EPA Process Manual for Responding to Requests Concerning Applicability and Compliance Requirements of Certain Clean Air Act Stationary Source Programs:

New Source Performance Standards (NSPS)
under CAA section 111(b) and 40 CFR part 60

National Emission Standards for Hazardous Air Pollutants (NESHAP)
under CAA section 112 and 40 CFR parts 61 and 63

Emission Guidelines for Federal Plans and State Plans
under CAA section 111(d) and 40 CFR parts 60 and 62

Solid Waste Incinerator Rules
under CAA section 129 and 40 CFR parts 60 and 62

July 2020

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

CONTENTS

Section 1. Overview

1.1 Background: Context and Scope of this Manual[1]

This manual addresses certain types of requests from regulated entities, state, local, and tribal air pollution control agencies (air agencies),[2] and other stakeholders concerning the applicability of and compliance with stationary source regulations issued pursuant to sections 111, 112, and 129 of the Clean Air Act (CAA). Under section 111(b), the Environmental Protection Agency (EPA or Agency) establishes New Source Performance Standards (NSPS) for new stationary sources. Under section 111(d), EPA establishes Emission Guidelines for State Plans and Federal Plans for existing sources. Under section 112, EPA establishes National Emissions Standards for Hazardous Air Pollutants (NESHAP). Under sections 129 and 111, EPA establishes NSPS and Emission Guidelines for State and Federal Plans applicable to solid waste incineration units.[3]

The regulations implementing these provisions are set forth in Title 40 of the Code of Federal Regulations (CFR):

- 40 CFR part 60 contains NSPS and Emission Guidelines issued under sections 111(b)/129(a) and 111(d)/129(b) of the CAA, respectively;
- 40 CFR part 61 contains NESHAP originally issued under section 112 prior to the 1990 amendments to the CAA;
- 40 CFR part 62 identifies EPA-approved State Plans and contains Federal Plans issued under sections 111(d) and 129(b) of the CAA; and
- 40 CFR part 63 contains NESHAP issued under section 112 after passage of the 1990 amendments to the CAA.

The development, implementation, and enforcement of these regulations is a shared responsibility among multiple EPA offices, along with delegated air agencies. Within EPA, the Office of Air and Radiation (OAR) is the lead office for developing the regulations, the Regional Offices oversee their administration, and the Office of Enforcement and Compliance Assurance (OECA) ensures compliance through a variety of means, including compliance monitoring, compliance assistance, and enforcement. The Office of General Counsel (OGC) and Offices of Regional Counsel (ORC) provide legal support in the development, implementation, and enforcement of the regulations.

[1] This manual supersedes EPA's 1999 guidance titled, "How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring," EPA 305B-99-004 (February 1999) (the "1999 Manual").

[2] The CAA defines "air pollution control agency" to include air agencies of state, local, and tribal governments. 42 U.S.C. § 7602(b).

[3] The NSPS and NESHAP programs under CAA sections 111(b) and 112 establish emission standards for certain pollutants and/or source categories that apply directly to sources and are immediately implemented by EPA (or a delegated air agency). Regulations under section 111(d) and section 129 function slightly differently. As noted above, section 129 rules include both a section 111(b) NSPS component (which functions the same as other NSPS) as well as a section 111(d) component. Under section 111(d), EPA first promulgates Emission Guidelines. The Emission Guidelines do not themselves establish requirements directly applicable to sources. Instead, states are required to submit State Plans (which are based on the Emission Guidelines) for EPA approval; the provisions of each State Plan establish the applicable requirements for sources. EPA also promulgates Federal Plans, which similarly establish the applicable requirements for sources located in areas not covered by an approved State Plan.

The Agency endeavors to develop clear and understandable regulations that are effective and meet their intended purpose when implemented. However, technological advances in processes and emission controls and modern emissions detection and pollution monitoring equipment may lead regulated entities or air pollution control agencies to request assistance in understanding the applicability or application of rule requirements. Also, regulated entities or air pollution control agencies may require assistance with regard to certain inherently complex rule provisions or a facility may require a site-specific response from the Agency as a result of specific activities unique to the affected facility.

EPA receives many different types of requests related to these programs, including requests for applicability determinations, regulatory interpretations, alternative test methods, and alternative monitoring. The different types of requests addressed in this manual are discussed in more depth in Sections 1.2 and 2.

Depending on the type and content of an incoming request, different offices within EPA will participate in the development of a response to the request. The lead office is the office responsible for responding to a given request and it is usually identified in a delegation of authority from the EPA Administrator or subsequent redelegations of authority. EPA has devised a system of tiers that help determine which office will take the lead in responding to a request and which offices need to be consulted in developing a response to each type of request. Sections 1.3 and 1.4 further discuss delegations and the tiering system.

EPA's written responses to the requests discussed in this manual will be developed in accordance with the Agency procedures discussed in Sections 1.5 and 3 of this manual.

1.2 Overview of Requests Addressed in this Manual

This manual addresses certain types of requests related to CAA sections 111, 112, and 129 and EPA's implementing regulations at 40 CFR parts 60, 61, 62, and 63.[4] In other words, this manual is restricted to NSPS, NESHAP, section 111(d) rules, and section 129 rules.[5] This manual does not address issues arising from other statutory or regulatory programs that EPA administers.

The requests addressed in this manual can be directly answered or granted by an EPA official with delegated authority (or a delegated air agency official) without additional notice-and-comment rulemaking procedures.[6]

This manual focuses on formal, written requests (i.e., signed letters) from a regulated entity or air agency (or other stakeholder) to EPA, and on EPA's written responses to such requests, signed

[4] The implementing regulations could also include provisions at 40 CFR parts 65 to the extent they are expressly referenced by a regulation under part 60, 61, 62, or 63.
[5] In the context of section 111(d) rules and the section 111(d) portion of section 129 rules, this manual addresses requests related to EPA's Emission Guidelines, Federal Plans, and, in certain circumstances, State Plans.
[6] Requests requiring additional procedures are not covered by this manual. For example, this manual does not address requests for alternative emission limitations under CAA sections 111(h)(3) and 112(h)(3) and 40 CFR 63.6(g) and (h), as these requests involve additional procedures specified in the statute and regulations.

by an EPA official with delegated authority. The tiering system and procedures described in Sections 1.4, 1.5, and 3 of this manual do not apply to informal responses, advice, recommendations, or analysis (e.g., phone discussions or email correspondence) provided by EPA to air agencies or the regulated community, nor to other informal communications between EPA and these entities. However, given that these informal inquiries are relatively common, and because they sometimes develop into a more formal written request, informal inquiries are discussed in Appendix A.

The types of requests addressed in this manual are discussed in more detail in Section 2. They include the following:

1. **Applicability determination** (Section 2.1): An "applicability determination" is a final, formal, written EPA decision issued in response to a request from a regulated entity concerning the applicability of a regulation or portion of a regulation issued pursuant to CAA sections 111, 112, or 129 to a specific source or facility owned and operated by the requesting entity. Applicability determinations are based on consideration of the actual site-specific operating conditions at the facility at issue, not on hypothetical operating scenarios.
2. **Regulatory interpretation** (Section 2.2): A "regulatory interpretation" provides EPA's interpretation of existing regulatory provisions issued pursuant to CAA sections 111, 112, or 129. A regulatory interpretation may be issued in response to a request from a regulated entity, air agency, or other stakeholder. In addition, EPA may on its own initiative determine that a regulatory interpretation is necessary to clarify a specific provision in response to repeated questions.
3. **Alternative test method** (Section 2.3): An "alternative test method" is a requested alternative to a test method designated in regulations issued pursuant to sections 111, 112, or 129 as the primary means of determining compliance with a standard. Requests for alternative test methods are similar to, but must be carefully distinguished from, requests for alternative monitoring.
4. **Alternative monitoring** (Section 2.4): "Alternative monitoring" refers to a requested alternative to a monitoring requirement in regulations issued pursuant to sections 111, 112, or 129 that supplements a primary test method in order to assure continuous compliance with a standard.
5. Other types of requests that adapt regulatory requirements to site-specific conditions (Section 2.5). These requests take various forms and are based on either the NSPS or NESHAP general provisions or a specific regulatory subpart. Some examples include alternative recordkeeping and reporting requirements, alternative reporting schedules, test plan review and approval, performance test waivers, performance test extensions (force majeure), and technical compliance extensions, among others.

1.3 Overview of Delegations of Authority

EPA's regulations provide the EPA Administrator with authority for responding to various types of requests related to the regulations discussed in this manual. In most cases, authority to respond to these requests has been delegated (and often re-delegated) to the appropriate EPA official(s) or

to other air agencies. Delegations of authority identify the EPA officials who are authorized to respond to incoming requests, and thus the delegations are generally used to determine the office that will take the lead in responding to an incoming request. Based on the delegations of authority, EPA has developed a system of "tiers" to categorize incoming requests in order to establish the appropriate lead office and consultation roles of other offices. Given that the procedures described in this manual (including the tiering system discussed in Section 3) are largely derived from the delegations of authority discussed in further detail below, any future delegations of authority or revisions to existing delegations may impact such procedures.

1.3.1 Delegations of Authority Within EPA

The EPA Administrator has delegated the authority to respond to most NSPS or NESHAP-related requests to regional or headquarters offices. Many of these delegations have been redelegated, generally to the level of branch chief or equivalent. The procedures discussed within this manual primarily relate to requests delegated within EPA. Appendix D contains reproductions of the most relevant within-EPA delegations (identified in Table 1.1), along with a list with hyperlinks to other relevant delegations (available to EPA employees on the EPA intranet). Additional resources related to within-EPA delegations for different types of requests can be found on EPA's intranet site at *https://intranet.epa.gov/ohr/rmpolicy/ads/delegat.htm*.

Table 1.1. Most Relevant Current Delegations of Authority Within EPA (as of July 2020)[7]

Authority	*Delegation #*	*Agency Office Delegated*
Applicability Determinations	EPA 7-127 (6/29/20)	OAR Regional Offices
Alternative Test Methods (Minor)	EPA 7-119 (4/2/02)	Regional Offices
Alternative Test Methods (Major)	EPA 7-121 (4/2/02)	OAR
Alternative Monitoring	EPA 7-121 (4/2/02)	Regional Offices

1.3.2 Delegations Outside EPA

CAA sections 111(c) and 112(l) provide states the ability to request delegation of EPA's authority to implement and enforce the NSPS and NESHAP programs. In practice, responsibility for implementing and enforcing many aspects of the NSPS and NESHAP programs (and, in slightly different ways, regulations under CAA sections 111(d) and 129[8]) has been delegated to most air pollution control agencies. Procedures for EPA's delegation of part 63 NESHAP authorities are detailed in 40 CFR part 63, subpart E. *See, e.g.*, 40 CFR § 63.91.

The exact scope of each delegation varies by jurisdiction and is reflected in the delegation agreement(s) between the EPA Region and the delegated air agency. A list of the state and local

[7] There is no formal EPA delegation concerning regulatory interpretations.

[8] Section 111(d) rules (that is, Emission Guidelines promulgated by EPA) are directly implemented by states following EPA's approval of a section 111(d) State Plan. Alternatively, states may be delegated authority to implement an EPA-issued Federal Plan. Section 129 rules are delegated or implemented in the same manner as NSPS and section 111(d) rules, because section 129 rules contain both NSPS and 111(d) components.

agencies that have been delegated authority to implement aspects of the NSPS and NESHAP programs, along with information about which authorities or regulations have been delegated, is provided in 40 CFR §§ 60.4(b)(1) and 63.99. However, these lists are in some cases outdated and do not in every case specify the precise authorities that have been delegated to the listed air agencies. Notices of delegations published by EPA in the *Federal Register* further clarify the scope of these delegations, but these notices may have been superseded by later delegations. EPA's Regional Office websites may have more up-to-date information about the current status of relevant delegations, as noted in the following table. In order to determine the current delegation status of a particular subpart or general provision, outside parties should contact the appropriate EPA Regional Office.

Table 1.2. Regional Office Webpages with Delegation Information

Region 1	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Region 2	New Jersey, New York, Puerto Rico, U.S. Virgin Islands
Region 3	(to be developed)
Region 4	(to be developed)
Region 5	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
Region 6	Arkansas, Louisiana, Oklahoma, New Mexico, Texas
Region 7	Iowa, Kansas, Missouri, Nebraska
Region 8	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming, Southern Ute
Region 9	Arizona, California, Hawaii, Nevada
Region 10	Alaska, Idaho, Oregon, Washington

Many of these delegations provide the delegated air agency with the authority to respond to certain types of routine requests discussed in this manual. In general, EPA does not delegate to air agencies the authority to make decisions that are likely to be nationally significant, that require additional rulemaking to implement, or that are specifically identified as nondelegable within EPA regulations. For the part 63 NESHAP program, a list of delegable and nondelegable authorities is codified at 40 CFR §§ 63.91(g)(1) and (2). Individual NSPS, NESHAP, section 111(d), and section 129 rules often further restrict the authorities that are delegable to air agencies.

For all delegations of NSPS and NESHAP rules, EPA retains oversight and enforcement authorities. Decisions that delegated air agencies make are not binding on EPA, and EPA retains the authority for resolving and enforcing even those issues that have been delegated to air agencies. Part 63 subpart E further specifies EPA's oversight of delegated NESHAP programs. *See* 40 CFR § 63.91.

Additional resources related to delegations of authority to air agencies can be found on EPA's public website at *https://www.epa.gov/caa-permitting/delegation-clean-air-act-authority*. Historical EPA guidance documents may also provide helpful background on these topics, although they should not be relied upon for current information regarding the delegation of a specific general provision, subpart, or type of request. These documents include Good Practices Manual for Delegation of NSPS and NESHAPS (1983) (available at *https://www3.epa.gov/ttn/atw/112(l)/goodpracticesmanual081009.pdf*) and a series of five

memoranda from 1982–1986 discussing part 60 and 61 delegable authorities (included as Attachment 2 to the now-superseded 1999 Manual).

1.4 EPA's Tiering System

In order to ensure consistency in the development and oversight of EPA formal written responses to requests related to NSPS, NESHAP, section 111(d), and section 129 rules, EPA developed a system of "tiers" to categorize different types of incoming requests. Tiering is derived from the delegations discussed in Section 1.3.

Each tier establishes the lead responsive office (whether headquarters, Region, or delegated air agency) and consultation obligations (required or as-needed).[9] Because most tiers accommodate multiple types of requests, the precise office (e.g., OAR or OECA) with lead or consultation roles will depend on the type of request, as discussed further in Section 2 (request-specific discussion). Table 1.3 at the end of this Section further summarizes these lead office and consultation roles for each type of request.

A single type of request (e.g., an applicability determination or alternative test method request) may be associated with multiple different tiers, depending on the nature of the request. Nationally significant requests are associated with lower-numbered tiers, and routine requests are associated with higher-numbered tiers. In general, the tiering structure is as follows:

- **Tier 1**: Nationally significant or multi-regional responses, led by a HQ office, with required consultation of other headquarters and Regional Offices.
- **Tier 2**: Responses led by a HQ office with as-needed consultation with other offices.
- **Tier 3**: Complex source-specific or region-specific requests, led by Regional Offices, with required consultation with headquarters.
- **Tier 4**: Routine source-specific requests handled by EPA Regional Offices, with as-needed consultation with headquarters.
- **Tier 5**: Routine source-specific requests delegated to and handled exclusively by delegated air agencies, with optional consultation of Regional Offices.

The subsections below describe these tiers in more detail.

1.4.1 Tier 1

Summary: Multi-regional or nationally significant responses issued by a headquarters office with required consultation of other offices.

Criteria: Tier 1 responses include both applicability determinations and regulatory interpretations that are either multi-regional or nationally significant, as well as multi-regional or nationally significant compliance extensions. Sections 2.1 and 2.2 discuss the differences

[9] Even in cases where consultation is not required, good governance would in many instances call for reaching out and obtaining input from other EPA offices.

between the first two types of requests and criteria for determining whether a request is nationally significant. In general, EPA anticipates that a relatively small proportion of applicability determinations will meet Tier 1 criteria, whereas a relatively large proportion of regulatory interpretations will meet Tier 1 criteria.

Lead Office and Consultation Roles: Tier 1 responses are issued by an EPA headquarters office (OAR for most types of responses) with required consultation with other EPA headquarters and Regional Offices. For example, nationally significant applicability determinations are issued by OAR in consultation with OECA, OGC, and the affected Regional Office(s).[10] Specific lead office and consultation roles for each type of request are discussed further in Sections 2.1 and 2.2.

1.4.2 Tier 2

Summary: Responses issued by a headquarters office with as-needed consultation of other offices.

Criteria: Currently, the only types of requests that are included within Tier 2 are major (and some intermediate) changes to test methods. *See* Section 2.3 for more information on distinguishing requests for alternative test methods from other types of requests (e.g., alternative monitoring) and determining whether such a request is major, intermediate, or minor.

Lead Office and Consultation Roles: EPA responses to Tier 2 requests are led by an EPA headquarters office (OAR in the case of alternative test method determinations) and involve consultation with other relevant offices on an as-needed basis. For example, OAR will consult with OECA and the relevant regional Enforcement and Compliance Assurance Division (ECAD) when an alternative test method response may have broader enforcement implications. *See* Section 2.3 for more specific discussion of lead office and consultation roles related to changes to test methods.

1.4.3 Tier 3

Summary: Complex source-specific or region-specific responses issued by Regional Offices, with required consultation with headquarters.

Criteria: Many different types of requests considered by Regional Offices may be considered Tier 3. In general, Tier 3 responses are not multi-regional or nationally significant (unlike the headquarters-issued responses in Tiers 1 and 2), but are more complex and may have more precedential significance than the routine responses issued by Regional Offices under Tier 4.

For example, Tier 3 applicability determinations (or, less frequently, regulatory interpretations) issued by a Regional Office are those that do not rise to the Tier 1 level (i.e., are region-specific and not nationally significant), but nonetheless raise complex issues or may not involve a

[10] As noted in Section 2.1, such consultation with the Regional Office(s) is to include the opportunity for input from ARD, ECAD, and ORC, although one of these offices (generally ARD) may coordinate the Regional Office's collective feedback.

straightforward application of existing EPA precedent. Additional examples of Tier 3 requests are presented in Table 3.1. A more detailed discussion of the criteria for identifying Tier 3 requests is contained in the Section 2 discussions of each respective type of request.

Lead Office and Consultation Roles: Regional Offices are responsible for issuing Tier 3 responses in consultation with other offices. Most Tier 3 responses will be issued by the regional Air and Radiation Division (ARD), with intra-office coordination with ECAD and ORC, but specific roles and responsibilities within a Regional Office may vary depending on the type of request and internal delegations and procedures. All Tier 3 responses involve required inter-office consultation with EPA headquarters office(s). However, the precise consultation roles vary for each type of request and are discussed further in the Section 2 discussions of each respective type of request.

1.4.4 Tier 4

Summary: Routine source-specific responses handled by EPA Regional Offices, with as-needed consultation with headquarters.

Criteria: As with Tier 3 requests, many different types of requests considered by Regional Offices may be included within Tier 4. Often, the same type of request could be considered either Tier 3 or Tier 4. In general, Tier 4 is reserved for routine requests that do not raise any novel or complex issues that would warrant (or benefit from) headquarters involvement under Tiers 1 or 3, respectively.

For example, minor changes to test methods or monitoring—to the extent they are approved by EPA instead of a delegated air agency—are considered Tier 4 responses. Additional examples of Tier 4 requests are presented in Table 3.1. A more detailed discussion of the criteria for identifying Tier 4 requests is contained in the Section 2 discussions of each respective type of request.

Lead Office and Consultation Roles: Tier 4 requests are handled by the EPA Regional Office where the facility is located, without required consultation of other EPA offices. Coordination within each Regional Office may vary region-by-region, according to internal regional delegations and procedures.

Although consultation with other EPA offices is not required for Tier 4 requests, EPA Regional Offices are encouraged to consult headquarters offices on a case-by-case basis if there is any question as to whether the request should be considered Tier 4, when seeking additional technical expertise or national perspective, and to confirm consistency with precedent. In such cases, and provided the offices agree that the response is appropriately considered a Tier 4 response, the Regional Office remains the lead office responsible for developing and issuing the response.

1.4.5 Tier 5

Summary: Routine source-specific requests handled by delegated state, local, or tribal air agencies, with optional consultation of their Regional Offices.

Criteria: The defining feature of a Tier 5 request is that it has been delegated to a state, local, or tribal air pollution control agency. Any type of request that can be delegated to an air agency could potentially be a Tier 5 request. However, not all requests are delegated or delegable to air agencies. As discussed in Section 1.3.2, certain types of requests are expressly identified as non-delegable in the NSPS or NESHAP general provisions, or by individual NSPS or NESHAP subparts. EPA may also decide not to delegate certain other types of requests on a case-by-case basis. Authority for responding to requests dealing with nationally significant, multi-regional, controversial, or complex issues (i.e., requests meeting Tier 1-3 criteria) are generally not delegated. However, the vast majority of routine requests (i.e., requests meeting Tier 4 criteria) are delegated to air agencies.

Lead Office and Consultation Roles: Delegated state, local, and tribal air agencies are the first point of contact for facilities with questions or requests pertaining to a NSPS, NESHAP, section 111(d), or section 129 rule. In responding to an appropriately-delegated request, these air agencies need not follow any specific procedures (such as the procedures discussed in Section 3 of this manual, which exclusively relate to requests answered by EPA), although air agencies may find some of EPA's procedures instructive. Delegated air agencies are also not required to consult with EPA for routine Tier 5 requests. However, air agencies are welcome to, and often do, reach out to the appropriate EPA Regional Office for assistance with Tier 5 requests. Such consultation is often informal.

Delegated air agencies may also determine, in consultation with an EPA Regional Office, that it would be more appropriate for EPA to respond to the request. If the facility and/or air agency prefers a formal EPA response, the air agency should direct the facility to formally submit a letter to EPA requesting an EPA response. Requests handled by EPA in this manner will be treated according to the appropriate tier (1–4) for EPA responses.

Table 1.3 Summary of Tiering, Lead Office, and Consultation Roles

Tier	Criteria: Type and Nature of Request	Lead Office	Consultation
1	**Applicability determinations** that are multi-regional or nationally significant	OAR/OAQPS/ AQPD/OPG (w/ SPPD)	*Required*: OECA, OGC, affected Region(s)
	Regulatory interpretations that are multi-regional or nationally significant	OAR/OAQPS/SPPD or OECA	*Required*: OECA (or OAQPS), OGC, affected Region(s) (where applicable)
	Compliance extensions that are multi regional or nationally significant	OECA	*Required*: OAQPS *As needed*: OGC, affected Region(s)
2	**Alternative test methods**: major (and some intermediate)	OAR/OAQPS/ AQAD/MTG	*As needed*: OECA, OGC, affected Region(s)
	Performance test extensions that are nationally significant	OECA	*As needed*: OAQPS, OGC, affected Region(s)
3	**Applicability determinations** that are region-specific and not nationally significant, but which raise complex technical, policy, or legal issues	Region (if ARD, with ECAD and ORC input)	*Required*: OAQPS, OECA *As needed*: OGC
	Regulatory interpretations that are not Tier 1		
	Alternative test methods: some intermediate		*Required*: OAQPS *As needed*: OECA, OGC
	Alternative monitoring: major (and some intermediate)		*Required*: OECA, OAQPS As needed: OGC
	Alternative recordkeeping/reporting: major		
	Performance test extensions (force majeure) that are regionally-applicable but complex		*Required*: OECA *As needed*: OAQPS, OGC
	Compliance extensions that are regionally-applicable but complex		
4	**Applicability determinations** that are region-specific and do not raise novel or complex issues	Region	As needed
	Alternative test methods: intermediate, minor		
	Alternative monitoring: intermediate, minor		
	Alternative recordkeeping/reporting: minor		
	Alternative reporting schedules		
	Test plan approvals		
	Performance test waivers		
	Performance test extensions (force majeure) that are routine and consistent with precedent		
	Compliance extensions that are routine and consistent with precedent		
	Other general provision or subpart-specific requests that are delegated to a Regional Office		
5	Any Tier 4 items (routine requests including applicability determinations, minor and intermediate changes to test methods and monitoring, test methods and monitoring waivers, and other requests) that have been specifically delegated to an air agency.	Delegated air agency	As needed

1.5 Overview of Procedures for Addressing Formal Written Requests

Formal written requests related to a NSPS, NESHAP, section 111(d), or section 129 rule that are submitted to EPA should be processed according to the procedures summarized in this section and discussed in Section 3. The procedures in this manual do not apply to informal inquiries (*see* Appendix A), requests that require notice-and-comment rulemaking to fulfill, requests related to other regulatory programs, or requests to which delegated air agencies respond.

Phase 1: Receiving, Tracking, Tiering, and Assigning Incoming Requests.

The first phase begins with EPA's receipt of a written request. The EPA office receiving a request is responsible for confirming some basic details about the request, including whether the request is something to which EPA should formally respond in writing.

Upon receipt, the recipient office is also responsible for adding the request to the National Tracking System housed on SharePoint, which is managed by OAR and accessible to relevant staff agencywide. Through the National Tracking System, the recipient office (and potentially other offices) will determine the appropriate tier and lead office for the request. Any decisions during this process should be made consistent with this manual and current delegations of authority. Once a final decision on the lead office assignment has been made, the request and all supporting information should then be transmitted to the appropriate lead office.

The final tiering decision will also establish any necessary consultation roles. At this time, the lead office should identify staff contacts from all consulting offices and, for more involved responses, should establish a temporary staff workgroup to facilitate consultation.

Phase 2: Developing EPA's Response.

Once the appropriate lead office staff is assigned to the request, the lead staff should begin researching the issue(s). Other lead staff responsibilities include developing an initial written response consistent with the guidelines presented in this manual, ensuring that consultation within and among EPA offices is conducted consistent with this manual, and updating EPA's National Tracking System. After consultation is completed, the lead staff will develop a final written response that addresses, as appropriate, input obtained during the consultation process, and will ensure that EPA's final response is signed by the EPA official with delegated authority.

Phase 3: Post-Signature Procedures. The lead office should distribute the signed response to the requestor, with electronic cc's to the consulting offices, other interested EPA offices, and delegated air agency. In most cases, the lead office should also prepare and upload certain material necessary for OAQPS to post the response to EPA's Applicability Determination Index (ADI). OAQPS will coordinate periodic updates to the ADI, along with periodic *Federal Register* notices announcing recent EPA responses.

Section 2. Distinguishing Incoming Requests

As discussed in Section 1.2, this manual addresses the process for responding to certain types of requests, but not others. To summarize, the scope of this manual is limited to:

- Requests related to NSPS, NESHAP, section 111(d), and section 129 rules, but not requests related to other statutory or regulatory programs;
- Requests that can be directly answered or granted by an EPA official with delegated authority or delegated air agency, but not requests that require additional notice-and-comment procedures;
- Formal written requests from a source, air agency, or other stakeholder requesting EPA input, but not informal inquiries (informal inquiries are discussed in Appendix A).

