

United States
Environmental Protection
Agency

Office of Air Quality
Planning and Standards
Research Triangle Park, NC 27711

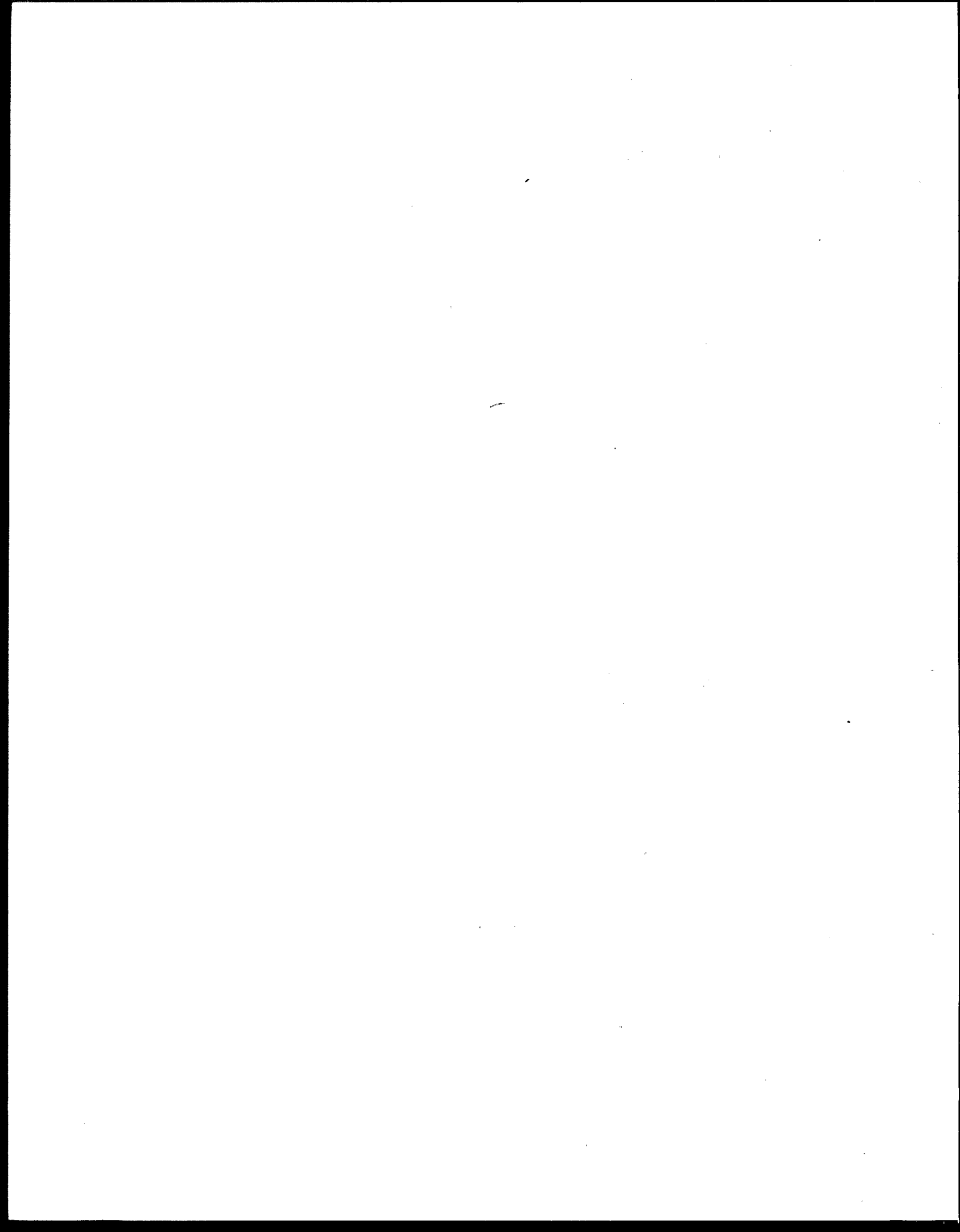
EPA-453/R-93-040
November 1993

Air



INTERIM ENABLING GUIDANCE FOR THE IMPLEMENTATION OF 40 CFR PART 63, SUBPART E





**ENABLING GUIDANCE FOR THE IMPLEMENTATION
OF
40 CFR PART 63, SUBPART E
VERSION I**

**U.S. Environmental Protection Agency
Office of Air Quality Planning and Standards
Emission Standards Division
Durham, North Carolina**

November 1993



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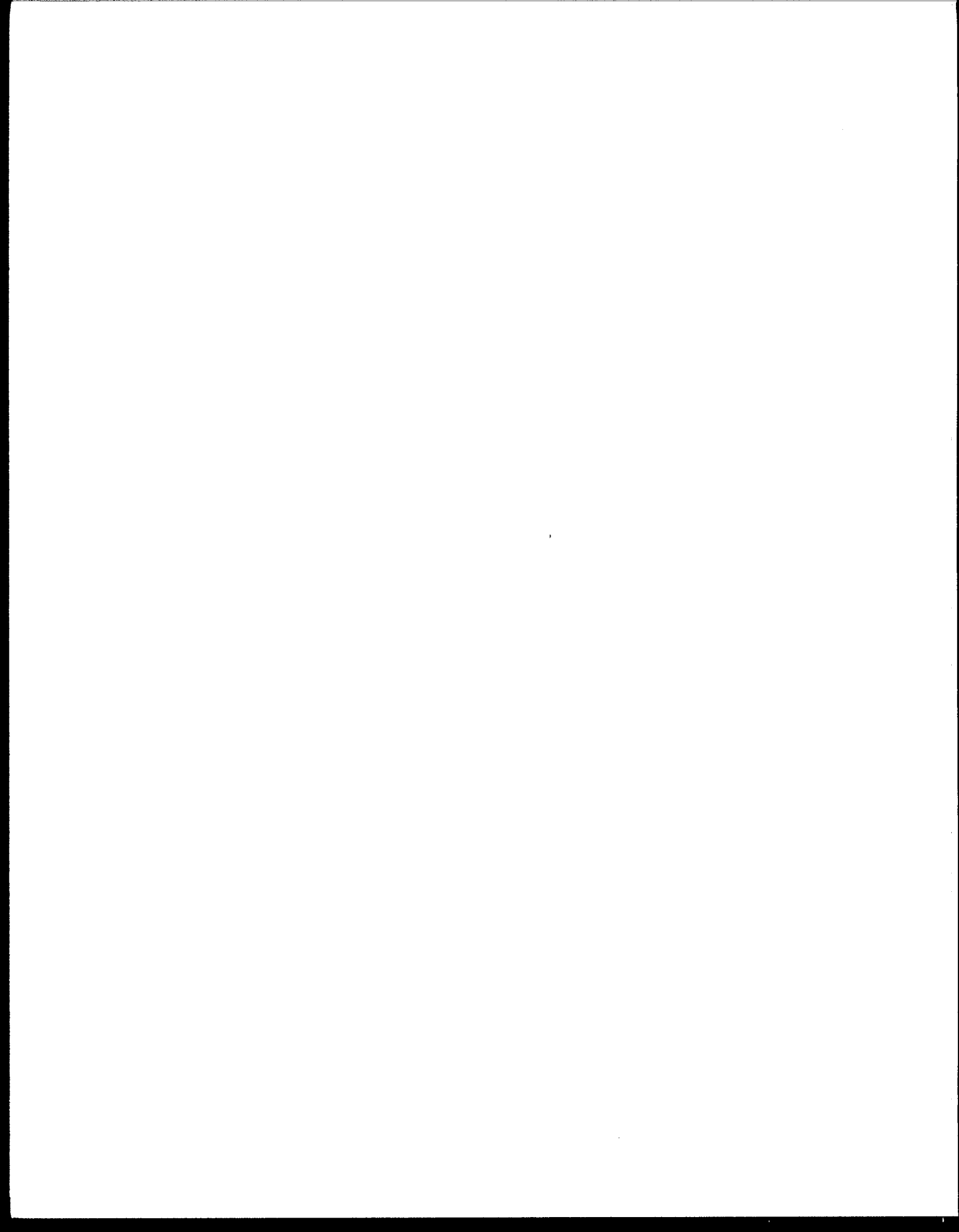
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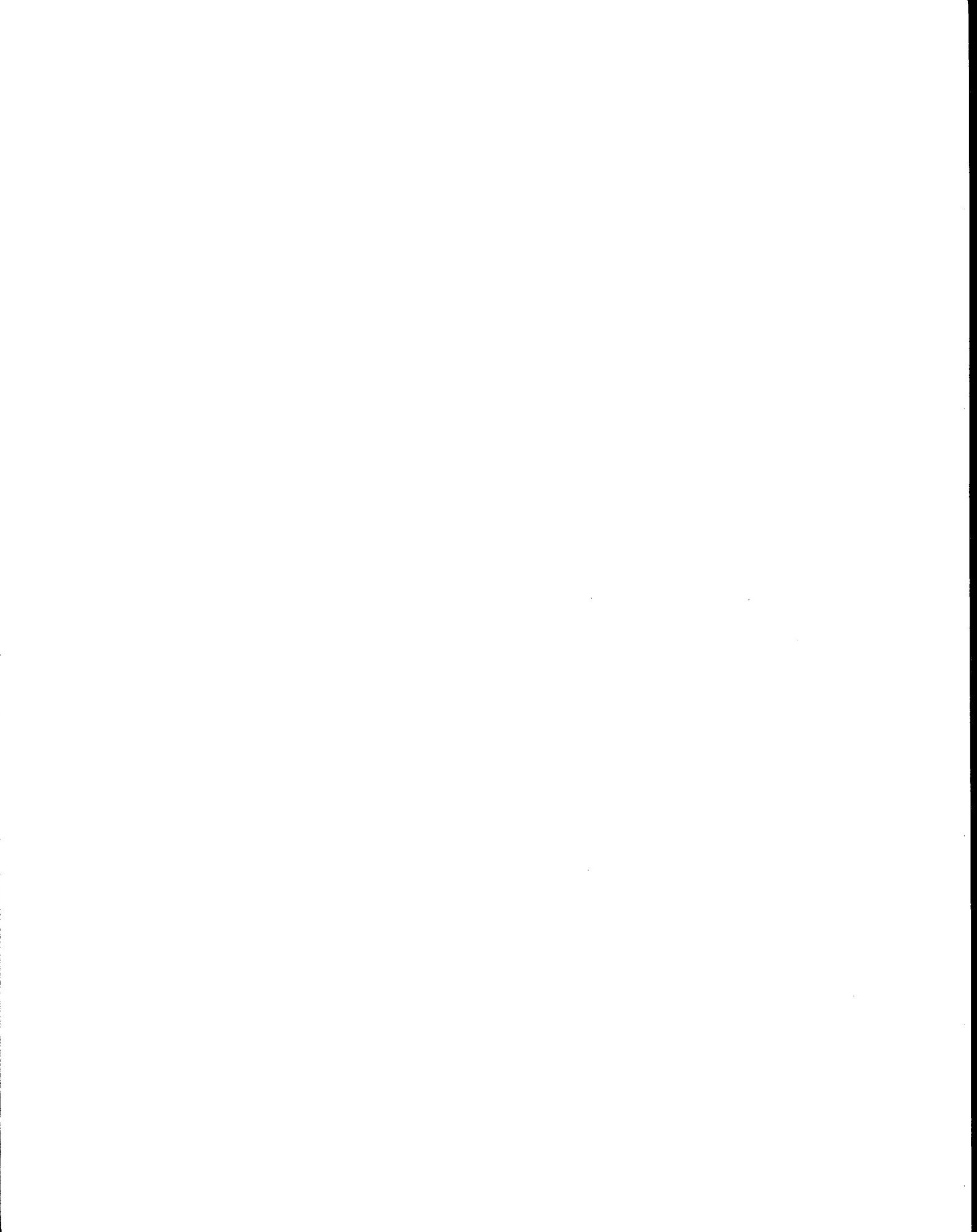
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PREFACE

This document is intended primarily for use by State and local agencies submitting Subpart E applications as well as the EPA Regional Offices who will be processing Subpart E applications. This first version should clarify typical questions regarding Subpart E implementation, and should help facilitate the submittal and approval process. As we learn more through the actual process, this document will be revised accordingly.

The content of this document is intended to supplement guidance provided in the rulemaking entitled, "Approval of State Programs and Delegation of Federal Authorities" (40 CFR Part 63, Subpart E) by providing additional information regarding how to implement the rulemaking. This rule will be referred to as Subpart E throughout this guidance document. It is assumed that the reader has read Subpart E in its entirety and has a general understanding of the rulemaking. It is hoped that this document becomes an evolving, "living document" that will experience continuous improvement through the fine tuning of the Subpart E approval process.

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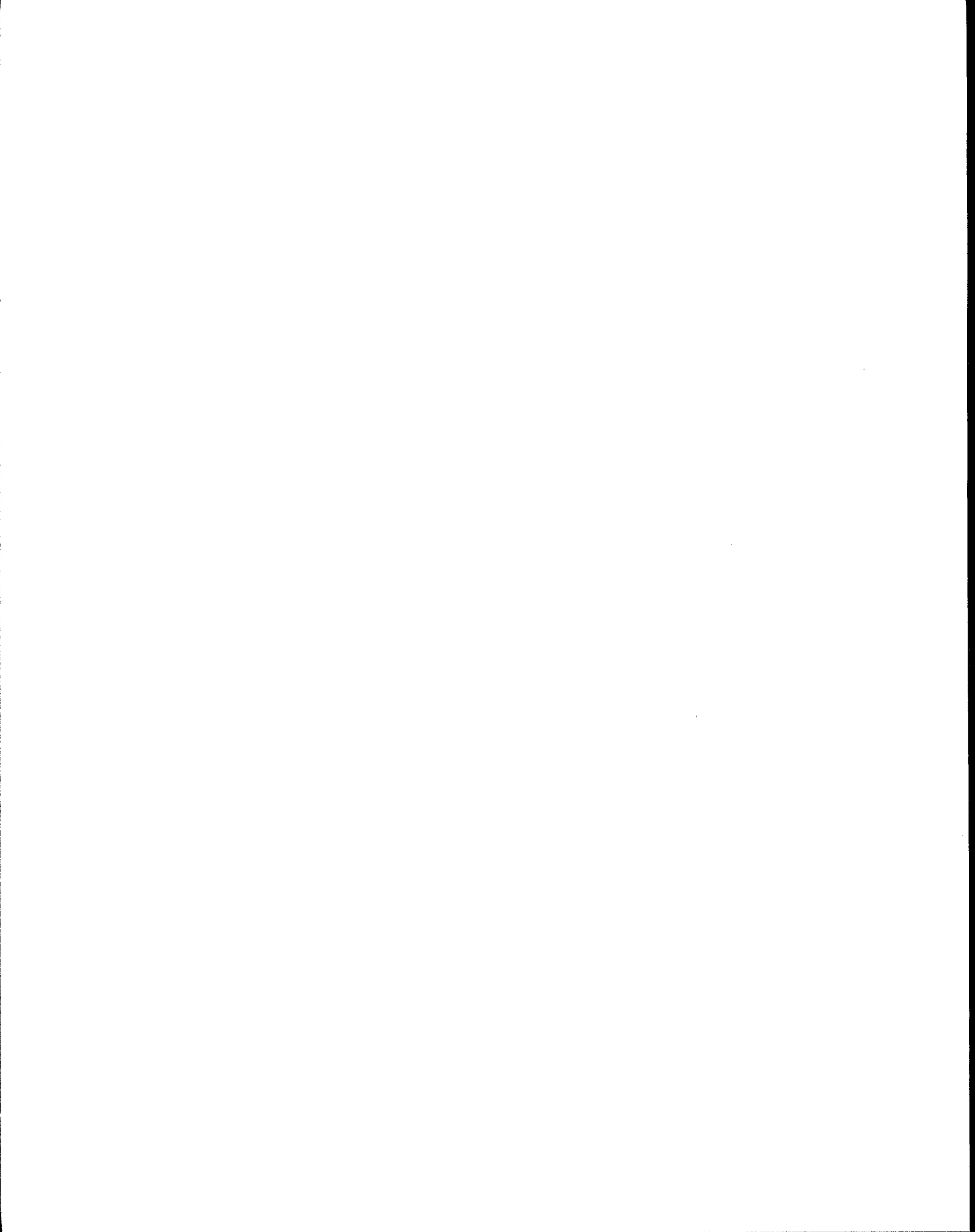
ACKNOWLEDGEMENT

This document was prepared by the U.S. Environmental Protection Agency, Emission Standards Division (ESD). This project was directed by Sheila Milliken and Tim Ream of the Pollutant Assessment Branch within ESD and included input from numerous State and local agency representatives including: Don Theiler (Wisconsin Department of Natural Resources), Robert Todd (Texas Air Control Board), Karen Olsen (Texas Air Control Board), Bliss Higgins (Louisiana Department of Environmental Quality), Henry Naour (Illinois Environmental Protection Agency), Robert Colby (Chattanooga-Hamilton Co., TN), Robert Fletcher (California Air Resources Board), Elizabeth Hendersen (State of Minnesota), Richard Valentinetti (State of Vermont), and William Becker (STAPPA/ALAPCO).

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DISCLAIMER

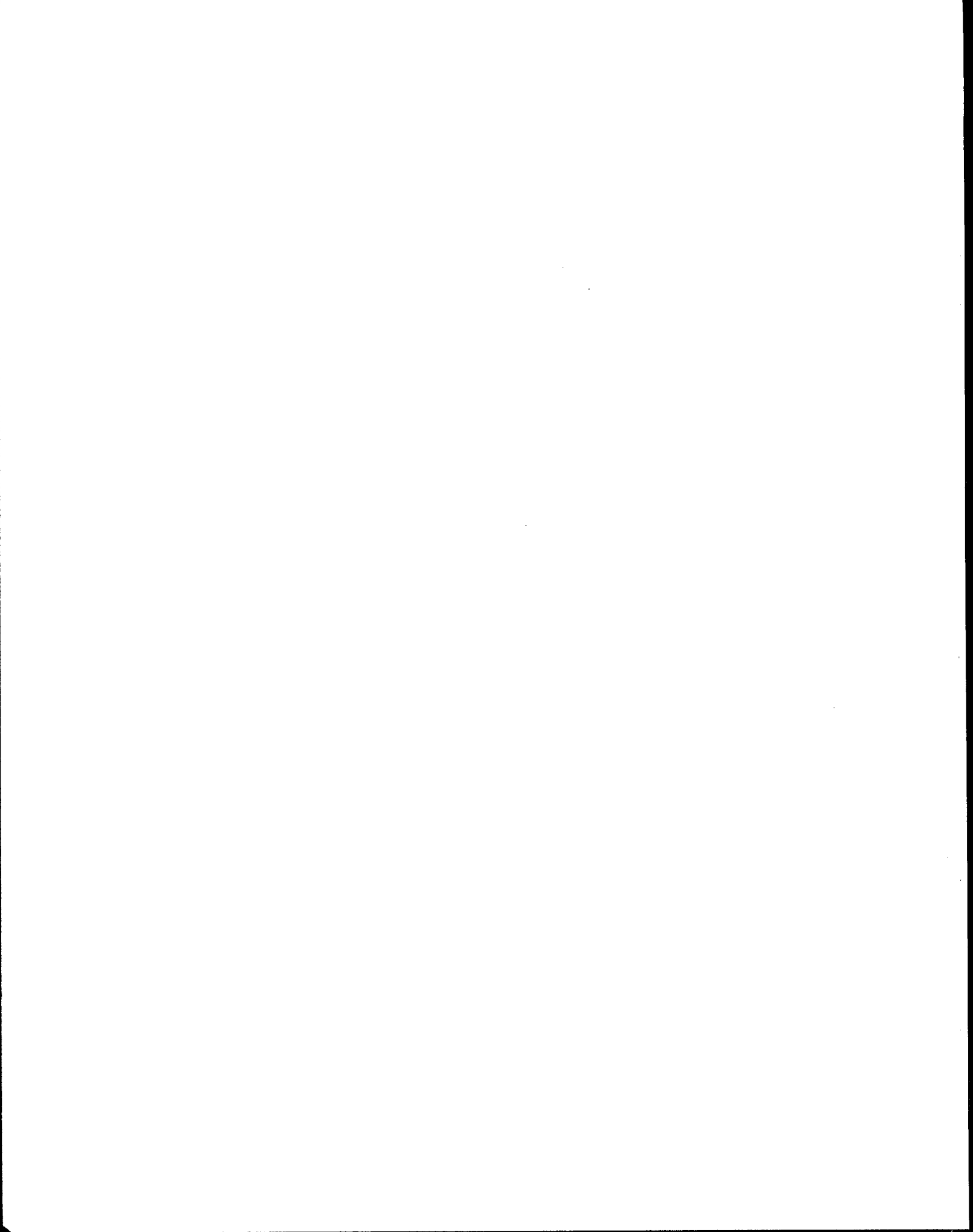
This document refers to several Federal regulations that have not been finalized. The reader should keep in mind that once these Federal rules are finalized some of the references in this document may not be accurate. Since this guidance document is intended to be a "living" document, the references will be updated to be consistent with the final Federal regulations in future versions of this guidance document.



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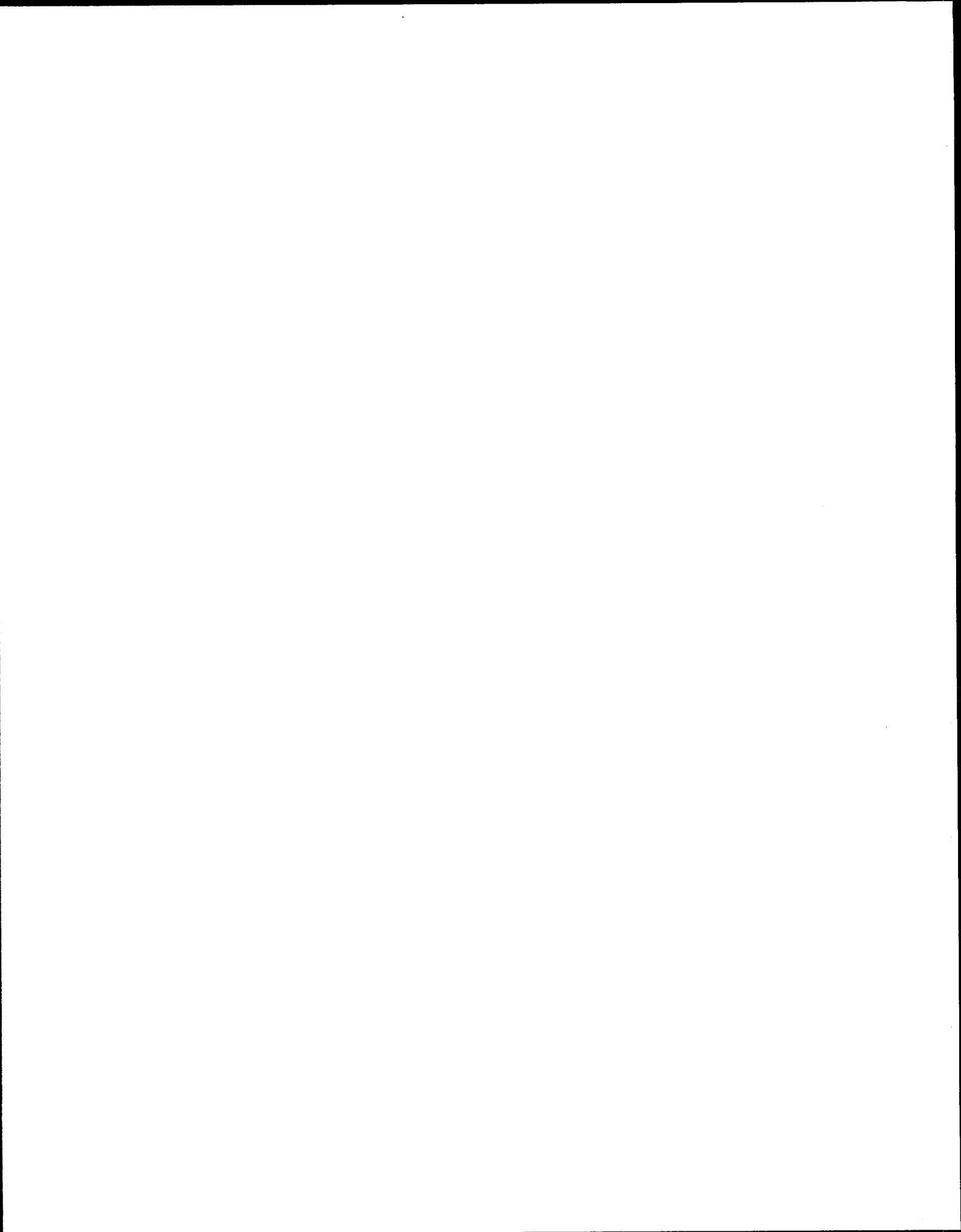
ACRONYMS

ARP	Accidental Release Prevention Program
The Act	Clean Air Act Amendments of 1990
CEPP	Office of Chemical Emergency Preparedness Prevention
CEMS	Continuous Emission Monitoring System
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
FR	Federal Register
GACT	Generally Available Control Technology
HAP	Hazardous Air Pollutant
HQ	EPA Headquarters Office
MACT	Maximum Achievable Control Technology
MOU	Memorandum of Understanding
NESHAP	National Emission Standards for Hazardous Air Pollutants
NSPS	New Source Performance Standard
NSR	New Source Review
OAP	Office of Atmospheric Programs
OAQPS	Office of Air Quality Planning and Standards
OE	Office of Enforcement
OGC	Office of General Counsel
OPPE	Office of Policy Planning and Evaluation
RA	Regional Administrator
RMP	Risk management plan



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RO EPA Regional Office
SIP State Implementation Plan
SSCD Stationary Source Compliance Division



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Evaluation Form

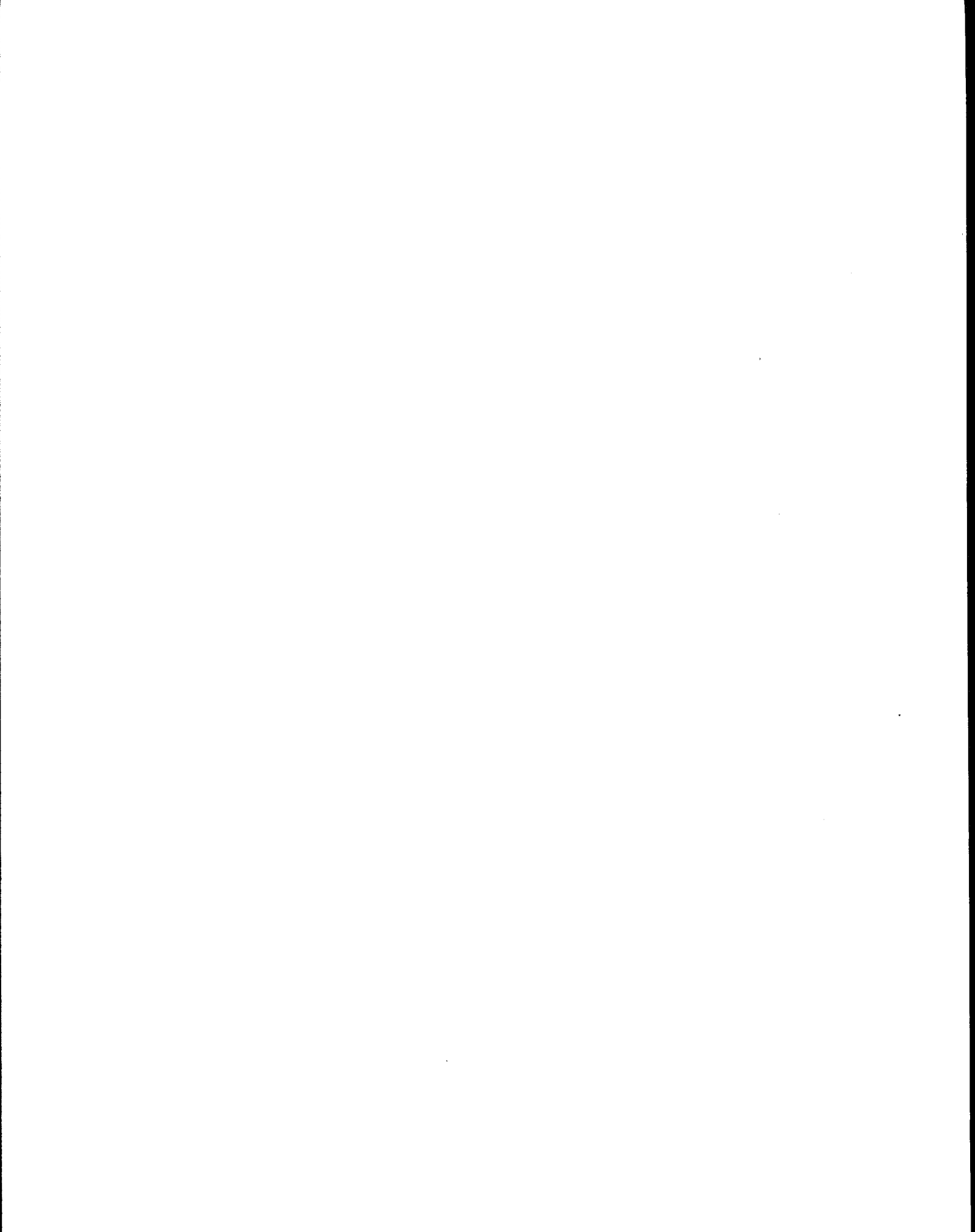
Please take a few minutes to provide us with your thoughts about this document. Comments will be taken into consideration in future versions of this document.

I. Please rate the usefulness of each chapter of the Enabling Guidance listed below. Use a 1 to 5 scale where 1 denotes not useful, and 5 denotes very useful.

- _____ Chapter 1 - Introduction - Why issue Enabling Guidance?
- _____ Chapter 2 - Overview of 40 CFR Part 63, Subpart E
- _____ Chapter 3 - Roles and Responsibilities
- _____ Chapter 4 - Common Elements of Subpart E Reviews
- _____ Chapter 5 - Adoption of Unchanged Federal Standards
- _____ Chapter 6 - §63.92 - Approval of Adjustments
- _____ Chapter 7 - §63.93 - Approval of State Rules or Authorities
- _____ Chapter 8 - §63.94 - Approval of a Generic State Program
- _____ Chapter 9 - §63.95 - Approval of a State Accidental Release Program
- _____ Chapter 10 - Periodic Review
- _____ Appendices
- _____ Tables
- _____ Figures

II. Please rate the Subpart E Enabling Guidance on the following. Use a 1 to 5 scale where 1 denotes not useful, and 5 denotes very useful.

- _____ Overall Usefulness
- _____ Organization
- _____ Content



Evaluation Form

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Thank you for your comments and suggestions regarding the usefulness of the Subpart E Enabling Guidance Document. If you have any questions regarding this document, please contact Sheila Q. Milliken at (919) 541-2625 or send correspondence to Pollutant Assessment Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711.



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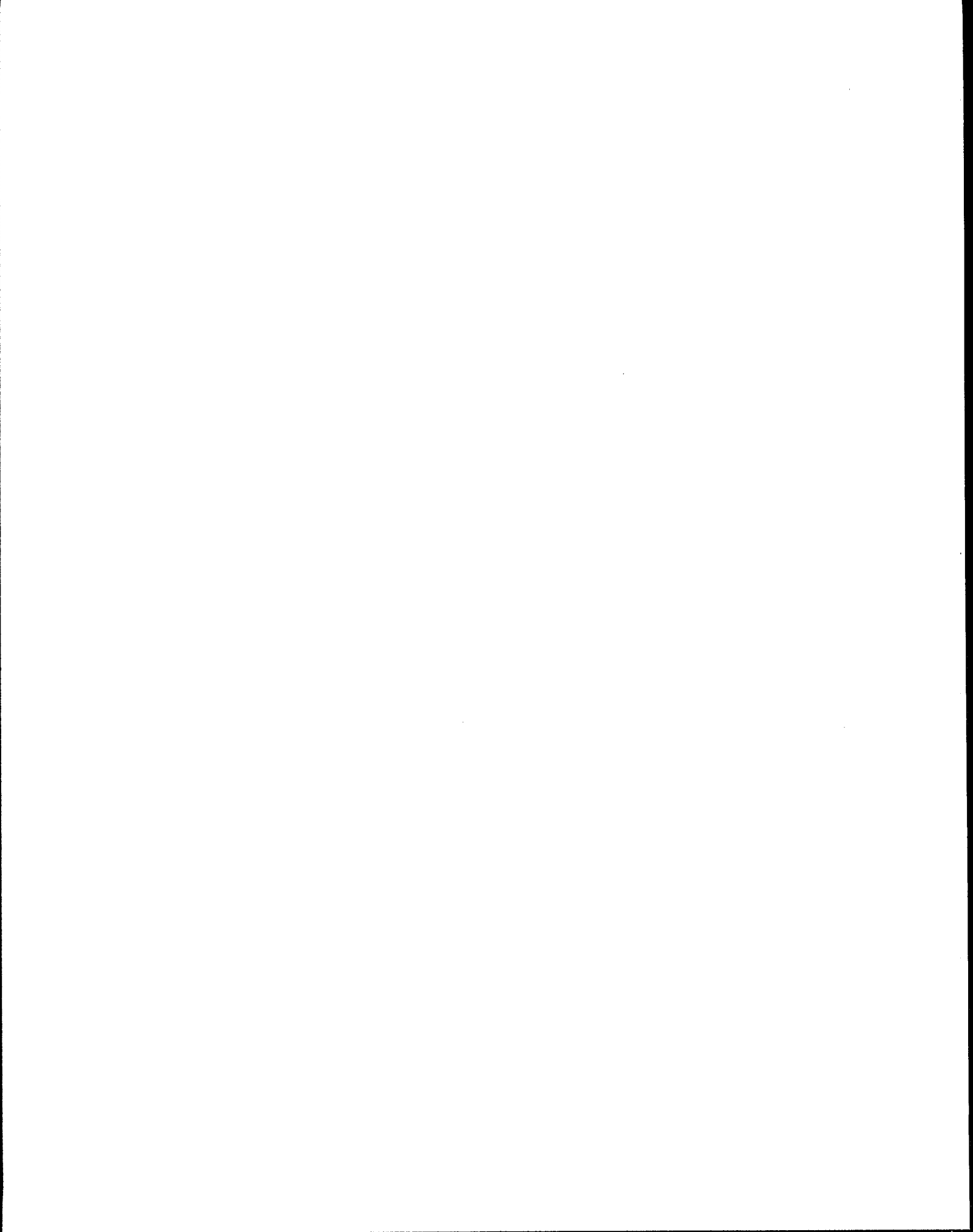
1.0 Introduction - Why issue Enabling Guidance?

1.1 History of NESHAP Delegations

Prior to 1990, the Clean Air Act (the Act) explicitly provided the opportunity for the States to implement and enforce the National Emission Standards for Hazardous Air Pollutants (NESHAP) program. The NESHAP program required the EPA to establish Federal emission standards for non-criteria pollutants which, in the judgment of the Administrator, cause or contribute to air pollution that may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness. The Act encouraged the delegation of the NESHAP program to the States. Section 112(d)(1), which contained the section 112 authority for the EPA to delegate NESHAPs to the State, provided that "each State may develop and submit to the Administrator a procedure for implementation and enforcement emission standards for hazardous air pollutants for stationary sources located in such State. If the Administrator finds the State procedure is adequate, he/she shall delegate to such State any authority he/she has under this Act to implement and enforce such standards."

As can be seen from the language of section 112(d)(1), prior to the 1990 Clean Air Act Amendments (the Act) very few conditions were specified on how to transfer the primary authority for implementing the NESHAP program from the EPA to the States. To help clarify the delegation process, the 1983 "Good Practice Manual for Delegation of NESHAPs and NSPS" was developed. This guidance document established the precedent for flexibility in the approval process of delegation, since there always existed an unambiguous, enforceable Federal emission regulation that is both legally binding on a source and ultimately enforceable by the EPA.

This transfer of authority could include an entire program, individual standards, or portions of individual standards. The criteria used by the EPA Regional Office in determining whether to transfer the NESHAP program to the State was flexible. The major requirement was that the State affirm its authority and capability to implement and enforce the programs and show that they are able to do so both legally and programmatically.



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The 1983 "Good Practice Manual for Delegation of NESHAPs and NSPS" encouraged State agencies to accept full delegation of all aspects of the implementation and enforcement of NESHAPs, but recognized that there were situations where States were either unwilling or unable to assume all responsibility for implementing NESHAPs. Resource-oriented problems were noted as a main reason for not accepting delegation.

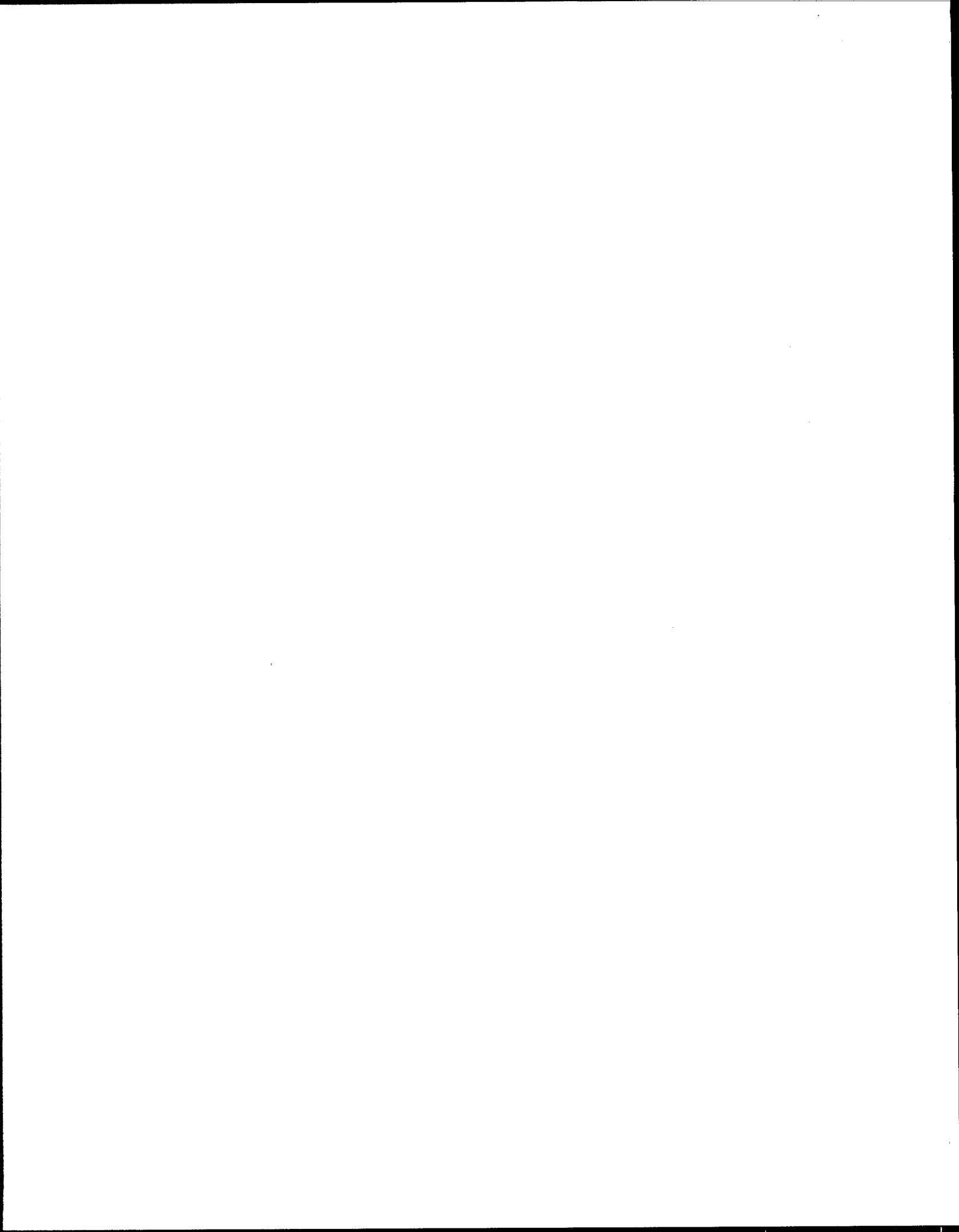
1.2 Delegation under the Clean Air Act Amendments of 1990

The Clean Air Act Amendments of 1990 established many new titles to the Clean Air Act, including the title V Operating Permit Program. Title V requires States to develop and submit to the EPA, a program for issuing operating permits to all major sources including major sources of hazardous air pollutants listed in section 112 of the Act. Title V also requires that sufficient fees be imposed on sources to cover both the direct and indirect costs of the operating permit program. In order to receive approval of a Part 70 operating permit program, a State must assure compliance by all sources required to have a part 70 operating permit with each applicable requirement of the Act, including all section 112 requirements for part 70 sources. Therefore, instead of encouraging States to assume delegation, title V establishes a funding mechanism for the States and compels them to assure compliance with each applicable requirement of the Act for sources subject to permitting.

Additionally, the amendments added new section 112(1), which provides the mechanism for delegating section 112 standards and programs to the States. Since the language in section 112(1) replaces the delegation language formerly found in section 112(d)(1), section 112(1) provides the exclusive pathway for delegation of State air toxics programs.

Many States have developed or are developing air toxics programs under State authorities. The Congress was very much aware of the States' air toxics programs in the course of developing the Act. These State programs, developed to address specific State needs, may differ widely from Federal rules being developed by the EPA under section 112 of the Act.

Existing State programs may result in emission reductions that are more stringent than, equivalent to, or less stringent than emission reductions resulting from corresponding Federal standards. From discussions with States and other interested parties concerning approval of State programs under section



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112(1), it became clear that some States want to continue to implement and enforce the requirements of their own air toxics programs even though new section 112 requirements will be promulgated.

Thus, section 112(1) allows for partial or complete delegation of the Administrator's authorities and responsibilities to implement and enforce standards as long as the State regulation is no less stringent than the otherwise applicable Federal rule. Unlike the former delegation language under section 112(d)(1), section 112(1) explicitly allows approval for State programs that are different than the Federal program as long as the State standard is at least as stringent.

However, section 112(1) also clearly sets out prescriptive requirements for approval of State air toxics programs and delegation of standards under notice and comment rulemaking that were not specified in the former section 112(d)(1) delegation language. Section 112(1)(5) requires States to assure:

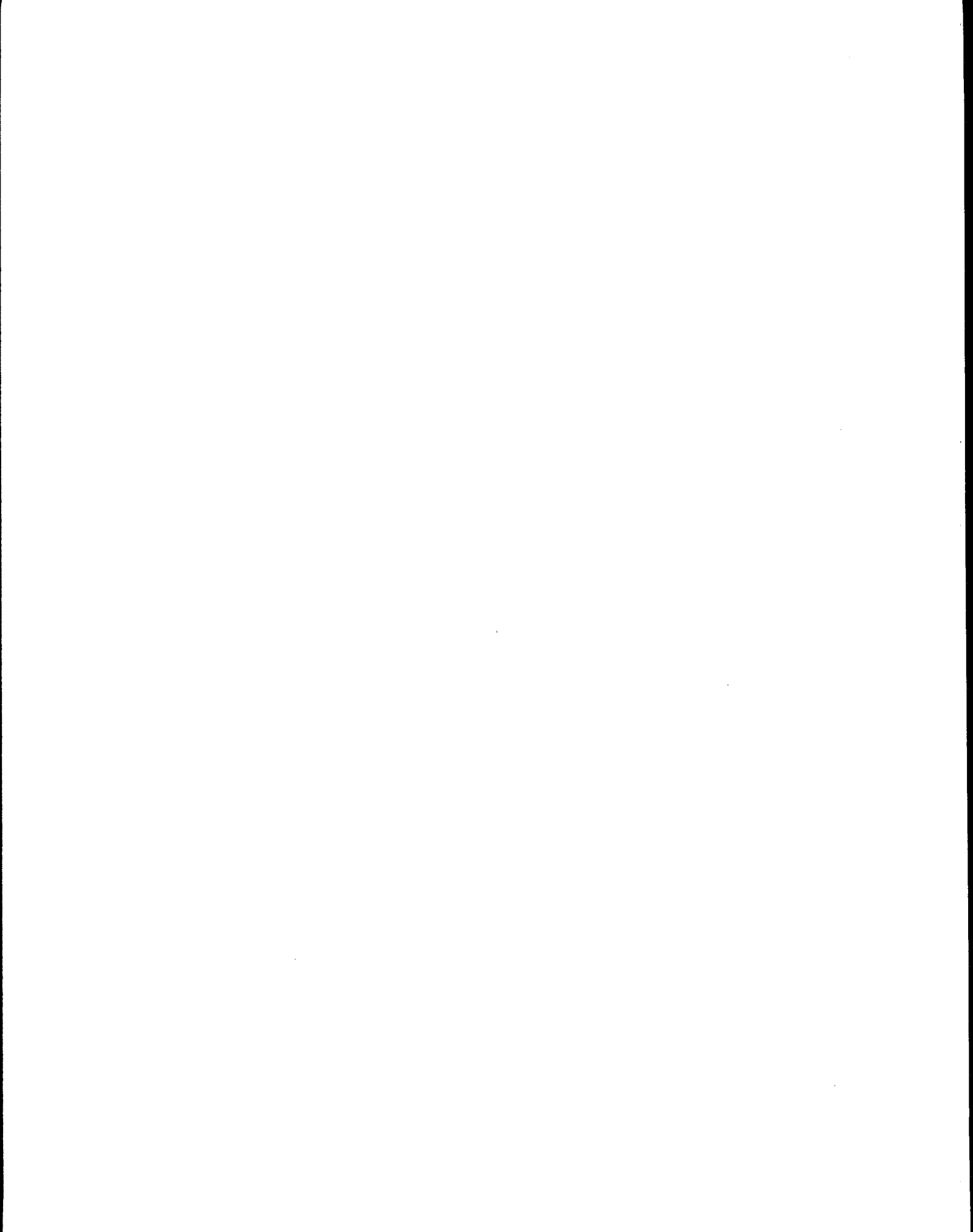
- (1) compliance by all applicable sources within the State;
- (2) adequate resources and authorities to implement the program;
- (3) expeditious compliance of affected sources; and (4) that the State program is in compliance with guidance issued by the Administrator pursuant to section 112(1)(2).

Therefore, additional guidance was published in a rulemaking entitled, "Approval of State Programs and Delegation of Federal Authorities" (40 CFR Part 63, Subpart E). This rulemaking establishes guidance for EPA approval of State air toxics rules (i.e., promulgated regulations) or programs (i.e., any collection of statutory, regulatory or policy requirements) that are at least as stringent as otherwise applicable Federal section 112 rules.

1.3 Scope and Content of this Document

This manual is divided into the following chapters:

This chapter provides an introduction. Chapter 2 provides an overview of the Subpart E rule requirements including a review of the various options a State can choose when submitting a request for approval under Subpart E. Chapter 3 outlines the EPA's expectations on the roles and responsibilities of the key players in the process - the State/local Agency, the EPA Regional office and the EPA Headquarters office. Chapter 4 describes the procedures and approval criteria under section 63.91 that are



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common for all Subpart E submittals. Chapter 5 discusses how to adopt a Federal section 112 rule or the Federal section 112 program without changes. Chapter 6 describes the procedures and approval criteria for approval of an adjustment to a Federal section 112 rule under section 63.92. Chapter 7 describes the procedures and approval criteria for approval of a State rule or State authorities under section 63.93 as well as further clarification of the term "detailed demonstration." Chapter 8 describes the procedures and approval criteria for approval of a generic State program under section 63.94 as well as an additional explanation of the term "form of the standard." Chapter 9 describes the procedures and approval criteria for a State submittal of its Accidental Release Prevention program under § 63.95. Chapter 10 examines the key points to keep in mind regarding periodic review.

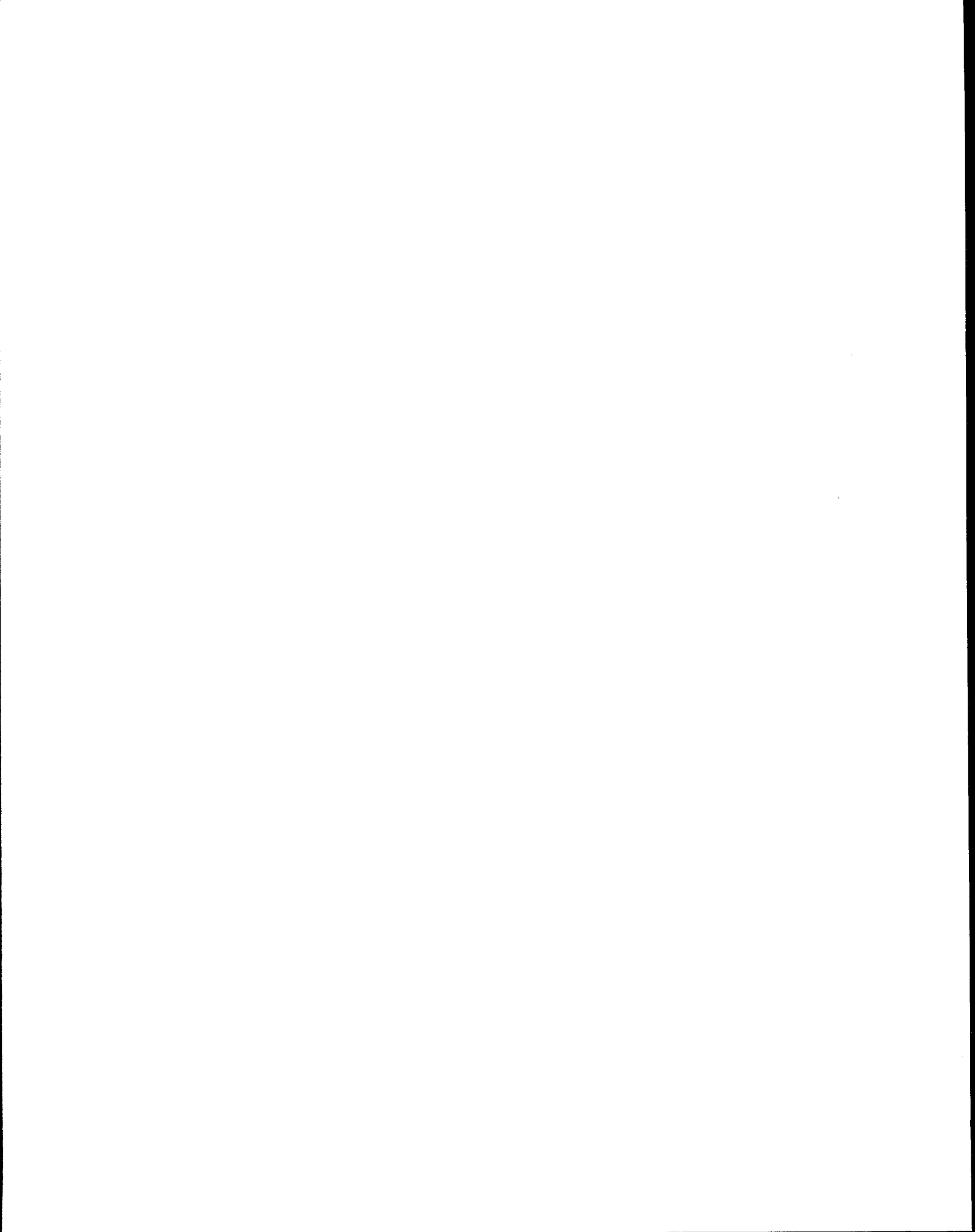
1.4 Intended use of this Document

This document is intended to supplement guidance provided in the Subpart E rule. It is hoped that this document will provide insight on the development and review of Subpart E submittals. This document is not intended as a stand-alone guide to submitting a Subpart E approval and therefore, a general understanding of the subpart E rule is assumed.

In addition, this document is not intended to provide policy discussions with respect to the approval procedures in Subpart E and the alternatives that were considered. Readers interested in more background of this nature should consult the preamble to the final rule, scheduled for promulgation on November 15, 1993.

This document is also intended to provide guidance on the approval and delegation of a State rule or State authorities which address the following situations:

- (1) A State or local agency seeking to replace a Federal section 112 rule or program with a State or local rule that is as least as stringent.
- (2) A State or local agency seeking to adopt a Federal section 112 rule without changes.
- (3) A State or local agency seeking to adopt a Federal rule before the State has an approved part 70 program in place.



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- (4) A State or local agency seeking approval of a generic program that can be substituted for existing and future Federal emission standards.
- (5) Approval of State or local agency's section 112(r) accidental release prevention program.

Additional guidance specifically related to various section 112 provisions may also be developed as the air toxics regulations are finalized.

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2.0 Overview of 40 CFR Part 63, Subpart E

This chapter provides a general overview of the Subpart E rule. The three approval options for a State seeking delegation are introduced, and the approval process is described. More detailed information about approval options, including specific requirements for each option, are found in later chapters of this document. In addition, delegation of Federal section 112 rules without changes and specific requirements for Accidental Release Prevention programs are briefly discussed in this chapter as well as in later chapters.

2.1 Overview of Subpart E Approval Options

Three approval options are available for States seeking delegation and approval of State rules which differ from the Federal standard. These options are designed to accommodate varying levels of difference between State and Federal section 112 rules or programs, and to allow the review and delegation effort to be appropriate to the level of difference.

The first approval option is for approval of a State rule that adjusts a section 112 rule. The second option is for approval of a State rule or State authorities that substitute for a section 112 rule. The third option is for approval of a generic State program that substitutes for section 112 emission standards. This section introduces the three options, and highlights differences between them. Chapters later in this document are devoted to each of these options.

In addition, Subpart E provides for approval of State rules or programs to implement and enforce Federal section 112 rules without changes as promulgated by the EPA. Chapter 5 provides information regarding delegation of Federal section 112 rules without changes.

2.1.1 Adjusting a Federal section 112 rule

The rule adjustment option (section 63.92) allows approval of a State rule which is similar to, yet at least as stringent as, a Federal rule. It may be used for any of the allowable adjustments which result in State rules which are unequivocally no less stringent than the corresponding Federal rule. The list of allowable adjustments is found in Chapter 6. This option is designed to allow rapid approval of State rules which are unequivocally no less stringent. For this reason, the EPA does not anticipate performing prolonged or detailed analysis of these



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submittals. Although no Federal public comment period is expected to be necessary under this option, the State rule must have undergone adequate public notice and comment at the State level. In addition, if the State does not have an approved part 70 program or if this is the State's initial submittal under Subpart E, then the State will have to follow the procedural requirements under § 63.91 for Federal public notice and comment and a 180 day EPA approval/disapproval review period. If a State has a rule which differs from the Federal rule only in one or more of these allowable adjustments, it should use this option to expedite the review and approval process.

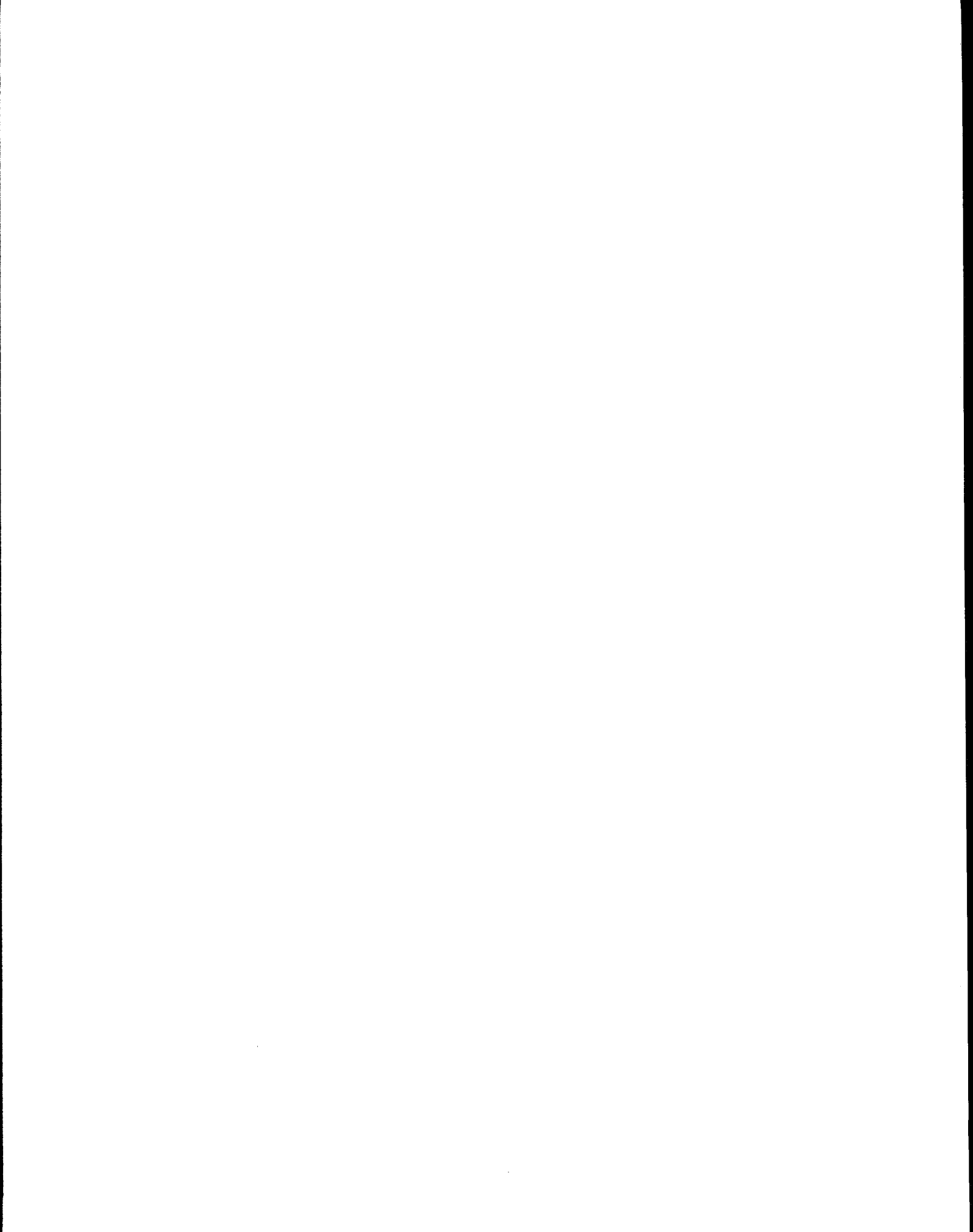
2.1.2 Substituting a State rule or authorities for a section 112 rule

This option (section 63.93) allows approval of a State rule (and in certain limited cases, a combination of State authorities for a particular source category) with a greater deviation from the applicable Federal rule than allowed under the rule adjustment option. This approval option may be used when a State seeks approval for a rule which differs significantly in structure from a Federal rule. The review and approval process for this option requires Federal public notice and comment, and thus, takes a longer time for approval. In addition, the EPA expects to perform more complicated and detailed analyses on rules which differ significantly from Federal rules. A State is required to make a detailed demonstration to the EPA under this approval option which is further described in Chapter 7.

This option offers approval for States with rules which would not be approvable under the rule adjustment option. If a State has a rule, for example, which was developed independently of the Federal rule and differs significantly from the Federal rule, it should use this option.

2.1.3 Substituting a generic State program for section 112 emission standards

The program substitution option (section 63.94) allows approval of a State program which will be implemented and enforced in place of specified existing and future Federal section 112 emission standards. Approval in this case is for the generic State program, and may substitute for some or all section 112 emission standards. Under this option, a State program may be approved in place of specific standards and requirements established under sections 112(d), (f), or (h). (Note: this



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option is not available for rules which are not classified as emission standards, such as the 112(g) rule for modifications.)

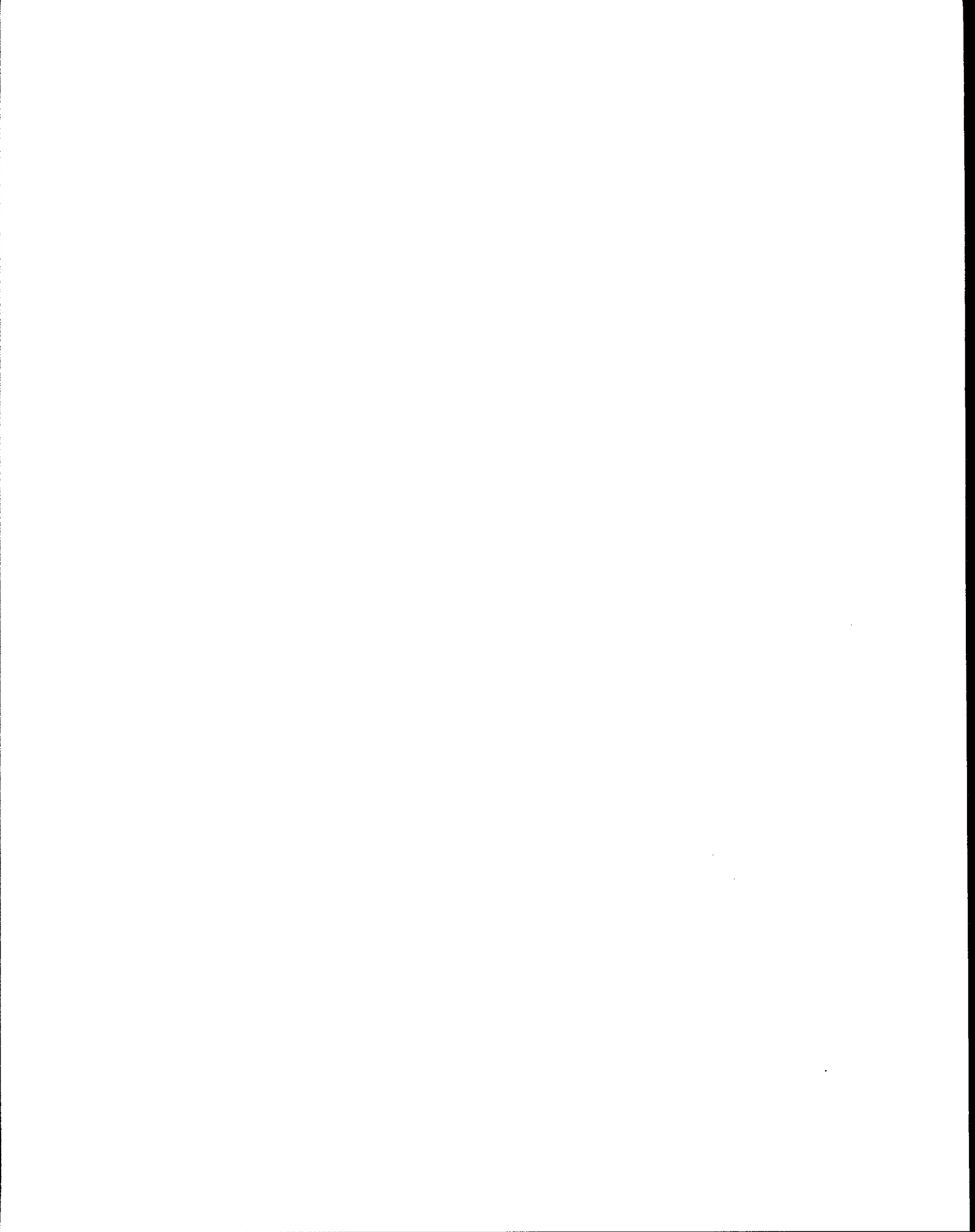
This option offers States with existing air toxics programs which differ significantly in methodology (e.g. risk-based programs) to receive upfront one-time approval for existing and future section 112 emissions standards, rather than to receive approval on a standard-by-standard basis. States must have part 70 program approval for this option. Under this option, a State must make a legally-binding commitment through its part 70 operating permit program, which ensures that the results of the State air toxics program will be at least as stringent as otherwise applicable Federal section 112 emissions standards. This commitment is described in detail in Chapter 8 of this document. If a State seeks approval of an existing program which differs significantly in methodology from the Federal program, it should use this option. Since this option relies on part 70 program approval, a State can not receive approval of its program under this option until the State has an approved part 70 program.

2.1.4 Additional Criteria for Approval of an accidental release prevention program under section 112(r)

A section 112(r) program also has additional criteria which apply. For approval of an Accidental Release Prevention program without changes to the Federal rule the requirements of section 63.91 and section 63.95 apply. For approval of State rules which differ from the Federal program the requirements of section 63.91, section 63.95 and either section 63.92 or section 63.93 must be met. The approval criteria is further described in Chapter 9 of this guidance document. For additional guidance on delegation procedures, States and Regions may also want to consult the draft document entitled "Guidance for the Development of State Accidental Release Prevention Program under 112(r) of the Clean Air Act."

2.2 Considerations in submitting a request for approval under subpart E

State or local agencies may elect to implement parts or all of the Federal section 112 program in ways different than the Federal program. If they choose to do so, they would need to follow the procedures described in Subpart E. The following examples illustrates some of those situations, which might make sense from a State or local perspective.



