...
Do not have to set source category-wide regulations	Source categories with few facilities
May take delegation without going through a rulemaking at the S/L/T level	Less complex rules
	Sources with part 70 permits

What is the process for determining equivalency by permit?

The approval process for EBP involves two separate steps. The first step is to request and receive up-front approval of your EBP program. The second step is to request and receive approval of alternative conditions that will be incorporated into Title V permits. You will not receive final approval of the alternative terms and conditions until they are written into Title V permits and those permits are issued.

What is up-front approval?

Up-front approval for EBP is a process to ensure that you meet the criteria of §63.91 for delegation. Also, this process provides a legal foundation for you to replace Federal section 112 requirements with your alternatives, and informs us of the specific sources and Federal emission standards for which you wish to take delegation.

As in straight delegation in §63.91, once you meet up-front approval requirements, you only need to reference this approval in subsequent EBP submittals and specify for which sources and Federal emissions standards you will be taking delegation.

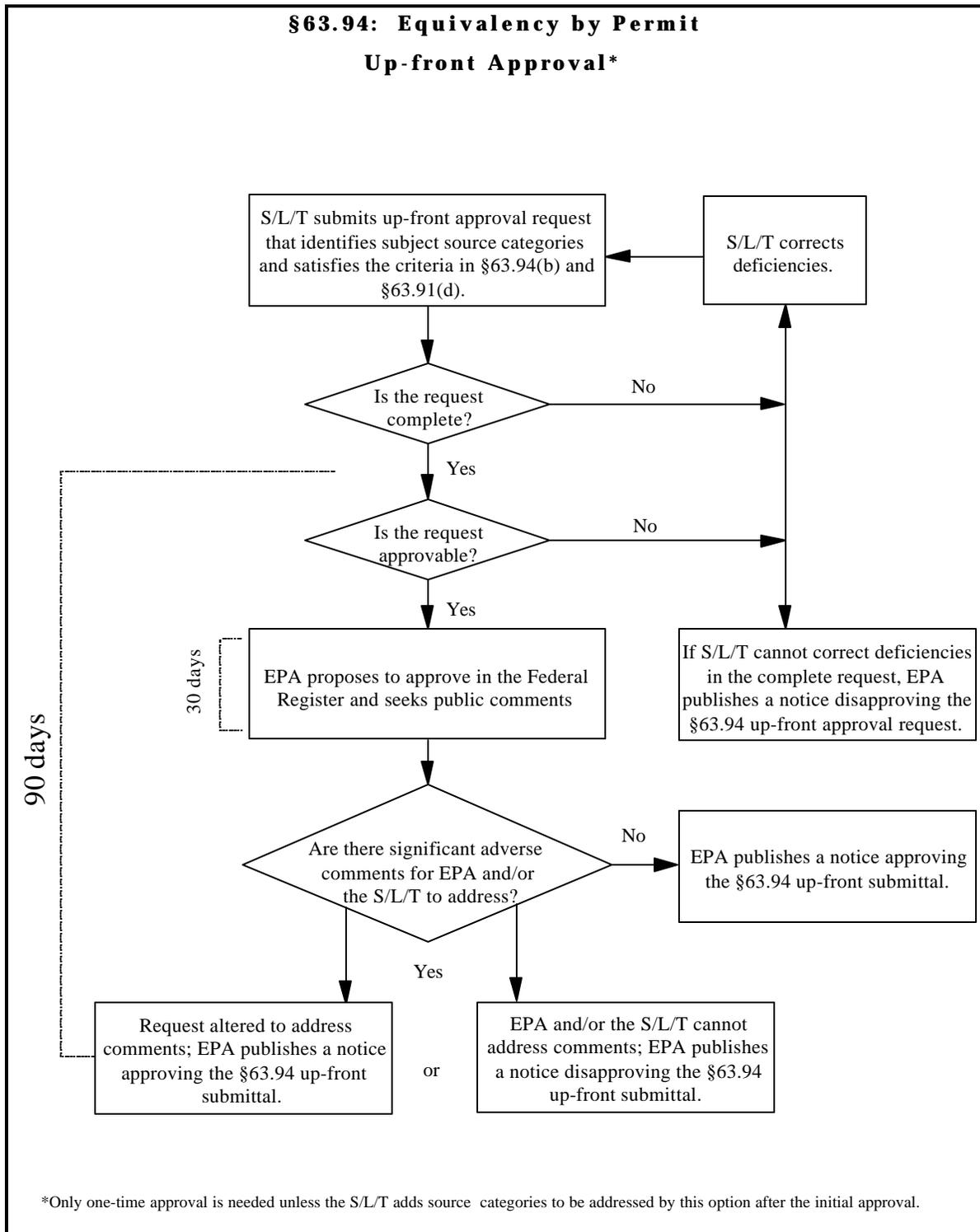
What is the process for up-front approval?

The steps in the up-front approval process for equivalency by permit as specified in §63.94 are as follows:

1. You submit a request for up-front approval to your Regional Administrator
2. We review it for completeness
3. If incomplete, we will notify you of necessary revisions and process any revised request as a new request for approval
4. After receipt of a complete request, we will determine whether the approval criteria have been met
5. If the approval criteria are not met, we will notify you of necessary revisions and process any revised request as a new request for approval, or we may publish a notice of disapproval in the Federal Register
6. If the approval criteria are met, we will propose to approve and seek public comment for a minimum of 21 days through a Federal Register notice
7. If there are no significant adverse comments, or significant adverse comments are adequately addressed, we will publish a notice of approval in the Federal Register and incorporate a reference into §63.99 and §63.14
8. If there are significant adverse comments that are not adequately addressed, we will publish a notice of disapproval in the Federal Register
9. We will either approve or disapprove the request within 90 days of receipt of a complete application.

A flow chart for this process is shown in Figure 4.

Figure 4. Process for equivalency by permit up-front approval



What information do I include in my up-front request?

You must include the following items in your request for delegation through EBP:

1. A submittal of items for approval of straight delegation required in §63.91(d), **OR**
A statement of prior approval of §63.91(d) authorities if this demonstration has already been made and approved
2. A list of all sources for which you want authority to implement and enforce alternative requirements
3. A list of all existing and future Federal standards you want authority to implement and enforce
4. A statement confirming that you have an approved Title V operating permit program and that your program permits the affected sources.

Once you have an approved up-front EBP submittal, you only need to reference that demonstration and reaffirm that you still meet the criteria for each subsequent EBP submittal. However, you must submit an addendum to the original, approved up-front submittal if you decide later to add sources, source categories, or Federal regulations to the original lists. This submittal will go through the same approval process as the original submittal.