The four most common types of requests that fit these criteria—applicability determinations, regulatory interpretations, alternative test methods, and alternative monitoring—are discussed in detail below, followed by a brief discussion of other types of commonly-received requests that should also generally follow the procedures specified in this manual.

This Section describes each type of request (including key characteristics that distinguish one type of request from another, as well as examples), the regulatory authority governing each request, and the delegations and tiering system that establish the lead EPA office with primary responsibility for responding to each type of request.

2.1 Applicability Determinations

Description: Applicability determinations[11] are source-specific, fact-based (non-hypothetical), written responses concerning whether a particular NSPS, NESHAP, section 111(d), or section 129 rule[12] (or a portion of such a rule) applies to a given source or activity. Applicability determinations are issued by an Agency official with authority delegated from the EPA Administrator, in response to a request from a source owner/operator, and conclusively define the applicability of a rule or part of a rule to a given source or activity. Formal written applicability determinations issued by EPA are enforceable final agency actions, subject to judicial review under CAA section 307(b)(1).

[11] The term "applicability determination" has been used informally in the past as a shorthand term to refer to other requests or responses that do not have the same legal effect as a formal written applicability determination. Use of the term "applicability determination" in this manual refers exclusively to the formal written requests and EPA responses described in this subsection. Most applicability-related requests and responses that are not technically "applicability determinations" will be considered regulatory interpretations, as discussed below. Informal inquiries (emails and phone calls) discussed in Appendix A are also not considered applicability determinations, even though they may concern applicability issues.

[12] In the section 111(d) context (and in the context of the section 111(d) portion of section 129 rules), applicability determinations typically relate to the applicability of the rule as a whole (i.e., whether a source is subject to the Emission Guidelines and, by extension, the State or Federal Plan implementing them), or to the applicability of a specific provision in a Federal Plan. As discussed further below, care must be taken when responding to applicability determination requests that relate in whole or in part to an Emission Guideline.

Care must be taken to distinguish an applicability determination from a regulatory interpretation, which may also concern issues related to the applicability of a rule (as discussed in Section 2.2). The primary difference is that an applicability determination is site-specific and fact-specific, based on detailed and non-hypothetical factual information about the source, in response to an explicit request from a source, and conclusively resolves the applicability issue for that specific source. By contrast, regulatory interpretations may be more broadly applicable, based on limited or hypothetical information, or based on an inquiry from a delegated state or other interested stakeholders. Regulatory interpretations are not binding; only formal applicability determinations directly resolve questions of applicability with respect to a particular source. A request from a source nominally described as an applicability determination may ultimately be treated and clarified by EPA as a regulatory interpretation if, for example, the source is unable to provide sufficient factual information for EPA's consideration or if EPA determines that a more broadly-applicable interpretation is warranted. On the other hand, a request that is initially characterized as a regulatory interpretation may eventually be more appropriately handled as an applicability determination if sufficient facts become available to EPA (and if the source explicitly requests a determination).

Because applicability may be based on different criteria, applicability determinations may involve different types of issues:

First, applicability determinations may relate to whether a particular activity would trigger applicability of a rule. Applicability of section 111, 112, and 129 rules is based on when a source began operations or commenced construction, reconstruction, or (for certain rules) modification. Accordingly, some applicability determinations consider whether a planned or past action by a source would constitute construction, reconstruction, or modification, or the commencement thereof. For example, EPA has considered whether the installation of a new boiler to replace a refinery's two existing boilers constituted construction of a new fuel gas combustion device, subject to NSPS subpart J.[13] As another example, EPA has considered whether the conversion of an external floating roof oil storage tank to an internal floating roof tank would constitute reconstruction, subject to NSPS subpart Kb.[14] Additionally, the date that construction, reconstruction, or modification is commenced may determine which rules apply to a facility. For example, applicability determinations under section 129 rules may address whether a facility is considered a new source subject to the NSPS portion of the 129 rule or an existing source covered by the Emission Guidelines.

Second, applicability determinations may relate to whether a source or activity is subject to a specific rule. Each section 111, 112, and 129 rule applies to a specifically defined type (or types) of source—the "affected facility" for NSPS, "designated facility" for section 111(d) rules, "affected source" for NESHAP, or other terms used in individual subparts. Accordingly, many

[13] Kern County Refinery, Inc., ADI Control Number J017 (July 7, 1981), available at *https://cfpub.epa.gov/adi/index.cfm?fuseaction=home.dsp_show_file_contents&CFID=126082776&CFTOKEN=72435197&id=J017*

[14] Chevron Products Company, ADI Control No. 0600037 (June 7, 1999), available at *https://cfpub.epa.gov/adi/index.cfm?fuseaction=home.dsp_show_file_contents&CFID=127293407&CFTOKEN=46051444&id=0600037*

applicability determinations address the threshold question of whether the source falls within the scope of the affected facility, designated facility, or affected source, as defined in a source category-specific regulation or combination of regulations. For example, EPA has considered whether a trash tank at a rice processing plant was an affected facility, subject to NSPS subpart DD.[15] As another example, EPA has considered whether certain valves at a compressor station were part of an affected facility, subject to NSPS subpart OOOOa.[16]

Third, applicability determinations may relate to the applicability of a specific provision within a regulation to which a source is subject. Regulations often contain multiple distinct regulatory requirements that only apply to sources or activities meeting specified criteria. This type of applicability determination—concerning *whether* a source is subject to a specific regulatory requirement within an applicable subpart—must be carefully distinguished from regulatory interpretations, which may ask similar questions concerning *how* a specific requirement applies to a source.

Special care must be taken when responding to—or considering whether to respond to—applicability determination requests in certain circumstances. In each of the situations described in the following paragraphs, determining whether and how to proceed will involve case-by-case consideration and, in most situations, consultation with other offices. As a general principle, EPA is not obligated to respond to a request exactly as framed by the requestor and has flexibility to tailor a response to the circumstances.

First, as noted above, certain requests that nominally pertain to a single source may involve more broad-ranging EPA policies or interpretations. For these requests, EPA may consider addressing the underlying issues through a different mechanism than a source-specific applicability determination, such as a regulatory interpretation or change to the regulatory text.

Second, care should be taken when addressing requests for applicability determinations related to section 111(d) or 129 rules for existing sources. Such requests typically concern EPA's Federal Plans or Emission Guidelines. Because EPA's Emission Guidelines do not themselves establish binding requirements, care should be taken in issuing applicability determinations for existing sources where a State Plan has not been approved and a Federal Plan has not been promulgated. For example, such an applicability determination could speak to whether the facility is the type of "affected facility" addressed by the Emission Guidelines, or to the applicability of a specific provision within EPA's Emission Guidelines.[17] Provided that circumstances do not change at the facility, such a determination may be relevant to whether the source is subject to a future-promulgated Federal Plan, or whether the source should be included in a future State Plan

[15] Producers Rice Mill, ADI Control No. 0000016 (February 23, 2000), available at *https://cfpub.epa.gov/adi/index.cfm?fuseaction=home.dsp_show_file_contents&CFID=126084534&CFTOKEN=53273318&id=0000016*.
[16] Thomaston Compressor Station (August 19, 2019) (upload to ADI forthcoming).
[17] *See, e.g.*, MaxWest Environmental Systems, Inc., ADI Control No. FP0004 (December 19, 2013), available at *https://cfpub.epa.gov/adi/index.cfm?fuseaction=home.dsp_show_file_contents&CFID=126652990&CFTOKEN=98981573&id=FP00004*.

submitted for EPA approval.[18] Relatedly, EPA is not aware of any prior requests explicitly asking EPA to determine whether a specific State Plan (or a provision within a specific State Plan) applies to a specific source. In the event EPA receives such a request, the lead office will consult with OGC/ORC to determine whether and/or what type of EPA response would be appropriate.

Third, applicability determinations may be issued either before or after a regulated entity has undertaken an action related to the construction, reconstruction, or modification of the equipment in question. However, the means for responding to inquiries after the action in question has occurred (sometimes referred to as a post hoc request) requires special consideration given the potential for an enforcement action. For these post-hoc requests—and particularly those where EPA concludes that a particular regulation is applicable—it is important to consider alternatives to issuing an applicability determination, such as: a letter of acknowledgment to the source of their inquiry, pending further action; a preliminary warning letter to the source that puts the source on notice that the action as described may constitute a violation, without finally deciding the issue; or proceeding directly with an enforcement action.

Fourth, and relatedly, when EPA receives an applicability determination request, the lead office will notify the regional ECAD and OECA to determine whether there is an ongoing or pending enforcement action involving the same facility or involving the same issue at other facilities. If there is no enforcement action that encompasses or otherwise involves the issue(s) raised in the applicability determination request, the lead office may move forward with developing EPA's response following the inter-office consultation process. If the applicability determination request is related to an ongoing or potential enforcement action where EPA or the delegated air agency has provided notice of a potential violation (e.g., through a Notice of Violation, Notice of Potential Violation, in-person meeting, conference call, letter of concern, etc.), the lead office (regional ARD or OAR) will discuss with the relevant enforcement office (regional ECAD or OECA) the appropriate next steps. The lead office will obtain concurrence from the relevant enforcement office before issuing the applicability determination. If concurrence cannot be achieved at the staff level, issuance of the applicability determination will be elevated to higher management.

Authority: The general provisions of the NSPS (40 CFR § 60.5) and part 61 NESHAP (40 CFR § 61.06)[19] provide that a source owner or operator can request a determination of whether certain actions constitute construction (including reconstruction), modification, or the commencement thereof, and accordingly whether a particular NSPS or NESHAP is applicable to the source. The part 62 general provisions incorporate section 60.5 by reference, and therefore provide the same opportunity for section 111(d) and section 129 State and Federal Plans. *See* 40 CFR § 62.02(b)(2); 66 FR 32484, 32494 (June 14, 2001). In addition to construction/ reconstruction/ modification issues under parts 60, 61, and 62, facilities routinely ask other questions concerning the applicability of NSPS, NESHAP (including part 63), section 111(d), and section 129 rules. It

[18] Please note that 40 CFR §§ 60.25(a) and 60.25a(a) require that: "(a) Each plan shall include an inventory of all designated facilities, including emission data for the designated pollutants and information related to emissions as specified in appendix D to this part."
[19] The part 63 NESHAP regulations do not contain a similar provision.

has been longstanding EPA practice to be responsive to these incoming questions and provide the requested compliance assistance.

Delegation and Tiering: EPA Delegation 7-127 (June 29, 2020) provides the Assistant Administrator of OAR and the Regional Administrators with authority to respond to applicability determinations for regulations issued under CAA sections 111, 112, or 129 (i.e., 40 CFR parts 60, 61, 62, and 63). The appropriate lead office for responding to an applicability determination will depend on the complexity and significance of the request and the potential response. Accordingly, applicability determinations may be categorized as a Tier 1, 3, 4, or 5 action, as discussed below.

Applicability determinations that meet one of the following criteria are considered multi-regional or nationally significant:[20]

1. **Multi-regional**: Responses that either explicitly relate to multiple sources in different EPA Regions,[21] or that nominally involve a single facility but are likely to have implications for similar facilities located in other states and regions;
2. **Precedential character**: Responses that are likely to impact sources beyond the source that is the subject of the request; raising either significant novel positions or positions contrary to prior precedent;
3. **Substantial external interest**: Responses that are expected to generate substantial external interest, e.g., due to significant environmental/health impacts of the facility addressed;
4. **Contentious**: Responses that are expected to be highly contentious or controversial, e.g., by industry (such responses may be better received if issued by a headquarters office)

OAR has been delegated authority from the EPA Administrator to respond to applicability determinations that are either of a multi-regional nature or of national significance (Tier 1). This authority has been redelegated to the Director of the Office of Air Quality Planning and Standards (OAQPS). The Operating Permits Group within the Air Quality Policy Division (AQPD) will lead development of all Tier 1 applicability determinations, in coordination with the appropriate standard-setting group in the Sector Policies and Programs Division (SPPD) of OAQPS (such intra-office discussions are referred to as "coordination" throughout this manual). Tier 1 applicability determinations also require inter-office consultation with OECA, OGC, and the affected Region.[22]

[20] Determining whether an applicability determination meets these criteria may not always be readily apparent to the office receiving a request (generally the Regional Office). As discussed in Section 3.4, the office in receipt of an applicability determination request may solicit input from headquarters as to the appropriate tier.
[21] Applicability determinations are, by definition, source-specific, but could potentially address multiple sources in different locations.
[22] Consultation with the Regional Office(s) should include the opportunity for input from all relevant portions of the office, including ARD, ECAD, and ORC, although one of these offices (generally ARD) may coordinate the Regional Office's collective feedback.

The EPA Regional Administrators have been delegated authority to respond to determinations that are region-specific and not nationally significant. Redelegations within each Region may vary, but this authority is usually redelegated within either ARD or ECAD.[23]

Regional responses that raise complex technical, policy, or legal issues are Tier 3 responses. When Tier 3 responses are issued by the regional ARD, such responses are to be coordinated with ECAD (to confirm that there are no ongoing or pending enforcement actions related to the facility) and ORC. Tier 3 responses also require inter-office consultation with OAR/OAQPS and OECA. For Tier 3 responses, ORC (or another office, including OAR or OECA) may consult with OGC at its discretion.

Regional responses that contain no novel or complex issues and consistently apply existing precedent are Tier 4 responses. Although Tier 4 applicability determinations may not involve the same level of intra-office coordination or inter-office consultation as a Tier 3 request, when the regional ARD is responsible for issuing an applicability determination, ARD should confirm with ECAD that there are no ongoing or pending enforcement actions related to the facility. For Tier 4 responses, Regional Offices may also extend consultation to other offices on an as-needed basis. Consultation is encouraged if any questions arise during the process that might benefit from additional technical expertise or national perspective, or to ensure consistency with precedent.

Externally, authority to respond to routine applicability questions meeting Tier 4 criteria may also be specifically delegated to air pollution control agencies (Tier 5) that take delegation of the program.[24] As noted in Section 1.3.2, applicability-related findings made by delegated air agencies are not binding on EPA. These applicability-related findings made by delegated air agencies are typically established through less formal mechanisms, including the permitting process, as discussed in Appendix B.

Table 2.1. Tiering of Applicability Determinations

Criteria	**Tier**	**Lead Office**	**Consultation**
Multi-regional or nationally significant (Multi-regional, precedential, substantial external interest, contentious)	1	OAR/OAQPS/AQPD/OPG (w/ SPPD)	OECA, OGC, affected Region
Region-specific and not nationally significant, but complex technical/ policy/ legal issues	3	Region (usually ARD w/ ECAD, ORC)	OAQPS, OECA (as needed, OGC)
Routine; no novel or complex issues	4	Region[25]	(As needed)
Routine; delegated to air agency	5	Delegated air agency	(As needed)

[23] For most of the requests addressed in this manual, roles and responsibilities are based on the assumption that ARD will take the lead, coordinating (when appropriate) with ECAD. Where ECAD takes the lead, ARD should receive similar opportunities for input.

[24] As explained above, the term "applicability determinations" refers only to EPA-issued determinations meeting certain criteria. Thus, for purposes of this manual, similar determinations by delegated air agencies are not referred to as applicability determinations, but instead as "findings" related to applicability.

[25] As noted above, if ARD is responsible for issuing an applicability determination, ARD should confirm with ECAD that there are no ongoing enforcement actions related to the facility.

2.2 Regulatory Interpretations

Description: Regulatory interpretations clarify regulatory requirements or policies concerning existing regulatory provisions, and may relate to a broad range of topics associated with a NSPS, NESHAP, section 111(d), or section 129 rule.[26] EPA may issue regulatory interpretations by, for example, letter or memoranda, usually in response to a written request from a regulated entity, an industry group, or air agency. Some regulatory interpretations may be considered "guidance documents" or "significant guidance documents" subject to additional requirements based on Executive Order 13891 (Oct. 9, 2019) and regulations that implement this EO.

Regulatory interpretations often concern questions related to the applicability of a rule or portion of a rule. Thus, care must be taken to distinguish regulatory interpretations from applicability determinations. When compared to an applicability determination, a regulatory interpretation will either be more broadly applicable (e.g., concerning an entire source category or type of technology, not just a single source) and/or based on hypothetical or limited factual information (although purely hypothetical questions are generally addressed informally). Also, as explained above, while applicability determinations may address *whether* a source is subject to a specific regulatory requirement within an applicable subpart, regulatory interpretations may address similar questions concerning *how* a specific requirement applies to a source. Unlike applicability determinations, regulatory interpretations are not binding, do not constitute final agency action, and do not directly resolve questions of applicability for a specific source.

Regulatory interpretations may also concern issues beyond applicability and can relate to essentially any portion of a regulation. For example, regulatory interpretations could involve questions about the type of testing, monitoring, recordkeeping, or reporting that applies to the source category, such as how often sources are required to sample fuel, or how monitoring data must be reported. The key difference between such regulatory interpretations and alternative test methods or monitoring is that regulatory interpretations only explain existing regulatory requirements and do not provide for alternatives or changes to existing requirements.

For example, EPA has issued a regulatory interpretation clarifying how to determine compliance with a limit in the part 61 subpart F NESHAP for Vinyl Chloride.[27]

EPA occasionally issues letters or memoranda that are not characterized as regulatory interpretations, but which address aspects of a regulation under CAA sections 111, 112, or 129 in a manner similar to a regulatory interpretation. In issuing these other types of responses, EPA should follow similar internal procedures as it would when issuing a regulatory interpretation.

Authority: EPA's authority to provide interpretations of its regulations and to develop policies, technical documents, and other compliance assistance materials related to the implementation of these regulations is an inherent aspect of the Agency's rulemaking authority and is not based on

[26] Regulatory interpretations issued by EPA with regard to a section 111(d) rule (including the 111(d) portion of a section 129 rule) are limited to Emission Guidelines and Federal Plans; EPA does not issue regulatory interpretations regarding the provisions of an EPA-approved State Plan.

[27] Memorandum from Ken Gigliello, Acting Director, Compliance Assessment and Media Programs Division, Office of Compliance, EPA (November. 6, 2008).

any specific statutory or regulatory provisions. EPA issues regulatory interpretations of NSPS, NESHAP, section 111(d), and section 129 rules in accordance with EPA's responsibilities to provide compliance assistance.

Delegation and Tiering: Although delegated air agencies often answer routine questions about a NSPS, NESHAP, section 111(d), or section 129 rule, only EPA may clarify the Agency's interpretations and policies related to these rules.[28] Thus, the regulatory interpretations discussed in this manual are issued exclusively by EPA. Regulatory interpretations are not governed by a specific EPA internal delegation.

Multi-regional or nationally significant regulatory interpretations—determined using the same criteria as for applicability determinations (multi-regional, precedential, substantial external interest, or contentious)—are Tier 1 responses led by an EPA headquarters office. Given that regulatory interpretations, by their nature, clarify the requirements of nationally-applicable regulations, most will be nationally significant and issued by an EPA headquarters office. Regulatory interpretations are most commonly issued by the relevant standard-setting group within OAR/OAQPS/SPPD, with required consultation with OECA, OGC, and, in circumstances where the interpretation is especially relevant to a Region or Regions, the affected Region(s).

In certain circumstances, a different HQ office may take the lead in developing and issuing a regulatory interpretation, with similar consultation obligations. For example, OECA may issue a regulatory interpretation that primarily concerns compliance-related provisions of a regulation—such as monitoring, recordkeeping, or reporting requirements—in consultation with OAR, OGC, and any affected Region(s).

Although less common, a Regional Office may also issue a regulatory interpretation in limited cases where the interpretation concerns issues that are not multi-regional or nationally significant. For example, a letter that addresses the meaning of a regulatory requirement in a manner relevant to a specific facility—but which does not definitively resolve the applicability issue, and which accordingly would not be considered an applicability determination—could be considered a Tier 3 regulatory interpretation. Such Tier 3 responses are to include input from ECAD and ORC and require consultation with OAR/OAQPS and OECA. For Tier 3 responses, ORC may determine whether consultation with OGC is necessary. Criteria for tiering are included in the table below.

[28] States may provide interpretations of EPA-approved State Plans implementing a section 111(d) or section 129 rule, provided such interpretation is not contrary to EPA's Emission Guidelines or conditions upon which EPA approved a State Plan.

Table 2.2. Tiering of Regulatory Interpretations

Criteria	Subcriteria	Tier	Lead Office	Consultation
Multi-regional or nationally significant (Multi-regional, precedential, substantial external interest, contentious)	Related to applicability or most other topics	1	OAR/OAQPS/ SPPD	OECA, OGC (where applicable, affected Region(s))
	Compliance or enforcement-related (uncommon)		OECA	OAR, OGC (where applicable, affected Region(s))
Not multi-regional or nationally significant	All	3	Region (w/ ECAD, ORC)	OAQPS, OECA (as needed, OGC)

2.3 Alternative Test Methods

Description: Requests for alternative test methods (including major, intermediate, and minor changes[29]) involve changes to a test method or testing procedures designated in a NSPS, NESHAP, section 111(d), or section 129 rule[30] as the primary means for determining compliance with an emission standard.

EPA regulations define "test method" as "the validated procedure for sampling, preparing, and analyzing for an air pollutant specified in a relevant standard as the performance test procedure." 40 CFR § 63.2. Test methods are designated in each NSPS, NESHAP, section 111(d), or section 129 rule as the primary means for determining compliance with an emission standard. An initial or periodic performance test that directly measures emissions is the most common form of test

[29] The definitions contained in the part 63 (NESHAP) general provisions related to test methods are more detailed than similar definitions in the part 60 general provisions (to the extent part 60 has such definitions). Therefore, EPA applies the principles in the relevant part 63 definitions to discussions of changes to test methods under all of the regulatory programs addressed in this manual, including NESHAP, NSPS, section 111(d), and section 129 rules. For example, while part 60 describes changes in a test methodology as a minor change, an equivalent method, or an alternative method (*see* 40 CFR § 60.8(b)), part 63 describes the changes as major, intermediate, or minor, as defined at 40 CFR § 63.90. For purposes of determining the lead office and consultation roles according the process set forth in this manual, each request for a change to a test method, whether under a section 111, 112, or 129 rule, will be evaluated as a "major change to test method," "intermediate change to test method," or a "minor change to test method" as defined at 40 CFR § 63.90.

[30] Care must be taken when considering whether to respond to a request for an alternative test method that would replace a provision in a section 111(d) or section 129 State Plan. This should involve a case-by-case evaluation of whether the State Plan allows for such an alternative and should always involve consultation with ORC and/or OGC. Additionally, because EPA's Emission Guidelines do not themselves establish binding requirements on sources, in cases where a State Plan has not been approved and a Federal Plan has not been promulgated, care should be taken in responding to alternative test method requests related to a section 111(d) or section 129 rule. EPA's response could speak to permissible alternatives to the testing requirements contained in EPA's Emission Guidelines, but the relevance of such a response to a future-approved State Plan or future-promulgated Federal Plan would need to be assessed on a case-by-case basis. Alternatively, in certain situations (e.g., when EPA's Emission Guidelines provide for flexibility on alternative test methods, or when a State Plan includes a different limit than EPA's Emission Guidelines), alternative test methods could be embodied within an EPA-approved State Plan itself, obviating the need for later case-specific alternative test method requests.

method specified in NSPS, NESHAP, section 111(d), and section 129 rules. However, some regulations specifically identify CEMS procedures as the performance test method (e.g., where CEMS procedures are used for the initial stack test). Additionally, when a default test method is replaced by something that might otherwise be considered monitoring (as discussed below), this would be considered a change to a test method. *See* 40 CFR § 63.8(f)(4)(i). So, as a rule of thumb, a change or modification to the procedures for any initial performance test, or any substitute for such a performance test, would be considered an alternative test method.

EPA must differentiate between requests for alternative test methods and alternative monitoring. Although some aspects of alternative test methods and alternative monitoring are similar, there are important differences in how these requests are processed. Notably, unless waived by the Administrator, the definition of alternative methods in part 63 specifies that alternative methods must be validated using EPA Method 301,[31] whereas major and intermediate changes to monitoring do not; changes to monitoring must nonetheless also be accompanied by a demonstration that the alternative would not decrease stringency. Additionally, only OAR/OAQPS has been delegated the authority to approve major changes to test methods, while EPA Regions have been delegated the authority to approve major changes to monitoring.

As noted above, test methods are identified as the *primary* means of determining compliance with a standard. By contrast, additional means of determining compliance that *supplement* a test method are considered monitoring. Monitoring provisions are usually longer-term and designed to assure ongoing, continuous compliance with a standard after the completion of an initial performance test or in between periodic performance tests. For example, where a standard specifies that, *in addition to a specific test method*, a CEMS or parametric monitoring system will be used to determine compliance with a standard, the CEMS or parametric monitoring would be considered monitoring, not a test method. (As this example and the example in Section 2.4 show, a CEMS could be considered a test method, monitoring, or both, depending on how it functions in relation to other requirements.) EPA Regional Offices are encouraged to consult with the Measurement Technology Group (MTG) within the Air Quality Assessment Division (AQAD) of OAQPS for assistance in determining whether a request concerns an alternative test method or alternative monitoring.

For purposes of this document, changes or alternatives to test methods are classified as either major, intermediate, or minor, as defined in 40 CFR § 63.90(a) and summarized in Table 2.3.

[31] *See* 40 CFR § 63.7(f)(2)(ii). Although the part 60 general provisions were established prior to the development of Method 301 and accordingly do not explicitly reference Method 301, the validation procedures in Method 301 are also appropriate to demonstrate the suitability of alternative test methods under part 60, which requires that an alternative method be "demonstrated to . . . produce results adequate for [the EPA Administrator's] determination of compliance." 40 CFR § 60.2; *see* Section 1.0 of Method 301. Note that the Administrator may waive the requirement for a Method 301 demonstration under Section 17.0 of Method 301.

Table 2.3. Major, Intermediate, and Minor Changes to Test Methods[32]

*Major**	*Intermediate**	*Minor (& reduced sampling times/volumes)*
Any of the following: • Uses unproven technology or procedures or • Entirely new method or • Broadly applicable (not site-specific)	All of the following: • Uses proven technology • Within an existing method • Site-specific Plus, any of the following: • Potential to set national precedent or • Potential to decrease stringency of standard	All of the following: • Uses proven technology • Within an existing method • Site-specific, accommodating site-specific constraints • No national significance or precedent • No potential to decrease stringency of standard

* *Must be validated using EPA Method 301*

Examples of major, intermediate, and minor changes to test methods are found in 40 CFR § 63.90(a), and include the following:[33]

Examples of major changes to a test method include, but are not limited to:

- Use of an unproven analytical finish;
- Use of a method developed to fill a test method gap;
- Use of a new test method such as one developed to apply to a control technology not contemplated in the applicable regulation; and
- Combining two or more sampling/analytical methods (at least one unproven) into one for application to processes emitting multiple pollutants.