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Example 1. A State Already Covers the Same Sources

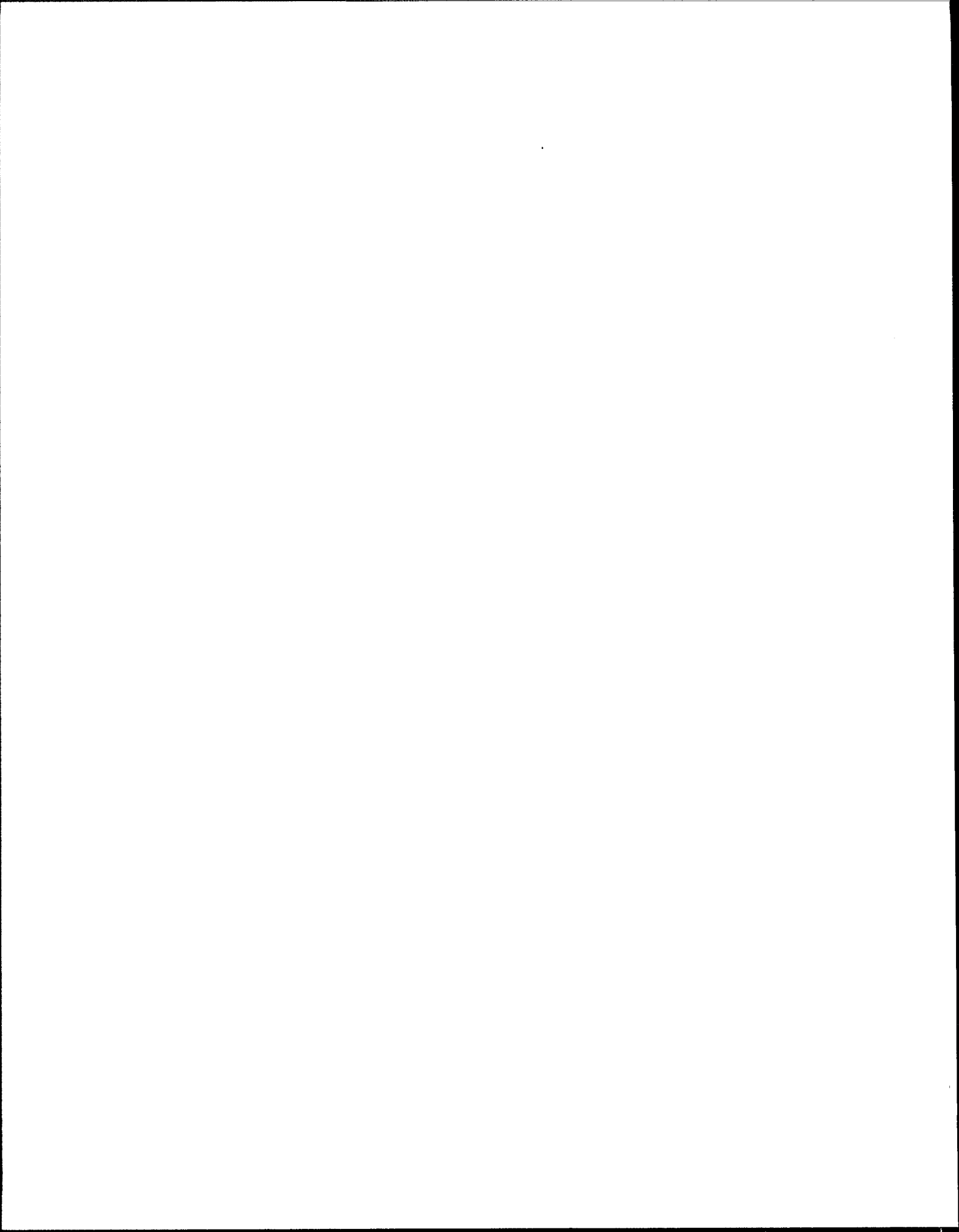
There may be States for which an existing State program has regulated the sources covered by the Federal rule. If the existing State program is at least as stringent as the Federal rule, the State may choose to use the Subpart E process to maintain that rule instead of switching over to a system of duplicative coverage and requirements.

Avoiding such a "dual regulation" situation has a number of advantages which will improve the efficiency of section 112 implementation. First, permits resulting from dual regulation are necessarily longer and more expensive to develop and approve due to the need to specify separate sets of operating conditions derived from both Federal and State regulations. Second, compliance and enforcement costs may be greater because of two sets of conditions that must be enforced. Third, and perhaps most critically, permit conditions that result from dual regulation may not always be complementary, and in some instances, may even be fundamentally inconsistent in instances where the Federal and State programs may require measures that are technically incompatible. In this latter instance, it may be physically difficult or impossible for a source to employ simultaneously the controls and/or work practices mandated by both Federal and State regulations.

The Subpart E process can be used to preserve requirements of generic State programs (for example, risk-based programs that can be demonstrated to be at least as stringent as the otherwise applicable Federal section 112 standard) using the process and criteria in section 63.94. The process can also be used to preserve industry-specific rules using the procedures of section 63.93.

Example 2. Local Considerations Suggest Special Needs

There may be situations where a State or local agency can identify alternatives that are warranted by unique features of a particular case, especially when the State or local agency has gathered additional data above and beyond that gathered in the national standard-setting process. For example, the State may be able to identify controls for a given source that could achieve the same emission reduction at less cost. In addition, the nature of public exposure to emissions at the plant may suggest to the State or local agency that additional control measures should be considered.



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In addition, a State rule that has required an innovative pollution prevention strategy for a source category which achieves emission reductions that are equal or greater at each affected source and does not trade across pollutants (unless allowed in the Federal rule) could be submitted for approval under section 63.93 of subpart E.

Subpart E can be used by States to ensure that, when a State needs to develop alternative requirements to address those special needs, the affected source will not have to be subject to dual regulation. In this way, the approved rule or program is seen as explicitly including both the Federal rule, and where necessary based upon local considerations, State and local requirements.

Example 3. Advances in Technology

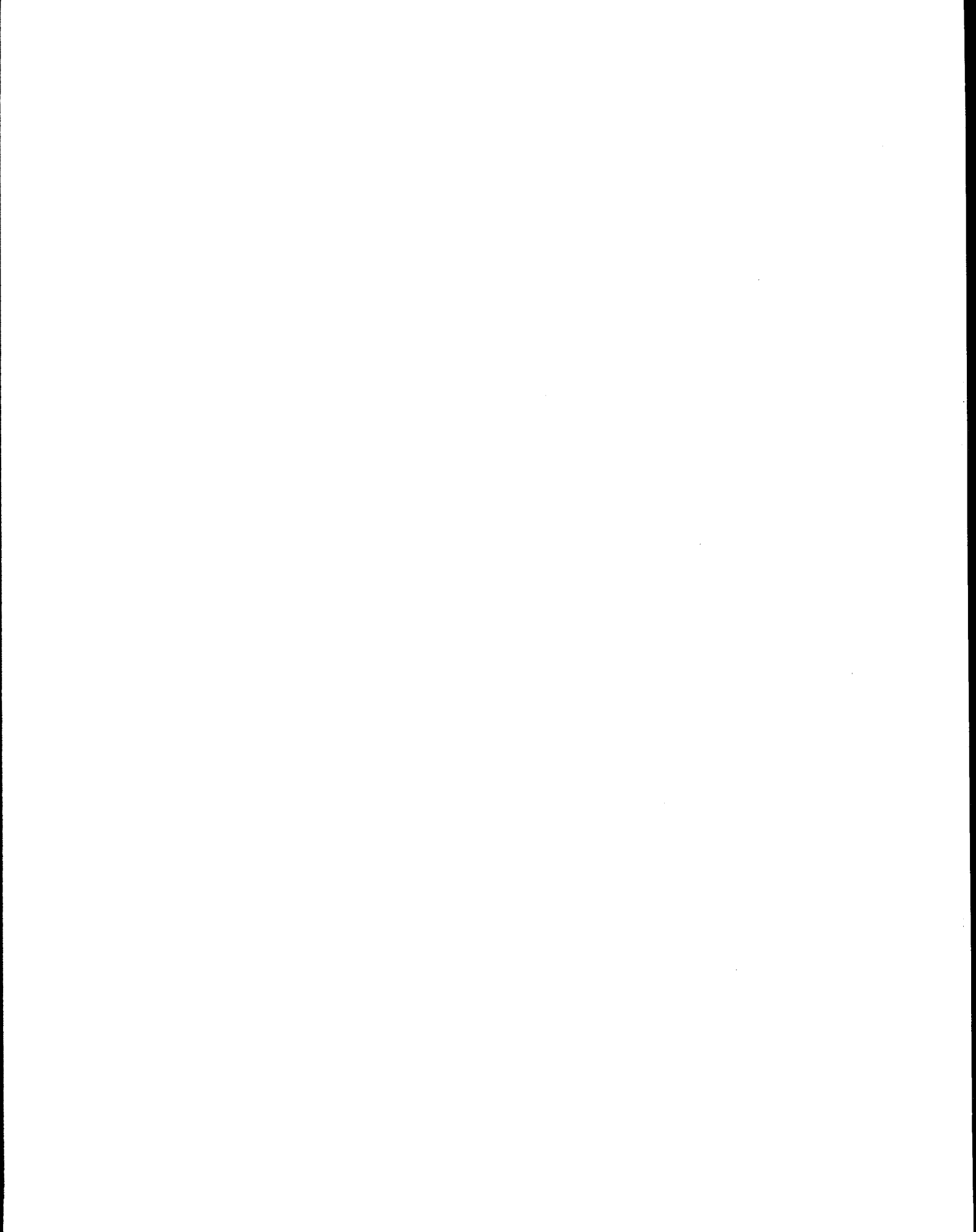
A third area for which Subpart E could be useful is in providing the State with an opportunity to consider advances in technology that have occurred subsequent to the Federal rule, but before a national regulation has been finalized to reflect those changes.

Example 4. A State wants to Adopt the Federal Program without Changes

Another area for which Subpart E could be useful is to establish a mechanism for future delegation of Federal section 112 rules without changes even before the part 70 operating permit program is in place for a State. Once a State has been granted an approved program under section 63.91 of Subpart E for delegation of Federal section 112 rules as promulgated, a State may utilize the mechanism established in the section 63.91 Subpart E submittal for section 112 standards as promulgated before an approved part 70 program is established, for deferred area sources and for existing NESHAPs that have not been delegated to the State.

2.3 The Subpart E Approval Process

The Subpart E approval process is initiated when a State applies for delegation under any of the three approval options described above or when a State applies for delegation of Federal section 112 rules without changes. A sample application is included in Appendix E of this document. Typically, this application is submitted with a letter from the Governor of the State or the Governor's designee which formally announces the



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request for approval. A sample Governor's letter is included in Appendix F. Regardless of which approval option is chosen, all States must fill out the General Information (Part 1) and the Criteria Common to All Options (Part 2) of the application. Next, the State completes whichever part of the application corresponds to the approval option the State has chosen. Part 3 is for the rule adjustment option; Part 4 is for the rule or authority substitution option; and Part 5 is for the program substitution option. In addition, the State must also complete Part 6 of the application if the State is seeking delegation of a rule which replaces section 112(r), the Accidental Release Prevention Program or if the State wants to adopt section 112(r) without changes. Note that the application will not provide enough space for detailed responses. It is intended to serve as a guideline of what responses are necessary and to provide the Region with the location of the State regulations and/or demonstrations that satisfy the approval criteria.

One of the criteria common to all approval options is the Attorney General's finding of adequate legal authority. This must be a written finding from the State Attorney General that the State has the necessary legal authority to implement and enforce the State rule or program upon approval, and to assure compliance with each applicable section 112 rule. This finding must be obtained from the Attorney General's office and included with the rest of the application submitted by the State agency. An example Attorney General's certification is included in Appendix F.

Upon receipt of the completed submittal by the Regional Office, review begins. Review differs depending on the approval option selected by the State. Figure 1 shows a flow diagram of the overall approval process, and Figure 2 shows timelines for review and approval. In addition, if the State does not have an approved part 70 permit program before the State makes its initial request for approval under Subpart E then the State must follow the procedural requirements under section 63.91 of Subpart E for the initial request regardless of which approval option the State is utilizing. The procedural requirements under 63.91 are described in Chapter 4 and include a Federal public comment period and a 180-day EPA review period.

For all of the approval options, the Regional Office has 30 days from receipt of the submittal to finish a completeness review. After the 30-day completeness review, the Regional Office notifies the State with the results of the completeness review. Sample text for this letter is included in Appendix F.

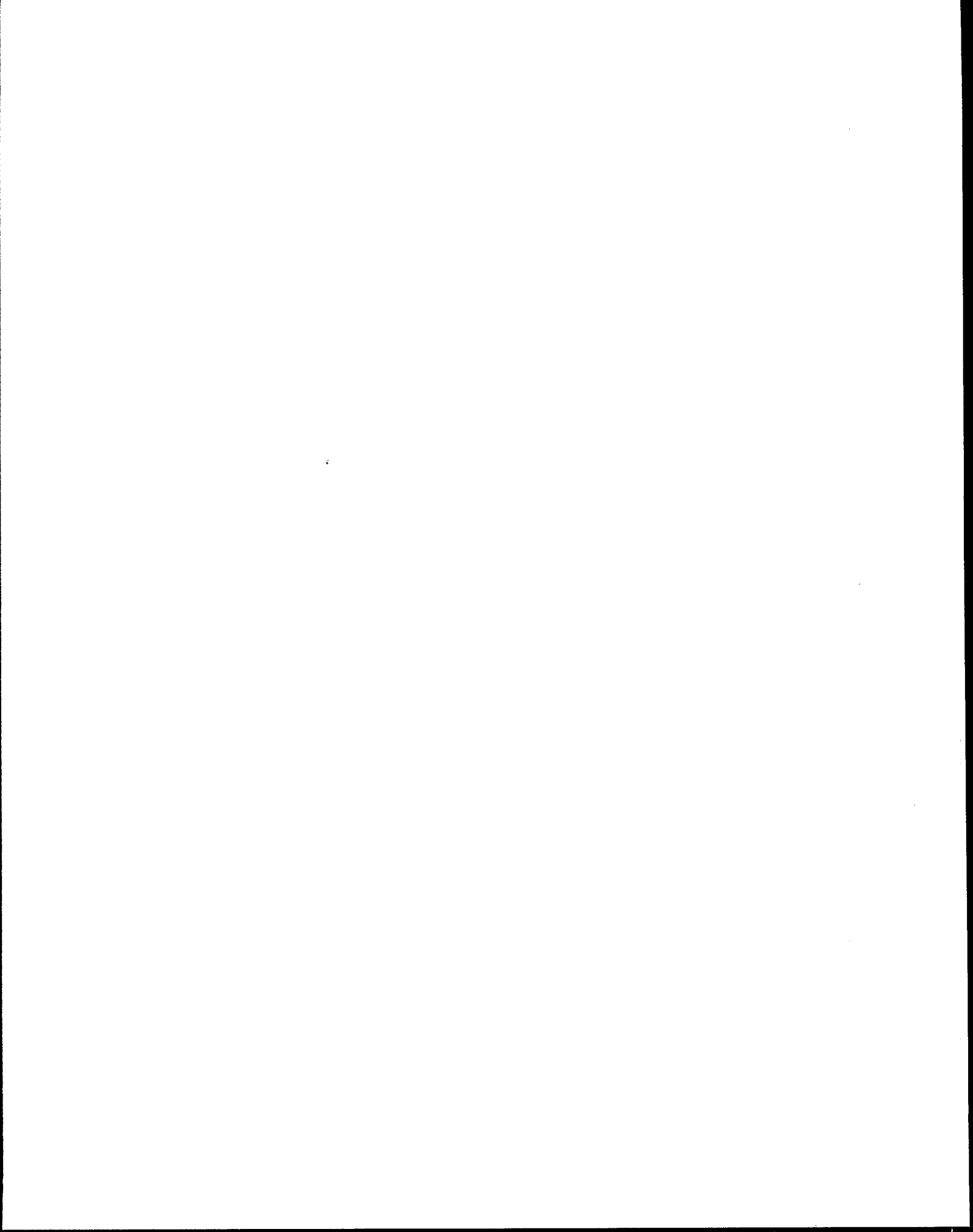
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If the submittal was found incomplete, the Regional Office lists the reasons for finding the submittal incomplete. For an incomplete submittal, the process ends here, but the State may address these problems and resubmit a revised rule or program for approval. If the submittal passes the completeness review, the EPA will start with the 180-day approval process.

Since the rule adjustment (section 63.92) option does not usually have an additional public comment period, the EPA will make its final approval or disapproval within 90 days of determining that a State's submittal is complete. However, if the State does not have an approved part 70 program and if this is the State's initial submittal under Subpart E, then the State will have to go through a Federal public comment period and a 180-day EPA review period. The EPA must send a letter informing the State of the results of its review, and must publish a Federal Register notice announcing approval or disapproval.

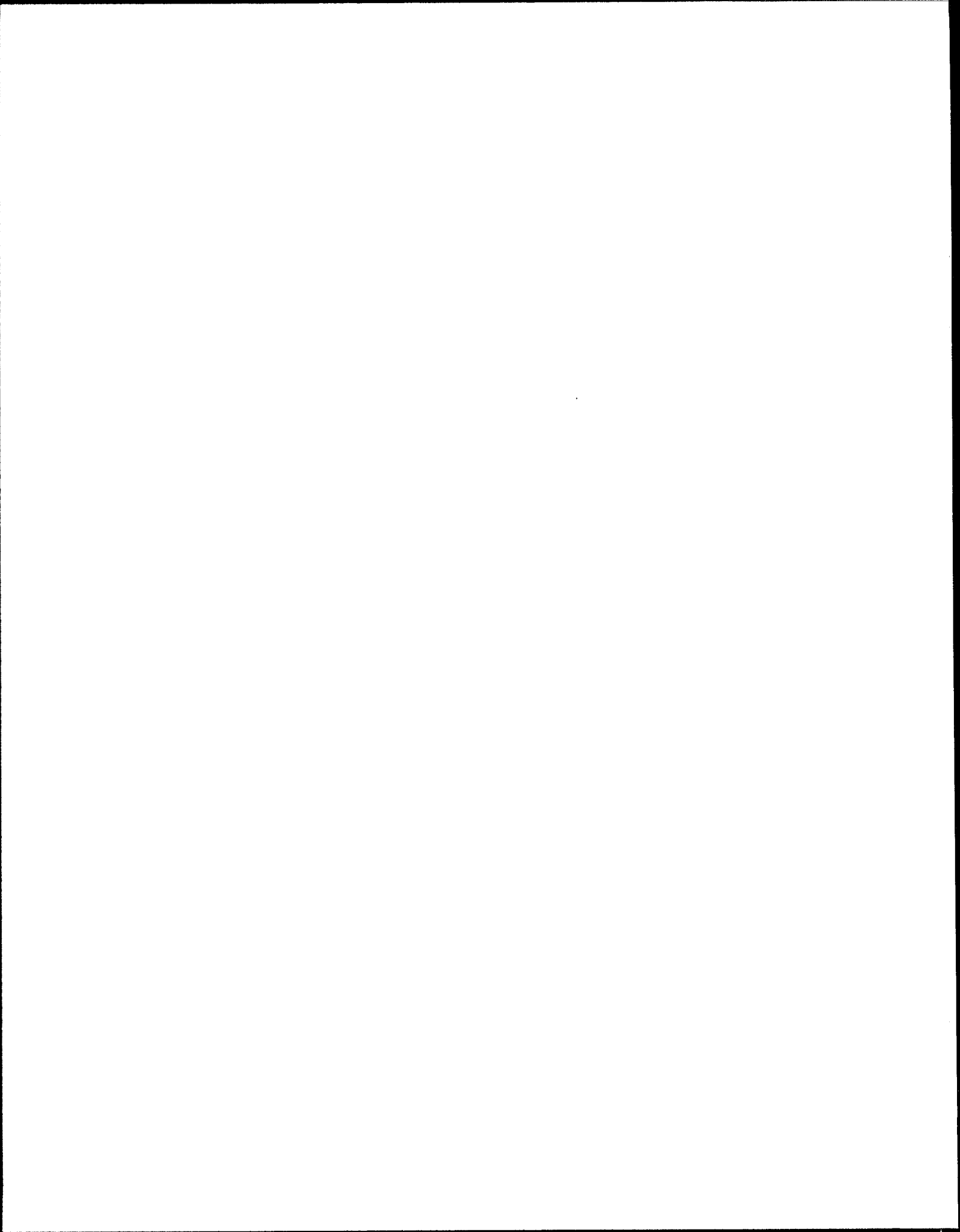
For each of the remaining approval options (section 63.93 and section 63.94) and for a State seeking delegation of Federal section 112 rules without changes, the Regional Administrator must seek public comments within 45 days of receiving the complete submittal. The 180-day review period does not begin until the EPA determines that the submittal is complete. A Federal Register notice will be published announcing that the EPA has received a complete State submittal and is accepting public comment on whether to approve or disapprove the State submittal. This Federal Register notice is not intended to address EPA's determination of whether to approve or disapprove the State submittal. Sample text for this notice and general guidelines for Federal Register notices are also included in Appendix F.

The public comment period must last at least 30 days from the publication date of the Federal Register notice. The Regional Administrator will require that public comments be submitted concurrently to the State and to the EPA. Within 30 days of the close of the public comment period, the State may prepare and submit responses to public comments for consideration by the Regional Office in the final review. If the public comment period lasts 30 days, the Regional Office then has about 75 days (for a total of 180 days since the Regional Office determined the original submittal to be complete) to finish its final review, and publish the Federal Register notice announcing final approval or disapproval. The Regional Office must also send a letter to the State notifying the State of the results of



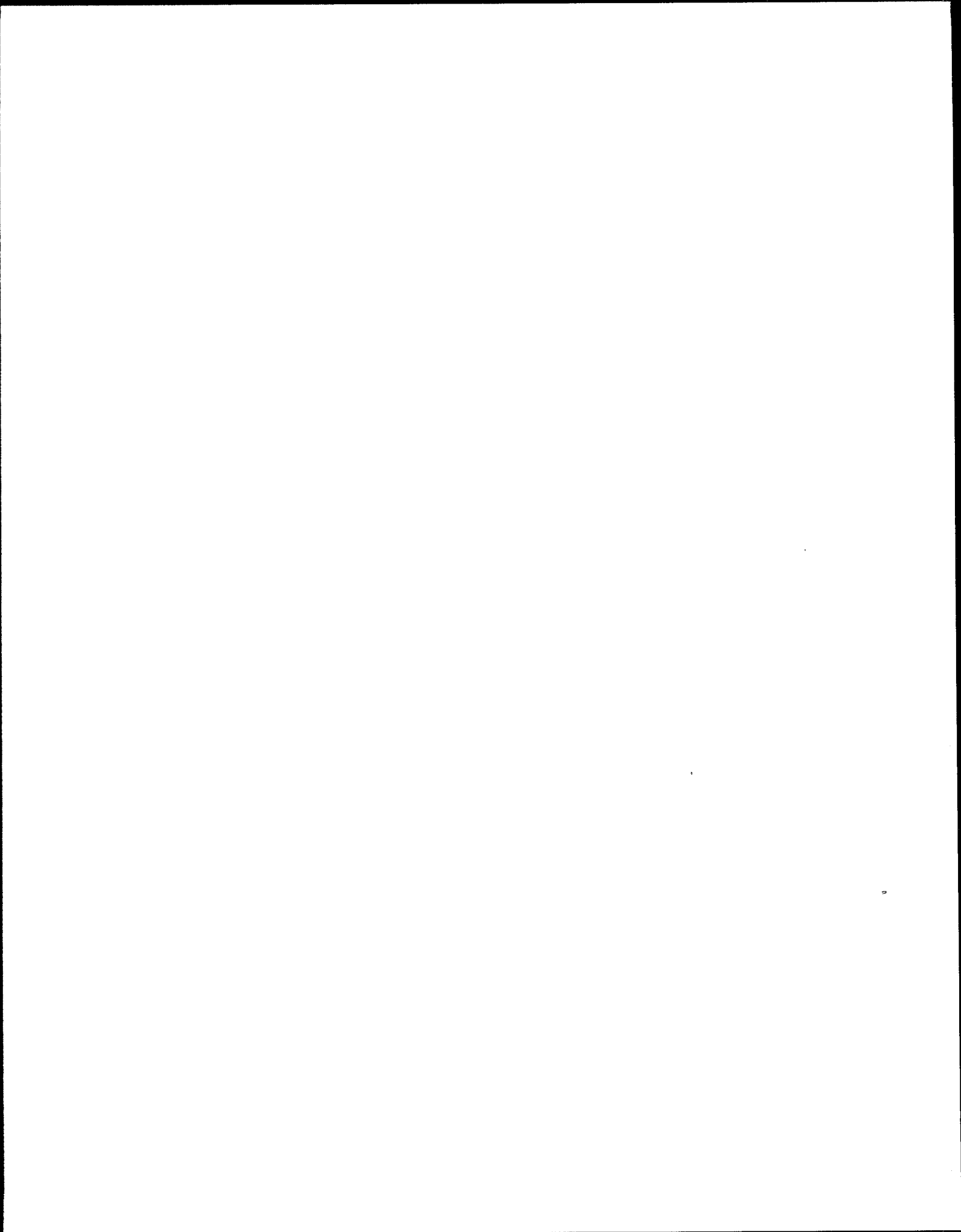
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the final review, and in the case of disapproval, the reasons for disapproval. Sample text for the final Federal Register notice and final approval/disapproval letter is included in Appendix F.

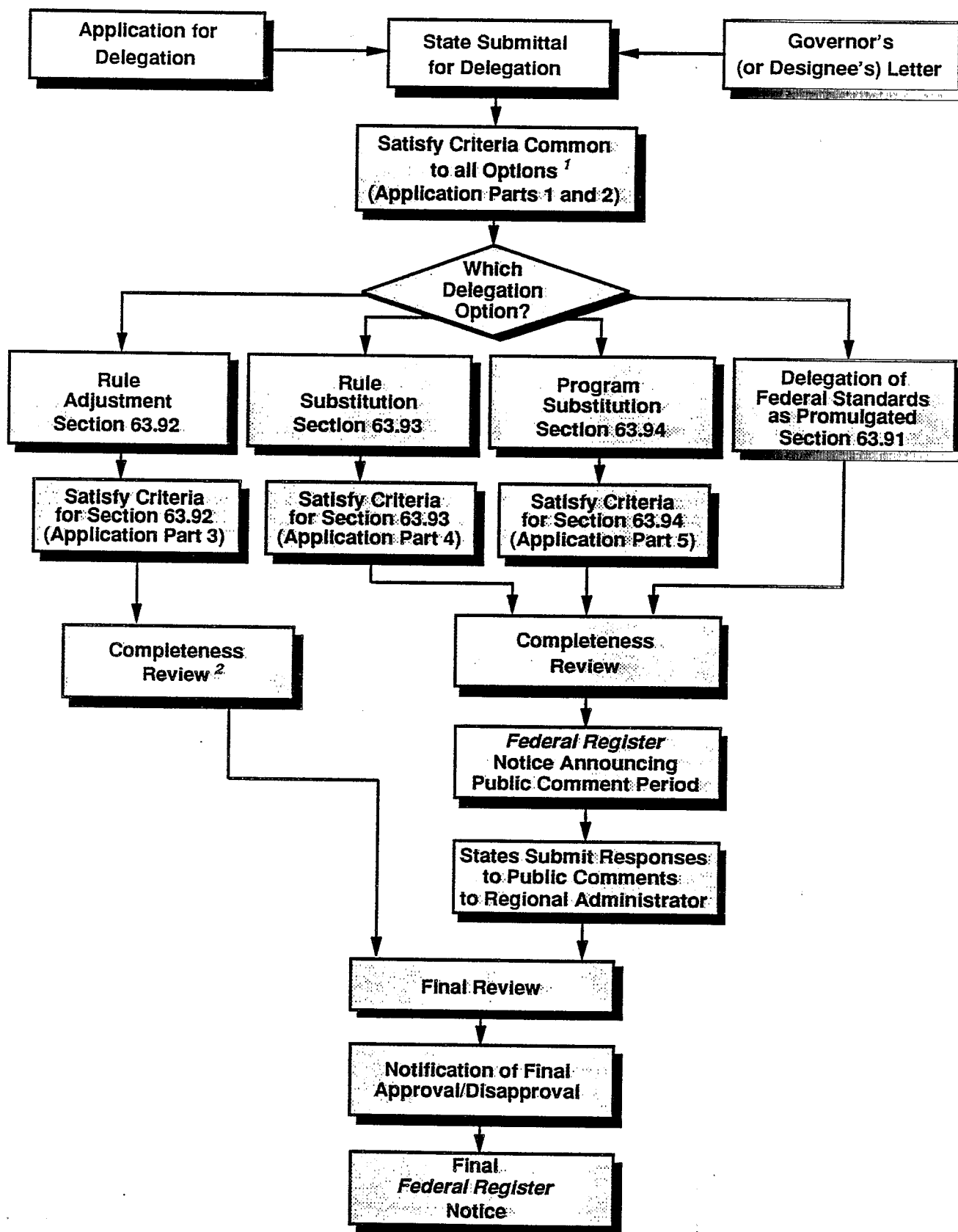


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Insert Figure 1

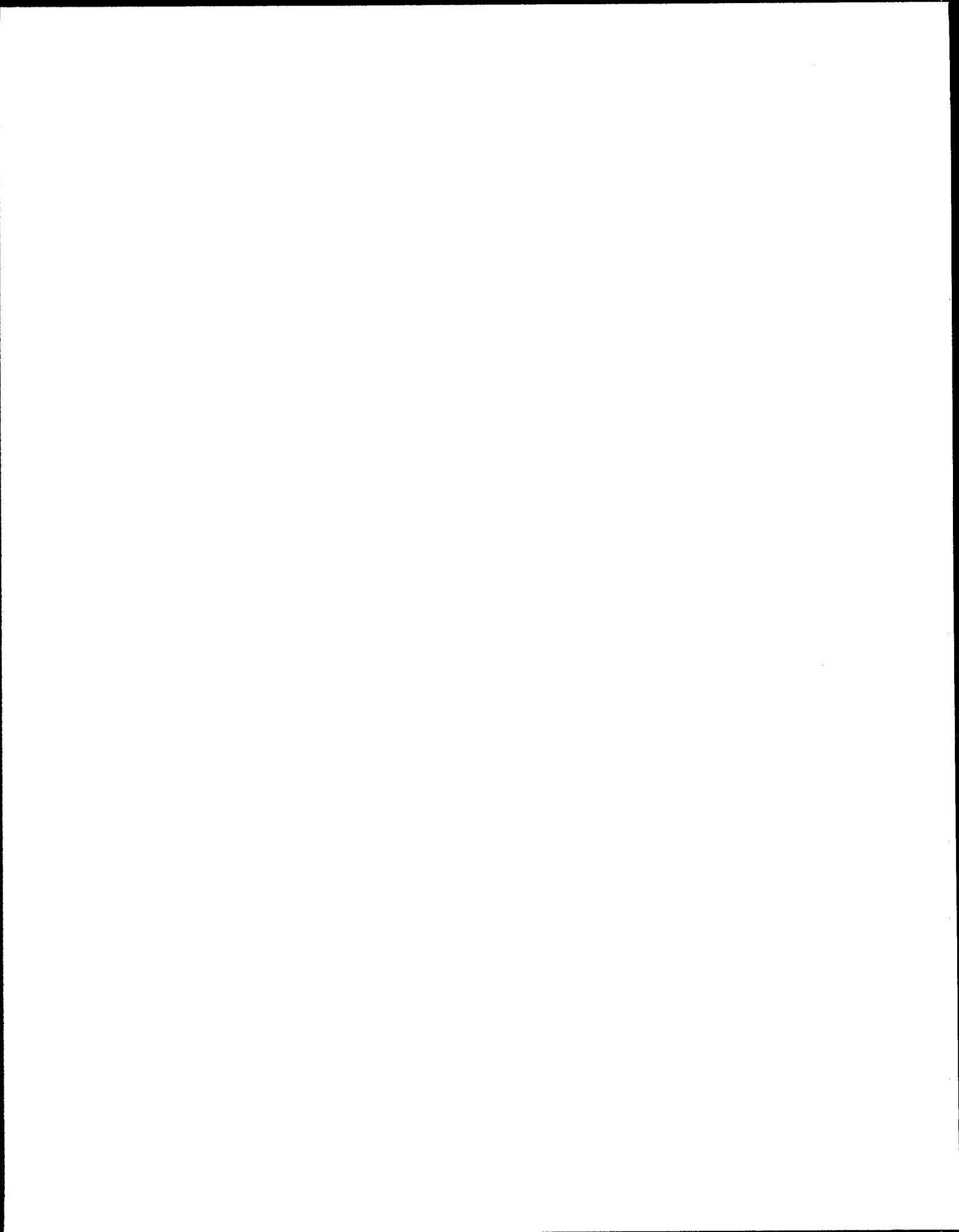


**Figure 1. Flow Diagram of Administrative Procedures
for Delegation Under Subpart E**



¹ Submittals for delegation of Accidental Release Programs also must satisfy the requirements of Section 63.95 (Application Part 6).

² For States without approved Part 70 programs, or those without any prior Subpart E delegations, a public comment period occurs for the first delegation under this option.



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Insert Figure 2

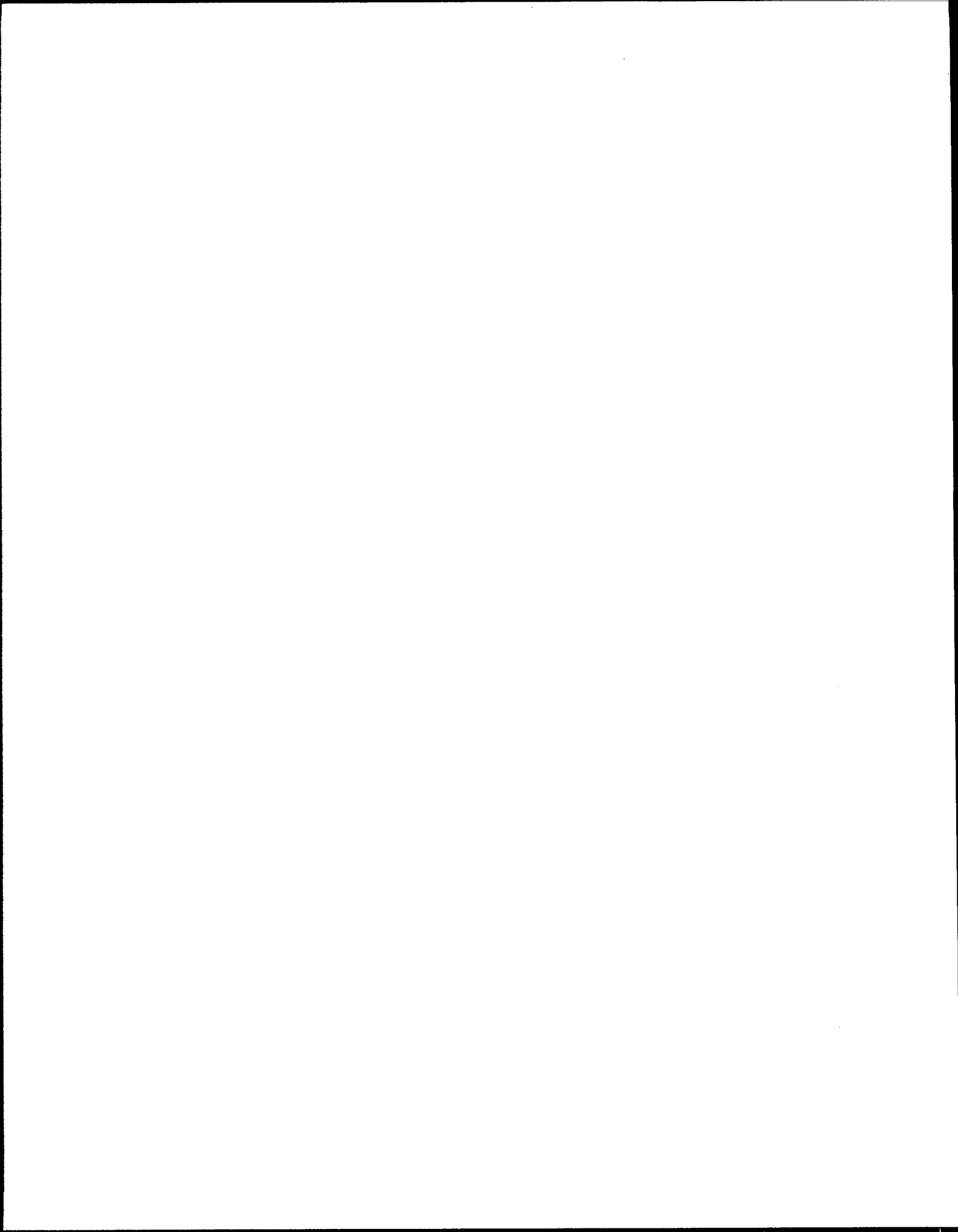
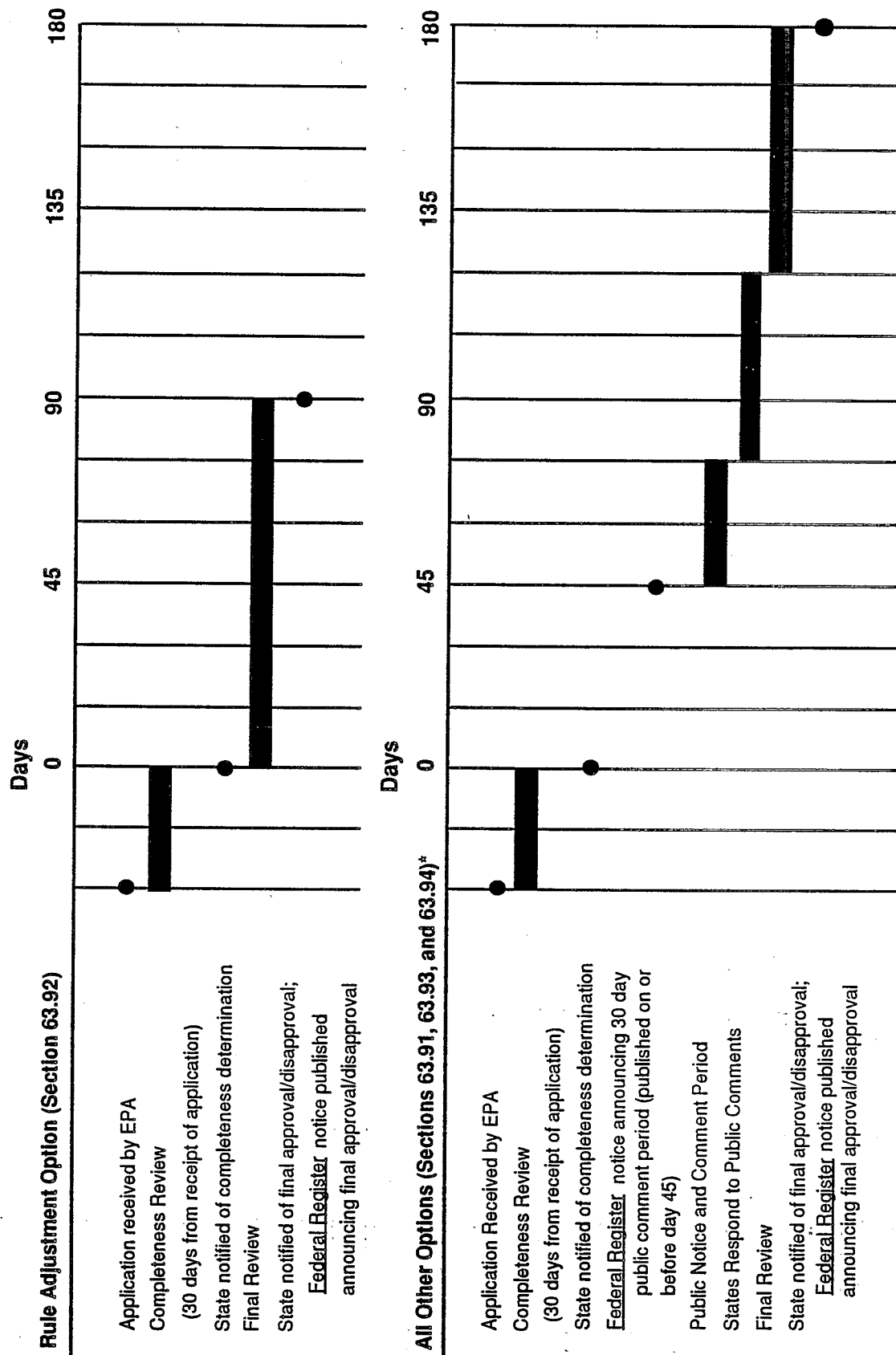
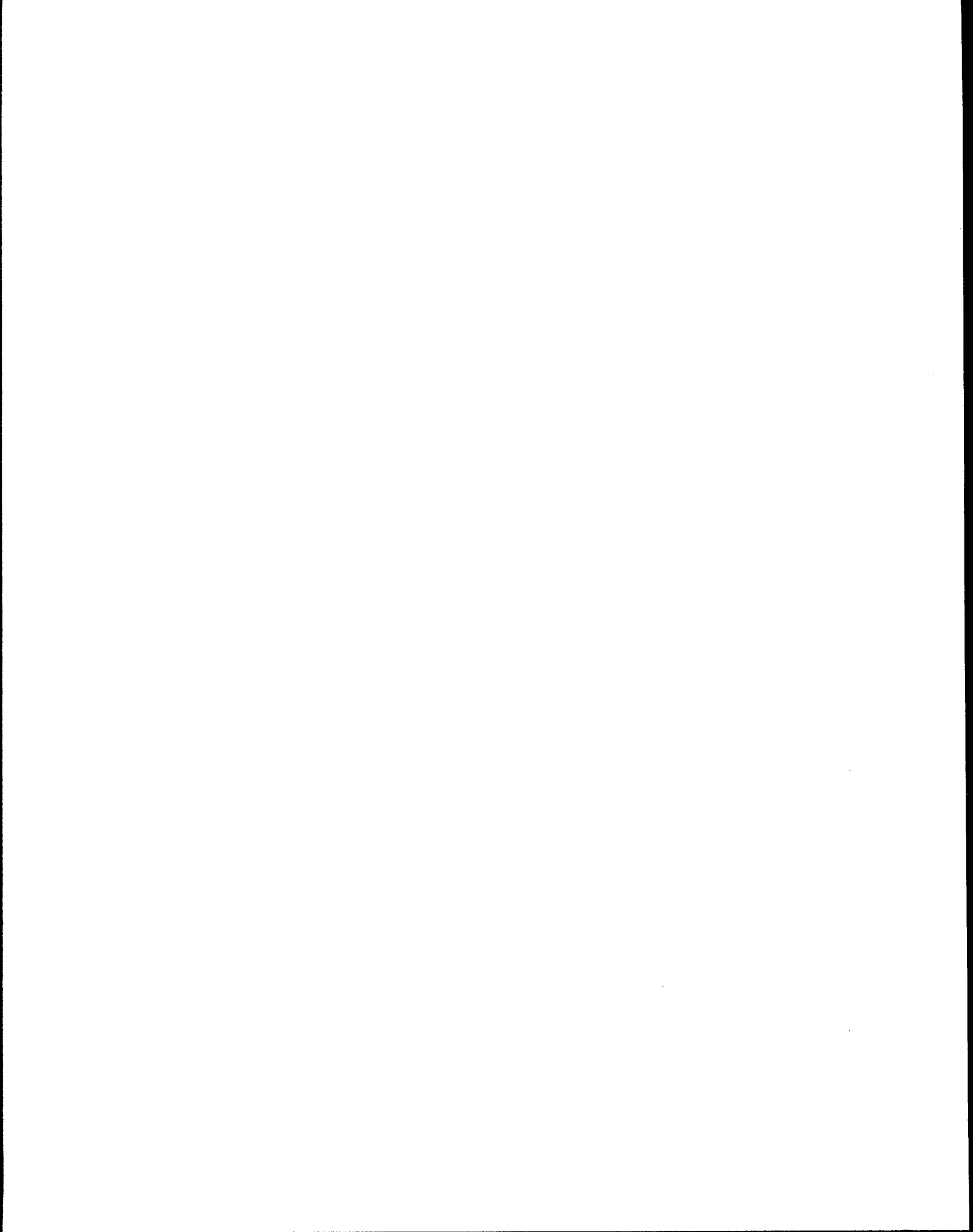


Figure 2. Major Dates in the Subpart E Approval Timeline



* For States without approved Part 70 programs or those without any prior Subpart E delegations, this timeline also applies to the Section 63.92 delegation option.



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3.0 Roles and Responsibilities

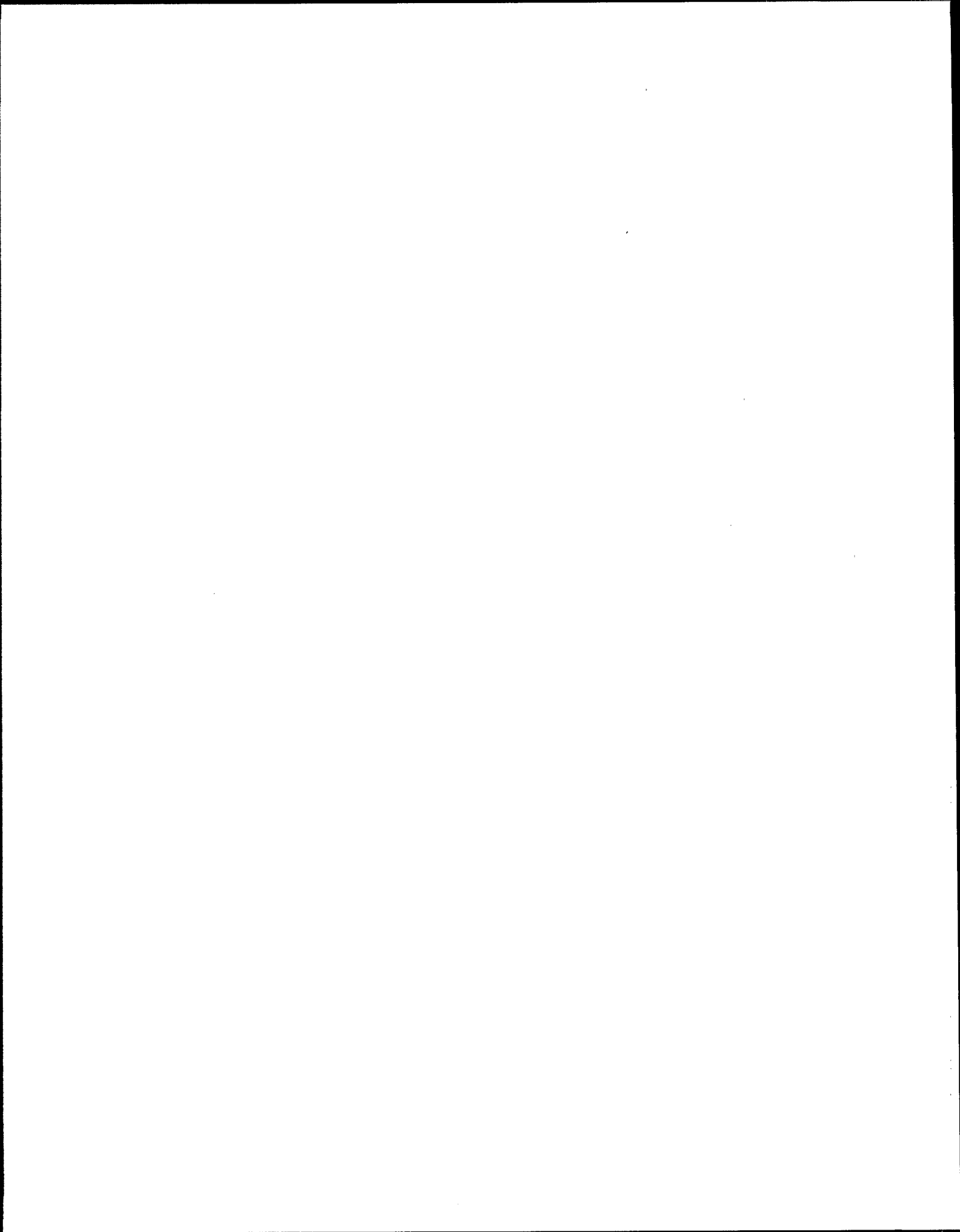
This section of the guidance outlines the roles and responsibilities of the State/local agency, the EPA Regional Office, and the various EPA Headquarters Offices both before and after any Federal section 112 rule is promulgated.

In the internal EPA process for the Subpart E approval, Headquarters is responsible for establishing and maintaining national standards for program consistency and quality. The Regions, who are most knowledgeable about the quality and uniqueness of individual State programs, are responsible for managing the review of submittals, and for making the tentative and final decisions to approve Subpart E submittals.

There are two discrete phases of the Subpart E review process: the pre-application (between proposal and promulgation of a Federal section 112 rule) review and the actual (180-day) review. The State legislative and regulatory work that must precede submission of an acceptable Subpart E submittal may require a long time frame, especially in States where legislative sessions may occur as infrequently as every other year. Not establishing the necessary legal authorities and program structure can greatly delay the entire process.

The pre-application phase is an excellent opportunity for States and EPA to establish the close working relationship necessary to ensure a successful approval and subsequent development and improvement of State programs. Regions have the lead responsibility for the Subpart E approvals. They should work closely with their States and make comments throughout the process, not just at the end. The Regions should work with the State early to build a strong program that will be in a good position to gain approval, providing technical assistance when necessary and responding quickly, thoroughly, and accurately to State questions or requests. The Regional staff should review the Subpart E submittal as it is being developed in order to facilitate review by the Regional Administrator. This will help ensure that the submittal is approvable even before an official application is submitted. Waiting for the State to provide a formal submittal can result in unnecessary delays in the review process.

One of the most important actions a State can take early in this process is to give the Regional Office complete copies of its statutes and regulations, even if no other application components are near completion. Because revising statutes and



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regulations can be one of the most time-consuming aspect of compiling a Subpart E submittal, it is important to complete and submit them for review first, so that if changes are needed, they can be made while other components of the application are being assembled. During the proposal to promulgation time frame of a Federal section 112 rule, the Region and the State can identify areas where additional legislative or regulatory changes may be necessary. Then when the Federal rule is final, the State and Region can identify and make any outstanding legislative and regulatory changes necessary even before the State starts developing their Subpart E submittal. States that wait until they have a complete application before submitting statutes and regulations for review are taking a great risk; review of those materials may reveal deficiencies that require time-consuming legislative or regulatory changes that will significantly delay the approval process.

Unless otherwise specified, any numerical dates discussed in the following sections refer to the number of days after the Regional Office determines a State's submittal to be complete. Please see Tables 1, 2, and 3 for the suggested timeline for review of Subpart E submittals. Table 1 summarizes the timeline for States seeking delegation of Federal section 112 rules without changes under section 63.91. Table 2 summarizes the timeline for Subpart E submittals under approval option section 63.92. Table 3 summarizes the timeline for Subpart E submittals under approval options section 63.93 and section 63.94.

In addition, Figure 3 shows the participants and their relationship to each other in the State Subpart E approval process.

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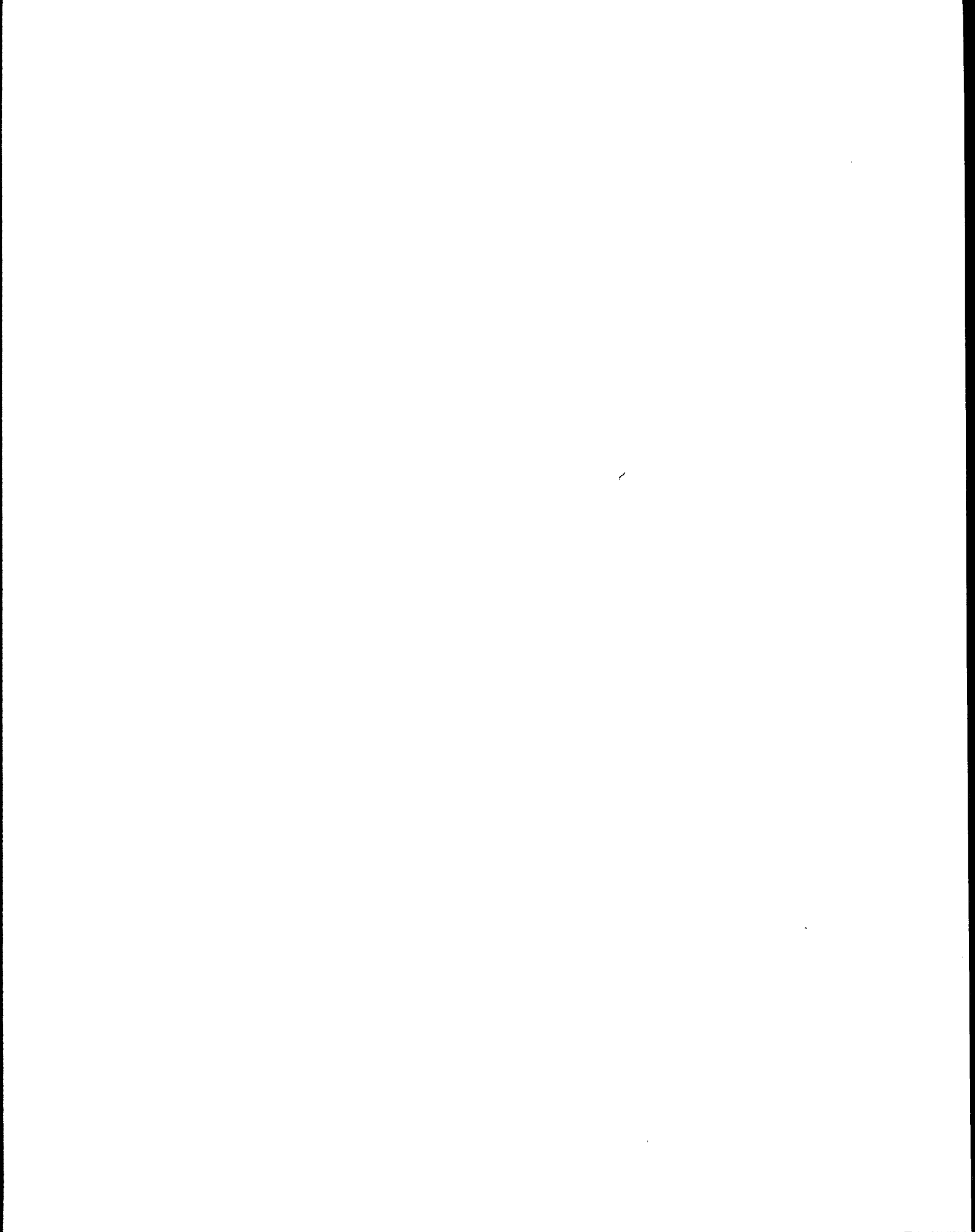
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Table 1

Timeline for Delegation of section 112 Federal standard as promulgated

Day	Action
0	Regional Office (RO) determines whether submittal is complete. If not complete, the RO will notify the State of all inadequacies, and the 180-day clock will not start. If complete, the 180-day clock will start from the date that the submittal was determined complete. HQ review is not necessary for straight delegation.
45	Regional Administrator (RA) signs <u>Federal Register</u> (FR) announcing a 30-day public comment period on the State's submittal. FR notice should be published by around day 45, which will determine the start of the public comment period.
75	Public comment period closes at least 30 days after FR notice is published. RA will require that the public comments be submitted concurrently to the State.
105	The State has 30 days from the close of the public comment period to submit any response to the public comments to the RA. RO should be summarizing and responding to public comments.
180	It is expected that delegation of Federal section 112 standards as promulgated will not take a full 180 days to approve or disapprove. RA should sign the final FR notice as soon as possible, but no later than day 180. A notice will be subsequently published in the FR announcing the approval/disapproval of the State's submittal.



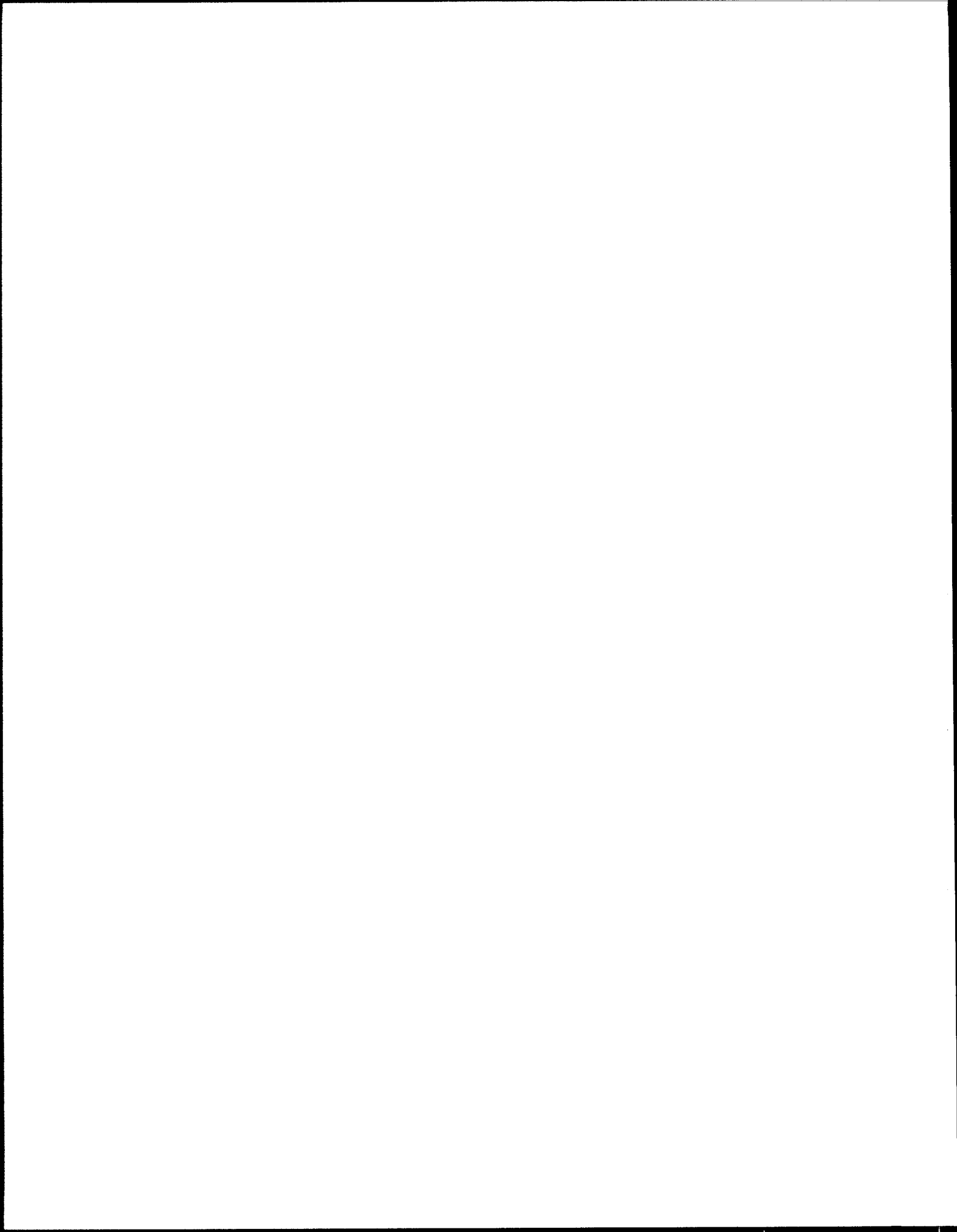
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Table 2

Timeline for section 63.92 **

Day	Action
0	Regional Office (RO) determines whether submittal is complete. If not complete, the RO will notify the State of all inadequacies and the 90-day clock will not start. If complete, the 90-day clock will start on the day the submittal was determined complete. Headquarters review is not required, but may be requested by the RO.
65	RO will draft FR notice with the preliminary determination regarding whether to approve or disapprove the State submittal.
90	RA signs the final FR notice. A notice will be subsequently published in the FR announcing the approval/disapproval of the State's submittal.

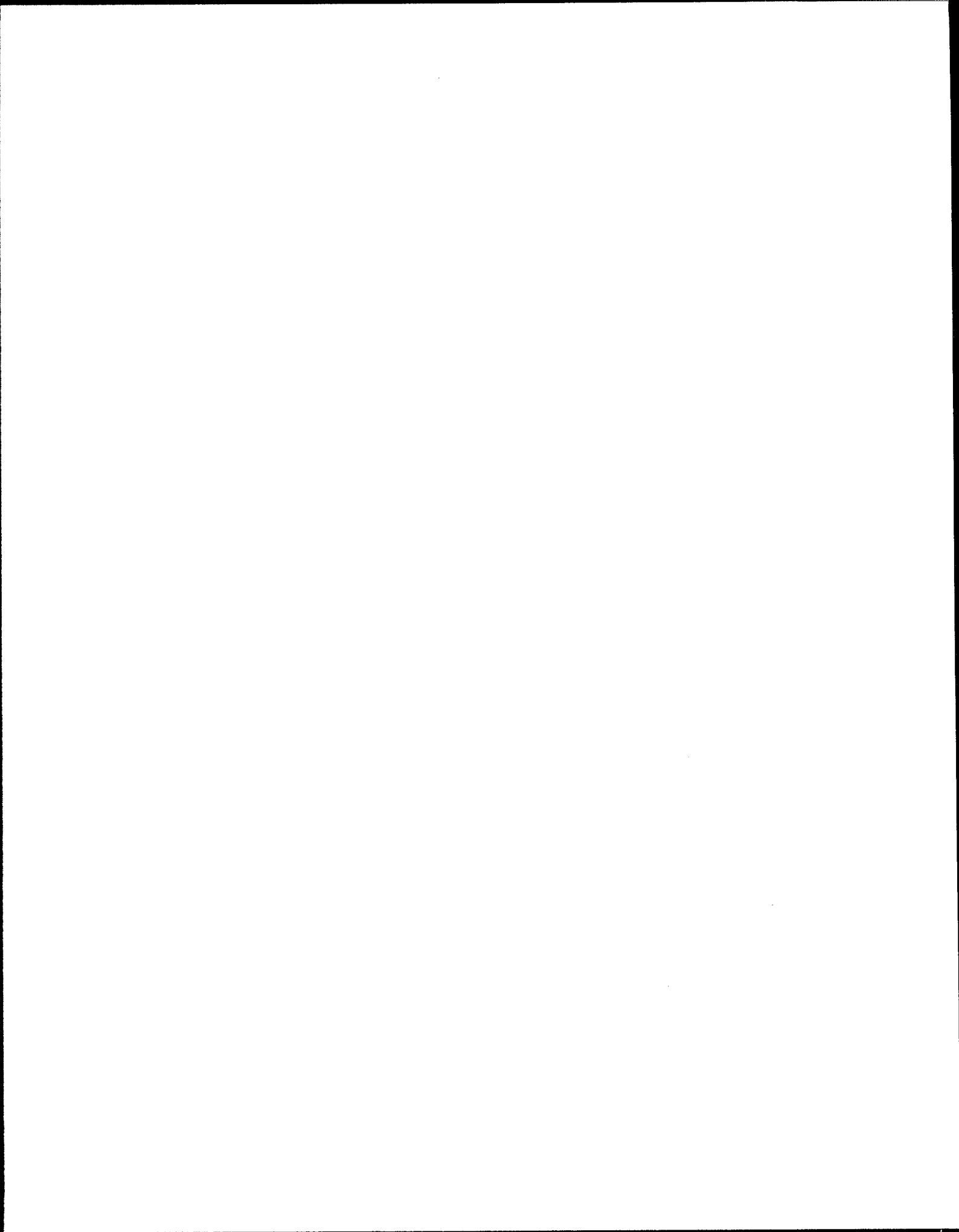
** Please note that if a State's first submittal for Subpart E is under approval option section 63.92 and a State does not have an approved part 70 program, then the State must go through the procedural requirements under section 63.91 (discussed in Chapter 4) which includes a Federal public comment period and a 180-day review period. Once a State has an approved part 70 program or has submitted a Subpart E application through the procedural requirements of section 63.91, then the State will be able to utilize the 90-day approval process described in the above timeline.