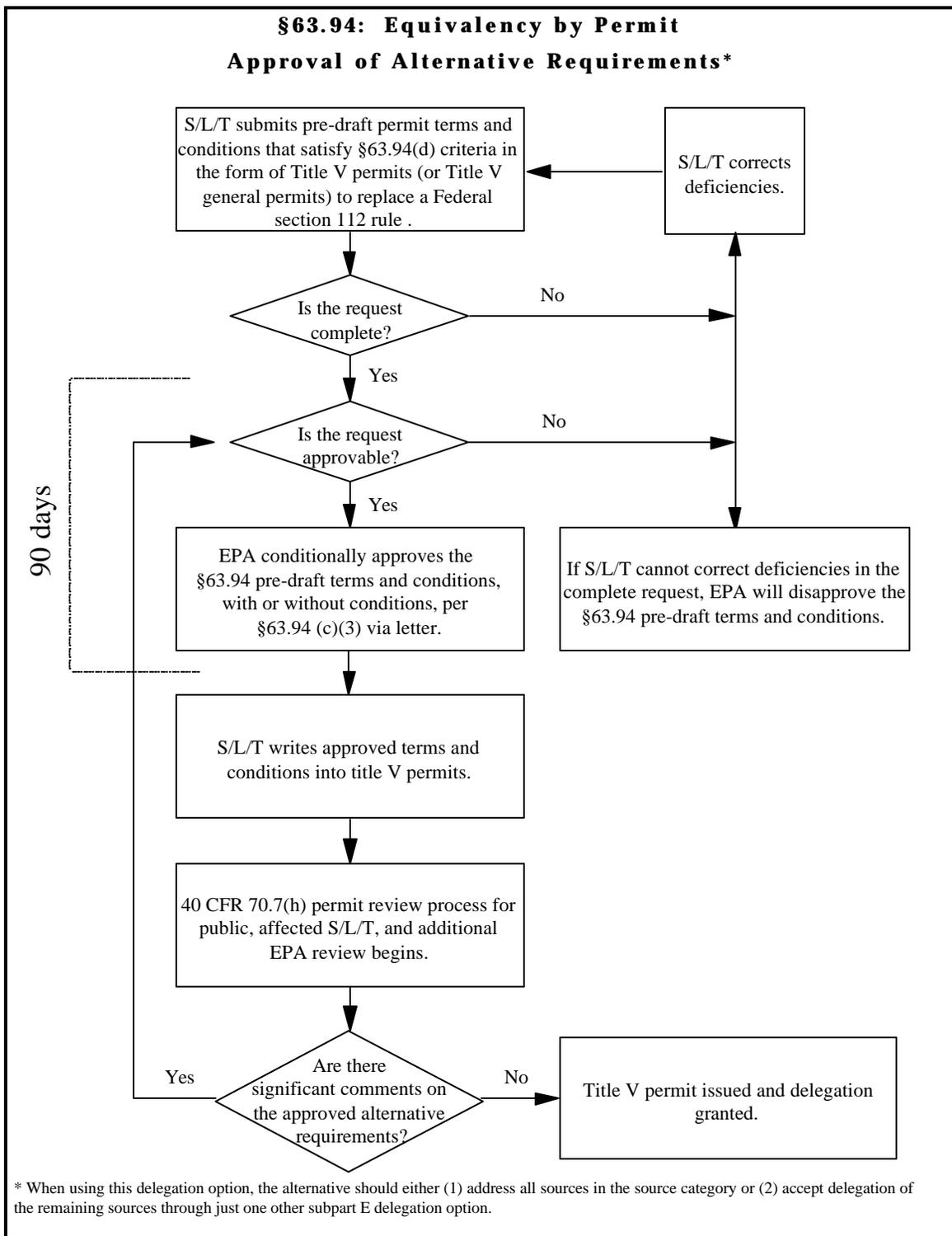
What is the process for approval of alternative requirements through EBP?

The steps to the approval of alternative requirements for equivalency by permit are as follows:

1. You submit a request for approval of alternative permit terms and conditions to your Regional Administrator
2. We review it for completeness
3. If incomplete, we will notify you of necessary revisions and process any revised request as a new request for approval
4. After receipt of a complete request, we will determine whether the approval criteria have been met
5. If the approval criteria are not met, we will notify you of necessary revisions and process any revised request as a new request for approval
6. If the approval criteria are met, we will conditionally approve the pre-draft terms and conditions and notify you in a letter
7. After approval of pre-draft terms and conditions, you must write the terms and conditions into Title V permits and submit the permits for review
8. Permits are reviewed through the 40 CFR 70.7(h) permit review process with a minimum public comment period of 30 days
9. If there are no significant adverse comments, Title V permits are issued and delegation is granted
10. If there are significant comments, the approval process should be repeated beginning with re-examination of pre-draft permit terms and conditions
11. We will either approve, partially approve, or disapprove the pre-draft Title V permits within 90 days of receipt of your complete request.

A flow chart for this process is shown in Figure 5.

Figure 5. Process for approval of alternative requirements through equivalency by permit



What information do I include in my request for approval of alternative requirements?

Along with the items you submit for up-front approval through EBP, you must include the following items to show equivalency with the Federal requirements:

1. Draft Title V permit terms and conditions
2. Identification of which terms contain alternative requirements
3. Any supporting documentation available that will show an alternative requirement is equivalent to the Federal requirement.

7. State Program Approval (SPA) (§63.97)

What is SPA?

SPA is another option you can use to seek approval of alternative rules, emission standards, or requirements. This option is intended for use by States with mature air toxics programs who wish to substitute alternative rules, emission standards, or regulations for many of the Federal section 112 standards.

What are the benefits to using the SPA option?

There are two main advantages to SPA. One is that the approval process can be expedited when there are several rules, emission standards, or requirements that you want approved. This option also allows greater flexibility in equivalency determinations. The attributes of this option that contribute to its speediness and flexibility are that it:

- Eliminates review of generic requirements that apply to multiple source categories (e.g., general provisions, equipment standards, work practice standards)
- Allows you to bundle regulations and requirements and submit them as a group
- Covers future section 112 requirements in sections other than 112(d) and 112(h) [e.g., 112(k), and 112(f)].

How do I get State Program Approval?

State program approval is one option under which you may seek to gain approval of your alternative requirements. Like the other options, it requires the submittal of specific information and has its own approval criteria. To begin the process for State Program Approval, you must submit three main items. These are:

1. A request for up-front approval showing that you meet the criteria of §63.91(d) (Chapter 3 of this document) for straight delegation. In this up-front approval request you must also identify the source categories and/or the Federal section 112 requirements for which you are seeking delegation.

2. The terms and conditions of your alternative rules, emission standards, or requirements must be submitted in any of the following forms:

- State rules, regulations, guidance*
- State permits*;
- Issued Title V permits
- Issued Title V general permits
- Issued Federal New Source Review (NSR) permits
- Board and administrative orders
- Permits issued pursuant to permit templates.

* guidance and State permits become Federally enforceable and may not be modified without EPA approval if used to demonstrate equivalency

3. An equivalency demonstration for each of the rules in which you seek to substitute alternative requirements.

What is the process for State Program Approval?

The approval process for SPA involves two separate steps. The first step is to request and obtain up-front approval of your SPA program, and the second step is approval of your specific alternative requirements.

What is up-front approval?

Up-front approval for SPA is a process to ensure that you meet the criteria of §63.91 for delegation. Also, this process provides a legal foundation for you to replace Federal section 112 requirements with your alternatives, and informs us of the specific sources and Federal emission standards for which you are seeking delegation.

What is the process for up-front approval?

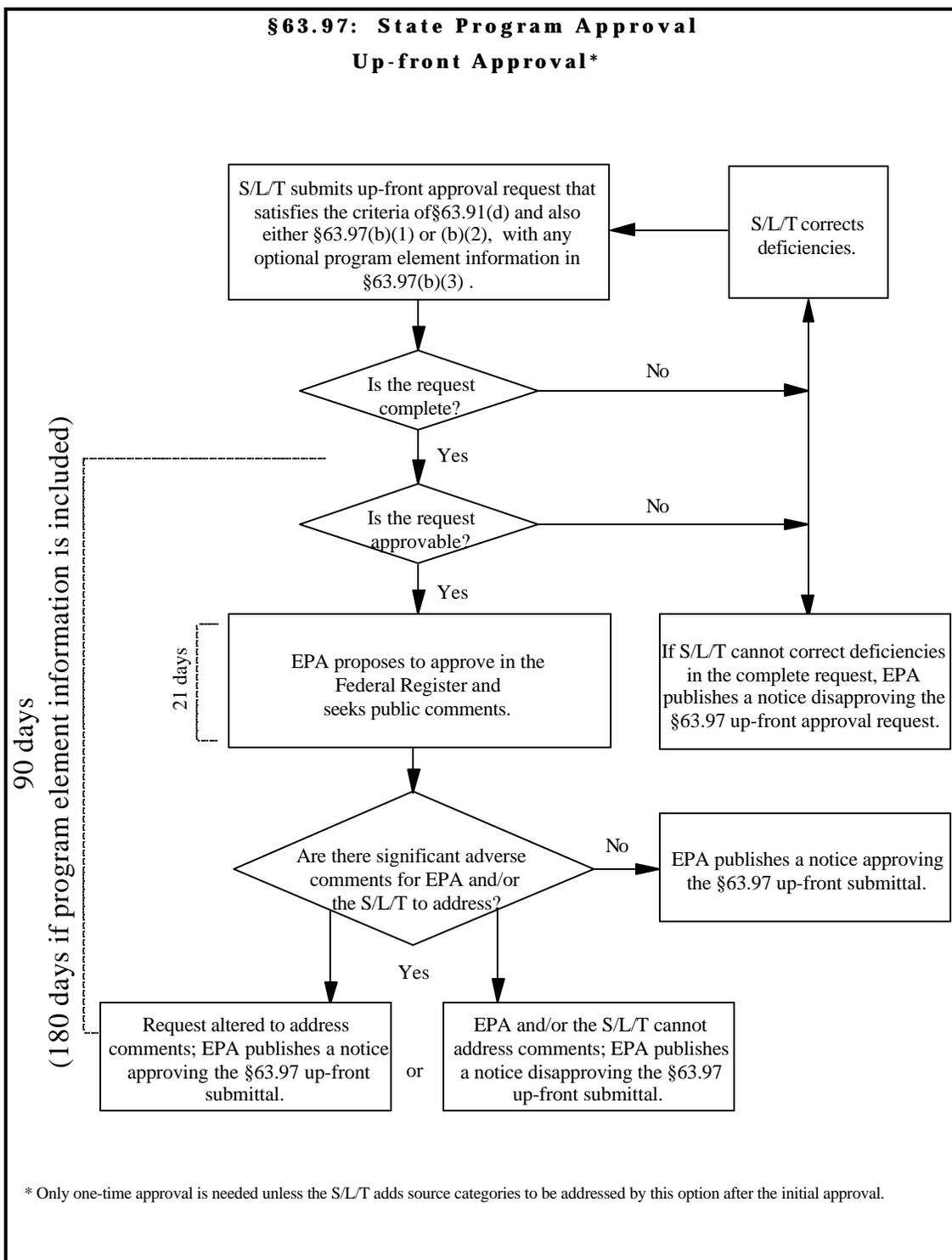
The steps to the up-front approval process for SPA are as follows:

1. You submit a request for up-front approval to your Regional Administrator
2. We review it for completeness
3. If incomplete, we will notify you of necessary revisions and process any revised request as a new request for approval
4. After receipt of a complete request, we will determine whether the approval criteria have been met
5. If the approval criteria are not met, we will notify you of necessary revisions and process any revised request as a new request for approval, or we may publish a notice of disapproval in the Federal Register
6. If the approval criteria are met, we will propose to approve and seek public comment for a minimum of 21 days through a Federal Register notice
7. If there are no significant adverse comments, or significant adverse comments are adequately addressed, we will publish a notice of approval in the Federal Register and incorporate a reference into §63.99
8. If there are significant adverse comments that are not adequately addressed, we will publish a notice of disapproval in the Federal Register
9. We will either approve, partially approve, or disapprove the up-front request within 90 days (180 days if the request includes program element information) of receipt of a complete application.

A flow chart for this process is shown in Figure 6.

Figure 6. Process for SPA up-front program approval

**§63.97: State Program Approval
Up-front Approval***



* Only one-time approval is needed unless the S/L/T adds source categories to be addressed by this option after the initial approval.

What information do I include in my up-front request?

As provided in §63.97, you must include the following items in your request for delegation through SPA:

1. A demonstration that you have met the criteria for straight delegation (§63.91).
2. A list of all source categories for which you want authority to implement and enforce alternative requirements
3. A list of all existing and future Federal standards you want authority to implement and enforce

You may include the following items in your up-front request for delegation through SPA. If your up-front request containing these elements is approved, these elements would be “pre-approved” and apply to all subsequent regulations for which you request delegation.

1. Generic program requirements (e.g., an alternative approach to a startup, shutdown, and malfunction plan), with an equivalency demonstration
2. A description of the mechanism(s) that will be used to make alternative requirements for area sources federally enforceable, with a demonstration that you have adequate resources and authorities to implement and enforce these mechanisms
3. Alternative compliance and enforcement strategies (e.g. performing compliance evaluation studies), with a demonstration that you have adequate resources and authorities to implement these strategies

You only need to make a statement that these program elements have not changed if you decide later to add sources, source categories, or Federal regulations to the original lists.

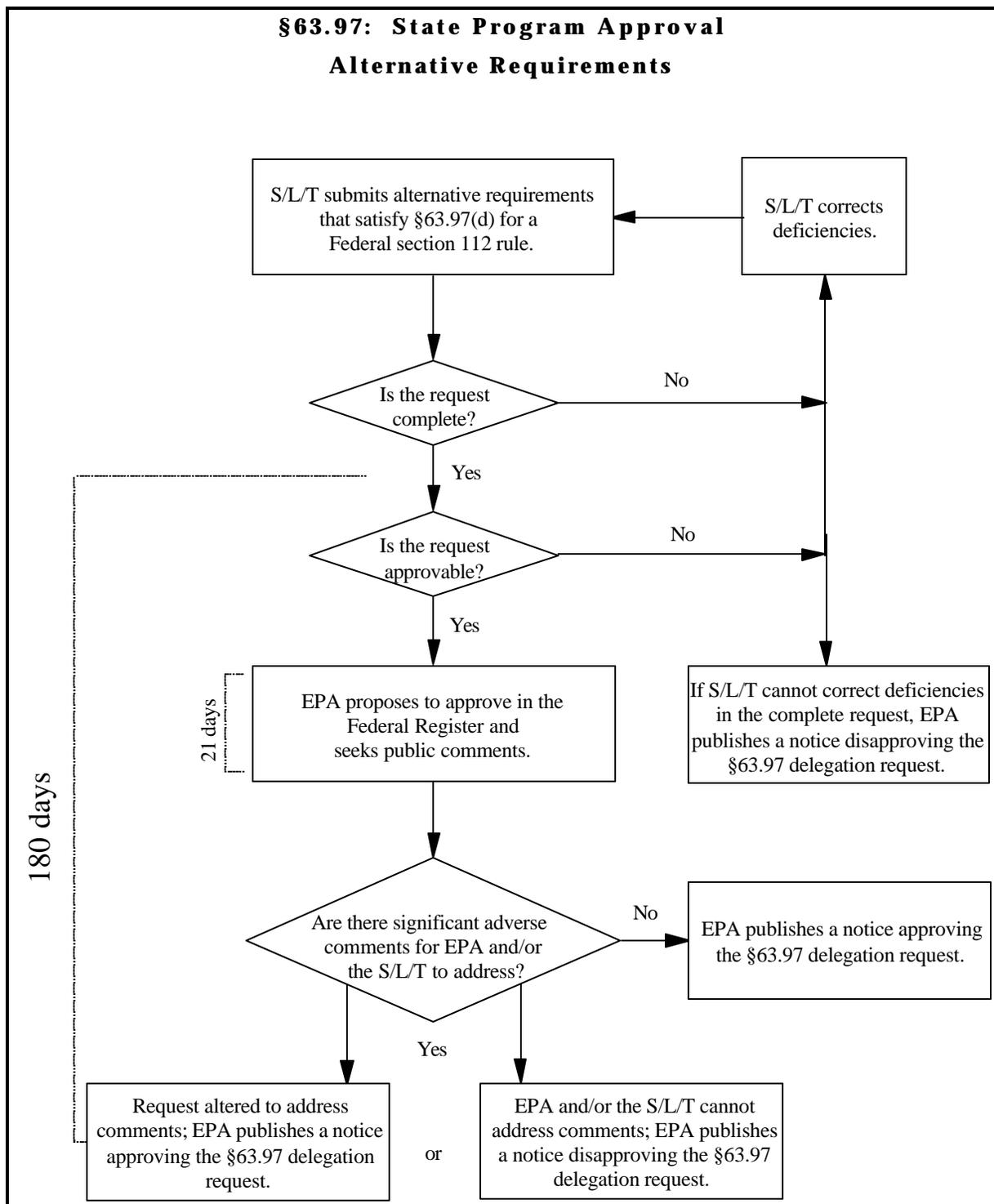
What is the process for approval of alternative requirements through SPA?

The steps to the approval of alternative requirements for State program approval are as follows:

1. You submit a request for approval of the alternative terms and conditions to your Regional Administrator
2. We review it for completeness
3. If incomplete, we will notify you of necessary revisions and process any revised request as a new request for approval
4. After receipt of a complete request, we will determine whether the approval criteria have been met
5. If the approval criteria are not met, we will notify you of necessary revisions and process any revised request as a new request for approval, or we may publish a notice of disapproval in the Federal Register
6. If the approval criteria are met, we will propose to approve and seek public comment for a minimum of 21 days through a Federal Register notice
7. If there are no significant adverse comments, or significant adverse comments are adequately addressed, we will publish a notice of approval in the Federal Register and incorporate a reference into §63.99 and §63.14
8. If there are significant adverse comments that are not adequately addressed, we will publish a notice of disapproval in the Federal Register
9. We will either approve, partially approve, or disapprove the request within 180 days of receipt of a complete application.