Examples of intermediate changes to a test method include, but are not limited to:

- Modifications to a test method's sampling procedure including substitution of sampling equipment that has been demonstrated for a particular sample matrix, and use of a different impinger absorbing solution;
- Changes in sample recovery procedures and analytical techniques, such as changes to sample holding times and use of a different analytical finish with proven capability for the analyte of interest; and
- "Combining" a federally required method with another proven method for application to processes emitting multiple pollutants.

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

- Field adjustments in a test method's sampling procedure, such as a modified sampling traverse or location to avoid interference from an obstruction in the stack, increasing the sampling time or volume, use of additional impingers for a high moisture situation, accepting particulate emission results for a test run that was conducted with a lower than

[32] Note that the same criteria distinguishing between major, intermediate, and minor changes to test methods also apply to distinguish between major, intermediate, and minor changes to monitoring, discussed in Section 2.4.
[33] Similar examples of major, intermediate, and minor changes to monitoring (also found in 40 CFR § 63.90(a)) are presented in Section 2.4.

specified temperature, substitution of a material in the sampling train that has been demonstrated to be more inert for the sample matrix; and

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

Requests for shorter sampling times and smaller sampling volumes when necessitated by process variables, as they relate to a primary test method, are similar to and processed in the same manner as minor changes to test methods.

Note that sources may also request waivers from performance testing requirements in certain circumstances. Performance test waivers are discussed separately in Section 2.5.4.

Requests for alternative test methods under NSPS and NESHAP are usually source-specific in nature. However, EPA/OAR has given broad (national) approval to some alternative test methods for use by any source that meets defined criteria. These broadly applicable approved alternative test methods may be used without an additional request for EPA approval (the source need only indicate the broadly applicable alternative in its pre-test plan and post-test report). For a list of broadly applicable approved alternative test methods, *see* *https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods*.

Substantive and procedural guidance on the submission and approval of requests for alternative test methods can be found in the following document*: https://www3.epa.gov/ttn/emc/guidlnd/gd-022.pdf*. Note that minor changes to NESHAP test methods may be requested, and approved, through the submission of a site-specific test plan, as discussed in Section 2.5.3. *See* 40 CFR § 63.7(e)(2)(i).

Authority: The general provisions of EPA's NSPS and NESHAP regulations authorize the EPA Administrator to approve changes and alternatives to the test methods specified in NSPS and NESHAP standards (these authorities also discuss requests for shorter sampling times and smaller sampling volumes). *See* 40 CFR §§ 60.8(b), 61.13(h), 63.7(e)(2), 63.7(f). The part 62 general provisions incorporate section 60.8(b) by reference, and therefore provide the same opportunity for section 111(d) and section 129 State and Federal Plans. *See* 40 CFR § 62.02(b)(2); 66 FR 32484, 32494 (June 14, 2001). Provisions in subpart E of part 63 further provide for EPA's delegation of, and oversight over, state-issued alternative test method decisions. *See* 63.91(g)(1)(i)–(ii). Definitions of relevant terms are included in 40 CFR §§ 60.2, 61.02, 63.2, and 63.90(a).

Delegation and Tiering: The EPA Administrator's authority to approve alternative test methods has been delegated both within and outside EPA, depending on the nature of the change. The delegated office with lead responsibility for responding to requests for alternative test methods depends on whether the changes to a test method are considered *major*, *intermediate*, or *minor*, as summarized in Table 2.3 above and defined in 40 CFR § 63.90(a) (reproduced in Appendix C). EPA offices receiving a request for an alternative test method may consult with OAR/OAQPS/AQAD/MTG to confirm whether the request constitutes a major, intermediate, or minor change in test method.

Internally, per EPA Delegation 7-121, the Assistant Administrator for OAR has authority over all major changes to test methods (Tier 2). This authority has been further redelegated from the OAR Assistant Administrator through the Director of OAQPS to the Group Leader of the Measurement Technology Group in OAQPS. Although no consultation is required for these Tier 2 requests, OAR will consult with other offices (including OECA, OGC, or the affected Regional Office) on an as-needed basis. For example, if an alternative test method request has the potential for broader enforcement impacts, OAR will consult with OECA and the regional ECAD before issuing a response.

Intermediate changes to test methods may be processed by either OAR (Tier 2), a Regional Office (Tier 3 or 4), or a delegated air agency (Tier 5).[34] Determining whether an intermediate test method change should be considered Tier 2 (OAR) or Tier 3/4 (Region) largely depends on the nature of the request as well as who receives the incoming request, and is contingent upon internal agreement as to the appropriate lead office. Thus, the recipient of a request for an intermediate change should, at a minimum, consult with the other relevant office to determine the appropriate lead office. Further consultation shall be offered depending on the assigned tier. Specifically, Tier 2 intermediate changes to test methods will be issued by OAR, with case-by-case consultation with OECA, OGC, and/or the affected Region (similar to the procedures for major changes to test methods discussed above). Tier 3 intermediate changes to test methods that involve more complicated or potentially precedent-setting issues will be issued by the Regional Office after intra-office coordination with ECAD and ORC (assuming ARD issues the response), required inter-office consultation with OAQPS, and as-needed consultation with OECA and/or OGC. Tier 4 intermediate changes to test methods that are more routine may be issued by a Regional Office with as-needed consultation of other offices (or, as noted below, these routine intermediate changes may be issued by a delegated air agency). EPA Regional Offices are encouraged to consult with OAR/OAQPS/AQAD/MTG on an as-needed basis when complex questions arise regarding alternative test method requests.

EPA Delegation 7-119 specifies that Regional Administrators have authority over minor changes to test methods and reduced sampling times or volumes (Tier 4). As with Tier 4 intermediate changes, consultation for minor changes are not required.

Externally, minor changes to test methods (and reduced sampling times or volumes) are typically delegated to air agencies (Tier 5), and intermediate changes to test methods are delegated as appropriate (Tier 5). EPA's oversight over delegations of NESHAP to air agencies is specified in 40 CFR part 63, subpart E. Notably, EPA's regulations require that:

> [T]he State must maintain a record of all approved alternatives to all monitoring, testing, recordkeeping, and reporting requirements and provide this list of

[34] Currently, Delegation 7-121 delegates authority to approve "alternative test methods"—a term which encompasses both major and intermediate changes to test methods—to the Assistant Administrator of OAR. Delegation 7-119 delegates authority to respond to "minor changes in test methodology"—a term which encompasses minor changes to test methods—as well as shorter sampling times and smaller sampling volumes when necessitated by process variables, to the Regional Administrators. *See* 1999 Manual at 17 n.5 (superseded by this manual). EPA is currently working on revisions to Delegations 7-119 and 7-121 to more explicitly address intermediate changes to test methods, and to align these delegations with the roles and responsibilities reflected in this manual.

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

40 CFR § 63.91(g)(1)(ii).

Table 2.4. Tiering of Changes to Test Methods

<table>
<tr><th>Type</th><th>Criteria</th><th>Subcriteria</th><th>Tier</th><th>Lead Office</th><th>Consultation</th></tr>
<tr><td>Major</td><td>Any of the following:
• Uses unproven technology or procedures or
• Entirely new method or
• Broadly applicable (not site-specific)</td><td>All major</td><td rowspan="2">2</td><td rowspan="2">OAR</td><td rowspan="2">(as needed, OECA, OGC, affected Region(s))</td></tr>
<tr><td rowspan="3">Inter.</td><td rowspan="3">All of the following:
• Uses proven technology
• Within an existing method

Plus, any of the following:
• Potential to set national precedent or
• Potential to decrease stringency of standard</td><td>Precedential/ complex</td></tr>
<tr><td>Precedential/ complex</td><td>3</td><td>Region (w/ ECAD, ORC)</td><td>OAQPS (as needed, OECA, OGC)</td></tr>
<tr><td>Routine</td><td rowspan="2">4/5</td><td rowspan="2">Region/ Delegated Air Agency</td><td rowspan="2">(As needed)</td></tr>
<tr><td>Minor</td><td>All of the following:
• Uses proven technology
• Within an existing method
• Site-specific, accommodating site-specific constraints
• No national significance or precedent
• No potential to decrease stringency of standard</td><td>All minor</td></tr>
</table>

2.4 Alternative Monitoring

Description: Requests for alternative monitoring (including major, intermediate, and minor changes[35]) involve changes to requirements that supplement a primary test method in order to ensure continuous compliance with a NSPS, NESHAP, section 111(d), or Section129 rule.[36]

Monitoring is defined in 40 CFR § 63.2, and used throughout this manual, to refer to the collection and use of measurement data or other information to control the operation of a process or pollution control device or to verify a work practice standard relative to assuring compliance with applicable requirements. Monitoring is composed of four elements: (1) indicator(s) of performance; (2) measurement techniques; (3) monitoring frequency, and (4) averaging time. Each of these concepts is described further in section 63.2, reproduced in Appendix C.

As noted above, care must be taken to differentiate between requests for alternative monitoring and requests for alternative test methods. Monitoring provisions may assure compliance with a standard, but they are always secondary to and *supplement* an explicitly designated performance test method. Monitoring provisions are usually longer-term, and they are designed to assure ongoing, continuous compliance with an emission standard after the completion of an initial or periodic performance test. Unlike test methods, which always provide direct evidence of compliance, some monitoring methods may not provide direct evidence of compliance. EPA Regional Offices are encouraged to consult with OAR/OAQPS/AQAD/MTG for assistance in determining whether a request concerns an alternative test method or alternative monitoring.

Monitoring must also be distinguished from work practice or operational standards, which are included in various NSPS, NESHAP, section 111(d), and section 129 regulations where emission standards are infeasible. In some cases, a work practice standard—such as a requirement to

[35] As noted above with respect to test methods, the definitions contained in the part 63 (NESHAP) general provisions related to monitoring are more detailed than similar definitions in the part 60 general provisions (to the extent part 60 has such definitions). Therefore, EPA applies the principles in the relevant part 63 definitions to discussions of changes to monitoring under all of the regulatory programs addressed in this manual, including NESHAP, NSPS, section 111(d), and section 129 rules. For example, while part 60 describes multiple different examples of alternatives to monitoring requirements (*see* 40 CFR § 60.13(i)), part 63 describes the changes as major, intermediate, or minor, as defined at 40 CFR § 63.90. For purposes of determining the lead office and consultation roles according the process set forth in this manual, each request for a change to monitoring, whether under a section 111, 112, or 129 rule, will be evaluated as a "major change to monitoring," "intermediate change to monitoring," or a "minor change to monitoring" as defined at 40 CFR § 63.90.

[36] Care must be taken when considering whether to respond to a request for alternative monitoring that would replace a provision in a section 111(d) or section 129 State Plan. This should involve a case-by-case evaluation of whether the State Plan allows for such an alternative and should always involve consultation with ORC and/or OGC. Additionally, because EPA's Emission Guidelines do not themselves establish binding requirements on sources, in cases where a State Plan has not been approved and a Federal Plan has not been promulgated, care should be taken in responding to alternative monitoring requests related to a section 111(d) or section 129 rule. EPA's response could speak to permissible alternatives to the monitoring requirements contained in EPA's Emission Guidelines, but the relevance of such a response to a future-approved State Plan or future-promulgated Federal Plan would need to be assessed on a case-by-case basis. Alternatively, in certain situations (e.g., when EPA's Emission Guidelines provide for flexibility on alternative test methods, or when a State Plan includes a different limit than EPA's Emission Guidelines), alternative test methods could be embodied within an EPA-approved State Plan itself, obviating the need for later case-specific alternative test method requests.

check for (and repair) leaks on a specified schedule, or the periodic inspection of tank seals—could be mistaken for a monitoring requirement. However, work practice standards should be located in the "standards," "design," or "emissions control" section of the relevant regulation (and should be specifically identified in the preamble to the rule as a work practice standard), whereas monitoring should be located in the "monitoring" section of the regulation. Also, monitoring provisions are usually associated with (and assure compliance with) an emission limit and test method, or a control standard for a process or pollutant, whereas work practice standards take the place of such an emission limit or control standard. Distinguishing between these types of requests is important because changes to work practice or operational standards may not be reviewed through the streamlined provisions of alternative monitoring, but instead must meet the statutory requirements and, if provided in the applicable rule(s), the regulatory requirements for approving alternative means of establishing emission limitations. *See* Section 2.6 below.

For purposes of this document, changes to monitoring are classified as either major, intermediate, or minor, as defined in 40 CFR § 63.90(a) and summarized in Table 2.5.

Table 2.5. Major, Intermediate, and Minor Changes to Monitoring[37]

Major	*Intermediate*	*Minor*
Any of the following: • Uses unproven technology or procedures or • Entirely new method or • Broadly applicable (not site-specific) *Must demonstrate no decrease in stringency.*	All of the following: • Uses proven technology • Within an existing method Plus, any of the following: • Potential to set national precedent or • Potential to decrease stringency of standard *Must demonstrate no decrease in stringency.*	All of the following: • Uses proven technology • Within an existing method • Site-specific, accommodating site-specific constraints • No national significance or precedent • No potential to decrease stringency of standard

Examples of major, intermediate, and minor changes to monitoring are found in 40 CFR § 63.90(a), and include the following:[38]

Examples of major changes to monitoring include, but are not limited to:

- Use of a new monitoring approach developed to apply to a control technology not contemplated in the applicable regulation;
- Use of a predictive emission monitoring system (PEMS) in place of a required continuous emission monitoring system (CEMS);
- Use of alternative calibration procedures that do not involve calibration gases or test cells;

[37] Note that the same criteria distinguishing between major, intermediate, and minor changes to monitoring also apply to distinguish between major, intermediate, and minor changes to test methods, discussed in Section 2.3.
[38] Similar examples of major, intermediate, and minor changes to test methods (also found in 40 CFR § 63.90(a)) are presented in Section 2.3.

- Use of an analytical technology that differs from that specified by a performance specification;
- Decreased monitoring frequency for a continuous emission monitoring system, continuous opacity monitoring system, predictive emission monitoring system, or continuous parameter monitoring system;
- Decreased monitoring frequency for a leak detection and repair program; and
- Use of alternative averaging times for reporting purposes.

Examples of intermediate changes to monitoring include, but are not limited to:

- Use of a CEMS in lieu of a parameter monitoring approach;
- Decreased frequency for non-continuous parameter monitoring or physical inspections;
- Changes to quality control requirements for parameter monitoring; and
- Use of an electronic data reduction system in lieu of manual data reduction.

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

- Modifications to a sampling procedure, such as use of an improved sample conditioning system to reduce maintenance requirements;
- Increased monitoring frequency; and
- Modification of the environmental shelter to moderate temperature fluctuation and thus protect the analytical instrumentation.

Changes to monitoring requirements are often accompanied by corresponding changes to recordkeeping and reporting requirements, and changes to recordkeeping or reporting have previously been discussed under the blanket term "alternative monitoring." Changes to recordkeeping or reporting may also be pursued independent of changes to monitoring if allowed under the applicable rule. This manual separately discusses changes to recordkeeping and reporting requirements in Section 2.5.1.

Authority: As with alternative test methods, general provisions of EPA's NSPS and NESHAP regulations authorize the EPA Administrator to approve alternatives to the monitoring specified in NSPS and NESHAP rules. *See* 40 CFR §§ 60.13(i), 61.14(g), 63.8(b)(1), and 63.8(f). The part 62 general provisions incorporate § 60.13 by reference, and therefore provide the same opportunity for section 111(d) and section 129 State and Federal Plans. *See* 40 CFR § 62.02(b)(2); 66 FR 32484, 32494 (June 14, 2001). Provisions in subpart E of part 63 further provide for EPA's delegation of, and oversight over, certain state-issued alternative monitoring decisions. *See* 63.91(g)(1)(i)–(ii). Definitions of relevant terms are included in 40 CFR §§ 60.2, 63.2, and 63.90(a).

Delegation and Tiering: The EPA Administrator's authority to approve alternative monitoring has been delegated both within and outside EPA. Internally, per EPA Delegation 7-121, the Regions have authority over all changes to monitoring. Determining the appropriate consultation roles for alternative monitoring turns on whether the requested changes to monitoring are considered *major*, *intermediate*, or *minor*, as summarized in Table 2.5 above. Full definitions of these terms, as used in this document, are found in 40 CFR § 63.90(a) and reproduced in Appendix C.

Major changes to monitoring are considered Tier 3. These responses are issued by the Regional Office after intra-office coordination with ECAD and ORC, required inter-office consultation with OECA and OAQPS, and as-needed consultation with OGC. Notably, major changes to monitoring cannot be delegated to air pollution control agencies.

Intermediate changes to monitoring approved by EPA may be considered either Tier 3 or Tier 4, depending on the nature of the change. Tier 3 intermediate changes to monitoring that involve more complicated or potentially precedent-setting issues will be issued by the Regional Office after intra-office coordination with ECAD and ORC, required inter-office consultation with OECA and OAQPS, and as-needed consultation with OGC. Tier 4 intermediate changes to monitoring that are more routine may be issued by a Regional Office with as-needed consultation of other offices (or, as noted below, these routine intermediate changes may be issued by a delegated air agency).

All EPA-issued minor changes to monitoring are considered Tier 4, issued by a Regional Office with as-needed consultation of other offices.

Externally, minor changes to monitoring are typically delegated to air agencies (Tier 5), and intermediate changes to monitoring are delegated as appropriate (Tier 5). EPA's oversight over these delegations is specified in 40 CFR part 63, subpart E. Notably, EPA's regulations require that:

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

40 CFR § 63.91(g)(1)(ii).

Table 2.6. Tiering of Changes to Monitoring

Type	Criteria	Subcriteria	Tier	Lead Office	Consultation
Major	Any of the following: • Uses unproven technology or procedures or • Entirely new method or • Broadly applicable (not site-specific)	(all major)	3	Region (w/ ECAD, ORC)	OECA, OAQPS (as needed, OGC)
Inter.	All of the following: • Uses proven technology • Within an existing method Plus, any of the following: • Potential to set national precedent or • Potential to decrease stringency of standard	Precedential/ complex			
		Routine	4/5	Region/ Delegated Air Agency	(As needed)
Minor	All of the following: • Uses proven technology • Within an existing method • Site-specific, accommodating site-specific constraints • No national significance or precedent • No potential to decrease stringency of standard	(all minor)			

2.5 Other Alternatives, Extensions, and Waivers

Both the general provisions governing NSPS and NESHAP rules (and, by incorporation, the section 111(d)/129 general provisions), as well as certain individual NSPS and NESHAP rules and section 111(d)/129 rules, contain additional opportunities for sources to request alternatives in order to adapt regulatory requirements to site-specific conditions. These alternatives take numerous forms, and an exhaustive treatment of all possible alternatives is beyond the scope of this manual. Nonetheless, some of the more frequently encountered requests for alternatives that are addressed in the tiering system and procedures discussed in this manual include:

- Alternative recordkeeping and reporting requirements (EPA Delegation 7-124)
- Alternative reporting schedules (7-122)
- Test plans and performance evaluation test plans (7-117, 7-120)
- Performance test waivers (7-119)
- Performance test extensions (force majeure) and rescheduling (7-156)
- Compliance deadline extensions (7-116)
- Other subpart-specific requests (e.g., alternative monitoring or operating parameters)

As with other types of requests, delegations of authority both within and outside EPA dictate which office has authority to respond to these requests. EPA Regional Offices and delegated air agencies are responsible for responding to most of these requests (Tiers 3, 4, and 5). The method for application and approval varies, but the method is usually specified in the relevant regulations or guidance.

2.5.1 Alternative Recordkeeping and Reporting Requirements

As noted in Section 2.3, changes to monitoring requirements are often accompanied by corresponding changes to recordkeeping and reporting requirements. Sources may also independently request changes to recordkeeping or reporting requirements (i.e., without also requesting alternative monitoring). The part 63 general provisions expressly provide for waiver and changes to recordkeeping and reporting requirements separate and apart from changes to monitoring. 40 CFR § 63.10(f). While there is no such provision in the Part 60, 61, or 62 general provisions, EPA believes that the provisions for making changes to monitoring in the Part 60, 61, and 62 general provisions also authorize changes to recordkeeping and reporting even where there is no change to the underlying monitoring requirement. After all, recordkeeping and reporting requirements are themselves forms of monitoring to assure compliance with the underlying substantive standards. Whether accompanied by changes to monitoring or not, requests for changes to recordkeeping or reporting are treated in a similar manner as requests for alternative monitoring. For processing and intra-agency delegation purposes, requests for changes to recordkeeping or reporting are classified as major or minor (there is no intermediate classification), as defined in 40 CFR § 63.90(a) and summarized in Table 2.7.

Table 2.7. Major and Minor Changes to Recordkeeping or Reporting

Major	*Minor*
Any of the following: • Broadly applicable (not site-specific) or • Has national significance or • Potential to decrease stringency of standard	All of the following: • Site-specific • No national significance or precedent • No potential to decrease stringency of standard

Examples of major and minor changes to recordkeeping and reporting are found in 40 CFR § 63.90(a), and include the following:

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

- Decreases in the record retention for all records;
- Waiver of all or most recordkeeping or reporting requirements;
- Major changes to the contents of reports; or
- Decreases in the reliability of recordkeeping or reporting (e.g., manual recording of monitoring data instead of required automated or electronic recording, or paper reports where electronic reporting may have been required).

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

- Changes to recordkeeping necessitated by alternatives to monitoring;
- Increased frequency of recordkeeping or reporting, or increased record retention periods;
- Increased reliability in the form of recording monitoring data, e.g., electronic or automatic recording as opposed to manual recording of monitoring data;
- Changes related to compliance extensions granted pursuant to section 63.6(i);
- Changes to recordkeeping for good cause shown for a fixed short duration, e.g., facility shutdown;
- Changes to recordkeeping or reporting that is clearly redundant with equivalent recordkeeping/reporting requirements; and
- Decreases in the frequency of reporting for area sources to no less than once a year for good cause shown, or for major sources to no less than twice a year as required by title V, for good cause shown.

Authority for approving alternative recordkeeping and reporting requirements for part 63 standards is contained in 40 CFR § 63.10(f). Definitions of relevant terms are included in 40 CFR § 63.90(a).

Determining the appropriate lead office and consultation roles for alternative recordkeeping and reporting turns on whether the requested changes are major or minor, as summarized above. Major changes to recordkeeping or reporting are considered Tier 3, issued by Regional Offices in coordination with ECAD and ORC, required consultation with OECA and OAQPS, and as-need consultation with OGC.

Minor changes to recordkeeping handled by EPA Regional Offices are considered Tier 4 (with optional headquarters consultation). Minor changes to recordkeeping may also be handled by delegated air agencies (Tier 5). Provisions in subpart E of part 63 provide for EPA's delegation of, and oversight over, state-issued alternative recordkeeping, and reporting decisions. *See* 63.91(g)(1)(i)–(ii).

2.5.2 Alternative Reporting Schedules

Sources may request to adjust the submittal date(s) for required NSPS and NESHAP reports, without changing the frequency of required reporting. *See* 40 CFR §§ 60.19(c)–(f), 61.10(g)–(j), 63.9(i), 63.10(a)(5)–(7).

Per EPA Delegation 7-122, EPA's approval of alternative reporting schedules has been delegated to the Regional Offices, which may act without headquarters consultation (Tier 4). In most cases, state and local agencies have been further delegated authority to approve alternative reporting schedules (Tier 5).

2.5.3 Test Plans

Sources are required to develop, and, upon request from EPA or a delegated agency, to submit for EPA or delegated agency approval a site-specific test plan prior to conducting performance

testing for a NESHAP. *See* 40 CFR § 63.7(c).[39] Similarly, as required by a relevant NESHAP standard, and upon request from EPA or delegated agency, sources may be required to conduct a performance evaluation of a continuous monitoring system used as monitoring or a test method. *See* 40 CFR § 63.8(e)(1). As part of a performance evaluation, sources must submit a site-specific performance evaluation test plan for EPA or delegated agency approval. 40 CFR § 63.8(e)(3).

Sources may request minor changes to test methods through submission of a site-specific test plan, provided the same air agency is delegated authority to approve both minor changes to test methods as well as test plans. *See* 40 CFR § 63.7(e)(2)(i); *see also* § 63.7(c)(3)(ii)(B).[40] Any other changes to test methods (i.e., major or intermediate changes) need to be separately approved by the appropriate delegated authority prior to being included in a source-specific test plan.

Per EPA Delegations 7-117 (performance test plans) and 7-120 (performance evaluation test plans for CEMSs), EPA's approval of site-specific test plans for NESHAP has been delegated to the Regional Offices, which may act without headquarters consultation (Tier 4). In most cases, air pollution control agencies have been further delegated authority to approve these test plans (Tier 5).

2.5.4 Performance Test Waivers

A source may request waivers of NSPS and NESHAP performance testing requirements if the source can demonstrate by other means to the Administrator's satisfaction that the source is in compliance with the relevant standard, and for other reasons provided in the regulations. *See* 40 CFR §§ 60.8(b)(4), 61.13(h)(1)(iii), 63.7(e)(2)(iv), 63.7(h). Often, performance test waivers are issued where multiple identical emission units (e.g. engines, turbines, or package boilers) are similarly operated at a single facility. Occasionally, test waivers are issued for other reasons, such as where a unit is infrequently used or where there are other ways to demonstrate compliance.[41]

EPA Delegation 7-119 provides EPA Regional Offices the authority to approve requests for performance test waivers (along with minor changes to test methodology, shorter sampling times and smaller sampling volumes, and performance test conditions). Responding to such requests does not require consultation with headquarters (Tier 4), but consultation with OAR/OAQPS/AQAD/MTG is encouraged if the test waiver request raises complicated technical issues, and consultation with OECA is encouraged if there are potential enforcement

[39] Test plans may incorporate other site-specific elements related to assuring compliance with particular standards, such as site-specific monitoring parameters or operating limits. *See, e.g.*, Delegation 7-128; *see also* Section 2.5.7 below.

[40] Regardless of the vehicle used to request a minor change to a test method (i.e. whether through a standalone request or through a test plan), only air agencies with delegated authority to grant minor changes to test methods may grant minor changes to test methods, and only air agencies with delegated authority to approve test plans may approve test plans.

[41] For additional information about performance test waivers, *see* EPA's National Stack Test Guidance (April 27, 2009), available at *https://www.epa.gov/sites/production/files/2013-09/documents/stacktesting_1.pdf*.

implications. In most cases, air pollution control agencies have been further delegated authority to approve performance test waivers (Tier 5).

2.5.5 Performance Test Extensions (Force Majeure)

Required performance tests may be rescheduled in certain circumstances. Sources may reschedule performance tests within existing deadlines in certain circumstances. *See* 40 CFR §§ 60.8(d) and 63.7(b)(2). Sources may also request extensions of performance test deadlines based on a claim of force majeure; such extensions require EPA approval. *See* 40 CFR §§ 60.8(a)(1)-(4), 61.13(a)(3)-(6), 63.7(a)(4).