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Table 3
Timeline for section 63.93 and section 63.94

Day	Action
0	Regional Office (RO) determines whether submittal is complete. If not complete, the RO will notify the State of all inadequacies and the 180-day clock will not start. If complete, the 180-day clock will start from the date the submittal was determined complete. The RO will forward the State's complete submittal to OE, OGC, OAQPS and CEPP (if applicable) for HQ review.
45	Regional Administrator (RA) signs <i>Federal Register</i> (FR) announcing a 30-day public comment period on the State's submittal. FR notice should be published by around day 45, which will determine the start of the public comment period.
75	Public comment period closes 30 days after FR notice is published. RA will require that the public comments be submitted concurrently to the State.
80	The RO and HQs are encouraged to have a conference call to discuss the major approval or disapproval issues identified by the RO and HQs. The RO could also summarize major public comments.
105	The State has 30 days from the close of the public comment period to submit any response to the public comments to the RA. RO should be summarizing and responding to public comments. HQ should provide any issues regarding approval or disapproval on the application as soon as possible, but no later than by day 105.
130	RO will draft FR notice with the preliminary determination regarding whether to approve or disapprove the State submittal.
135	HQs will receive draft FR notice from the RO.



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150	HQs will provide any comments regarding draft FR to the RO. If no comments are received within 15 days, the draft FR notice will be forwarded to the RA (go to day 180). If problems arise continue with timeline.
160	If the RO and HQs both agree to language changes, RO will revise and submit revisions by day 160. If RO and HQs staff cannot reach agreement on changes, the respective Branch Chiefs will determine if the unresolved issue should be elevated to the Division Director.
165	If RO and HQs had agreed to language changes, HQs has until day 165 to review suggested changes. If no comments are received, the draft FR notice will be forwarded to RA for signature.
170	If unresolved issues have been elevated to the respected Division Directors and are still unresolved, HQ and the RO will have to resolved these issues on a case-by-case basis. A future version of this guidance document will address who will have the final decision on whether to approve or disapprove the State submittal, but currently this issue is not settled.
180	RA signs the final FR notice. A notice will be subsequently published in the FR announcing the approval/disapproval of the State's submittal.

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Insert Figure 3

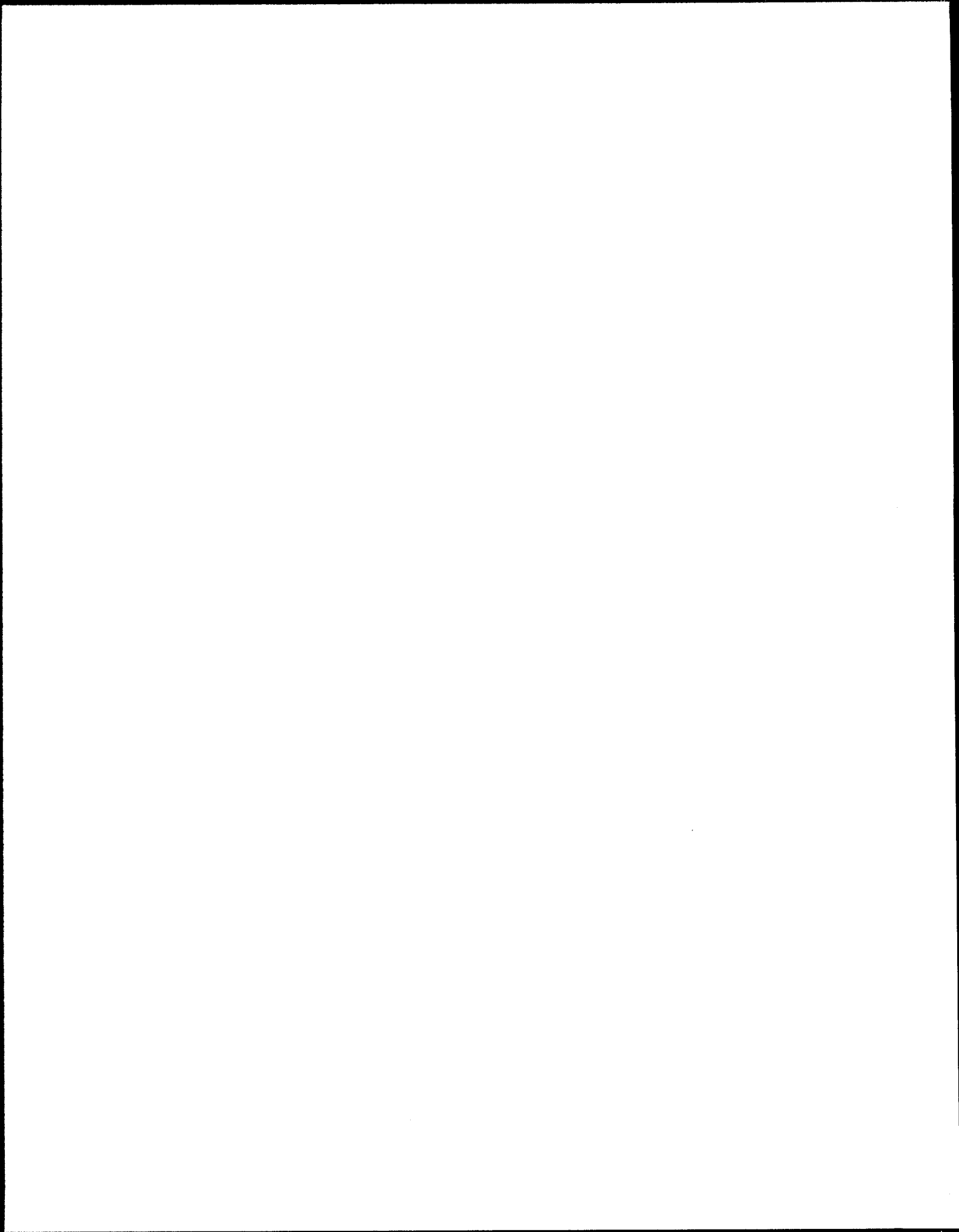
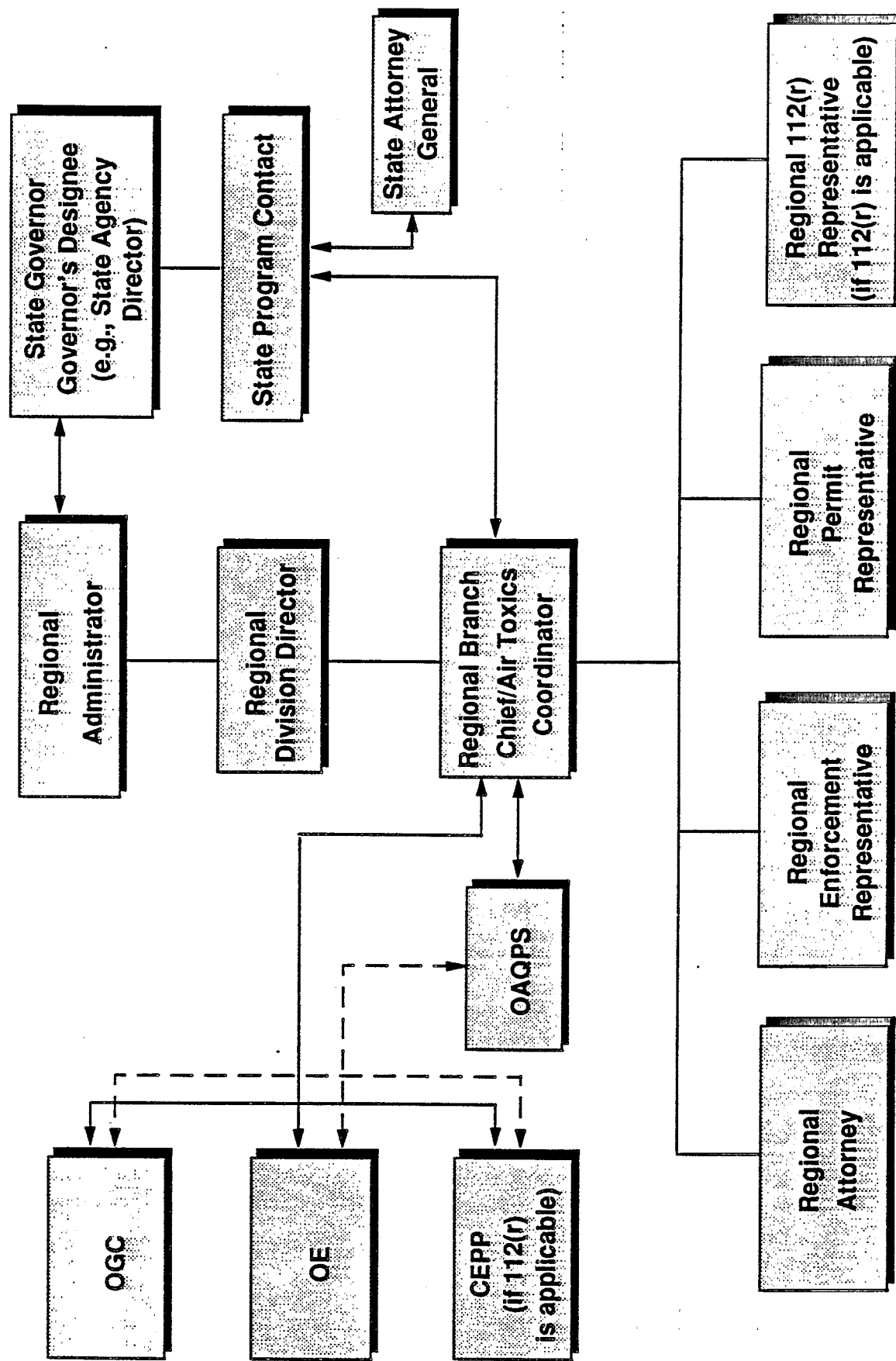
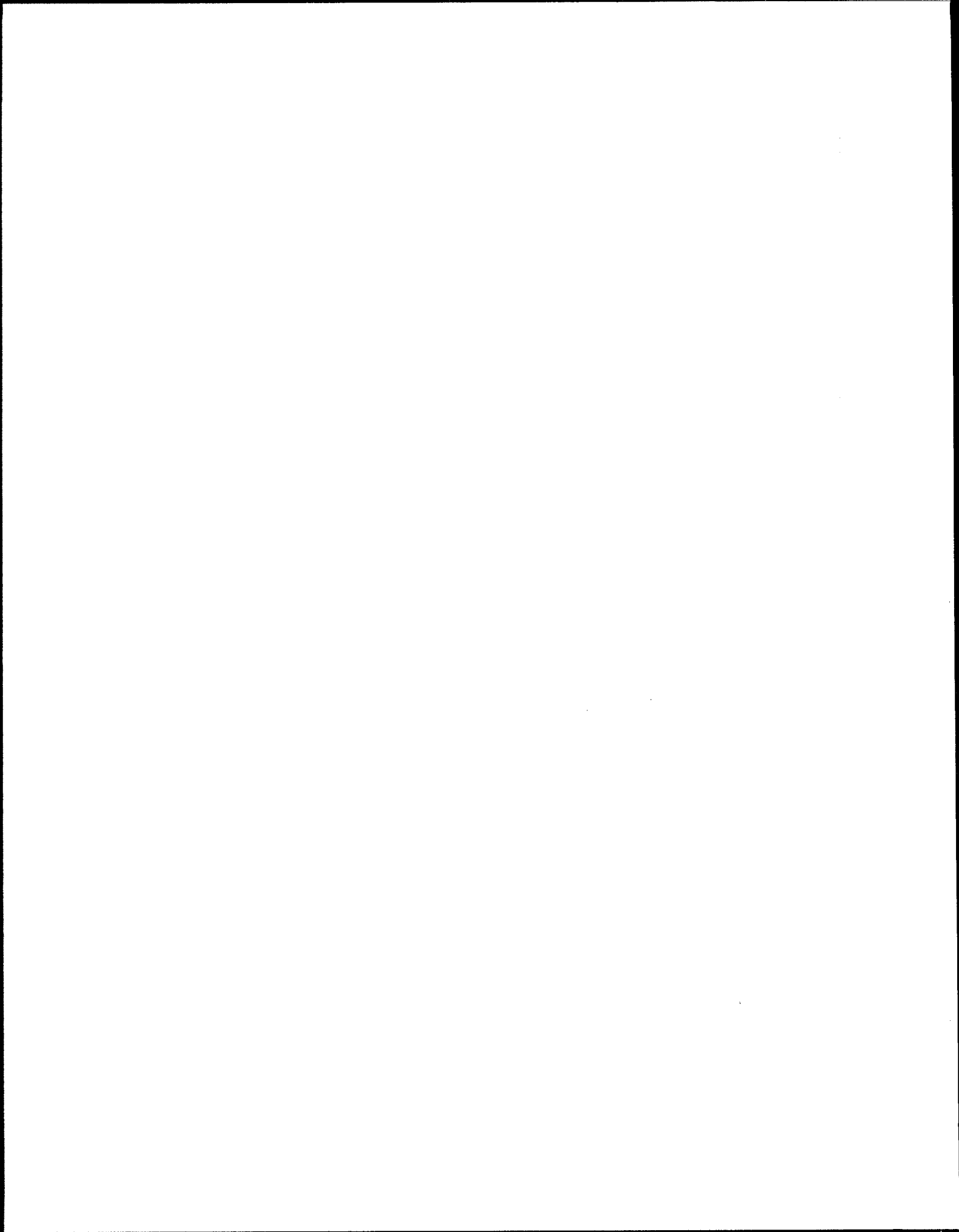


Figure 3. Participants in the Subpart E Approval Process



NOTE: Dashed lines indicate that, while OGC, OE, and CEPP communicate directly with the Regional Office, they should also keep OAQPS informed of any issues which arise during review.



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3.1 State and Local Agencies

Since submitting a different State program through Subpart E is voluntary, the State has the primary responsibility of initiating the process. Outlined below are a few suggestions of what a State might want to consider to accomplish during the approval process.

1. Once a Federal rule is proposed, the State should evaluate whether there are any affected sources which have existing State regulations that apply to them.

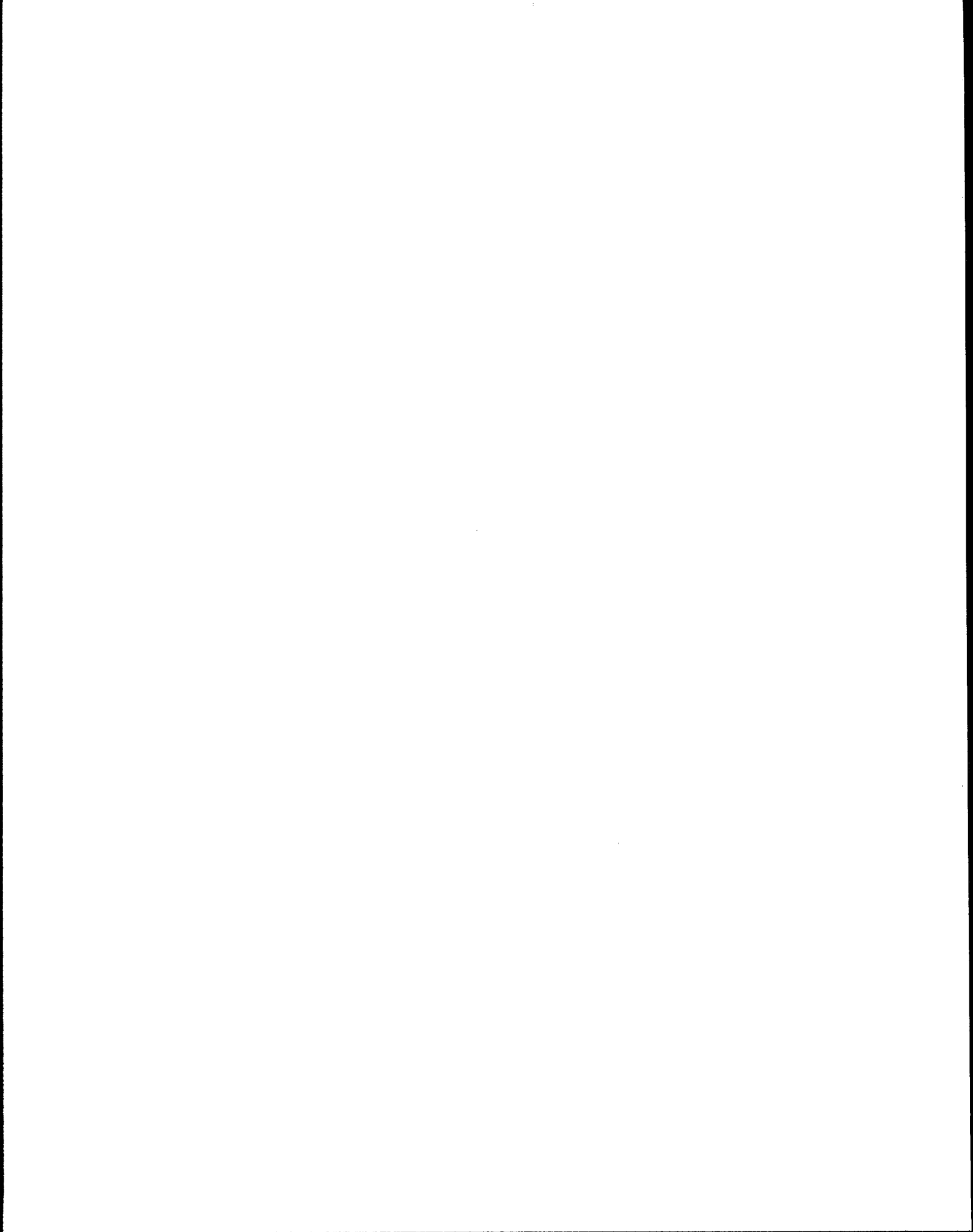
2. If the State does have an existing program that applies to affected sources, then the State should compare its existing program to the proposed Federal program and identify any significant differences. If the EPA has not included a control technology or approach that the State currently requires that is more stringent, then the State should submit its approach to the EPA during the comment period for the Federal section 112 standard.

3. The State should evaluate the benefits of using Subpart E. If there are benefits, then the State should consider which approval option under Subpart E should be employed.

4. States that want to apply for Subpart E approval, should contact the Regional Office during the proposal - promulgation time frame so that Regions will have a better idea of the resources and time needed for stringency determinations. The State should specify which approval option is being considered. In addition, States who plan to simply adopt the Federal standard should also inform the Regional Office during the proposal - promulgation time frame.

5. The State may also want to consider having pre-application meetings with the Region. Detailed pre-application meetings will help States identify concerns and discuss them with the Region before beginning to prepare their submittals. In addition, the State will be able to anticipate necessary changes to its rules and eliminate delays because it can begin the rulemaking process long before making its formal submittal, rather than waiting until disapproval before beginning the process.

6. In addition, the State and Regional Offices may want to consider entering into a Memorandum of Understanding (MOUs). These documents could address procedures for (1) problem resolution, (2) program revisions, (3) the enforcement



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relationship and 4) program implementation until official delegation is completed. An MOU can act as a vehicle for communicating the respective roles of the State and the EPA and clearly spelling out the purpose and limitations of that role.

For example, the Regional role in this partnership could include: providing information and guidance regarding the Federal section 112 regulations; providing technical guidance to the States; providing comments and suggestions early in the delegation process; communicating national and Regional priorities; and providing information on other successful State programs. The State role could include: providing prompt responses to Regional concerns, providing input to the Regions with regard to further development of national program development, and guaranteeing that the Subpart E program will be adequately implemented by the State.

In the case where the section 112 rule has not been officially delegated to a State yet, the MOU could be used to contract with the State to perform the administrative implementation of the section 112 rule.

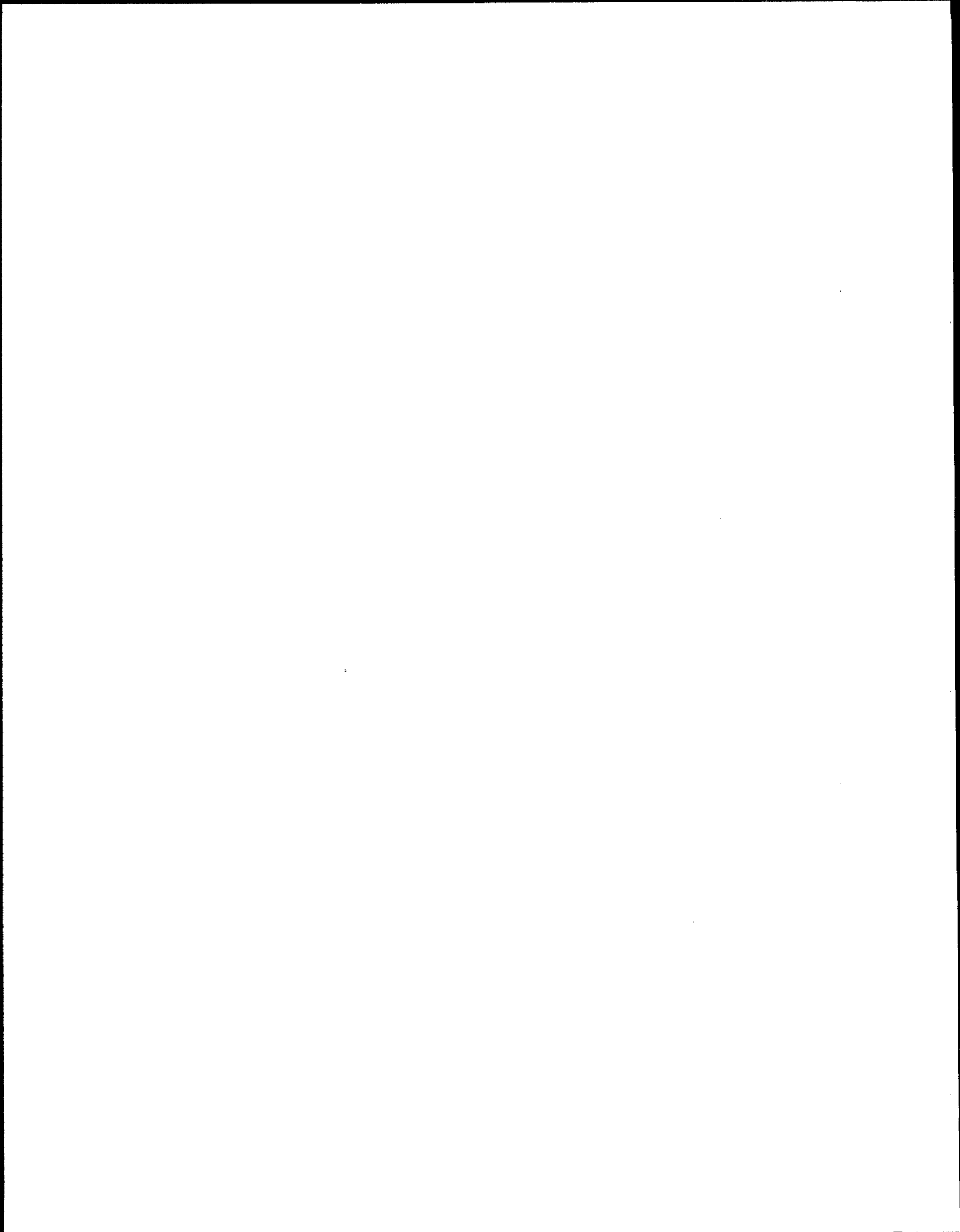
7. If a State chooses to use Subpart E, the State should send the submittal to the appropriate EPA Regional Office.

8. The State will have the burden of showing that its program is no less stringent than the otherwise applicable Federal section 112 standard. If the State does not make a complete demonstration to the EPA, then the Region will notify the State within 30 days.

9. The State should work closely with the Regional Office to address any conflicts as quickly as possible. The 180-day review period will not start until EPA receives a complete submittal.

10. After the public comment period closes for options section 63.93 and section 63.94 as well as for delegation of Federal section 112 rules without changes, the State may submit responses to the public comments to the Regional Administrator within 30 days of the close of the public comment period. The Regional Administrator will require that public comments be submitted concurrently to the State. The State responses will be evaluated by the Regional Administrator in the final approval decision.

11. If the State has an approved State program under section 63.94 and plans to issue a part 70 permit that will



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incorporate the State rule in the form of the Federal rule, the State should provide the EPA Regional Office with a copy of each proposed permit for a 45-day review period and potential EPA veto.

12. For later standards, States may want to consider submitting their State programs to EPA Headquarters to be used in the development of the MACT standard. This may help to avoid some stringency problems in the future.

3.2 Regional Offices

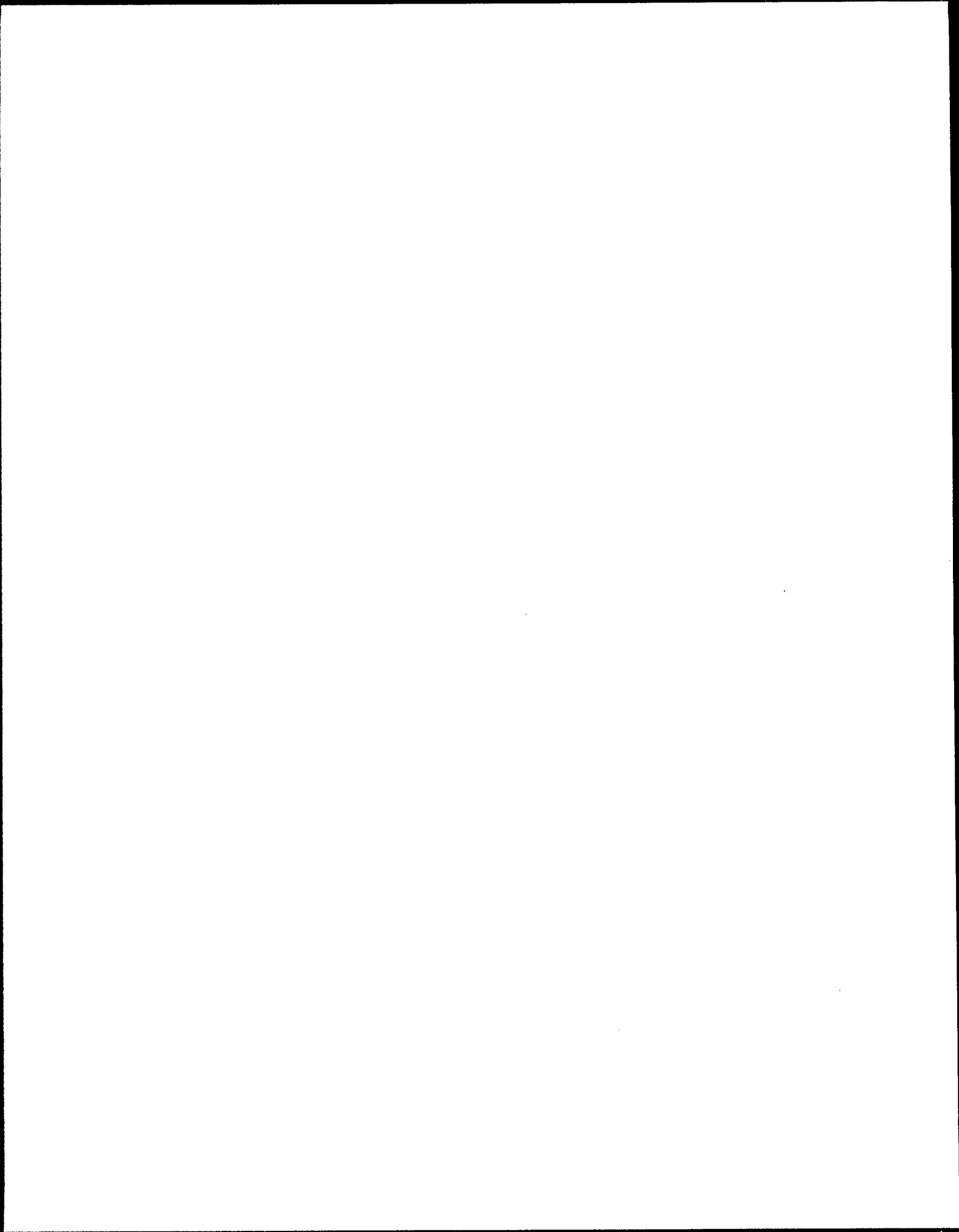
The Regions should encourage the States to start thinking about Subpart E at the time a Federal rule is proposed. The Region should start working with States who are interested in Subpart E during the time frame between proposal and promulgation as well as once the Federal rule is final. The Regions may also want to consider having a review team that encompasses several different areas. The team, for example, may include the Air Toxics coordinator, a Regional person representing enforcement, a Regional person representing permitting, a Regional attorney, and a Regional representative for section 112(r) when applicable. In many Regions, one Regional person may represent several roles. Outlined below are a few suggestions that the Regions may want to consider.

1. The Region could incorporate some general milestones into the Air Toxics Section 105 Grants. One milestone could be to notify the EPA within 60 days of a proposed section 112 standard whether the State is considering utilizing Subpart E.

2. The Region could survey all of their States soon after a Federal rule is proposed and ask the States whether they are planning to use Subpart E.

3. If Subpart E is being considered by a State, the Region could request a copy of any existing State programs that apply to the affected sources. The Region should assist the State in comparing the State program to the Federal program during the proposal - promulgation timeframe. The Region should identify additional State authorities needed at the State level. The Region should also help identify areas where the State will need to change its regulations to make them equivalent with the Federal program.

4. Since the Region can not release specific information to the State regarding significant changes to the final Federal



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rule, the Region should try to identify potential problems with the existing State regulation and the final Federal rule.

5. As soon as the final Federal rule is released, the Region should provide the State with a summary of any potential issues that have been identified.

6. As discussed in the previous section, the Region and State may want to consider having a pre-application meeting.

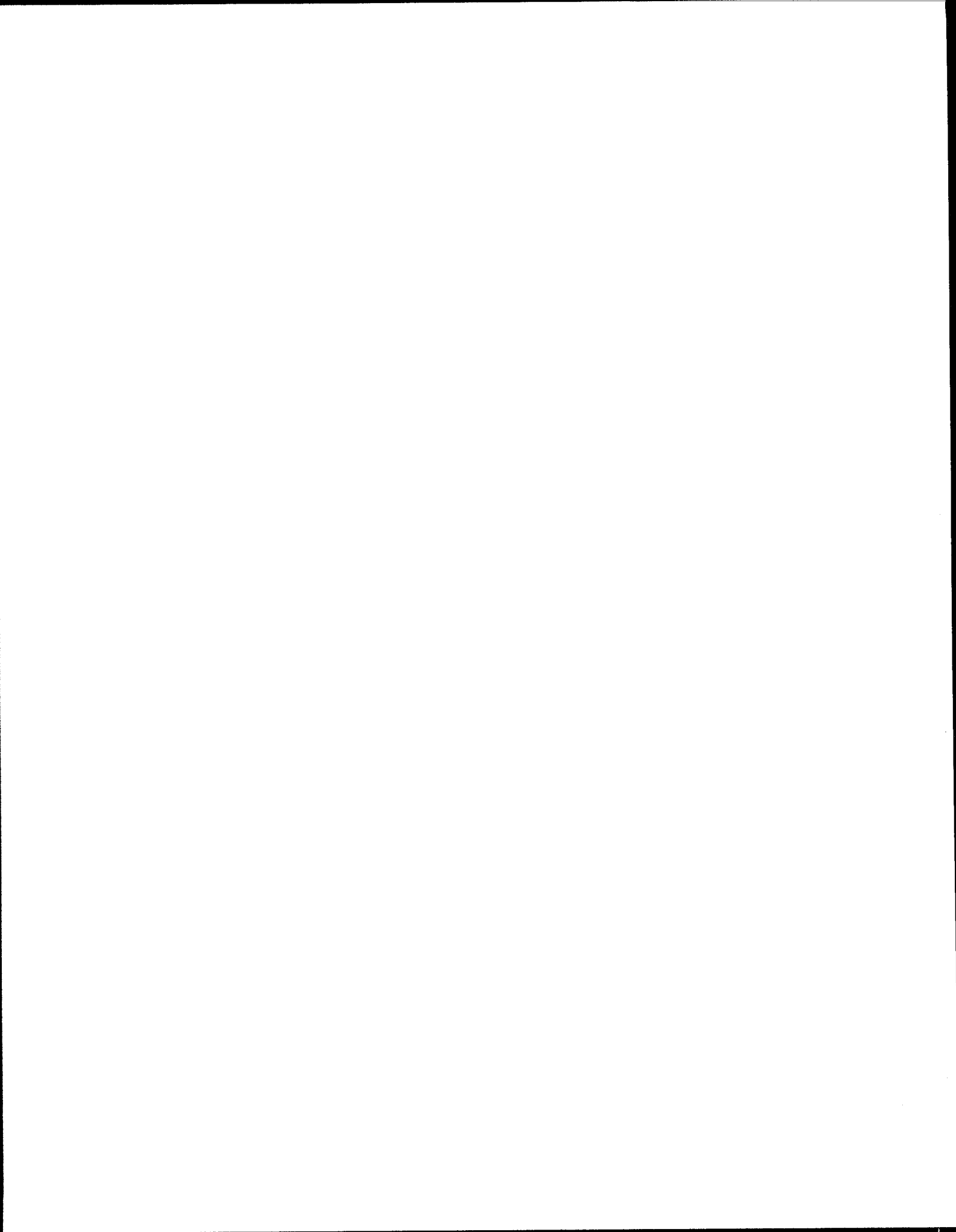
7. Within 30 days of receipt by an EPA Regional Office of a Subpart E submittal, the Regional Administrator will notify the State whether its submittal is complete enough to warrant review by EPA.

8. If the EPA finds that a State's submittal is complete, the 180-day review period begins on the date that the EPA Regional Office determined the State's submittal complete. If the EPA finds that a State's submittal is incomplete, the 180-day review period shall not begin until the EPA receives a complete submittal.

9. If the State's submittal is incomplete, the Regional Office should notify the State of all deficiencies and work closely with the State to resolve any problems.

10. For Subpart E approvals under options section 63.93 and section 63.94 and once the State's submittal is determined complete, the Regional Office will forward a copy of the State's complete submittal to OE, OGC, and the OAQPS clearinghouse contact. If the submittal involves accidental releases under section 112(r), then CEPP should also receive a copy of the submittal. Please see Appendix B for the list of Headquarter offices contacts and addresses. For Subpart E approvals submitted under option section 63.92 as well as for delegation of Federal section 112 rules without changes under section 63.91, Headquarters will not normally be forwarded a copy of the State's submittal for review.

11. Within 45 days of determining a request for approval complete, the Regional Administrator shall seek public comment for a minimum of 30 days on the State's request for approval. The Regional Office will publish the notice for public comment in the Federal Register. The Regional Administrator will require that public comments be submitted concurrently to the State. This step is not necessary for Subpart E approvals made under section 63.92, unless the State does not have an approved part 70



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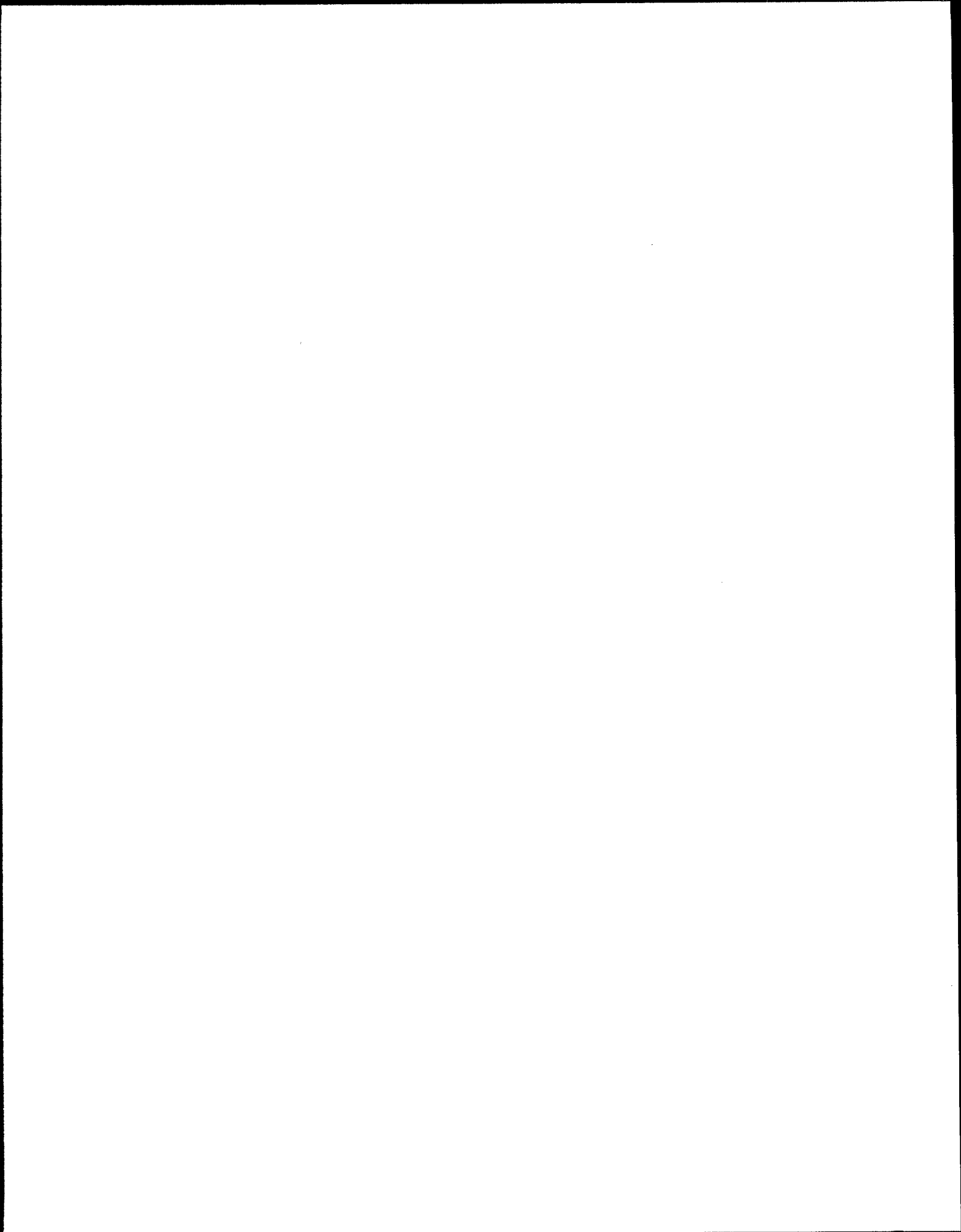
program and this is the State's initial submittal under Subpart E in which case the State will have follow the procedural requirements under section 63.91.

12. For approval options section 63.93 and section 63.94, the Regional Office and the Headquarters reviewing offices are encouraged to have a conference call by around day 80 to discuss the major approval or disapproval issues identified by each office. During the call, the Regional Office could also summarize the quantity and content of the public comments received during the comment period.

13. The EPA Regional Office along with the other EPA Offices including: OAQPS, OGC, OE, and CEPP (if applicable) shall evaluate any comments made during the public comment period including any State responses to the public comments. Headquarters should provide the Regional Office with all approval/disapproval issues as soon as possible, but no later than day 105. If comments are received from Headquarters, the Regional Office should consider all comments when determining whether to approve or disapprove the submittal.

14. For Subpart E approvals submitted under options section 63.93 and section 63.94, the Regional Administrator should make a preliminary determination on approving or disapproving the State's submittal within 130 days of determining a request for approval complete. The Regional Office should forward the draft Federal Register with the preliminary approval or disapproval to each Headquarters reviewing office for a 15 day review. For Subpart E approvals submitted under option section 63.92 as well as for delegation of Federal section 112 rules without changes under section 63.91, Headquarters review is not required but may be requested by the Regional Office.

15. The Regional Administrator shall approve or disapprove a State's submittal within 180 days of determining a request complete. If the Headquarters reviewing offices do not identify any concerns with the State's submittal, then the Regional Office can forward the Federal Register notice to the Regional Administrator for signature on day 150. If comments are received from Headquarters regarding the draft Federal Register notice, the Regional Office should consider additional comments regarding the content of the draft notice rather than whether the submittal should be approved or disapproved. Headquarters should have commented on all approval/disapproval issues by day 105. If a conflict arises, please see the process for issue resolution which is discussed in the EPA Headquarters section number 5. For



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Subpart E approvals submitted under option section 63.92, the Regional Administrator shall approve or disapprove a State's submittal within 90 days of determining a State's request is complete.

16. Once a State's submittal is approved or disapproved, the Regional Office shall publish a Federal Register notice approving/disapproving the State's submittal.

3.3 EPA Headquarters Office

As discussed earlier, Headquarter's offices have a major role in developing national decision criteria (i.e., the criteria Regions apply when evaluating State submittals), but a less active role in implementation of these decision criteria during the review of individual Subpart E submittals.

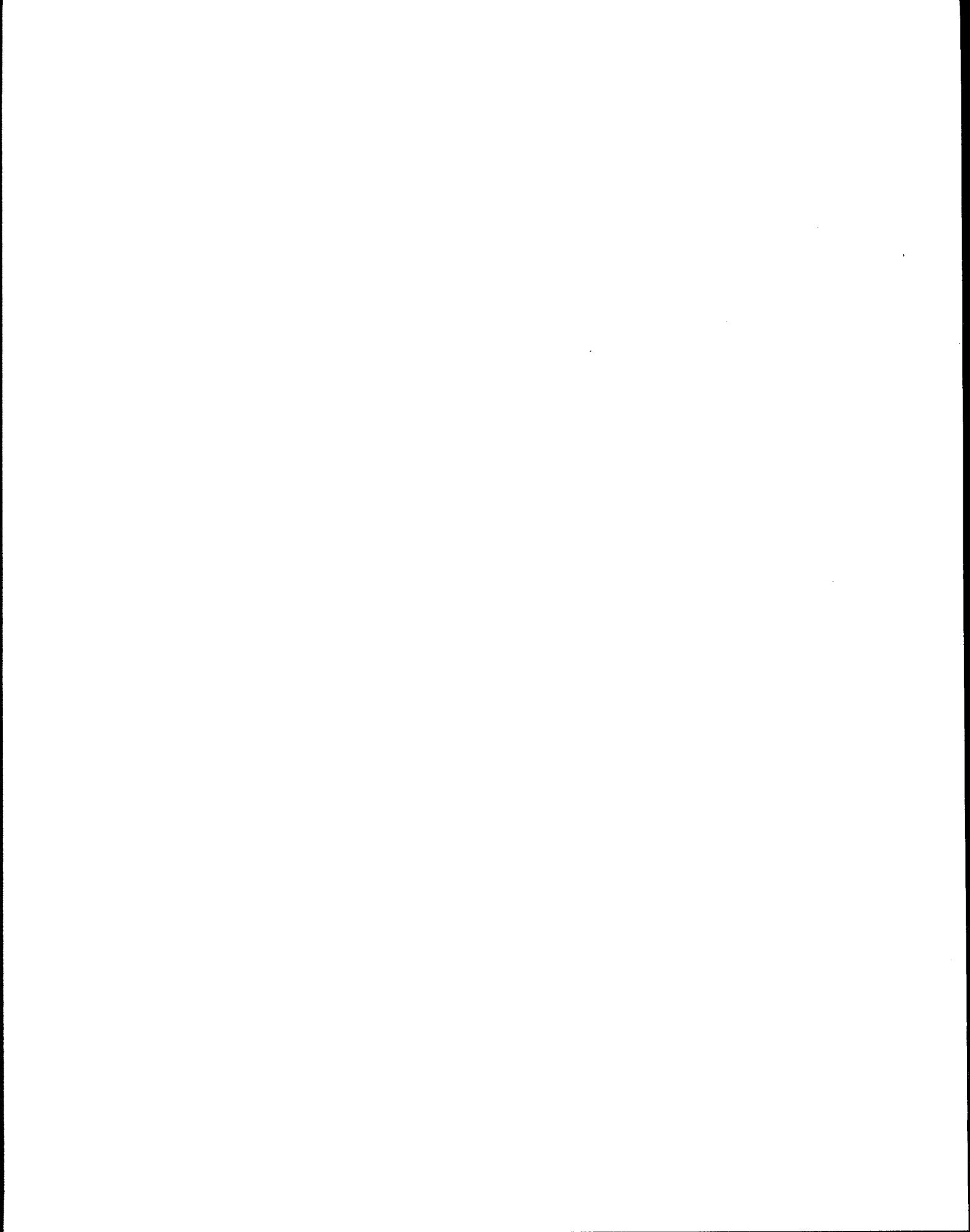
1. If during the comment period for a proposed Federal rule, any additional control technologies or approaches are identified by a State/local agency, EPA Headquarters should consider whether the alternative approaches can be specified within the final Federal standard. To the extent possible, all equivalent approaches identified should be incorporated into the final Federal rule.

2. Within the MACT Standards and section 112 programs, EPA Headquarters may want to include more specific delegation guidance in the text of the proposed standard. Headquarters can receive comments and suggestions from the Regions, States, etc. and publish final guidance with the final rule. Headquarters may also want to include delegation guidance in final section 112 standards or in a separate manual on controversial delegation issues that are specific to that standard.

3. Headquarters staff including OAQPS, OE, OGC and CEPP (if applicable) should be available to participate in the pre-application meetings for consultation.

4. Headquarters should keep the Regional Offices informed of any major changes to a proposed section 112 standard. This will help the Regions ensure that any outstanding issues with a State's Subpart E submittal are identified as soon as possible.

5. For Subpart E approvals under options section 63.93 and section 63.94 and once the State's submittal is deemed complete, a copy of the State's complete submittal will be sent to OE, OGC, and the OAQPS clearinghouse contact. If the submittal involves



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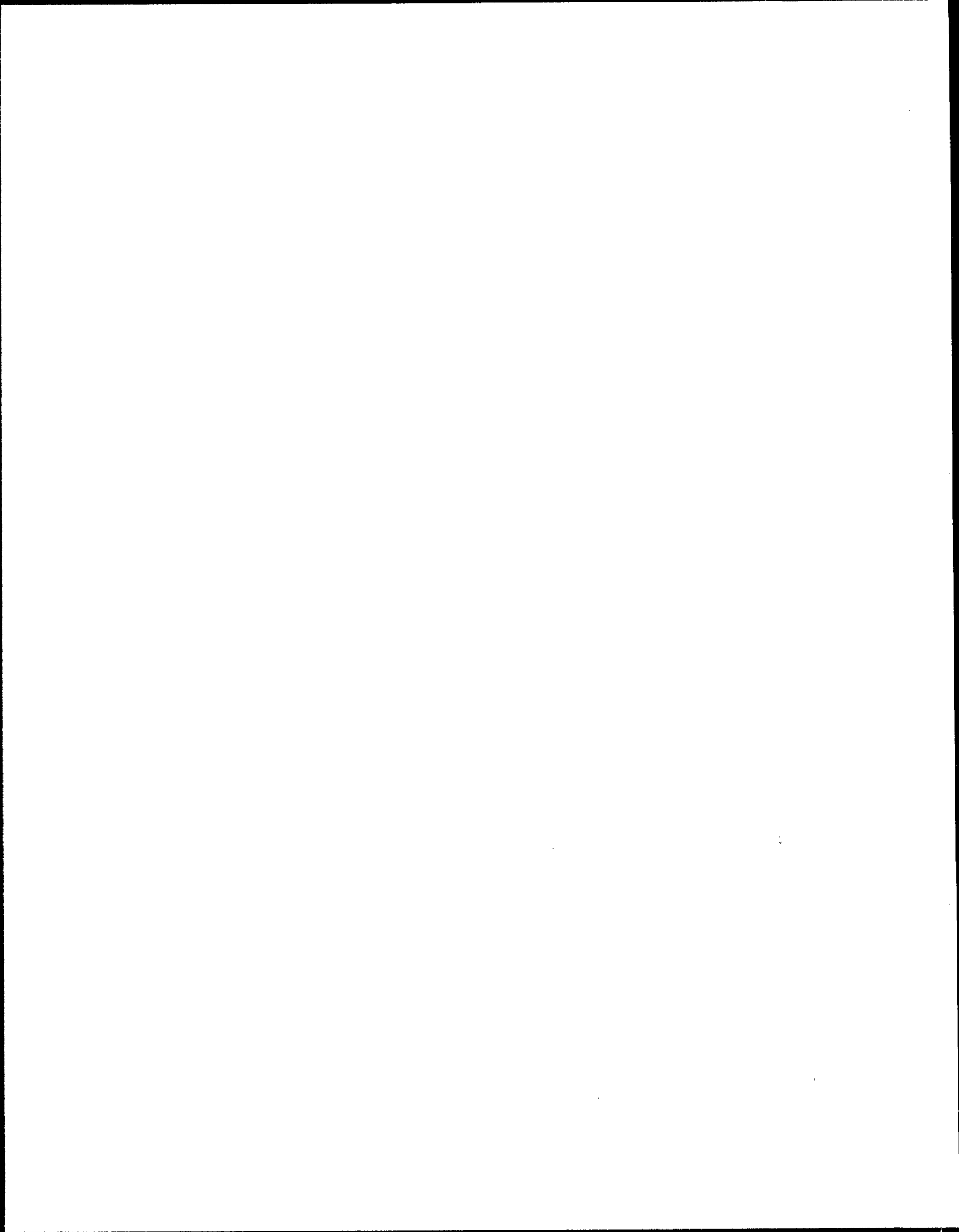
accidental releases under section 112(r), then CEPP will also receive a copy of the submittal. For Subpart E approvals submitted under options section 63.91 and section 63.92, Headquarters review is not required, but may be requested by the Regions. Headquarters reviewing offices should provide the Regional Office with any comments that may effect the Regions decision on approving or disapproving a State's submittal as soon as possible, but no later than day 105. Each Headquarters reviewing agency should also send a copy of any comments to the OAQPS clearinghouse contact.

6. For approval options section 63.93 and section 63.94, the Regional Office and the Headquarters reviewing offices are encouraged to have a conference call by around day 80 to discuss the major approval or disapproval issues identified by each office. During the call, the Regional Office could also summarize the quantity and content of the major public comments received during the public comment period.

7. For Subpart E approvals submitted under options section 63.93 and section 63.94, the Regional Office will forward the draft Federal Register with the preliminary approval or disapproval by day 135 to each Headquarters reviewing office for a 15 day review. For Subpart E approvals submitted under approval option section 63.92 and for delegation of Federal section 112 standards without changes, Headquarters review is not required but may be requested by the Regional Office.

Headquarters reviewing offices should identify concerns regarding the content of the draft notice rather than whether the submittal should be approved or disapproved during this 15 day review period. Headquarters should have commented on all approval/disapproval issues by day 105. The Headquarters reviewer is responsible for contacting the Regional contact to try and resolve the issue. Each Headquarters reviewing office should also send a copy of any comments to the OAQPS clearinghouse contact.

If Headquarters and the Regional Office agree to language changes, the Regional Office will revise the Federal Register notice by day 160 and submit revisions to Headquarters for review. Headquarters has until day 165 to review suggested changes. If Headquarters agrees with the language changes, the Regional Office forwards the Federal Register notice to the Regional Administrator for signature. If the Regional Office staff and the Headquarters staff cannot agree on a resolution, the respective Branch Chiefs will determine if the

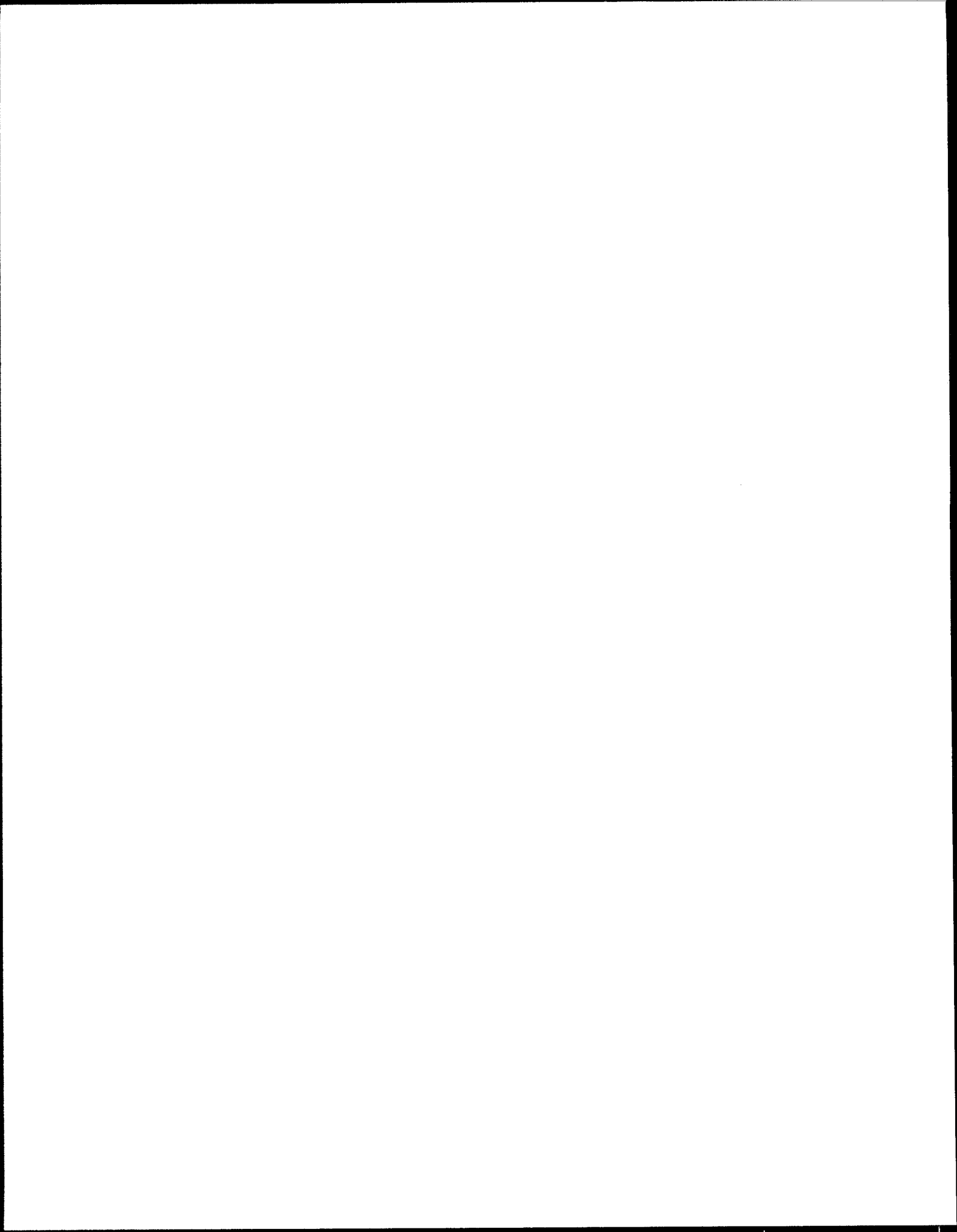


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issue should be raised to the Division Director level by day 160. If resolution is still not reached by day 170, Headquarters may provide further information and guidance. In future versions of this guidance document either Headquarters will be given a limited time to nonconcur or the final decision will be made by the Regional Administrator. Currently, this issue is unresolved and will be addressed in future guidance.

8. Headquarters should identify a contact person to act as a "clearinghouse" of information and advice who will process queries and requests for information from Regions using a consistent set of answers, procedures, and informational materials. This contact will ensure the accuracy and consistency of all information reaching the Regions from Headquarters, and document all discussions and information transmittals in order to keep track of what has been requested and what has been provided. In addition, the OAQPS clearinghouse contact will receive all State submittals under approval options section 63.93 and section 63.94 that the Regional Office will forward for OAQPS review. The OAQPS contact should review submittals for option section 63.94 and should forward submittals under option section 63.93 to the project lead for the rule being submitted.

8. If similar issues arise in several Regional Offices, Headquarters should consider incorporating additional guidelines within the appropriate sections of this document. Headquarters may also provide guidance through the Technology Transfer Network (TTN) as well as through various newsletters.



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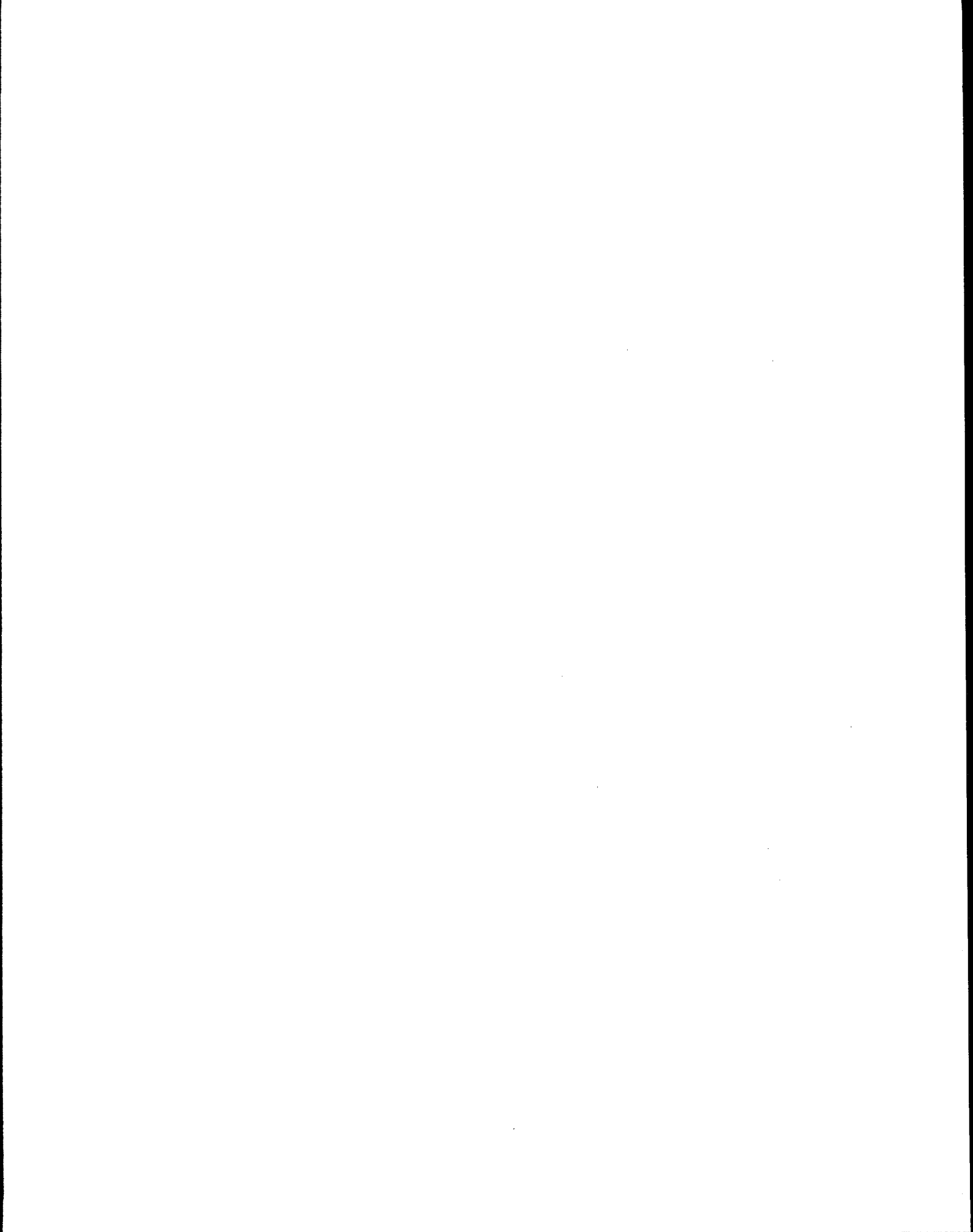
4.0 Section 63.91 of Subpart E Common Elements of Subpart E Reviews

The following Chapter of the guidance describes the general procedural requirements and common criteria that must be met for all Subpart E submittals. States seeking delegation of Federal section 112 rules without changes must meet the additional procedural requirements discussed in Chapter 5. States requesting approval of a different State rule or program will also have to meet one of the three specific sets of criteria which correspond to one of the three approval options: approval of a State rule that adjusts a section 112 rule (Chapter 6), approval of a State rule or State authorities that substitute for a section 112 rule (Chapter 7), or approval of a generic State program which substitutes for some or all section 112 emission standards or requirements (Chapter 8). In addition, State rules regarding Accidental Release Prevention programs will have to meet the specific criteria in Chapter 9. This chapter also discusses authority not conferred by delegation and concurrent Federal authority retained by the EPA.

4.1 Procedural Requirements

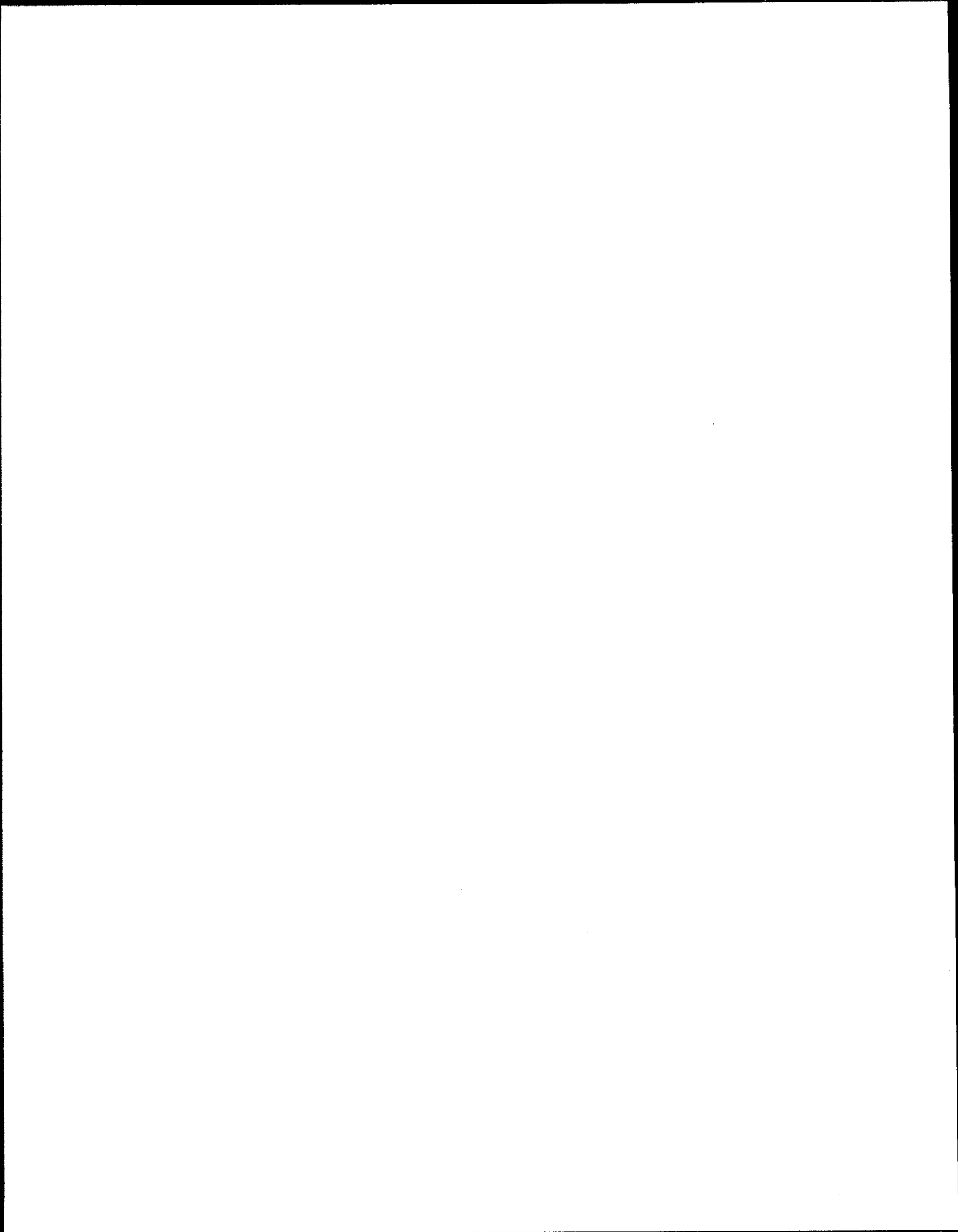
The general procedures set forth below must be followed by a State requesting delegation of authority pursuant to Subpart E. In addition to the general procedures and approval criteria outlined below, the procedures and approval criteria of either option section 63.92 (Chapter 6), section 63.93 (Chapter 7) or section 63.94 (Chapter 8) must be addressed unless the State is seeking delegation of the Federal standard as promulgated (Chapter 5). For approval of State programs to implement and enforce Federal section 112 rules as promulgated without changes (except for accidental release programs), only the approval criteria and the procedures outlined in this chapter must be met. Delegation of Federal section 112 standards without changes is discussed in more detail in Chapter 5. For approval of State rules or programs to implement and enforce the Federal Accidental Release Prevention program with or without changes, the requirements of this section and the approval criteria of section 63.95 (Chapter 9) must be met.