A flow chart for this process is shown in Figure 7.

Figure 7. Process for approval of alternative requirements through SPA



What information do I include in my request for approval of alternative requirements?

Your alternate requirements must be State or locally enforceable for approval through SPA. These alternative requirements must be in the form of one, or a mixture of, the following enforceable mechanisms:

- State rules, regulations, guidance*
- State permits*;
- Issued Title V permits
- Issued Title V general permits
- Issued Federal New Source Review (NSR) permits
- Board and administrative orders
- Permits issued pursuant to permit templates.

* guidance and State permits become Federally enforceable and may not be modified without EPA approval if used to demonstrate equivalency

Section 63.97 also requires that the submittal of the alternatives also meet the following conditions:

- Include an equivalency demonstration for each Federal section 112 regulation with requirements you seek to substitute
- The alternative conditions must apply to the entire source category or subcategory
- The alternative conditions must not require source-specific equivalency evaluations.

What are the approval criteria for alternative requirements under SPA?

The information you submit must identify the following in order to gain approval:

- Specify the conditions the sources must follow
- Identify how these conditions are the same as or different from the Federal requirements in a side-by-side equivalency demonstration; holistically the requirements must be equivalent
- Provide detailed information that justifies why your alternative requirements are equivalent to the Federal requirements on a whole (i.e., how they will achieve equivalent or greater emission reductions).

How can I make changes to an approved up-front or alternative requirement submittal?

If you decide that you want to change some of the approved conditions of your up-front approval, you must go through the process for up-front approval again. This process must be performed whether you are changing your alternative conditions to new alternative conditions, or you are reverting to the Federal section 112 requirements.

8. Accidental Release Prevention Programs (§63.95)

What is the purpose of §63.95?

Section 63.95 of this rule contains provisions for taking delegation of the Federal accidental release prevention program or seeking approval to implement an alternative accidental release prevention program, which is a requirement of section 112(r) of the CAA. These regulations (40 CFR 68) require facilities to develop and implement a risk management program that includes analyses of offsite consequences of accidental chemical releases to the air, a five-year accident history, a release prevention program, and an emergency response program. Facilities also must submit a risk management plan (RMP) that describes its hazards and prevention activities and certifies its compliance with the regulations.

Risk management program regulations cover stationary sources that use more than a threshold quantity of a regulated substance in a process. However, the specific requirements of the prevention program depend on the complexity and level of risk posed by the processes at the facility. There are three program levels with different required elements, ranging from Level 1 source processes with low risk and complexity to Level 3 processes, which are in certain industrial sectors with substantial accident histories or are subject to the OSHA process safety management standard. A list of the 140 regulated substances can be found at 40 CFR 68.130, Tables 1 - 4.

How do I get delegation of the Federal program?

To take delegation of the Federal accidental release prevention program without changes, you must demonstrate through the processes of §63.91 (Chapter 3 of this document) that you meet the criteria for straight delegation. This demonstration only needs to be made one time, so if you have been approved for straight delegation of a Federal section 112 standard, you only need to reference this demonstration and reaffirm that you still meet these criteria.

In addition, you must also demonstrate that you have the legal authority to meet the following part 70.11 enforcement authority requirements:

1. Immediately restrain (by order or suit in court) a person who, in violation of a permit, engages in an activity that presents an imminent and substantial danger to the public health or welfare, or to the environment
2. Seek injunctive relief in court for any violation of a program requirement without the necessity of a prior permit revocation
3. Assess or sue in court to recover:
 - A. civil penalties of at least \$10,000 per day per violation against any person for violation of any applicable requirement, permit condition, fee or filing requirement; and any duty to allow or carry out inspection, entry, or monitoring activities, or any regulation or orders issued by the permitting authority
 - B. criminal fines of at least \$10,000 per day per violation against any person who knowingly violates any applicable requirement, permit condition, or fee or filing requirement; makes a false material statement, representation, or certification in any notice or report required by a permit; or renders inaccurate any required monitoring device or method

How do I get approval to implement an alternative accidental release prevention program?

If you wish to implement an accidental release prevention program that differs from the Federal program, you must seek approval of that alternative program through the procedures and meet the criteria of either §63.92 or §63.93 (Chapters 4 and 5 of this document) in addition to those of §63.91 and §63.95. You must also have the authority required under part 70.11 to administer an alternative section 112(r) program.

You should use the procedures of §63.92 if your alternative program is very similar in form to the Federal program, only makes minor changes to the Federal program, and is clearly at least as stringent. Use the procedures of §63.93 if your alternative program is structurally different from the Federal program or would otherwise require close examination to determine equivalency.

Can I implement just part of a program?

You may accept full or partial delegation of either the Federal or your alternative accidental release prevention program. Whether you plan to implement the Federal program without changes or an alternative program, full delegation requires you to implement and enforce the entire program to all affected sources.

You may request delegation for only a defined universe of sources or a defined universe of the Federally-listed chemicals (partial delegation), but you are still required to implement and enforce the full program for those sources and/or chemicals. Some example situations in which partial delegation would be appropriate include the following:

1. You wish to regulate only program Level 1 facilities
2. You wish to regulate only the chemicals associated with certain industries
3. You wish to regulate only certain industrial sectors

What criteria must my alternative accidental release prevention program meet for approval?

You must meet the criteria for straight delegation of a Federal accidental release prevention program. You must meet the following additional criteria for approval of your alternative program:

- Provide technical assistance to sources, and define in your submittal:
 1. Who will perform the technical assistance
 2. What the technical assistance will consist of (e.g. workshops, hotlines, training courses, etc.)

- Include an auditing strategy for RMPs in your program that complies with the Federal requirements in §68.220, and define in your submittal:
 1. The number or percentage of facilities you plan to audit and inspect each year
 2. The strategy that will be used for audits if local agencies conduct the audits
 3. The mechanism you will use to ensure local authorities conduct the required audits

- Have adequate staff in number and qualification to implement the program
- Have adequate funding for your program
- All elements of the alternative program are no less stringent than the Federal program
- Include a requirement in your program that any subject source submit an RMP containing at least the same information in the same format as the Federal requirements
- Include in your program procedures for reviewing RMPs
- Retain the general duty clause and the requirement to submit an RMP to a central location

What materials must I submit for delegation or approval of an alternative program?

You must submit all the material required under §63.91, plus that of either §63.92 or §63.93 for alternative programs, including an equivalency demonstration. In addition, through §63.95, you must also submit a statement from the Attorney General that certifies you have adequate authority to carry out the technical requirements of this program. This Attorney's General's letter must be submitted in addition to the letter required under §63.91. It is also recommended that you submit a letter of request from the Governor to the EPA.

Governor's Letter

A letter from the Governor acts as a formal tool to request EPA approval of an accidental release prevention program and designate the responsible agency. The letter to EPA should include a reference to the Federal statute, a request for approval of the program, and the Governor's signature.

Sample Governor's Letter

Ms. Jane Jones
Regional Administrator
Region XI, U.S. Environmental Protection Agency
Street Address
City, State, Zip Code

Dear Ms. Jones:

In accordance with section 112(l) and section 112(r) of the Clean Air Act as amended, I am forwarding an application for approval of the Chemical Accident Prevention Program of (State). I believe you will find it contains the provisions necessary to implement an effective Chemical Accident Prevention Program.

Should you require further information, please contact (Director) of (Lead Agency). Thank you for your assistance.

Sincerely,
Jane Smith

Attorney General's
Certification

You must submit an Attorney General (AG)'s statement and certification containing the following elements:

- Certification that State statutes and regulations provide adequate authority to carry out and enforce the technical requirements in a "no less stringent" manner
- Certification that all statutes and regulations cited in the letter are fully effective by the time the program is approved
- A description of any State authority over Indian lands, or agreements with a Tribe or Tribes
- Signature of the State AG or the attorney; or for those agencies that have independent legal counsel, either (1) an attorney authorized to sign for the AG; or, (2) a Deputy or Assistant AG if authorized to do so. Authorization should be in writing, case law, or statute. Independent counsel for the State may submit the "no less stringent" certification in place of the AG if the independent counsel has full authority to represent independently the State agency in court on all matters pertaining to the State program.
- A demonstration of the authority to adopt regulations incorporating by reference any Federal regulation, if applicable, citing the State statutes and regulations, listing the comparable CFR cite and date of incorporation.
- If the State's incorporation is intended to include any EPA revisions that may occur in the future, then the AG should cite State authority both to promulgate and to enforce regulations in this manner.
- When a State adopts the Federal regulations by reference, the following phrase can be included in the AG's statement to show that the State has no less stringent requirements: "The State has adopted the Federal regulations by reference and therefore meets the no less stringent criterion for 40 CFR 68."