EPA Delegation 7-156 provides OECA with authority to approve or disapprove force majeure performance test rescheduling in multi-regional cases or cases of national significance (Tier 2); however, this authority is infrequently exercised. More commonly, EPA Regions evaluate force majeure performance test extensions. EPA-issued performance test extensions based on claims of force majeure may be classified either as Tier 3 (requiring consultation with OECA) or Tier 4. When delegated, air agencies may also grant some force majeure test extensions (Tier 5). *See* 72 FR 27437, 27438 (May 16, 2007).

2.5.6 Compliance Deadline Extensions

In certain circumstances, sources may request a 1-year extension of the compliance deadlines listed in a NESHAP when necessary for an existing source to install pollution controls. *See* CAA § 112(i)(3)(B); 40 CFR § 63.6(i). These are often referred to as "technical compliance extensions." Under EPA Delegation 7-116, OECA has authority to approve such extensions in multi-regional cases or cases of national significance; however, this authority is infrequently exercised. For nationally significant compliance deadline extensions, OECA will consult with OAQPS, and with other offices (e.g., OGC) on an as-needed basis (Tier 1). Per Delegation 7-116, EPA Regions have authority to respond to all other compliance deadline extension requests. Depending on the complexity, these may be treated either as Tier 3 (requiring consultation with OECA, and other offices as needed) or Tier 4 (without required consultation). Air pollution control agencies have been further delegated to respond to these routine requests (Tier 5). Non-routine compliance extensions that are not expressly provided for in CAA section 112(i)(3)(B) and 40 CFR § 63.6(i) generally involve the exercise of enforcement discretion and are not addressed in this manual.

2.5.7 Other Subpart-Specific Requests

In addition to the requests discussed above—all of which are based on either the NSPS and/or NESHAP general provisions—some individual NSPS, NESHAP, section 111(d), and section 129 rules include similar opportunities or requirements for sources to submit requests to EPA (or a delegated air agency) for approval. These requests may take numerous forms, including, for example:

- Requests for Alternative Compliance Timelines (ACTs) and Higher Operating Values (HOVs) under the Landfill NSPS (subparts WWW and XXX);

- Requests for site-specific operating limits under the NSPS and Emission Guidelines for Commercial and Industrial Solid Waste Incineration (CISWI) Units (subpart CCCC and subpart DDDD)
- Requests for site-specific monitoring parameters under the pulp and paper NESHAP (subpart S; 40 CFR § 63.453(g)) or the NESHAP for halogenated solvent cleaning (subpart T; 40 CFR § 63.463(f)(1)(ii)) (*see* EPA Delegation 7-128).
- Requests for site-specific fenceline monitoring plans under the petroleum refinery NESHAP (subpart CC; 40 CFR § 63.658(i)(1)).

In some cases, the individual subpart may specifically reserve EPA's authority to respond to certain requests in the Implementation and Enforcement section of a subpart. For example, the EPA regulations expressly prohibit petitions for site-specific operating limits under the CISWI NSPS from being delegated to state, local, or tribal agencies. 40 CFR § 60.2030(c)(1). In such situations and provided such authority has been internally delegated to the EPA Regions, EPA Regions are responsible for responding to such requests, without required consultation (Tier 4). Where not expressly reserved in the relevant rule, authority to respond to many subpart-specific requests has been delegated to state, local, or tribal agencies along with the general delegation of the subpart (Tier 5). Again, when determining the appropriate office for responding to such a request, consult the regulatory language to determine whether the authority is specifically reserved to EPA or is delegable to an air agency.

2.6 Other Requests NOT Covered by this Manual

The following requests may appear similar to those discussed in this manual, but they are not subject to the same tiering system or EPA response procedures. These include:

- Alternative means of emission limitation under CAA sections 111(h) and 112(h)
- Innovative technology waivers for NSPS under CAA section 111(j)

Alternative Means of Emission Limitation
Requests for alternative means of emission limitation (AMEL), also known as alternative nonopacity emission standards, are based on CAA sections 111(h)(3) and 112(h)(3), 40 CFR § 63.6(g), and other provisions in source category-specific subparts. Unlike the requests discussed in this manual, requests for AMEL involve changes to the NSPS or NESHAP standards themselves. Responding to such requests requires following additional statutory requirements and applicable regulatory requirements, as contained in either the relevant general provisions and/or the specific subpart at issue. Thus, these requests are not included in this manual and are not subject to the same tiering system or EPA response procedures. EPA Delegation 7-121 provides OAR the responsibility for responding to AMEL requests.

Innovative Technology Waivers
Similar to AMEL, innovative technology waivers under section 111(j) require additional procedures dictated by statutory requirements and are not addressed in this manual.

Section 3. EPA Procedures for Addressing Formal Written Requests

State, local, and tribal air pollution control agencies are the first stop for most routine questions involving section 111, 112, and 129 rules. However, certain types of requests are addressed by EPA—such as where an air agency has not been delegated the authority to respond to the request, or where the request is novel or complex and EPA's input is requested. The procedures discussed below relate to formal requests that are transmitted to, and responded to by, EPA. A roughly chronological list of each step is summarized below, divided into three phases. This list can serve as a checklist to guide the process, and gauge the progress, of EPA's responses to incoming requests.

Phase 1: Receiving, Tracking, Tiering, and Assigning a Request

1. Submitting and receiving a request
2. Confirming details about the request
3. Tracking the request (through the National Tracking System on SharePoint)
4. Tiering and assigning a lead office
5. Preparing for consultation and/or establishing an informal workgroup

Phase 2: Developing EPA's Response

6. Researching the issue(s)
7. Drafting EPA's response
8. Consultation and review of EPA's response
9. Finalizing EPA's response/signing by delegated EPA official

Phase 3: Post-Signature Procedures

10. Distributing EPA's response
11. Uploading the response and other materials to the National Tracking System
12. Publishing to ADI and the *Federal Register*

Phase 1: Receiving, Tracking, Tiering, and Assigning a Request

3.1 Submitting and receiving a request

Requests for applicability determinations, regulatory interpretations, alternative test methods or monitoring procedures, and many other types of formal requests (and informal inquiries) come to different EPA offices in a variety of ways. Consistently tracking and processing formal requests in an efficient manner has been a longstanding challenge that EPA intends to address in this manual. The initial steps in the first phase of the process are critical to effectively and consistently managing incoming requests.

The first step in the process involves EPA's receipt of an incoming request. Until EPA's centralized electronic system is operational,[42] requests from the public—whether from owners or operators of regulated entities or air agencies—should generally be sent to the appropriate EPA Regional Office in the first instance.[43] EPA is working on providing a list of appropriate regional contacts on its external-facing website.

As a best practice, the EPA recipient of a formal written request should acknowledge receipt of the request within 5 business days of receipt. This receipt acknowledgement may be shared via email. As part of this initial communication, it may be helpful to notify the requestor of the possibility that additional information may be necessary for EPA to evaluate the request.

3.2 Confirming details about the request

The EPA office receiving the request should first confirm that the request is a formal written request for EPA's written feedback, as opposed to an informal inquiry. Many incoming requests are informally communicated via phone or in the body of an email and would not be considered formal written requests. Refer to Appendix A for information on distinguishing formal requests from informal inquiries. Some requests that begin as informal inquiries later develop into formal written requests. Only requests that are (or become) formal written requests need to follow the procedures discussed in this section. (However, some of the steps discussed below may also be relevant to responding to informal inquiries, as discussed further in Appendix A.)

The EPA office receiving the request should also confirm that the request is generally appropriate for EPA (as opposed to a delegated air agency) to consider and respond to. For example, requests related to routine issues over which an air pollution control agency has been delegated authority, or requests relating to the content of a section 111(d) or section 129 State Plan that is not language adopted from the applicable emissions guidelines by EPA, may be more appropriately handled by the delegated (or EPA-approved) air agency. In these situations, the EPA office in receipt of an incoming request is encouraged to reach out to the delegated air agency to determine whether the air agency—as the authority with primary responsibility for implementing and enforcing standards under CAA sections 111, 112, and 129—would prefer to issue such a response.[44]

At this stage, if it is unclear whether the request is a formal request that EPA (as opposed to a delegated air agency) should respond to, the receiving office will need to request a clarification or additional information from the requestor. The receiving office may conduct these preliminary information-gathering tasks prior to tracking the request or reaching out to other offices.

[42] OAR has taken lead responsibility (with input from other offices, e.g., OECA, Regions) for developing a centralized electronic system through which the public will be able to submit the various types of formal requests discussed in this manual to EPA. This manual will be updated to reflect the use of such a system once it becomes operational. The system is expected to become operational by early 2021.

[43] Requests for regulatory interpretations that are not Region-specific may be transmitted directly to the relevant EPA headquarters office.

[44] If it is determined for any reason that EPA will not issue a response to a formal request, the requestor may withdraw the request by written letter or email. If this happens later in the process, the lead office will update the National Tracking System (discussed in the following sections) to indicate withdrawal.

For all incoming written requests—particularly those to which EPA will respond—it is a best practice for the office that receives the request (or the Regional Office, for requests sent directly to a headquarters office) to reach out to the air agency in which the source is located to inform the air agency of the incoming request. This communication may be done informally (e.g., by phone or email), following the standard practices of the Regional Office.

3.3 Tracking the request (through the National Tracking System on SharePoint)

Until an automated electronic tracking system is operational, the Group Leader of the Operating Permits Group in OAQPS (the OAQPS tracking coordinator) will oversee tracking of incoming requests by maintaining a National Tracking System housed on the following SharePoint site: *https://usepa.sharepoint.com/sites/OAR_Custom/ADT/Lists/Request%20Tracker/AllItems.aspx*.

This National Tracking System is used to track the following types of incoming requests and EPA-issued responses:

- Applicability determinations;
- Regulatory interpretations;
- Region-issued alternative test methods;
- Alternative monitoring decisions;
- Alternative recordkeeping and reporting;
- Alternative reporting schedules;
- Performance test waivers;
- Performance test extensions (force majeure);
- Technical compliance extensions; and
- Other requests for alternatives, such as those provided for in individual subparts.[45]

The following types of requests, although discussed in this manual, will not be tracked:

- OAQPS-issued alternative test methods;[46]
- Test plans (including test plans that include minor changes to test methods)
- Other requests that do not involve changes to regulatory requirements promulgated in EPA regulations.

After determining that a request warrants a formal written response that must be tracked, the EPA office that received the request is responsible for creating an entry in the National Tracking System in the SharePoint site to begin tracking the request as soon as practicable, but no later

[45] Importantly, this only includes requests for alternatives, extensions, and waivers that would change existing regulatory requirements established in individual subparts. This does not include requests to approve site-specific operating conditions when such site-specific approval is a basic requirement of a regulation.
[46] OAQPS/AQAD/MTG will separately track all OAQPS-issued alternative test method decisions.

than 5 business days after receiving the request.[47] Responsibility for updating the tracking information may later transfer to a different EPA office if it is determined that another office should be the lead office for a given request. However, the EPA office receiving the request should always initiate this tracking process and add basic information about the request through the forms on the tracking system.[48] The recipient office will upload a copy of the incoming request as part of the tracking form that the recipient office will complete.

3.4 Tiering and assigning a lead office

When creating an entry for an incoming request in the National Tracking System, the recipient office will, among other things, identify the type of request and suggest a Tier and lead office based on the criteria described in Sections 2 and 3 of this manual. For example, the Regional Office that receives an incoming request could add it to the tracking system and suggest that it be considered a Tier 3 applicability determination for which the Regional Office will take the lead in developing a response. If the recipient office has any questions about the appropriate tier, it may raise these questions to the OAQPS tracking coordinator at this time.

The OAQPS tracking coordinator (and, depending on the type of request, certain other offices) will automatically receive notifications when new items are added to the tracking system and may evaluate whether incoming entries are appropriately identified or tiered. Absent any communication from the OAQPS tracking coordinator(s) within 5 business days, the recipient office may move forward with processing the request according to the proposed tier (or may forward the request to the proposed lead office, if it has not done so already).

In some cases, characterizing the request (e.g., whether it is an applicability determination or a regulatory interpretation) and determining the appropriate tier (e.g., whether it is nationally significant) may be complicated. In these situations, either at the request of the receiving office (usually a Regional Office) or a headquarters office, the OAQPS tracking coordinator will convene an ad hoc tiering committee to help determine the appropriate tier. This committee will comprise staff from the relevant EPA region (presumably the recipient office) and OAR/OAQPS/AQPD (the OAQPS tracking coordinator), along with other offices, depending on the type of request:

- For applicability determinations, OAQPS/SPPD will be included in the tiering committee. Shortly after convening, the tiering committee will provide OECA and relevant ECAD an opportunity to provide information relevant to national enforcement significance within 5 business days.
- For regulatory interpretations, OAQPS/SPPD will be part of the tiering committee.
- For alternative test methods, OAQPS/AQAD will be part of the tiering committee.

[47] For requests received solely through paper mail, determining the date of receipt may be more difficult, but generally should reflect the date the request is stamped "received" and/or provided to an appropriate manager or staff.

[48] Staff in all relevant EPA offices will have access to the National Tracking System and the ability to create and edit entries in the tracking system. Additional guidance on the use of this tracking system is available on the SharePoint site. For questions about how to use the tracking system, contact the OAQPS tracking coordinator.

- For alternative monitoring, OECA will be part of the tiering committee.

During the tiering process, it may be necessary to request additional information from the requestor to determine the scope and intent of the request. Once all necessary information has been received, the tiering committee should work to complete the tiering exercise within one week. Note that formation of an ad-hoc committee to resolve complicated tiering issues is intended as a resource for Regional Offices, and as an oversight tool for headquarters offices. However, in most cases, this committee will not be necessary, and the recipient office may either begin processing the request or may forward the request to the appropriate lead office.

Resolution of the tiering exercise will define the appropriate lead office and consultation roles. If the lead office is different from the office that initially received the request, the request and all supporting materials should be transmitted to the lead office. A list of appropriate lead office contacts is available internally at *THIS LINK*. The lead office will coordinate the majority of the steps described below. At this stage, the lead office will update the National Tracking System to indicate the final tier, final tier date, lead office, and lead office staff fields of the tracker.

Note that some tiering decisions—whether made by the receiving office or by an ad-hoc tiering committee—may need to be revisited later in the process in certain situations. For example, after researching the issues and beginning to develop EPA's response, the lead office and consulting offices might determine that the request presents a more novel or nationally significant issue than initially apparent, or the offices might determine that a different type of response (e.g., a regulatory interpretation instead of an applicability determination) is more appropriate. In such cases, lead office and consultation roles should be transferred as soon as practicable.

Box 3.1 Consultation Overview

Many EPA responses will involve coordination within different divisions of an EPA lead office, as well as consultation with other EPA offices. The specific coordination and consultation roles associated with each type of request are detailed in Section 2 of this manual. This box provides a basic overview of consultation; additional details about the process for engaging in consultation is provided in Sections 3.5 through 3.8 (particularly Section 3.8).

First, the lead group or division within a lead office may need (or want) to coordinate with other groups or divisions within the lead office. This type of within-office coordination will depend on the nature of the request (as discussed in Section 2) and may be further governed by the lead office's internal delegations and procedures. For example, although the Operating Permits Group in the Air Quality Policy Division within OAQPS will lead the development of nationally significant applicability determinations (Tier 1), responding to such requests will always involve coordination with staff from the relevant standard-setting group within the Sectors Policies and Programs Division within OAQPS. For another example, depending on the structure of a Regional Office (and any within-office delegations), an applicability determination related to a NSPS or NESHAP may be led by either the ARD or ECAD branch of the Regional Office. For Tier 3 requests, the lead group or division within a Region is to coordinate with (or at a minimum, notify and provide an opportunity for feedback from) other relevant divisions (including those named above, as well as the ORC) in developing EPA's

response. Even for Tier 4 requests, if ARD is the lead division, it is to notify/check with ECAD regarding any possible enforcement implications.

Second, for certain types of requests (Tier 1 and Tier 3), inter-office consultation with other offices is mandatory. This type of consultation is sometimes embodied as a condition of the relevant delegation agreement.[49] For requests where consultation is optional (Tier 2 and Tier 4), the lead office is encouraged to consult on a case-by-case basis with other EPA offices when seeking additional technical expertise or national perspective, and to ensure consistency with precedent and that there are no ongoing/potential enforcement actions that may be impacted by responding to the request.

The means by which coordination and consultation are conducted may vary depending on the complexity of the request and the number of offices involved. In general, and unless otherwise specified in a specific delegation, consultation is often satisfied with staff-level participation from consulting offices. For routine or straightforward responses that require little intra-office coordination or inter-office consultation, the lead office has the discretion to determine the appropriate procedures to obtain all necessary input from the offices involved. For complicated responses coordinated between multiple offices, the most effective way to offer consultation is to form an informal response-specific workgroup with staff representatives from each consulted office (along with staff from different divisions within the lead office).[50]

3.5 Preparing for consultation

Shortly after a lead office is assigned an incoming request, the lead office is responsible for identifying and reaching out to the relevant staff from other divisions within the lead office, as well as from consulting offices (e.g., organizing the workgroup, if one is formed). To determine the appropriate staff from each consulting office to involve in deliberations, the lead staff should either consult the EPA staff contact list available internally at *THIS LINK* or contact the first-line supervisor of the relevant office. Standing workgroups that comprise EPA staff familiar with relevant subject matter (e.g., the section 129 workgroup) may facilitate the process of identifying relevant staff or establishing a response-specific workgroup.

[49] Although consultation is the most common restriction placed on delegations of authority, individual delegation agreements may place different restrictions on the exercise of delegated authority, including requirements that the lead office "notify" another office, or that another office "concur" in the lead office's decision. *See* https://intranet.epa.gov/ohr/rmpolicy/ads/dm/intro.htm. Notification requires informing the named office when exercising the delegated authority. Concurrence requires approval from the other office before exercising the authority. Consultation, by contrast, requires discussing an action with other EPA officials (generally through staff representatives) before exercising the delegated authority. In practice, even though consultation does not require concurrence, the lead office should strive to obtain concurrence from all offices whenever possible before moving forward.

[50] The manner by which a lead office coordinates internally may vary depending on the internal procedures of the lead office. For example, representatives from different divisions of the lead office may participate in the same staff workgroup as staff from outside consulting offices, or the lead office may choose to coordinate internally through other, less formal mechanisms outside of the workgroup process.

Phase 2: Developing the Response

3.6 Researching the issue(s)

Once the appropriate lead office staff is assigned to the request, staff should begin researching the issues, which would include reviewing: applicable statutory and regulatory provisions; the preambles to proposed and final rules, response to comments document, and technical support documents associated with a rule; EPA precedent (e.g., through the ADI); relevant compliance and enforcement history; and factual information provided by the requestor.

If necessary, the lead office staff may also request additional factual information and documentation from the requestor. Once all relevant information has been received from the requestor, the lead office will update the National Tracking System to reflect the date a complete request has been submitted.

During this early stage, the lead office staff should consult with staff in other offices as necessary. For example, for applicability determinations, the lead office staff will reach out to ECAD and/or OECA to determine whether there are any ongoing or potential enforcement actions related to the request. The lead office staff may also consult with other offices to gather additional information on topics about which the consulting offices may have additional experience or expertise.

Depending on the complexity of the issues addressed and the level of consultation involved, after researching the issues, the lead office may choose to develop written materials summarizing the issues and/or outlining the lead office's preferred approach. These documents may facilitate workgroup discussions of novel or complex issues and may also be used as a starting point for drafting EPA's response.

3.7 Drafting EPA's response

The lead office staff will typically draft EPA's response, with input from consulting offices. For more straightforward responses, the draft response may be the first (and only) document shared with consulting offices in the workgroup. For more complicated or contentious issues with significant involvement from other offices, the lead office may want to hold off on drafting the response until after all consulting offices have discussed the proposed approach (e.g., through workgroup meetings) and after any necessary management input has been received, as discussed further in Section 3.8.

Staff drafting a response should review prior EPA responses (such as those available on the ADI) for examples/templates to use as a starting point. In order to ensure uniformity and completeness in EPA responses across multiple offices, drafters should also follow the drafting guidelines below.

- Follow the conventions in EPA's style manual, available here: *https://intranet.epa.gov/agcyintr/manual/index.html*.

- Label draft versions of EPA's response, such as those distributed to the workgroup for review, with a header reading "DRAFT, INTERNAL, DELIBERATIVE," etc.

- **Restate the question**. Only EPA's response (and not the incoming question) will be posted on the ADI. To make determinations and decisions useful for future reference, it is necessary that the question be accurately restated or summarized. If necessary, additional technical information related to the incoming question may be included as an attachment to EPA's response.

- **Identify the applicable subpart and regulations**. Reiterate in the response the relevant regulation(s) at issue, including general citations to the relevant subpart and specific citations to the CFR provisions at issue. If responding to a question concerning a section 111(d) or section 129 rule, be explicit about whether EPA's response concerns Emission Guidelines, a State Plan, or a Federal Plan.[51]

- **Clearly state what is being determined, interpreted, or approved (or denied)**.
    - The form of EPA's response may sometimes differ from that which was requested (e.g., EPA may issue a regulatory interpretation even though an applicability determination was requested). Thus, it is important to explicitly identify the nature of EPA's response, along with a concise explanation of why EPA is issuing that type of response, particularly when issuing an applicability determination or regulatory interpretation. For non-binding responses (e.g., regulatory interpretations or any responses to delegated air agencies), EPA's letter should clearly state that the Agency's position is not binding and not a final agency action. Consult with ORC or OGC for appropriate disclaimer language.
    - For EPA responses approving a request for an alternative test method, alternative monitoring, compliance extension, or other type of request, it is essential to clearly state the new requirements. The reader may not have the same interpretation of the proposed or approved alternative as does EPA. For example, if the test method or monitoring frequency is changing, reiterate the name of the method or the new frequency in EPA's response letter. If the alternative protocol is very lengthy and is being approved in its entirety, attach or specifically cite the new method. It is also important to use the correct terminology to describe the change.[52]

[51] Care should be taken when addressing issues related to Emission Guidelines or EPA-approved State Plans. Particularly, when responding to an applicability determination request related to Emission Guidelines (e.g., when neither a State or Federal Plan is yet in effect), such an applicability determination could speak to whether the facility is the type of "affected facility" addressed by the Emission Guidelines, or to the applicability of a specific provision within EPA's Emission Guidelines. Provided that circumstances do not change at the facility, such a determination may be relevant to whether the source is subject to a future-promulgated Federal Plan, or whether the source should be included in a future State Plan submitted for EPA approval. When responding to a request related to an EPA-approved State Plan, the lead staff should always consult with ORC and/or OGC in determining whether and how to respond to such a request.

[52] For example, when approving an alternative test method or monitoring, it is important to use the correct terminology from the relevant regulations to describe the change, which may differ depending on whether the change is processed under part 60 or 63.

- **Explain why**. State the rationale for the determination, approval, or disapproval.
    - If concurring with the position of another EPA office, delegated agency, or the requestor, be specific as to what information is particularly compelling. Be more specific than "based on your submission" or "it is acceptable upon review."
    - Cite and summarize documents and technical information that support the determination.
    - Cite the appropriate statutory and regulatory provisions, guidance documents, policy statements, determinations, and interpretations. When referring to a previous determination, cite at a minimum the date, author, and origin (office) of the determination. Where preamble language exists that is on point, identify, quote or paraphrase the *Federal Register* notice, along with a citation.
    - If a previous determination seems to contradict our current determination, explain how the current case is different.

- In conclusion, EPA's response must include enough information that the question, the answer, the rationale, and the effect of the determination are all clear from reading the response alone.

- As applicable, EPA's response should also identify the EPA offices that were consulted in developing the response.

3.8 Consultation and review of EPA's response

Consultation[53] can occur at multiple points in the process, beginning shortly after a lead office is assigned and continuing until final approval and signature of EPA's response. Appendix E contains a checklist of specific items or information the lead office should consider sharing throughout the consultation process.

The level of engagement with consulting offices during the early stages of the response process will vary on a case-by-case basis. At a minimum, for all responses, the lead office will share a copy of the incoming request and other associated documents with all consulting offices. As described in Section 3.6, the lead office may need or want to engage in consultation while researching the issues. When relevant, the lead office should also share a copy of any pre-decisional materials developed by the lead office (e.g., issues papers, etc.). For more complex responses, it may be helpful for the lead office to discuss the issues and the lead office's proposed response with other offices prior to developing the draft response. These discussions will generally occur through workgroup meetings, organized by the lead office as necessary (or when requested by another office).

For all EPA responses involving consultation, the lead office should share a copy of the draft response and solicit written feedback from staff in all consulting offices. In addition to this email distribution, an optional but effective way to encourage feedback during this stage is to schedule

[53] The consultation procedures discussed in this section are primarily related to the lead office's engagement with other EPA offices. Intra-office coordination within different divisions of the lead office may—but do not necessarily need to—follow the same procedures.

a short workgroup call to discuss the response and all consulting offices' plans for providing written feedback. Consultees intending to provide comments on the draft response will engage in best efforts to do so within 10 calendar days after receiving the lead office request. If the lead office has not heard from a consulting office within this time period, the lead office should reach out to confirm whether the consulting office intends to provide feedback before proceeding. If a consultee requires additional time to review the draft response, the lead office and consultee will agree upon a date by when to provide comment.

The lead office should work collaboratively with all other offices to address feedback and should strive to achieve consensus (e.g., through additional workgroup meetings, as necessary). Issues that cannot be resolved at the staff level shall be expeditiously elevated to management for resolution. Appropriate levels of management from each consulted office will be given the opportunity to weigh in during this process.

3.9 Finalizing EPA's response/ signing by delegated EPA official

Once EPA's draft final written response has been reviewed by staff from all participating consulting offices (e.g., the staff workgroup) and all outstanding issues have been resolved (or elevated to management for resolution), the lead office will prepare the final written response for management review. The level of necessary management review within the lead office will depend on the nature of the response, but usually will not exceed the EPA official that has been (re-)delegated authority to respond to the request. In addition to management from the lead office, management from other offices may also review EPA's written response, upon request.

The lead staff should follow the internal routing procedures within the Region/Office for signature packages and final approval of the response. The final EPA response must be signed by an EPA official with delegated authority.[54]

Phase 3: Post-Signature Procedures

3.10 Distributing EPA's response

As soon as EPA's final response letter is signed, the lead office will send the signed response letter to the requestor in the format generally used by the lead office. When transmitting an electronic copy of EPA's signed letter via email, consider requesting a return receipt from the requestor.

Delegated air agencies and/or regulated entities should be cc'd, as appropriate, and may be sent an electronic copy of EPA's response.