For a State's initial request for approval, and except for as otherwise specified under section 63.92, 63.93, or 63.94 for a State's subsequent requests for approval, the approval process will be the following:



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1. The Governor or the Governor's designee of the State shall submit to the appropriate Regional Administrator of the EPA a written request for delegation of authority pursuant to section 112(1). The request must demonstrate the adequacy of the State rule or program with respect to the approval criteria set forth in this guidance.
2. The request may seek delegation of authority to implement and enforce any section 112 standard which has been promulgated at the time of the request. The request should specify the source categories for which delegation is being sought. In addition, there are two ways a State may request future delegation of section 112 standards. A State requesting delegation of Federal section 112 standards without changes, may submit a program under section 63.91 establishing a mechanism for future delegation of section 112 standards as promulgated even before the State has an approved part 70 permit program. In addition, a State with an approved part 70 program who is seeking delegation of its more stringent State program may utilize approval option section 63.94 which allows a State to request delegation of future section 112 rules.
3. The Regional Administrator will review the request for approval and notify the Governor or the Governor's designee within 30 days of receipt whether the request for approval is complete according to the approval criteria in this guidance.
4. If, after review of public comments and any State responses to comments submitted to the Regional Administrator within 30 days of the close of the public comment period, the Regional Administrator finds that the approval criteria for section 63.91 are met along with any other applicable approval criteria under section 63.92, section 63.93 or section 63.94 for States seeking delegation of its different State program or authorities, then the State program or authorities will be approved by the Regional Administrator, published in the Federal Register and incorporated directly or by reference, under Part 63, Subpart A and under the subpart containing the otherwise applicable Federal rule. State authorities approved under section 63.95 (Chapter 9) will be incorporated under part 68.
5. Within 180 days of receiving a complete Subpart E submittal, the Regional Administrator shall notify the Governor or the Governor's designee in writing whether and to what extent the request has been approved or disapproved. If the request is disapproved, the notification to the Governor shall specify the reasons for such disapproval and any revisions or additions



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necessary to obtain approval. Any resubmittal by a State will be considered a new request.

6. If the request is approved in whole or in part, the Regional Administrator shall delegate to the Governor authority to carry out the approved portions of the State rule or program. A Notice of Delegation will subsequently be published in the Federal Register. The Notice of Delegation shall identify the approved State rule or program by reference to the request and to any additional submission by the Governor or the Governor's designee supplementing or modifying the State rule or program and shall specify which portions of the proposed State rule or program, if any, are disapproved. Such approved rule or program shall be Federally enforceable from the date of publication of approval.

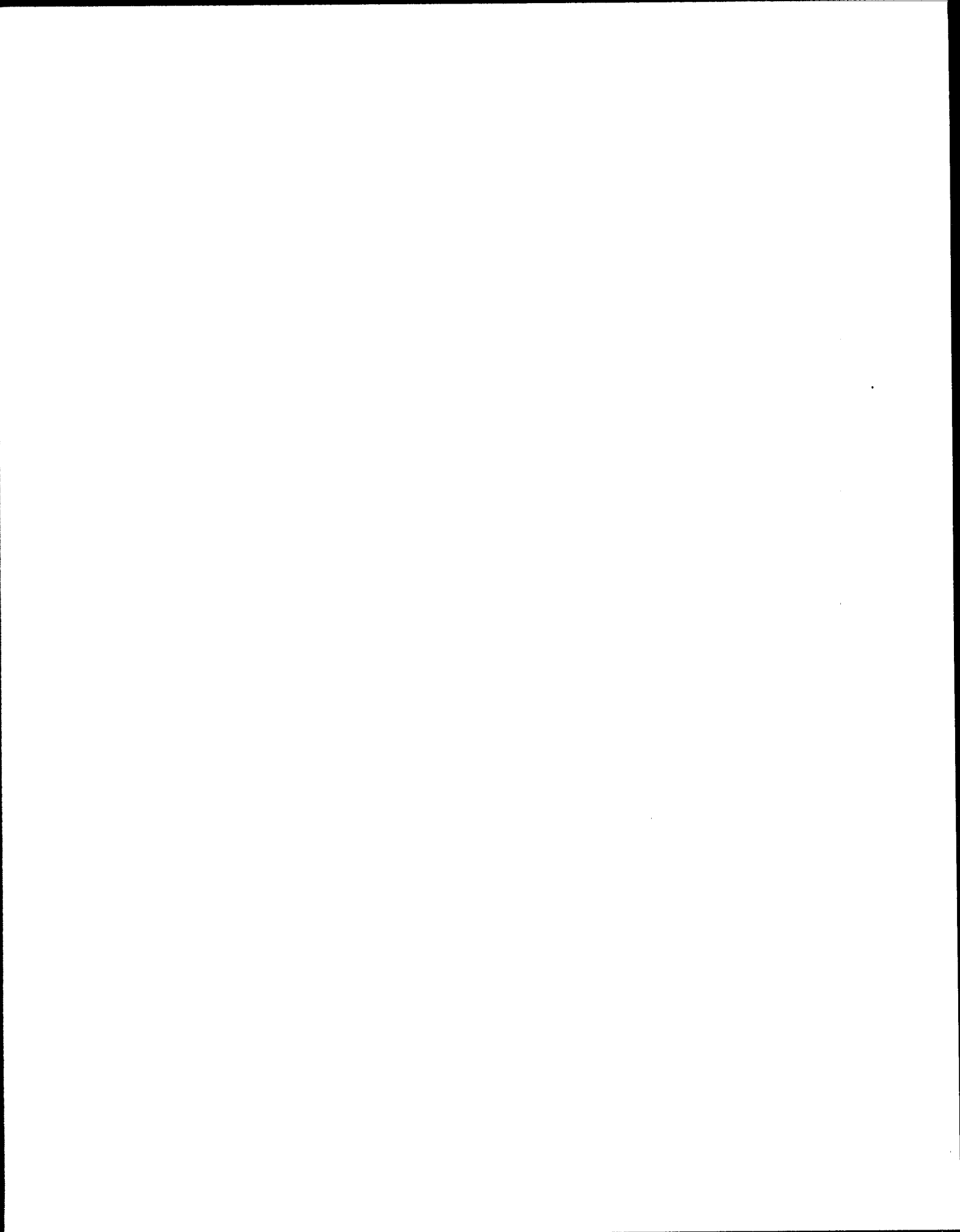
7. A delegation of authority pursuant to Subpart E shall not authorize Federal implementation and enforcement of section 112 standards according to a State rule or program which is different from the approved State rule or program identified in the Notice of Delegation unless a revised State rule or program is submitted by the Governor or the Governor's designee and is approved by the Regional Administrator according to the procedures established in the final Subpart E rule 40 CFR section 63.91(c).

4.2 General Approval Criteria

Any request for Subpart E approval must meet the following general approval criteria in addition to the specific approval criteria established for each Subpart E approval option.

1. A written finding by the State Attorney General (or for a local agency, the General Counsel with full authority to represent the local agency) that the State has the necessary legal authority to implement and enforce the State rule or program upon approval and to assure compliance by all sources within the State with each applicable section 112 rule, emission standard or requirement.

The Attorney General's finding should include a statement that the laws of a State provide adequate authority to carry out all aspects of the rule or program being submitted including all of the enforcement authorities identified in this section. This statement shall include citations of the specific statutes or administrative regulations, and, where appropriate, judicial decisions that demonstrate adequate authority. State statutes and



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regulations cited by the State Attorney General shall be in the form of lawfully adopted State regulations at the time the statement is signed and shall be fully effective by the time the State rule or program is approved. Appendix F contains a sample Attorney General letter.

At a minimum, the State must have the following legal authorities concerning enforcement:

- (i) *The State shall have enforcement authorities that meet the requirements of section 70.11 of part 70.*

section 70.11 requires permitting authorities to have authority to seek and impose civil penalties and criminal fines as well as injunctive relief.

- (ii) *The State shall have authority to request information from regulated sources regarding its compliance status.*

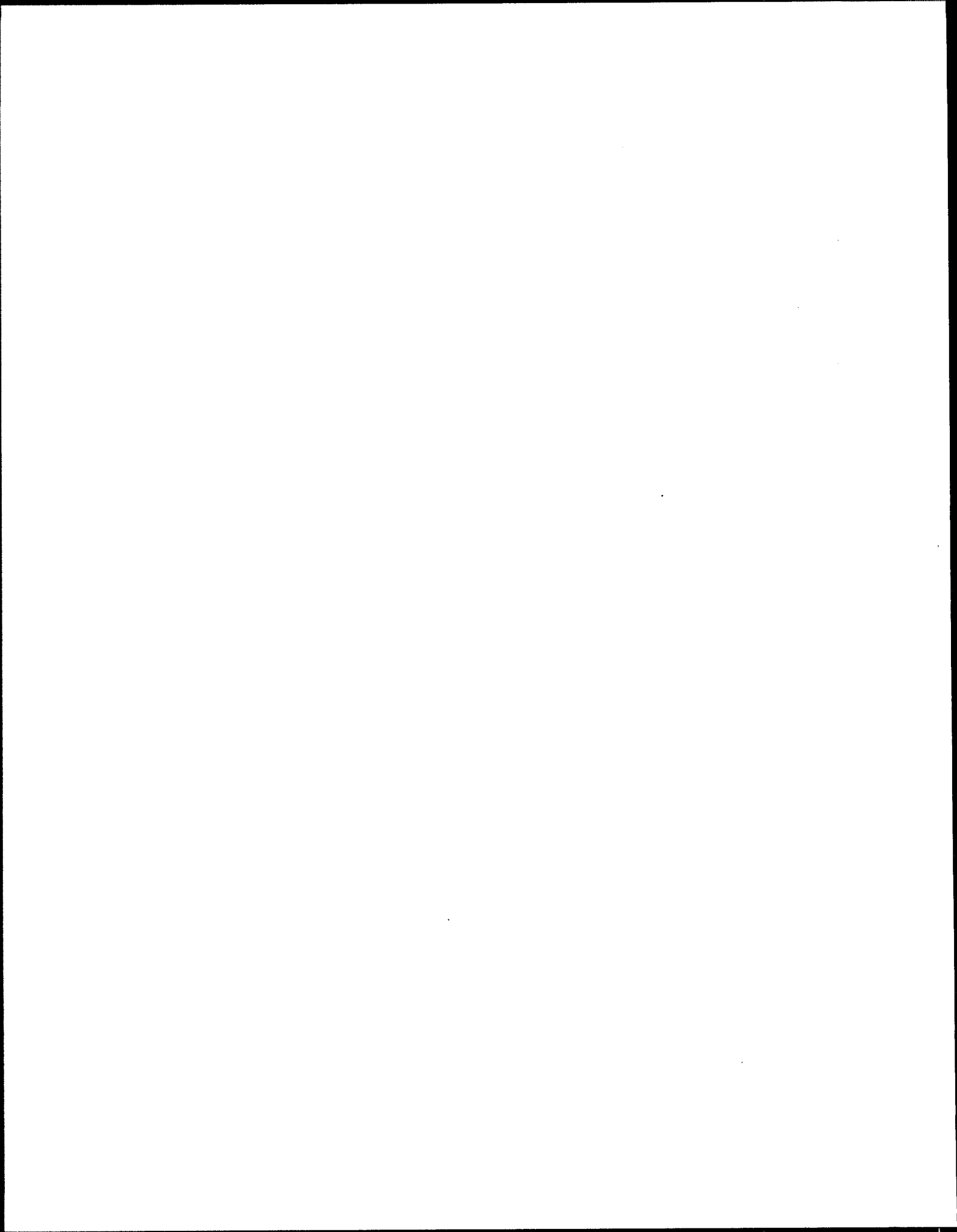
- (iii) *The State shall have authority to inspect sources and records required to determine a source's compliance status.*

For example, upon presentation of credentials and other documents as may be required by law, the State should be able to: 1) enter the location where the emissions related activity is conducted, 2) have access to and copy any records relating to this State rule or program, 3) inspect at reasonable times any facilities, equipment, practices or operations regulated by this State rule or program and 4) sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the applicable requirements of this State rule or program.

- iv) *If a State delegates authorities to a local agency, the State must retain enforcement authority unless the local agency has authorities that meet the requirements of section 70.11 of part 70.*

2. *A copy of State statutes, regulations, and other requirements that contain the appropriate provisions granting authority to implement and enforce the State rule or program upon approval.*

The State regulations and authorities should be clearly marked for easy reference. As indicated on the Subpart E



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application form, for each approval criteria the State will have to reference the page number (citation) of the specific State regulation or authority which satisfies each approval criteria (if applicable).

3. A demonstration that the State has adequate resources to implement and enforce all aspects of the rule or program upon approval, which includes:

- (i) a description in narrative form of the scope, structure, coverage and processes of the State program;

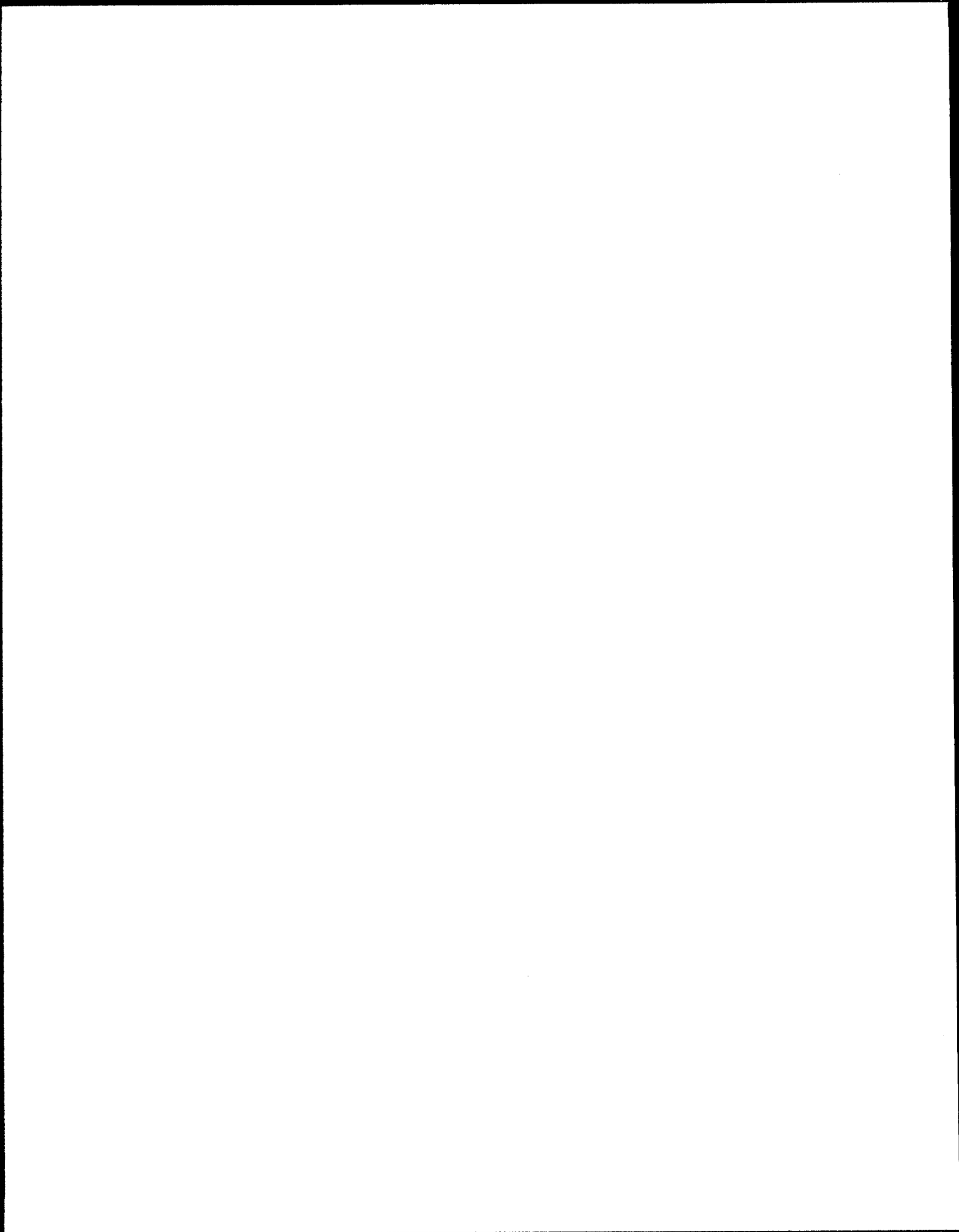
The scope description could include a comparison to the scope of the Federal rule. This section could include a comparison to the Federal rule with regard to consistent applicability, definitions that are consistent with the Federal rule and General Provisions, standards that are at least as stringent as the Federal rule, test methods and monitoring that are consistent with the Federal rule or that are demonstrated to be at least as stringent, and reporting and record keeping requirements that are as stringent as the Federal rule.

The structure description could address whether the State standard is structured similarly to the Federal standard. For example, does the State standard take a risk-based approach or a control technology approach?

The coverage description could include an approximate number of affected sources and what equipment is required.

- (ii) a description of the organization and structure of the agency or agencies that will have responsibility for administering the program.

If more than one agency is responsible for administering the rule or program, the responsibility of each agency should be delineated, their procedures for coordination should be set forth, and an agency should be designated as a "lead agency": to facilitate communications between EPA and the other agencies having program responsibility. The organizational structure should include a primary contact and phone number for each agency identified. It may be useful to



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include a simple chart of the organizational structure which describes the relationship and responsibility of each State agency involved in implementation.

- (iii) *a description of the agency staff who will carry out the State program, including the number, occupation, and general duties of the employees.*

The State need not submit complete job descriptions for every employee carrying out the State program.

- 4. *A schedule demonstrating expeditious State implementation of the rule or program upon approval.*

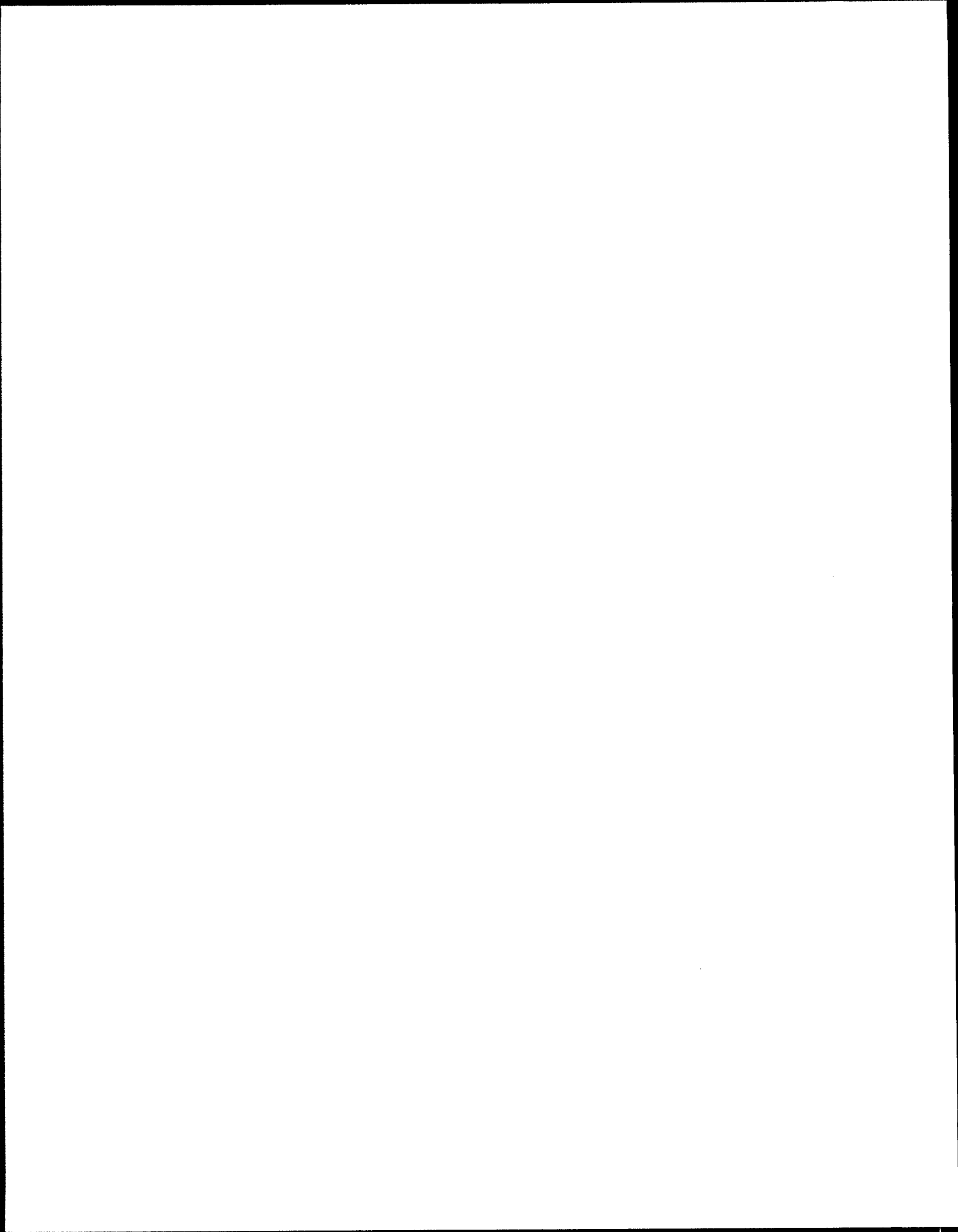
The State should demonstrate an expeditious implementation schedule, if the Federal rule is final, or have the authority to require affected sources to be in compliance at least as quickly as they would have been required by the otherwise applicable Federal rule. This demonstration assures that the State can expeditiously implement the section 112 program.

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

This plan assures that the source will comply with the State's approved program or rule.

One mechanism to assure the Regional Office of expeditious compliance of all sources is to utilize section 105 grant objectives. Some additional grant objectives that could be included are: (1) a target number of section 112 inspections for the State rule being submitted that must be conducted by the State in a fiscal year; (2) performance test reviews of stack tests that were conducted in accordance with section 112 requirements; and (3) timely and appropriate enforcement action against sources that violate section 112 requirements.

Another mechanism to assure the Regional Office of expeditious compliance is to enter into a Memorandum of Understanding regarding compliance tracking and enforcement strategies.



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In addition, a State should follow both the Significant Violator Timely and Appropriate Guidance which defines significant violators and what EPA considers to be timely and appropriate enforcement responses to those significant violators, and the Compliance Monitoring Strategy which discusses inspection targeting and requirements.

6. A demonstration of adequate legal authority to assure compliance with the rule or program upon approval. At a minimum, the State must have the following legal authorities concerning enforcement:

- (i) The State shall have enforcement authorities that meet the requirements of section 70.11 of part 70.

- (ii) If a State delegates authorities to a local agency, the State must retain enforcement authority unless the local agency has authorities that meet the requirements of section 70.11 of part.

4.3 Authority Conferred and Not Conferred by Delegation

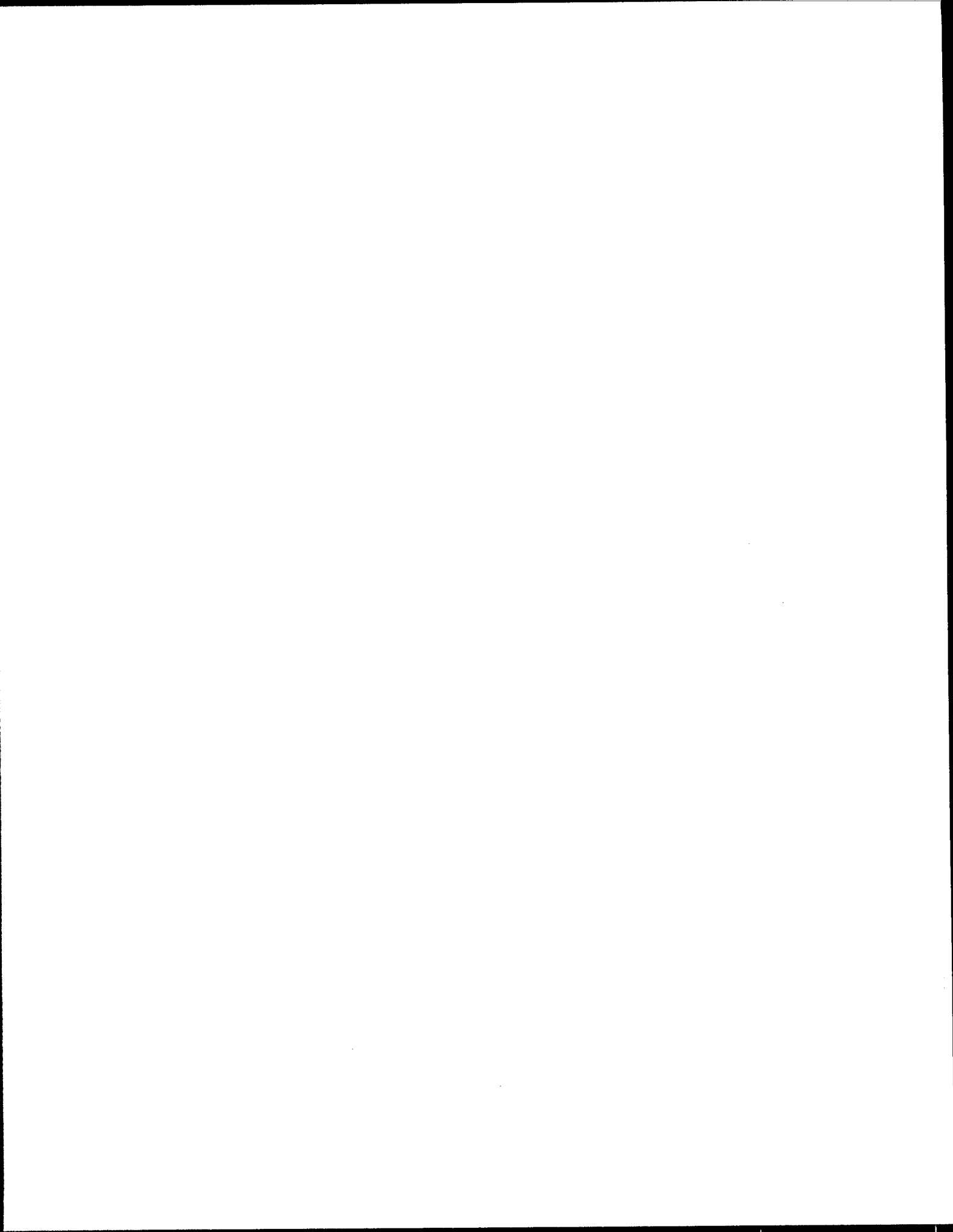
If the State seeks delegation of a different State rule or program, then delegation to a State pursuant to Subpart E confers authority to implement and enforce the section 112 standards and programs in accordance with the approved State rule or program. If the State seeks delegation of the Federal standard without changes, then delegation to a State pursuant to Subpart E confers authority to implement and enforce the Federal section 112 rules and programs without changes. The authority not conferred under Subpart E includes:

- (1) The authority to add or delete pollutants from the list of hazardous air pollutants established under section 112(b).

If the State rule wants to include additional pollutants that are not included on the list established under section 112(b), those pollutants will not be Federally enforceable. However, the States must have the authority to amend its list of HAP, if EPA adds or deletes a chemical from the list established under section 112(b).

- (2) The authority to add or delete substances from the list of substances established under section 112(r).

If the State rule includes additional substances to the list established under section 112(r), those substances



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will not be Federally enforceable. However, a State must have the authority to amend its list of substances, if EPA adds or deletes a substance from the list established under 112(r).

(3) The authority to delete source categories from the Federal source category list established under section 112(c)(1) or to subcategorize categories on the Federal source category list after proposal of a relevant Federal section 112 emission standard.

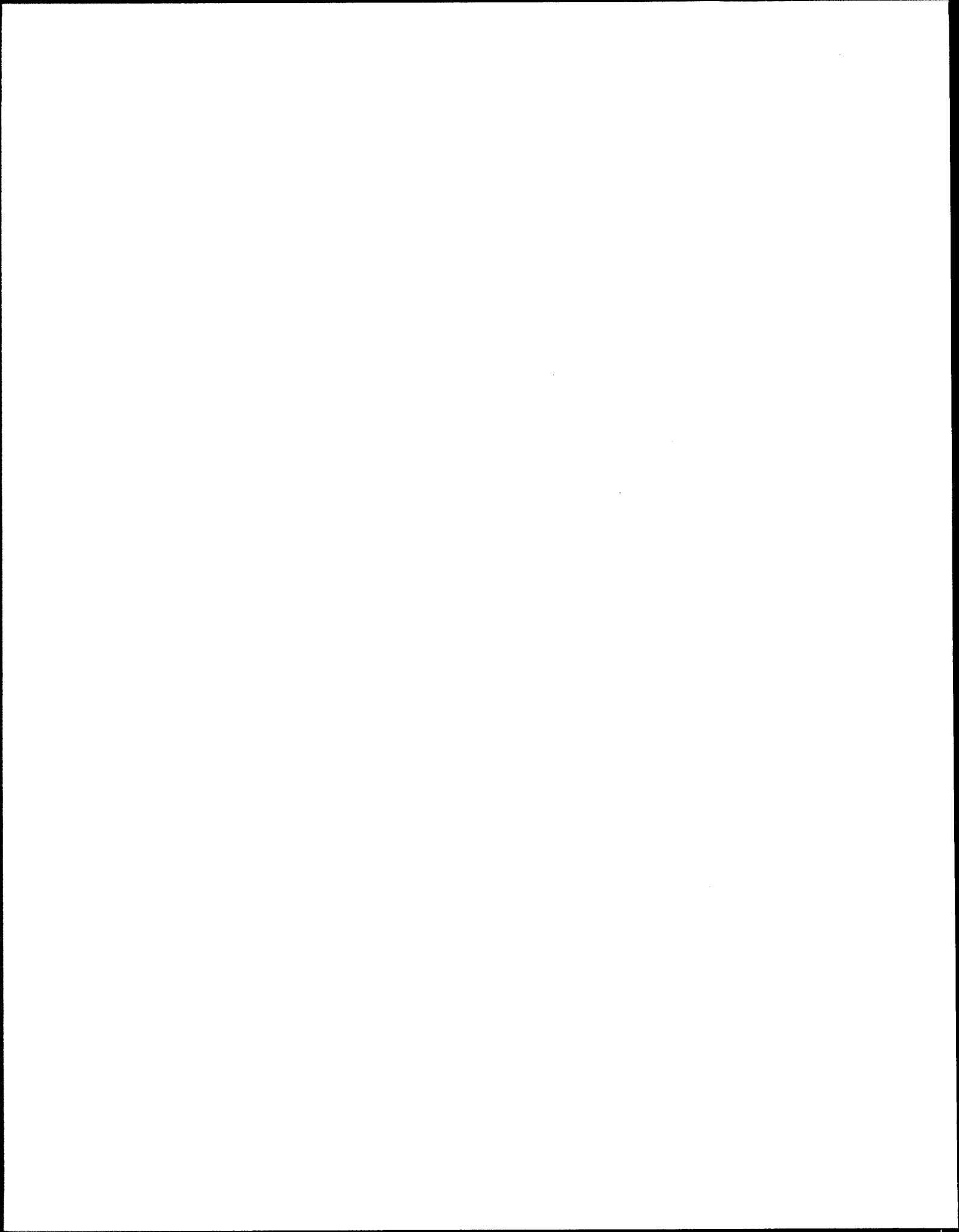
(4) The authority to revise the source category schedule established under section 112(e) by moving a source to a later date for promulgation.

(5) Any other authorities determined to be non-delegable by the Administrator.

(6) Certain authorities for the regulation of radionuclides; See the Subpart E rule for further discussion.

4.4 Concurrent Federal Authority

Pursuant to section 112(1)(7), the EPA retains the concurrent authority to enforce the section 112 rules and programs in Federal court. After delegation to a State, the EPA will exercise its concurrent authority when necessary to secure effective enforcement of the delegated section 112 rule or program. In exercising its concurrent authority, EPA is not bound by any State action or determination in carrying out authority delegated to the State pursuant to section 112(1).



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5.0 Adoption the unchanged Federal section 112 standards

The following Chapter of the guidance describes how Federal section 112 standards as promulgated can be transferred to a State or local agency.

The language in section 112(1) provides the mechanism for delegating Federal section 112 standards and requirements to the States. Since the language in section 112(1) replaces that formerly found in section 112(d), section 112(1) now provides the exclusive pathway for section 112 delegation. Section 112(1)(5) clearly sets prescriptive requirements for approval after November 15, 1990 of State air toxics programs and delegation of section 112 standards and requirements under notice and comment rulemaking.

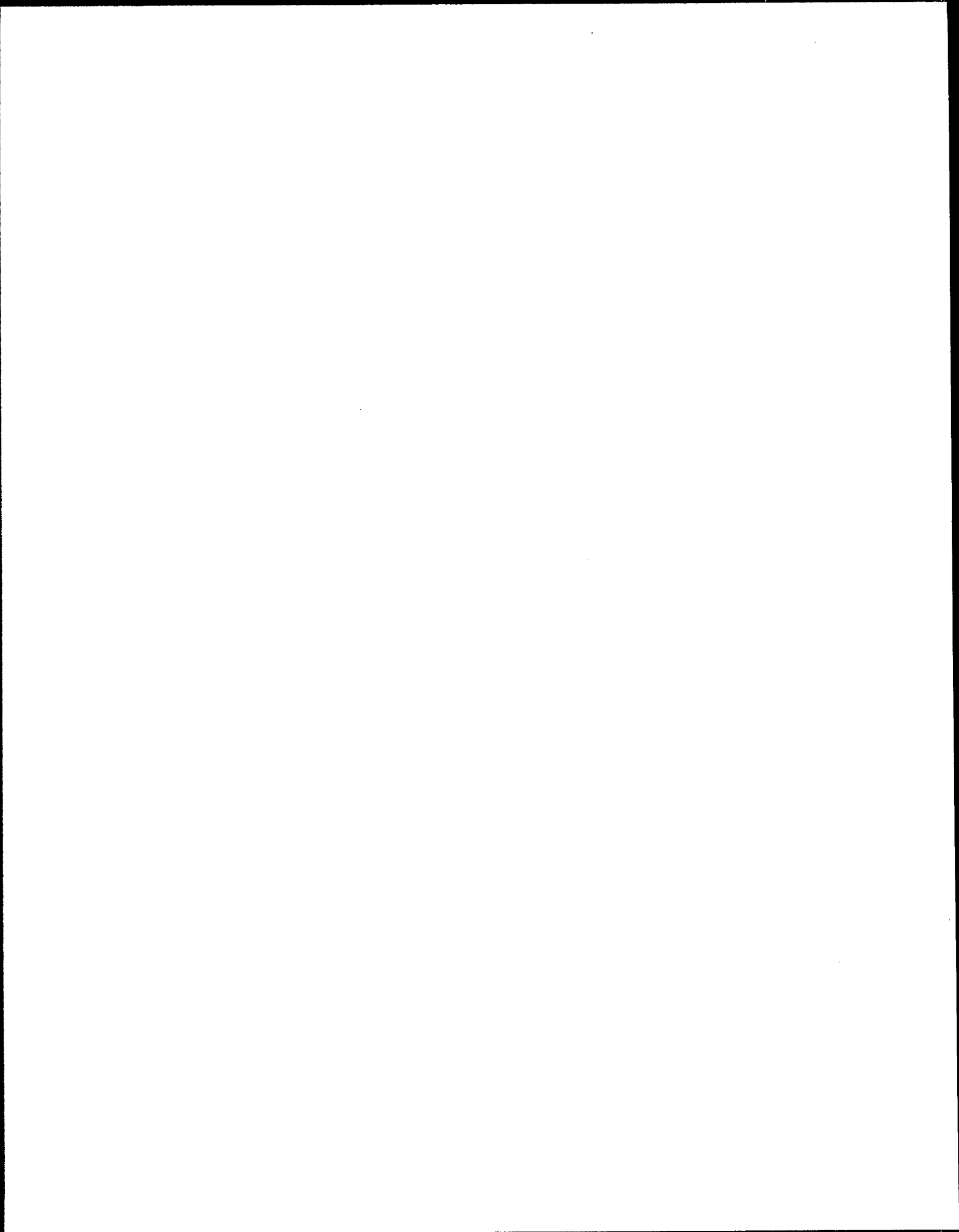
5.1 Before Part 70 Approval and Non-part 70 Sources

Section 63.91 of Subpart E has been amended from proposal to provide for approval of State rules or programs that implement and enforce future Federal section 112 rules as promulgated by EPA. This section provides a mechanism for delegation of Federal section 112 standards and requirements prior to approval of a State's part 70 operating permit program and for Federal section 112 requirements applicable to sources that are not subject to the requirements of part 70. A State seeking formal EPA approval for programs to implement and enforce Federal section 112 rules as promulgated must meet the common approval criteria described in Chapter 4 including the requirement for notice and opportunity for public comment.

5.1.1 Procedural Requirements

For a State requesting delegation under section 112(1) of Federal section 112 rules as promulgated without changes, the procedural requirements discussed in Chapter 4 must be followed.

In general, a Subpart E submittal for a State seeking delegation of Federal section 112 standards without changes requires a submittal of a request for approval under section 63.91, notice in the Federal Register that the EPA has received a request for approval, a public comment period of at least 30 days, and a notice in the Federal Register that the EPA has approved or disapproved the request. Where the State intends to implement and enforce the section 112 requirement as promulgated by EPA, this notice and comment rulemaking, even where it cannot be combined with the part 70 approval process can



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still be expeditiously accomplished in many cases. See below for discussion of automatic delegation and direct final approaches.

5.1.2 Approval Criteria

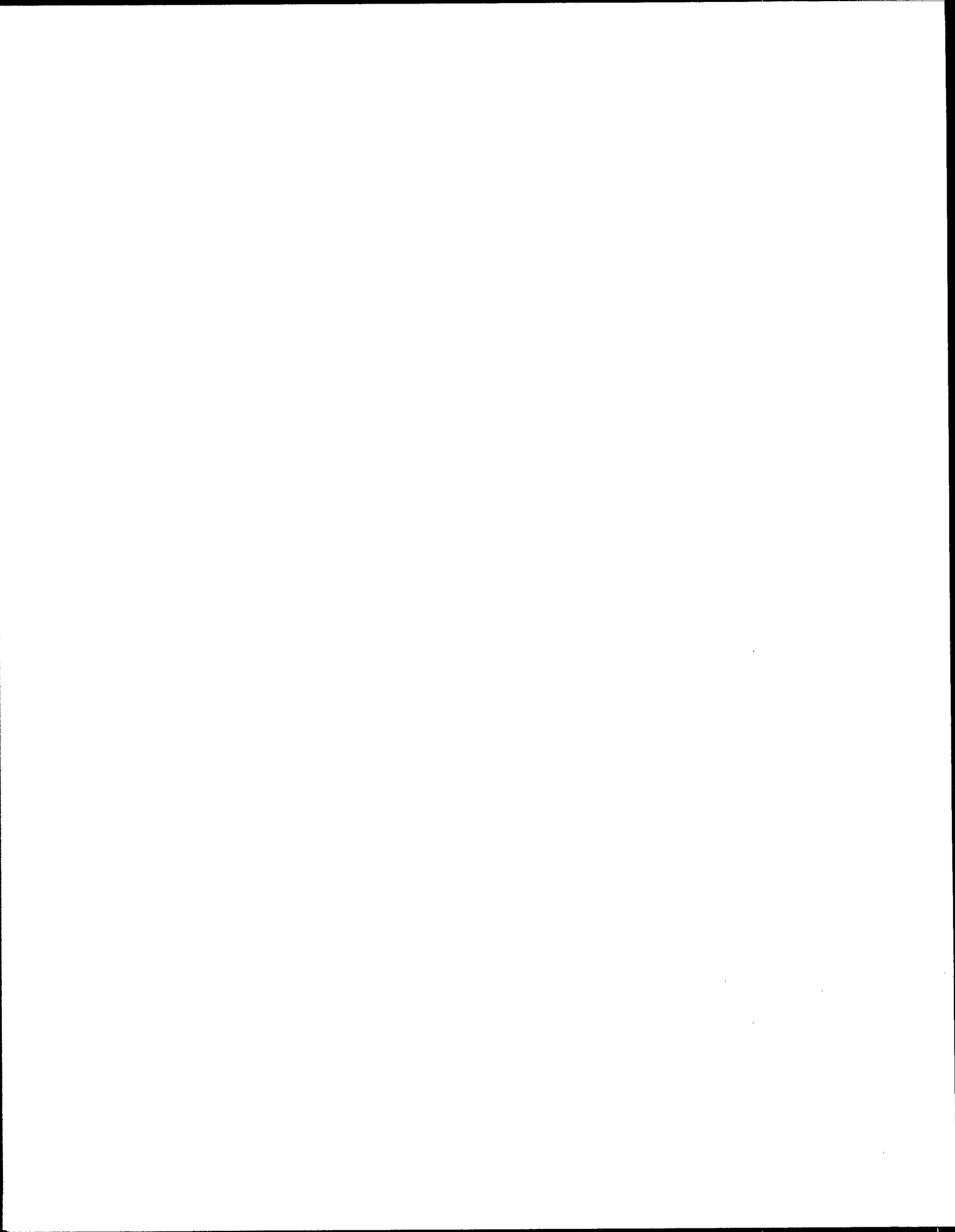
Any request for Subpart E approval of Federal section 112 rules as promulgated must meet the common criteria in section 63.91 (discussed in Chapter 4) before approval may be granted. For section 112(r), the requirements of section 63.95 must also be met.

A State may submit a request which satisfies the approval criteria in section 63.91 and specifies the mechanism that the State will utilize to assume delegation of future Federal section 112 standards as promulgated. In order to use this option, the State must have adequate authority under State law to accept delegation of future standards to be promulgated by the EPA. The public will have an opportunity to comment on the approval criteria in section 63.91, which fulfill the prescriptive requirements of 112(l)(5), as well as the mechanism that the State will use for any future delegation of a Federal section 112 standard as promulgated. Once the State's request under section 63.91 has been approved by EPA, that State will have established a program which satisfies the public notice and comment requirement for all future delegations of Federal section 112 standards as promulgated and may utilize the delegation mechanism established under section 63.91 as long as there is a mechanism to assure that a State continues to meet the approval criteria in section 63.91 of Subpart E. For example, if the State for some reason was unable to meet its commitment to provide adequate resources in the future, the auditing and withdrawal mechanism in the Subpart E regulation would allow EPA to withdraw approval, thus providing protection against a State's failure to continue to meet the criteria for each future applicable requirement of section 112.

The delegation mechanism that a State may use to assume delegation of a Federal section 112 standard as promulgated is a matter of State law. Outlined below are a few mechanisms that a State may be able to use depending on its own State law.

5.1.2.a Automatic Delegation

Automatic delegation refers to a process where agencies assume responsibility for the implementation and enforcement of current and future section 112 standards without additional rulemaking at the State level. The State must have authority under its own



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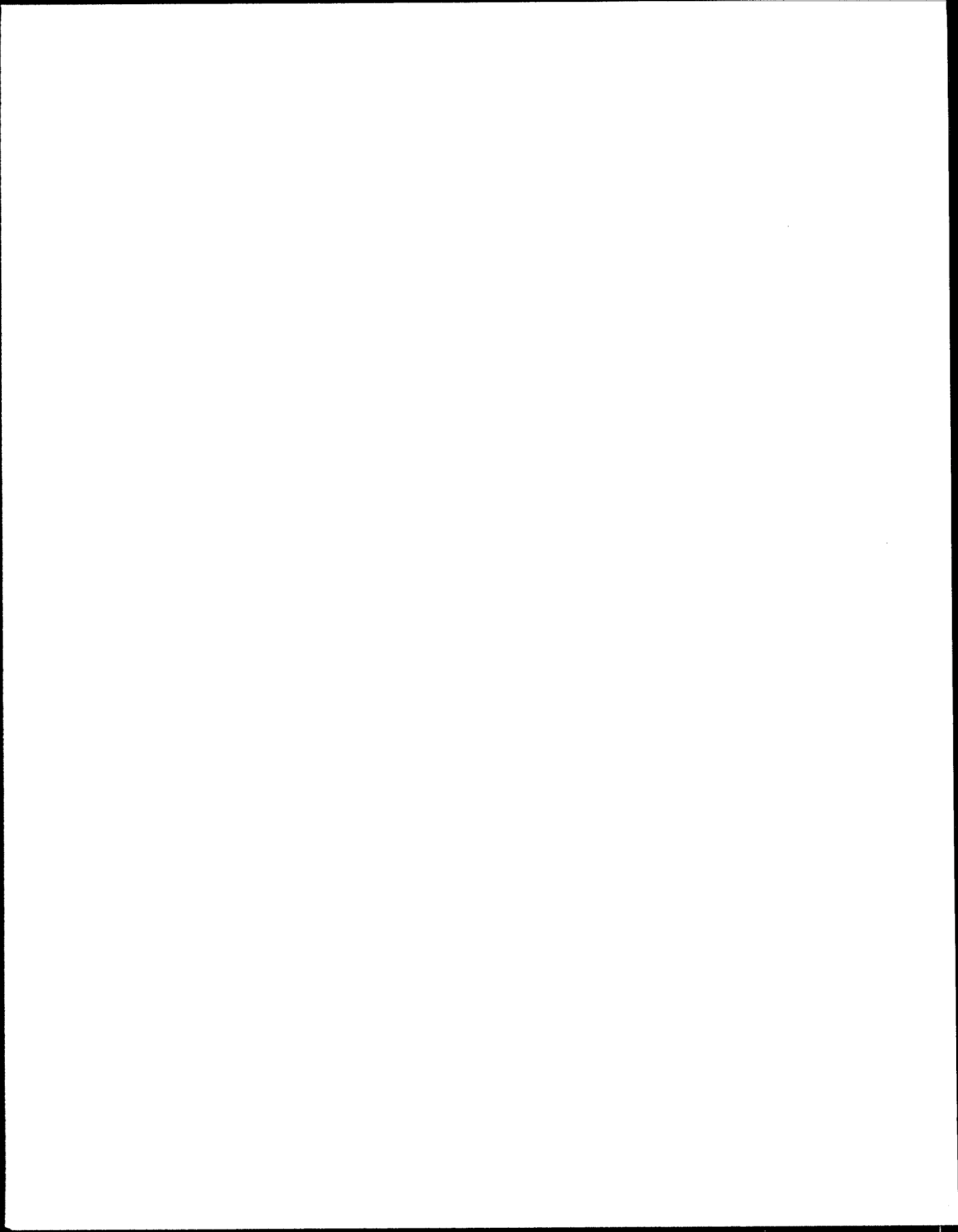
State law to accept delegation in this way. Automatic delegation is initially accomplished when State agencies request the authority to implement and enforce all future section 112 standards in its request for approval under section 63.91. Once this delegation mechanism has been approved under section 63.91, the EPA will notify the State agencies of the promulgation of additional standards through an automatic delegation letter. This letter does not require a response by the State agency and if no negative response is received within 10 days from the State, the delegation is final. A notice of automatic delegation is then published in the Federal Register. This notification officially delegates the standards to the State based on the previous request for automatic delegation. The purpose of the Federal Register notice is to inform the public that the delegation has taken place and to indicate where a source notification and other reports should be sent.

5.1.2.b Adoption by Reference

One alternative for those States that do not have authority under their own State law to accept automatic delegation would be delegation by reference. Under this procedure, newly promulgated section 112 standards would be adopted directly into the State codes by reference to the Federal law. The State would have to have authority under its own State law to use this mechanism. This would considerably decrease the administrative and economic burdens associated with major regulatory changes. Once this delegation mechanism has been approved under section 63.91, the EPA will notify the State agencies of the promulgation of additional standards. The State will send a delegation request letter from the Governor or his delegated representative. The EPA will then send a letter delegating the section 112 standard to the State. This letter does not require a response by the State agency, and if no negative response is received within 10 days from the State the delegation is final. A notice of delegation is then issued into the Federal Register which formally delegates the Federal standard to the State. The purpose of the Federal Register notice is to inform the public that the delegation has taken place and to indicate where a source notification and other reports should be sent.

5.1.2.c Program for Case-by-Case Delegation

In some States, neither automatic delegation nor delegation by reference may be available to a State agency due to legal or political constraints such as lack of adequate authority under State law. In these instances, additional section 112 standards



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must be delegated on a case-by-case basis. This technique for assuming responsibility of a newly promulgated section 112 standard entails submitting an additional delegation request, complete with demonstration of adequate resources and legal capabilities (as needed), for each new section 112 standard as well as incorporating the Federal regulations directly into the State or local regulations.

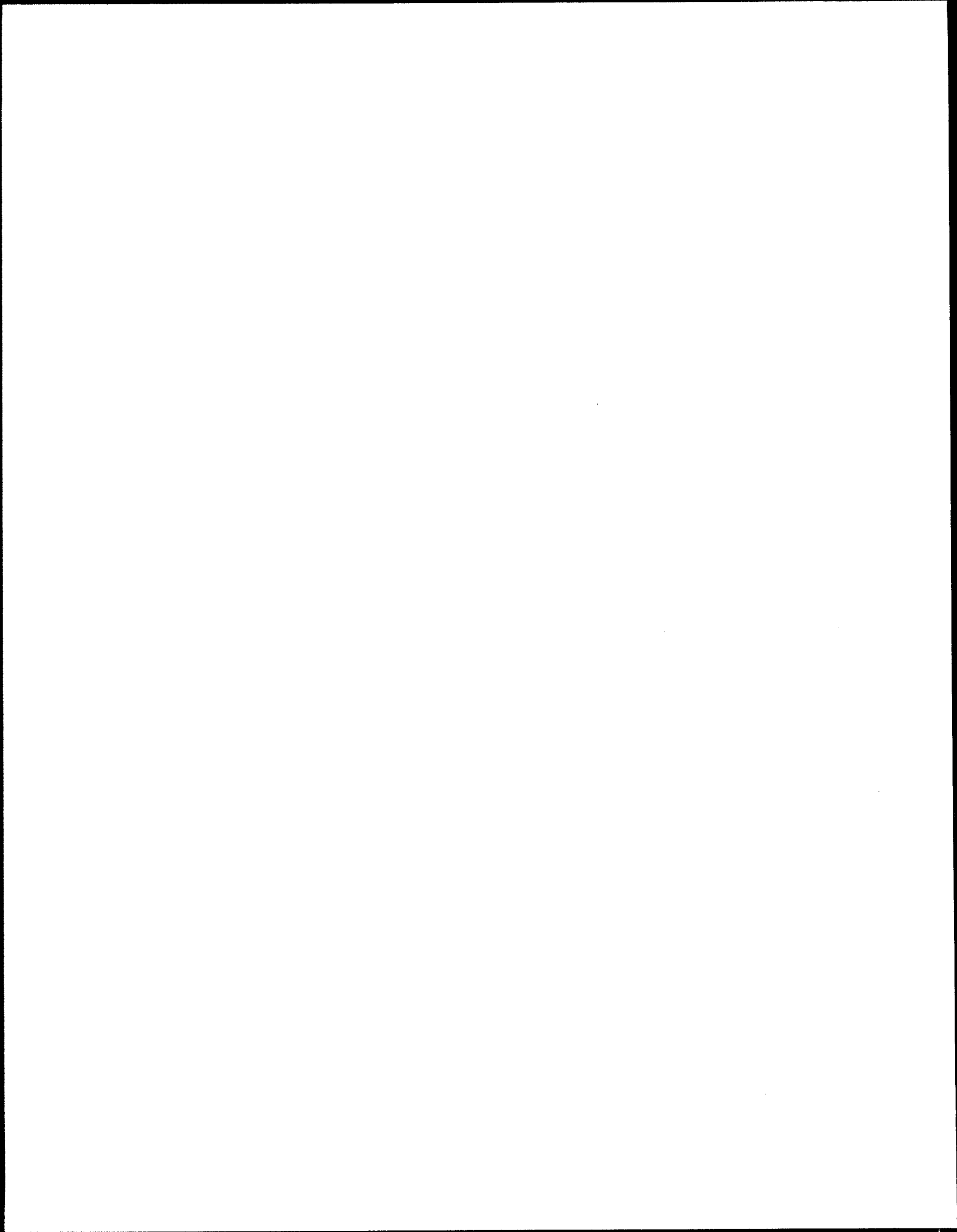
This mechanism would require public notice and comment for each delegation. Once this delegation mechanism has been approved under section 63.91, the EPA will notify the State agencies of the promulgation of additional standards. The State will send a delegation request letter from the Governor or his delegated representative. This request would be subject to procedural requirements of 5.1.1. The EPA will then send a letter delegating the section 112 standard to the State. This letter does not require a response by the State agency, and if no negative response is received within 10 days from the State, the delegation is final. A notice of delegation is then issued into the Federal Register which officially delegates the Federal standard to the State. The purpose of the Federal Register notice is to inform the public that the delegation has taken place and to indicate where a source notification and other reports should be sent.

5.1.3 Option for Direct Final Rulemaking

Another procedural streamlining mechanism is the use of direct final rulemaking, where appropriate, for formal delegations where there has been no prospective approval like that discussed above. In the instances where EPA did not expect any adverse comments upon publication of a notice of approval, the notice could specify that the approval would become effective in 30 days unless adverse comments were received. If adverse comments were received, then the EPA would have to renounce the approval and provide for a 30-day public comment period. The time and resources savings from this use of direct final rulemaking would thus depend on the correctness of the EPA's judgement regarding whether or not adverse comments would be submitted.

5.1.4 Option for Implementation Agreements

Where a Subpart E rulemaking required to delegate a section 112 requirement is not practical (e.g., short time frame before part 70 approval expected), the EPA can enter into implementation agreements with a State willing to transfer the effective workload of such requirement. That is, the less formal



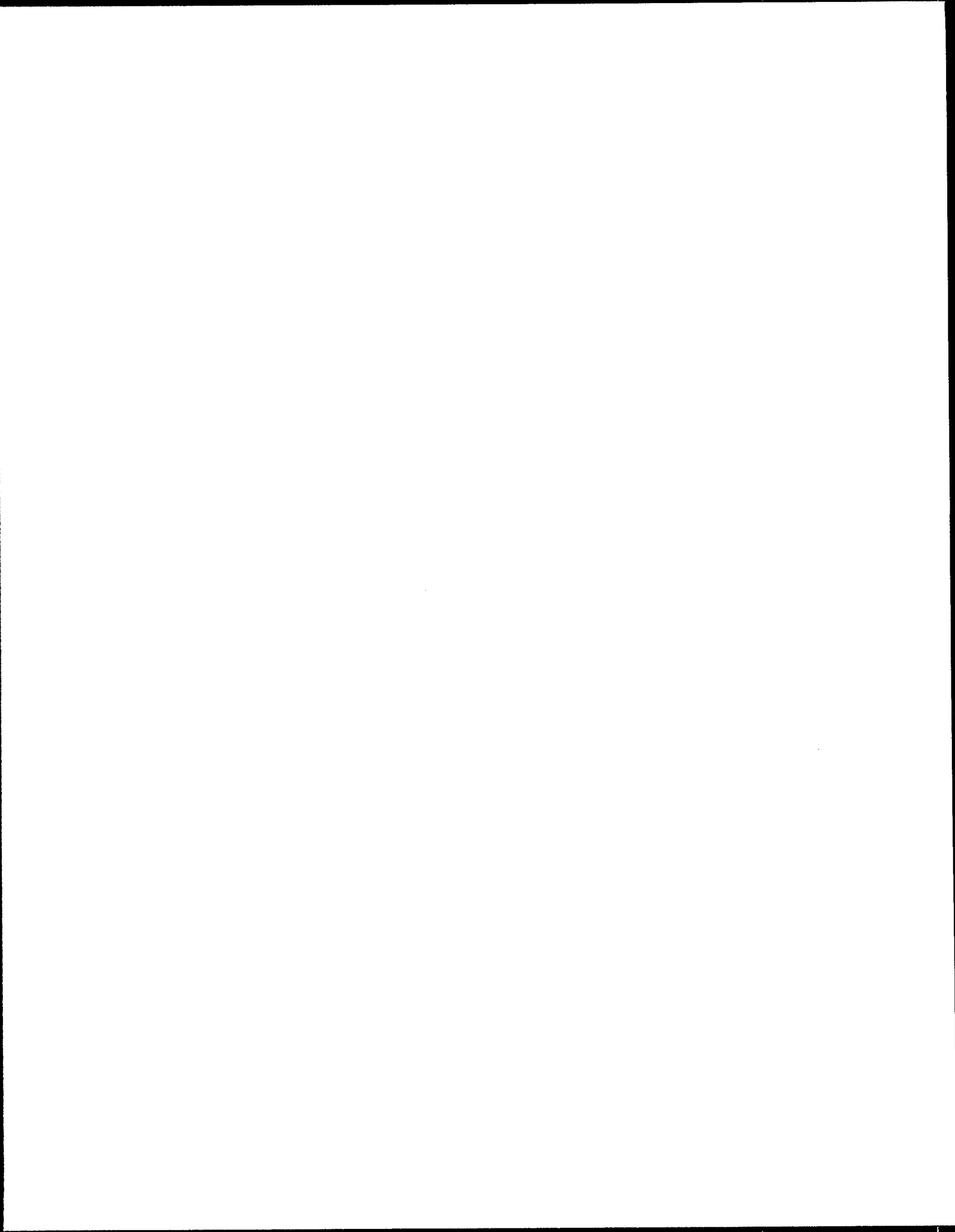
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delegation practices previously allowed under section 112(d) can be used to contract with the State to perform the technical and administrative implementation of the requirement (and enforcement as well if the State has adequate legal authority to enforce in State court). This approach, while potentially valuable in several situations would not serve, for example, to replace the EPA as the point of receipt for required source information. The opportunity for transfer under implementation agreements, however, should not be pursued for section 112 requirements applicable to sources after they are subject to an approved part 70 permit program.

5.2 Relationship to Part 70 Program Approval

State operating permit programs are the mechanism through which most 112 requirements will be implemented. At this time, all major sources (i.e. have the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP) must receive a part 70 operating permit. This permit must assure compliance by the source with all applicable requirements of the Act, including those contained in section 112.

In order to put an approved part 70 operating permits program in place in a State, the State is obligated to incorporate all section 112 applicable requirements into permits and to assume the primary responsibility to enforce these requirements for all major sources. The EPA therefore considers the approval of the State operating permit program under part 70 an excellent opportunity to facilitate simultaneous EPA approval of the State program under section 112(1) to the extent that it applies to part 70 sources, especially where the State merely intends to implement section 112 requirements as they are promulgated by EPA. Both EPA approval actions are necessary before the State can begin to issue part 70 permits that incorporate Federal section 112 standards, but the demonstration addressing section 112(1) in most instances can be extremely brief and can largely rely on the demonstrations required for part 70 approval. That is, the part 70 approval will consider essentially the same approval criteria with respect to legal authority and resource adequacy required to be met under section 112(1)(5), and will provide an adequate opportunity for oversight of future State actions to implement and enforce section 112 requirements for part 70 sources. Because Title V approval is conditioned on a State's ability to implement and enforce all applicable section 112 requirements for sources subject to the title V program, EPA



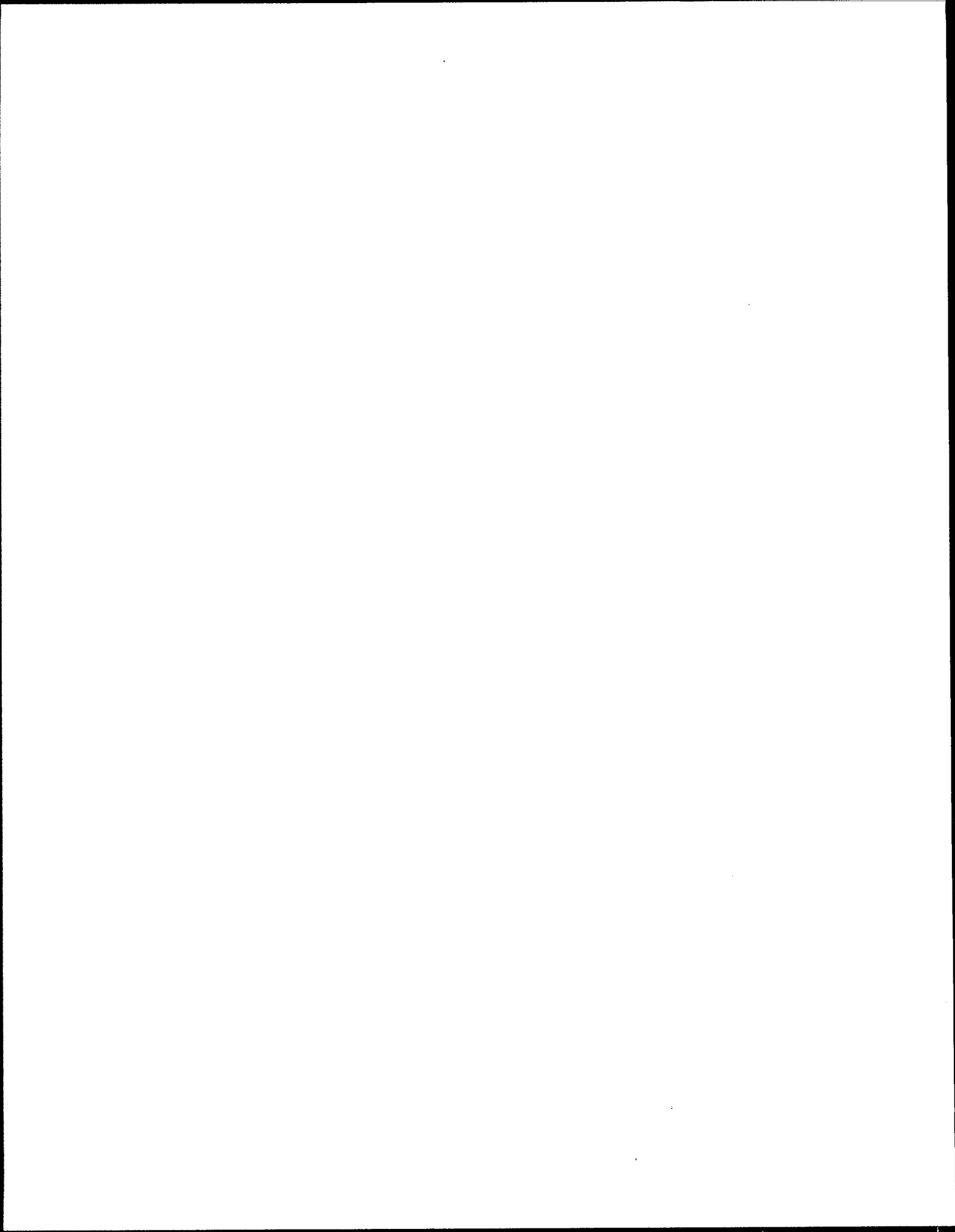
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will automatically treat the request for approval under title V as a request for approval of a program under section 112(1) for section 112 requirements.

The approval of a part 70 program transfers to the State the responsibility to implement and enforce applicable NESHAP and NSPS standards at all part 70 sources, with the exception of non-major sources qualifying for exemption under section 70.3(c)(2). The part 70 approval thus has an effect similar to an agreement for automatic delegation, in that it is preconditioned on the States ability and willingness to implement and enforce section 112 standards at sources subject to the part 70 permit program. The EPA will presume that in light of the required demonstration and/or commitments required for part 70 approval, a State will automatically implement each new requirement in accordance with the State's implementation schedule to incorporate the Federal section 112 standard expeditiously into the part 70 permit. The EPA may request a review of individual State actions to ensure that the needed legal authority and/or technical capabilities are in place at the State level in time for their use in the part 70 permit process. Such evaluations should be limited to the exceptional case where the EPA has strong reasons to believe that legal and/or resource problems exist. Thus, the presumption is that the State will implement the Federal section 112 requirements as promulgated and adopt any new authority at the State level needed to assure timely inclusion as applicable in part 70 permits in order to maintain its part 70 approval.

The procedural steps necessary before a State may incorporate a Federally promulgated standard into the part 70 permit will vary as a matter of State law as discussed in the previous section. A State may have mechanisms available to satisfy part 70 requirements that do not involve a formal delegation from EPA for section 112 requirements. For instance, State law may allow incorporation of a Federal standard directly into the part 70 permit without any interim steps to promulgate the standard through rulemaking or to seek formal delegation of the standard from EPA.

In some cases, it may be necessary for a State to request formal delegation of the Federal standard in order for the State to have authority for incorporation into the permit. Transfer of authority in these situations can occur through an agreement for automatic delegation or by a separate delegation agreement for each specific source category.



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6.0 Section 63.92 of Subpart E Approval for adjustments to a Federal section 112 rule

This approval option is intended to be exercised by a State seeking approval of a rule that is substantially similar in form to a Federal section 112 rule, but incorporates specified changes, or adjustments that make the State rule unequivocally no less stringent than the Federal rule. This will normally be the case when a State rule has been developed using an existing Federal rule or proposal as a basis. It is not the EPA's intent that this option would be invoked for approval of State rules where any sort of involved analysis would be required in order for the EPA to determine that the adjusted State rule was no less stringent than the Federal section 112 rule.