The AG's statement certifies to State authorities only. The requirement that the State have the authority to carry out the technical requirements and enforce those requirements does not

change if certain aspects of the State program are implemented by local government agencies.

Sample Attorney General's Certification

Ms. Jane Jones
Regional Administrator
Region XI, U.S. Environmental Protection Agency
Street Address
City, State, Zip Code

Dear Ms. Jones:

I hereby certify pursuant to my authority as [insert official title] and in accordance with sections 112(l) and 112(r) of the Clean Air Act, as amended, and 40 CFR 68 that in my opinion the laws of the (State) provide adequate authority to (1) carry out the "no less stringent" technical requirements submitted by the (Lead Agency), (2) adequately enforce compliance with such program, and (3) regulate, at a minimum, the same chemical accident prevention universe as the Federal program. I hereby certify, to the best of my knowledge, that the application submitted by (Lead Agency) is legally accurate. The specific authorities provided are contained in statutes or regulations lawfully adopted at the time this statement is signed and which will be effective by the time the program is approved, [or are provided by judicial decisions issued at the time this statement is signed].

Seal of Office

Signature

Where can I get more information about accidental release prevention programs?

The requirements specific to accidental release prevention programs and RMPs can be found in the rule and preamble to 40 CFR 68. In addition, many resources, such as guidance for these programs are available to you through the Chemical Emergency Preparedness and Prevention Office (CEPPO) website at <http://www.epa.gov/ceppo/>.

9. Radionuclide NESHAPs

What are radionuclide NESHAPs?

Section 112(d) of the Act provides for the establishment of standards to regulate sources that emit any HAP listed in section 112(b) of the Act. On December 27, 1979, EPA listed radionuclides as HAP substances under section 112 of the CAA (44 FR 76738, December 27, 1979). Once listed, radionuclides became subject to the requirement of section 112(b)(1)(B) that EPA establish NESHAPs at a “level which (in the judgement of the Administrator) provides an ample margin of safety to protect the public health from such hazardous air pollutants,” or find that they are not hazardous and delist them.

Most of the standards promulgated under this authority are found in 40 CFR 63, and are known as “National Emission Standards for Hazardous Air Pollutants” or NESHAPs. However, 40 CFR 61 also contains NESHAPs established for radionuclides. The standards for specific sources of radionuclide emissions are contained in the following subparts of 40 CFR 61:

<u>Subpart</u>	<u>Source of Emissions</u>
B	Underground Uranium Mines
H	Department of Energy (DOE) Facilities
I	Certain Non-DOE Federal Facilities
K	Elemental Phosphorus Plants
Q	Radon Emissions from DOE Facilities
R	Radon from Phosphogypsum Stacks
T	Non-Operational Uranium Mill Tailing Piles (Rescinded for NRC licensees and Agreement States)
W	Operating Mill Tailing Piles

Why are the section 112 radionuclide standards of special concern?

The EPA Office of Radiation and Indoor Air and certain other Federal agencies have traditionally played the primary role in implementing requirements applying to those sources that may emit radiation. Additionally, radiation is not a “traditional” HAP, and thus risk measures in considering the NESHAPs policy were different from the risk measures considered in the non-radionuclide NESHAPs (refer to FR Vol.54 No. 240 December 15, 1989).

Very few S/L/Ts have developed the technical expertise to independently implement radionuclide NESHAPs. S/L/Ts should develop this expertise prior to requesting delegation of part 61 radionuclide NESHAPs by consulting the appropriate EPA regional office.

For similar reasons, there is also concern regarding the approvability of S/L/T requests to implement alternative rules, programs, or requirements to these Federal standards. As a result, the EPA will not approve any alternatives to part 61 radionuclide NESHAPs.

How is implementation of radionuclide NESHAPs affected by the part 70 program?

Just as for part 63 NESHAPs, in order to receive delegation of the part 61 radionuclide NESHAPs, an S/L/T must demonstrate that it has adequate statutory authority to issue title V permits that assure compliance. Title V of the Act and the implementing regulations at 40 CFR 70 require that S/L/Ts develop operating permit programs meeting various criteria. One important aspect of S/L/T program adequacy is the ability to issue permits that assure compliance with all requirements of the Act applicable to the permitted sources, including the radionuclide NESHAPs.

All States currently have approved part 70 programs. However, you may permit facilities regulated by one or more of the radionuclide NESHAPs only if you have demonstrated that your agency has adequate personnel and expertise in radioactivity. If this demonstration was not made in the initial title V program, a separate demonstration regarding radionuclides must be made prior to permitting these facilities. Further information regarding the part 70 program and radionuclide NESHAPs can be found in the 1994 John Seitz and Margo Oge Memorandum, “The Radionuclide National Emissions Standards for Hazardous Air Pollutants (NESHAPs) and the Title V Operating Permits Program”.

Approval of a title V program does not automatically confer approval of delegation of unchanged radionuclide standards. To be approved delegation of these regulations, you must separately request approval for the specific subparts you wish to implement and enforce and you must meet the criteria of §63.91. If you believe you have been automatically delegated part 61 radionuclides NESHAPs, you must work with your EPA region to demonstrate that you do have adequate expertise and legal authority to implement and enforce these requirements.

How do I get delegation of unchanged radionuclide NESHAPs?

You may request and receive straight delegation of all the promulgated part 61 radionuclide NESHAPs. You must follow the requirements for straight delegation (§63.91) to request straight delegation of the part 61 radionuclide NESHAPs. However, in requesting approval for radionuclide NESHAPs, you must demonstrate that you have enforcement authorities that meet the requirements of 40 CFR 70 for radionuclides. Also, §63.91 requires you to describe your capacity to carry out the program, and you must demonstrate that the personnel who will be implementing and enforcing these regulations have experience and technical expertise with radiation.

Section 63.91 requires that you submit 5 items to the Administrator for straight delegation. These same requirements apply to straight delegation of radionuclide NESHAPs. However, you must add to that information the following items for delegation of radionuclide NESHAPs, unless you have previously included these items in your request for title V program approval:

- A description of your ability to determine which facilities are subject to the radionuclide NESHAP
- A description of your agency's ability to enforce against non-complying radionuclide-emitting sources
- A description of your agency's ability to complete surveillance/inspections of sources subject to radionuclide NESHAPs
- A description of your agency's ability to assess doses to persons residing in the vicinity of facilities (i.e., use appropriate dose models, such as CAP-88).

This demonstration only needs to be made once, so that in future requests for straight delegation of other section 112 radionuclide standards, you only need to reference this demonstration and reaffirm that you still meet these criteria.

What authority will I have under straight delegation for radionuclide NESHAPs?

You will receive the same authorities you receive under straight delegation through §63.91, with the following two differences:

1. You may not approve any alternatives to test methods
2. You must report periodically to your Regional EPA office on the status of your program.

Can I receive automatic delegation of radionuclide NESHAPs?

For most part 63 and part 61 standards, you may request to automatically receive straight delegation of new standards as they are promulgated, without separately requesting delegation for each new standard. However, you may not receive automatic delegation of future part 61 radionuclide NESHAPs. You may only receive delegation of part 61 radionuclide NESHAPs by requesting approval of delegation for those specific NESHAPs using the procedures of §63.91. However, you may request delegation of all the promulgated part 61 radionuclide NESHAPs in one request, rather than as separate requests for each subpart.

What S/L/T personnel can carry out radionuclide program activities?

The S/L/Ts have asked EPA in the past if it is necessary for all radionuclide program activities to be carried out by air program personnel. EPA responded by announcing through the memorandum from John Seitz in 1994 that S/L/Ts are free to use the combination of personnel they feel is appropriate for performing radionuclide program duties. However, efforts involving more than one agency should be described so that EPA and the public can understand how the job will be done. An intragovernmental agreement (IGA) may be an appropriate mechanism for managing this activity. An example IGA is displayed at the end of this chapter.