Copies of EPA's response will also be distributed electronically to other relevant EPA offices (including offices that may be interested in the outcome, but which were not consulted or

[54] This includes EPA officials serving in an acting capacity, as well as EPA officials up the chain of command from the official who has been redelegated authority (which should also have delegated authority).

declined to participate). Typically, key staff from relevant consulting offices are cc'd, but they may also be bcc'd depending on the preference of the lead office. When appropriate, management from consulting offices may also be cc'd in addition to or instead of staff. As noted in Section 3.7, regardless of whether individual staff are listed as cc's in EPA's response, the body of EPA's response letter should acknowledge which other EPA offices were involved in developing the response.

For example, for a Tier 1 applicability determination issued by OAQPS, the signed copy would be transmitted to the facility requesting the determination, and copies would be shared with the relevant delegated air agency, EPA Regional Office staff, OECA staff, and OGC staff (as cc's).

3.11 Uploading the response and other materials to the National Tracking System

For all responses that were initially tracked through SharePoint (*see* Section 3.3 for a list of the relevant response types), the lead office will update the National Tracking System to reflect the distribution date of EPA's response and any other relevant updates or information that was not previously included in the tracking system (e.g., which offices were consulted). The lead office should also upload a PDF copy of the final EPA response, any supporting documents attached to EPA's response, and (if not previously uploaded) the incoming request letter, to a designated location on SharePoint.[55]

For these responses tracked through SharePoint (again, *see* Section 3.3), in addition to EPA's response, the lead office must prepare an abstract and a header, and then upload these documents to the SharePoint site (these documents will eventually be posted to the ADI by OAQPS). Each of these documents should be included in a separate Word file.

The abstract should contain a high-level summary of the issues addressed in the request, including: the type of request; the question/issue presented; the type of source or equipment addressed; the applicable subparts or specific regulatory citations; and the name and location of the facility. The abstract should generally not provide a summary of EPA's response or the basis for EPA's response (as such a summary may not be able to capture important nuances or limitations to EPA's decision).

The header should list the name of the person who signed the EPA response letter, the date of EPA's response, the subject line, the affected subpart, and any relevant regulatory citations.

3.12 Publishing to ADI and the *Federal Register*

For the responses identified in Section 3.3, the OAQPS tracking coordinator is responsible for ensuring that EPA's response, along with other relevant materials uploaded by the lead office to

[55] If issues arise uploading documents to SharePoint, the lead office can also email documents directly to the OAQPS tracking coordinator.

SharePoint, are uploaded to AIS and periodically published on the ADI website.[56] The OAQPS tracking coordinator is also responsible for providing notice of such responses in the *Federal Register* on a periodic basis. *Federal Register* publication of final actions like applicability determinations is particularly important, as such publication starts a 60-day period for judicial challenges to EPA's decision. For broadly-applicable alternative test method approvals, OAR/OAQPS/AQAD/MTG is responsible for publishing EPA's responses on the EPA Air Emission Measurement Center website at www.epa.gov/emc and for providing notice of such responses in the *Federal Register* on a yearly basis.

Box 3.2 Example of the Process for Issuing a Tier 3 Applicability Determination

A regulated entity wants EPA's input on whether a proposed new process line would be subject to the subpart ABCD NSPS. After informally discussing the issue with the delegated state air agency, the state and the facility realize that the issue is fairly complex, and the state advises the facility to reach out to EPA.

The facility sends its request in the body of an email to the Regional Office air program staff contact that it finds on EPA's website.

The facility's emailed request is somewhat hypothetical and relatively short. Upon receiving the request, the Regional Office staff observes that it is not clear whether the facility is asking for a formal applicability determination from EPA, or whether it simply wants informal feedback on some of the general questions in the email. The Regional Office staff asks the facility to clarify whether it desires a formal, determinative decision by EPA as to the applicability of the ABCD NSPS to the proposed activity. The Region indicates that if so, the facility would need to send a more formal written signed request for an applicability determination, accompanied by sufficient factual information for EPA's consideration.

The facility responds by submitting an explicit request for an EPA applicability determination, accompanied by comprehensive factual information about the proposed process design.

Upon receiving the request, the Regional Office acknowledges receipt with an e-mail confirmation to the requestor and also forwards a copy of the incoming request to the relevant delegated state agency. The Regional Office promptly adds a short entry to the SharePoint National Tracking System on SharePoint, indicating some basic information about the request and a suggestion that it be considered a Tier 3 applicability determination (to which the Region would respond). The Regional Office also uploads the incoming request to the National Tracking System.

The OAQPS tracking coordinator is automatically notified of the new entry to the National Tracking System. Appreciating that the request raises some novel issues, the Regional Office staff proactively reaches out to the OAQPS tracking coordinator to confirm that the request should be considered Tier 3 (and, consequently, that the Region is the appropriate lead office). The OAQPS tracking coordinator notifies the coordinator in SPPD, who, together with the

[56] The OAQPS tracking coordinator is responsible for updating the tracking database to reflect the dates the documents were added to AIS and ADI.

Regional Office (the ad hoc tiering committee), confer as to the tiering decision. Although the request appears to raise a somewhat novel issue, it appears unique to the facility's design and unlikely to be nationally significant or precedential, so the tiering committee ultimately agrees that Tier 3 is appropriate. The Regional Office is now officially the lead office.

The first line supervisor (branch chief/group leader) of the Regional Office's air permitting branch assigns a lead staff for the project. Given the complexity of the project, the branch chief decides that a temporary workgroup should be formed to facilitate the consultation process. Either the branch chief or lead staff reaches out to colleagues in the regional ECAD and ORC offices to notify them of the incoming request and confirm whether these offices would like to participate in the process. The lead office also checks with ECAD to make sure there are no active/potential enforcement proceedings related to the facility. After checking the master contact list on the SharePoint site, the lead office also reaches out to the appropriate contacts in the relevant standard-setting group of OAQPS/SPPD and in OECA. ORC suggests that OGC should be looped in due to complex legal issues in the request, so the lead office also reaches out to the appropriate OGC subject matter expert.

The lead staff circulates a copy of the incoming request to all staff workgroup members from different offices and identifies a rough timeline for future correspondence or meetings to discuss the request.

The lead staff begins researching the issues underlying the request, checking the regulatory text of subpart ABCD; scanning the proposal and final preambles, response to comments, and technical support document associated with the rule; searching the ADI to determine whether similar issues have been previously addressed. The lead staff realizes that the technical information submitted by the facility omits key pieces of information relevant to the applicability of the subpart, so the staff reaches out to the facility to request additional information on the missing aspect of the process design. Once all information/documentation has been provided by the requestor, the lead staff updates the National Tracking System to indicate the date all information was received.

After evaluating all information and informally discussing the issue with his or her branch chief/group leader, the lead staff drafts a short 1-pager outlining a preliminary position and suggested EPA response. The lead staff shares this 1-pager with the other workgroup members and sets up a teleconference meeting to discuss the issues with the workgroup.

During the workgroup call, staff from one of the consulting headquarters offices indicates disagreement with how the lead staff has interpreted a regulatory provision, and the workgroup discusses both sides of the issue. The workgroup staff are unable to reach consensus on the issue during the initial workgroup call, so the lead office schedules another call for one week later. Staff from all offices invite their branch chiefs/group leaders to join the call, during which the group successfully reaches consensus on a viable path forward.

The lead staff drafts EPA's response letter, using prior letters as a template and following the drafting guidelines presented in Section 3.7 of this Process Manual.

The lead staff circulates a draft of the response letter to the workgroup, requesting feedback within 10 calendar days. After sending a reminder email a few days before the deadline, staff from another office requests a few more days to review, and the lead office agrees. The written feedback from the workgroup is all constructive, and staff in all offices are comfortable with EPA's draft response.

The lead staff cleans up the draft response and shares it with his or her supervisor for review. One consulting office requests that a clean copy of the letter be shared with his or her supervisor, so the lead staff shares it with him or her too.

After this round of review, the lead staff prepares the document (plus a routing memo required by that specific Regional Office's protocols) for transmission to the division director, who has the delegated authority to issue applicability determinations in the Region.

The Regional division director signs the letter. The same day, staff mail a hard copy of the letter to the requestor, and the lead staff emails scanned copies of the letter to the requestor, the state air agency, and all staff that participated in the workgroup.

The lead staff updates the National Tracking System on SharePoint to reflect the status of EPA's response and the completed consultation, as well as to update any other relevant information in the database related to this request and EPA's response.

The lead staff realizes that he or she needs to prepare an abstract summarizing EPA's response. After preparing the abstract, the lead staff uploads the final letter, abstract, and header information to the SharePoint site. The lead staff's obligations are now concluded.

Subsequently, as part of its periodic effort to update the ADI, the OAQPS tracking coordinator ensures that the letter, abstract, and header information from this applicability determination (along with a dozen other recently-issued EPA responses) are uploaded into the ADI, and prepares a *Federal Register* Notice announcing the availability of these decisions.

No one files a lawsuit within the 60-day judicial review period challenging EPA's applicability determination. The state air agency (which also serves as the state permitting authority) issues a preconstruction permit authorizing the construction of the new process equipment, and then a title V permit authorizing the operation of the new process equipment. The title V permit incorporates all of the relevant ABCD NESHAP requirements that EPA identified as applicable in EPA's recent response letter, and the facility operates in compliance with these requirements.

APPENDIX A. Responding to Informal Inquiries

Regulated entities, air pollution control agencies, and other stakeholders often contact EPA by telephone or e-mail to informally raise questions concerning regulations under CAA sections 111, 112, and 129 ("informal inquiries"). It is important to distinguish these informal inquiries from the formal signed written requests and formal EPA responses from Agency officials with delegated authority discussed in this manual, and to clearly communicate this distinction.

Distinguishing Informal Inquiries from Formal Signed Written Requests

All discussions by telephone are inherently informal. Most email correspondence will also be considered informal. However, because formal requests may be transmitted by email, and because both informal inquiries and formal requests may involve similar questions or topics, it is particularly important to understand the differences between informal and formal email communications, as described below and summarized in Table A.1.

The format of the incoming request should provide helpful context as to the request's formality. Informal inquiries are generally contained as text in the body of an email, whereas formal requests should be reflected in a separate letter signed by a representative for the company (formal request letters may be electronically signed and included as an attachment to an email). The content of an incoming request should also be examined. Informal inquiries may seek additional information or ask questions related to the applicability of a rule or the availability of alternative compliance measures, but such requests are often more hypothetical and less fully developed than a formal request. Formal requests should also explicitly identify the nature of the request (e.g., "Company A requests an applicability determination for its planned construction of …" or "Company A requests EPA's approval for the alternative test method specified below."). As discussed further below, if it is unclear whether the requestor intended to submit a formal request, EPA should ask the requestor for a clarification.

Distinguishing between informal inquiries and formal requests is particularly important when it comes to EPA's responses. Informal inquiries may be handled by the EPA staff with technical expertise, including those that have not been delegated the authority to issue formal responses or speak officially on behalf of the Agency. Correspondence from EPA staff may be informative, but it does not reflect an "official" EPA position. By contrast, formal EPA responses must be signed by an EPA official with delegated authority to respond to a particular type of request. Formal responses are dispositive and reflect EPA's official position on the matter at hand.[57]

[57] This description primarily applies to applicability determinations, alternative test methods, alternative monitoring, and EPA responses to other source-specific requests. As discussed in Section 2.2 of this manual, regulatory interpretations may be based on some hypothetical facts, are generally not site-specific or dispositive, and should not be relied on in the same manner.

Table A.1. Distinguishing Informal Inquiries from Formal Requests and Responses

	Informal Inquiries	**Formal Requests/ Responses**[58]
Format	Telephone or email discussion	Formal signed letter (may be transmitted via email)
Request Content	Asks questions or seeks additional information; may be somewhat hypothetical	Explicitly requests EPA's position based on full and complete facts
EPA Response	Communication handled by EPA staff without authority to bind the Agency	Letter signed by an EPA official with delegated authority to speak on behalf of the Agency
Effect of Response	May be informative, but should not be relied upon as an official EPA position	Dispositive, official EPA position for the specific issue addressed

How to Approach Informal Inquiries

Many of the procedures associated with responding to formal requests may also be relevant to EPA's consideration of informal inquiries. References within the following paragraphs to Section 3 of this manual are intended to provide helpful parallels, but do not establish mandatory procedures that must be followed when addressing informal inquiries.

In some cases, a request that begins as an informal inquiry may ultimately turn into a formal request. In other cases, a request that begins as a formal written request may be resolved to the requestor's satisfaction through informal discussions, and the formal request may be withdrawn.

As with formal requests, informal inquiries arrive at EPA through various channels (*see* Section 3.1). Upon receiving an informal inquiry from an outside party, EPA staff should first consider whether EPA is best suited to address the issues posed, or whether the inquiry could be addressed by the delegated air agency (*see* Section 3.2). Even where informal discussions are principally between an outside party and EPA, it is often a best practice to notify the delegated air agency of the outcome of these communications. The EPA staff receiving the inquiry should consider which EPA office or staff may be best suited to address the issues (and which other EPA offices should be involved in deliberations and communications) (*see* Sections 3.4. and 3.5. When determining the most appropriate EPA office or staff to address an informal inquiry, the lead office designations associated with different types of formal requests (discussed in Section 2 of this manual) may be a helpful starting point. More specific staff contacts associated with different types of requests or particular subparts may be found on EPA's internal SharePoint site at *THIS LINK*. Responding to informal inquiries may involve significant resource commitments from EPA staff, including substantial research and coordination/consultation within and between EPA offices (*see* Sections 3.6 and 3.8). When coordinating EPA's informal responses within EPA offices, EPA staff should not publicly release internal, deliberative emails or documents to outside parties.

[58] As explained in note 51, not all elements of this table relate to regulatory interpretations.

Outside parties may not be aware of the differences between informal inquiries and formal requests, nor of the precise means by which they must request a formal EPA response. Accordingly, some incoming requests are not clear as to whether the requestor is interested in an informal inquiry or a formal EPA response. In such cases, EPA staff should ask for clarification of the requestor's intent. If the requestor intended (or later decides) to request a formal EPA response, EPA staff should inform the requestor of the appropriate means by which to formally request an EPA response. This will generally involve a more formal letter (which may be attached to an email) explicitly requesting the relevant EPA response, supported by sufficient factual information upon which EPA can base its decision.

Informal inquiries should generally be restricted to questions about section 111, 112, or 129 regulations that can be answered by referring the inquirer to relevant regulatory text or prior EPA statements (e.g., prior formal response letters in the ADI). EPA staff should avoid speaking to novel or unresolved issues of policy or interpretation during informal discussions. It is also important to clearly explain that EPA's feedback provided during informal discussions—including emails from EPA staff directly answering a question or expressing an opinion—do not reflect formal, determinative EPA responses. EPA staff should also be careful not to refer to an informal EPA communication as an "applicability determination," "regulatory interpretation," "alternative test method," alternative monitoring," or similar labels that correspond to the formal, written responses discussed in this manual.

APPENDIX B. Interface with Title V Operating Permits

Background

Stationary sources subject to NSPS and NESHAP regulations (along with other types of large sources) are generally required to obtain operating permits under title V of the Act. *See* CAA § 502(a); 40 CFR § 70.3(a). For these sources, the applicable requirements of NSPS, NESHAP, section 111(d), and section 129 rules are included in title V permits and are implemented and enforced primarily through the title V permitting program.

In most cases, the air agencies that have been delegated authority to implement NSPS, NESHAP, section 111(d), and section 129 rules also administer EPA-approved title V operating permit programs (known as "part 70 programs").[59] Although the same administrative agency may be responsible for implementing NSPS/ NESHAP/ 111(d)/ 129 and title V permitting programs, these two roles are distinct, albeit related.[60] Accordingly, delegations associated section 111, 112, and 129 rules, and EPA's responses to the requests discussed in this manual, generally occur outside of the title V permitting process. However, as discussed further below, the final decisions addressed in this manual must at some point be reflected in the title V permit to assure the permit contains and assures compliance with all applicable requirements.

In consolidating and assuring compliance with all applicable requirements, title V permits serve as an important compliance and enforcement tool. First, title V permits must include all CAA requirements that are applicable to a source in a single permit document. *See* CAA § 504(a); 40 CFR § 70.2 (definition of "applicable requirement" includes standards under CAA sections 111, 112, and 129). Thus, determining which requirements are applicable to a source is critical to the permitting process. This creates an area of overlap with applicability determinations and applicability-related regulatory interpretations, as discussed further below.

Second, title V permits must also assure compliance with all applicable requirements and permit terms. CAA §§ 504(a), (c); 40 CFR § 70.6(c)(1). Testing, monitoring, recordkeeping, and

[59] In limited circumstances, EPA acts as the title V permitting authority under regulations in 40 CFR part 71, or delegates this federal part 71 authority to a state, local, or tribal air agency. 40 CFR § 71.10. However, the vast majority of state and local agencies administer their own EPA-approved programs. Importantly, these EPA-approved programs are not described as "delegated" federal programs.

[60] Each state with an EPA-approved part 70 permitting program is required to have the authority to issue permits that include and assure compliance with all applicable section 111, 112, and 129 requirements. CAA §§ 502(b)(5)(A), (d)(1), 504(a), (c); 40 CFR §§ 70.4(b)(3)(i), (ii), (iv), (v), 70.4(c)(1)(iii), (d)(3)(ii)(A), 70.6(a)(1). The means by which a state permitting agency obtains this authority to include such requirements in title V permits is a matter of state law and does not necessarily require delegation of EPA's section 111, 112, or 129 authority to the state. However, as a practical matter, most states have taken delegation at least with respect to such standards applicable to title V sources, because delegation offers certain practical benefits over implementing these requirements solely through the title V permit program. For further information, *see* Memorandum from Thomas C. Curran (June 12, 1997), available at *https://www.epa.gov/sites/production/files/2015-08/documents/interfac.pdf*; Memorandum from Karen L. Blanchard (October 6, 1994), available at *https://www.epa.gov/sites/production/files/2015-08/documents/section1.pdf*; Memorandum from John S. Seitz (December 10, 1993), available at *https://www.epa.gov/sites/production/files/2015-08/documents/delegate.pdf*; and Memorandum from John S. Seitz, Director, (April 13, 1993), available at *https://www.epa.gov/sites/production/files/2015-08/documents/t5-112.pdf*.

reporting provisions associated with individual section 111, 112, and 129 rules must be included in title V permits. Additionally, the title V permitting process may also be used to establish additional testing, monitoring, recordkeeping, and reporting provisions when necessary to assure compliance with an applicable requirement or permit term.

Due to the unique procedural requirements associated with title V permits, issues related to NSPS, NESHAP, section 111(d), and section 129 rules may arise during multiple stages of the permitting process, including when title V permits are first issued, renewed (every 5 years), or, in certain cases, modified or reopened. In each permit action, a regulated entity may work with the permitting authority either before or after submitting a permit application to determine which requirements should be included in the source's permit. Once a state issues a draft permit, the public is afforded (at least) 30 days to comment on the permit terms. States are also required to submit a proposed permit (along with the state's response to public comments, as applicable) to EPA for a 45-day review period, during which time EPA can object to the permit if, for example, the permit does not contain or assure compliance with all applicable requirements. If EPA does not object to a permit, the public has a 60-day period to petition EPA to object to the permit. At any time after a final permit is issued, either the permitting authority or EPA can reopen a permit that does not comply with the Act.

Applicability Determinations and Title V Operating Permits

As noted above, a primary function of title V operating permits is to consolidate all existing applicable requirements into a single permit document. Determining which requirements (e.g., which NSPS, NESHAP, section 111, or section 129 regulations) apply to a source is therefore an important part of the permitting process. Thus, air agencies with approved title V programs make decisions similar to "applicability determinations"[61] when they determine which CAA requirements must be included in a draft permit.[62] These state permitting decisions concerning applicability must then go through a public comment period and an EPA review period where the public and EPA have an opportunity to evaluate the air agency's determinations of applicability. In this regard, the state title V decisions are different than the formal EPA-issued applicability determinations addressed in this manual.

In preparing a title V permit application, a source must identify all of the requirements that apply to the source. During this stage of the permitting process, owners or operators may find it useful to request an applicability determination from EPA or the delegated state or local agency (which, as noted above, may be different from the state or local permitting authority). As noted above, the process for seeking such a formal applicability determination from EPA occurs outside of the permitting process. Because formal EPA-issued applicability determinations are reviewable final agency actions that conclusively resolve questions of applicability for a particular source, these

[61] As noted above, *supra* note 24, such decisions are not referred to as "applicability determinations" as this term is defined in this manual.

[62] To the extent that the state, local, or tribal air agency with delegated authority to implement a section 111, 112, or 129 rule differs from the agency with an EPA-approved title V permitting program, the delegated air agency should be the first stop for resolving issues related to applicability of a delegated rule. However, as noted above, the permitting authority must also have the authority to issue title V permits that contain all applicable section 111, 112, and 129 requirements.

applicability determinations define the "applicable requirements" for title V purposes; therefore, issues related to the applicability of a regulation for which a formal EPA applicability determination has already been issued would not be substantively reviewed during the title V process.[63] By contrast, applicability issues that are addressed for the first time in a title V permit could generally be substantively reviewed through the title V permitting process.

Absent a formal EPA applicability determination, facilities interested in additional certainty may apply for a title V permit shield. *See* CAA § 504(f); 40 CFR § 70.6(f). Under these provisions, a permitting authority may expressly include in a title V permit a provision stating that compliance with the title V permit "shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that … such applicable requirements are included and are specifically identified in the permit." 40 CFR § 70.6(f)(1)(i). Otherwise, the permitting authority can only provide a shield from non-applicable requirements if it, "in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof." 40 CFR § 70.6(f)(1)(ii). The permit shield may only extend to requirements that exist (or are determined not to exist) as of the date of permit issuance, and does not apply to requirements that become applicable after issuance of a title V permit (whether due to EPA's promulgation of such a requirement, or a change at the source that renders the source subject to a requirement). Additionally, the content of a permit shield may be reviewed by the public and EPA, and EPA may object or reopen a permit if a permit shield is erroneously included in the title V permit.[64]

New sources are generally required to apply for a title V permit containing all applicable requirements within 12 months of becoming subject to the permitting program, or, in certain circumstances, within 12 months of beginning operation. 40 CFR § 70.5(a)(1)(i) and (ii). When new requirements become applicable to an existing source, these requirements must also be added to the source's title V permit. For permits with a remaining term of three or more years, new requirements that will become effective before the permit expires must be added to the permit within 18 months after promulgation of the applicable requirement. CAA § 502(b)(9); 40 CFR § 70.7(f)(1)(i) (reopening for cause). For permits with less than three years until expiration, such requirements may be incorporated during the next permit renewal.

Testing, Monitoring, Recordkeeping, Reporting, and Title V Operating Permits

Title V permits must contain testing, monitoring, recordkeeping, and reporting conditions sufficient to assure compliance with all applicable requirements and permit terms. As relevant to the NSPS, NESHAP, section 111(d), and section 129 rules discussed in this manual, this entails three basic steps:

[63] If a permit does not include a requirement that EPA formally determined was applicable, that *would* be properly raised through the permitting process, including through an EPA objection or reopening for cause.
[64] *See* Memorandum from Thomas C. Curran (June 12, 1997), available at *https://www.epa.gov/sites/production/files/2015-08/documents/interfac.pdf.*

First, title V permits must include all applicable testing, monitoring, recordkeeping, and reporting provisions included within the NSPS, NESHAP, section 111(d), or section 129 rule. *See* CAA § 504(a); 40 CFR § 70.6(a)(3)(i)(A).[65] If an alternative compliance assurance requirement has been approved following the mechanisms described in this manual, the alternative can be included in the title V permit in the place of the default provisions established in EPA's rule (the statement of basis accompanying the title V permit should summarize the reason for this change).

Second, if the underlying regulation does not contain any testing, monitoring, or recordkeeping requirements, then periodic testing, monitoring, or recordkeeping requirements sufficient to assure compliance must be added to the title V permit. 40 CFR § 70.6(a)(3)(i)(B). This should not be necessary for most post-1990 NSPS, NESHAP, section 111(d), and section 129 rules promulgated by EPA, each of which should include compliance assurance requirements.

Third, even when an underlying requirement contains some testing, monitoring, recordkeeping, or reporting requirements, a permitting authority or EPA may determine that additional conditions are necessary to assure compliance, and any such conditions must be incorporated into the title V permit. *See* CAA § 504(c); 40 CFR § 70.6(c)(1); *Sierra Club v. EPA*, 536 F.3d 673 (D.C. Cir. 2008). Although determining the adequacy of monitoring provisions is necessarily a case-by-case inquiry depending on various factors, most post-1990 NSPS, NESHAP, section 111(d), and section 129 rules should generally not require supplementation.

The procedures used to incorporate the appropriate testing, monitoring, recordkeeping, and reporting requirements into a title V permit may vary. Such provisions should generally be incorporated into a permit at the same time as the underlying emission standard(s) is included. For any changes or additions to compliance assurance provisions, EPA's regulations specify that permit revisions that require more frequent monitoring or reporting may be processed as an administrative amendment. 40 CFR § 70.7(d)(1)(iii). EPA's regulations also specify that minor permit modification procedures may be used for changes that do not involve significant changes to existing monitoring, recordkeeping, or reporting requirements. 40 CFR § 70.7(e)(2)(i)(A)(*2*). EPA's longstanding position is that alternatives approved through the NSPS and NESHAP procedures discussed in this manual may generally be incorporated in a title V permit using minor modification procedures, but a state title V program may differ on the required procedure for incorporating such requirements.[66] Regulated entities should consult with their title V permitting authority to determine the appropriate procedures for modifying a title V permit.

[65] Additionally, any requirements based on EPA's Compliance Assurance Monitoring (CAM) regulations in 40 CFR part 64 must be included in a title V permit. Where a source is subject to multiple potentially overlapping testing or monitoring requirements, the permit may specify a streamlined set of testing or monitoring provisions, provided such streamlined provisions assure compliance at least to the same extent as the provisions that are not included as a result of the streamlining. 40 CFR 70.6(a)(3)(i)(A); *see also* White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program, 6–20 (March 5, 1996).

[66] *See* 1999 Manual at 12 (superseded by this manual).

APPENDIX C: Relevant Regulations and Definitions

Note: the text reproduced below is a verbatim copy of the regulations as of July 2020.

Note: most citations to part 60 general provisions will also apply in the part 62 (State/Federal Plan) context, per 40 CFR § 62.02(b)(2),[67] which states:

> (2) The part 60 subpart A of this chapter general provisions and appendices to part 60 apply to part 62, except as follows: 40 CFR 60.7(a)(1), 60.7(a)(3), and 60.8(a) and where special provisions set forth under the applicable subpart of this part shall apply instead of any conflicting provisions.