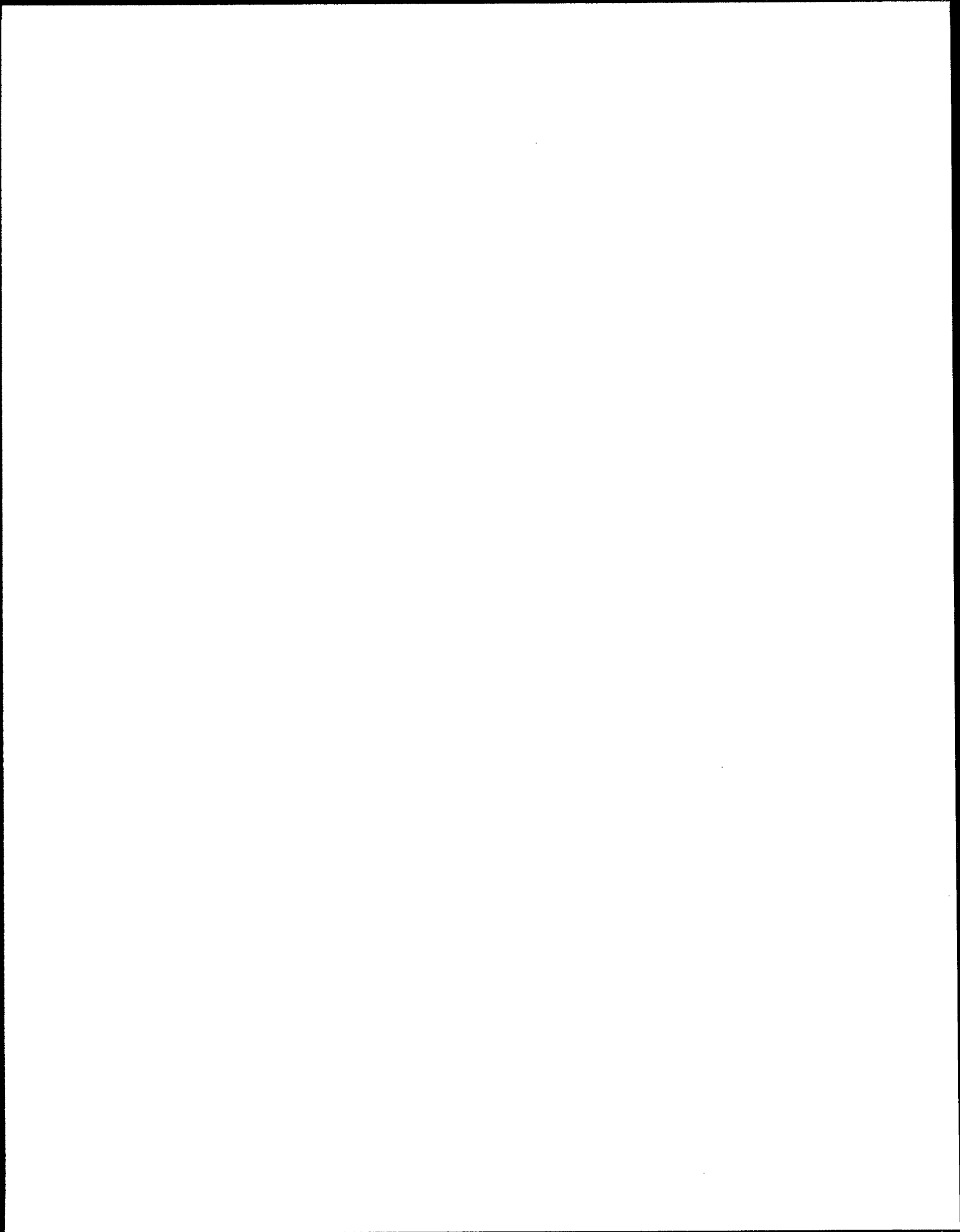
This option is administratively simple, but only the pre-approved list of adjustments discussed in this Chapter will qualify. Approval of a pre-approved adjustment will not require an additional public comment period as the other two options will as long as the State rule has undergone adequate public notice and comment at the State level. However, if the State does not have an approved part 70 program or if this is the State's initial submittal under Subpart E then the State will have to follow the procedural requirements under section 63.91 which includes a Federal public notice and comment period.

This chapter discusses both the procedural requirements and the approval criteria that must be met for a Subpart E submittal under option section 63.92.

6.1 Procedural Requirements

Please note that if a State's first submittal for Subpart E is under approval option section 63.92 and a State does not have an approved part 70 program, then the State must go through the procedural requirements under section 63.91 (discussed in Chapter 4) which includes a Federal public notice and comment period and a 180-day EPA approval/disapproval review period. Once a State has an approved part 70 program or has submitted a Subpart E application through the procedural requirements of section 63.91 then the State will be able to utilize the 90-day approval/disapproval process described below.

For a State's subsequent request for delegation of authority pursuant to Subpart E under approval option section 63.92, the Regional Administrator must follow the procedures outlined below.



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1. If the Regional Administrator finds that the approval criteria for section 63.91 and the criteria for section 63.92 are met, the State rule will be approved by the Regional Administrator, published in the Federal Register and incorporated, directly or by reference, under Subpart A and under the subpart containing the otherwise applicable Federal rule, without additional notice and opportunity for comment. State ARP programs (Chapter 9) will be incorporated under part 68.
2. If the Regional Administrator finds that any one of the State adjustments to the Federal rule is in any way ambiguous with respect to the stringency of applicability, the stringency of the level of control, or the stringency of the compliance and enforcement measures for any affected source or emission point, the Regional Administrator will disapprove the State rule. The State may submit its rule through another approval option.
3. Within 90 days of receiving a complete request for approval under section 63.92, the Regional Administrator will either approve or disapprove the State rule.

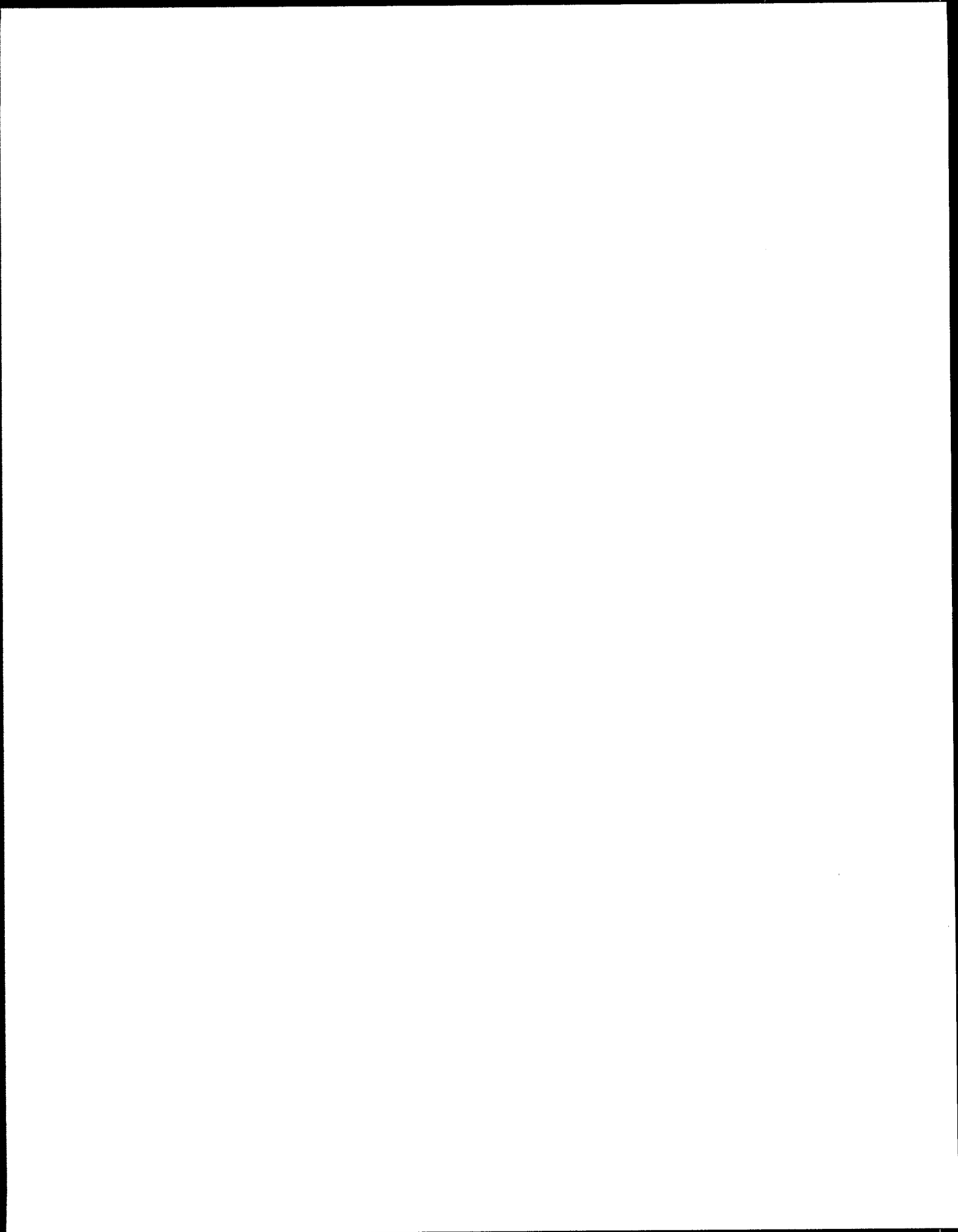
6.2 Approval Criteria

Any request for Subpart E approval under option section 63.92 must meet all of the criteria of section 63.92, as discussed in this section, as well as the common approval criteria in section 63.91 (discussed in Chapter 4) before approval may be granted. For section 112(r), the requirements of section 63.95 must also be met.

1. *A demonstration that the public within the State has had adequate notice and opportunity to submit written comment on the State rule.*

Each State rule for which a State seeks approval must have undergone rulemaking at the State level that included public participation equivalent to that required at the Federal level. This includes at least a 30 day public comment period.

2. *A demonstration that each State adjustment to the Federal rule individually results in requirements that:*
 - (i) *are unequivocally no less stringent than the otherwise*



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applicable Federal section 112 rule with respect to applicability.

The State rule or program must cover each source covered by the otherwise applicable Federal rule at least as stringently.

- (ii) *are unequivocally no less stringent than the otherwise applicable Federal rule with respect to level of control for each affected source and emission point.*

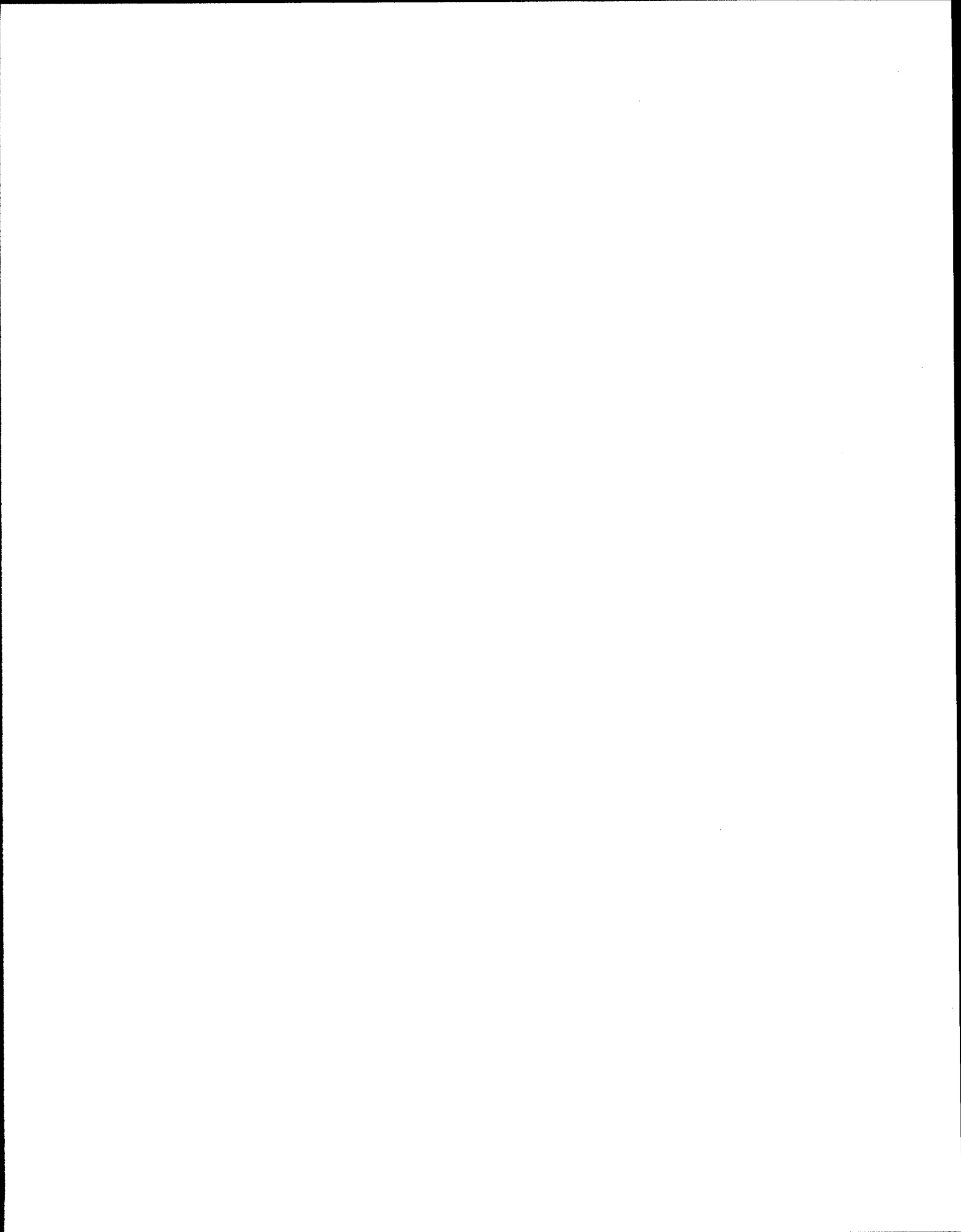
Since under this approval option there is no additional Federal public notice and comment prior to approval, there can be no question regarding stringency of a State rule submitted. Therefore, to the extent that there are specific Federal requirements for individual emission points, a State rule must match or exceed stringency at each regulated emission point.

- (iii) *are unequivocally no less stringent than the otherwise applicable Federal rule with respect to compliance and enforcement measures for each affected source and emission point.*

Since under this approval option there is no additional Federal public notice and comment prior to approval, there can be no question regarding stringency of a State rule submitted. Therefore, to the extent that there are specific Federal compliance and enforcement measures for individual emission points, a State rule must match or exceed stringency for each regulated emission point.

- (iv) *assure compliance by every affected source no later than would be required by the otherwise applicable Federal rule.*

However, it is possible for a State to grant additional time for sources to come into compliance with the approved State rule. In its submittal to the EPA for approval, a State could set an absolute date for approval or establish a certain period to achieve compliance once a State rule or program is approved. If a State chooses to provide such flexibility, affected sources must be in compliance with the underlying Federal rule and any specified compliance timeframes in the interim period.



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3. *State adjustments to Federal section 112 rules which may be part of an approved rule under this option are:*

- (i) *lowering a required emission rate or de minimis level.*

For example, a Federal de minimis level for a certain HAP is 5 tons/yr and the State rule wants to lower that de minimis level to 1 ton/yr.

- (ii) *adding a design, work practice, operational standard, emission rate or other such requirement.*

For example, the Federal standard does not require sources to keep the lids closed on their tanks and the State rule wants to add an additional requirement for keeping lids closed.

- (iii) *increasing a required control efficiency.*

For example, the Federal standard requires a 95% control efficiency and the State rule wants to require a 99% control efficiency.

- (iv) *increasing the frequency of required reporting, testing, sampling or monitoring.*

For example, the Federal rule requires a source to report semi-annually and the State wants to require quarterly reporting.

- (v) *adding to the amount of information required for records or reports.*

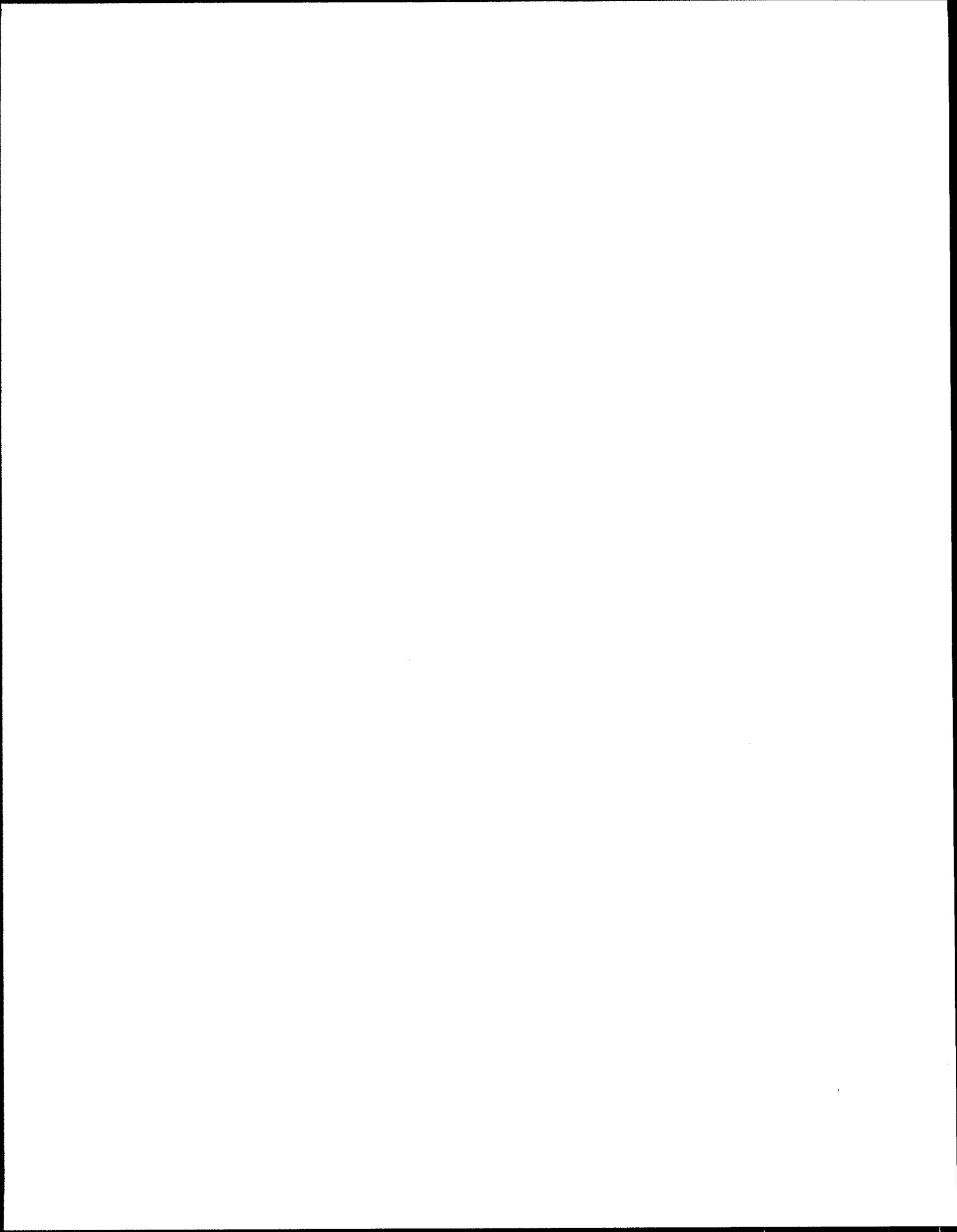
For example, the State wants additional information in reports concerning fuel use and the Federal standard does not require this information.

- (vi) *decreasing the amount of time to come into compliance.*

For example, the Federal rule allows a source three years to come into compliance and the State rule wants to require compliance in two years.

- (vii) *subjecting additional emission points or sources within a source category to control requirements*

For example, the proposed Federal standard does not

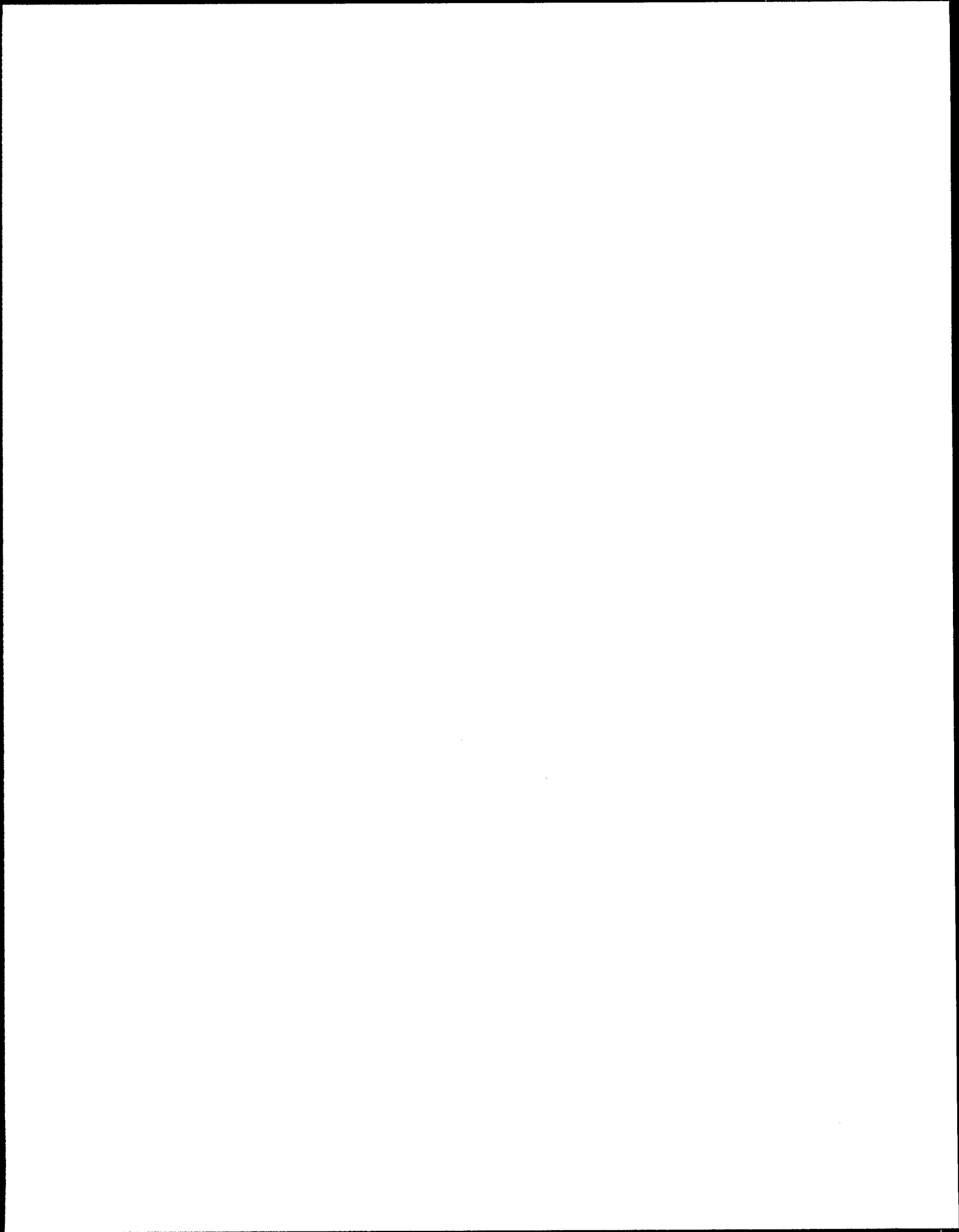


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require controls for Group 2 emission points and the State wants to require controls for the Group 2 emission points.

(viii) *any adjustments allowed in a specific section 112 rule.*

For example, a Federal standard may allow the State additional adjustments to be used only for that particular regulation.



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7.0 Section 63.93 of Subpart E Approval for a State rule or State authorities which substitute for a Federal section 112 Rule

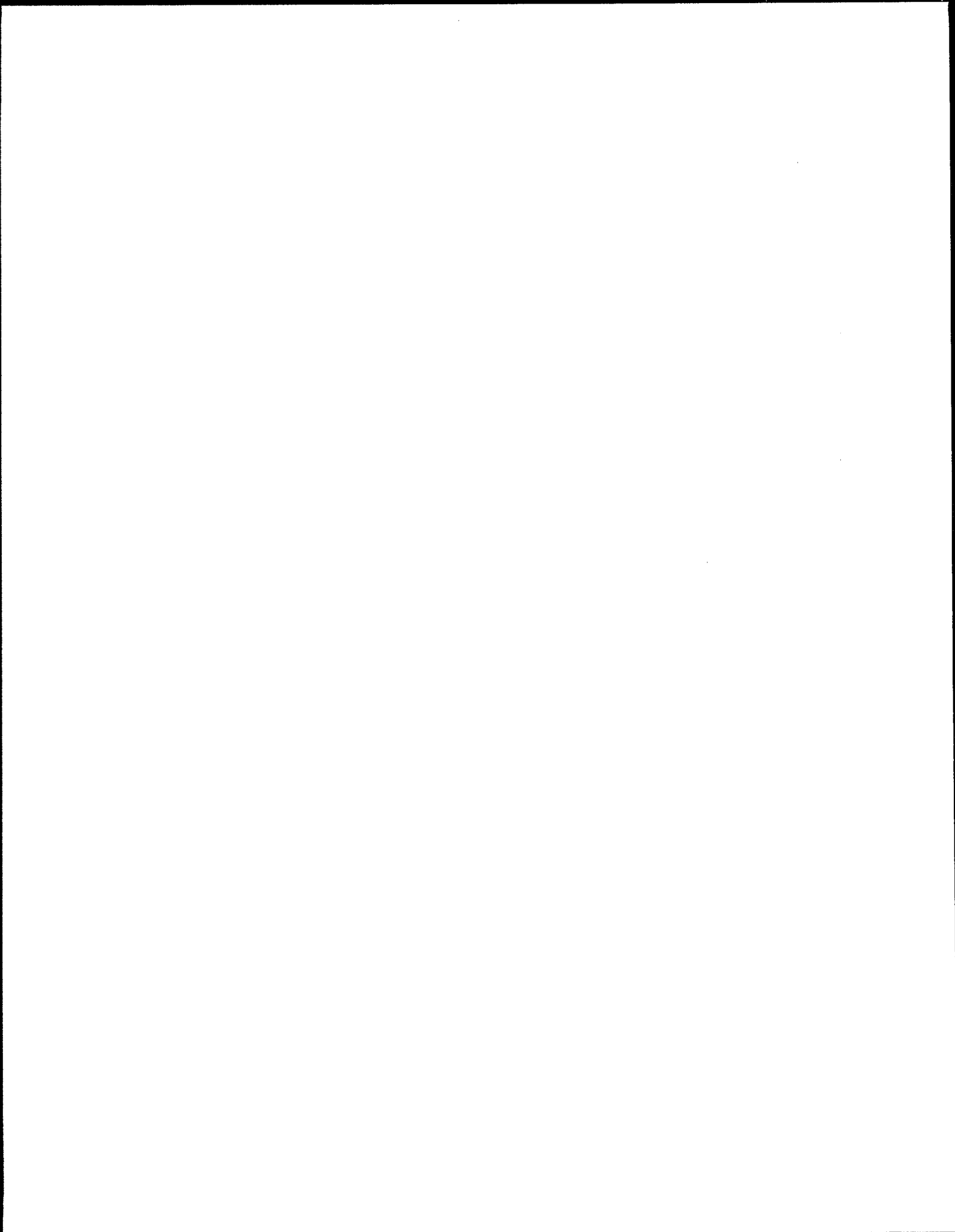
This approval option is intended to be exercised by a State seeking approval of a State rule or authority that would substitute for a Federal rule that did not match any of the approval adjustments under option section 63.92 discussed in Chapter 6. This might be the case when a State submits an authority that differs significantly in form. In the case of section 112(r), the State rule must be no less stringent than the Federal Accidental Release Prevention requirements. Once approved, the State rule would substitute for the Federal rule. This approval option requires a detailed demonstration of stringency, but allows States a very wide latitude in the types of changes they may make. Generally under this option, EPA will be approving a State rule. Under certain circumstances, EPA may approve, and make Federally enforceable, a specific application of broader State authorities.

This chapter discusses both the procedural requirements and the approval criteria that must be met for a Subpart E submittal under option section 63.93.

7.1 Procedural Requirements

For a State requesting delegation of authority pursuant to Subpart E under approval option section 63.93, the Regional Administrator must meet the procedures outlined below.

1. Within 45 days of receiving a complete request for approval, the Regional Administrator will seek public comment for a minimum of 30 days regarding the State request for approval. The Regional Administrator will require that comments be submitted concurrently to the State.
2. If, after review of public comments and any State responses to comments submitted to the Regional Administrator within 30 days of the close of the public comment period, the Regional Administrator finds that the approval criteria for section 63.91 and the criteria for section 63.93 are met, the State rule or authorities will be approved by the Regional Administrator, published in the Federal Register and incorporated directly or by reference, under Part 63,



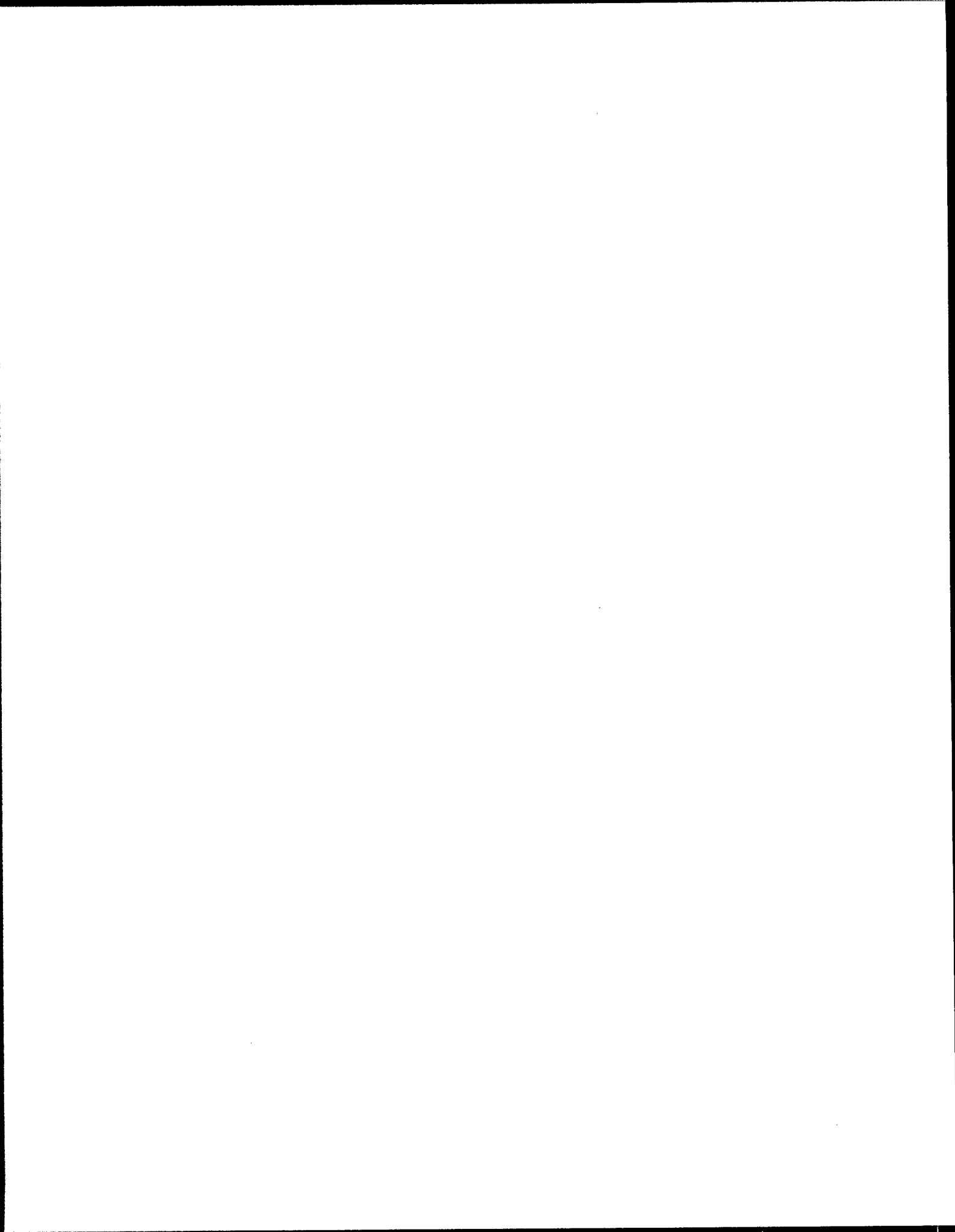
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Subpart A and under the subpart containing the otherwise applicable Federal rule. State authorities approved under section 63.95 (Chapter 9) will be incorporated under part 68.

3. If the Regional Administrator finds that any of the requirements of section 63.93 or section 63.91 or section 63.95 (where applicable) have not been met, the Regional Administrator will disapprove the State authority.
4. Authorities submitted for approval under section 63.93 shall include either:
 - (i) A State rule or other requirements enforceable under State law that would substitute for a Federal section 112 rule.
 - (ii) (A) The specific permit terms and conditions for the source or set of sources in the source category for which the State is requesting approval under this section, including control requirements and compliance and enforcement measures, that would substitute for the permit terms and conditions imposed by the otherwise applicable Federal section 112 rule for such source or set of sources.

(B) The Regional Administrator will approve authorities specified under (ii) (A) only when the State submitting the request already has an approved program under section 63.94, the Federal standard for the source category has been promulgated under section 112(h) and the Administrator has not determined the work practice, design, equipment or operational requirements submitted by the State to be inadequate under the provisions of the Federal standard.
5. Within 180 days of receiving a complete request for approval under section 63.93, the Regional Administrator will either approve or disapprove the State request.
- 7.2 Approval Criteria under section 63.93

Any request for Subpart E approval under option section 63.93 must meet all of the criteria of section 63.93 as well as the common approval criteria in section 63.91 (discussed in chapter 4) and section 63.95 (where applicable) before approval may be granted. The State shall provide the Regional Administrator with detailed documentation that the State rule or State authorities contain or demonstrate:



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1. *Applicability criteria that are no less stringent than those in the respective Federal rule.*

The State rule or program must regulate at least as stringently each source covered by the otherwise applicable Federal rule.

2. *Levels of control and compliance and enforcement measures that result in emission reductions from each affected source or accidental release prevention program requirements for each affected source that are no less stringent than would result from the otherwise applicable Federal rule.*

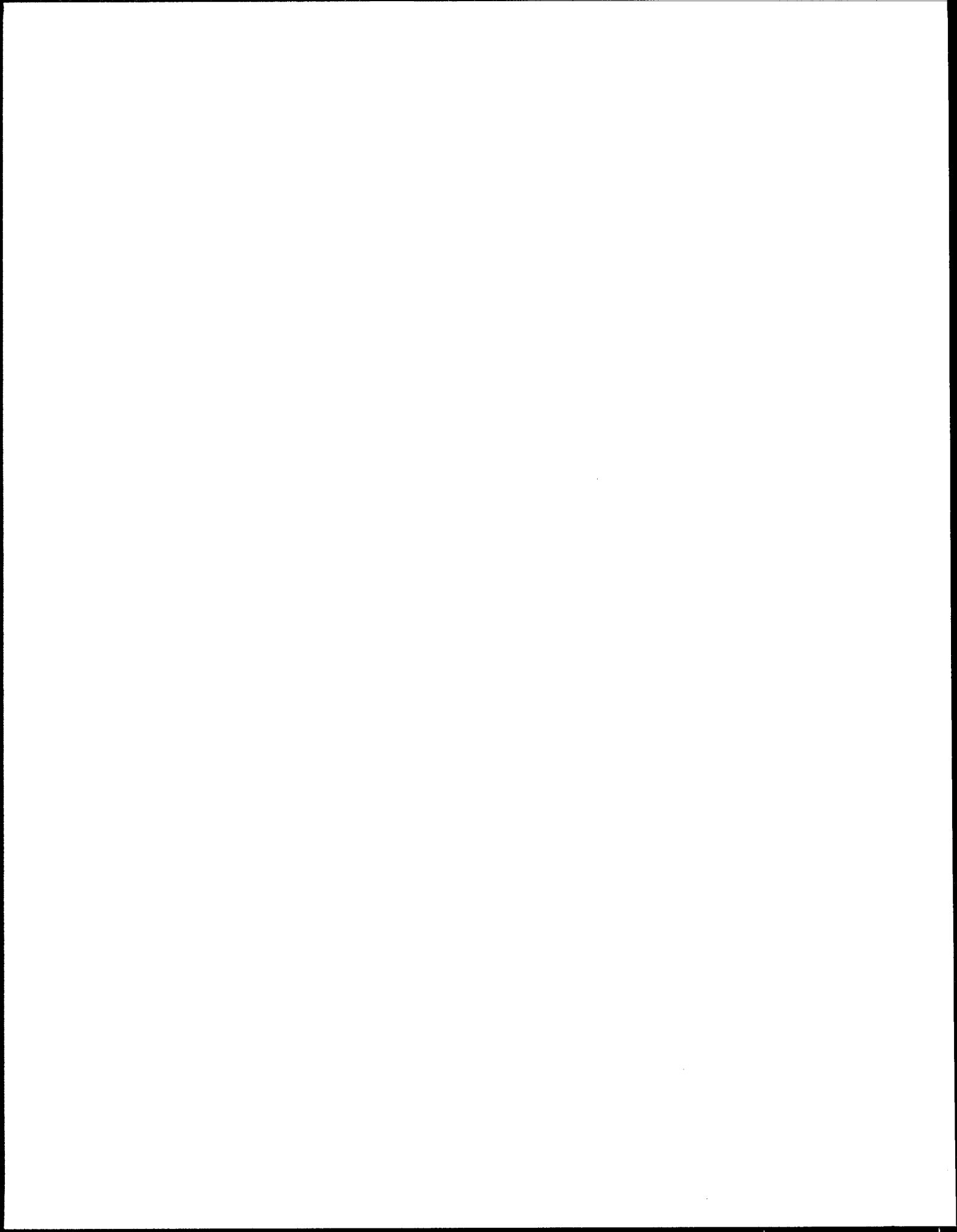
A State may demonstrate that the levels of control and compliance and enforcement measures result in a greater emission reduction. When applicable, the State should demonstrate that the accidental release prevention program requirements have been met. This issue is discussed further in the "detailed demonstration" section.

3. *A compliance schedule that assures that each affected source is in compliance no later than would be required by the otherwise applicable Federal rule.*

However, it is possible for a State to grant additional time for sources to come into compliance with the approved State rule. In its submittal to the EPA for approval, a State could set an absolute date for approval or establish a certain period to achieve compliance once a State rule or program is approved. If a State chooses to provide such flexibility, affected sources must be in compliance with the underlying Federal rule and any specified compliance timeframes in the interim period.

4. *At a minimum, the approved State rule or State authorities must include the following compliance and enforcement measures. (For authorities addressing the accidental release prevention program, minimum compliance and enforcement provisions are described in section 63.95.)*

- (i) *The approved authorities must include a method for determining compliance.*
- (ii) *If a standard in the approved State rule or State authorities is not instantaneous, a maximum averaging time must be established.*



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- (iii) *The authorities must establish an obligation to periodically monitor or test for compliance using the method established under (i) above sufficient to yield reliable data that are representative of the source's compliance status.*
- (iv) *The results of all required monitoring or testing must be reported at least every six months.*

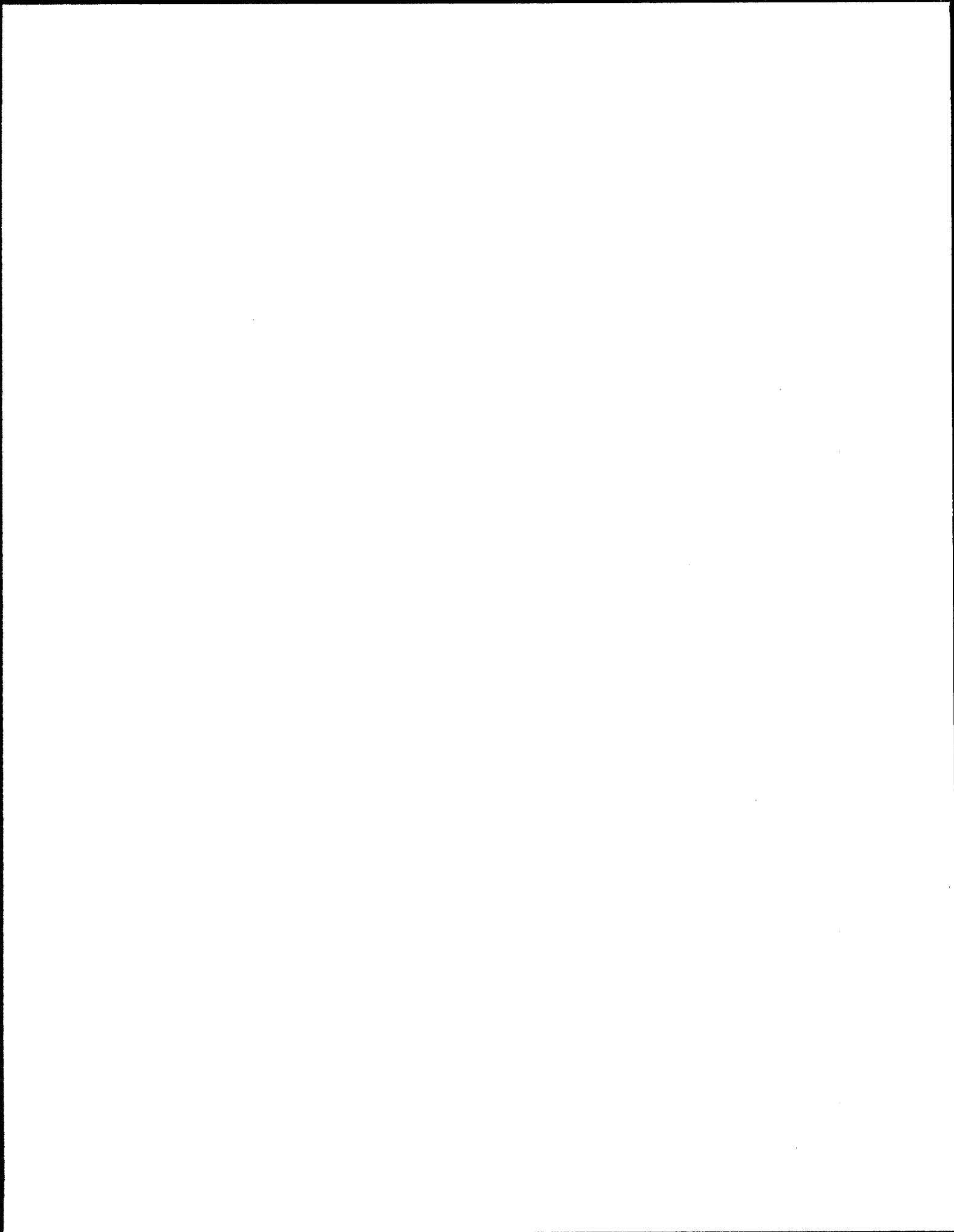
7.3 Detailed Demonstration

Approval option section 63.93 requires a State to make a "detailed demonstration" that the State rule or State authorities result in as great or greater emission reductions (or other measure of stringency when appropriate) for each individual source affected by the Federal section 112 rule.

The State must submit data or information to the Regional Office demonstrating that its standard is as stringent as the Federal rule. Because there are so many possible kinds of rules to evaluate, there is no set form for this detailed demonstration. The EPA intends to give latitude to the States in making such demonstrations. However, several guidelines are offered that limit the latitude that would be extended to the States in its approved submittals.

- A. Except for provisions expressly allowed in the otherwise applicable Federal section 112 standard, any forms of averaging across facilities, source categories, or geographical areas, or any forms of trading across pollutants, will be disallowed for a demonstration of stringency under section 63.93. However, if the emission limit for a section 112 standard regulates the total volatile organic HAP generically, for example, rather than specifying individual HAP emission limits, then the State standard should achieve an equal or greater reduction in total volatile organic HAP emissions provided that the State rule would not lead to an increase in risk to human health or the environment.

For example, States will not be allowed to average a lower percent efficiency on an affected source with a higher percent efficiency on another affected source, even if the overall emission reductions achieved are greater than the Federal rule. Any State rule must be demonstrated to be no less stringent than an otherwise applicable Federal rule for each affected source rather than, on average, across sources. In addition, the State cannot offset emission reductions achieved



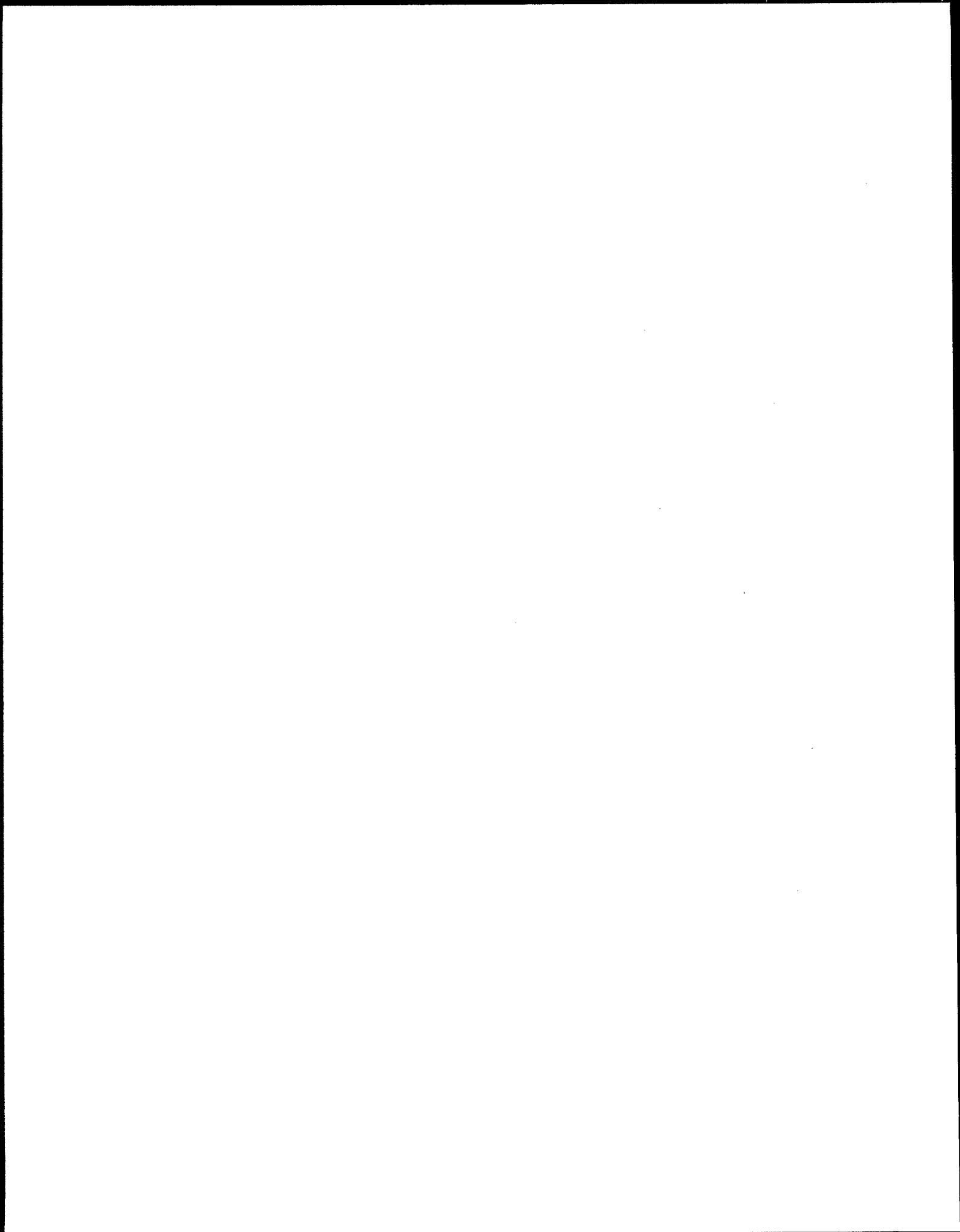
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by sources not covered by the Federal standard. For example, non-major sources not covered in the Federal standard cannot be used to average the emission reductions needed at affected sources.

- B. In addition, for emission standards, a State should not base its detailed demonstration on a reduction of overall risk and other impacts. While a reduction of the impacts of HAP emissions to human health and the environment are the central objectives of section 112, Congress based the establishment of MACT stringency on "reduction of emissions" and "emission limitation." This then should be the primary basis for determining the stringency of State rules and programs to be approved in place of Federal section 112 emission standards.
- C. Another limitation on a State is that ambient air limits cannot be approved as Federally enforceable. However, if an ambient air limit is converted into an emission limit or percent efficiency, then that emission limit, which may have been derived from an ambient air limit, could be approved as Federally enforceable.
- D. The overall focus of the Accidental Release Prevention program is the reduction of chemical accidents. Reductions in chemical accidents, unlike routine emissions, cannot be easily measured. Thus, the test of stringency of a State section 112(r) program will be a comparison of the State program to the components of the Part 68 program. The State demonstration will need to verify that all listed regulated substances are included at or below the assigned threshold quantities. In addition, the State must show that their program contains the elements of the risk management program at the facility level, the submission of risk management plans (RMPs) to the appropriate authorities, and the provisions for auditing and updating the plans.

7.3.1 Level of Control

The State has a couple of ways to demonstrate that its regulations are at least as stringent as the otherwise applicable Federal rule. For a State who wants its regulation to be at least as stringent for each requirement which is specified in the Federal regulation, the State could demonstrate line-by-line equivalency. For this detailed demonstration, the State regulation could show that it is at least as stringent as the Federal regulation for each source and each emission point both



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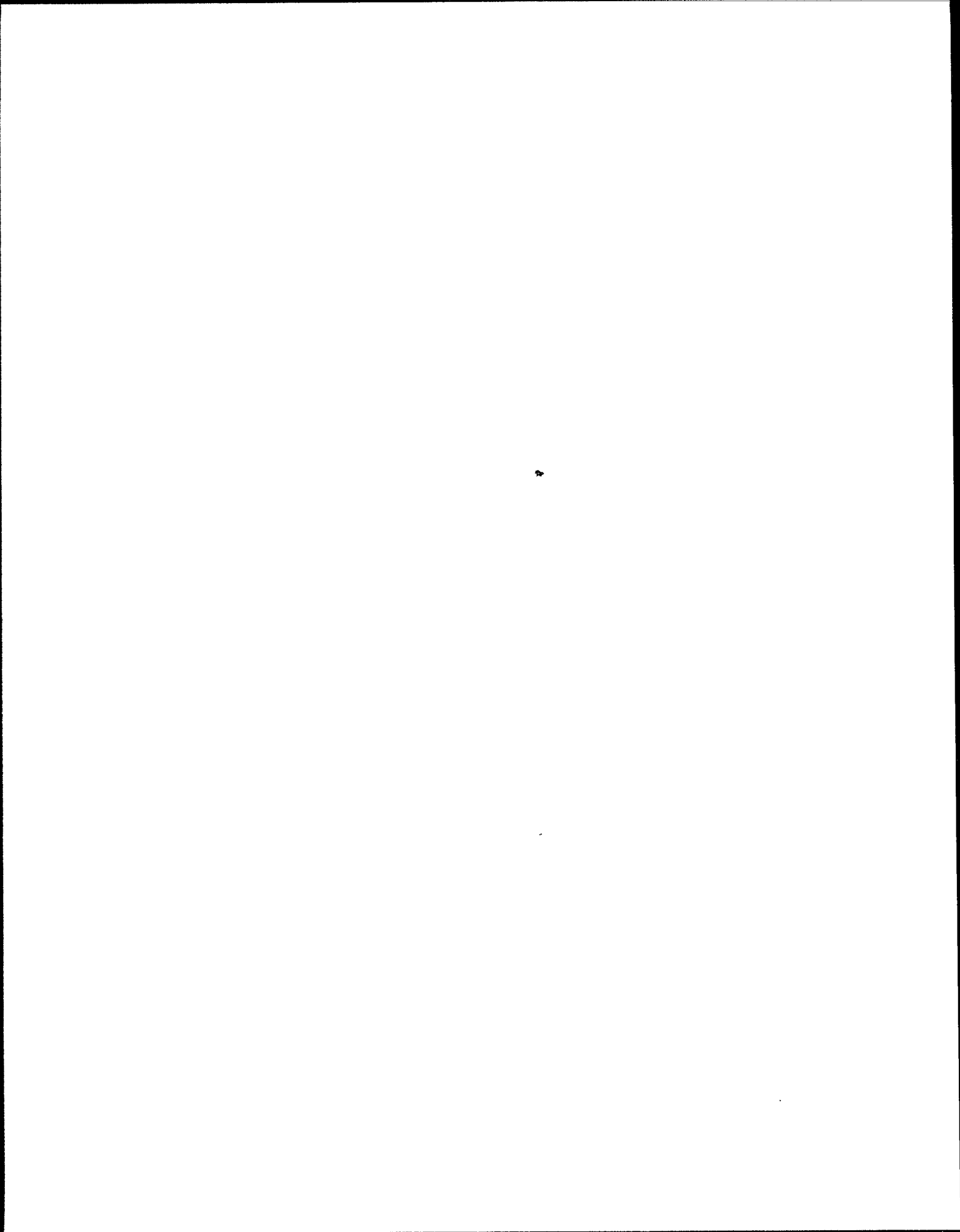
in level of control and for compliance and enforcement measures. If a State standard is less stringent for a particular emission point than the Federal standard, then the State could amend its State standard to reflect the more stringent Federal emission limit for that emission point. This detailed demonstration could be accomplished by specifying each Federal regulation or requirement and demonstrating that there is a stricter State requirement that fulfills the Federal requirement. The State's submittal should make it clear which State requirement satisfies each Federal requirement. If the Federal requirement is specified differently, then the State should include an explanation of why its regulation is more stringent. For this demonstration, if the State shows that its regulation covers the same sources and its regulation is at least as stringent for every emission point both in level of control and compliance and enforcement measures, then the State will have demonstrated that its regulation is at least as stringent as the Federal regulation.

Another way to demonstrate that a State standard is at least as stringent occurs when the Federal definition of source is broad. In this case, option section 63.93 allows the State the flexibility to shift emissions between emission points within the source category at the same affected source as long as the rule results in equal or greater emission reductions at each individual source and there is no trading of HAP, unless specified in the otherwise applicable Federal standard.

For example, a State rule that has required an innovative pollution prevention strategy for a source category which achieves emission reductions that are equal or greater at each affected source and does not trade across pollutants (unless allowed in the Federal rule) could be submitted for approval under section 63.93.

The State must demonstrate that the regulation will be at least as stringent as the Federal rule for each affected source using reasonable assumptions and judgement regarding the characteristics of the sources covered by the regulation. A worst case analysis may reasonably suffice for such demonstration(s). The reader should note that worst case analysis has a specific meaning in section 112(r) which is not discussed in this section.

A worst case analysis could demonstrate for all relevant situations that affected sources would always be regulated more stringently by the State standard than the otherwise applicable



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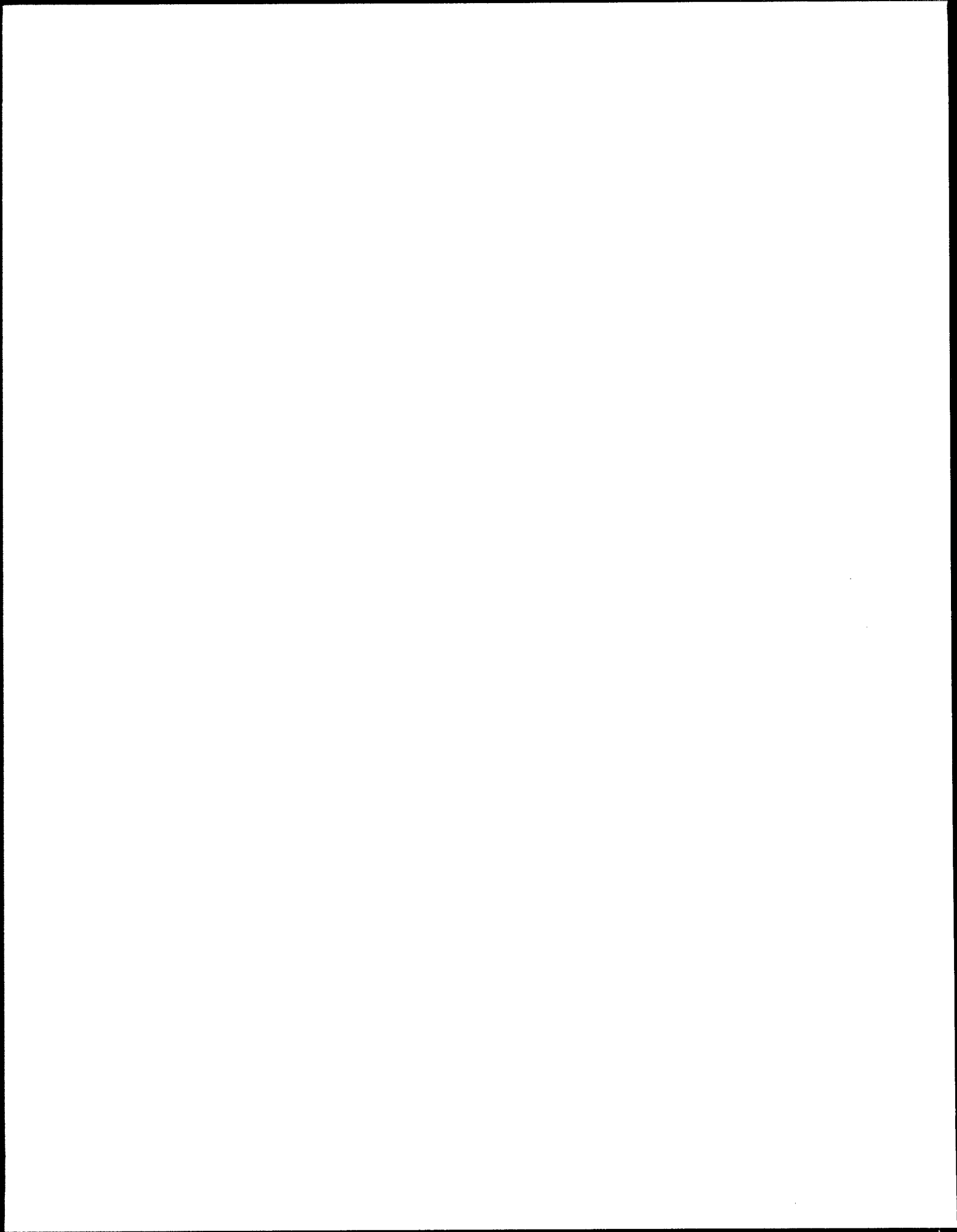
Federal standard. As a suggested guideline, the State could consider providing a demonstration that for "worst case" conditions the State regulation would always be more stringent. The "worst case" conditions that the State would have to demonstrate may vary depending on the structure of the Federal rule, but the State may want to consider the following generic conditions: applicability, size of source, types of emission points, location (i.e. low risk area or attainment area), types of HAP, overall level of control for each facility (i.e., percent efficiency and amount of emission reductions), types of compliance and enforcement measures (i.e., temperature conditions, desorption frequency, work practice procedures, record-keeping, test methods, averaging times, etc.), actual versus potential emissions, requirements for new sources, and requirements for existing sources.

Please note that these suggestions are very broad and can not address every specific situation. There may be situations where the Region will need to require additional conditions to the ones specified in this guidance. In addition, there may be situations where a demonstration of one of the specific conditions mentioned in this guidance will be combined or unnecessary because of the specific rule that the State standard is replacing.

In order to accomplish this demonstration, the State could model or estimate emission reductions from several sources that represent a stratified group which satisfy some or all of the conditions specified above. This stratified group may vary depending on the format of the Federal regulation. The State should provide a written justification of why the stratified group is a reasonable representation of the types of sources and "worst case" conditions in the State.

For example, if the Federal regulation is on an emission reduction basis, the State could show that the actual emission reductions from the State regulation for both new and existing sources are at least as great as for the Federal standard for each source in the stratified group as well as for each pollutant. In addition, the State would have to include a justification of why the stratified group selected represents all of the affected sources in the State.

In the case of the Accidental Release Prevention program the State must demonstrate that regulated sources would be required to develop risk management programs and submit RMPs which would contain all the elements in at least the same detail as the Federal requirements. In addition, the State rule or program



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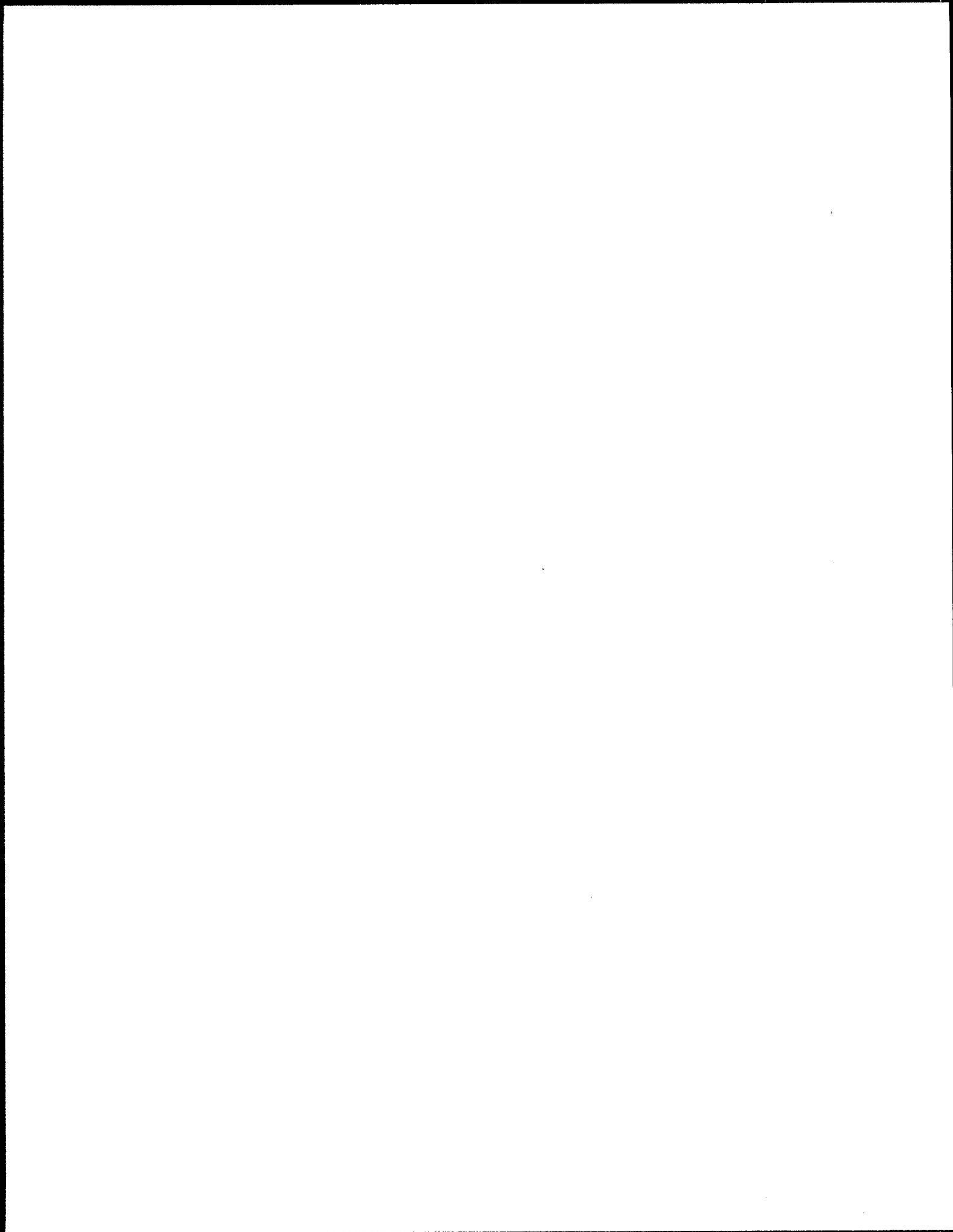
must contain an auditing component which would ensure that the RMPs are reviewed and updated as necessary. The State may include additional detection and correction requirements such as monitoring, record keeping, reporting, training, vapor recovery, secondary containment, or other design, equipment, work practice or operational requirements which they can demonstrate to be more stringent than the Federal section 112(r) requirements.