In addition, due to the technical challenges posed by the radionuclide NESHAPs, EPA may be able to provide support to S/L/Ts during the initial years of part 70 program implementation for these sources. If you need assistance, we recommend that you work with the EPA Regional Offices to outline the timing and level of assistance necessary to address the radionuclide NESHAPs and related permits.

May I get approval to implement an alternative radionuclide rule, program, or requirement?

As described earlier in this chapter, EPA will not approve any alternative radionuclide rule, program, or requirement that differs from the Federal regulations of part 61 subparts B, H, I, K, Q, R, T, or W.

What other information is available for radionuclide standard delegation?

For further information regarding delegation of radionuclide NESHAPs, refer to the following documents:

- “Guidance for State Delegation of Authority for Radionuclide NESHAPs.” February 26, 1992. J. William Gunter Memorandum.
- Good Practices Manual for Delegation of NSPS and NESHAPS. U.S. EPA. February 1983.
- “The Radionuclide National Emission Standard for Hazardous Air Pollutants (NESHAPs) and the Title V Operating Permits Program.” September 20, 1994. John Seitz and Margo Oge Memorandum.

Example Intragovernmental Agreement (IGA)

INTRAGOVERNMENTAL (IGA) AGREEMENT

Between the State Air Pollution Agency
and the
State Department of Health

PURPOSE

This IGA is made and entered into between the State Air Pollution Control Agency (APCA) and the State Department of Health (DH) pursuant to authorities granted within the revised code of the State. The effect of this IGA is to recognize the DH as the lead agency for regulation of radioactive air emissions and the APCA as the lead agency for issuing air quality permits under State law.

BACKGROUND

The DH has the responsibility to regulate sources of radioactive air emissions per State regulation, and APCA has the authority to issue both notice of construction and operating permits for sources of air contaminant emissions under State regulation. All federally-applicable requirements must be included in the operating permits, including all national emission standards for hazardous air pollutants.

RESPECTIVE ROLES AND RESPONSIBILITIES

State Air Pollution Control Agency

1. The APCA will regulate non-radioactive airborne pollutants, issue air operating permits under State regulation, and issue notice of construction permits for non-radioactive airborne pollutants under State regulation for all sources subject to operating permits requirements.
2. The APCA will include all applicable Federal requirements in the operating permit. The APCA will consult with DH to determine the contents of the permit pertaining to radioactive air emissions.
3. The APCA will reimburse DH for all title V costs which are incurred by DH at sources required to obtain a construction or operating permit.

State Department of Health

1. The DH will act as lead agency for issues and questions pertaining to the regulation of radioactive air emissions. If a facility does not need an operating permit under State regulation but is a potential source of radioactive airborne pollutants, DH will regulate the facility under State regulations.
2. The DH shall submit a plan to APCA for approval for evaluating all Federal facilities not regulated by the Nuclear Regulatory Commission.
3. The DH shall have the principal responsibility for evaluating airborne radionuclide emissions during new and modified source review, providing input for the applicable construction permit.
4. The DH will identify to APCA radionuclide emissions limitation and control technologies it deems appropriate for adoption and incorporation into air operating permits issued by APCA under State and Federal Clean Air Act authorities. When pollutant control technology requirements may affect the safety or effectiveness of both radioactive and non-radioactive emissions, DH and APCA agree to work together to resolve the conflicting requirements.
5. The DH will perform at least one inspection annually for any site that is required to obtain an operating permit. The DH will provide APCA a detailed report summarizing the inspection and any compliance issues that are pertinent to the requirements listed in the operating or construction permit within "X" days of completing inspection.
6. The DH shall evaluate radionuclide air emissions reports submitted by the facilities and provide an evaluation by June 30 of each year.
7. If DH needs assistance in enforcing any requirements, DH may request assistance from the U.S. Environmental Protection Agency.

10. Review and Withdrawal of Approval (§63.96)

What is the review process?

Subpart E provides that the process for review and withdrawal will be triggered if we determine that you are not adhering to the conditions under which your delegation, rule(s), program, or requirements were approved. In the subpart E revisions, we are streamlining this process.

We may request information to review the adequacy, implementation, and enforcement of an approved rule, program, emission standard, or other requirement at any time. You must provide this information within 45 days. Additionally, we may request that you demonstrate that your alternative is achieving emission reductions at least equivalent to the Federal requirement.

The specific information requested may include the following:

1. Copies of any rules or regulations that have changed your approved rule, program, or requirements since approval or the last EPA review
2. A demonstration of adequate State enforcement or compliance monitoring for your approved alternative
3. A demonstration of adequate funding, staff, and other resources to implement your alternative
4. A schedule for implementing your alternative that assures compliance with Federal section 112 rules promulgated since approval or the last EPA review
5. A summary of enforcement actions regarding section 112 requirement violations

What is the withdrawal process?

If after review there is reason to believe you're not adequately implementing or enforcing a delegated or an approved alternative rule, program or requirement, we will begin the process of withdrawal of approval. We may withdraw delegation approval or approval of a rule, program, or requirement either partially or in entirety. After withdrawal of any requirement, sources are required to adhere to the otherwise applicable Federal requirement. The withdrawal process involves the following steps:

1. We propose to withdraw approval and seek public comment
2. We review public comments and your responses
3. We either withdraw approval or ask you to correct the identified deficiencies
4. You have 90 days to correct identified deficiencies, if given that option
5. We will either approve your changes or withdraw approval through a Federal Register notice.

What are the criteria for withdrawal?

We may withdraw your approval if we find that you are **not** adequately meeting the following criteria:

- Have authorities or resources to assure compliance
- Are implementing and enforcing the approved requirements
- Are achieving emission reductions equivalent to the Federal requirements

Can I voluntarily withdraw my approved rule, program, or requirement?

You may voluntarily withdraw from delegation or withdraw your approved rule, program, or requirement partially or entirely. To do this you must:

1. Notify the EPA of the specific requirements you intend to withdraw
2. Notify all affected sources
3. Notify the public and take comments
4. Reopen and revise the title V permits of all affected sources

The withdrawal may not take effect until 180 days after you notify the EPA of your intent to withdraw. At that time, the otherwise applicable Federal standard becomes the applicable requirement, and the EPA will publish a timetable for sources to come into compliance with these requirements.

Can I get delegation again after a withdrawal?

You may request straight delegation after your delegation has been withdrawn or after voluntary withdrawal. Also, you may re-submit or submit a partial or entirely new rule, program, or requirement for approval after your program has been withdrawn or after voluntary withdrawal. The request will be processed as normal according to the procedures of §63.91, §63.92, §63.93, §63.94, or §63.97, as appropriate.

11. Equivalency Demonstrations

What is an equivalency demonstration?

An equivalency demonstration is the component of your request for approval of an alternative rule, program, or requirement that shows your alternative is at least as stringent as the corresponding Federal section 112 standard. This chapter presents a suggested format for this demonstration that has proven to effectively compare alternative rules, programs, or requirements to the otherwise applicable Federal requirements in the past. We recommend that you follow the examples in this chapter as closely as possible to enable the review process to be completed expeditiously.

A complete equivalency demonstration should be comprised of the following three items:

1. An equivalency demonstration table, which is a tabular, line-by-line comparison of the alternative rule, program, or requirement to the corresponding Federal section 112 standard
2. A worksheet showing any calculations and assumptions used to determine equivalency
3. A narrative description of the analysis, including brief explanations of equivalency, if these comments are not included in the equivalency demonstration table.

How do I prepare the Equivalency Demonstration Table?

The most important element to an equivalency demonstration is the comparison of your rule to the Federal rule. It is highly recommended that you use a tabular format identical to the format shown below to help your regional office efficiently evaluate the stringency of the alternative requirements.

The table should contain columns for the Federal rule, your alternative, the decision made (equivalent, more stringent, less stringent, or equivalency uncertain), and comments for you to make to the regional office (as in Table 3).

Table 3. Example Equivalency Demonstration Table

Topic Area	Federal Section 112 Regulation		Alternative Rule		Equivalency	Comments
	Citation	Provision	Citation	Provision		
Applicability						
<i>(Example)</i> Category of sources	§63.XX	<i>Rule applies to all major sources</i>	<i>Rule 1234: §A.4</i>	<i>Rule applies to all sources</i>	<i>more stringent</i>	<i>Rule 1234 applies to all major and all area sources</i>
Compliance Dates						
<i>(Example)</i> New or reconstructed sources	§63.XY	<i>New sources must comply by January 1, 2005</i>	<i>Rule 1234: §A.8</i>	<i>New sources must comply by July 1, 2005</i>	<i>less stringent</i>	<i>Rule 1234 allows more time to come into compliance</i>
Emissions Standards						
Performance Test Methods						
Monitoring Requirements						
Recordkeeping Requirements						
Reporting Requirements						
Plans						
General Provisions						

What information do I put in the Equivalency Demonstration Table?