Applicability Determinations

40 CFR § 60.5 Determination of construction or modification.

> (a) When requested to do so by an owner or operator, the Administrator will make a determination of whether action taken or intended to be taken by such owner or operator constitutes construction (including reconstruction) or modification or the commencement thereof within the meaning of this part.
> (b) The Administrator will respond to any request for a determination under paragraph (a) of this section within 30 days of receipt of such request.

40 CFR § 61.06 Determination of construction or modification.

- An owner or operator may submit to the Administrator a written application for a determination of whether actions intended to be taken by the owner or operator constitute construction or modification, or commencement thereof, of a source subject to a standard. The Administrator will notify the owner or operator of his determination within 30 days after receiving sufficient information to evaluate the application.

Alternative Test Methods (and Waivers)

40 CFR § 60.8(b):

(b) Performance tests shall be conducted and data reduced in accordance with the test methods and procedures contained in each applicable subpart unless the Administrator

> (1) specifies or approves, in specific cases, the use of a reference method with minor changes in methodology,
> (2) approves the use of an equivalent method,
> (3) approves the use of an alternative method the results of which he has determined to be adequate for indicating whether a specific source is in compliance,

[67] *See* 66 FR 32484, 32494 (June 14, 2001).

(4) waives the requirement for performance tests because the owner or operator of a source has demonstrated by other means to the Administrator's satisfaction that the affected facility is in compliance with the standard, or
(5) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors. Nothing in this paragraph shall be construed to abrogate the Administrator's authority to require testing under section 114 of the Act.

40 CFR § 61.13(h)(1):
(1) Emission tests shall be conducted as set forth in this section, the applicable subpart and appendix B unless the Administrator –
(i) Specifies or approves the use of a reference method with minor changes in methodology; or
(ii) Approves the use of an alternative method; or
(iii) Waives the requirement for emission testing because the owner or operator of a source has demonstrated by other means to the Administrator's satisfaction that the source is in compliance with the standard.

40 CFR § 63.7(e)(2):
(2) Performance tests shall be conducted and data shall be reduced in accordance with the test methods and procedures set forth in this section, in each relevant standard, and, if required, in applicable appendices of parts 51, 60, 61, and 63 of this chapter unless the Administrator –
(i) Specifies or approves, in specific cases, the use of a test method with minor changes in methodology (see definition in § 63.90(a)). Such changes may be approved in conjunction with approval of the site-specific test plan (see paragraph (c) of this section); or
(ii) Approves the use of an intermediate or major change or alternative to a test method (see definitions in § 63.90(a)), the results of which the Administrator has determined to be adequate for indicating whether a specific affected source is in compliance; or
(iii) Approves shorter sampling times or smaller sample volumes when necessitated by process variables or other factors; or
(iv) Waives the requirement for performance tests because the owner or operator of an affected source has demonstrated by other means to the Administrator's satisfaction that the affected source is in compliance with the relevant standard.

40 CFR § 63.7(f): Use of an alternative test method
(1)General. Until authorized to use an intermediate or major change or alternative to a test method, the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.
(2) The owner or operator of an affected source required to do performance testing by a relevant standard may use an alternative test method from that specified in the standard provided that the owner or operator –
(i) Notifies the Administrator of his or her intention to use an alternative test method at least 60 days before the performance test is scheduled to begin;
(ii) Uses Method 301 in appendix A of this part to validate the alternative test method. This may include the use of specific procedures of Method 301 if use of such procedures are sufficient to validate the alternative test method; and

(iii) Submits the results of the Method 301 validation process along with the notification of intention and the justification for not using the specified test method. The owner or operator may submit the information required in this paragraph well in advance of the deadline specified in paragraph (f)(2)(i) of this section to ensure a timely review by the Administrator in order to meet the performance test date specified in this section or the relevant standard.

40 CFR § 63.7 (h) Waiver of performance tests.

(1) Until a waiver of a performance testing requirement has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section.

(2) Individual performance tests may be waived upon written application to the Administrator if, in the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis, or the source is being operated under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request.

(3) Request to waive a performance test.

(i) If a request is made for an extension of compliance under § 63.6(i), the application for a waiver of an initial performance test shall accompany the information required for the request for an extension of compliance. If no extension of compliance is requested or if the owner or operator has requested an extension of compliance and the Administrator is still considering that request, the application for a waiver of an initial performance test shall be submitted at least 60 days before the performance test if the site-specific test plan under paragraph (c) of this section is not submitted.

(ii) If an application for a waiver of a subsequent performance test is made, the application may accompany any required compliance progress report, compliance status report, or excess emissions and continuous monitoring system performance report [such as those required under § 63.6(i), § 63.9(h), and § 63.10(e) or specified in a relevant standard or in the source's title V permit], but it shall be submitted at least 60 days before the performance test if the site-specific test plan required under paragraph (c) of this section is not submitted.

(iii) Any application for a waiver of a performance test shall include information justifying the owner or operator's request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the affected source performing the required test.

(4) Approval of request to waive performance test. The Administrator will approve or deny a request for a waiver of a performance test made under paragraph (h)(3) of this section when he/she -

(i) Approves or denies an extension of compliance under § 63.6(i)(8); or

(ii) Approves or disapproves a site-specific test plan under § 63.7(c)(3); or

(iii) Makes a determination of compliance following the submission of a required compliance status report or excess emissions and continuous monitoring systems performance report; or

(iv) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(5) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver.

The cancellation will be made only after notice is given to the owner or operator of the affected source.

40 CFR § 63.2 Definitions:
"Test method means the validated procedure for sampling, preparing, and analyzing for an air pollutant specified in a relevant standard as the performance test procedure. The test method may include methods described in an appendix of this chapter, test methods incorporated by reference in this part, or methods validated for an application through procedures in Method 301 of appendix A of this part."

"Alternative test method means any method of sampling and analyzing for an air pollutant that is not a test method in this chapter and that has been demonstrated to the Administrator's satisfaction, using Method 301 in appendix A of this part, to produce results adequate for the Administrator's determination that it may be used in place of a test method specified in this part."

"Performance test means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission standard as specified in the performance test section of the relevant standard."

40 CFR § 63.90(a) Definitions
"*Major change to test method* means a modification to a federally enforceable test method that uses "unproven technology or procedures" (not generally accepted by the scientific community) or is an entirely new method (sometimes necessary when the required test method is unsuitable). A major change to a test method may be site-specific, or may apply to one or more sources or source categories, and will almost always set a national precedent. In order to be approved, a major change must be validated according to EPA Method 301 (part 63, appendix A). Examples of major changes to a test method include, but are not limited to:

1. Use of an unproven analytical finish;
2. Use of a method developed to fill a test method gap;
3. Use of a new test method developed to apply to a control technology not contemplated in the applicable regulation; and
4. Combining two or more sampling/analytical methods (at least one unproven) into one for application to processes emitting multiple pollutants."

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

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

2. Changes in sample recovery procedures and analytical techniques, such as changes to sample holding times and use of a different analytical finish with proven capability for the analyte of interest; and
3. "Combining" a federally required method with another proven method for application to processes emitting multiple pollutants."

"*Minor change to test method* means:

1. A modification to a federally enforceable test method that:
    i. Does not decrease the stringency of the emission limitation or standard;
    ii. Has no national significance (e.g., does not affect implementation of the applicable regulation for other affected sources, does not set a national precedent, and individually does not result in a revision to the test method); and
    iii. Is site-specific, made to reflect or accommodate the operational characteristics, physical constraints, or safety concerns of an affected source.
2. Examples of minor changes to a test method include, but are not limited to:
    i. Field adjustments in a test method's sampling procedure, such as a modified sampling traverse or location to avoid interference from an obstruction in the stack, increasing the sampling time or volume, use of additional impingers for a high moisture situation, accepting particulate emission results for a test run that was conducted with a lower than specified temperature, substitution of a material in the sampling train that has been demonstrated to be more inert for the sample matrix; and
    ii. Changes in recovery and analytical techniques such as a change in quality control/quality assurance requirements needed to adjust for analysis of a certain sample matrix."

Alternative Monitoring

40 CFR § 60.13(i):

(i) After receipt and consideration of written application, the Administrator may approve alternatives to any monitoring procedures or requirements of this part including, but not limited to the following:

(1) Alternative monitoring requirements when installation of a continuous monitoring system or monitoring device specified by this part would not provide accurate measurements due to liquid water or other interferences caused by substances in the effluent gases.

(2) Alternative monitoring requirements when the affected facility is infrequently operated.

(3) Alternative monitoring requirements to accommodate continuous monitoring systems that require additional measurements to correct for stack moisture conditions.

(4) Alternative locations for installing continuous monitoring systems or monitoring devices when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements.

(5) Alternative methods of converting pollutant concentration measurements to units of the standards.
(6) Alternative procedures for performing daily checks of zero and span drift that do not involve use of span gases or test cells.
(7) Alternatives to the A.S.T.M. test methods or sampling procedures specified by any subpart.
(8) Alternative continuous monitoring systems that do not meet the design or performance requirements in Performance Specification 1, appendix B, but adequately demonstrate a definite and consistent relationship between its measurements and the measurements of opacity by a system complying with the requirements in Performance Specification 1. The Administrator may require that such demonstration be performed for each affected facility.
(9) Alternative monitoring requirements when the effluent from a single affected facility or the combined effluent from two or more affected facilities is released to the atmosphere through more than one point.

40 CFR § 61.14(g):
(1) Monitoring shall be conducted as set forth in this section and the applicable subpart unless the Administrator -
(i) Specifies or approves the use of the specified monitoring requirements and procedures with minor changes in methodology; or
(ii) Approves the use of alternatives to any monitoring requirements or procedures.
(2) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative monitoring method, the Administrator may require the monitoring requirements and procedures specified in this part.

40 CFR § 63.8(b)(1):
(1) Monitoring shall be conducted as set forth in this section and the relevant standard(s) unless the Administrator -
(i) Specifies or approves the use of minor changes in methodology for the specified monitoring requirements and procedures (see § 63.90(a) for definition); or
(ii) Approves the use of an intermediate or major change or alternative to any monitoring requirements or procedures (see § 63.90(a) for definition).

40 CFR § 63.8(f) Use of an alternative monitoring method:
(1) General. Until permission to use an alternative monitoring procedure (minor, intermediate, or major changes; see definition in § 63.90(a)) has been granted by the Administrator under this paragraph (f)(1), the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.
(2) After receipt and consideration of written application, the Administrator may approve alternatives to any monitoring methods or procedures of this part including, but not limited to, the following:
(i) Alternative monitoring requirements when installation of a CMS specified by a relevant standard would not provide accurate measurements due to liquid water or other interferences caused by substances within the effluent gases;

(ii) Alternative monitoring requirements when the affected source is infrequently operated;
(iii) Alternative monitoring requirements to accommodate CEMS that require additional measurements to correct for stack moisture conditions;
(iv) Alternative locations for installing CMS when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements;
(v) Alternate methods for converting pollutant concentration measurements to units of the relevant standard;
(vi) Alternate procedures for performing daily checks of zero (low-level) and high-level drift that do not involve use of high-level gases or test cells;
(vii) Alternatives to the American Society for Testing and Materials (ASTM) test methods or sampling procedures specified by any relevant standard;
(viii) Alternative CMS that do not meet the design or performance requirements in this part, but adequately demonstrate a definite and consistent relationship between their measurements and the measurements of opacity by a system complying with the requirements as specified in the relevant standard. The Administrator may require that such demonstration be performed for each affected source; or
(ix) Alternative monitoring requirements when the effluent from a single affected source or the combined effluent from two or more affected sources is released to the atmosphere through more than one point.

(3) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative monitoring method, requirement, or procedure, the Administrator may require the use of a method, requirement, or procedure specified in this section or in the relevant standard. If the results of the specified and alternative method, requirement, or procedure do not agree, the results obtained by the specified method, requirement, or procedure shall prevail.

(4)

(i) Request to use alternative monitoring procedure. An owner or operator who wishes to use an alternative monitoring procedure must submit an application to the Administrator as described in paragraph (f)(4)(ii) of this section. The application may be submitted at any time provided that the monitoring procedure is not the performance test method used to demonstrate compliance with a relevant standard or other requirement. If the alternative monitoring procedure will serve as the performance test method that is to be used to demonstrate compliance with a relevant standard, the application must be submitted at least 60 days before the performance evaluation is scheduled to begin and must meet the requirements for an alternative test method under § 63.7(f).
(ii) The application must contain a description of the proposed alternative monitoring system which addresses the four elements contained in the definition of monitoring in § 63.2 and a performance evaluation test plan, if required, as specified in paragraph (e)(3) of this section. In addition, the application must include information justifying the owner or operator's request for an alternative monitoring method, such as the technical or economic infeasibility, or the impracticality, of the affected source using the required method.
(iii) The owner or operator may submit the information required in this paragraph well in advance of the submittal dates specified in paragraph (f)(4)(i) above to ensure a timely

review by the Administrator in order to meet the compliance demonstration date specified in this section or the relevant standard.

(iv) Application for minor changes to monitoring procedures, as specified in paragraph (b)(1) of this section, may be made in the site-specific performance evaluation plan.

(5) Approval of request to use alternative monitoring procedure.

(i) The Administrator will notify the owner or operator of approval or intention to deny approval of the request to use an alternative monitoring method within 30 calendar days after receipt of the original request and within 30 calendar days after receipt of any supplementary information that is submitted. If a request for a minor change is made in conjunction with site-specific performance evaluation plan, then approval of the plan will constitute approval of the minor change. Before disapproving any request to use an alternative monitoring method, the Administrator will notify the applicant of the Administrator's intention to disapprove the request together with -

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present additional information to the Administrator before final action on the request. At the time the Administrator notifies the applicant of his or her intention to disapprove the request, the Administrator will specify how much time the owner or operator will have after being notified of the intended disapproval to submit the additional information.

(ii) The Administrator may establish general procedures and criteria in a relevant standard to accomplish the requirements of paragraph (f)(5)(i) of this section.

(iii) If the Administrator approves the use of an alternative monitoring method for an affected source under paragraph (f)(5)(i) of this section, the owner or operator of such source shall continue to use the alternative monitoring method until he or she receives approval from the Administrator to use another monitoring method as allowed by § 63.8(f).

(6) Alternative to the relative accuracy test. An alternative to the relative accuracy test for CEMS specified in a relevant standard may be requested as follows:

(i) Criteria for approval of alternative procedures. An alternative to the test method for determining relative accuracy is available for affected sources with emission rates demonstrated to be less than 50 percent of the relevant standard. The owner or operator of an affected source may petition the Administrator under paragraph (f)(6)(ii) of this section to substitute the relative accuracy test in section 7 of Performance Specification 2 with the procedures in section 10 if the results of a performance test conducted according to the requirements in § 63.7, or other tests performed following the criteria in § 63.7, demonstrate that the emission rate of the pollutant of interest in the units of the relevant standard is less than 50 percent of the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the owner or operator may petition the Administrator to substitute the relative accuracy test with the procedures in section 10 of Performance Specification 2 if the control device exhaust emission rate is less than 50 percent of the level needed to meet the control efficiency requirement. The alternative procedures do not apply if the CEMS is used continuously to determine compliance with the relevant standard.

(ii) Petition to use alternative to relative accuracy test. The petition to use an alternative to the relative accuracy test shall include a detailed description of the procedures to be applied, the location and the procedure for conducting the alternative, the concentration or response levels of the alternative relative accuracy materials, and the other equipment checks included in the alternative procedure(s). The Administrator will review the petition for completeness and applicability. The Administrator's determination to approve an alternative will depend on the intended use of the CEMS data and may require specifications more stringent than in Performance Specification 2.
(iii) Rescission of approval to use alternative to relative accuracy test. The Administrator will review the permission to use an alternative to the CEMS relative accuracy test and may rescind such permission if the CEMS data from a successful completion of the alternative relative accuracy procedure indicate that the affected source's emissions are approaching the level of the relevant standard. The criterion for reviewing the permission is that the collection of CEMS data shows that emissions have exceeded 70 percent of the relevant standard for any averaging period, as specified in the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the criterion for reviewing the permission is that the collection of CEMS data shows that exhaust emissions have exceeded 70 percent of the level needed to meet the control efficiency requirement for any averaging period, as specified in the relevant standard. The owner or operator of the affected source shall maintain records and determine the level of emissions relative to the criterion for permission to use an alternative for relative accuracy testing. If this criterion is exceeded, the owner or operator shall notify the Administrator within 10 days of such occurrence and include a description of the nature and cause of the increased emissions. The Administrator will review the notification and may rescind permission to use an alternative and require the owner or operator to conduct a relative accuracy test of the CEMS as specified in section 7 of Performance Specification 2. The Administrator will review the notification and may rescind permission to use an alternative and require the owner or operator to conduct a relative accuracy test of the CEMS as specified in section 8.4 of Performance Specification 2.

40 CFR § 63.2 Definitions:
"Monitoring means the collection and use of measurement data or other information to control the operation of a process or pollution control device or to verify a work practice standard relative to assuring compliance with applicable requirements. Monitoring is composed of four elements:

- Indicator(s) of performance - the parameter or parameters you measure or observe for demonstrating proper operation of the pollution control measures or compliance with the applicable emissions limitation or standard. Indicators of performance may include direct or predicted emissions measurements (including opacity), operational parametric values that correspond to process or control device (and capture system) efficiencies or emissions rates, and recorded findings of inspection of work practice activities, materials tracking, or design characteristics. Indicators may be expressed as a single maximum or minimum value, a function of process variables (for example, within a range of pressure drops), a particular operational or work practice status (for example, a damper position, completion of a waste recovery task, materials tracking), or an interdependency between two or among more than two variables.

- Measurement techniques - the means by which you gather and record information of or about the indicators of performance. The components of the measurement technique include the detector type, location and installation specifications, inspection procedures, and quality assurance and quality control measures. Examples of measurement techniques include continuous emission monitoring systems, continuous opacity monitoring systems, continuous parametric monitoring systems, and manual inspections that include making records of process conditions or work practices.
- Monitoring frequency - the number of times you obtain and record monitoring data over a specified time interval. Examples of monitoring frequencies include at least four points equally spaced for each hour for continuous emissions or parametric monitoring systems, at least every 10 seconds for continuous opacity monitoring systems, and at least once per operating day (or week, month, etc.) for work practice or design inspections.
- Averaging time - the period over which you average and use data to verify proper operation of the pollution control approach or compliance with the emissions limitation or standard. Examples of averaging time include a 3-hour average in units of the emissions limitation, a 30-day rolling average emissions value, a daily average of a control device operational parametric range, and an instantaneous alarm.

40 CFR § 63.90(a) Definitions:

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

1. Use of a new monitoring approach developed to apply to a control technology not contemplated in the applicable regulation;
2. Use of a predictive emission monitoring system (PEMS) in place of a required continuous emission monitoring system (CEMS);
3. Use of alternative calibration procedures that do not involve calibration gases or test cells;
4. Use of an analytical technology that differs from that specified by a performance specification;
5. Decreased monitoring frequency for a continuous emission monitoring system, continuous opacity monitoring system, predictive emission monitoring system, or continuous parameter monitoring system;
6. Decreased monitoring frequency for a leak detection and repair program; and
7. Use of alternative averaging times for reporting purposes.

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

i. Use of a continuous emission monitoring system (CEMS) in lieu of a parameter monitoring approach;
ii. Decreased frequency for non-continuous parameter monitoring or physical inspections;
iii. Changes to quality control requirements for parameter monitoring; and
iv. Use of an electronic data reduction system in lieu of manual data reduction.

Minor change to monitoring means:

1. A modification to federally required monitoring that:
    i. Does not decrease the stringency of the compliance and enforcement measures for the relevant standard;
    ii. Has no national significance (e.g., does not affect implementation of the applicable regulation for other affected sources, does not set a national precedent, and individually does not result in a revision to the monitoring requirements); and
    iii. Is site-specific, made to reflect or accommodate the operational characteristics, physical constraints, or safety concerns of an affected source.
2. Examples of minor changes to monitoring include, but are not limited to:
    i. Modifications to a sampling procedure, such as use of an improved sample conditioning system to reduce maintenance requirements;
    ii. Increased monitoring frequency; and
    iii. Modification of the environmental shelter to moderate temperature fluctuation and thus protect the analytical instrumentation.

Alternative Recordkeeping and Reporting

40 CFR § 63.90(a) Definitions:

Major change to recordkeeping/reporting means:

1. A modification to federally required recordkeeping or reporting that:
    i. May decrease the stringency of the required compliance and enforcement measures for the relevant standards;
    ii. May have national significance (e.g., might affect implementation of the applicable regulation for other affected sources, might set a national precedent); or
    iii. Is not site-specific
2. Examples of major changes to recordkeeping and reporting include, but are not limited to:
    i. Decreases in the record retention for all records;
    ii. Waiver of all or most recordkeeping or reporting requirements;
    iii. Major changes to the contents of reports; or
    iv. Decreases in the reliability of recordkeeping or reporting (e.g., manual recording of monitoring data instead of required automated or electronic recording, or paper reports where electronic reporting may have been required).

Minor change to recordkeeping/reporting means:

1. A modification to federally required recordkeeping or reporting that:
    i. Does not decrease the stringency of the compliance and enforcement measures for the relevant standards;
    ii. Has no national significance (e.g., does not affect implementation of the applicable regulation for other affected sources, does not set a national precedent, and individually does not result in a revision to the recordkeeping or reporting requirement); and
    iii. Is site-specific.
2. Examples of minor changes to recordkeeping or reporting include, but are not limited to:
    iv. Changes to recordkeeping necessitated by alternatives to monitoring;
    v. Increased frequency of recordkeeping or reporting, or increased record retention periods;
    vi. Increased reliability in the form of recording monitoring data, e.g., electronic or automatic recording as opposed to manual recording of monitoring data;
    vii. Changes related to compliance extensions granted pursuant to § 63.6(i);
    viii. Changes to recordkeeping for good cause shown for a fixed short duration, e.g., facility shutdown;
    ix. Changes to recordkeeping or reporting that is clearly redundant with equivalent recordkeeping/reporting requirements; and
    x. Decreases in the frequency of reporting for area sources to no less than once a year for good cause shown, or for major sources to no less than twice a year as required by title V, for good cause shown.

Alternative Reporting Schedules

40 CFR § 60.19 General notification and reporting requirements:
(c) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.
(d) If an owner or operator of an affected facility in a State with delegated authority is required to submit periodic reports under this part to the State, and if the State has an established timeline for the submission of periodic reports that is consistent with the reporting frequency(ies) specified for such facility under this part, the owner or operator may change the dates by which periodic reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State. The allowance in the previous sentence applies in each State beginning 1 year after the affected facility is required to be in compliance with the applicable subpart in this part. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(e) If an owner or operator supervises one or more stationary sources affected by standards set under this part and standards set under part 61, part 63, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State with an approved permit program) a common schedule on which periodic reports required by each applicable standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the stationary source is required to be in compliance with the applicable subpart in this part, or 1 year after the stationary source is required to be in compliance with the applicable 40 CFR part 61 or part 63 of this chapter standard, whichever is latest. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(f)

(1)

(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (f)(2) and (f)(3) of this section, the owner or operator of an affected facility remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (f)(2) and (f)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

61.10 Source reporting and waiver request:

(g) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(h) If an owner or operator of a stationary source in a State with delegated authority is required to submit reports under this part to the State, and if the State has an established timeline for the submission of reports that is consistent with the reporting frequency(ies) specified for such

source under this part, the owner or operator may change the dates by which reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State. The allowance in the previous sentence applies in each State beginning 1 year after the source is required to be in compliance with the applicable subpart in this part. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(i) If an owner or operator supervises one or more stationary sources affected by standards set under this part and standards set under part 60, part 63, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State with an approved permit program) a common schedule on which reports required by each applicable standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the source is required to be in compliance with the applicable subpart in this part, or 1 year after the source is required to be in compliance with the applicable part 60 or part 63 standard, whichever is latest. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(j)

(1)

(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (j)(2) and (j)(3) of this section, the owner or operator of an affected source remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (j)(2) and (j)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

63.9(i) Adjustment to time periods or postmark deadlines for submittal and review of required communications:

(1)

(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (i)(2) and (i)(3) of this section, the owner or operator of an affected source remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (i)(2) and (i)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

63.10(a) Recordkeeping and reporting requirements:

(5) If an owner or operator of an affected source in a State with delegated authority is required to submit periodic reports under this part to the State, and if the State has an established timeline for the submission of periodic reports that is consistent with the reporting frequency(ies) specified for such source under this part, the owner or operator may change the dates by which periodic reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State. For each relevant standard established pursuant to section 112 of the Act, the allowance in the previous sentence applies in each State beginning 1 year after the affected source's compliance date for that standard. Procedures governing the implementation of this provision are specified in § 63.9(i).

(6) If an owner or operator supervises one or more stationary sources affected by more than one standard established pursuant to section 112 of the Act, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State permitting authority) a common schedule on which periodic reports required for each source shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the latest compliance date for any relevant standard established pursuant to section 112 of the Act for any such affected source(s). Procedures governing the implementation of this provision are specified in § 63.9(i).

(7) If an owner or operator supervises one or more stationary sources affected by standards established pursuant to section 112 of the Act (as amended November 15, 1990) and standards

set under part 60, part 61, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State permitting authority) a common schedule on which periodic reports required by each relevant (i.e., applicable) standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the stationary source is required to be in compliance with the relevant section 112 standard, or 1 year after the stationary source is required to be in compliance with the applicable part 60 or part 61 standard, whichever is latest. Procedures governing the implementation of this provision are specified in § 63.9(i).

Test Plans

40 CFR § 63.7(c) Quality assurance program:

(1) The results of the quality assurance program required in this paragraph will be considered by the Administrator when he/she determines the validity of a performance test.

(2)

(i) Submission of site-specific test plan. Before conducting a required performance test, the owner or operator of an affected source shall develop and, if requested by the Administrator, shall submit a site-specific test plan to the Administrator for approval. The test plan shall include a test program summary, the test schedule, data quality objectives, and both an internal and external quality assurance (QA) program. Data quality objectives are the pretest expectations of precision, accuracy, and completeness of data.

***

(iv) The owner or operator of an affected source shall submit the site-specific test plan to the Administrator upon the Administrator's request at least 60 calendar days before the performance test is scheduled to take place, that is, simultaneously with the notification of intention to conduct a performance test required under paragraph (b) of this section, or on a mutually agreed upon date.

(v) The Administrator may request additional relevant information after the submittal of a site-specific test plan.

(3) Approval of site-specific test plan.

(i) The Administrator will notify the owner or operator of approval or intention to deny approval of the site-specific test plan (if review of the site-specific test plan is requested) within 30 calendar days after receipt of the original plan and within 30 calendar days after receipt of any supplementary information that is submitted under paragraph (c)(3)(i)(B) of this section. Before disapproving any site-specific test plan, the Administrator will notify the applicant of the Administrator's intention to disapprove the plan together with -

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present, within 30 calendar days after he/she is notified of the intended disapproval, additional information to the Administrator before final action on the plan.