7.3.2 Minimum Compliance Provisions for Detailed Demonstrations

The EPA will be promulgating enhanced monitoring rules under 40 CFR Part 64 which will apply to all existing Act regulations if the facility satisfies the major source definition specified in the enhanced monitoring provisions. The EPA is also required to incorporate enhanced monitoring into all new rules promulgated after the 1990 Clean Air Act Amendments. This requirement would also apply to all substitute rules submitted under section 63.93. Therefore, all monitoring requirements submitted as part of a State rule that substitutes for a Subpart E rule must qualify as enhanced monitoring. This means that the monitoring must be capable of detecting deviations with sufficient reliability and timeliness to determine if compliance with applicable emission limitations or standards is continuous. Furthermore, monitoring must provide data that can be used as evidence of a violation, and that is directly enforceable.

The goal of enhanced monitoring is to assure that the emissions reductions intended by regulations are in fact achieved. Consistent with Section 114(a) of the Clean Air Act, source owners or operators have the burden of demonstrating that each emission unit remains in compliance with all applicable standards. States will have some flexibility in designing enhanced monitoring requirements for individual regulations. These monitoring options include everything from continuous emission monitoring system (CEMS) to periodic monitoring of parameters, to the maintenance of records, depending on the standard and the particular emission unit covered. However, States must be able to establish that the monitoring requirements are capable of determining compliance with the applicable standards.

It is important to distinguish between continuous compliance and continuous monitoring. In order to demonstrate continuous compliance, a source need not record data on a continuous, instantaneous basis. For all rules, monitoring frequency must be based on the averaging time of the applicable limitation or



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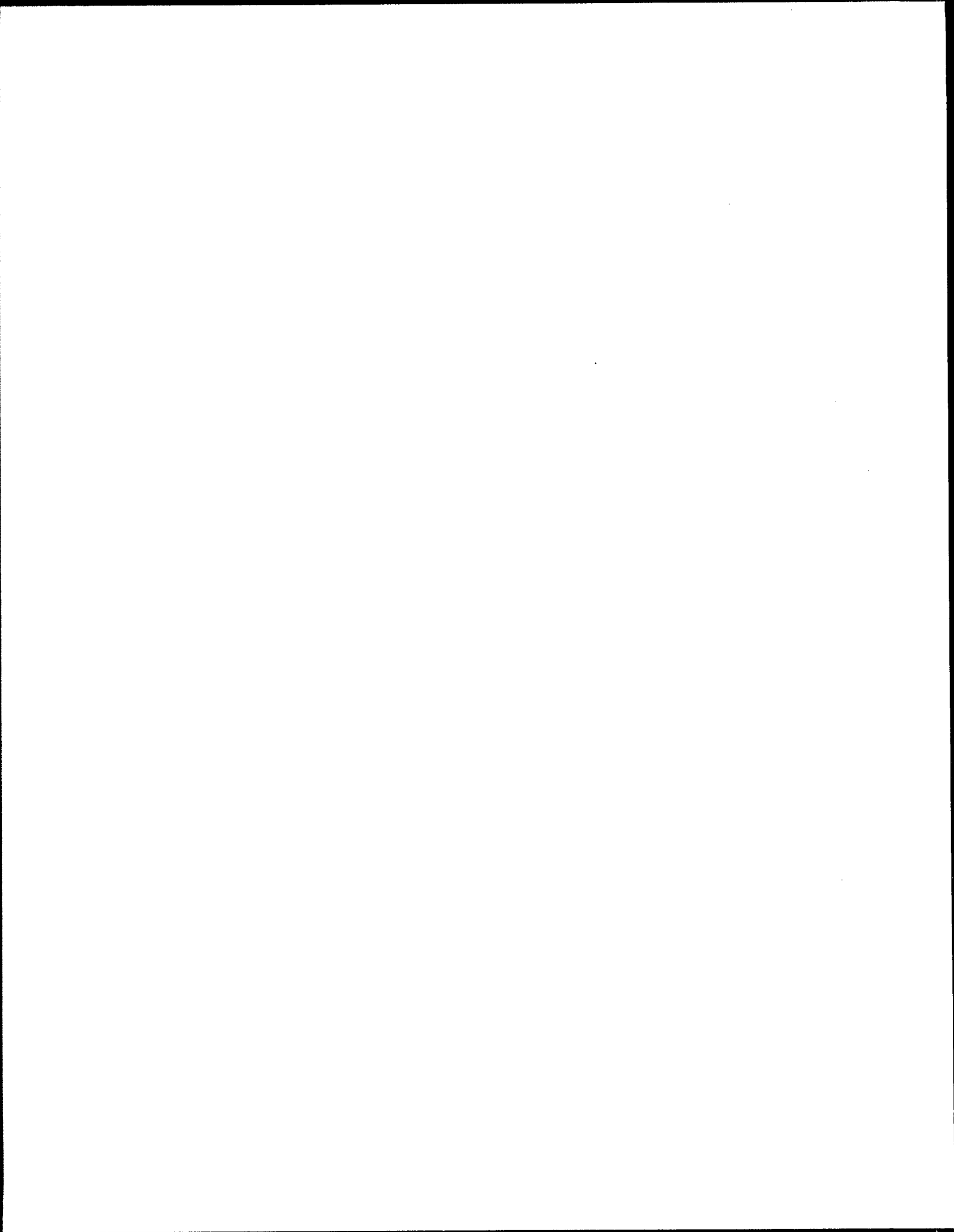
standard, and the likely variability of potential emissions from a particular emissions unit. If the potential variability is high, monitoring must be done frequently. If the potential variability is low, monitoring may be done less frequently at regular intervals. What is essential is that each State rule require monitoring to be performed frequently enough to allow the owner or operator to certify compliance with the applicable standard for each averaging period.

Thus, for approval as a Subpart E substitution, a State rule does not need to require a CEMS. However, the State rule must contain an appropriate alternative to enable sources to certify compliance. The alternative may involve the monitoring of specific parameters to demonstrate that a control device is operating properly and achieving the intended emissions reduction. In all cases where parameter monitoring is used, a correlation of monitoring data to emissions must be performed. Moreover, any alternative limits established through such a performance test must be quantifiable, accountable, practically and Federally enforceable, and based on replicable procedures.

Where an emissions unit is subject to design, equipment, operational or work practice requirements, monitoring that provides documentation of the particular equipment or work practice program would satisfy the terms of enhanced monitoring. For example, standards for fugitive emissions (equipment leaks) might require a leak detection and repair program. Enhanced monitoring in this case would be met by recording the monitoring results, identifying any exceedances, and documenting what repairs were undertaken and when. For certain other standards, record keeping would constitute enhanced monitoring. Where the standard is a straightforward ban on the use of a particular raw material, a source may need only to maintain purchase orders to demonstrate that none of the banned material was used.

For additional examples of enhanced monitoring, States may refer to EPA's Enhanced Monitoring Reference Document being developed in conjunction with the Part 64 regulation. This document is intended to provide a constantly evolving compendium of monitoring systems and procedures that can be used to satisfy enhanced monitoring requirements.

Frequency of record keeping, as well as the types of information to be recorded, will depend on the type of monitoring required under the specified standard. As with monitoring, record keeping should also be based on the averaging period and the likely variability of emissions.



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In accordance with section 63.10(b)(1) of the proposed General Provisions, a State rule must require that sources maintain records of all required monitoring data and support information for a period of at least 5 years. This 5-year retention period is consistent with the statute of limitations, enabling EPA to use its enforcement authority for the full 5 years.

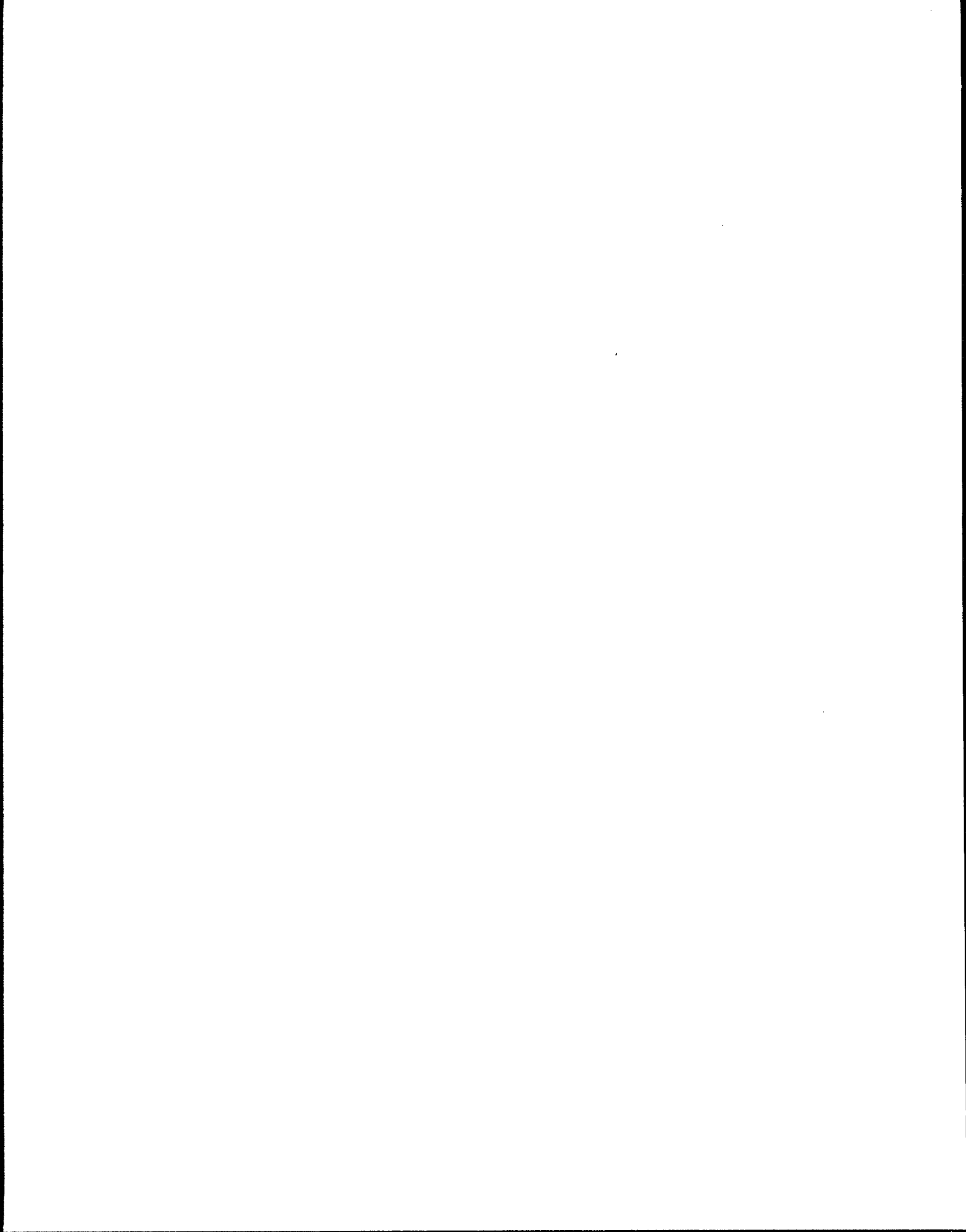
In order for a State rule to be approved as a substitution for a Federal regulation under part 63, the reporting requirements must be sufficient to allow the EPA to respond to any compliance problems in a timely manner. Consistent with section 63.10(d) of the proposed General Provisions, State rules must require sources to submit reports, and start-up, shutdown, or malfunction reports. These reports shall be viewed as minimum reporting requirements. In addition, any State standard approved under Subpart E must contain all of the reporting provisions in the relevant 112(d) standard. For the Accidental Release Prevention program, the State should refer to the Subpart E rule.

Most MACT standards will require quarterly reports of monitoring, and State rules must be consistent with these requirements. States, however, would also have the option of including a provision such as section 63.10(e)(3)(ii) of the proposed General Provisions, whereby the frequency of reporting could be reduced from quarterly (or more frequently) to semiannually following 1 full year in which reports demonstrate that the source was continually in compliance with the relevant standard.

7.4 State Authorities

In response to numerous comments which expresses concern about the inflexibility that the "form of the standard imposes", the EPA in the final Subpart E rule expanded section 63.93 to allow a State to submit broader State authorities for a specific application under certain conditions. The State must already have a State program approved through section 63.94, before a State can submit broad authorities through section 63.93.

In addition, only under the following conditions may a State submit broad authorities through section 63.93. The conditions occur when EPA writes a work practice, equipment, design or operational standard (in other words, when the EPA does not write a standard based on performance, like control efficiency or an emission rate) and when such a Federal standard does not address a State work practice, equipment, design or operational standard as either meeting or failing to meet the Federal standard. Under



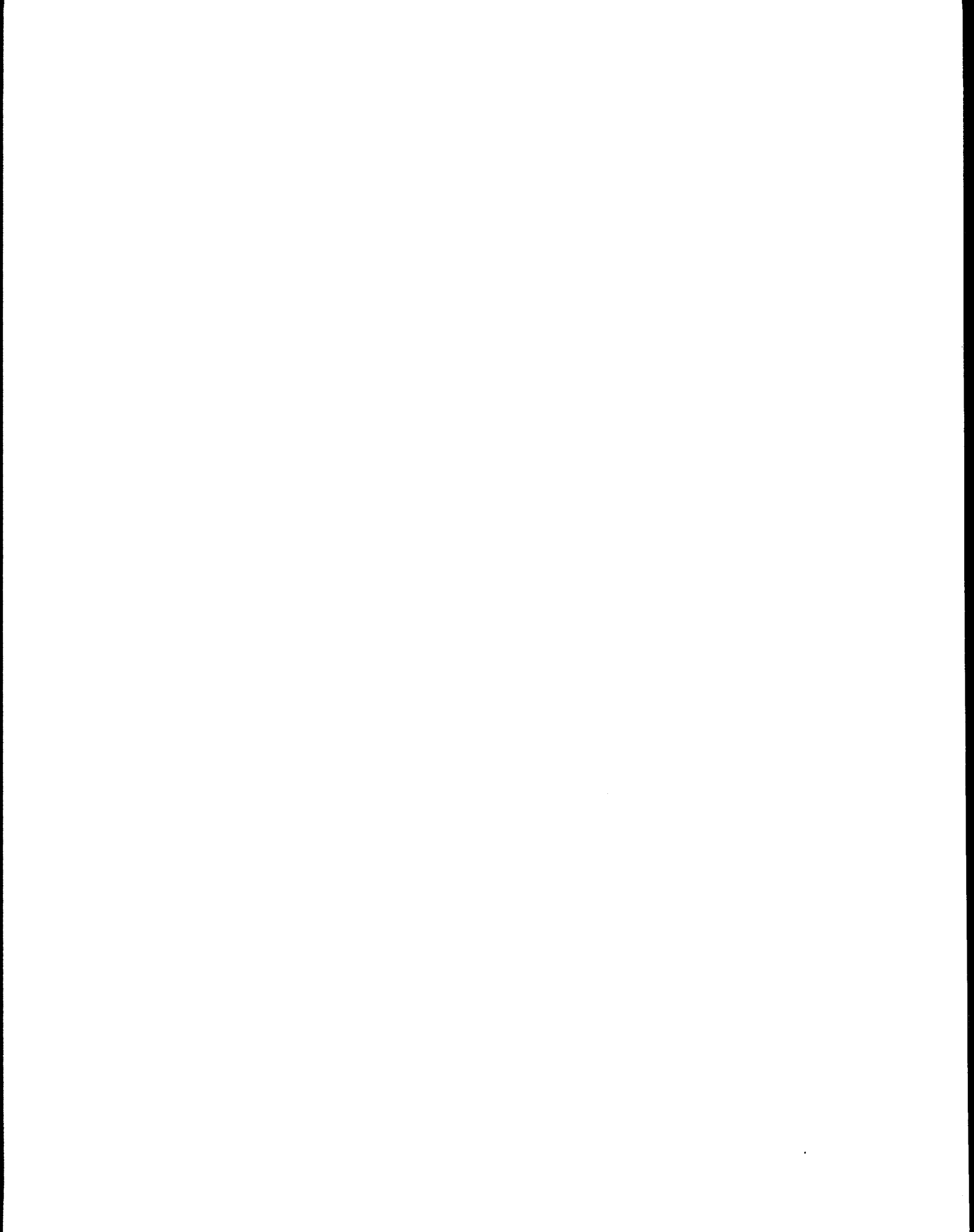
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these conditions the flexibility of Section section 63.94 would not allow the State standard to be the basis for the permit.

Under the conditions discussed above, the EPA is not requiring the submittal of a source-category-specific rule for approval under option section 63.93. Instead a State may submit broader authorities which allow it to regulate the source category in question, a specific description of how those authorities will affect (i.e., the controls that are required by application of those authorities and the specific permit terms and conditions) and the authorities which will assure adequate compliance and enforcement per this subpart and part 70. If the EPA grants approval in such a case, it will result in Federal enforceability only for the specific application of the State authorities to a single source category.

For example, a State might have a single regulation that assesses risk at facilities that emit hazardous air pollutants as defined in section 112(b) of the Act and based on estimates of risk, requires specific emission rates or specific controls at those facilities. This regulation might apply to a wide range of source categories in the State. If such a State initially received approval under section 63.94 for a source category which is later regulated via Federal equipment standards, approval under section 63.94 might provide very little flexibility to the State to require different types of equipment instead of otherwise applicable Federal requirements. This is especially problematic when a State seeks to require innovative controls not evaluated at the time of Federal standard promulgation. If a State can demonstrate to the EPA, via the process described in section 63.93 that such controls resulted in emission reductions for all sources in the source category as great or greater than the Federal standard would achieve, the EPA is willing to consider a request to approve such controls as Federally enforceable instead of the otherwise applicable Federal standard. However, only the controls and compliance measures that were approved through section 63.93 in addition to the controls and compliance measures specified in the otherwise applicable Federal standard would be allowed in the permit for that source category. The State would not be allowed to incorporate any control and compliance measures that had not been approved through section 63.93.

Approval under section 63.93 has been broadened to allow the State to request approval of a limited application (i.e., a different piece of equipment for a source category) of its general air toxics regulation as it applies to a single source



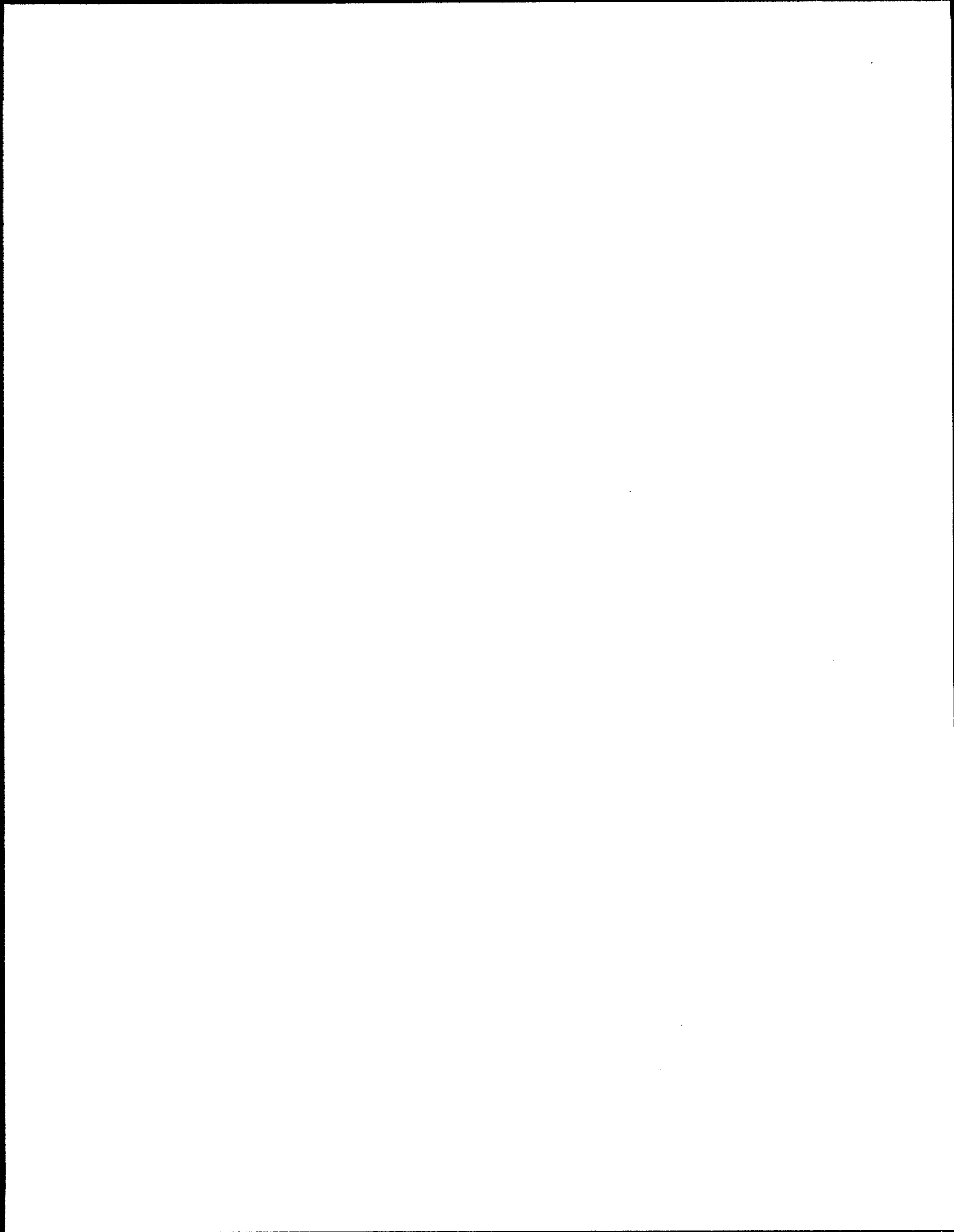
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category. To do so, the State needs to meet the requirements of section 63.93 which calls for, among other things a detailed engineering analysis of emission reductions that would result from the Federal and State scenarios. Any resulting approval would make the State authorities Federally enforceable only insofar as they relate to the single application of authorities for a single source category for which they were submitted.

7.4.1 Detailed Demonstration of State Authority

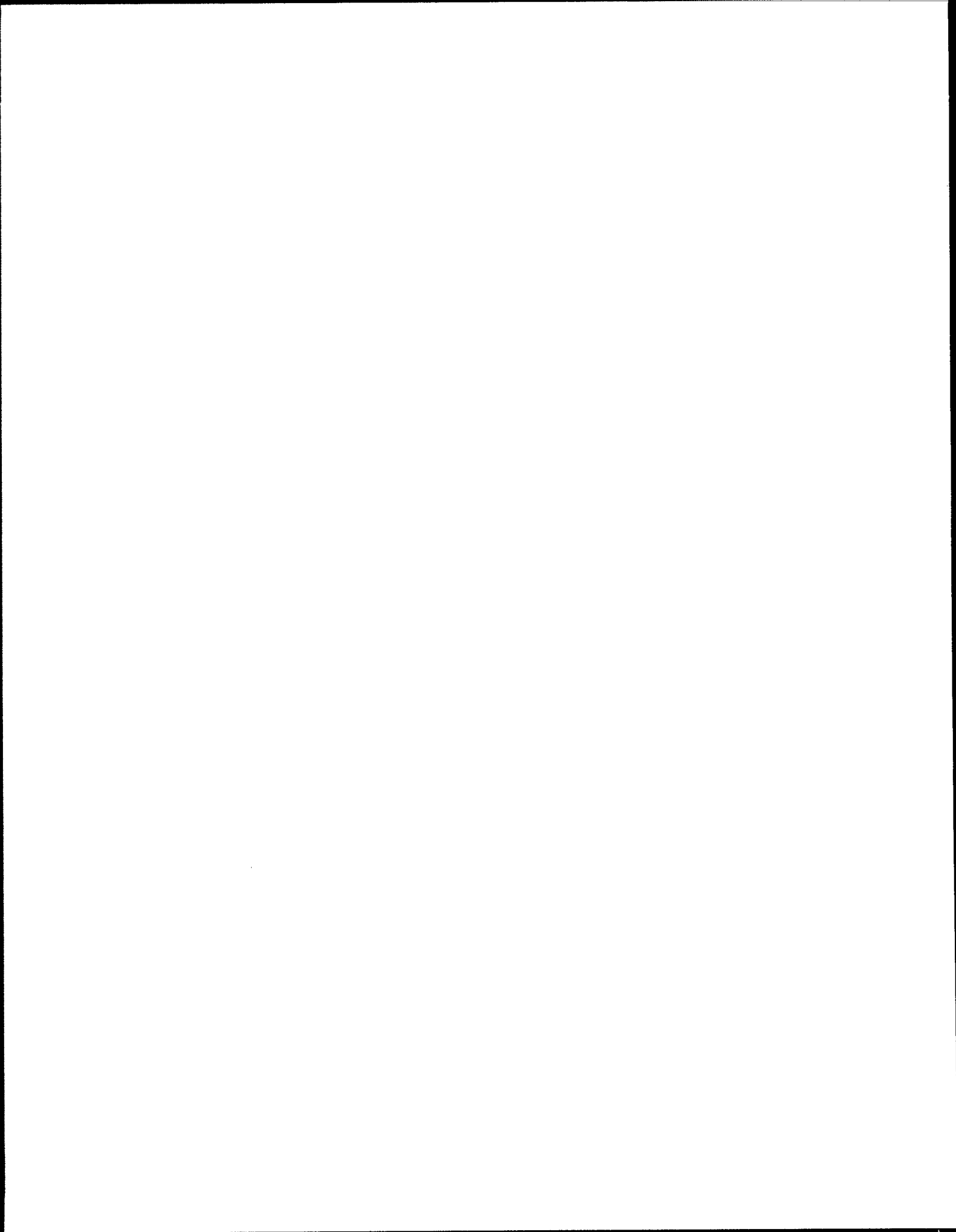
As discussed above, the State Authority approval under section 63.93 will also require a "detailed demonstration." This section allows a State under the conditions described above to submit an alternative piece of equipment and compliance measures for a particular source category. In addition, the State will have to specify the exact permit terms and conditions. In order to provide a detailed demonstration that an alternative piece of equipment and compliance measures are at least as stringent as the otherwise applicable Federal standard, the State could consider collecting, verifying and submitting to the Regional Office the following information:

1. Diagrams, as appropriate, illustrating the emission control technology and its operation.
2. If possible, information quantifying the emission reductions achieved by the alternative emission control technology. For example, emissions with and without the alternative emission control technology and compare to the emission reductions achieved by the required technology.
3. Information on other relevant measures of comparison. For example, the dry cleaning standard required information regarding the solvent mileage achieved with and without the candidate control technology.
4. Identification of maintenance requirements and parameters to monitor to ensure proper operation and maintenance of the alternative emission control technology.
5. Explanation of why this information is considered accurate and representative of both the short-term and the long-term performance of the alternative emission control technology.
6. Explanation of why this information (if specific to one test of the alternative technology) can be extrapolated to other similar sources within the source category.



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7. If relevant, information on the cross-media impacts (to water and solid waste) of the alternative emission control technology and demonstration that the cross-media impacts are less than or equal to the cross-media impacts of the otherwise applicable Federal standard.



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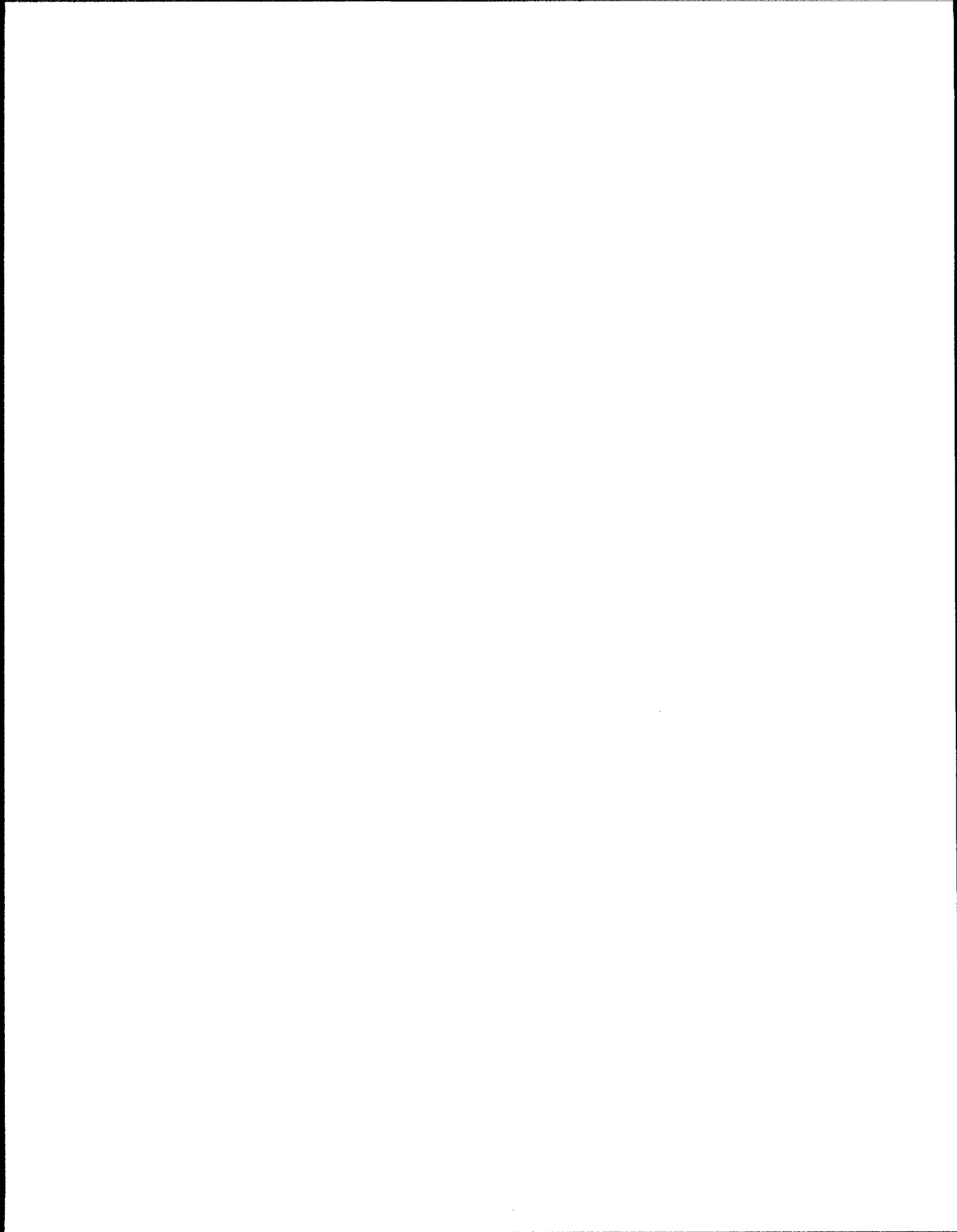
8.0 Section 63.94 of Subpart E Approval of a generic State program for Program which substitutes for some or all Federal section 112 Emission Standards

This delegation option is for approval of a generic State program that substitutes for some or all Federal section 112 emission standards. Under this option, a State program may be approved in place of specific emission standards and requirements established under sections 112(d), (f), or (h). This option can not be used for Federal rules that are not emission standards like section 112(g). However, emission standards promulgated under sections 112(k), 112(m), 112(n), 112(c)(6) or any other section which requires an emission standard could be approved under this option. For approval, the State must make a number of legally-binding commitments, which are discussed below.

8.1 Procedural Requirements

For a State requesting delegation of authority pursuant to Subpart E under option section 63.94, the Regional Administrator must follow the procedures outlined below.

1. Within 45 days of receiving a complete request for approval, the Regional Administrator will seek public comment on the State request for approval. The Regional Administrator will require that comments be submitted concurrently to the States.
2. If, after review of public comments and any State responses to comments submitted to the Regional Administrator within 30 days of the close of the public comment period, the Regional Administrator finds that the approval criteria for section 63.91 and the approval criteria for section 63.94 are met, the State program will be approved by the Regional Administrator. The approved legally-binding State commitments and reference to all documents submitted under section 63.91 will be published in the Federal Register and incorporated directly or by reference under subpart A.
3. If the Regional Administrator finds that any of the requirements of section 63.94 or section 63.91 have not been met, the Regional Administrator will disapprove the State program.



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4. Within 180 days of receiving a complete request for approval under section 63.94, the Regional Administrator will either approve or disapprove the State request.

8.2 Approval Criteria under section 63.94

Any request for Subpart E approval under option section 63.94 must meet all of the criteria of section 63.94 as well as the common criteria in section 63.91 (discussed in Chapter 4) before approval may be granted.

The State shall provide the Regional Administrator with:

1. *A reference to all specific sources or source categories listed pursuant to subsection 112(c) for which the State is seeking authority to implement and enforce standards or requirements under section 63.94.*

The State must list all source categories for which it plans to use this approval option. The initial list of source categories was published in the Federal Register on July 16, 1992 (57 FR 31576).

2. *A legally-binding commitment adopted through State law that, after approval:*
 - (i) *For each source subject to Federal section 112 emission standards or requirements for which approval is sought, part 70 permits shall be issued or revised by the State in accordance with procedures established in part 70 and in accordance with the schedule submitted under section 63.91 assuring expeditious compliance by all sources*
 - (ii) *All such issued or revised part 70 permits shall contain conditions that:*
 - (A) *Reflect applicability criteria no less stringent than those in the otherwise applicable Federal section 112 standards or requirements.*

The State rule or program must cover each source covered by the otherwise applicable Federal rule at least as stringently.

1. *Journal of Management Studies*, 1990, 27, 1, 1-14.

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- (B) *Require levels of control for each source and emission point no less stringent than those contained in the otherwise applicable Federal standards or requirements.*

Since under this option there is only a 45-day EPA review of the part 70 permit, there can be no question regarding stringency of a State rule submitted. Therefore, to the extent that there are specific Federal requirements for individual emission points, a State rule must match or exceed stringency at each regulated emission point in the same form as the Federal standard.

- (C) *Require compliance and enforcement measures for each source and emission point no less stringent than those in the otherwise applicable Federal standards or requirements.*

Since under this option there is only a 45-day EPA review of the part 70 permit, there can be no question regarding stringency of a State rule submitted. Therefore, to the extent that there are specific Federal requirements for individual emission points, a State rule must match or exceed stringency at each regulated emission point in the same form as the Federal standard.

- (D) *Express levels of control and compliance and enforcement measures in the same form and units of measure as the otherwise applicable Federal standards and requirements.*
- (E) *Assure compliance by each affected source no later than would be required by the otherwise applicable Federal standard or requirement.*

However, it is possible for a State to grant additional time for sources to come into compliance with the approved State rule. In its submittal to the EPA for approval, a State could set an absolute date for approval or establish a certain period to achieve compliance once a State rule or program is approved. If a State chooses to provide such flexibility, affected sources must be in compliance with the underlying Federal rule and any specified compliance timeframes in the interim period.

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8.3 Form of the Standard

This delegation option requires a State to make a legally-binding commitment that it will express all relevant emission or other limitations or requirements resulting from the State's program, in 40 CFR part 70 permits for all affected sources in the "form of the federal standard." Any such permit conditions would have to reflect emission or other limitations that would be no less stringent than those that would result from the otherwise applicable Federal standard. In addition, compliance and enforcement measures must also be in the same form and units of measure.

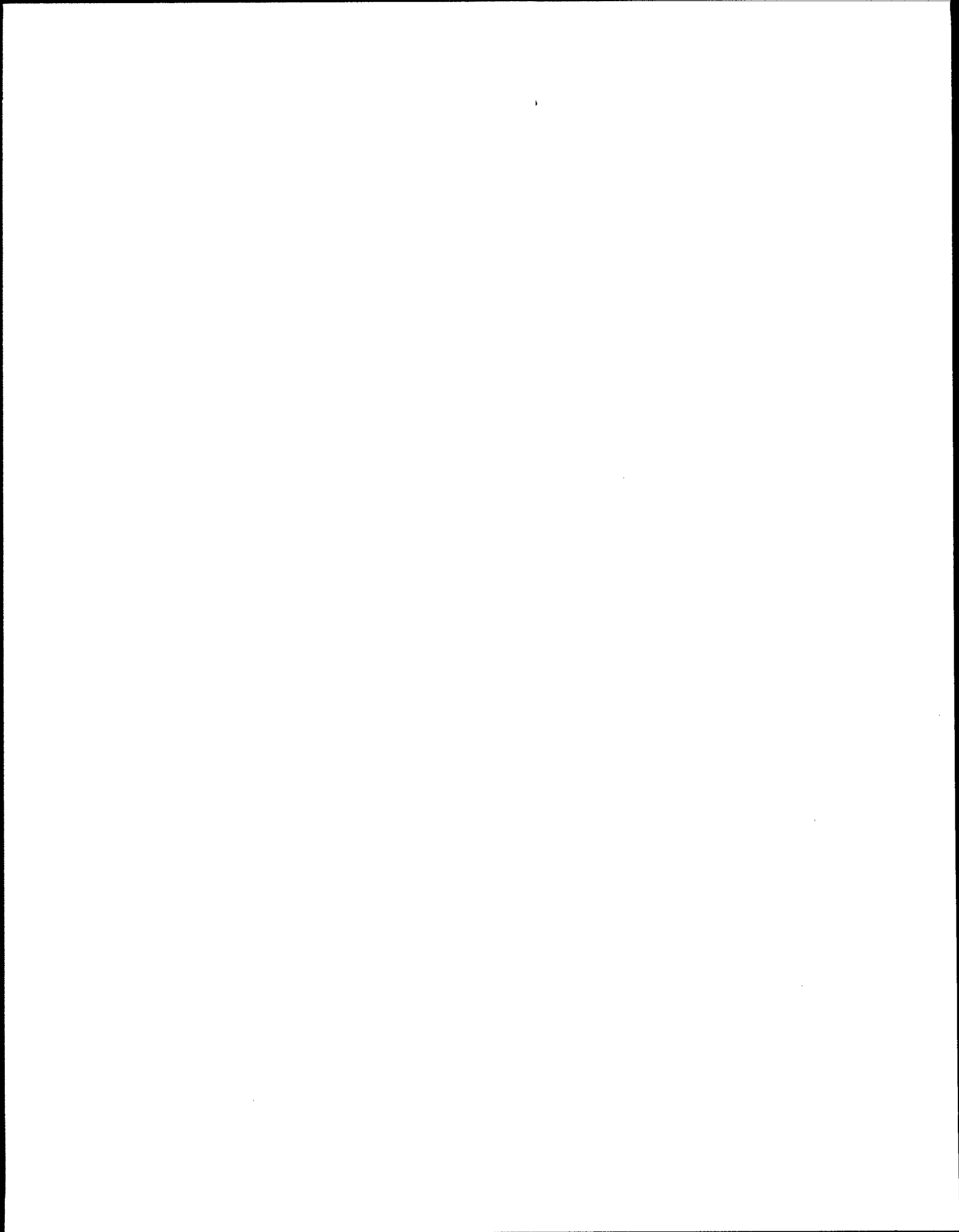
8.3.1 How does a State demonstrate a no less stringent level of control in the "form of the Federal standard?"

Typically Federal emission standards will express a level of control in terms of a numerical emission limit or percent reduction that must be attained by an affected source. In such situations, a State with a program approval under section 63.94 shall express in the applicable permit a level of control, resulting from its own program that is in the same form and metric as in the Federal standard (i.e., in terms of the same emission limit, level or reduction, including the same units of measure).

As an example, a certain Federal emission standard may require an emission limit of 5 pounds per hour of a HAP from a particular piece of equipment. In this example, the State would have to express an emission limit resulting from its own program in the same units, i.e., pounds per hour. In this case, the actual limit would have to be 5 pounds per hour or less in order to be no less stringent than the Federal standard.

Another example might be if a Federal standard required a 99 percent reduction in a pollutant from a particular emission point, the State would have to express an emission limit in the respective part 70 permit that achieved 99 or greater percent reduction from that emission point to be no less stringent and to express the requirements of its program in the form of the Federal standard.

Conversely, if the Federal emission limit is 5 pounds per hour, a part 70 permit requirement for 99 percent reduction would not be expressed on the form of the Federal standard, even if a State could show that a 99 percent reduction resulted in an



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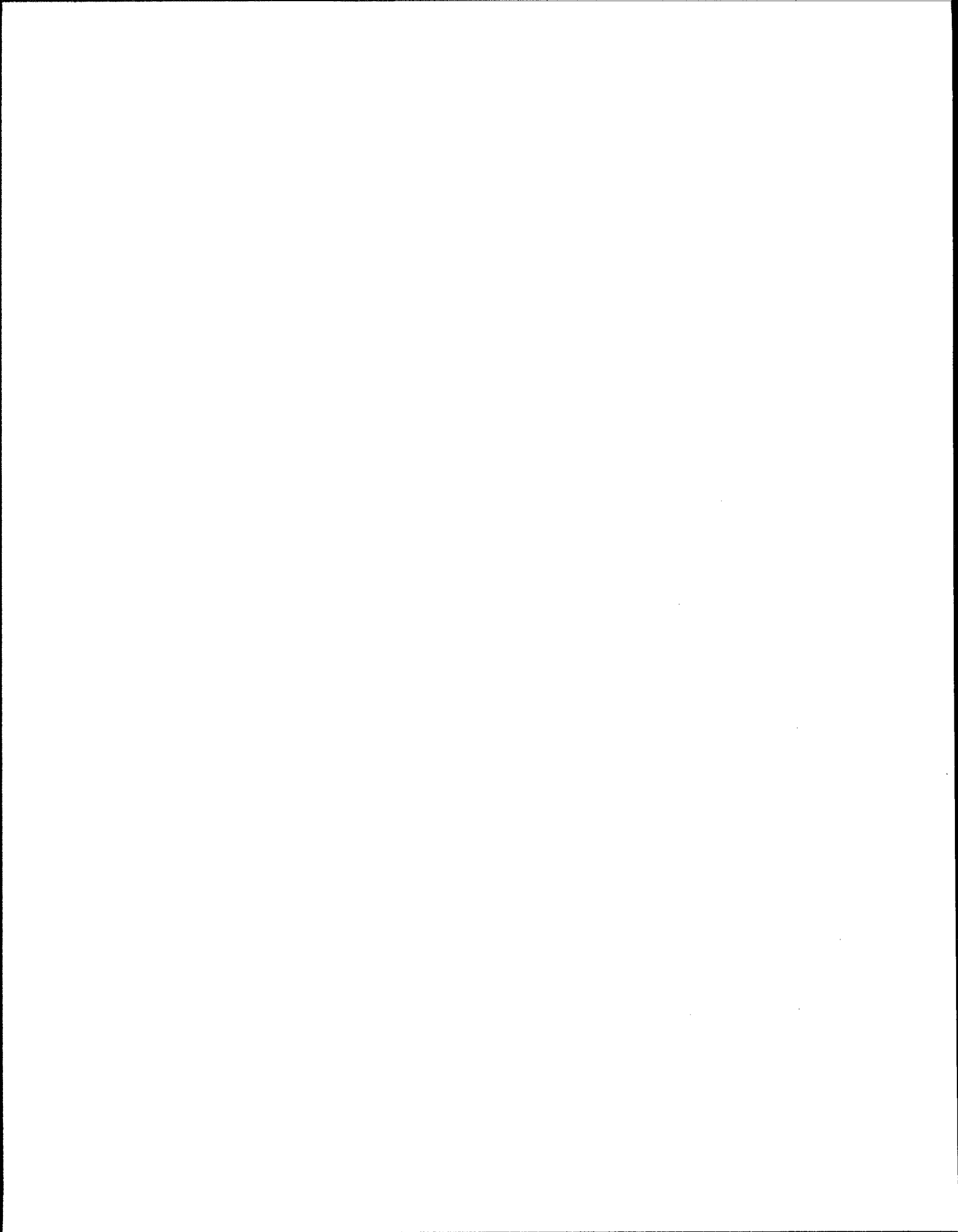
emission rate less than 5 pounds per hour. In such a case, the State would need to convert the percent reduction to pounds per hour and write the pounds per hour number into the permit.

An example of how a State might translate a risk-based or ambient concentration standard to the form of a Federal technology-based standard, might proceed as follows: if a State standard were expressed as a concentration not to be exceeded at the source fenceline, the State could determine, perhaps through dispersion modeling, an emission rate that could not be exceeded. This emission rate could then be expressed by an emissions reduction requirement that could be met using a certain type of control equipment. The emission reduction requirement could be directly comparable and translatable to the form of the corresponding requirement under the Federal Standard. Therefore, for this example, the more stringent emission rate in the form of the Federal standard would become the Federally enforceable limit for the facility. Note that if the State's analysis concluded that no control equipment was required because the source did not exceed the risk-based standard, the Federal requirements would nonetheless apply, that is, the source still would be required to install control technology or meet the otherwise applicable conditions required by section 112.

In situations where the final Federal standard does not address the equipment, design, work practice or operational requirements that a State standard wants to require in lieu of the specified Federal requirements and the Federal rule does not specify an emission limit, a State will not be able to directly express an alternative piece of equipment and compliance measures in the same form as the Federal standard. EPA has broadened approval under section 63.93 to allow a State to request approval of a limited application of its general air toxics regulations as it applies to a single source category (e.g., an alternative piece of equipment and compliance measures for the dry cleaning standard). This expanded use of option section 63.93 was discussed in more detail in chapter 7.

8.3.2 How does a State demonstrate no less stringent compliance measures in the "form of the Federal standard?"

Compliance measures refer to the requirements of a Federal standard relating, for example, to monitoring, test methods and procedures, record keeping, reporting and compliance certification. Compliance measures are as important as the level of control in effecting the intended emission reductions and



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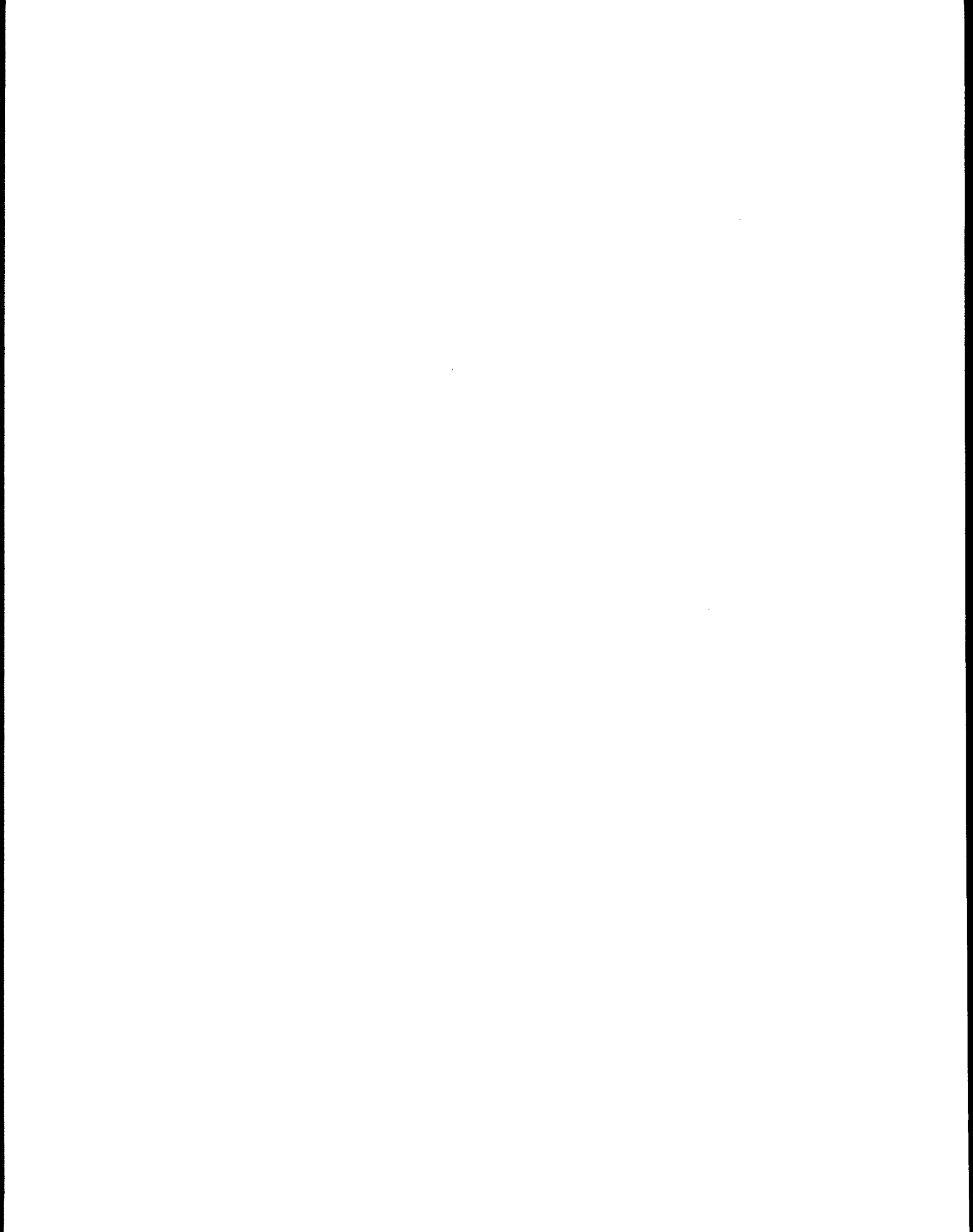
therefore must also be no less stringent than and expressed in the form of the Federal standard within the permit.

Compliance measures are not always expressed in terms of numerical limits, as is typically the case for levels of control. Therefore, there is less latitude for demonstrating that one set of compliance measures is no less stringent than another. Similarly, there is little latitude for demonstrating that an alternative set of compliance measures is expressed in the same form as another.

Consequently, under the section 63.94, States will have to incorporate compliance measures that largely reflect the compliance measures specified in the otherwise applicable Federal standard. If alternative sets of compliance measures are specified within the Federal standard, or within delegation manuals, any of the specified alternatives could be incorporated into the respective permit by the State and meet the criterion under section 63.94 that compliance measures must be no less stringent and expressed in the form of the Federal standard. For example, a particular standard may specify one set of compliance measures if a source employs a carbon adsorber, but specify another set of compliance measures if the source employs a flare on the same affected source. In such an instance, the set of compliance conditions that correspond appropriately with the particular control device employed should be incorporated into the permit.

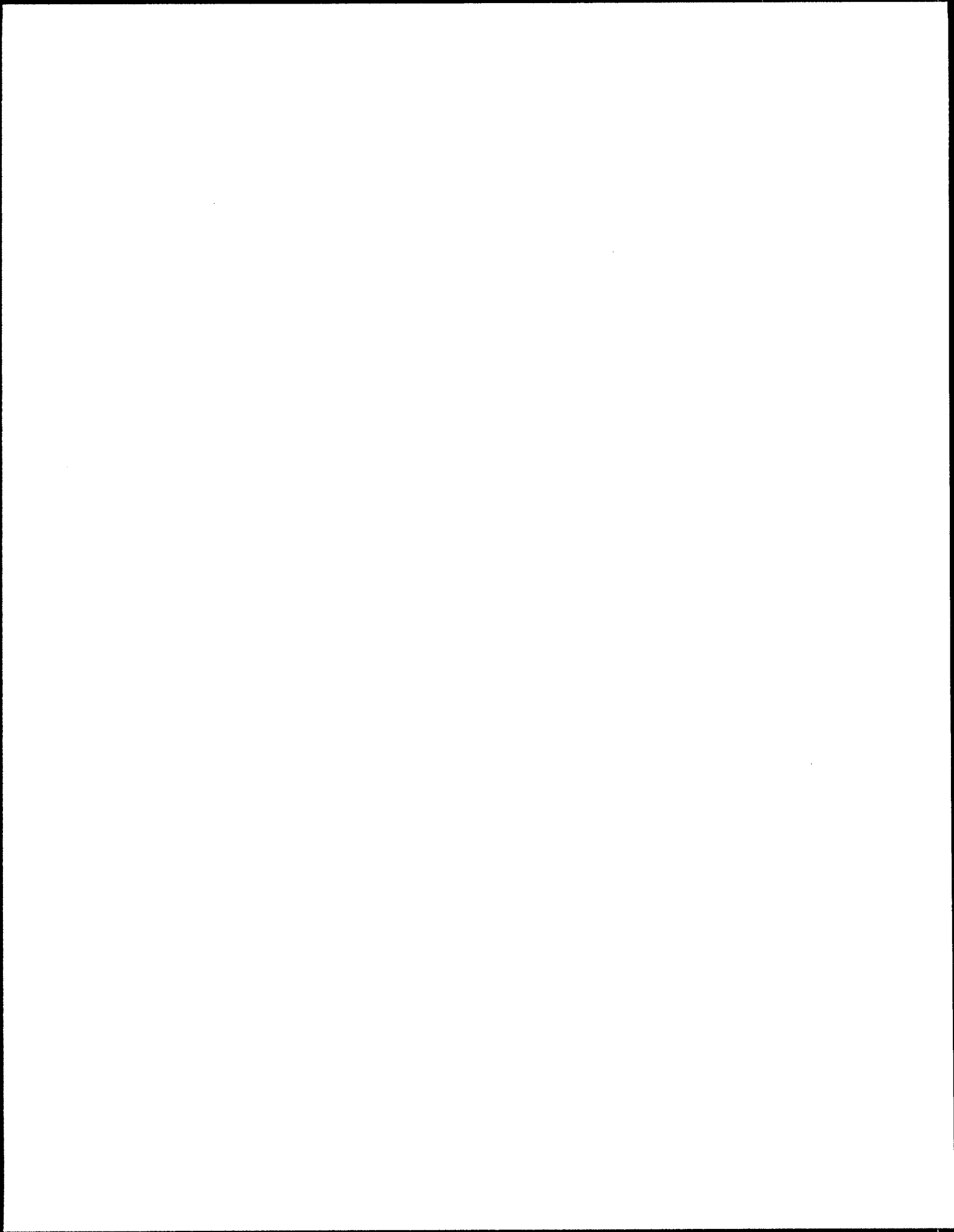
However, in situations where the final Federal standard does not address the equipment, design, work practice or operational requirements that a State standard wants to require in lieu of the specified Federal requirements and the Federal rule does not specify an emission limit, a State may request approval of a limited application of its general air toxics regulations as it applies to a single source category (e.g., an alternative piece of equipment and compliance measures for the dry cleaning standard). This expanded use of section 63.93 was discussed in more detail in chapter 7.

In addition, if the Federal rule is not a work practice, equipment, design or operational standard (in other words, when the EPA writes a standard based on performance, like control efficiency or an emission rate), then the EPA should specify within the Federal standard general enforcement and compliance measures that any source could use to demonstrate compliance. Even though there may be less latitude on how to express the



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compliance and enforcement measures, a State should be able to use the more general compliance provisions if specific technologies are not specified.



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9.0 Section 63.95 of Subpart E Approval of a State Accidental Release Prevention Program

This Chapter discusses the procedural requirements and the approval criteria that must be met for a State section 112(r) program under section 63.95. Approval of a State Accidental Release Prevention (ARP) program can occur in two ways, delegation of the Federal requirements without changes or development of a State ARP program that is different but at least as stringent as the Federal program using the options outlined in section 63.92 (discussed in chapter 6) and section 63.93 (discussed in chapter 7). A State may not receive delegation for the ARP program that differs from the Federal requirements prior to promulgation of the list of regulated substances and risk management program rules pursuant to section 112(r). In order to receive approval and delegation for an ARP program which differs from the Federal section 112(r) rules, a State submittal must meet the approval criteria in section 63.91, either section 63.92 or section 63.93 and section 63.95. The requirements of section 63.91 and section 63.95 must be met for the approval of State ARP programs which do not differ from the Federal requirements.

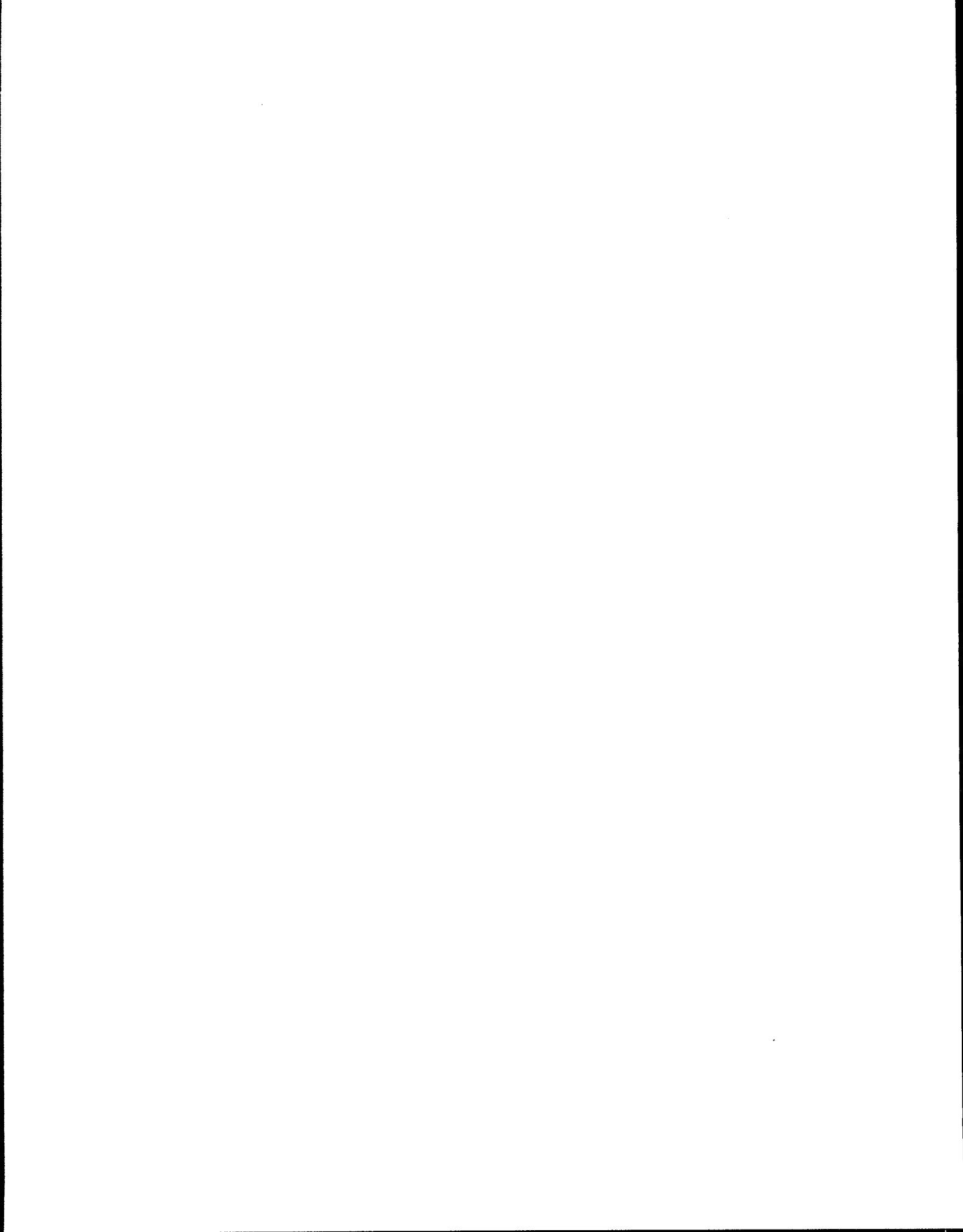
For additional guidance on the delegation of section 112(r), States and Regions should consult the draft document entitled "Guidance for the Delegation of a State Accidental Release Prevention Program under section 112(r) of the Clean Air Act."

9.1 Procedural Requirements

A State seeking delegation of a different State section 112(r) program should follow the procedures set forth in chapter 4 as well as the approval criteria established in either chapter 6 regarding rule adjustment under section 63.92 or the approval criteria in chapter 7 regarding substituting a State rule or State authorities under section 63.93 depending upon which approval option the State plans on utilizing. A State seeking delegation of the Federal section 112(r) rule without changes must meet the requirements of section 63.91 and section 63.95.

9.2 Approval Criteria under section 63.95

1. A demonstration of the State's authority and resources to implement and enforce regulations which are at least as stringent as regulations promulgated under section 112(r) that



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specify substances, related thresholds and a risk management program.

2. Procedures for:

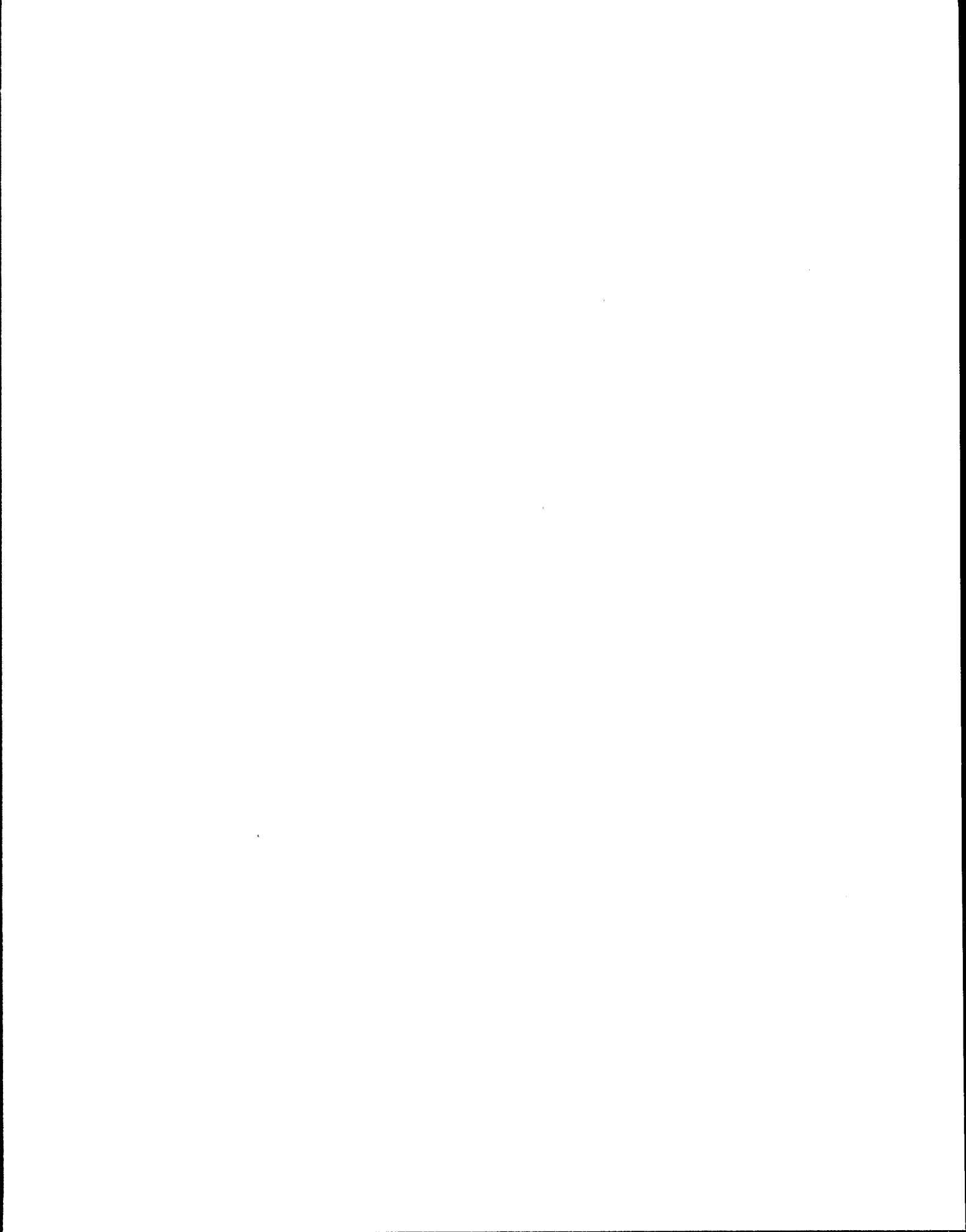
- (i) Registration of stationary sources, as defined in section 112(r)(2)(C) of the Act, which clearly identifies the State entity to receive the registration.
- (ii) Receiving and reviewing risk management plans.
- (iii) Making available to the public any risk management plan submitted to the State pursuant to provisions specified in the section 112(r) which are consistent with section 114(c) of the Act.
- (iv) Providing technical assistance to subject sources, including small businesses.

3. A demonstration of the State's authority to enforce all accidental release prevention requirements including a risk management plan auditing strategy.