You should take the following steps to completely fill out this table.

- List all Federal section 112 requirements and ensure that your standard alternative rule(s) address them holistically.
- Locate all requirements referenced in your alternative rule or other that apply to this industry.
- Read the Federal regulation and insert a reference to the location of each provision in the **Topic Area** column in the **Section 112** column.
 - < Include all reference citations in the Federal section 112 standard.
- Use your alternative rule to fill out the **Alternative Rule** column the same way you filled the **Section 112** column, by inserting a reference to the location of each provision in the **Topic Area** column in the **Alternative Rule** column.
 - < Include all reference citations.
- Compare your rule to the Federal rule and fill out the **Equivalency** column with judgements as to whether your rule is equivalent, More Stringent, Less Stringent, or Uncertain.
 - < Also provide a short reason for the determination in this column or in the **Comments** column, if needed.
- Provide any additional information that may help your regional office evaluate the submittal in the **Comments** column. For example, if equivalency for a provision was uncertain, the **Comments** column would be the place to explain this, to make comments on the methods used, or to discuss calculations.

What issues should I address in my equivalency demonstration table?

In your equivalency demonstration table, the **Topic Area column** should minimally include information that addresses the areas shown in Table 4.

Table 4. Subjects that should be covered in an equivalency demonstration table.

Topic Area	Subjects to Address
<i>Emission Standards</i>	
Applicability	<ul style="list-style-type: none"> • Category of sources • Emission points • Equipment • Products and materials • Pollutants (VOCs/HAPs)
Compliance Dates	<ul style="list-style-type: none"> • Emission limits • Equipment installation or prohibition • Material substitution • Work practice standards
Emission Limits	<ul style="list-style-type: none"> • Mass/time emission rate • Pollutant concentration (volume or mass basis) • Control efficiency
Work practices	<ul style="list-style-type: none"> • Standards • Compliance assurance measures
Test Methods	<ul style="list-style-type: none"> • Sample collection • Sample analysis • Frequency of testing

Topic Area	Subjects to Address
<u>Compliance</u> <u>Assurance Measures</u>	
Emission Monitoring	<ul style="list-style-type: none"> • Consistent with Federal standard for all CEMS • Frequency of measurement for non-continuous monitoring • Frequency of recording for non-continuous monitoring • Provisions for: <ul style="list-style-type: none"> < performance specifications < installation < calibration < sampling < maintenance < operation < quality assurance < measurement frequency < recording.
Recordkeeping	<ul style="list-style-type: none"> • Minimum 5 year retention • Records of test results and material usage consistent with Federal standards or approved alternatives • Records to support reporting requirements for: <ul style="list-style-type: none"> < Title V reports < excess emissions < exceedances < violation reports < breakdown and malfunction reports.
Reporting	<ul style="list-style-type: none"> • All Title V reports • Reports that provide information consistent with Federal standard requirements for: <ul style="list-style-type: none"> < excess emissions < exceedances < violation reports < breakdown and malfunction reports.
Plans	<ul style="list-style-type: none"> • Performance test plans • Startup/shutdown plans • Malfunction plans • Operation and maintenance plans
General Provisions	All GP that apply to the Federal standard not already addressed in the other categories

What information do I include in my Narrative Description?

After filling out the table, you should create a narrative description to accompany the table so your regional office can see the reasoning used to develop the table.

Your narrative should have a paragraph for each topic area. The paragraphs should summarize any major differences between your requirements and the Federal requirements. The narrative should also include any helpful information that does not have a place in the equivalency table, for instance under applicability, information to include in your narrative would be the number of facilities that exist, the number of facilities the alternative rule would cover, and whether your alternative rule was in effect before the Federal standard.

How will equivalency be determined?

Your demonstration will be reviewed for completeness and fulfillment of the administrative and technical criteria. Approval of the administrative criteria is addressed in the straight delegation (§63.91) section of this document. The technical criteria will be evaluated for equivalency in the following ten main areas:

1. Applicability
2. Compliance dates
3. Emissions standards
4. Work practices
5. Performance test methods
6. Monitoring requirements
7. Recordkeeping requirements
8. Reporting requirements
9. Plans
10. General Provisions.

Each of these main categories has more specific criteria that are used to evaluate equivalency.

Applicability
Sources

While the language of your rule compared to the Federal rule may differ, your rule needs to cover at least the same sources and HAPs.

HAPs

While S/L/T rules may not specifically list HAPs covered as a section 112 standard might, your rule still needs to cover at least the same HAPS as the corresponding Federal regulation. This may require you to investigate the industry your rule would regulate and the current and future chemicals they may use to prove equivalency with this provision.

Exemptions

Your rule must exempt exactly the same or fewer sources than the Federal regulation. If your exemption is stated in different terms, the same or fewer of the exact facilities exempt by the Federal standard must be exempt by your rule. If your rule exempts the same number of facilities as the Federal rule, but the facilities are different, your exemption is not equivalent.

Compliance Dates

The compliance dates in your rule should be equal to or sooner than the section 112 regulation dates for existing, new, and reconstructed sources. However, through cooperative efforts with your regional office, exceptions may be made if there are very minimal differences.

Emission Standards
Units of Measure

Where possible, you should convert the units of your rule to the units used in the Federal rule for the equivalency demonstration. However, if a direct conversion is not possible, establish a correlation between the different units. You should provide the equations used and any assumptions made for these conversions or correlations.

Emission Limits

The emission limits in your rule must be equivalent to the Federal rule's emission limits at the same level of production. The units for the equivalency demonstration should be converted to the units used in the Federal rule for numerical limitations. Control efficiency limits must be at least as stringent as the Federal rule. In addition, averaging times must be explicitly stated in your rule and be equivalent to the Federal rule in guaranteeing the appropriate emission reductions.

In addition, you should submit any empirical or other reliable data that can be used in evaluating alternative emission limits.

Work Practices

Any alternative work practice standards you wish to substitute must be equivalent to work practice standards of the Federal regulation. The alternative work practice standards do not need to be exactly the same, but they should achieve at least the same emissions reductions as the Federal regulation. Where work practice standards are related to compliance and enforcement measures, your alternative work practice standard and the related compliance and enforcement requirements must be equivalent as a whole to the corresponding requirements in the Federal regulation.

It may be challenging to show equivalency for work practice standards in the equivalency demonstration table. We recommend that, as necessary, you use the comments column of the table, provide further information in the narrative description, and provide any data or other information that may be beneficial for determining equivalency in your submittal.

Performance Test Methods

Test methods may affect the stringency of emissions limits (e.g., using a method that incorporates both front and back catches for particulates is more stringent than one only using the front half). You must state what performance test methods will be used and how you will determine compliance. Any alternative test methods must ensure that the control equipment or other control strategy performs well enough to achieve the same emission reductions required by the Federal section 112 standard. Intermediate changes to test methods must be demonstrated as equivalent through EPA Method 301.

**Compliance Assurance
Measures** (Monitoring,
Recordkeeping, and Reporting)

Compliance assurance measures are often comprised of monitoring, recordkeeping, and reporting requirements. However, these requirements may also encompass field inspections, compliance assurance training, rule effectiveness studies, and other measures. As equivalence for compliance assurance measures is determined holistically, this may allow for greater substitution of requirements in this requirement category than the others. For instance, you may be able to substitute very detailed inspections for monitoring in some instances. The goal for alternative measures in this category is to demonstrate compliance and non-compliance at least as well as the Federal requirements. However, for substitution within a subset of these compliance assurance measures, a few general guidelines are provided below to help you create alternatives equivalent to those found in Federal rules.

Monitoring and Recording Frequency

A Federally equivalent alternative monitoring plan will measure and record any emissions exceedances as frequently and accurately as the Federal monitoring requirements. In determining an appropriate and equivalent monitoring frequency, you should consider:

1. The frequency of monitoring measurement and recording needed to detect non-compliance reliably
2. Monitoring schedule in relation to the averaging time
3. Any alternative equipment or emissions limits used
4. The margin of compliance (unit operating at X% of emission limit)
5. The accuracy of the emission estimation method
6. Variability in emissions.