(ii) In the event that the Administrator fails to approve or disapprove the site-specific test plan within the time period specified in paragraph (c)(3)(i) of this section, the following conditions shall apply:

(A) If the owner or operator intends to demonstrate compliance using the test method(s) specified in the relevant standard or with only minor changes to those tests methods (see paragraph (e)(2)(i) of this section), the owner or operator must conduct the performance test within the time specified in this section using the specified method(s);

(B) If the owner or operator intends to demonstrate compliance by using an alternative to any test method specified in the relevant standard, the owner or operator is authorized to conduct the performance test using an alternative test method after the Administrator approves the use of the alternative method when the Administrator approves the site-specific test plan (if review of the site-specific test plan is requested) or after the alternative method is approved (see paragraph (f) of this section). However, the owner or operator is authorized to conduct the performance test using an alternative method in the absence of notification of approval 45 days after submission of the site-specific test plan or request to use an alternative method. The owner or operator is authorized to conduct the performance test within 60 calendar days after he/she is authorized to demonstrate compliance using an alternative test method. Notwithstanding the requirements in the preceding three sentences, the owner or operator may proceed to conduct the performance test as required in this section (without the Administrator's prior approval of the site-specific test plan) if he/she subsequently chooses to use the specified testing and monitoring methods instead of an alternative.

(iii) Neither the submission of a site-specific test plan for approval, nor the Administrator's approval or disapproval of a plan, nor the Administrator's failure to approve or disapprove a plan in a timely manner shall -

(A) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(B) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

63.8(e) Performance evaluation of continuous monitoring systems:

(1) General. When required by a relevant standard, and at any other time the Administrator may require under section 114 of the Act, the owner or operator of an affected source being monitored shall conduct a performance evaluation of the CMS. Such performance evaluation shall be conducted according to the applicable specifications and procedures described in this section or in the relevant standard.

(2) Notification of performance evaluation. The owner or operator shall notify the Administrator in writing of the date of the performance evaluation simultaneously with the notification of the performance test date required under § 63.7(b) or at least 60 days prior to the date the performance evaluation is scheduled to begin if no performance test is required.

(3)

(i) Submission of site-specific performance evaluation test plan. Before conducting a required CMS performance evaluation, the owner or operator of an affected source shall

develop and submit a site-specific performance evaluation test plan to the Administrator for approval upon request. The performance evaluation test plan shall include the evaluation program objectives, an evaluation program summary, the performance evaluation schedule, data quality objectives, and both an internal and external QA program. Data quality objectives are the pre-evaluation expectations of precision, accuracy, and completeness of data.

(ii) The internal QA program shall include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of CMS performance. The external QA program shall include, at a minimum, systems audits that include the opportunity for on-site evaluation by the Administrator of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

(iii) The owner or operator of an affected source shall submit the site-specific performance evaluation test plan to the Administrator (if requested) at least 60 days before the performance test or performance evaluation is scheduled to begin, or on a mutually agreed upon date, and review and approval of the performance evaluation test plan by the Administrator will occur with the review and approval of the site-specific test plan (if review of the site-specific test plan is requested).

(iv) The Administrator may request additional relevant information after the submittal of a site-specific performance evaluation test plan.

(v) In the event that the Administrator fails to approve or disapprove the site-specific performance evaluation test plan within the time period specified in § 63.7(c)(3), the following conditions shall apply:

(A) If the owner or operator intends to demonstrate compliance using the monitoring method(s) specified in the relevant standard, the owner or operator shall conduct the performance evaluation within the time specified in this subpart using the specified method(s);

(B) If the owner or operator intends to demonstrate compliance by using an alternative to a monitoring method specified in the relevant standard, the owner or operator shall refrain from conducting the performance evaluation until the Administrator approves the use of the alternative method. If the Administrator does not approve the use of the alternative method within 30 days before the performance evaluation is scheduled to begin, the performance evaluation deadlines specified in paragraph (e)(4) of this section may be extended such that the owner or operator shall conduct the performance evaluation within 60 calendar days after the Administrator approves the use of the alternative method. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance evaluation as required in this section (without the Administrator's prior approval of the site-specific performance evaluation test plan) if he/she subsequently chooses to use the specified monitoring method(s) instead of an alternative.

(vi) Neither the submission of a site-specific performance evaluation test plan for approval, nor the Administrator's approval or disapproval of a plan, nor the Administrator's failure to approve or disapprove a plan in a timely manner shall -

(A) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or
(B) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

Performance Test Extensions

40 CFR § 60.8(a):
(a) Except as specified in paragraphs (a)(1),(a)(2), (a)(3), and (a)(4) of this section, within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility, or at such other times specified by this part, and at such other times as may be required by the Administrator under section 114 of the Act, the owner or operator of such facility shall conduct performance test(s) and furnish the Administrator a written report of the results of such performance test(s).

(1) If a force majeure is about to occur, occurs, or has occurred for which the affected owner or operator intends to assert a claim of force majeure, the owner or operator shall notify the Administrator, in writing as soon as practicable following the date the owner or operator first knew, or through due diligence should have known that the event may cause or caused a delay in testing beyond the regulatory deadline, but the notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification shall occur as soon as practicable.
(2) The owner or operator shall provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure occurs.
(3) The decision as to whether or not to grant an extension to the performance test deadline is solely within the discretion of the Administrator. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.
(4) Until an extension of the performance test deadline has been approved by the Administrator under paragraphs (a)(1), (2), and (3) of this section, the owner or operator of the affected facility remains strictly subject to the requirements of this part.

60.8(d):
(d) The owner or operator of an affected facility shall provide the Administrator at least 30 days prior notice of any performance test, except as specified under other subparts, to afford the Administrator the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of an affected facility shall notify the Administrator (or delegated State or local agency) as soon as possible of any delay in the original

test date, either by providing at least 7 days prior notice of the rescheduled date of the performance test, or by arranging a rescheduled date with the Administrator (or delegated State or local agency) by mutual agreement.

61.13(a):

(a) Except as provided in paragraphs (a)(3), (a)(4), (a)(5), and (a)(6) of this section, if required to do emission testing by an applicable subpart and unless a waiver of emission testing is obtained under this section, the owner or operator shall test emissions from the source:

(1) Within 90 days after the effective date, for an existing source or a new source which has an initial startup date before the effective date.

(2) Within 90 days after initial startup, for a new source which has an initial startup date after the effective date.

(3) If a force majeure is about to occur, occurs, or has occurred for which the affected owner or operator intends to assert a claim of force majeure, the owner or operator shall notify the Administrator, in writing as soon as practicable following the date the owner or operator first knew, or through due diligence should have known that the event may cause or caused a delay in testing beyond the regulatory deadline specified in paragraphs (a)(1) or (a)(2) of this section or beyond a deadline established pursuant to the requirements under paragraph (b) of this section, but the notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification shall occur as soon as practicable.

(4) The owner or operator shall provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure occurs.

(5) The decision as to whether or not to grant an extension to the performance test deadline is solely within the discretion of the Administrator. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.

(6) Until an extension of the performance test deadline has been approved by the Administrator under paragraphs (a)(3), (a)(4), and (a)(5) of this section, the owner or operator of the affected facility remains strictly subject to the requirements of this part.

63.7(a):

(2) Except as provided in paragraph (a)(4) of this section, if required to do performance testing by a relevant standard, and unless a waiver of performance testing is obtained under this section or the conditions of paragraph (c)(3)(ii)(B) of this section apply, the owner or operator of the affected source must perform such tests within 180 days of the compliance date for such source.
***

(4) If a force majeure is about to occur, occurs, or has occurred for which the affected owner or operator intends to assert a claim of force majeure:

(i) The owner or operator shall notify the Administrator, in writing as soon as practicable following the date the owner or operator first knew, or through due diligence should have

known that the event may cause or caused a delay in testing beyond the regulatory deadline specified in paragraph (a)(2) or (a)(3) of this section, or elsewhere in this part, but the notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification shall occur as soon as practicable.

(ii) The owner or operator shall provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure occurs.

(iii) The decision as to whether or not to grant an extension to the performance test deadline is solely within the discretion of the Administrator. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.

(iv) Until an extension of the performance test deadline has been approved by the Administrator under paragraphs (a)(4)(i), (a)(4)(ii), and (a)(4)(iii) of this section, the owner or operator of the affected facility remains strictly subject to the requirements of this part.

63.7(b)(2):

(2) In the event the owner or operator is unable to conduct the performance test on the date specified in the notification requirement specified in paragraph (b)(1) of this section due to unforeseeable circumstances beyond his or her control, the owner or operator must notify the Administrator as soon as practicable and without delay prior to the scheduled performance test date and specify the date when the performance test is rescheduled. This notification of delay in conducting the performance test shall not relieve the owner or operator of legal responsibility for compliance with any other applicable provisions of this part or with any other applicable Federal, State, or local requirement, nor will it prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

Compliance Extensions

CAA § 112(i)(3)(B), 42 USC § 7412(i)(3)(B):

(B) The Administrator (or a State with a program approved under subchapter V) may issue a permit that grants an extension permitting an existing source up to 1 additional year to comply with standards under subsection (d) if such additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added for mining waste operations, if the 4-year compliance time is insufficient to dry and cover mining waste in order to reduce emissions of any pollutant listed under subsection (b).

40 CFR § 63.6(i) Extension of compliance with emission standards

(1) Until an extension of compliance has been granted by the Administrator (or a State with an approved permit program) under this paragraph, the owner or operator of an affected source subject to the requirements of this section shall comply with all applicable requirements of this part.

(2) Extension of compliance for early reductions and other reductions -

(i) Early reductions. Pursuant to section 112(i)(5) of the Act, if the owner or operator of an existing source demonstrates that the source has achieved a reduction in emissions of hazardous air pollutants in accordance with the provisions of subpart D of this part, the Administrator (or the State with an approved permit program) will grant the owner or operator an extension of compliance with specific requirements of this part, as specified in subpart D.

(ii) Other reductions. Pursuant to section 112(i)(6) of the Act, if the owner or operator of an existing source has installed best available control technology (BACT) (as defined in section 169(3) of the Act) or technology required to meet a lowest achievable emission rate (LAER) (as defined in section 171 of the Act) prior to the promulgation of an emission standard in this part applicable to such source and the same pollutant (or stream of pollutants) controlled pursuant to the BACT or LAER installation, the Administrator will grant the owner or operator an extension of compliance with such emission standard that will apply until the date 5 years after the date on which such installation was achieved, as determined by the Administrator.

(3) Request for extension of compliance. Paragraphs (i)(4) through (i)(7) of this section concern requests for an extension of compliance with a relevant standard under this part (except requests for an extension of compliance under paragraph (i)(2)(i) of this section will be handled through procedures specified in subpart D of this part).

(4)

(i)

(A) The owner or operator of an existing source who is unable to comply with a relevant standard established under this part pursuant to section 112(d) of the Act may request that the Administrator (or a State, when the State has an approved part 70 permit program and the source is required to obtain a part 70 permit under that program, or a State, when the State has been delegated the authority to implement and enforce the emission standard for that source) grant an extension allowing the source up to 1 additional year to comply with the standard, if such additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added for mining waste operations, if the 1-year extension of compliance is insufficient to dry and cover mining waste in order to reduce emissions of any hazardous air pollutant. The owner or operator of an affected source who has requested an extension of compliance under this paragraph and who is otherwise required to obtain a title V permit shall apply for such permit or apply to have the source's title V permit revised to incorporate the conditions of the extension of compliance. The conditions of an extension of compliance granted under this paragraph will be incorporated into the affected source's title V permit according to the provisions of part 70 or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever are applicable.

(B) Any request under this paragraph for an extension of compliance with a relevant standard must be submitted in writing to the appropriate authority no later than 120 days prior to the affected source's compliance date (as specified in paragraphs (b) and (c) of this section), except as provided for in paragraph (i)(4)(i)(C) of this section. Nonfrivolous requests submitted under this paragraph will stay the applicability of the rule as to the emission points in question until such time as the request is granted or denied. A denial will be effective as of the date of denial. Emission standards established under this part may specify alternative dates for the submittal of requests for an extension of compliance if alternatives are appropriate for the source categories affected by those standards.

(C) An owner or operator may submit a compliance extension request after the date specified in paragraph (i)(4)(i)(B) of this section provided the need for the compliance extension arose after that date, and before the otherwise applicable compliance date and the need arose due to circumstances beyond reasonable control of the owner or operator. This request must include, in addition to the information required in paragraph (i)(6)(i) of this section, a statement of the reasons additional time is needed and the date when the owner or operator first learned of the problems. Nonfrivolous requests submitted under this paragraph will stay the applicability of the rule as to the emission points in question until such time as the request is granted or denied. A denial will be effective as of the original compliance date.

(ii) The owner or operator of an existing source unable to comply with a relevant standard established under this part pursuant to section 112(f) of the Act may request that the Administrator grant an extension allowing the source up to 2 years after the standard's effective date to comply with the standard. The Administrator may grant such an extension if he/she finds that such additional period is necessary for the installation of controls and that steps will be taken during the period of the extension to assure that the health of persons will be protected from imminent endangerment. Any request for an extension of compliance with a relevant standard under this paragraph must be submitted in writing to the Administrator not later than 90 calendar days after the effective date of the relevant standard.

(5) The owner or operator of an existing source that has installed BACT or technology required to meet LAER [as specified in paragraph (i)(2)(ii) of this section] prior to the promulgation of a relevant emission standard in this part may request that the Administrator grant an extension allowing the source 5 years from the date on which such installation was achieved, as determined by the Administrator, to comply with the standard. Any request for an extension of compliance with a relevant standard under this paragraph shall be submitted in writing to the Administrator not later than 120 days after the promulgation date of the standard. The Administrator may grant such an extension if he or she finds that the installation of BACT or technology to meet LAER controls the same pollutant (or stream of pollutants) that would be controlled at that source by the relevant emission standard.

(6)

(i) The request for a compliance extension under paragraph (i)(4) of this section shall include the following information:

(A) A description of the controls to be installed to comply with the standard;

(B) A compliance schedule, including the date by which each step toward compliance will be reached. At a minimum, the list of dates shall include:

(1) The date by which on-site construction, installation of emission control equipment, or a process change is planned to be initiated; and

(2) The date by which final compliance is to be achieved.

(3) The date by which on-site construction, installation of emission control equipment, or a process change is to be completed; and

(4) The date by which final compliance is to be achieved;

(C)-(D)

(ii) The request for a compliance extension under paragraph (i)(5) of this section shall include all information needed to demonstrate to the Administrator's satisfaction that the installation of BACT or technology to meet LAER controls the same pollutant (or stream of pollutants) that would be controlled at that source by the relevant emission standard.

(7) Advice on requesting an extension of compliance may be obtained from the Administrator (or the State with an approved permit program).

(8) Approval of request for extension of compliance. Paragraphs (i)(9) through (i)(14) of this section concern approval of an extension of compliance requested under paragraphs (i)(4) through (i)(6) of this section.

(9) Based on the information provided in any request made under paragraphs (i)(4) through (i)(6) of this section, or other information, the Administrator (or the State with an approved permit program) may grant an extension of compliance with an emission standard, as specified in paragraphs (i)(4) and (i)(5) of this section.

(10) The extension will be in writing and will -

(i) Identify each affected source covered by the extension;

(ii) Specify the termination date of the extension;

(iii) Specify the dates by which steps toward compliance are to be taken, if appropriate;

(iv) Specify other applicable requirements to which the compliance extension applies (e.g., performance tests); and

(v)

(A) Under paragraph (i)(4), specify any additional conditions that the Administrator (or the State) deems necessary to assure installation of the necessary controls and protection of the health of persons during the extension period; or

(B) Under paragraph (i)(5), specify any additional conditions that the Administrator deems necessary to assure the proper operation and maintenance of the installed controls during the extension period.

(11) The owner or operator of an existing source that has been granted an extension of compliance under paragraph (i)(10) of this section may be required to submit to the Administrator (or the State with an approved permit program) progress reports indicating whether the steps toward compliance outlined in the compliance schedule have been reached. The contents of the progress reports and the dates by which they shall be submitted will be specified in the written extension of compliance granted under paragraph (i)(10) of this section.

(12)

(i) The Administrator (or the State with an approved permit program) will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days after receipt of sufficient information to

evaluate a request submitted under paragraph (i)(4)(i) or (i)(5) of this section. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(iii) Before denying any request for an extension of compliance, the Administrator (or the State with an approved permit program) will notify the owner or operator in writing of the Administrator's (or the State's) intention to issue the denial, together with -

(A) Notice of the information and findings on which the intended denial is based; and

(B) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator (or the State) before further action on the request.

(iv) The Administrator's final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 calendar days after presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(13)

(i) The Administrator will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days after receipt of sufficient information to evaluate a request submitted under paragraph (i)(4)(ii) of this section. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 15 calendar days after receipt of the original application and within 15 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 15 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(iii) Before denying any request for an extension of compliance, the Administrator will notify the owner or operator in writing of the Administrator's intention to issue the denial, together with -

(A) Notice of the information and findings on which the intended denial is based; and

(B) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator before further action on the request.

(iv) A final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 calendar days after presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(14) The Administrator (or the State with an approved permit program) may terminate an extension of compliance at an earlier date than specified if any specification under paragraph (i)(10)(iii) or (iv) of this section is not met. Upon a determination to terminate, the Administrator will notify, in writing, the owner or operator of the Administrator's determination to terminate, together with:

(i) Notice of the reason for termination; and

(ii) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the determination to terminate, additional information or arguments to the Administrator before further action on the termination.

(iii) A final determination to terminate an extension of compliance will be in writing and will set forth the specific grounds on which the termination is based. The final determination will be made within 30 calendar days after presentation of additional information or arguments, or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(15) [Reserved]

(16) The granting of an extension under this section shall not abrogate the Administrator's authority under section 114 of the Act.

APPENDIX D: Delegations of Authority

Delegation 7-127. Applicability Determinations

1200 TN 406
06/29/2020

1. **AUTHORITY.** To issue determinations pertaining to applicability of 40 CFR Parts 60, 61, 62, and 63, and pursuant to the Clean Air Act, including Sections 111(b), 111(d), 111(f), 111(h), 112(d), 112(f), 112(h), and 129 to a source.

2. **TO WHOM DELEGATED.**
    a. The authority to issue applicability determinations of a multiregional nature or are of national significance is delegated to the assistant administrator for the Office of Air and Radiation.
    b. The authority to issue applicability determinations that are region-specific is delegated to regional administrators.

3. **LIMITATIONS.**
    a. Prior to exercising the authority in 2.a, the OAR AA will consult with the AA in the Office of Enforcement and Compliance Assurance, the Office of General Counsel, and the affected regions.
    b. Prior to exercising the authority in 2.b, regional administrators will consult, as necessary, with the OAR AA and OECA AA, and with OGC. Regional administrators must provide to OAR, on a quarterly basis and through a medium determined by OAR, a summary and copies of their applicability determinations.

4. **REDELEGATION AUTHORITY.**
    a. The authority delegated to the OAR AA may be redelegated to the branch chief level, or equivalent, and no further.
    b. The authority delegated to the regional administrators may be redelegated within each individual region, respectively, to the branch chief level, or equivalent, and no further.
    c. An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any official in the chain of command to the official to whom it has been specifically delegated.
    d. A copy of any redelegation of this authority must be provided to the OAR AA.

5. **ADDITIONAL REFERENCES.**
    a. 40 CFR 60.5 and 61.06.
    b. "How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring for New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants" (February 1999), and any superseding or related guidance.
    c. This delegation, Applicability Determinations, supersedes Delegation 7-127 dated January 18, 2017, (1200 TN 406).

Delegation 7-119. Performance Test

1200 TN 548
04/02/2002

1. **AUTHORITY**. To approve the use of a reference method with minor changes in test methodology, to approve shorter sampling times and smaller sampling volumes when necessitated by process variables, to specify the conditions of the performance test, to waive the requirement for a performance test pursuant to Sections 111(f), 111(h), 112(d), 112(f) and 112(h) of the Clean Air Act if the owner or operator of an affected source has demonstrated by other means that the affected source is in compliance.

2. **TO WHOM DELEGATED.** Regional Administrators.

3. **LIMITATIONS.** None.

4. **REDELEGATION AUTHORITY.** This authority may be redelegated to the Branch Chief level, or equivalent, and no further.

5. **ADDITIONAL REFERENCES.**
    a. 40 CFR 63.7(e)(2)(i), 40 CFR 63.7(e)(2)(iii), 40 CFR 63.7(e)(2)(iv), and 63.7(h).
    b. 40 CFR 61.13(h)(1)(i) and 40 CFR 61.13(h)(1)(iii).
    c. 40 CFR 60.8(b)(1), 40 CFR 60.8(b)(4), and 40 CFR 60.8(b)(5).
    d. 40 CFR 65.157(b), 40 CFR 65.158(a)(2)(i), and 40 CFR 65.158(a)(2)(iv).
    e. 40 CFR 60.8(c), 61.13(e), 63.7(e)(1), 40 CFR 65.158(a)(1), 40 CFR 65.159(a), and 40 CFR 65.160(a).

6. **SUPERSESSION.** This delegation, Performance Test, and EPA Delegation 7-121, Alternative Methods, supersede EPA Delegation 7-14, Specification or Approval of Changes to Testing and Monitoring Methods and Procedures.

Delegation 7-121. Alternative Methods

1200 TN 548
04/02/2002

1. **AUTHORITY**.
    a. To approve or disapprove alternatives to any monitoring methods required under 40 CFR Part 60, 61, 63, or 65 pursuant to Sections 111(f), 111(h), 112(d), 112(f) and 112(h) of the Clean Air Act.
    b. To approve or disapprove alternative test methods, equivalent methods, alternative standards, or procedures required under 40 CFR Part 60, 61, 63, or 65 pursuant to Sections 111(f), 111(h), 112(d), 112(f) and 112(h) of the Clean Air Act.

2. **TO WHOM DELEGATED.**
    a. Authority 1a. is delegated to Regional Administrators.
    b. Authority 1b. is delegated to the Assistant Administrator of the Office of Air and Radiation.

3. **LIMITATIONS.** None.

4. **REDELEGATION AUTHORITY.**
    a. The authority in 2a. may be redelegated to the Branch Chief level, or equivalent, and no further.
    b. The authority in 2b. May be redelegated to the Director of the Office of Air Quality Planning and Standards. This authority may be further redelegated to the Branch Chief level, or equivalent, and it may not be redelegated further.

5. **ADDITIONAL REFERENCES.**
    a. 40 CFR 60.8(b)(2), 40 CFR 60.8(b)(3), and 40 CFR 60.13(i).
    b. 40 CFR 61.13(h)(1)(ii) and 40 CFR 61.14(g).
    c. 40 CFR 63.6(g), 40 CFR 63.7(e)(2)(ii), 40 CFR 63.7(f), 40 CFR 63.8(b)(1), and 40 CFR 63.8(f).

Other Relevant EPA Internal Delegations

Delegation 7-1: Approval of State NSPS Plans:
https://intranet.epa.gov/ohr/rmpolicy/ads/dm/7-2.htm

Delegation 7-1: New Hazardous Source Review
https://intranet.epa.gov/ohr/rmpolicy/ads/dm/7-3.htm

Delegation 7-5: Enforcement of Hazardous Emission Standards:
https://intranet.epa.gov/ohr/rmpolicy/ads/dm/7-5.htm

Delegation 7-7: Enforcement of Residential Wood Heater NSPS
https://intranet.epa.gov/ohr/rmpolicy/ads/dm/7-7.htm

Delegation 7-10: Approval/Disapproval of State Implementation Plans [and 111(d) Plans]
https://intranet.epa.gov/ohr/rmpolicy/ads/dm/7-10.htm

Delegation 7-116: Compliance Extensions:
https://intranet.epa.gov/ohr/rmpolicy/ads/dm/7-116.pdf

Delegation 7-117: Approval of Site-Specific Test Plans:
https://intranet.epa.gov/ohr/rmpolicy/ads/dm/7-117.htm

Delegation 7-120: Approval of Site-specific Performance Evaluation Test Plan:
https://intranet.epa.gov/ohr/rmpolicy/ads/dm/7-120.htm

Delegation 7-122: Adjustment to Time Periods for Submitting Reports:
https://intranet.epa.gov/ohr/rmpolicy/ads/dm/7-122.htm

Delegation 7-139 Implementation and Enforcement of 111(d)(2) and 111(d)/(2)/129(b)(3) Federal Plans:
https://intranet.epa.gov/ohr/rmpolicy/ads/dm/7-139.htm

Delegation 7-156: Performance Test Rescheduling:
https://intranet.epa.gov/ohr/rmpolicy/ads/dm/7-156.pdf

Authorities Retained by EPA:

Note: The following list reflects provisions that EPA has historically not delegated to air agencies.[68] This list is included for general information purposes only. To determine whether a particular general provision has been delegated to a specific air agency, always consult the relevant delegation document itself.

NSPS (part 60):

- 40 CFR § 60.4(b)
- 60.8(b)(2) & (3) (to the extent these involve major changes to/ alternative/ equivalent test methods)
- 60.9
- 60.11(b) (with respect to alternative methods)
- 60.11(e)(7) & (8)
- 60.13(a)
- 60.13(d)(2)
- 60.13(g)
- 60.13(i) (to the extent these involve major changes to monitoring)
- Any other provisions specifically identified as non-delegable in each individual subpart.

Emissions Guidelines (parts 60 and 62):

- Part 60 subparts B, Ba, and C (requirements for states to adopt and submit plans, and EPA review and approval)
- Other provisions specifically identified in individual Part 60 Emission Guidelines or Part 62 Federal Plans.

NESHAP (part 61):

- 61.04(b)
- 61.04(c)
- 61.05(c)
- 61.11
- 61.12(d)
- 61.13(h)(1)(ii)
- 61.14(d)
- 61.14(g)(1)(ii)
- 61.16

NESHAP (part 63):

- The following provisions of subpart A:
    - 63.6(g) (Approval of Alternative Non-Opacity Emission Standards)

[68] For background on EPA's policies concerning delegation of these provisions, *see* the Good Practices Manual for Delegation of NSPS and NESHAPS (1983) (available at *https://www3.epa.gov/ttn/atw/112(l)/goodpracticesmanual081009.pdf*) and a series of five memoranda from 1982–1986 discussing part 60 and 61 delegable authorities (included as Attachment 2 to the now-superseded 1999 Manual).

    - 63.6(h)(9) (Approval of Alternative Opacity Standards)
    - 63.7(e)(2)(ii) and (f) (Approval of Major Alternatives to Test Methods)
    - 63.8(f) (Approval of Major Alternatives to Monitoring)
    - 63.10(f) (Approval of Major Alternatives to Recordkeeping and Reporting)
- All of subparts B, C, D, and E
- Any other provisions specifically identified as non-delegable in each individual subpart.