4. A description of the coordination mechanisms the State implementing agency will use with:

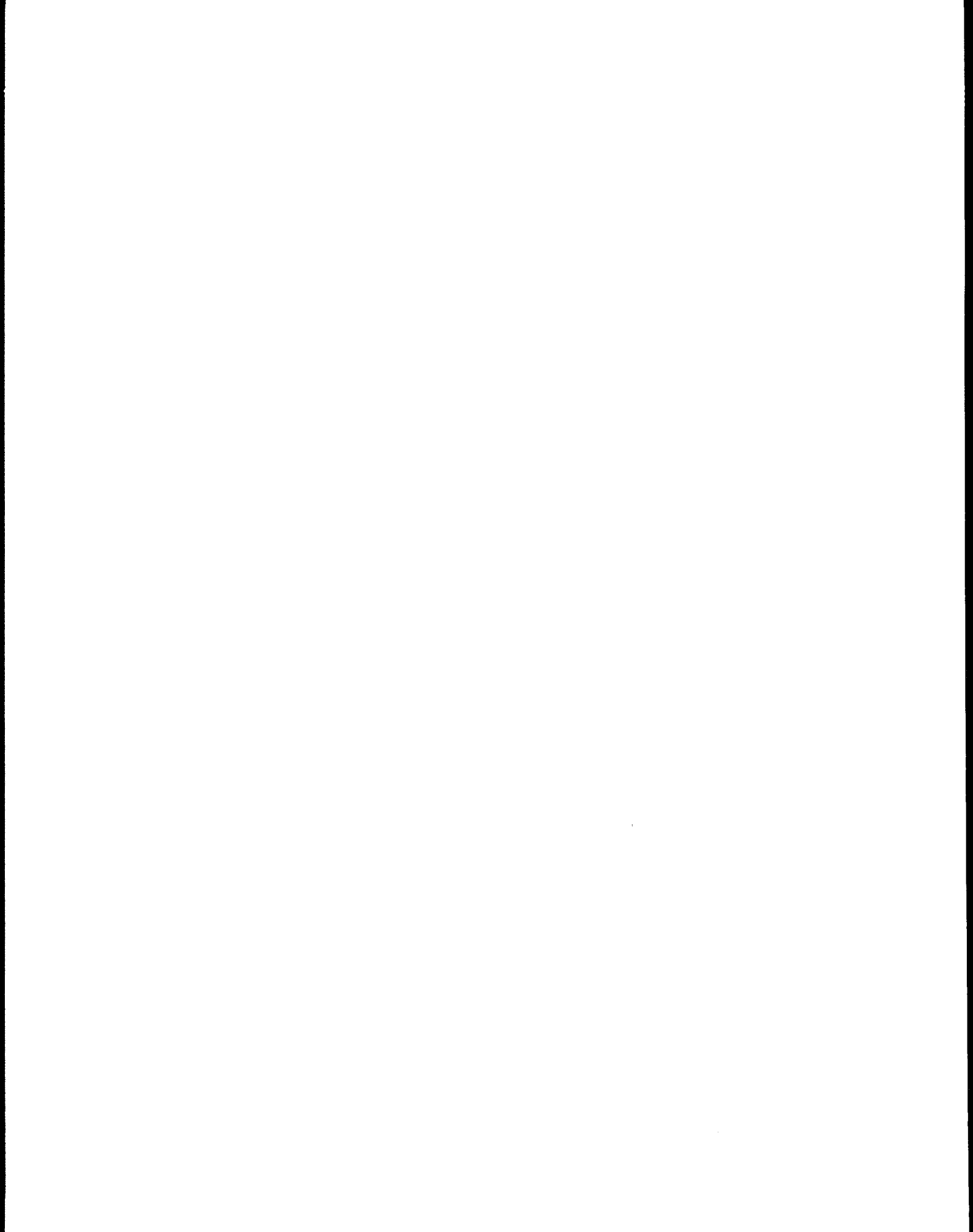
- (i) The Chemical Safety and Hazard Investigation Board, particularly during accident investigation.
- (ii) The State Emergency Response Commission, and the Local Emergency Planning Committees.
- (iii) The air permitting program with respect to the interface of the sources subject to both section 112(r) of the Act and permit requirements under part 70.

Under this section, a State may request delegation for a complete or partial program. A partial Accidental Release Prevention program must include the approval criteria discussed above.



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**10.0 PERIODIC REVIEWS
[TO BE ADDED IN THE NEXT VERSION]**



APPENDIX A

DEFINITIONS

Applicability criteria means the regulatory criteria used to define all emission points within all affected sources subject to a specific section 112 rule.

Approval means a determination by the Administrator that a State rule or program meets the criteria of section 63.91 and the additional criteria of either section 63.92, section 63.93 or section 63.94, where appropriate. For accidental release prevention programs, the criteria of section 63.95 must also be met.

Compliance and enforcement measures means requirements within a rule or program relating to compliance and enforcement, including but not necessarily limited to monitoring, test methods and procedures, recordkeeping, reporting, compliance certification, inspection, entry, sampling or accidental release prevention oversight.

Level of control means the degree to which a rule or program requires a source to limit emissions or to employ design, equipment, work practice, operational, accident prevention or other requirements or techniques (including a prohibition of emissions) for:

(1)(i) each hazardous air pollutant, if individual pollutants are subject to emission limitations, and

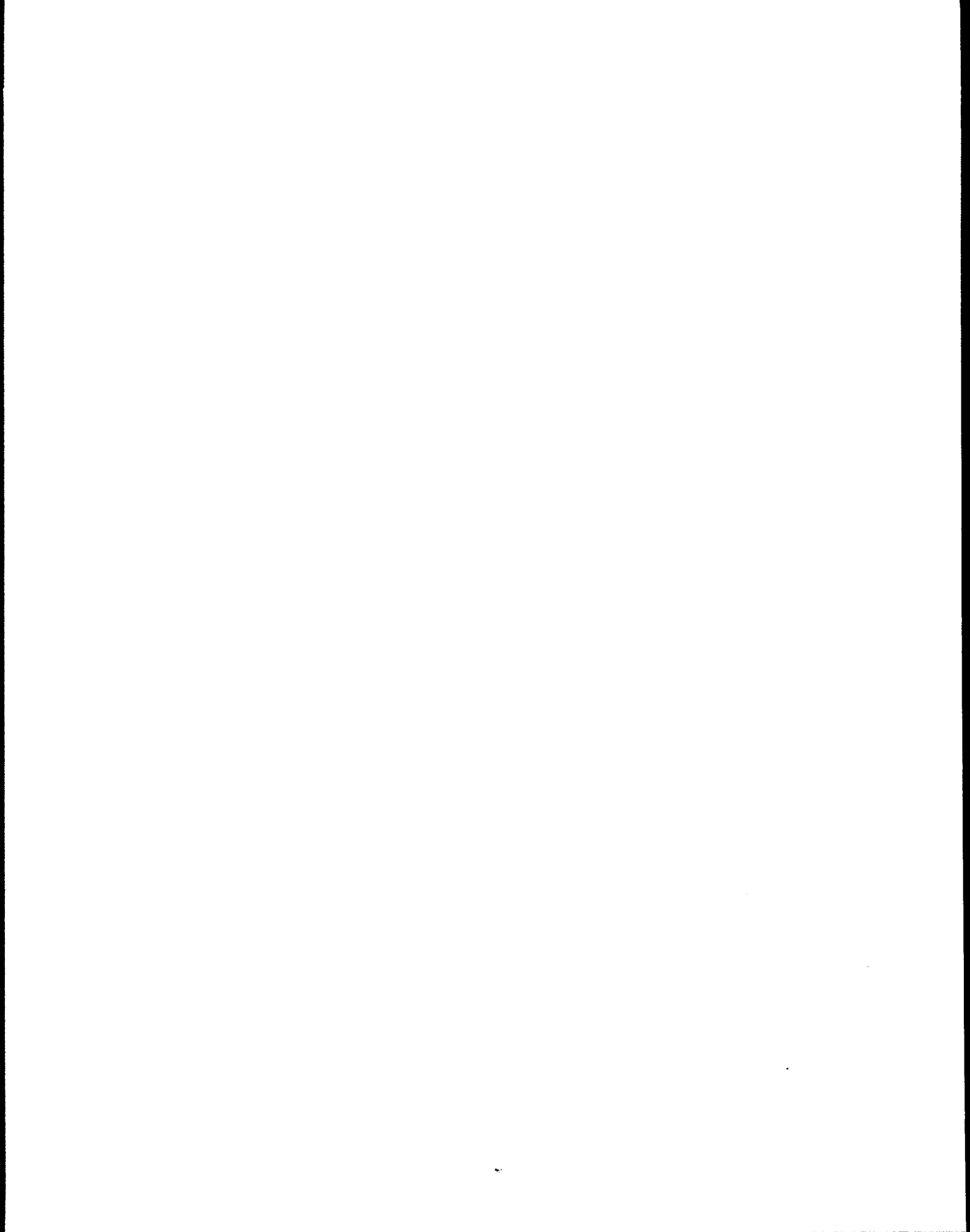
(ii) the aggregate total of hazardous air pollutants, if the aggregate grouping is subject to emission limitations, provided that the rule or program would not lead to an increase in risk to human health or the environment; and

(2) each substance regulated under section 112(r).

Local agency means a local air pollution control agency or, for the purposes of section 63.95, any local agency or entity having responsibility for preventing accidental releases which may occur at a source regulated under section 112(r).

Program means, for the purposes of an approval under section 63.94, a collection of State statutes, rules or other requirements which limits or will limit the emissions of hazardous air pollutants from affected sources.

Stringent or stringency means the degree of rigor, strictness or severity a statute, rule, emission standard or requirement imposes on an affected source as measured by the quantity of emissions, or as measured by parameters relating to rule applicability and level of control, or as otherwise determined by the Administrator.



APPENDIX B

HEADQUARTERS REVIEWING OFFICES

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the 1990s, the number of people in the UK who are aged 65 and over has increased by 1.5 million, and the number of people aged 75 and over has increased by 1 million (Office for National Statistics 1999). The number of people aged 85 and over has increased by 300,000 in the same period.

There is a growing awareness of the need to address the needs of older people in the community. The Department of Health (1999) has published a strategy for older people, which sets out the government's commitment to improve the lives of older people. The strategy is based on the following principles:

- Older people should be able to live independently and actively in the community.
- Older people should be able to access the services and facilities they need.
- Older people should be able to participate in the decisions that affect their lives.

The strategy also sets out a number of objectives, which are intended to be achieved by the year 2010. These objectives are:

- To reduce the number of older people who are in long-term care.
- To improve the health and well-being of older people.
- To improve the quality of life of older people.

The strategy is a key document in the development of policy for older people in the UK. It provides a framework for the development of services and facilities for older people, and for the improvement of the lives of older people in the community.

The strategy is based on the following assumptions:

- Older people are a valuable resource for the community.
- Older people should be able to live independently and actively in the community.
- Older people should be able to access the services and facilities they need.

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The strategy is a key document in the development of policy for older people in the UK. It provides a framework for the development of services and facilities for older people, and for the improvement of the lives of older people in the community.

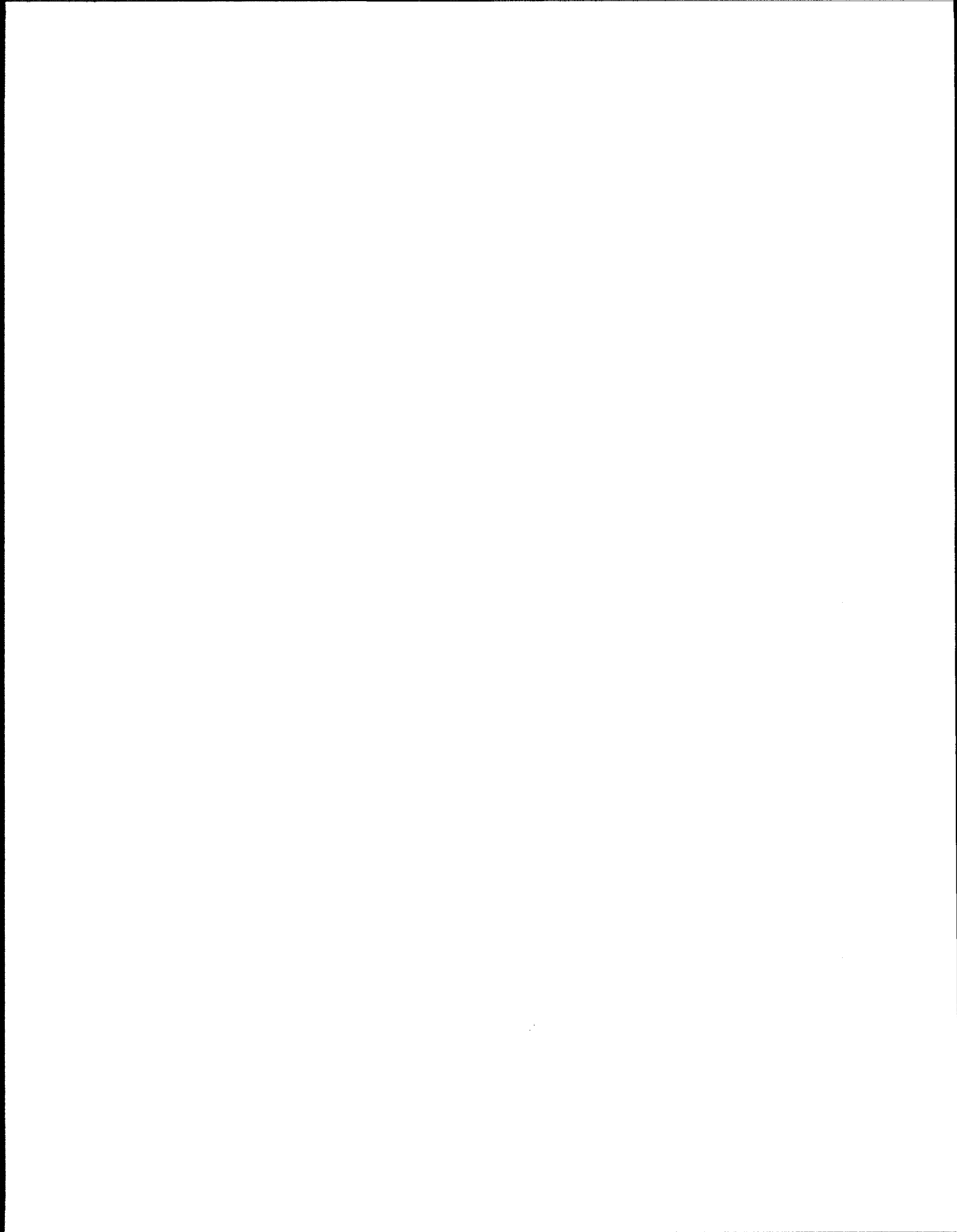
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APPENDIX C

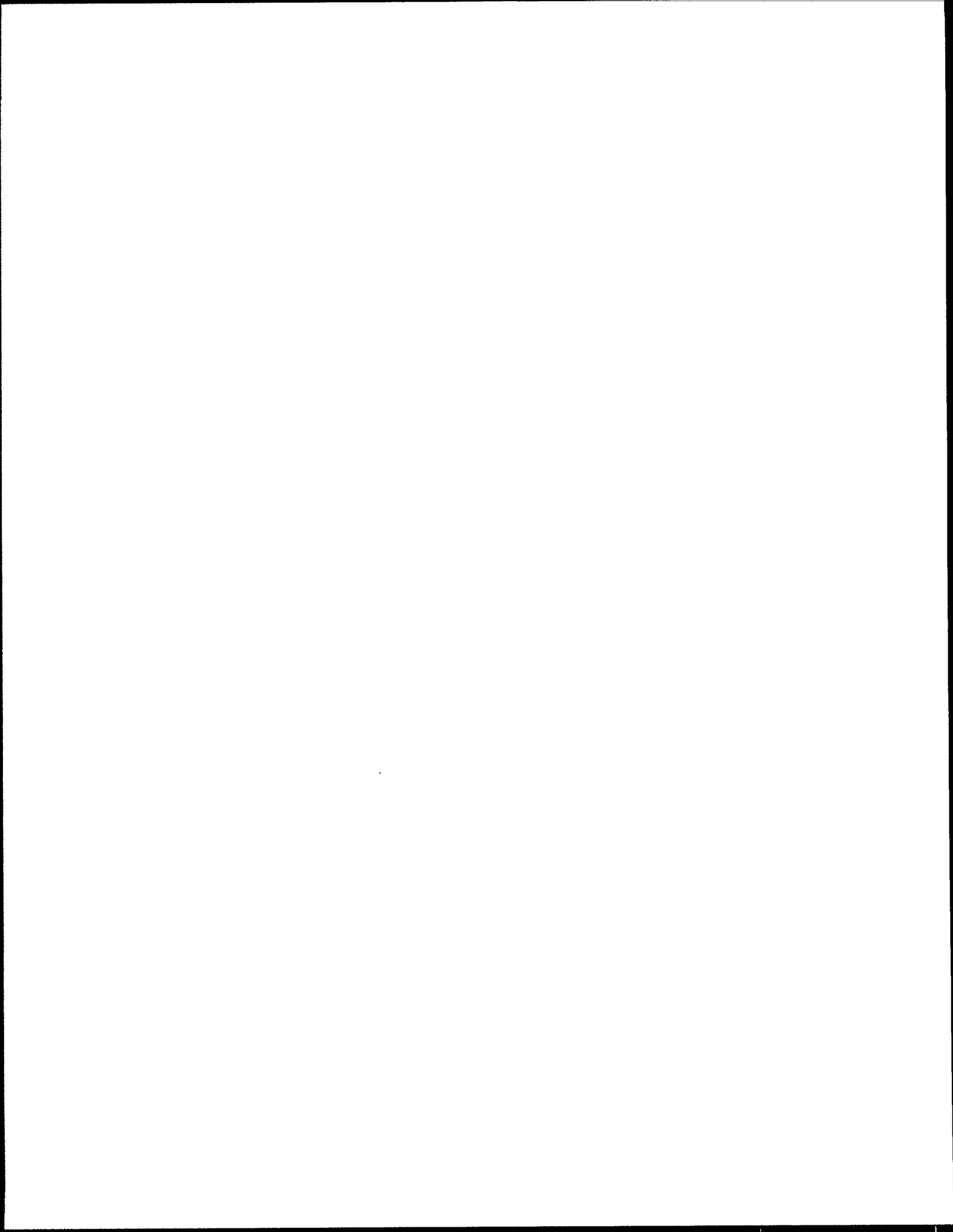
FEDERAL REGISTER NOTICE FOR
APPROVAL OF STATE PROGRAMS AND
DELEGATION OF FEDERAL AUTHORITIES

[TO BE ADDED]



APPENDIX D

STATUTORY LANGUAGE OF SECTION 112(1) :



"(I) STATE PROGRAMS.—

"(1) IN GENERAL.—Each State may develop and submit to the Administrator for approval a program for the implementation and enforcement (including a review of enforcement delegations previously granted) of emission standards and other requirements for air pollutants subject to this section or requirements for the prevention and mitigation of accidental releases pursuant to subsection (r). A program submitted by a State under this subsection may provide for partial or complete delegation of the Administrator's authorities and responsibilities to implement and enforce emissions standards and prevention requirements but shall not include authority to set standards less stringent than those promulgated by the Administrator under this Act.

"(2) GUIDANCE.—Not later than 12 months after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall publish guidance that would be useful to the States in developing programs for submittal under this subsection. The guidance shall also provide for the registration of all facilities producing, processing, handling or storing any substance listed pursuant to subsection (r) in amounts greater than the threshold quantity. The Administrator shall include as an element in such guidance an optional program begun in 1986 for the review of high-risk point sources of air pollutants including, but not limited to, hazardous air pollutants listed pursuant to subsection (b).

"(3) TECHNICAL ASSISTANCE.—The Administrator shall establish and maintain an air toxics clearinghouse and center to provide technical information and assistance to State and local agencies and, on a cost recovery basis, to others on control technology, health and ecological risk assessment, risk analysis, ambient monitoring and modeling, and emissions measurement and monitoring. The Administrator shall use the authority of section 103 to examine methods for preventing, measuring, and controlling emissions and evaluating associated health and ecological risks. Where appropriate, such activity shall be conducted with not-for-profit organizations. The Administrator may conduct research on methods for preventing, measuring and controlling emissions and evaluating associated health and environment risks. All information collected under this para-

"(4) GRANTS.—Upon application of a State, the Administrator may make grants, subject to such terms and conditions as the Administrator deems appropriate, to such State for the purpose of assisting the State in developing and implementing a program for submittal and approval under this subsection. Programs assisted under this paragraph may include program elements addressing air pollutants or extremely hazardous substances other than those specifically subject to this section. Grants under this paragraph may include support for high-risk point source review as provided in paragraph (2) and support for the development and implementation of areawide area source programs pursuant to subsection (k).

"(5) APPROVAL OR DISAPPROVAL.—Not later than 180 days after receiving a program submitted by a State, and after notice and opportunity for public comment, the Administrator shall either approve or disapprove such program. The Administrator shall disapprove any program submitted by a State, if the Administrator determines that—

"(A) the authorities contained in the program are not adequate to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by the Administrator under this section;

"(B) adequate authority does not exist, or adequate resources are not available, to implement the program;

"(C) the schedule for implementing the program and assuring compliance by affected sources is not sufficiently expeditious; or

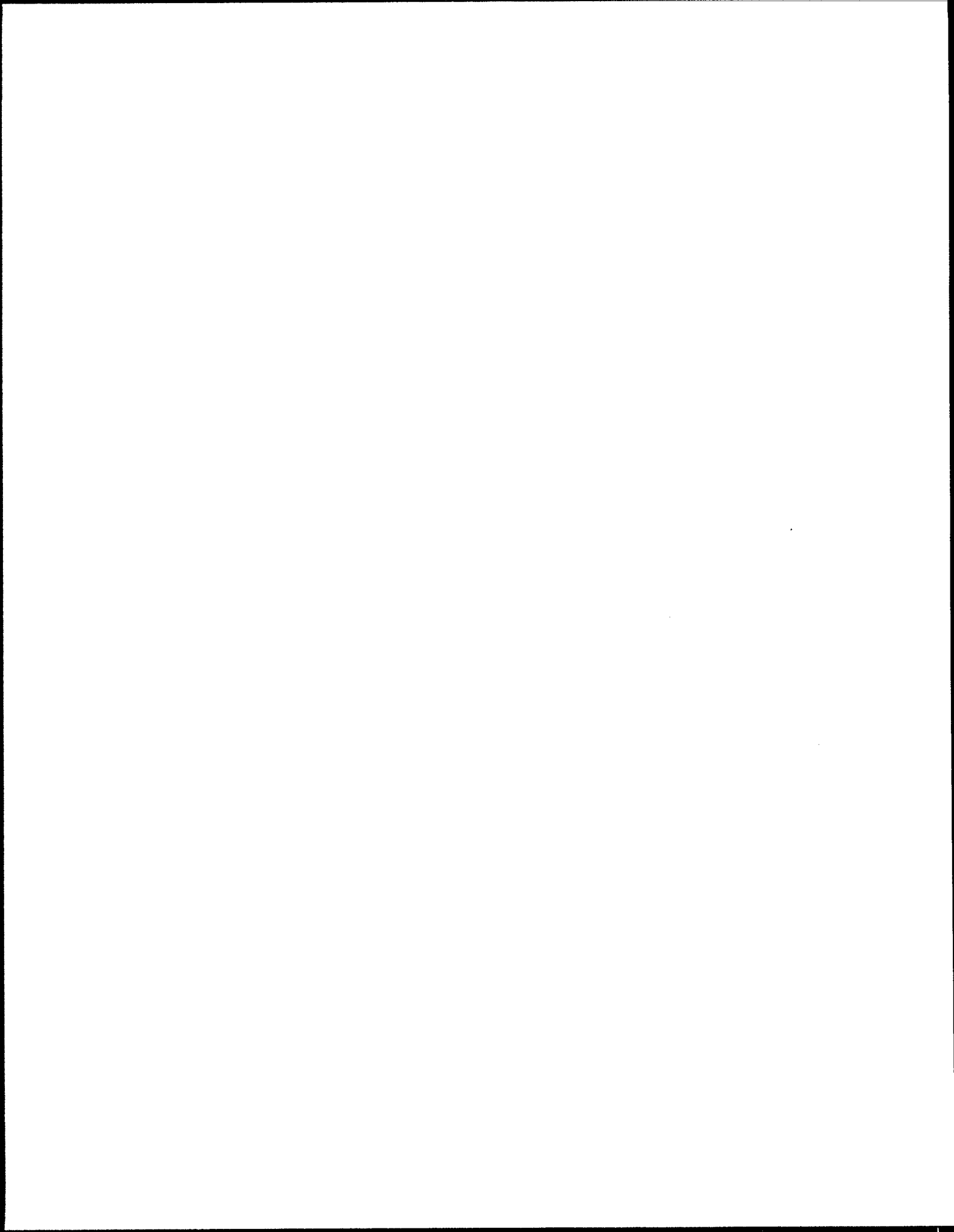
"(D) the program is otherwise not in compliance with the guidance issued by the Administrator under paragraph (2) or is not likely to satisfy, in whole or in part, the objectives of this Act.

If the Administrator disapproves a State program, the Administrator shall notify the State of any revisions or modifications necessary to obtain approval. The State may revise and resubmit the proposed program for review and approval pursuant to the provisions of this subsection.

"(6) WITHDRAWAL.—Whenever the Administrator determines, after public hearing, that a State is not administering and enforcing a program approved pursuant to this subsection in accordance with the guidance published pursuant to paragraph (2) or the requirements of paragraph (5), the Administrator shall so notify the State and, if action which will assure prompt compliance is not taken within 90 days, the Administrator shall withdraw approval of the program. The Administrator shall have been notified and the reasons for withdrawal shall have been stated in writing and made public.

"(7) AUTHORITY TO ENFORCE.—Nothing in this subsection shall prohibit the Administrator from enforcing any applicable emission standard or requirement under this section.

"(8) LOCAL PROGRAM.—The Administrator may, after notice and opportunity for public comment, approve a program developed and submitted by a local air pollution control agency (after consultation with the State) pursuant to this subsection and any such agency implementing an approved program may take any



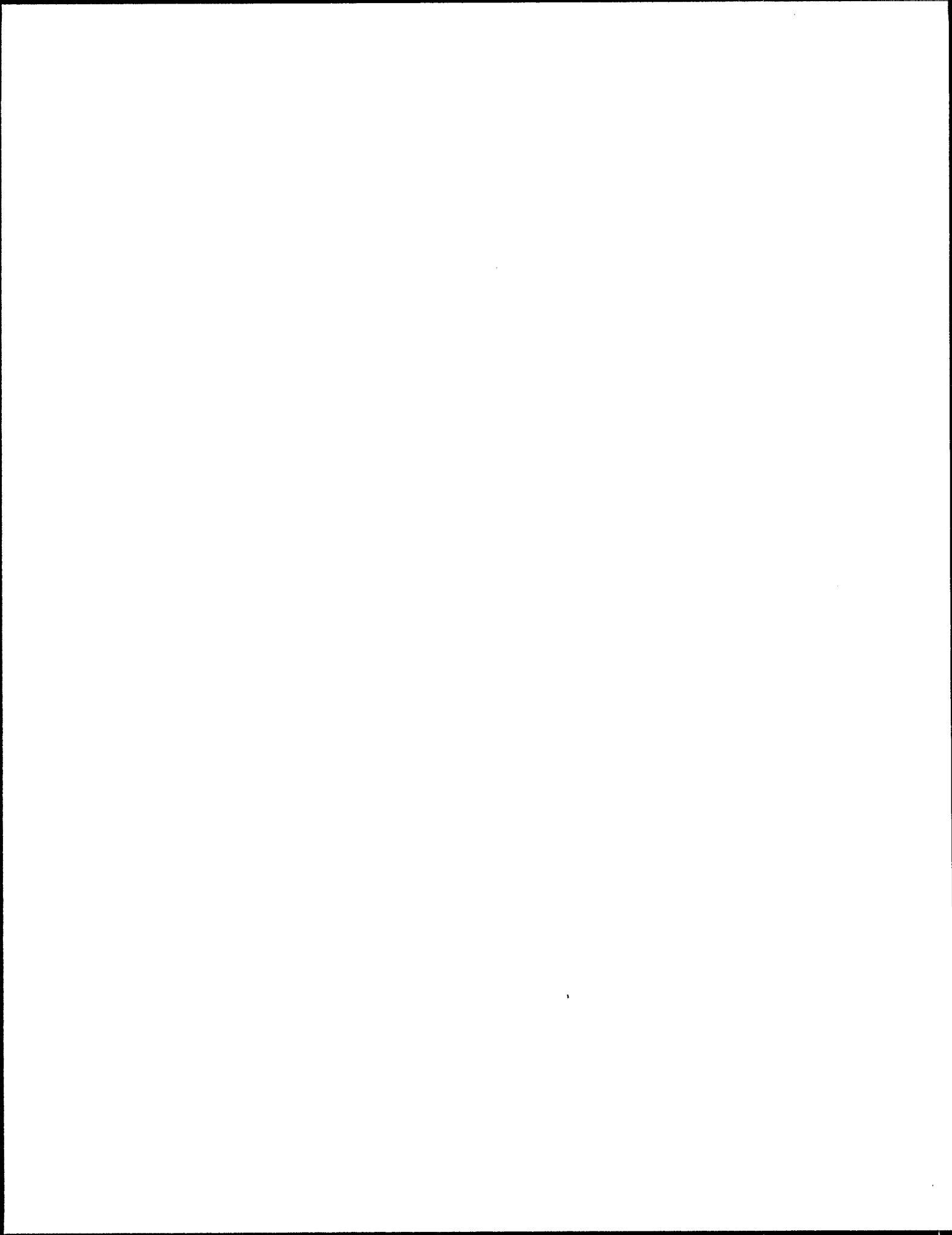
104 STAT. 2556

PUBLIC LAW 101-549—NOV. 15, 1990

"(9) PERMIT AUTHORITY.—Nothing in this subsection shall affect the authorities and obligations of the Administrator or the State under title V.

APPENDIX E

APPLICATION FOR SUBPART E DELEGATION AND REGIONAL APPROVAL CHECKLIST



APPLICATION FOR SUBPART E DELEGATION
GENERAL INFORMATION

PART 1. GENERAL INFORMATION

1.1 Agency Information

Date:

Official Agency Name:

Mailing Address:

Phone:

Fax:

Agency Contact:

Contact Information:

(if different from above)

1.2 Title V Information

Please give date and Federal Register citation for the final approval of the State's Title V Operating Permits Program (if applicable).

1.3 Other 112(l) delegations

Please cite Federal Register notices and dates for any previous 112(l) delegations.

1.4 Delegation option:

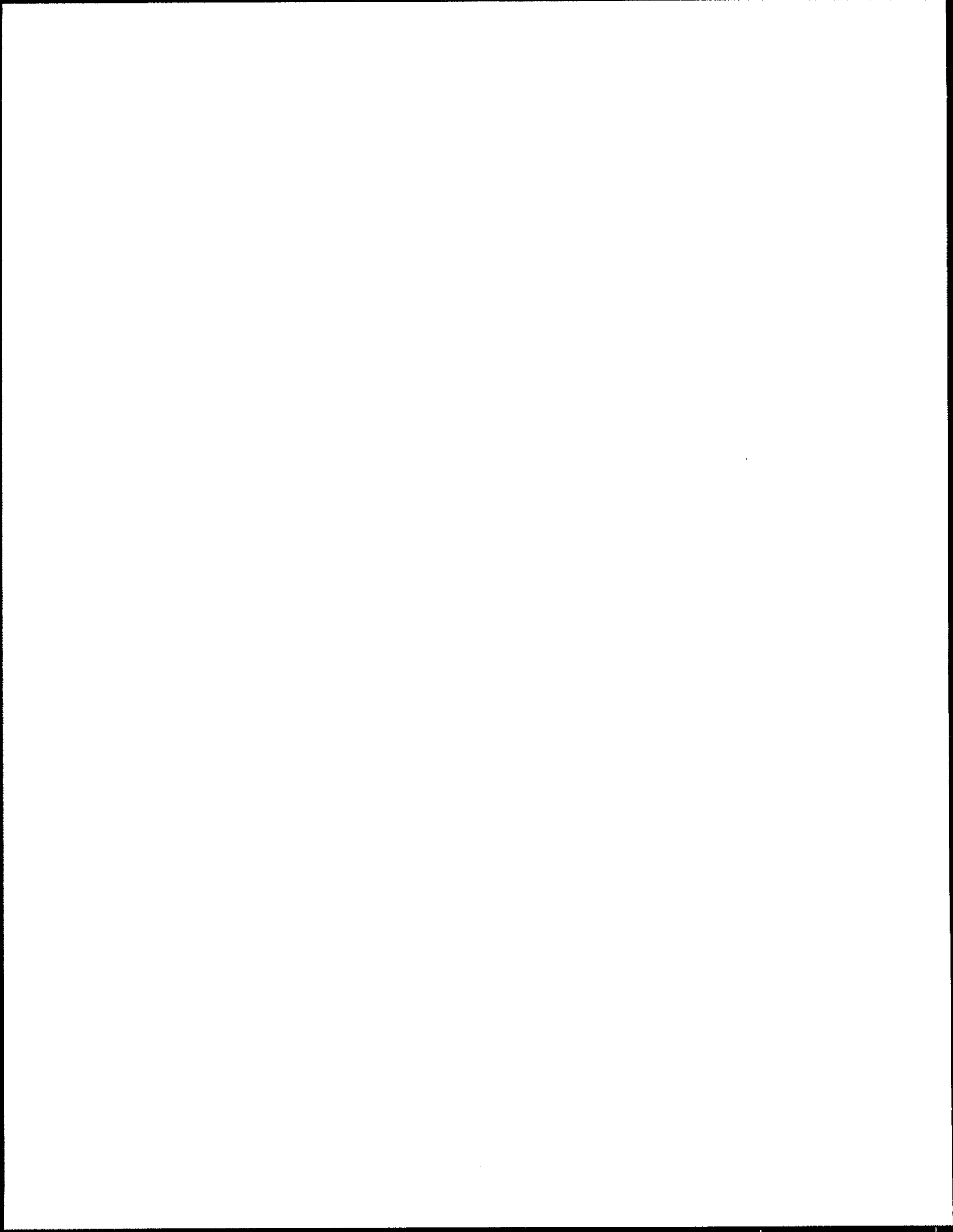
- ☐ Rule Adjustment (Section 63.92)
- ☐ Rule Substitution (Section 63.93)
- ☐ Program Substitution (Section 63.94)
- ☐ Federal Standard with no Changes (Section 63.91)
(for States without approved Title V programs)

1.5 Agency Certification

We, the undersigned, do hereby certify that the information contained in this application is correct to the best of our knowledge.

Signature: _____ Date: _____
(State Agency Contact)

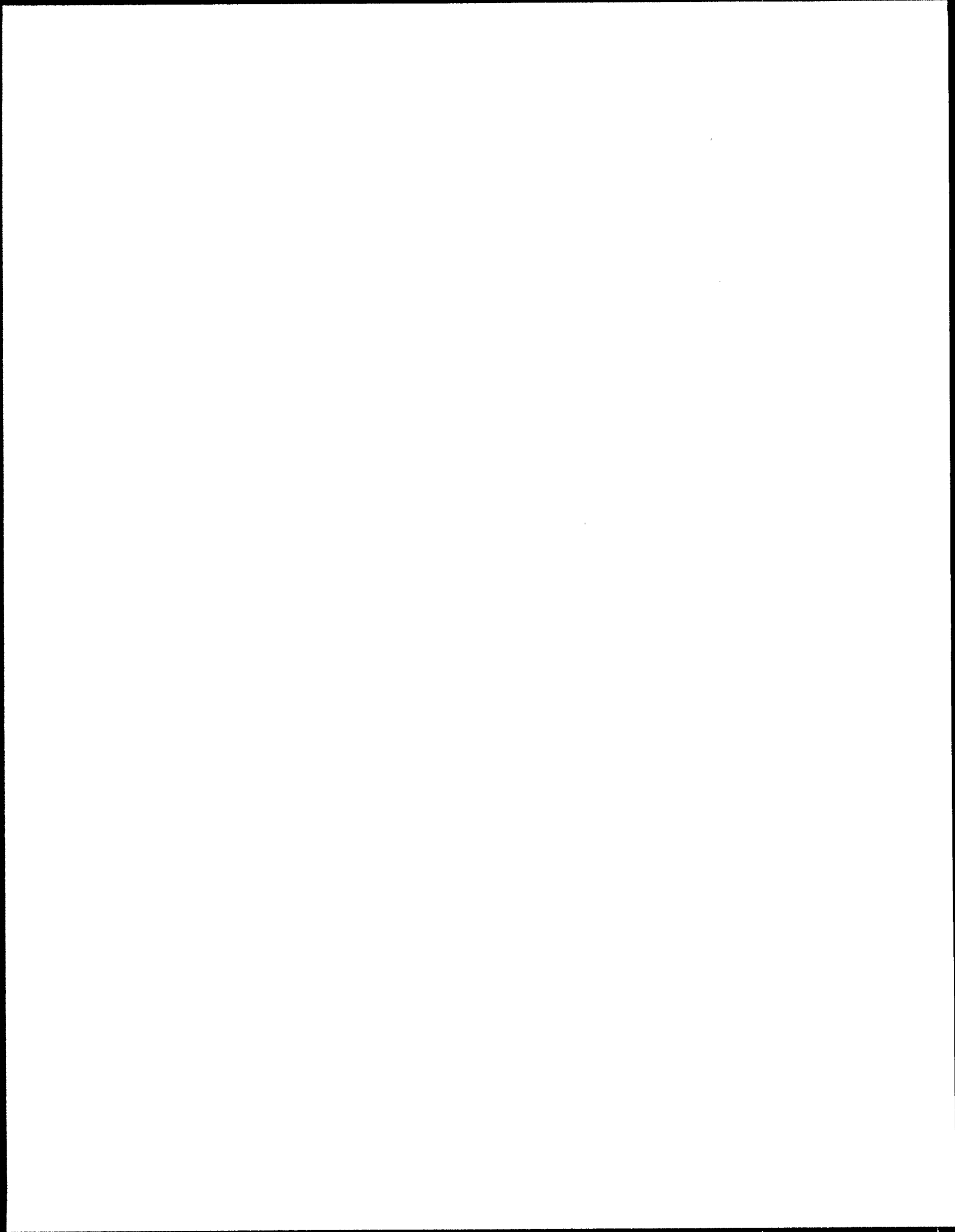
Signature: _____ Date: _____
(State Agency Director or other highest official)



APPLICATION FOR SUBPART E DELEGATION
COMMON CRITERIA (§ 63.91)

PART 2. CRITERIA COMMON TO ALL OPTIONS

- 2.1 Provide a written finding by the State Attorney General that the State has the necessary legal authority to implement and enforce the State rule or program at the time of approval and to assure compliance by all sources with each applicable section 112 rule, emission standard, or requirement [§ 63.91(b)(1)].
- 2.2 Provide a copy of all State statutes, regulations and other requirements that contain the appropriate provisions granting authority to implement and enforce the State rule or program upon approval [§ 63.91(b)(2)].
- 2.3 Provide a demonstration that the State has adequate resources to implement and enforce all aspects of the rule or program upon approval [§ 63.91(b)(3)]. This attachment should include the following:
 - 2.3.1 A narrative description of the scope, structure, coverage, and processes of the State program or rule.
 - 2.3.2 A description of the organization and structure of the agency or agencies that will have responsibility for administering the rule or program.
 - 2.3.3 A description of the agency staff who will carry out the State rule or program. Include the number, occupation, and general duties of the employees, but do not submit complete job descriptions for every employee carrying out the State program or rule.
- 2.4 Provide a schedule demonstrating expeditious State implementation of the rule or program upon approval [§ 63.91(b)(4)].
- 2.5 Provide a plan that assures compliance by all sources subject to the rule or program upon approval [§ 63.91(b)(5)]. The plan should include a complete description of the State's compliance tracking and enforcement program, including but not limited to inspection strategies.
- 2.6 Provide a demonstration of adequate legal authority to assure compliance with the rule or program upon approval [§ 63.91(b)(6)]. Applicable State provisions should be cited demonstrating enforcement authorities that meet the requirements of § 70.11. If authorities are delegated to a local agency, it must be demonstrated that the State retains its enforcement authority unless the local agency has authorities that meet § 70.11 requirements.



**APPLICATION FOR SUBPART E DELEGATION
RULE ADJUSTMENT (§ 63.92)**

PART 3. CRITERIA FOR APPROVAL - RULE ADJUSTMENT OPTION
[Note: Skip this section if not seeking approval under this option.]

- 3.1 This rule adjustment must be one of the adjustments listed in § 63.92(b)(3). Identify which of the allowable adjustments is/are being made in the rule requested for delegation.
- 3.2 Provide a demonstration that the public within the State has had adequate notice and opportunity to submit written comment on the State rule [§ 63.92(b)(1)].
- 3.3 Provide a demonstration that each State adjustment to the Federal rule individually results in requirements which meet the following. For each of the following, provisions in the State's rule(s) should be cited, and, if necessary, descriptions of the provisions should be provided:

- 3.3.1 The applicability requirements are unequivocally no less stringent than those of the otherwise applicable Federal rule [§ 63.92(b)(2)(i)].

Citation: _____

- 3.3.2 The requirements for level of control for each affected source and emission point are unequivocally no less stringent than those of the otherwise applicable Federal rule [§ 63.92(b)(2)(ii)].

Citation: _____

- 3.3.3 The compliance and enforcement measures for each affected source and emission point are unequivocally no less stringent than those of the otherwise applicable Federal rule [§ 63.92(b)(2)(iii)].

Citation: _____

- 3.3.4 The requirements assure compliance by every affected source no later than would be required by the otherwise applicable Federal rule [§ 63.92(b)(2)(iv)].

Citation: _____

APPLICATION FOR SUBPART E DELEGATION
RULE SUBSTITUTION (§ 63.93)

**PART 4. APPROVAL OF A STATE RULE OR STATE AUTHORITIES THAT
SUBSTITUTE FOR A SECTION 112 RULE**

[Note: Skip this section if not seeking approval under this option.]

- 4.1 Provide a demonstration that the State authorities contain or demonstrate applicability criteria that are no less stringent than those in the respective Federal rule [§ 63.93(b)(1)].

As part of this demonstration, cite the State's applicability provisions:

Citation(s): _____

- 4.2 Provide a demonstration that the State authorities contain or demonstrate levels of control and compliance and enforcement measures that result in emissions reductions from each affected source (or accidental release prevention program requirements for each affected source) which are no less stringent than those that would result from the otherwise applicable Federal rule [§ 63.93(b)(2)].

As part of this demonstration, cite relevant State compliance and enforcement provisions:

Citation(s): _____

- 4.3 Provide a demonstration that the State authorities contain or demonstrate a compliance schedule that assures that each affected source is in compliance no later than would be required by the otherwise applicable Federal rule [§ 63.93(b)(3)].

If applicable to this demonstration, cite State provisions containing compliance schedules:

Citation: _____

- 4.4 Provide a demonstration that the State authorities contain each of the following compliance and enforcement measures [§ 63.93(b)(4)]. Cite State provisions for each:

- 4.4.1 A method for determining compliance.

Citation: _____

- 4.4.2 A maximum averaging time for any standard in the authorities which is not an instantaneous standard.

Citation: _____

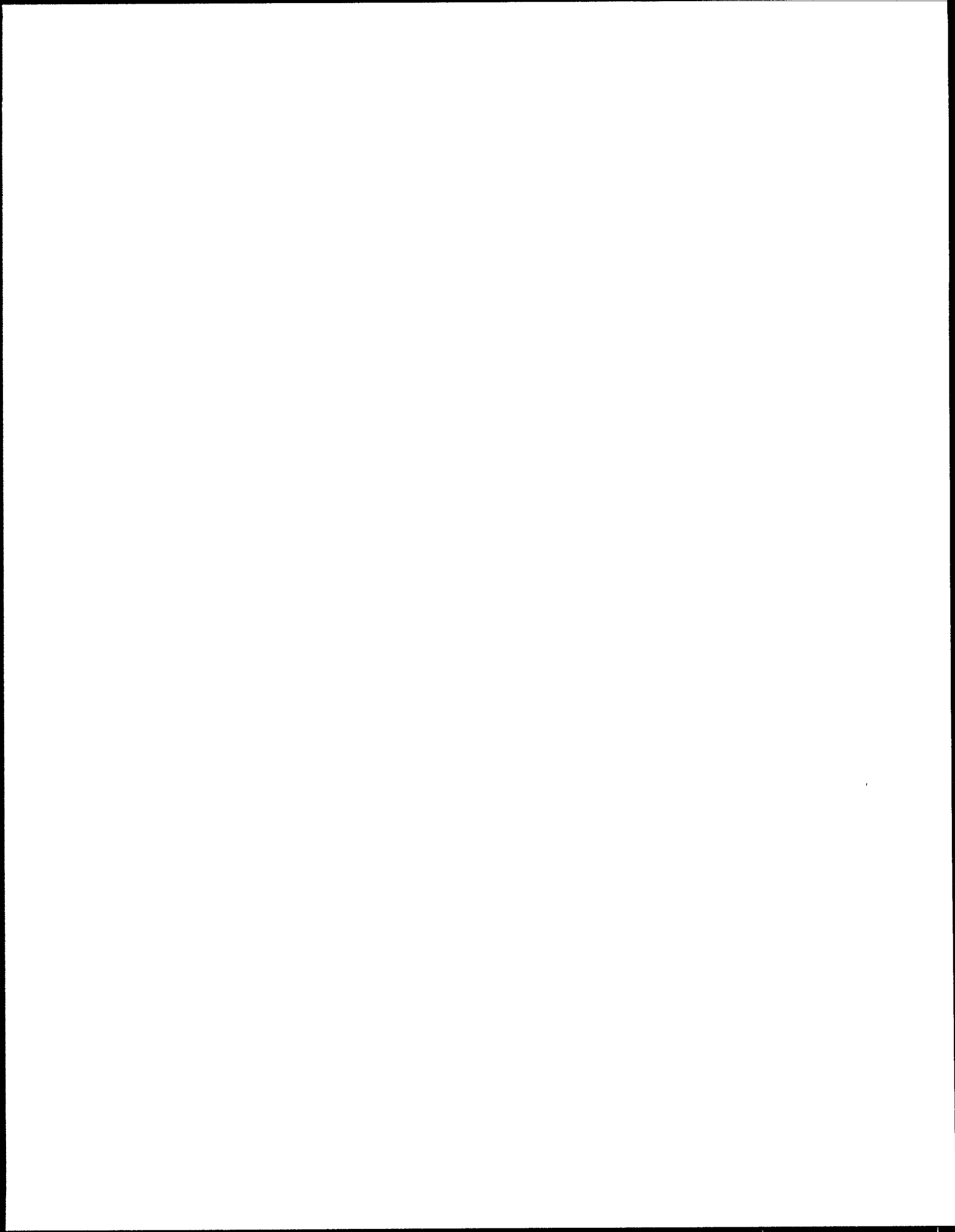
APPLICATION FOR SUBPART E DELEGATION
RULE SUBSTITUTION (§ 63.93) (CONTINUED)

- 4.4.3 An obligation to periodically monitor or test compliance using the method shown in question 4.4.1 which is sufficient to yield reliable data that are representative of the source's compliance status.

Citation: _____

- 4.4.4 A requirement that the results of all required monitoring and testing be reported at least every six months.

Citation: _____



APPLICATION FOR SUBPART E DELEGATION
PROGRAM SUBSTITUTION (§ 63.94)

**PART 5. APPROVAL OF A STATE PROGRAM THAT SUBSTITUTES FOR
SECTION 112 EMISSION STANDARDS**

[Note: Skip this section if not seeking approval under this option.]

- 5.1 List all source categories pursuant to subsection 112(c) for which the State is seeking authority to implement and enforce standards under this section [§ 63.94(b)(1)].
- 5.2 The following legally binding commitments must be made through State Law. [§ 63.94(b)(2)]. For each of the following, cite the State provisions which contain the legally binding commitment, and describe these provisions as necessary.
- 5.2.1 For each source subject to Federal section 112 emission standards for which approval is sought, 40 CFR Part 70 permits shall be issued or revised by the State in accordance with procedures established in part 70 and in accordance with the schedule established in part 2, question 2.5 of this application assuring expeditious compliance by all sources.

Citation: _____

- 5.2.2 All such issued or revised part 70 permits shall contain conditions that do each of the following:

- 5.2.2.1 Reflect applicability criteria no less stringent than those in the otherwise applicable Federal standards.

Citation: _____

- 5.2.2.2 Require levels of control for each source and emission point no less stringent than those contained in the otherwise applicable Federal standards or requirements.

Citation: _____

- 5.2.2.3 Require compliance and enforcement measures for each source and emission point no less stringent than those in the otherwise applicable Federal standards or requirements.

Citation: _____

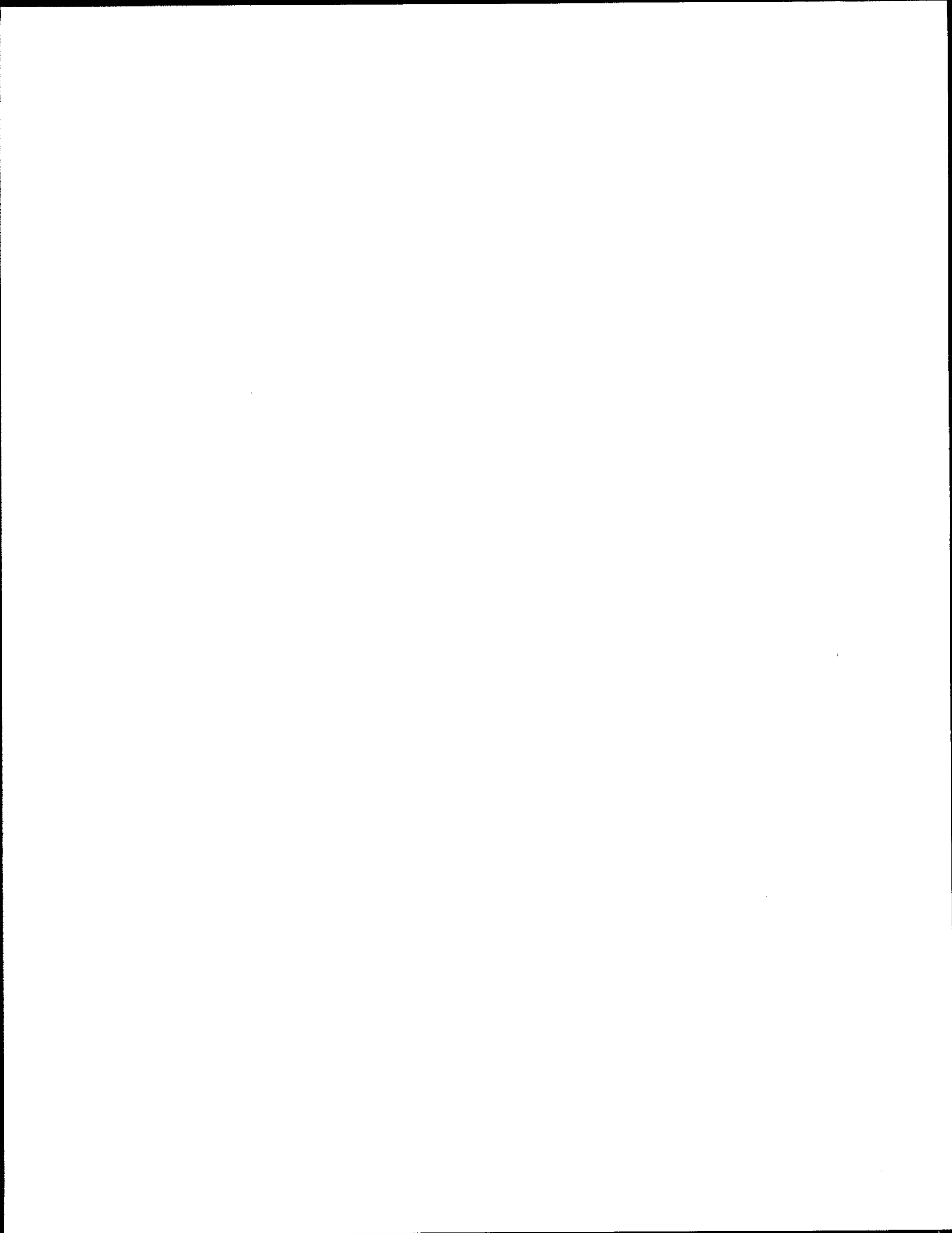
APPLICATION FOR SUBPART E DELEGATION
PROGRAM SUBSTITUTION (§ 63.94) (CONTINUED)

- 5.2.2.4 Express levels of control and compliance, and enforcement measures in the same form and units of measure as under the otherwise applicable Federal standard or requirement.

Citation: _____

- 5.2.2.5 Assure compliance by every affected source no later than would be required by the otherwise applicable Federal standard.

Citation: _____



APPLICATION FOR SUBPART E DELEGATION
ACCIDENTAL RELEASE PREVENTION PROGRAM (§ 63.95)

PART 6. ADDITIONAL APPROVAL CRITERIA FOR A STATE RULE THAT ADJUSTS OR SUBSTITUTES FOR THE FEDERAL ACCIDENTAL RELEASE PREVENTION PROGRAM.

[Note: In addition to this part, part 4 of the application, "Approval of a State rule or State authorities that substitute for a section 112 rule," must also be completed.]

6.1 Provide a demonstration of the State's authority and resources to implement and enforce regulations which are at least as stringent as regulations promulgated under Section 112(r) that specify substances, related thresholds, and a risk management program [§ 63.95(b)(1)].

6.2. Demonstrate procedures for, and where applicable, cite State rules requiring the following [§ 63.95(b)(2)]:

6.2.1 Registration of stationary sources, as defined in section 112(r)(2)(C) and consistent with the requirements of the Act, which clearly identifies the State entity to receive the registration.

Citation: _____

6.2.2 Receiving and reviewing risk management plans.

Citation: _____

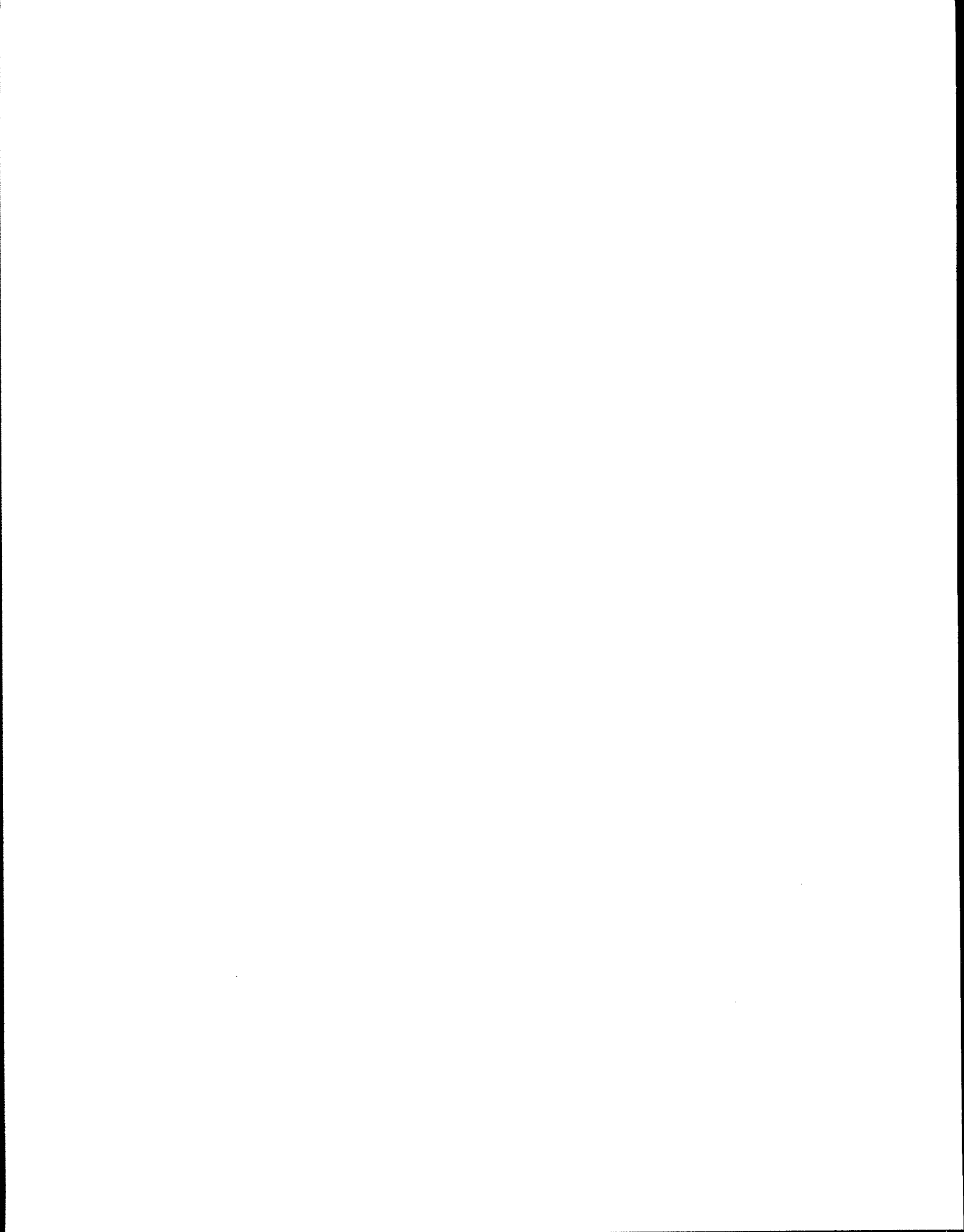
6.2.3 Making available to the public any risk management plan submitted to the State pursuant to provisions specified in section 112(r) which are consistent with section 114(c) of the Act.

Citation: _____

6.2.4 Providing technical assistance to subject sources, including small businesses.

Citation: _____

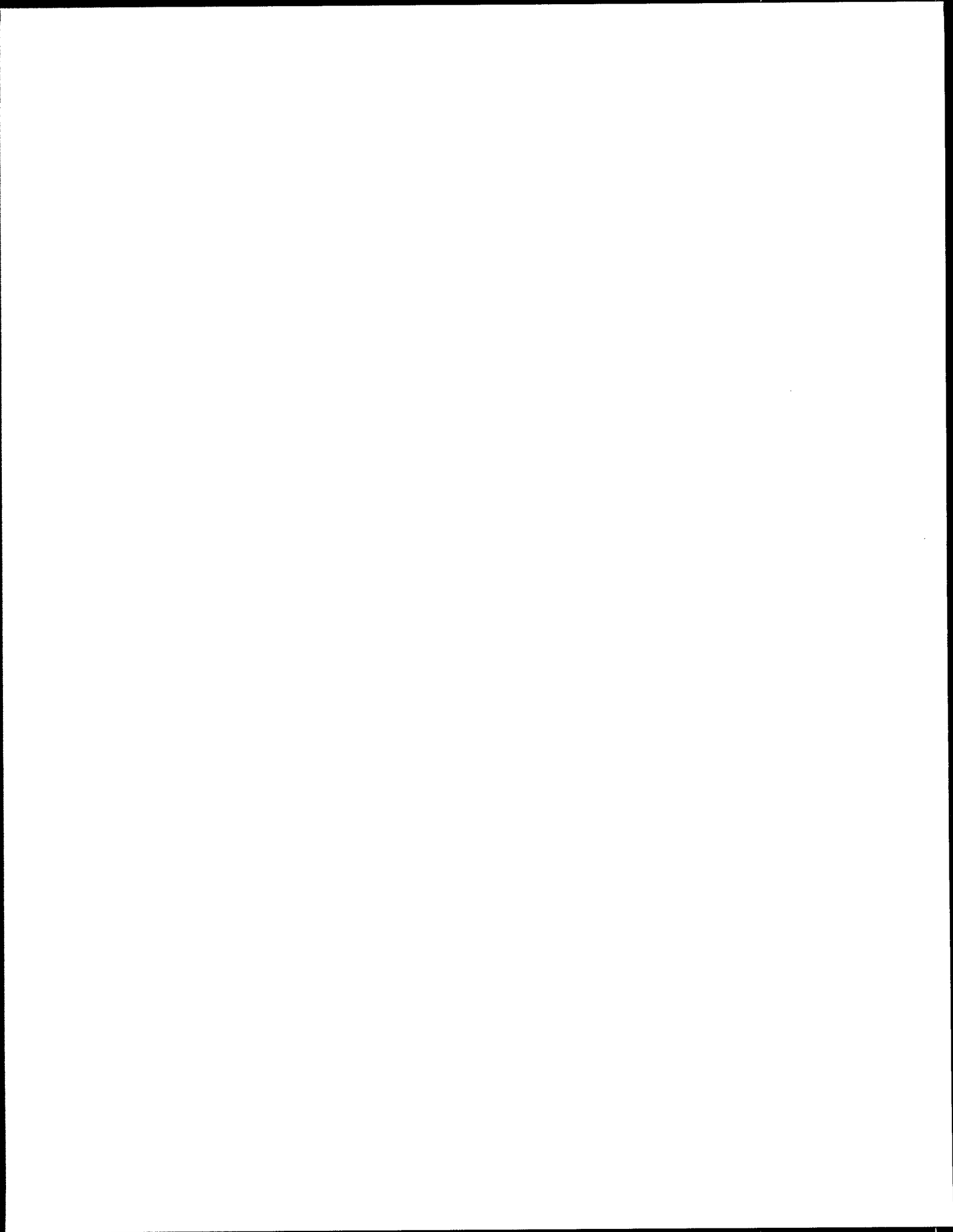
6.3 Demonstrate, and cite applicable State rules providing for, the State's authority to enforce all accidental release prevention requirements including a risk management plan auditing strategy [§ 63.95(b)(3)].



APPLICATION FOR SUBPART E DELEGATION
ACCIDENTAL RELEASE (§ 63.95) (CONTINUED)

6.4 Attach a description of the coordination mechanisms the State implementing agency will use for coordination with each of the following entities [§ 63.95(b)(4)]:

- 6.4.1 The Chemical Safety and Hazard Investigation Board, particularly during accident investigation.
- 6.4.2 The State Emergency Response Commission, and the Local Emergency Planning Committees.
- 6.4.3 The air permitting program with respect to the interface of the sources subject to both section 112(r) of the Act and permit requirements under part 70.



SUBPART E APPROVAL CHECKLIST

I. GENERAL INFORMATION

1. Contact Information complete?
2. Title V approval (if necessary)?
3. Agency Certification?

(Yes/No) Comments

II. CRITERIA COMMON TO ALL OPTIONS (Section 63.91)

1. Written finding by the State Attorney General?

2. Copy of all State statutes, regulations and other requirements?

3. Demonstration of adequate resources to implement and enforce?

- 3.1 Narrative description of the scope, structure, coverage, and processes?

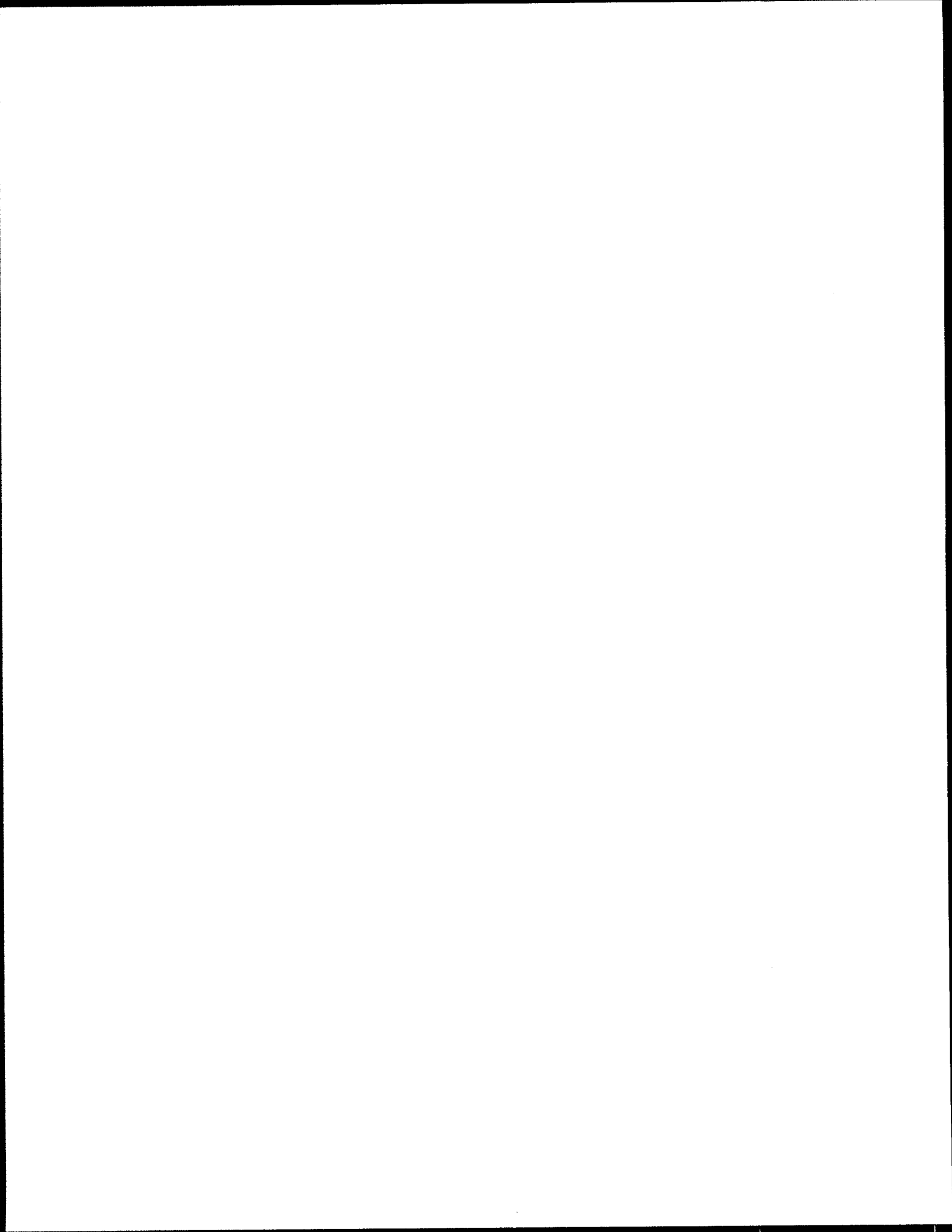
- 3.2 Description of the organization and structure of implementing agency?