Table 5 provides suggested approach for determining appropriate alternative monitoring/recording frequencies.

Table 5. Determining Appropriate Monitoring/Recording Frequency

Ranking	Normal Variability	Likelihood of Exceedance	Suggested Monitoring/Recording Frequency
high	>40%	> once/week	hourly or daily
medium	15 - 40%	once/month	daily or weekly
low	<15%	< 2/year	weekly or monthly

Reporting and Recordkeeping

Similar to the monitoring and recording requirements, Federally equivalent reporting and recordkeeping requirements will ensure reports of emissions and operating conditions are made and sent

to the proper authority as frequently and accurately as the Federal requirements, and also are kept available for viewing for an equivalent period of time. For example, you may wish to have reports submitted on an alternative schedule to match reporting schedules for other requirements, or you may wish to have sources keep files electronically rather than in hard copy. You should provide information with your equivalency demonstration to show justification for these types of alternatives.

Plans

Most plans in Federal regulations have specific requirements that must be met. Any alternative plans you wish to substitute should provide holistic equivalency to the plan of the Federal regulation. In some cases, you may not require a plan at all, but have other requirements that address the plan requirements of the Federal rule. In either case, a small equivalency demonstration for the plan is needed. You should highlight all differences between the two plans, or the Federally required plan and your alternative requirements, and provide any information that will help show equivalence. This information should be presented in a table accompanied by a worksheet showing any calculations or assumptions made. A narrative description may also be necessary to further describe differences or to include other information beneficial to determining equivalency.

General Provisions

Each section of the GP that applies to the section 112 standard you are seeking delegation of must be addressed in the equivalency demonstration. This section of the table (or a separate table if this section is lengthy) should compare each requirement of the GP to the provisions of the alternative rule. This line-by-line comparison can be shortened. You may provide a statement that you accept delegation of the GP your rule either does not change or address. These specific sections should be listed. The provisions your rule addresses differently or that you want to substitute alternate requirements for should be entered into the table as normal.

12. Submittal Package Contents

What is a submittal?

You must prepare and submit several items to request delegation of Federal section 112 requirements. The items you must submit will differ, depending on whether you are requesting approval of straight delegation or approval of an alternative rule, program, or requirement. You are encouraged to work with your regional office in the preparation of your package, beginning with discussion of any issues that arise during preparation and before you formally submit the information. Since your submittal cannot be processed until it is complete, you should follow the guidelines in this chapter to ensure your submittal is complete. When the package is complete, you must submit it to your regional office.

What items do I include in my request for straight delegation?

You should include the following items in your complete request for straight delegation:

1. A cover letter explaining your goal in this submittal
2. A written finding by the State Attorney General (or General Counsel for local or tribal agencies) that you have the following authorities:
 - Enforcement authorities that meet the requirements of 40 CFR 70.11
 - Authority to request compliance information
 - Authority to inspect sources and records
 - Retained enforcement authority if you have delegated authorities to a local agency, unless that agency has authorities that meet the criteria of section 70.11

OR

 - Confirmation of interim or final Title V program approval.
3. A copy of the State statute, regulation, or requirement that grants you authority to implement and enforce the rule, program, or requirement upon approval

4. A demonstration that you have adequate resources to implement and enforce the rule, program or requirement upon approval, including the following items:
 - A description of the scope, structure, coverage, and processes of your agency's program
 - A description of the organization and structure of your agency
 - A description of your capacity to carry out the State program, including the number, occupation and general duties of employees.
5. An implementation schedule for the rule, program or requirement after approval
6. A plan to assure compliance by all subject sources, including a description of your compliance and enforcement program and inspection strategy
7. A completeness checklist.

What items do I include in my request for approval of an alternative rule, program, or requirement?

You should include the following items in your complete request for approval of an alternative rule, program, or requirement:

1. A cover letter explaining your goal in this submittal
2. Copies of the alternative rules or requirements you are seeking approval to implement and enforce, and copies of any other rules your alternative rule references or that apply to this industry
3. Copies of any other rules your alternative rule references or other rules that apply to this industry
4. Tabular, line-by-line comparison of the alternative rule, emission standard, or requirement to the corresponding Federal rule (an example equivalency demonstration is provided in Table 3)
5. Worksheet showing any calculations and assumptions used to determine equivalency
6. Narrative description of the analysis, including brief explanations of equivalency for provisions that may not be clearly as stringent
7. A completeness checklist
8. Confirmation of straight delegation, or the items required for straight delegation.

What information should my cover letter contain?

We have provided a sample cover letter requesting approval of an alternative rule, program, or requirement. A similar letter should be used in a request for straight delegation. You may use this sample letter in your request, replacing the information in bold and in parentheses, the information in bold italics, which provides instructions, and other information as appropriate.

Sample cover letter

(Date)
Regional Administrator or Regional Air Division Director United States Environmental Protection Agency Region (Add Region Number) (Street) (City, State, Zip)
Dear (Regional Administrator or Air Division Director) :
The (S/L/T name) submits the enclosed application for delegation to implement and enforce the (S/L/T alternative rule, emission standard, or requirement name) in lieu of the Federal Maximum Achievable Control Technology Standards (MACT standard) for (type of production/operation) . We submit the application pursuant to the provisions in the Code of Federal Regulations (CFR), Title 40, part (63 or 61) , subpart E, on behalf of the (State or Districts(s)) that will implement and enforce the (S/L/T regulation name) . <i>Include the following sentence if you have not already received straight delegation:</i> In addition, we request approval of (State or District(s)) legal authority and resources to implement and enforce all section 112 programs and rules.
We request delegation to substitute the (S/L/T regulation name) for those provisions of the MACT standard that apply to (applicable NESHAP) . We are submitting this application on behalf of the (State or District(s)) that are/will be implementing and enforcing (S/L/T rule) . (Add citation that allows S/L/T agency to implement and enforce the S/L/T rule) allow the (State or District(s)) to directly implement and enforce (general S/L/T rules name) and (State of District(s)) has approved.
<i>Use this paragraph if you have not already received straight delegation.</i> We are requesting a one time approval of (State or District name) 's legal authority and resources for this and all subsequent applications to implement and enforce any section 112 program or rule. The information regarding the adequacy of (State or District name) 's legal authority and resources to implement and enforce a rule or program will not vary for this and subsequent

approval applications. Therefore, there is no need to resubmit this information for subsequent section 112 applications. If changes occur in the future regarding the adequacy of **(State of District name)**'s legal authority and resources to implement and enforce section 112 rules, we will modify our applications to reflect these changes.

For your review, the equivalency demonstration table and supporting narrative are enclosed. The equivalency demonstration table generally follows the format identified in the U.S. EPA's 40 CFR 63, subpart E Guidance Document.

Again, we appreciate the efforts that you and your staff have taken to address and resolve issues as they have occurred. If you have any questions, please call me at **(primary contact's telephone number)** or have you staff contact **(staff contact's name)** at **(staff contact's telephone number)**.

Sincerely,
(Primary Contact)
(Primary Contact Position)

What information do I include on my Completeness Checklist?

The Completeness Checklist should document all the information included in your package. The sample Completeness Checklist shown below includes all the required information for a request for approval of an alternative rule, program, or requirement. A similar checklist including only the administrative criteria should be used for a request for straight delegation. Any additional information you include in your package should also be added to this checklist.

Example Completeness Checklist for Equivalency Demonstration Packages

Administrative Criteria

- _____ Cover letter
- _____ Completeness Checklist
- _____ Either a copy of the notice of straight delegation approval **OR** all of the following:
 - _____ Written finding by the Attorney General
 - _____ Copies of State Statutes granting authority to implement and enforce alternative rule
 - _____ Demonstration of adequate resources to implement and enforce all aspects of rule
 - _____ Schedule of expeditious implementation
 - _____ Plan assuring expeditious compliance
 - _____ Adequate legal authority to assure compliance with rule or program

Equivalency Demonstration

- _____ Complete equivalency demonstration table
- _____ Narrative description of equivalency demonstration table
- _____ Work sheet showing any calculations
- _____ Copy of alternative rule
- _____ Copies of cited State rules