APPENDIX E: Checklist of Information Relevant for Consultation

This checklist provides examples of the information that may be helpful for lead offices to provide to consultees during the development of responses addressed in this manual.

For all types of formal requests, always include:

- Purpose of the consultation
- Facility's basic information (name, location)
- Description of unit(s), process(es), and control(s)
- Incoming request letter
- Draft EPA response (in the absence of a draft, include a summary of the request, an outline of the response, or other relevant written materials)
- Relevant regulatory text and preamble language, as appropriate

On a case-by-case basis (as needed):

- Relevant agency guidance and policy documents
- Relevant previously issued formal responses (including conflicting ones)
- Inspection report or site visit memo
- Notes (including emails) related to conversations with facility and/or air agency
- Level of priority and urgency
- Political or public interest in the outcome
- Possible industry adverse reaction to a response, such as likelihood that the requestor would seek judicial review

For Applicability Determinations:

- Facility's potential to emit or major/minor/area source status, if relevant
- Other site-specific information relevant to applicability

For Alternative Test Methods:

- Facility's current required test methods/procedures, with regulatory citations and any relevant terms of the facility's permit(s)
- Previous stack test protocol and results
- Proposed alternative method(s) or method changes
- Detailed procedures for proposed alternative(s) or changes
- Justification for the proposed alternative(s) or changes, including design obstacles for following EPA published methods
- Test data performed following EPA-approved method and proposed method or other relevant data/information

For Alternative Monitoring Plans:

- Facility's current monitoring practices and parameters, with regulatory citations and any relevant terms of the facility's permit(s)
- Monitoring data following current and proposed monitoring practices
- Facility's requested monitoring alternative

- Standard operating practices for the proposed alternative

For Performance Test Waivers:

- Reason/justification for the waiver, including technical or economic infeasibility or impracticality

For Compliance Extensions:

- Requested extension timeline
- Reason for the extension

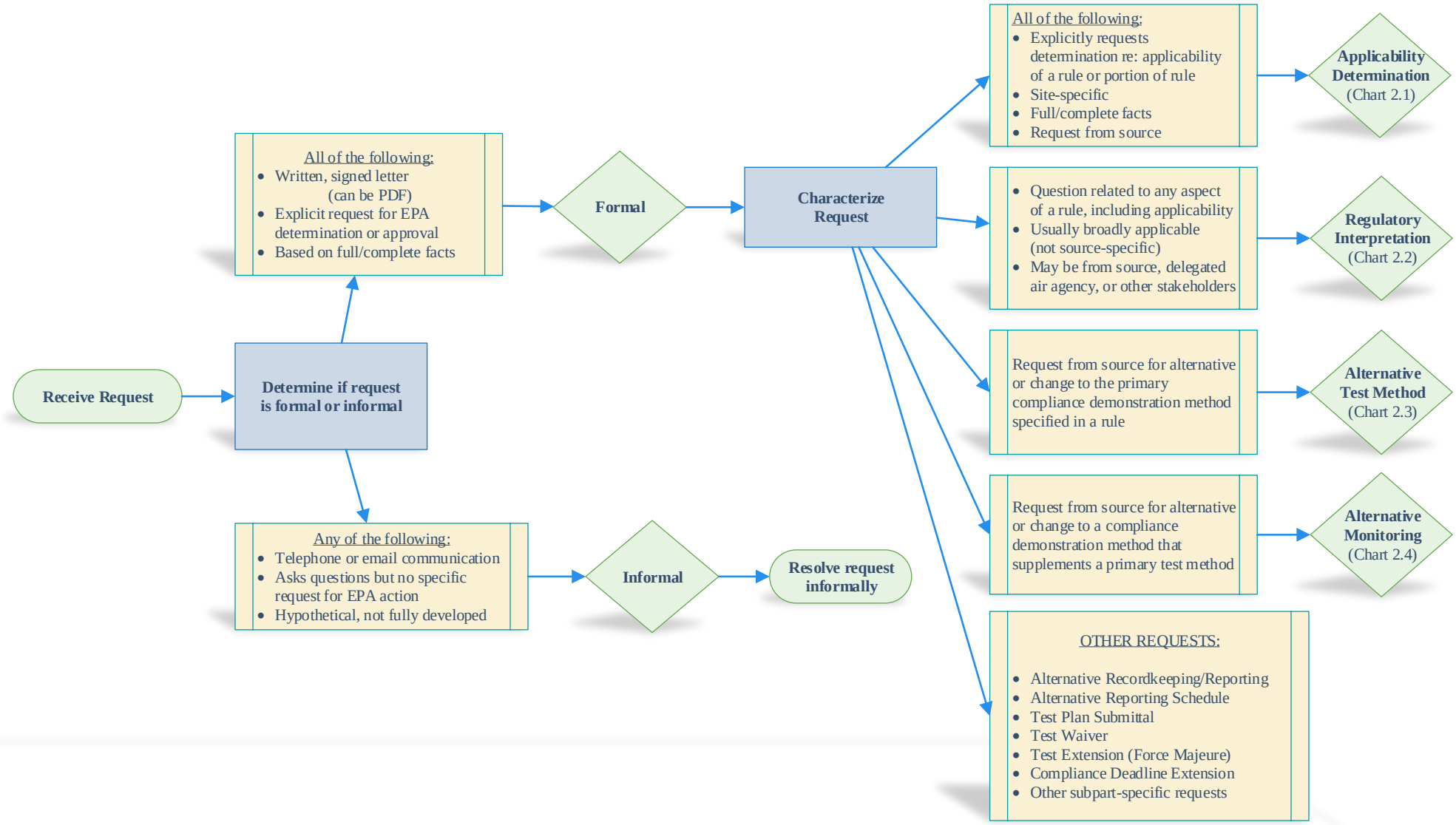
APPENDIX F: Process Flow Charts

Please see the following pages for flow charts outlining the procedures discussed in this manual.

Process Manual for Responding to Requests Under CAA Sections 111, 112, and 129

Chart 1: Characterizing the Request

(References: Sections 2, 3, Appx A)



Process Manual for Responding to Requests Under CAA Sections 111, 112, and 129

Chart 2.1: Tiering Applicability Determinations

(References: Section 2.1)

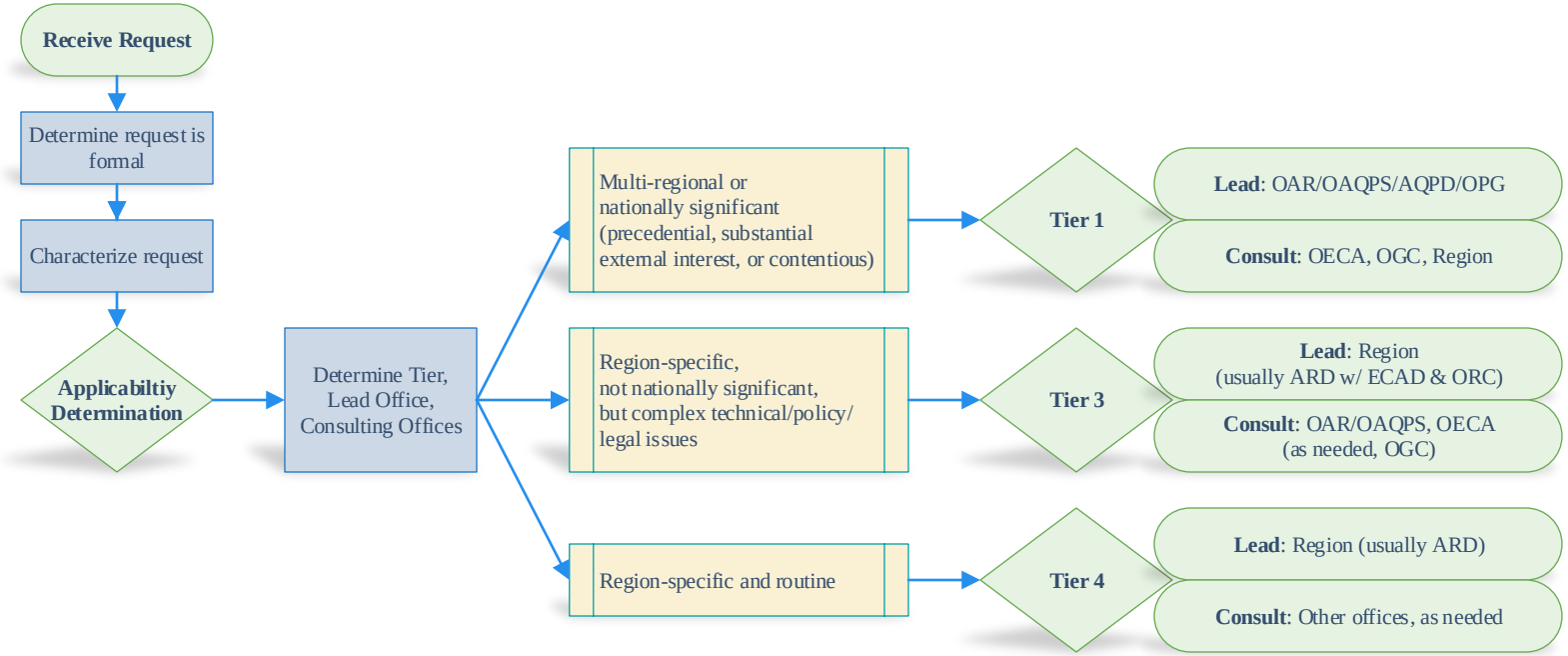


Chart 2.2: Tiering Regulatory Interpretations

(References: Section 2.2)

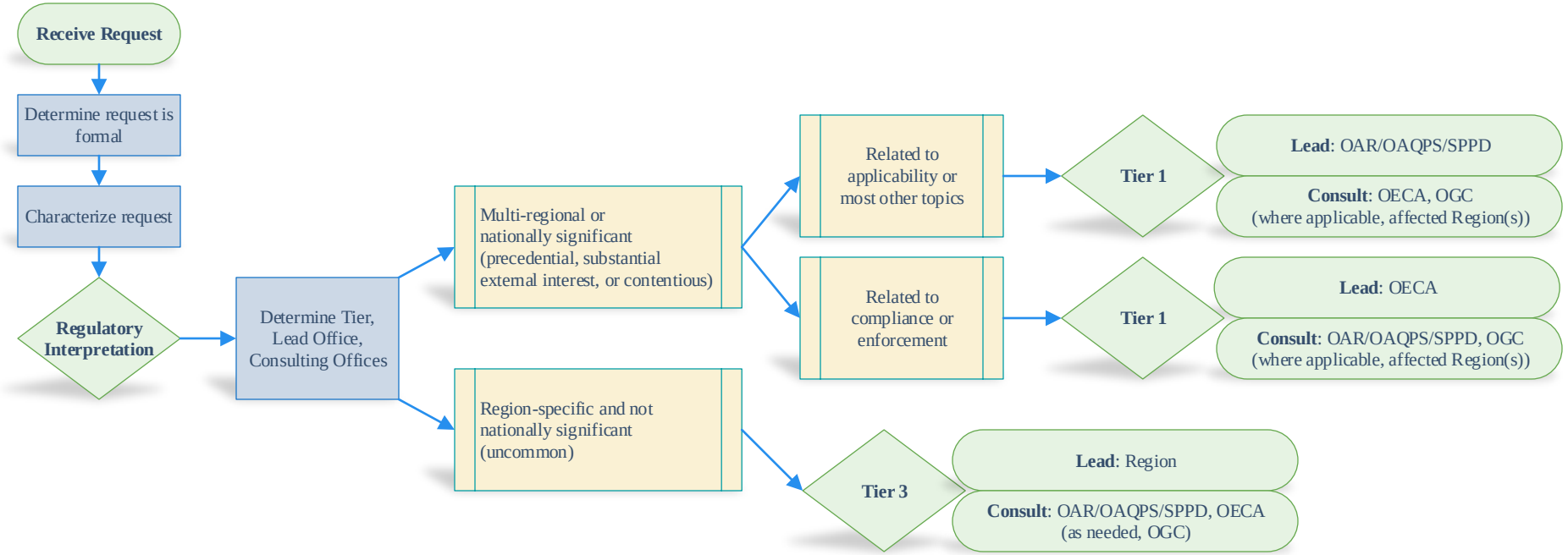


Chart 2.3: Tiering Alternative Test Methods

(References: Section 2.3)

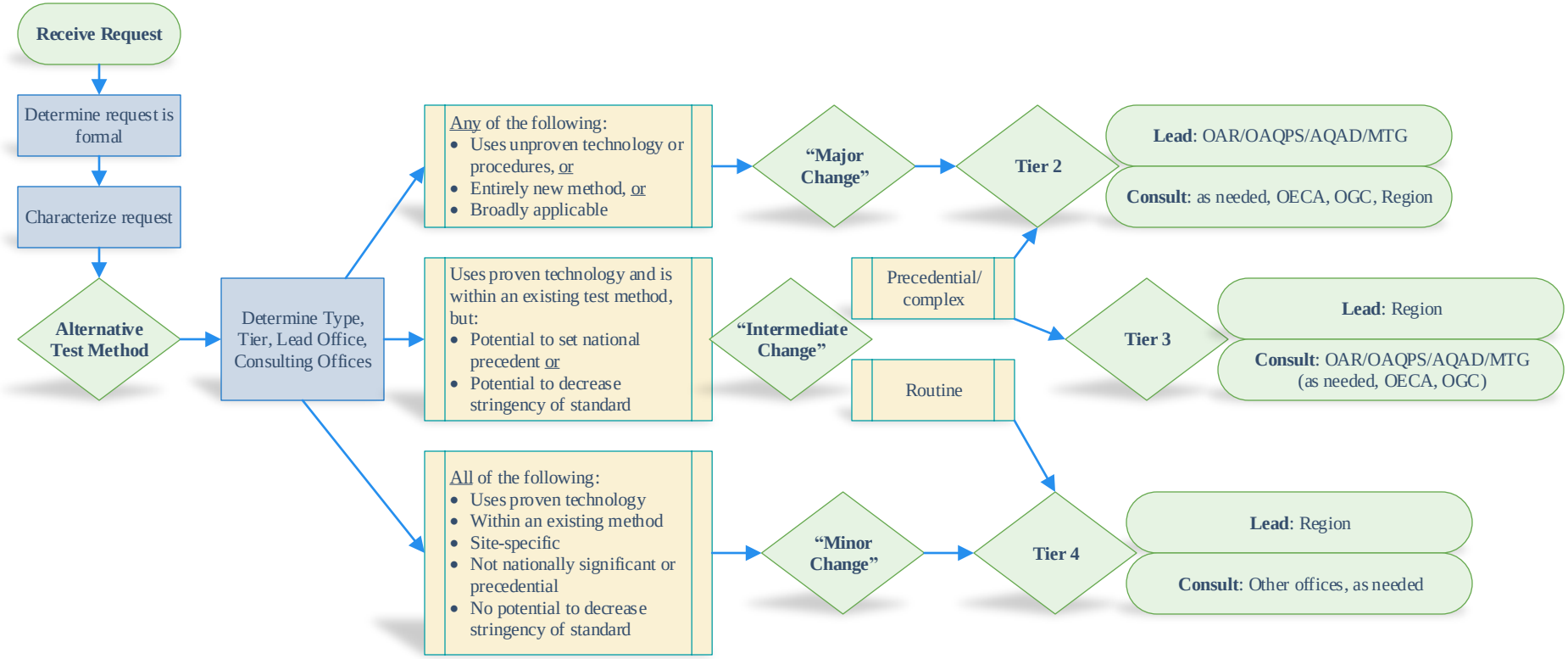


Chart 2.4: Tiering Alternative Monitoring

(References: Section 2.4)

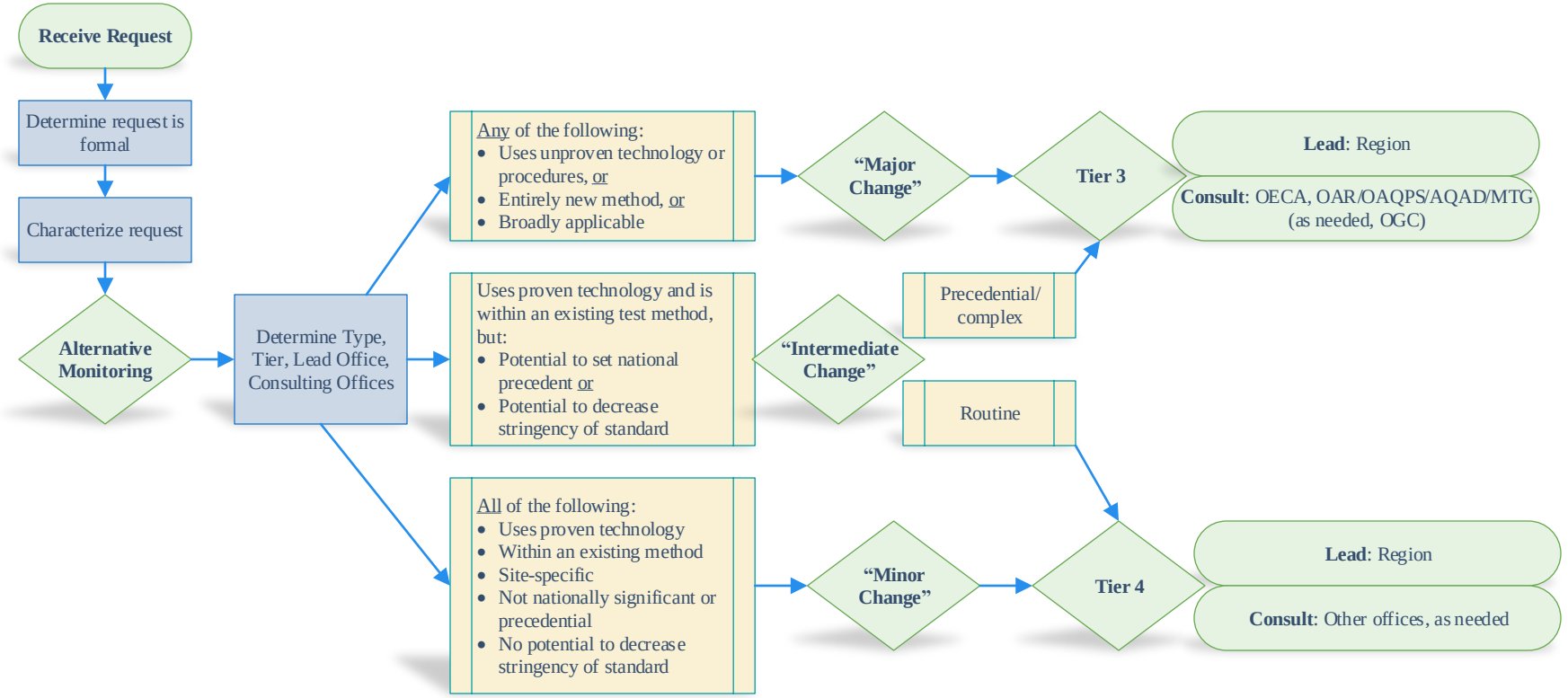
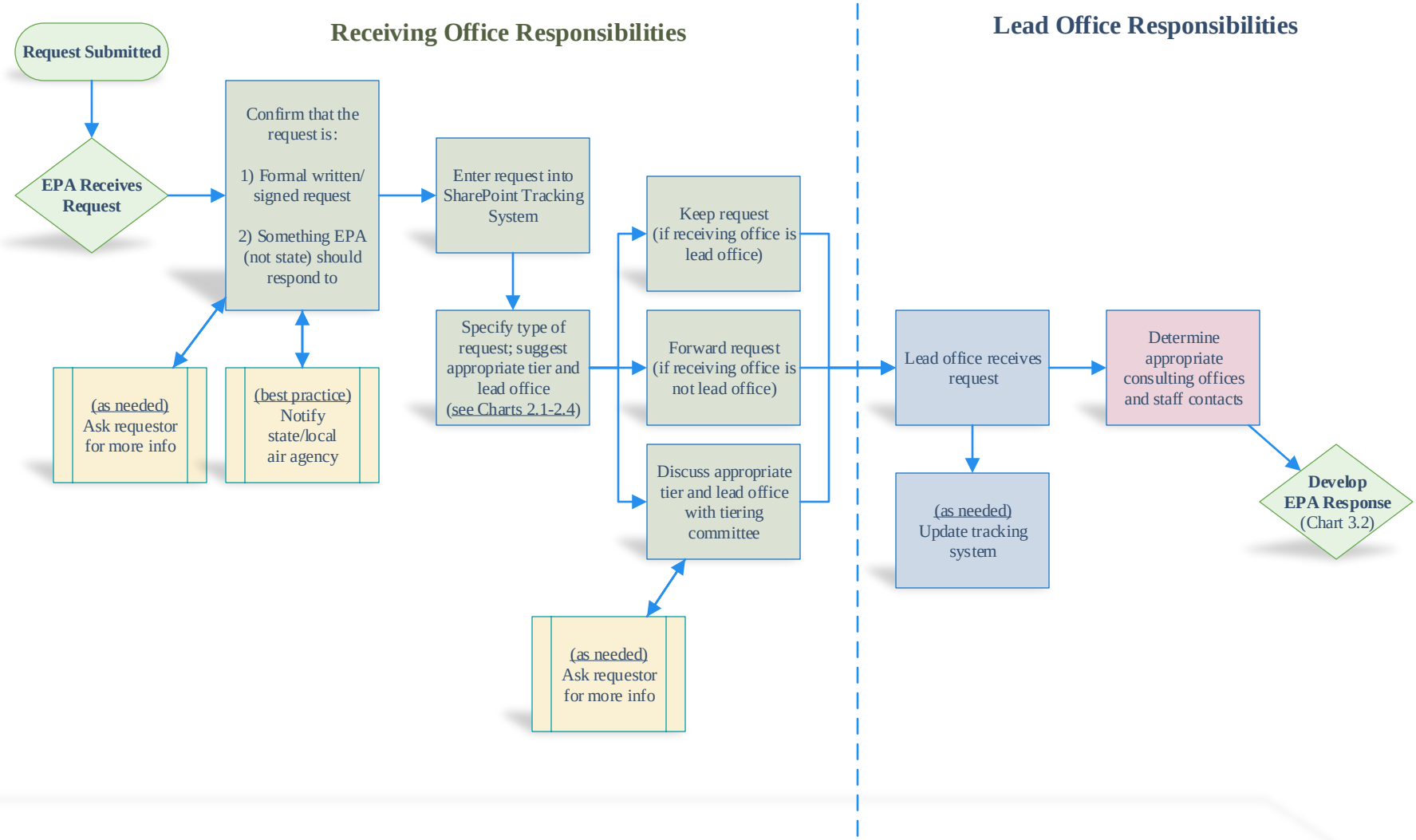


Chart 3.1: Processing a Request: Initial Steps (Phase 1 of 3)

(References: Sections 3.1–3.5)



Process Manual for Responding to Requests Under CAA Sections 111, 112, and 129

Chart 3.2: Processing a Request: Developing EPA's Response (Phase 2 of 3)

(References: Sections 3.6–3.9)

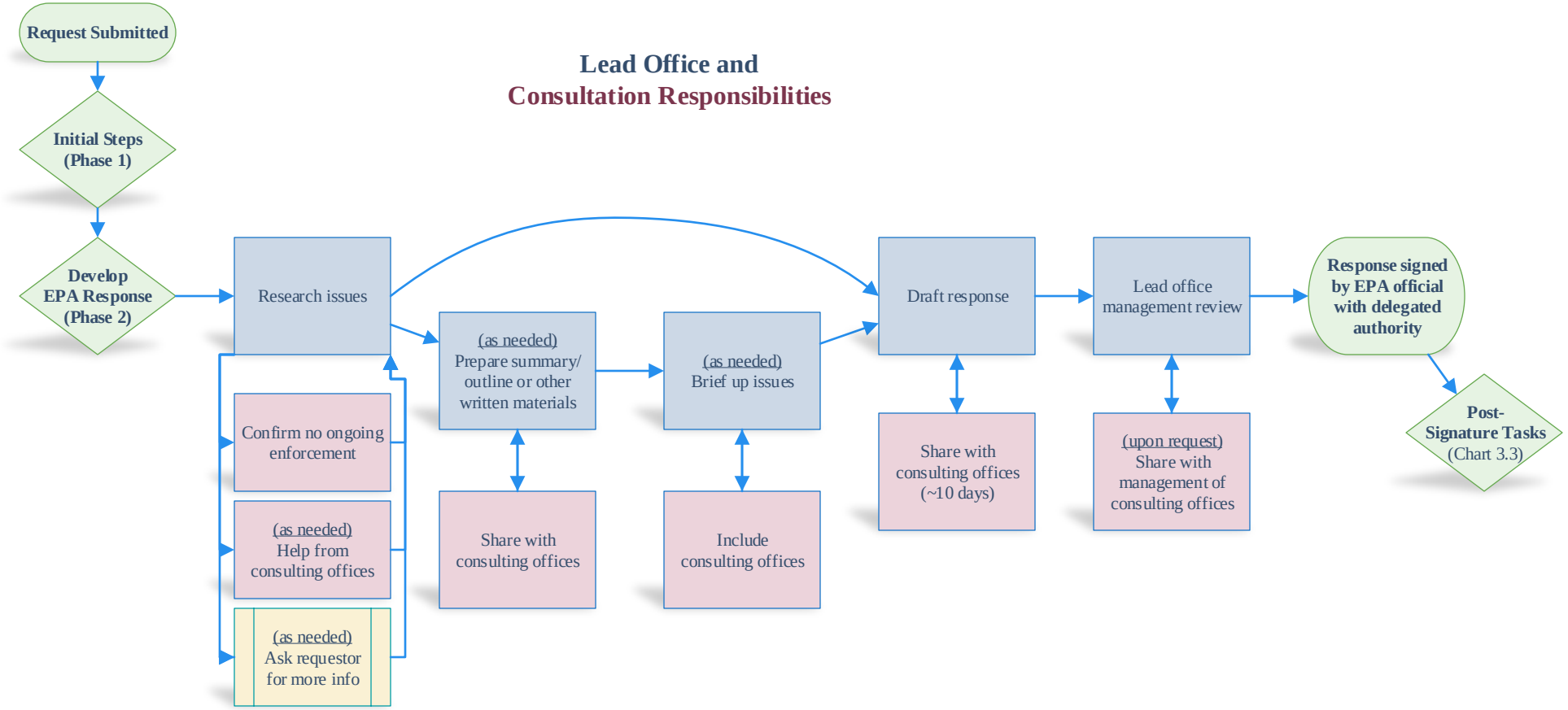


Chart 3.3: Processing a Request: Post-Signature Tasks (Phase 3 of 3)

(References: Sections 3.10–3.12)