- 3.3 Description of the implementing agency staff?

4. Schedule demonstrating expeditious implementation of the rule?

5. Plan provided that assures compliance by all sources subject to the rule/program?

- 5.1 Complete description of the State's compliance tracking and enforcement program, including but not limited to inspection strategies?



II. CRITERIA COMMON TO ALL OPTIONS (CONTINUED)

(Yes/No)

Comments

6. Demonstration of adequate legal authority to assure compliance?

6.1 Enforcement authorities that meet the requirements of § 70.11?

6.2 If authorities are delegated to a local agency, does the State retain enforcement authority unless the local agency has authorities that meet § 70.11 requirements?

III. RULE ADJUSTMENT OPTION (Section 63.92)

1. Is the adjustment one which is allowed under the Subpart E rule?

2. Demonstration of adequate State public notice and comment?

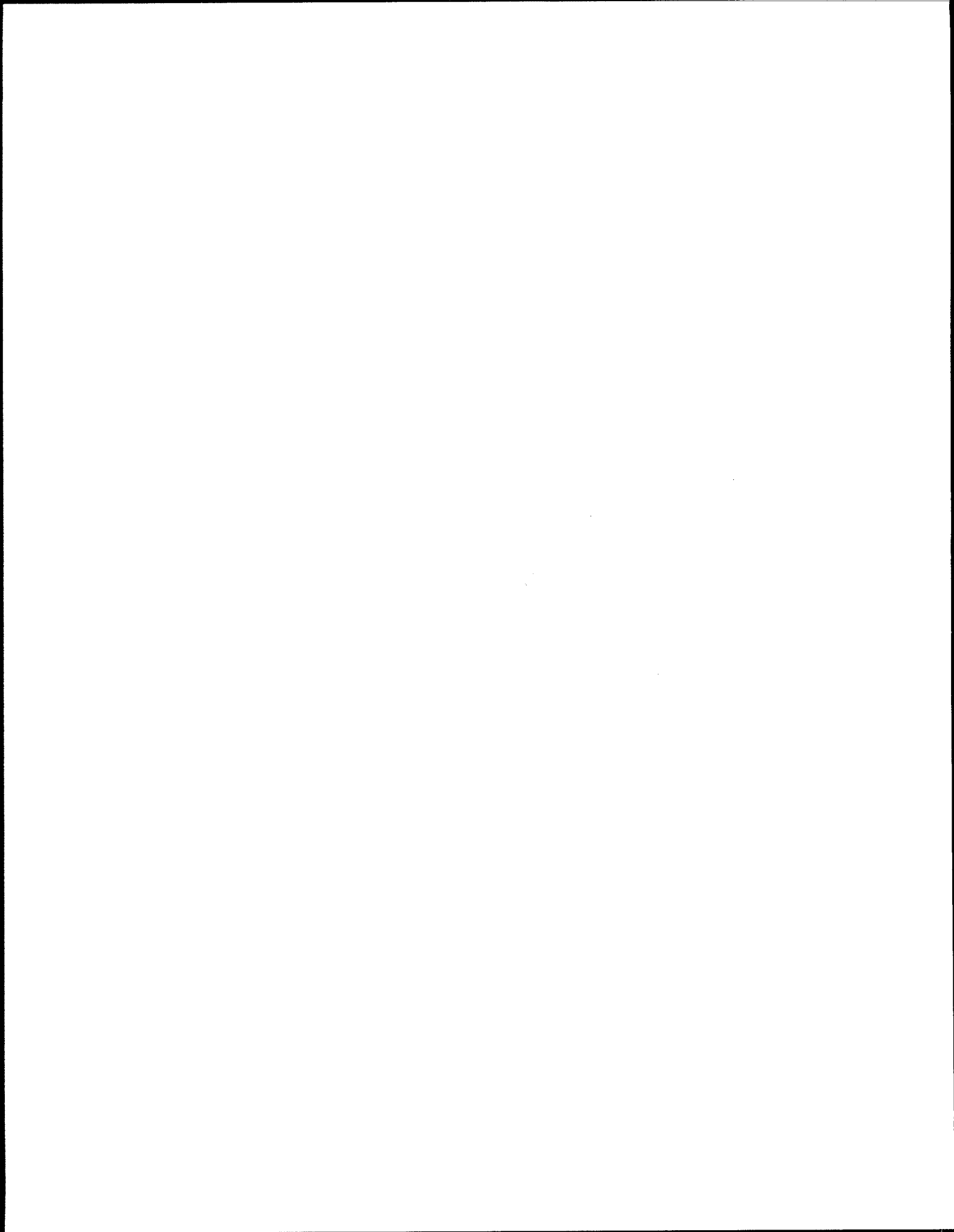
3. Demonstration that each State adjustment to the Federal rule individually results in requirements which meet the following:

3.1 Applicability requirements no less stringent?

3.2 Requirements for level of control for each affected source and emission point no less stringent?

3.3 Compliance and enforcement measures for each affected source and emission point no less stringent?

3.4 Assurance of compliance by every affected source no later than otherwise applicable Federal rule?



IV. RULE SUBSTITUTION OPTION (Section 63.93)

(Yes/No) Comments

1. Demonstration of applicability no less stringent?

2. Demonstration of levels of control and compliance and enforcement measures or accidental release prevention program requirements which are no less stringent?

3. Demonstration of compliance schedule that assures compliance no later otherwise applicable Federal rule?

4. Demonstration of each of the following compliance and enforcement measures:
 - 4.1 Method for determining compliance?

 - 4.2 Maximum averaging time for non-instantaneous standards?

 - 4.3 Obligation to periodically monitor or test compliance sufficient to yield reliable data representative of the source's compliance status?

 - 4.4 Requirement that the results of all required monitoring and testing be reported at least every six months?

V. PROGRAM SUBSTITUTION OPTION (Section 63.94)

1. Listing of all source categories for which the State is seeking authority?

2. Necessary legally binding commitments made through State Law?
 - 2.1 Part 70 permits to be issued or revised by the State in accordance with procedures established in part 70 and in accordance with the expeditious compliance schedule?

the 'information' and 'communication' fields. The 'information' field is defined as:

...the study of the processes of information creation, organisation, storage, retrieval, dissemination and use, and the social, cultural and economic contexts in which these processes take place. (p. 1)

The 'communication' field is defined as:

...the study of the processes of communication, the social, cultural and economic contexts in which these processes take place, and the impact of communication on society. (p. 1)

The 'information science' field is defined as:

...the study of the processes of information creation, organisation, storage, retrieval, dissemination and use, and the social, cultural and economic contexts in which these processes take place, and the impact of information science on society. (p. 1)

The 'information studies' field is defined as:

...the study of the processes of information creation, organisation, storage, retrieval, dissemination and use, and the social, cultural and economic contexts in which these processes take place, and the impact of information studies on society. (p. 1)

The 'information technology' field is defined as:

...the study of the processes of information creation, organisation, storage, retrieval, dissemination and use, and the social, cultural and economic contexts in which these processes take place, and the impact of information technology on society. (p. 1)

The 'information systems' field is defined as:

...the study of the processes of information creation, organisation, storage, retrieval, dissemination and use, and the social, cultural and economic contexts in which these processes take place, and the impact of information systems on society. (p. 1)

The 'information management' field is defined as:

...the study of the processes of information creation, organisation, storage, retrieval, dissemination and use, and the social, cultural and economic contexts in which these processes take place, and the impact of information management on society. (p. 1)

The 'information policy' field is defined as:

...the study of the processes of information creation, organisation, storage, retrieval, dissemination and use, and the social, cultural and economic contexts in which these processes take place, and the impact of information policy on society. (p. 1)

The 'information law' field is defined as:

...the study of the processes of information creation, organisation, storage, retrieval, dissemination and use, and the social, cultural and economic contexts in which these processes take place, and the impact of information law on society. (p. 1)

The 'information ethics' field is defined as:

...the study of the processes of information creation, organisation, storage, retrieval, dissemination and use, and the social, cultural and economic contexts in which these processes take place, and the impact of information ethics on society. (p. 1)

V. PROGRAM SUBSTITUTION OPTION (CONTINUED)

(Yes/No) Comments

2.2 Part 70 permits will contain conditions that do each of the following?

2.2.1 Reflect applicability criteria no less stringent?

2.2.2 Require levels of control for each source and emission point no less stringent?

2.2.3 Require compliance and enforcement measures for each emission point no less stringent?

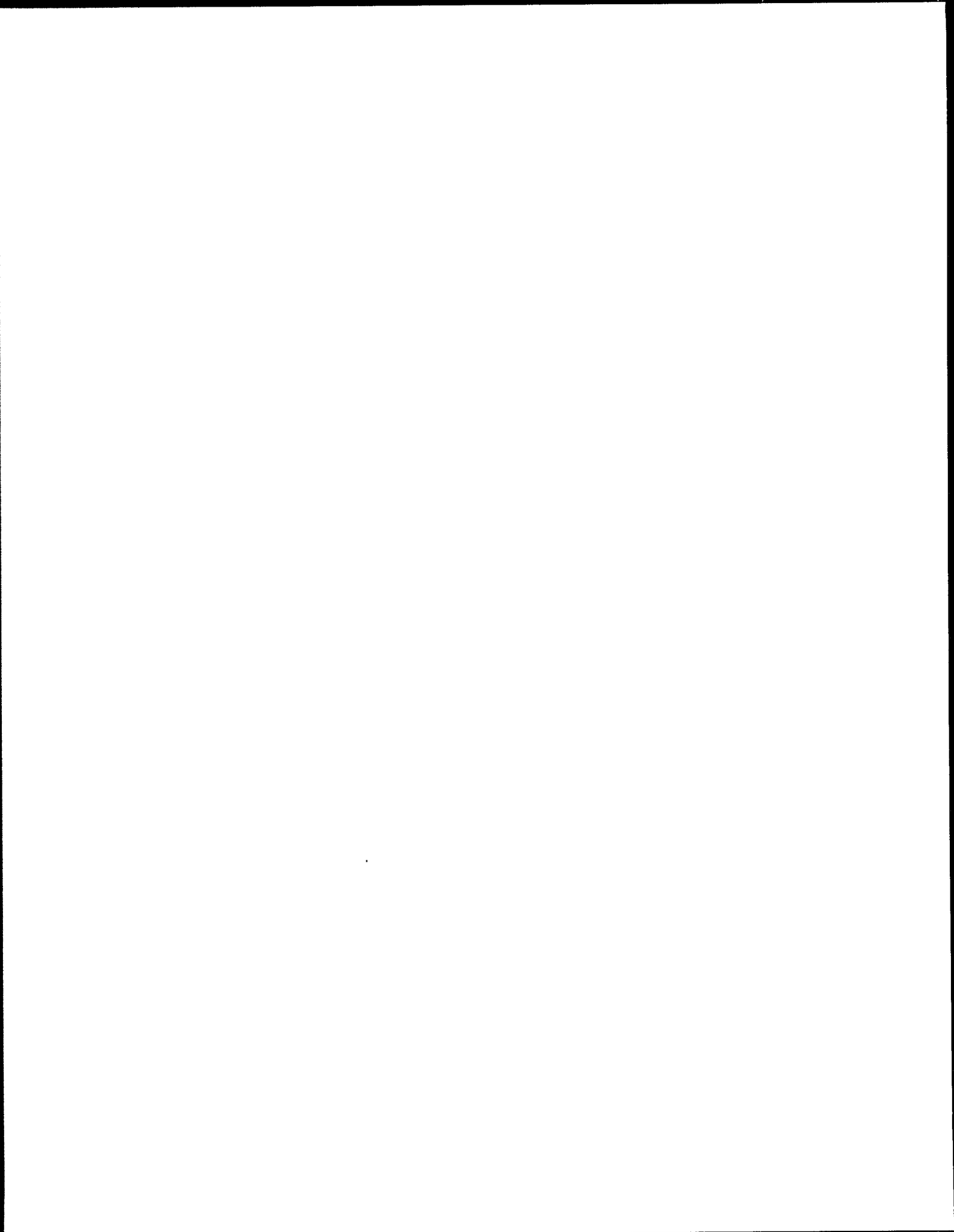
2.2.4 Express levels of control and compliance and enforcement measures in the same form and units of measure as Federal standard or requirement?

2.2.5 Assure compliance by every affected source no later than would be required by the otherwise applicable Federal standard?

VI. ACCIDENTAL RELEASE PREVENTION PROGRAM OPTION (63.95)

[Note: "IV. Rule Substitution Option" must also be completed]

1. Demonstration of the State's authority and resources to implement and enforce regulations which are at least as stringent as regulations promulgated under Section 112(f)?



VI. ACCIDENTAL RELEASE PREVENTION PROGRAM OPTION (CONTINUED)

(Yes/No)

Comments

2. Demonstration of procedures for each of the following:

2.1 Registration of stationary sources?

2.2 Receiving and reviewing risk management plans?

2.3 Making available to the public any risk management plan submitted to the State?

2.4 Providing technical assistance to subject sources, including small businesses?

3. Demonstration of State's authority to enforce all accidental release prevention requirements including a risk management plan auditing strategy?

4. Description of the coordination mechanisms the State implementing agency will use for coordination with each of the following entities:

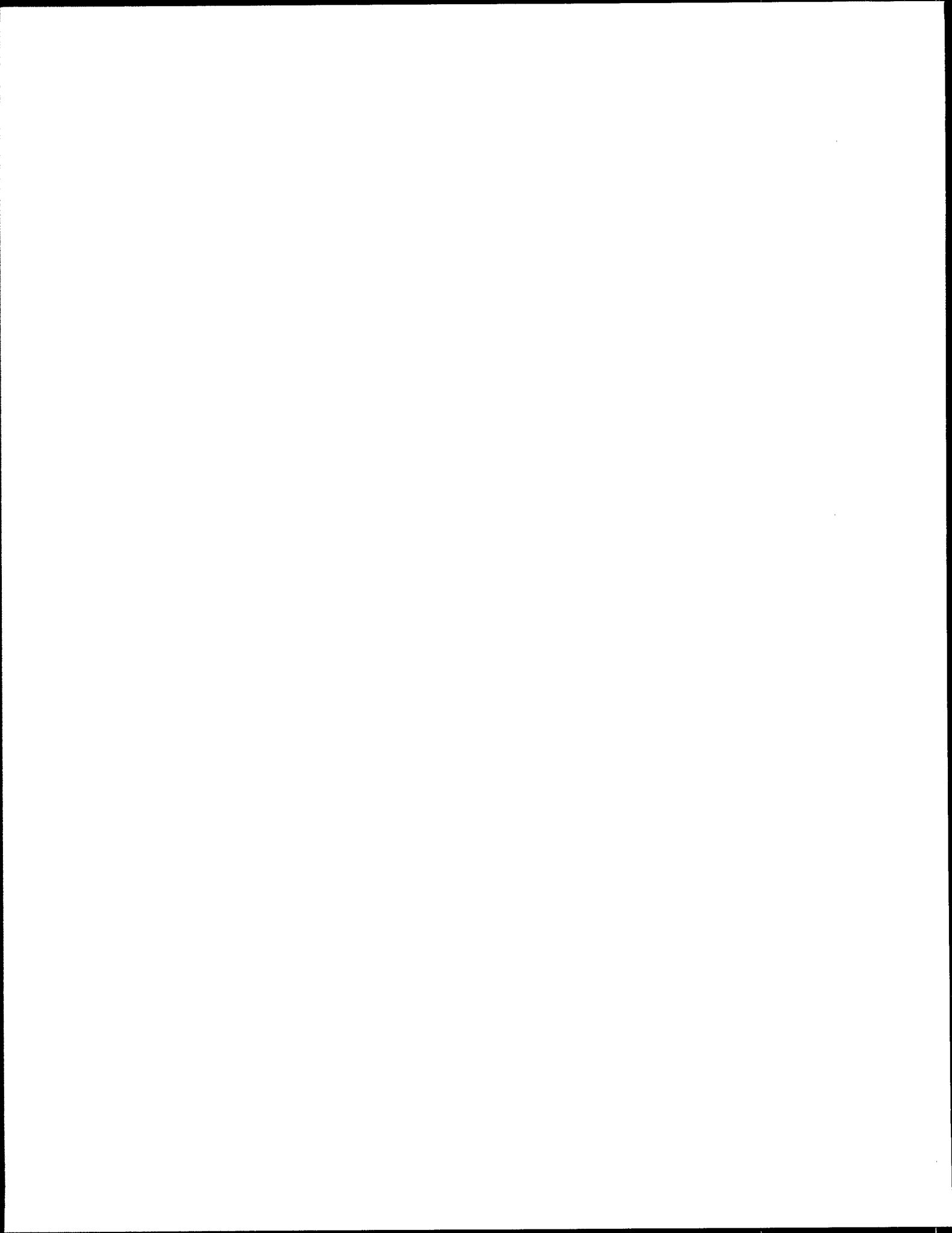
4.1 The Chemical Safety and Hazard Investigation Board?

4.2 The State Emergency Response Commission, and the Local Emergency Planning Committees?

4.3 The air permitting program?

APPENDIX F

SAMPLE TEXT FOR FEDERAL REGISTER NOTICES, COMPLETENESS REVIEW
LETTER, FINAL APPROVAL/DISAPPROVAL LETTER, GOVERNOR'S LETTER AND
ATTORNEY GENERAL'S LETTER



SAMPLE FEDERAL REGISTER NOTICE ANNOUNCING
PUBLIC NOTICE AND COMMENT PERIOD

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

(Insert name of State); Request for Approval of Section 112 (I) Authority

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of Receipt of a Complete Application for State X,
Notice of Public Hearing and Public Comment Period.

SUMMARY: State X has applied for approval of its air toxics rule/program (if rule, specify rule) under section 112(I) of the Clean Air Act (CAA) as amended November 15, 1990. The Environmental Protection Agency (EPA) has reviewed State X's submittal and has made the decision that State X's air toxics rule/program satisfies all of the requirements necessary to qualify as a complete submittal. Thus, the EPA intends to take comment on whether the State's rule/program should be implemented and enforced in place of the Federal section 112 rule/program. State X's submittal is available for public review and comment.

DATES: All comments on State X's submittal must be received by the close of business on (insert date at least 30 calendar days after date of publication in Federal Register).

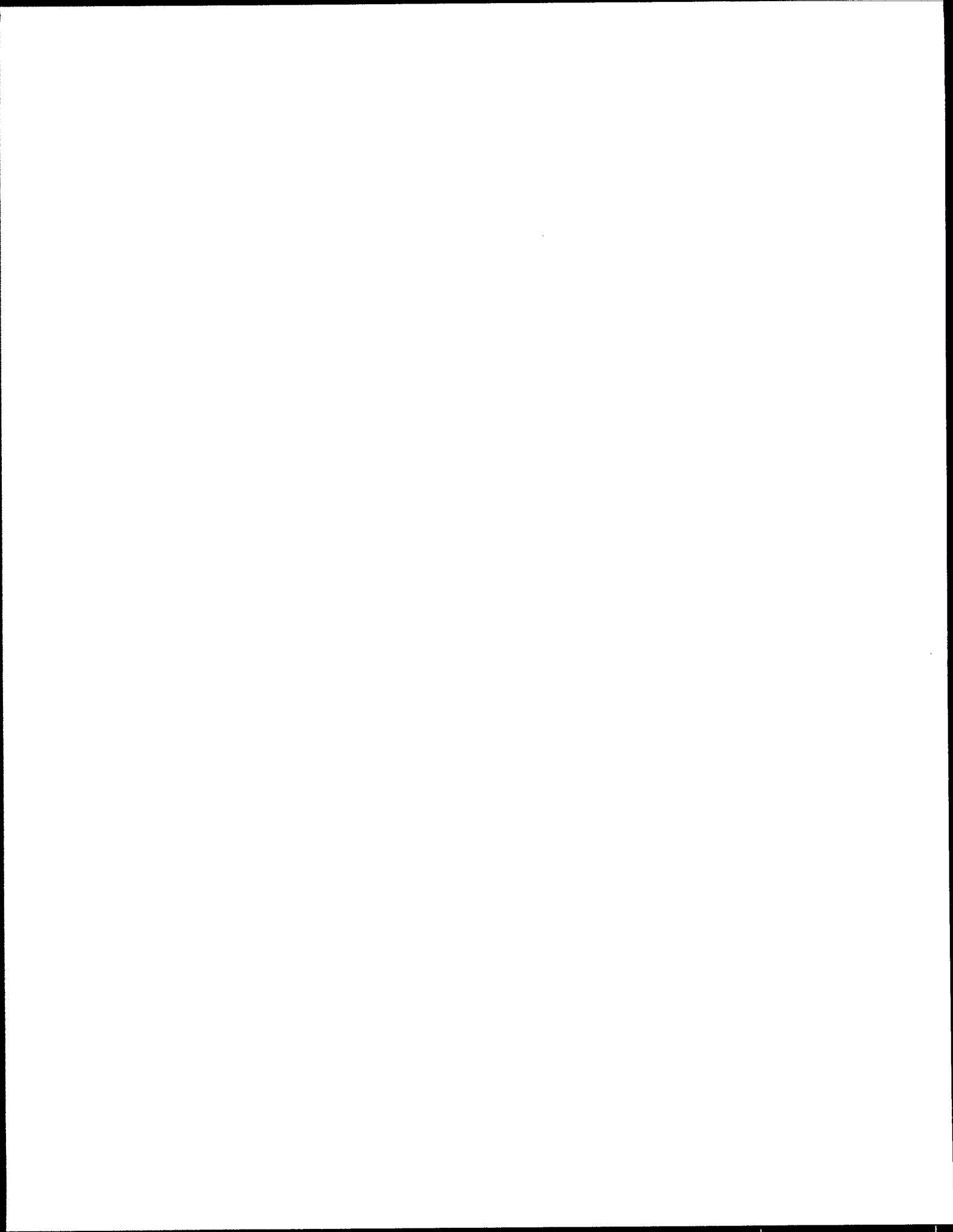
ADDRESSES: Copies of State X's submittal are available during (insert business hours) at the following addresses for inspection and copying: (insert appropriate State address); U.S. EPA Headquarters Library, PM 211A, 401 M Street, S.W., Washington, D.C. 20460, Phone: 202/382-5926; and U.S. EPA Region (insert Region Number)'s Regional Library, (insert the address, phone number, and contact). Written comments should be sent to (insert name, address, and phone number of Regional contact), and should be submitted concurrently to (insert name, address, and phone number of State agency contact).

FOR FURTHER INFORMATION CONTACT: (Insert name, address, and phone number of the appropriate Regional Contact.)

SUPPLEMENTARY INFORMATION:

A. Background

Section 112 (I) of the 1990 Clean Air Act enables the EPA to approve State air toxics programs or rules to operate in place of the Federal air toxic program. Approval is granted by



Appendix F (Continued)

the EPA if the Agency finds that the State program or rule: (1) is "no less stringent" than the corresponding Federal rule or program, (2) adequate authority and resources exist, (3) schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance.

B. State X

(Insert paragraph briefly describing the State's approval history prior to submission of the "official" application.)

(May wish to insert a paragraph here that directs the public's attention to certain issues.)

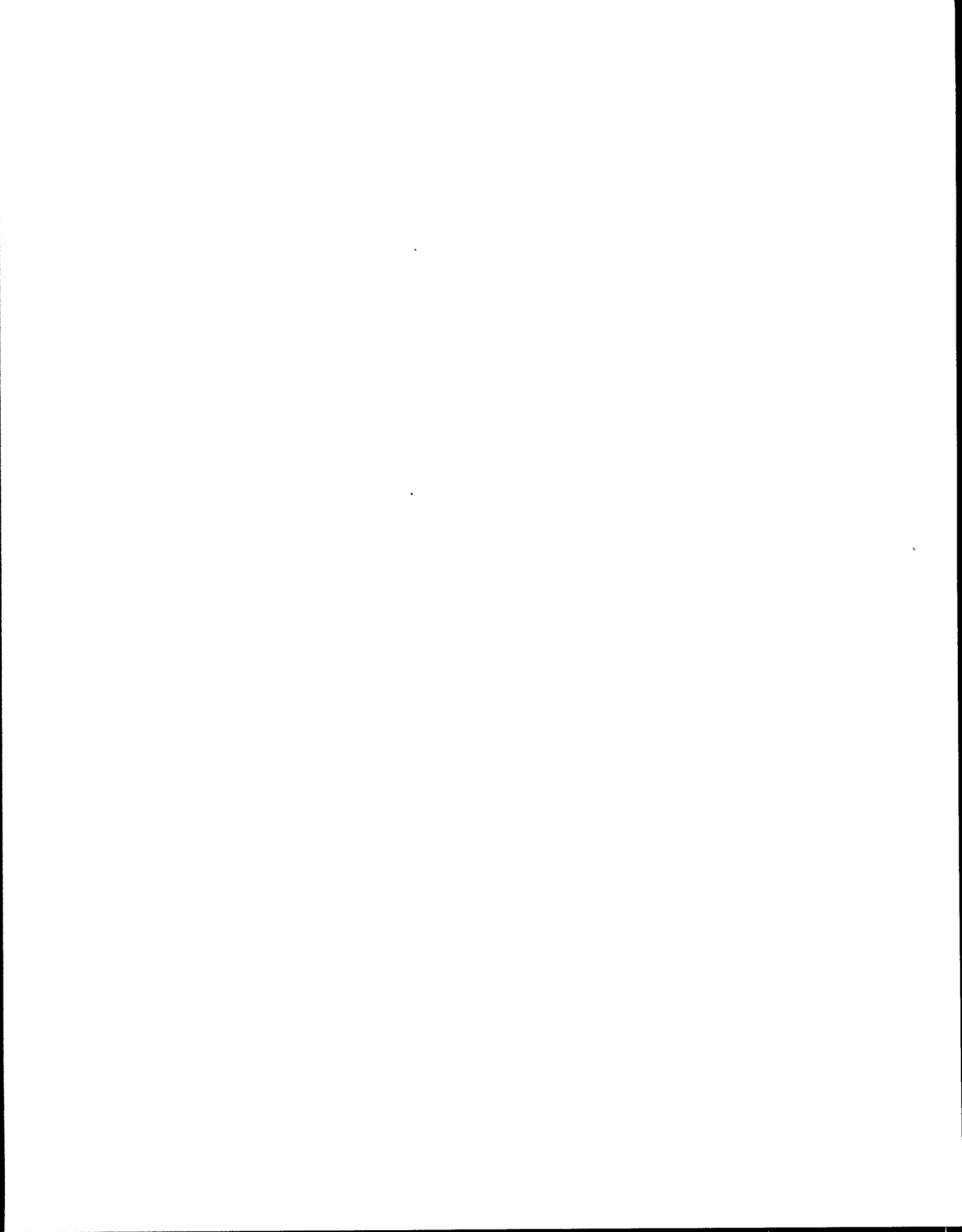
EPA will consider all public comments submitted regarding the State X submittal during the public comment period. Issues raised by those comments will be carefully reviewed and considered in the decision to approve or disapprove the submittal. The EPA expects to make a final decision on whether or not to approve State X's rule/program on (insert date 180 calendar days after receipt of complete State submittal) and will give notice of the decision in the Federal Register. The notice will include a summary of the reasons for the final determination and a response to all major comments.

LIST OF SUBJECT IN 40 CFR PART 63: (List subjects)

AUTHORITY: This notice is issued under the authority of Title III of Clean Air Act as amended 42 U.S.C. 2399.

Regional Administrator

Dated:



Appendix F (Continued)

SAMPLE FEDERAL REGISTER NOTICE ANNOUNCING APPROVAL/DELEGATION
ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 63

(Insert State); Approval of Section 112(l) Authority; rule/program (if rule, specify rule)

AGENCY: Environmental Protection Agency

ACTION: Notice of Final Determination on State X's Application for Approval of Section 112(l) authority

SUMMARY: State X has applied for final approval of its air toxics rule/program (if rule, specify rule) under section 112 of the Clean Air Act (CAA) as amended November 15, 1990. The Environmental Protection Agency (EPA) has reviewed State X's application and has reached a decision that State X's air toxics rule/program satisfies all of the requirements necessary to qualify for approval. Thus, except for any exclusions noted under items A.3 and A.4, the EPA is granting approval to State X to implement and enforce its rule/program.

EFFECTIVE DATE: Final approval for State X shall be effective (specify date of publication in Federal Register.)

SUPPLEMENTARY INFORMATION:

A. Background

Section 112 (l) of the 1990 Clean Air Act enables the EPA to approve State air toxics rules or programs in place of Federal air toxics rules or requirements. Approval is granted by the EPA if the Agency finds that the State rule or program: (1) is "no less stringent" than the corresponding Federal program or rule, (2) adequate authority and resources exist, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the rule/program is otherwise in compliance with Federal guidance.

On (insert date), State X submitted an official application to obtain approval to implement and enforce the air toxic rule/program (if rule, specify rule). On (insert date), the EPA made the decision that State X's air toxics rule/program satisfies all of the requirements necessary to qualify as a complete submittal. Along with the completeness determination, the EPA announced the availability of the submittal for public comment in the Federal Register on (insert date).

Appendix F (Continued)

1. (Insert discussion on public comments received and the response to those comments. Additionally, in the case where a State had to make changes to its submittal in order to be approved, insert discussion of the needed changes for approval and what the State agreed to do to be approved.)
2. (Insert discussion of any different or additional procedural steps during the approval process. For example, the State may have held a public hearing on a portion of its program which was substantially modified subsequent to the initial State public hearing.)
3. (Insert discussion which describes any major portions of the State's program which are not part of the approved State air toxics program; e.g., any major State requirements that are broader in scope than Federal requirements.)
4. (Insert a discussion of any portions of the air toxics program that will continue to be regulated by the EPA as a result of partial program approval or unregulated segments of the hazardous air pollutant universe.)

B. Decision

After reviewing the public comments and the resulting changes the State has made to its submittal and rules/program since the public comment period, it is concluded that State X's submittal for approval meets all of the statutory and regulatory requirements established by section 112 of the Clean Air Act. Accordingly, State X is granted approval to implement and enforce its air toxics rule/program (if rule, specify rule). State X now has primary implementation and enforcement responsibility, although under section 112 (l)(7), the EPA retains the right to enforce any applicable emission standard or requirement.

(May want to include the approval/delegation letter to State X)

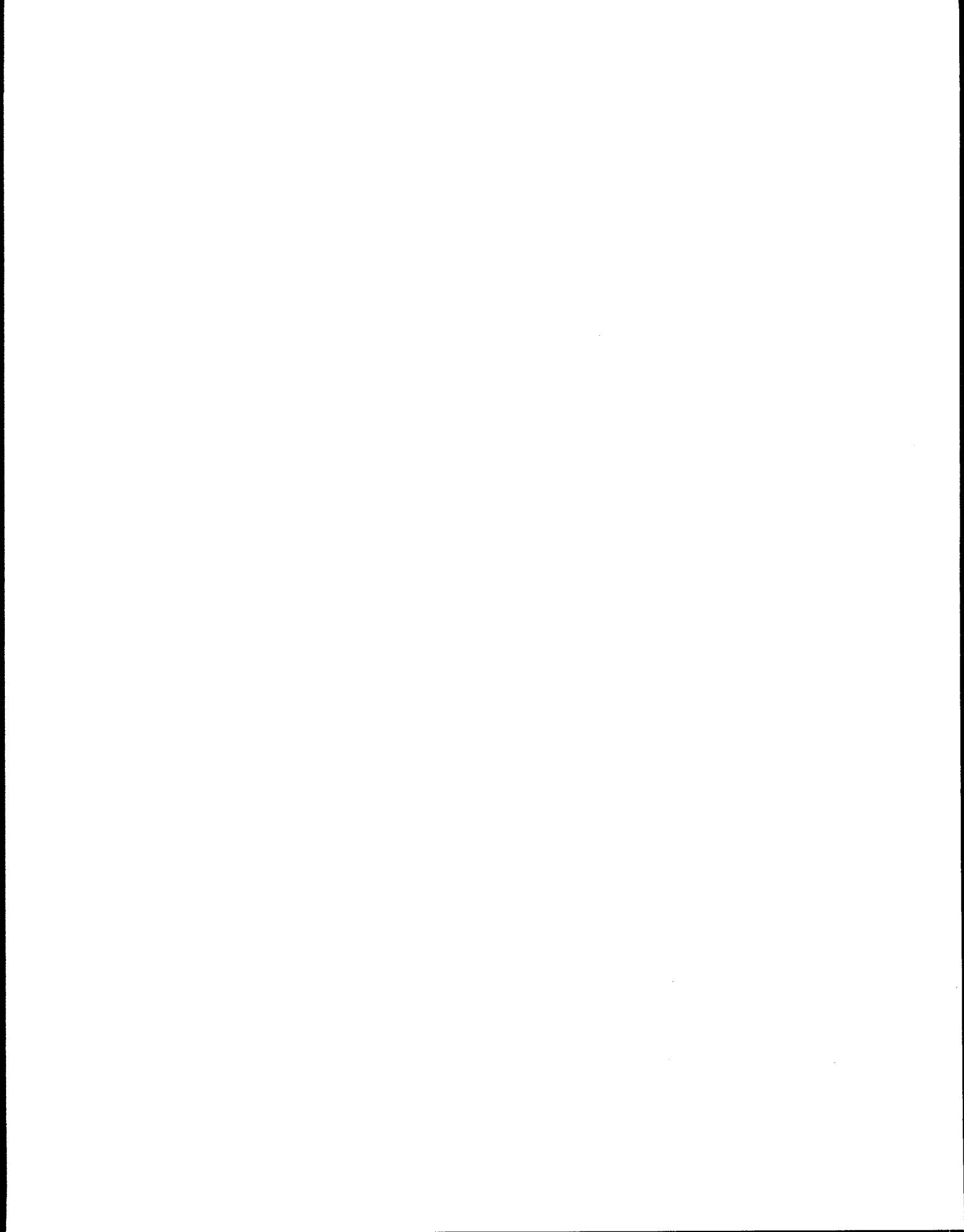
Effective immediately, all applications, reports, and other correspondence required under the rule/program should be sent to State X (insert address) rather than to the EPA Region Y in (insert City).

LIST OF SUBJECT IN 40 CFR PART 63: (List subjects)

AUTHORITY: This notice is issued under the authority of section 112 of the Clean Air Act as amended 42 U.S.C. 2399.

Regional Administrator

Dated:



Appendix F (Continued)

SAMPLE COMPLETENESS DETERMINATION LETTER

If application was determined to be complete:

Dear _____:

Our office has completed a preliminary review of your submittal for delegation of authority to implement and enforce the rule/program (if rule, specify rule) in place of the otherwise applicable Federal section 112 standard or requirement. Your application was found to be complete and will now enter the public comment period. The Federal Register notice announcing the beginning of the public comment period will be published on date. The comment period will last 30 days, after which the EPA will begin final review of your application. You may submit State responses up to date 30 days after close of public comment period. The final review period will begin on date and you should receive final notification of approval/disapproval on or about date.

Sincerely,

Regional Administrator

If application was found to be incomplete:

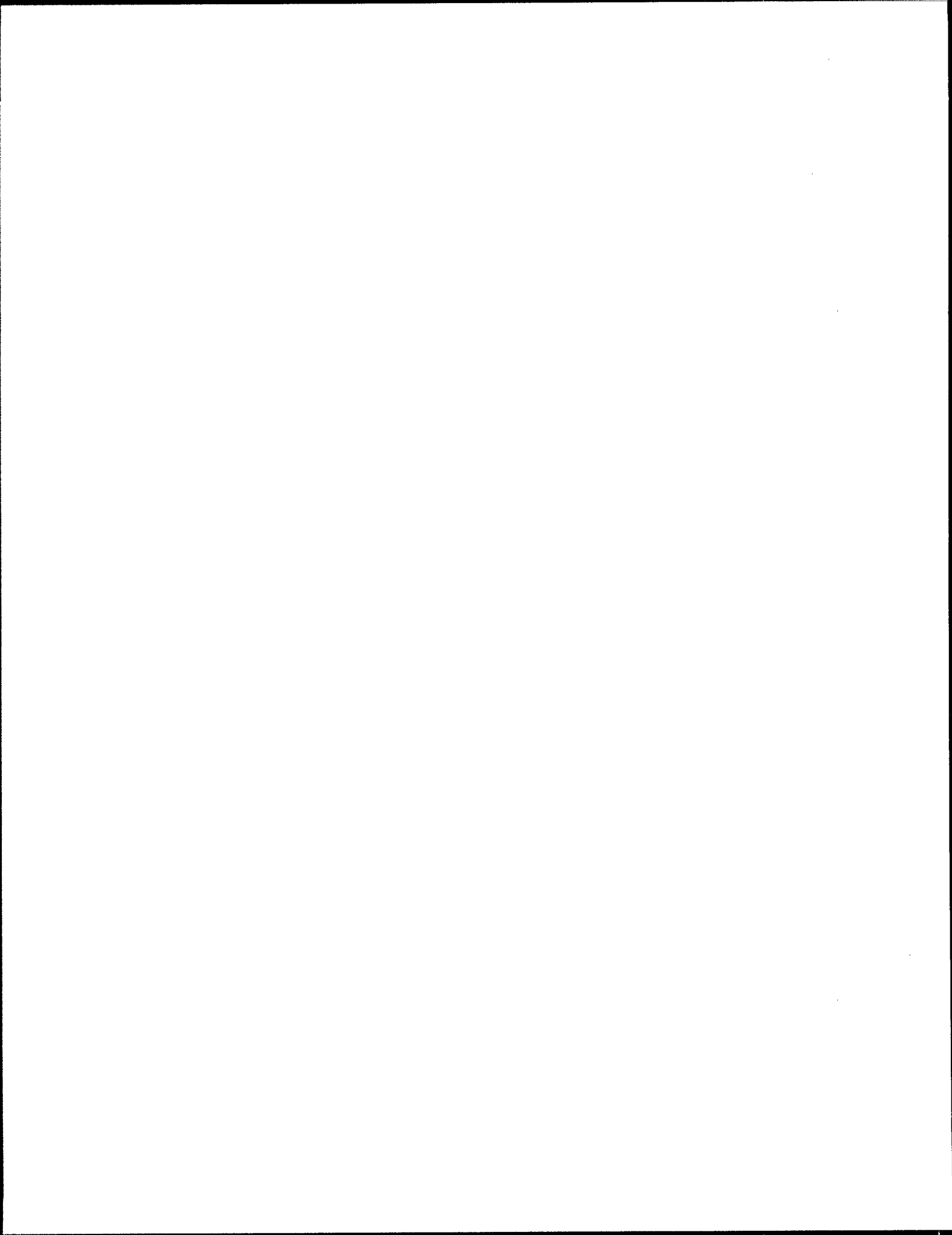
Dear _____:

Our office has completed a preliminary review of your submittal for delegation of authority to implement and enforce the rule/program (if rule, specify rule) in place of the otherwise applicable Federal section 112 standard or requirement. Your application was found to be incomplete for the following reason(s): _____

You may elect to resubmit your application upon correction of the deficiencies listed above, and the delegation procedure will be restarted.

Sincerely,

Regional Administrator



SAMPLE APPROVAL/DISAPPROVAL LETTER

If delegation was approved:

Dear _____:

This is in response to your letter of date, requesting authority to implement and enforce the air toxics rule/program (if rule, specify rule) as specified in section 112 of the Clean Air Act. We have reviewed the pertinent laws of State X and the rules and regulations thereof, and have determined that they provide an adequate and effective procedure for implementation and enforcement of the rule/program (if rule, specify rule) submitted by State X OR the Federal rule as written (specify rule). Therefore, pursuant to the Clean Air Act as amended and 40 CFR (insert specific parts), we delegate our primary authority for implementation and enforcement of section 112, respectively, to the State of _____ as follows:

A. Responsibility for all sources located or to be located in State X subject to emission standards for hazardous air pollutants (HAPs) promulgated in 40 CFR part and amendments thereto as published in the Federal Register as of the date of your request letter. (list the source categories covered by this authority).

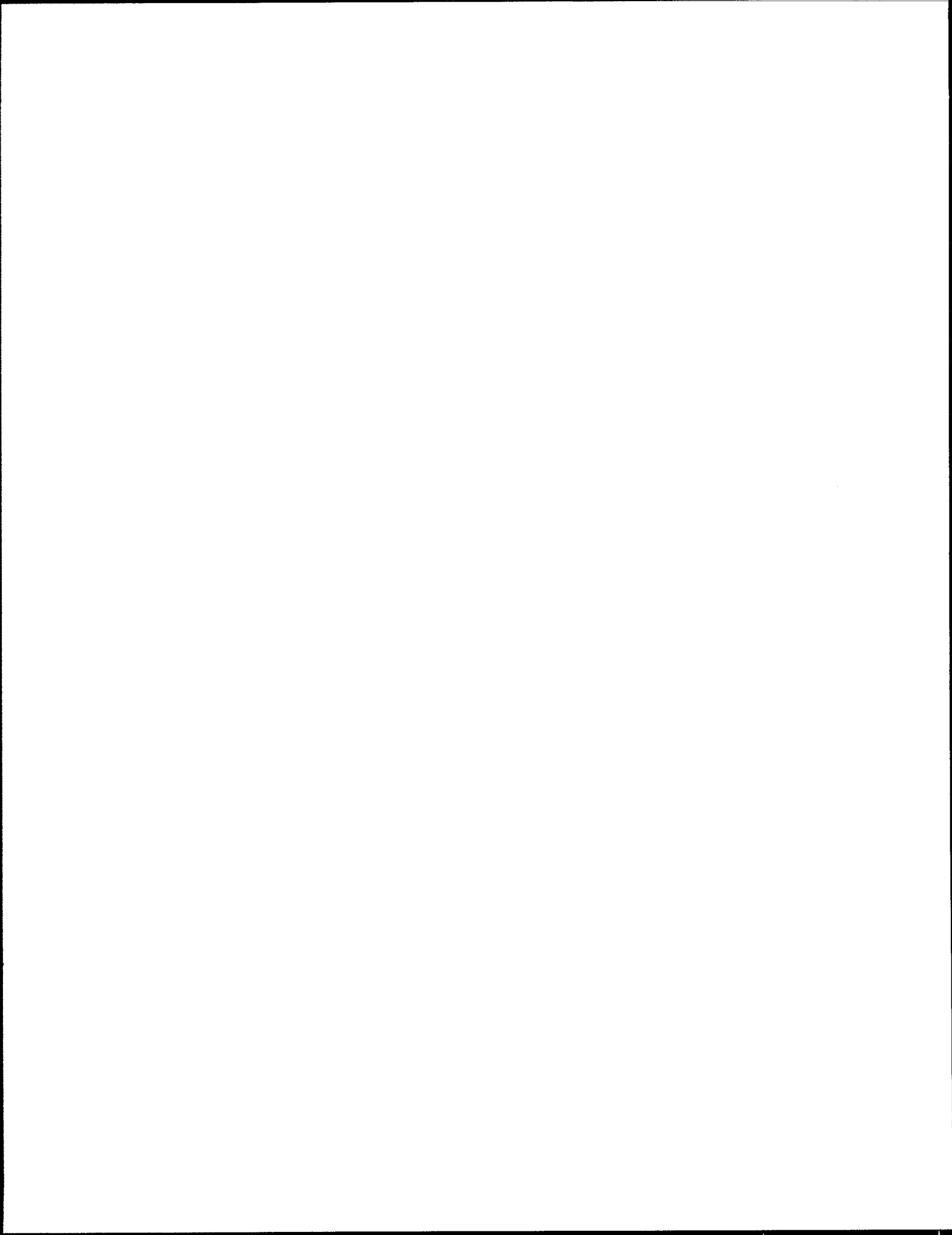
B. This delegation is based upon the following conditions:

1. Enforcement of emission standards in State X will be the primary responsibility of the (insert State Agency). If the State determines that such enforcement is not feasible and so notifies the EPA, or where the State acts in a manner inconsistent with the terms of this granted authority, the EPA will exercise its concurrent enforcement authority pursuant to section 112(l)(7) of the Clean Air Act, as amended, with respect to sources within State X subject to section 112 requirements.

2. (May insert any reporting requirements)

3. If the Administrator determines that the State procedure for enforcing or implementing the Title III requirements is inadequate, or is not being effectively carried out, his delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to State X.

4. (Insert requirement for public and EPA availability to information collected by the State in accordance with these regulations).



Appendix F (Continued)

Since this action is effective immediately, there is no requirement that State X notify the EPA of its acceptance. Unless the EPA receives from State X written notice of objections within ten (10) days of the date of receipt of this letter, the State will be deemed to have accepted all of the terms as stated herein.

Sincerely,

Regional Administrator

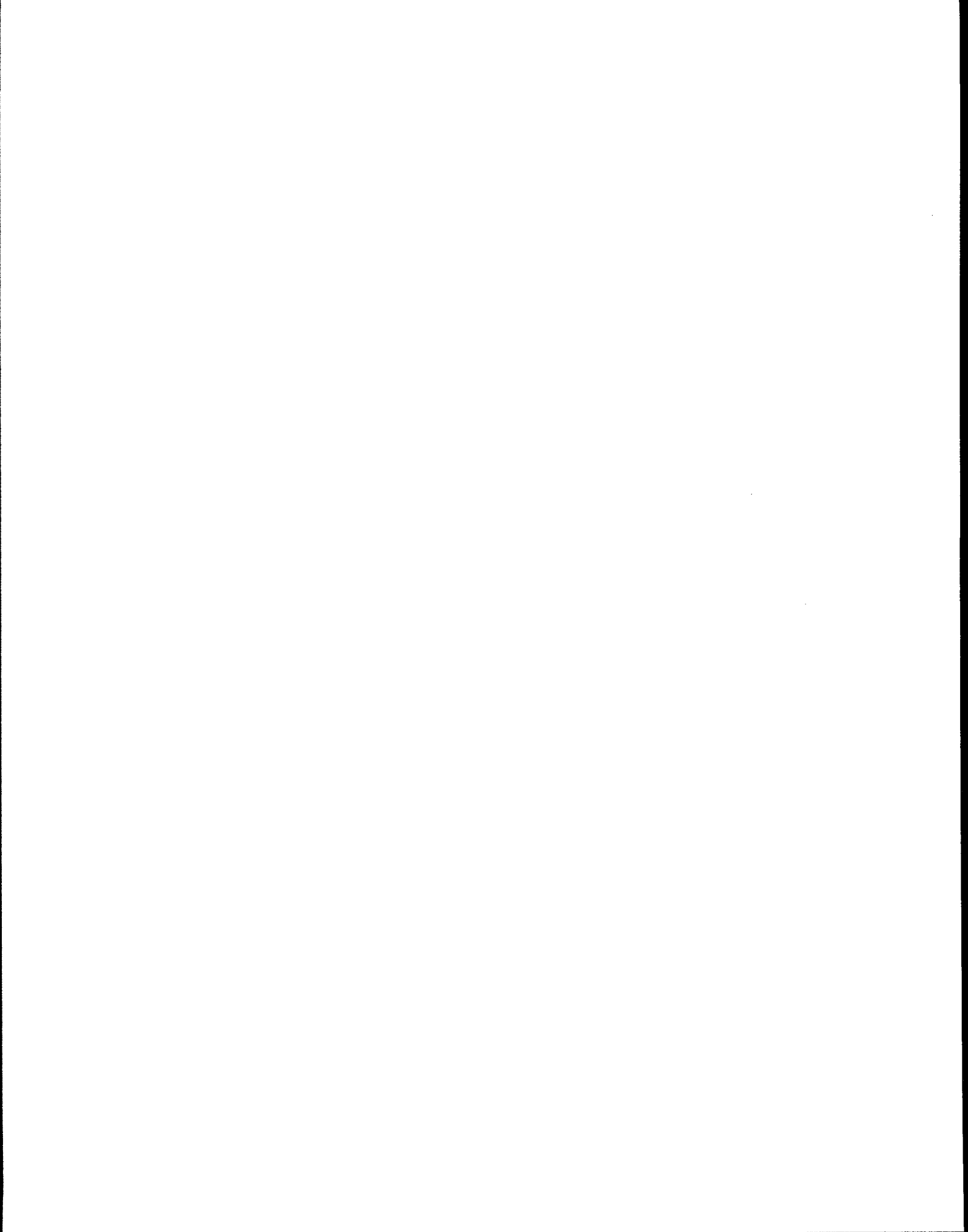
If final review resulted in disapproval of application:

Dear _____:

Our office has completed the review of your application for delegation of authority to implement and enforce rule/program (if rule, specify rule) OR the federal rule as written (specify rule) in place of the otherwise applicable Federal section 112 rule or requirement. Your application was disapproved for the following reason(s): (insert reasons) _____

Sincerely,

Regional Administrator



SAMPLE GOVERNOR'S LETTER

Office of the Governor
State
etc.

Regional Administrator
Region __, U.S. Environmental Protection Agency
Address
City, State, Zip

Dear Administrator,

In accordance with Title I, section 112(l) of the Clean Air Act as amended on November 15, 1990, I am forwarding an application for delegation of authority to implement and enforce, in place of the otherwise applicable Federal section 112 rule or requirement, emissions standards for the State Air Toxics program/rule (if rule, specify rule) described herein. I believe that you will find that this program/rule is an adequate substitute for the Federal program/rule (if rule, specify rule), and meets all the necessary Federal requirements set forth in section 112 of the Act.

Should you require further information, please contact Agency Director or Agency Contact of State Agency. Include contact information. Thank you for your assistance.

Sincerely,

Governor

Appendix F (Continued)

SAMPLE ATTORNEY GENERAL'S LETTER

Office of the Attorney General
State
etc.

Regional Administrator
Region __, U.S. Environmental Protection Agency
Address
City, State, Zip

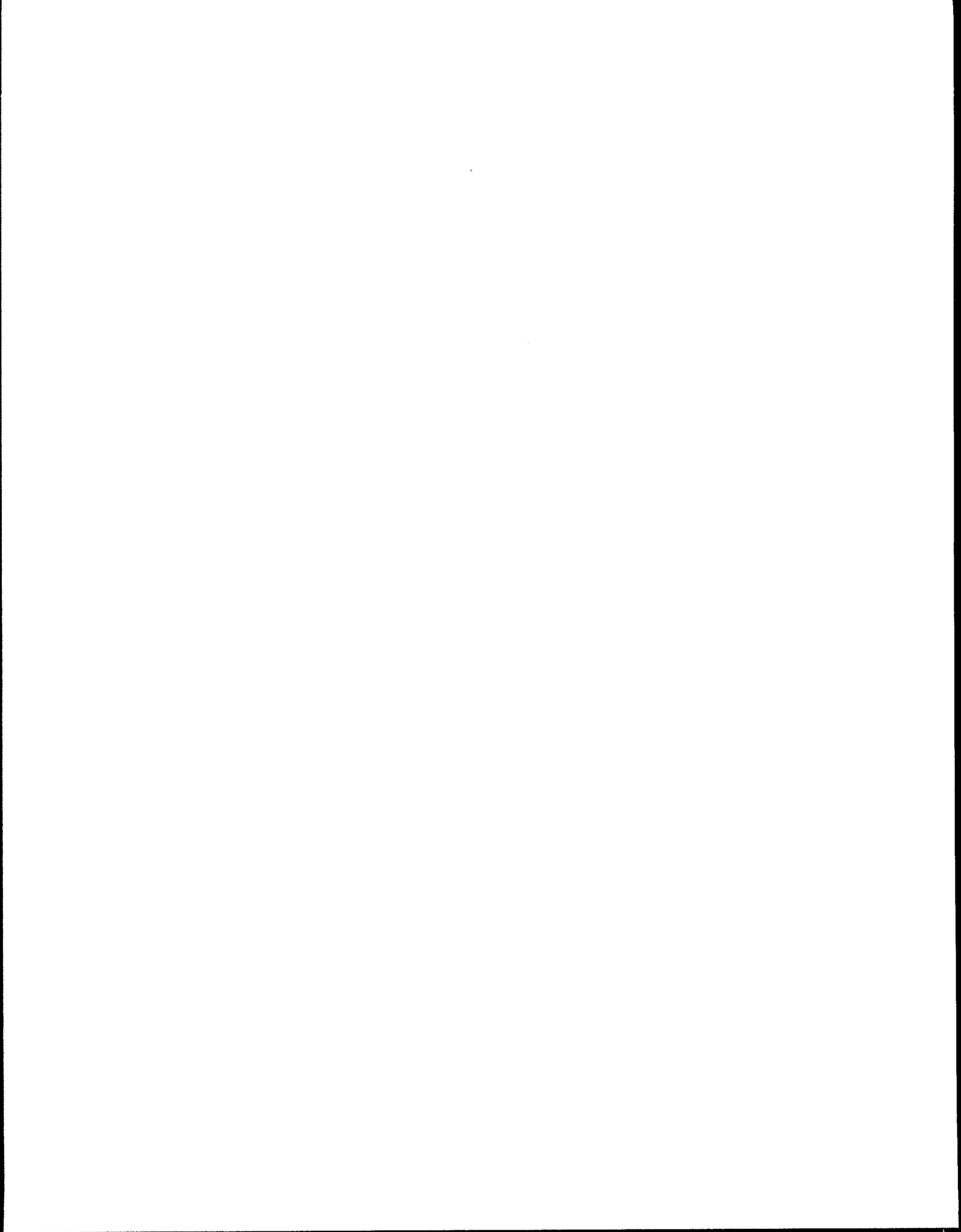
Dear Administrator,

I hereby certify pursuant to my authority as Attorney General of the State of State and in accordance with Title I section 112(l) of the Clean Air Act as amended on November 15, 1990, that in my opinion the laws of State: (1) provide adequate authority to implement the program/rule (if rule, specify rule) described in the application submitted by State Agency, (2) adequately enforce compliance with such program/rule, and (3) regulate at a minimum the same sources as the Federal Clean Air Act, and do so with standards that are no less stringent than those specified by the Federal Clean Air Act. I hereby certify, to the best of my knowledge, that the application submitted by State 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 this program is approved, or are provided by judicial decisions issued at the time this Statement is signed.

Sincerely,

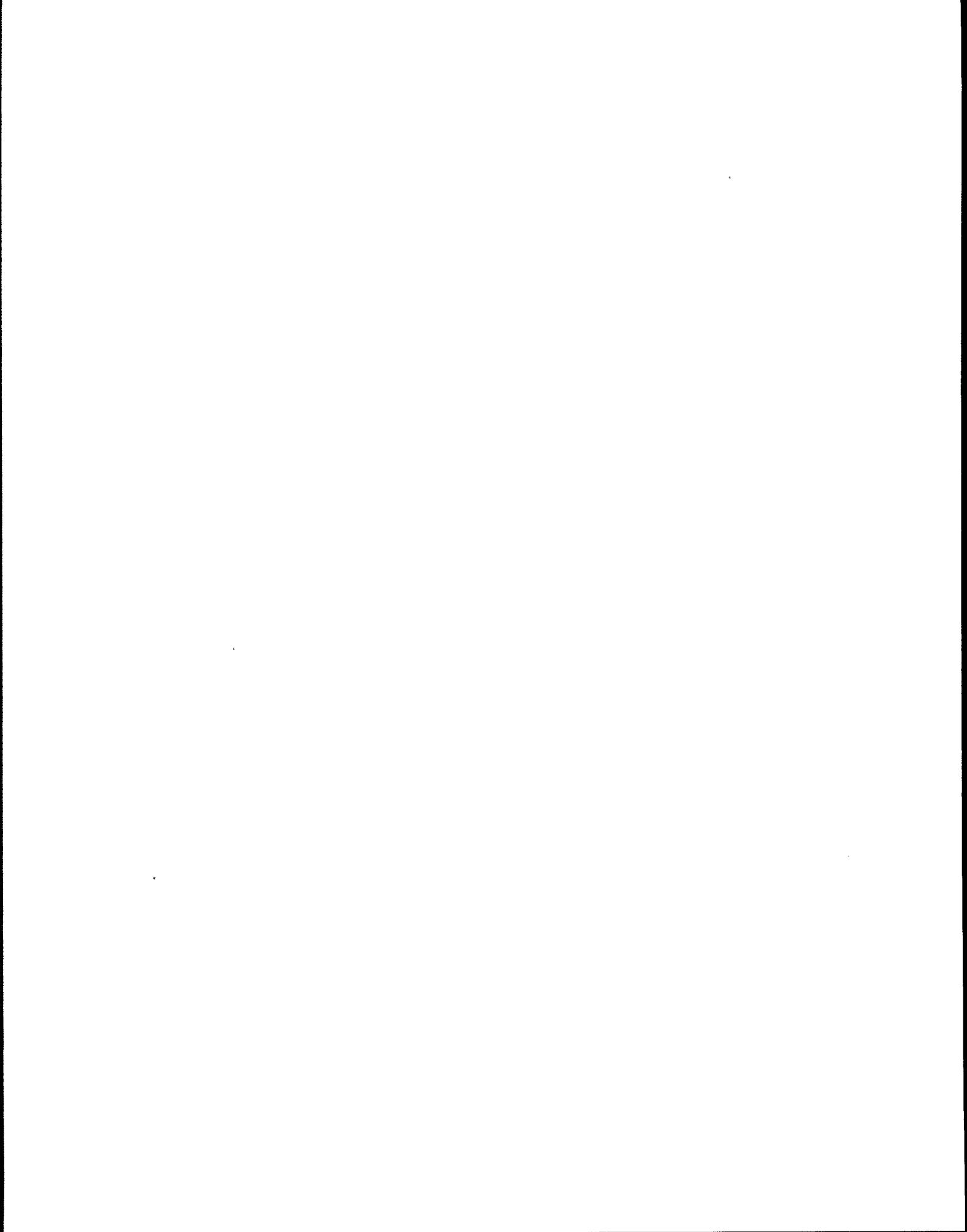
Attorney General

Seal of Office



APPENDIX G

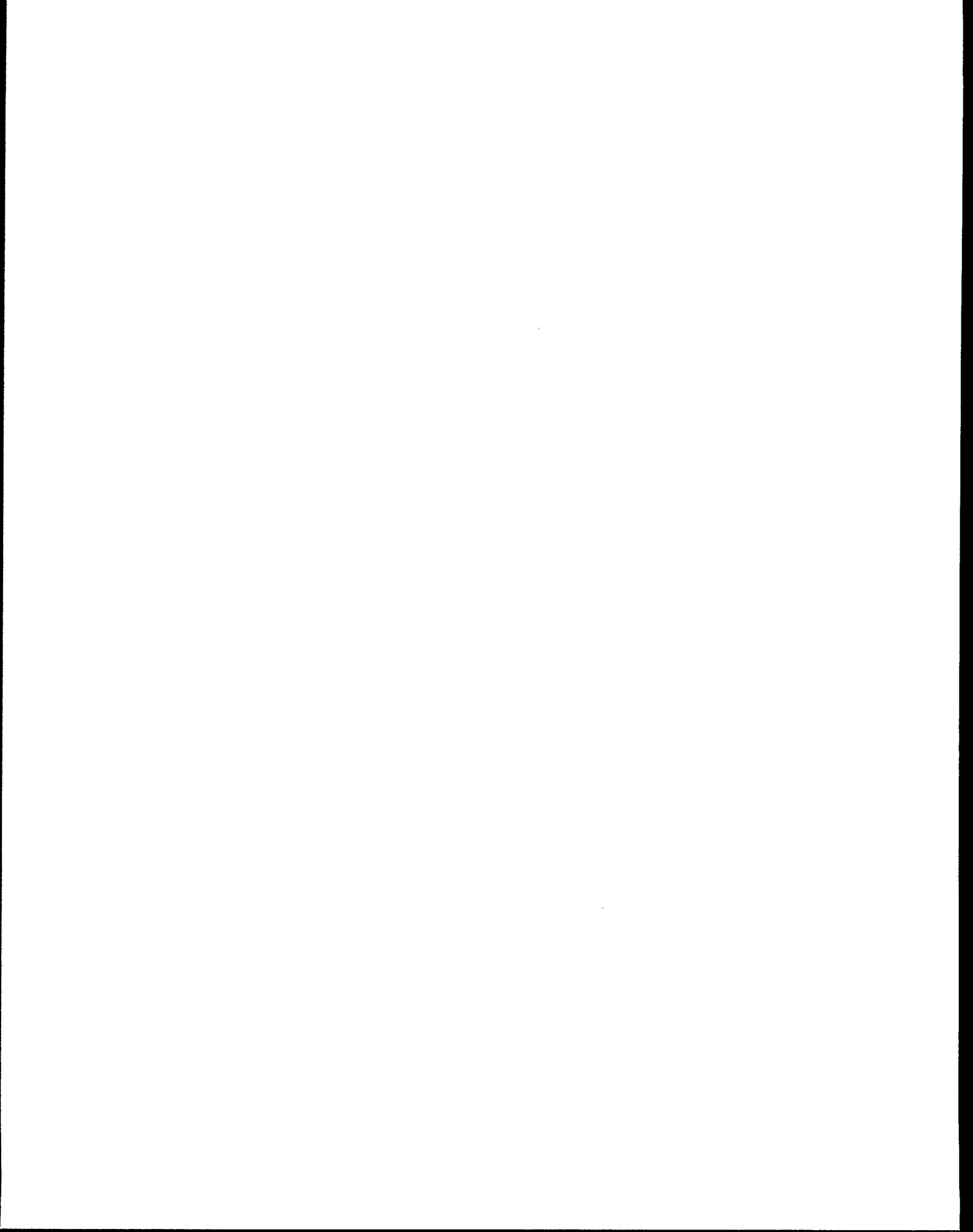
[TO BE ADDED IN NEXT VERSION]



Appendix H

REFERENCES

1. Toxic Air Pollutants: State and Local Regulatory Strategies - 1989 - Stappa/Alapco.
2. U.S. EPA, 19XX. State Implementation Plan Completeness Criteria, Proposed Rule XX Federal Register XXXXX, Date.
3. Partial, Limited and Conditional Approval of SIP Submittals Memo - AQMD.
4. U.S. EPA, 1993. Title V Operating Permits Memo - John Seitz April 13, 1993.
5. U.S. EPA, 19XX. Model Title V Operating Permits - Mike Trutna.
6. U.S. EPA, 1993. National Emission Standards for Hazardous Air Pollutants for Source Categories; General Provisions; Proposed Rule 58 Federal Register 42760. August 11, 1993.
7. U.S. EPA, 1993. National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Dry Cleaning Facilities XX Federal Register XXXXXX. September 22, 1993.
8. U.S. EPA, 1992. Operating Permit Program, Final Rule 57 Federal Register 32250. July, 21, 1992.
9. U.S. EPA, 1983. Good Practice Manual For Delegation of NSPS and NESHAPS. February 1983.
10. U.S. EPA, 1993. Approval of State Programs and Delegation of Federal Authorities - Proposed Rule 58 Federal Register 29296. May, 19, 1993.
11. U.S. EPA, 1993. Delegations Issues Concerning Section 112 and Title V memo - John Seitz Date.
12. U.S. EPA, 1992. State Program Approval Handbook EPA 500-B-92-004. May 1992.
13. U.S. EPA, 1992. Suggested Procedures For Review Of State UST Applications EPA 500-B-92-005. May 1992
14. TRC Environmental Corp., 1992. Administrative Procedures for Section 112(1) Delegation of State Air Toxic Programs - Draft Report EPA Contract No. 68-DOO121. October 1992.
15. TRC Environmental Corp., 1993. Section 112(1) Delegation Case Studies using Texas Air Toxics Programs - Draft Report. EPA Contract No. 68-D0-0121. April 30, 1993.



Please Note:

Many of the memorandums and Federal Register notices referred to in this reference section may be obtained by accessing the Technology Transfer Network (TTN) bulletin board system in the CAAA section. The Federal Register notices published since 1990 will appear under Recently Signed Rules. The policy memos and guidance would be under "Title III Policy and Guidance". To access the TTN call (919) 541-5742 for a 1200, 2400, or 9600 bps modem. If problems are encountered accessing the bulletin board, call (919) 541-5384.

