

Compliance Extensions Summary

What is a compliance extension?

The Part 63 General Provisions allow a source additional time to come into compliance with a relevant standard, under certain circumstances and with certain requirements.

If the owner/operator of a source requests a compliance extension, and the EPA Administrator (or, in most cases, the State with an approved permit program) approves the request, a compliance extension will be issued to postpone the date by which the source must comply with a relevant standard (or specific part(s) of the relevant standard).

Generally, until the compliance extension has been granted, the owner/operator must comply with all applicable requirements of the relevant standard.

What is a relevant standard?

All of the following are "relevant standards" with respect to the Part 63 General Provisions. If a source is subject to any of these requirements, then the source is also subject to the Part 63 General Provisions:

- 112(d) MACT Standard; 112(f) Residual Risk;
- 112(g) Major Source Modification MACT Determination;
- 112(h) NESHAP Work Practice Standard; or
- 112(j) Equivalent Emission Limitation by Permit MACT Determination.

Where do the General Provisions address compliance extensions?

The procedures for compliance extensions appear in section 63.6(i).

Are progress reports required during the extension period?

When granting an extension of compliance, the Administrator (or the State with an approved permit program) may or may not require that the owner/operator submit progress reports during the period of extension. If progress reports are required, the contents of the progress reports and the dates by which they must be submitted will be specified in the written extension. The purpose of the progress report is to indicate whether steps toward compliance outlined in the compliance schedule have been reached. (The compliance schedule is referred to in §63.6(i)(6)(i)(B) and is submitted as part of the request for compliance extension.) Progress reports are addressed under §63.6(i)(11).

Through what mechanisms may a compliance extension be granted?

Compliance extensions may be granted in the following four cases:

Case 1: Early Reductions Program.

If a source achieves reductions in accordance with the voluntary Early Reductions Program (pursuant to section 112(i)(5) of the Clean Air Act), the source may be granted an extension of compliance with specific requirements, as specified in subpart D. [§63.6(i)(2)(i)]

Case 2: BACT/LAER.

If a source has installed BACT or has installed technology required to meet LAER prior to promulgation of the relevant standard, the source may be granted an extension of compliance with the standard for 5 years after the installation date. [§63.6(i)(2)(ii)]

Case 3: Section 112(d) Standard.

Applies to a source subject to a section 112(d) standard [§63.6(i)(4)(i)(A)]:

- If a source needs additional time in order to install controls before it can comply with a section 112(d) standard, then the source may be granted an extension up to 1 year. Conditions of the extension must be incorporated into the source's title V permit.
- If the source is a mining waste operation and it needs additional time in order to install controls before it can comply with a section 112(d) standard, then the source may be first granted an extension up to 1 year. If that 1-year extension is insufficient to dry and cover mining waste, then an additional extension of up to 3 years may be added. Conditions of the extension must be incorporated into source's title V permit.

Case 4: Section 112(f) Standard.

If a source needs additional time in order to install controls before it can comply with a section 112(f) standard, then the source may be granted an extension up to 2 years after the standard's effective date. The source must take steps during the period of extension to assure that the health of persons will be protected from imminent endangerment. [§63.6(i)(4)(ii)]

When must a request for compliance extension be submitted?

Generally, the source must submit a request for extension in writing not later than 120 days before the relevant standard's compliance date. [§63.6(i)(4)(i)(B)] There are four exceptions to the 120-day limit:

Exception 1:

If the standard specifies an alternative date for submittal of requests, the source must submit its request by that alternative date. [§63.6(i)(4)(i)(B)]

Exception 2:

If the need for the compliance extension arises within 120 days before the compliance date, or if the need for the compliance extension arises between the alternative submittal date specified by the standard and the otherwise applicable compliance date, and the need arose due to circumstances beyond reasonable control of the owner/operator, then the source may submit its request later. [§63.6(i)(4)(i)(C)]

Exception 3:

If the standard is pursuant to section 112(f), the source must submit request for compliance extension not later than 90 days after the effective date of the standard. [§63.6(i)(4)(ii)]

Exception 4:

If the compliance extension is requested on the basis of installation of BACT or technology required to meet LAER, the source must submit its request not later than 120 days after the promulgation date of the standard. [§63.6(i)(5)]

If either Exception 1 or 2 above applies, the compliance extension request will stay the effect of the rule until the request is either approved or denied; in other words, the source does not have to comply with a standard while waiting for approval of its request for an extension of compliance with that standard.

What information must a request for compliance extension include?

For a source seeking either a 1-year extension of compliance with a standard pursuant to section 112(d) or a 2-year extension of compliance with a standard pursuant to section 112(f), the request for compliance extension must include the following information [§63.6(i)(6)(i)]:

- A description of the controls to be installed
- A compliance schedule, including:
 - Starting date for onsite construction, installation of emission control equipment, or process change.
 - Date by which final compliance is to be achieved.

For a source seeking a 5-year extension of compliance due to installation of BACT or LAER technology (as in Case 2 above), the request for compliance extension must include information needed to demonstrate that the installation controls the same pollutant(s) that would be controlled at that source by the relevant standard. [§63.6(i)(6)(ii)]

What is the step-by-step procedure for obtaining a compliance extension?

A request for a compliance extension in connection with Early Reductions (Case 1 above) is handled through subpart D procedures. Other requests (Cases 2, 3, and 4 above) are handled pursuant to paragraphs 63.6(i)(4) through (7).

How the request for extension of compliance will be handled depends on the mechanism through which the owner/operator is requesting an extension. A flow diagram, "Procedure for Compliance Extension Request" depicts how the request for extension of compliance will be handled. This flow diagram shows two possible paths, A and B, which are also described below.

Path A: Section 112(d) Standard or BACT/LAER.

Path A [corresponding to §63.6(i)(12)] depicts how the request is handled if it is for either:

- An owner/operator who is unable to comply with a section 112(d) standard for the reason that additional time is necessary for installation of controls (as in Case 3), or
- An owner/operator who seeks an extension for the reason that the source has installed BACT or LAER technology (as in Case 2).

Within 30 calendar days after receiving the compliance extension request, the Administrator (or the State with an approved permit program) will notify the

owner/operator in writing as to the status of the application (that is, whether it is complete--containing sufficient information with which to make a determination).

If the application is not complete, the notification of status will specify the information needed. The applicant has 30 calendar days after being notified of the incomplete application in which to present additional information or arguments toward further action on the application. After such additional information or arguments have been submitted by the owner/operator, the Administrator (or the State with an approved permit program), just as for the original request, will notify the owner/operator in writing within 30 calendar days as to the status of the application.

When the owner/operator has been notified that the application is complete, the clock starts for the 30-day approval or denial period. This means the Administrator (or the State with an approved permit program) will notify the owner/operator either of approval or of intent to deny approval of the compliance request within 30 calendar days after the owner/operator has been notified that the application is complete.

In the case where the Administrator (or the State with an approved permit program) notifies the owner/operator of intent to deny the compliance extension request, the notification will specify the basis for the intended denial, and it will allow the owner/operator 15 days in which to present in writing any additional information or arguments before a final determination is made.

A final determination to deny the request for a compliance extension will be in writing and will specify the basis for the denial. If additional information or arguments submitted by the owner/operator (following receipt of a notice of intent to deny) do not change the decision to deny, then the final determination of denial will be issued within 30 calendar days after the additional information or arguments were presented. If no additional information or arguments were submitted by the owner/operator, then the final determination of denial will be issued within 30 calendar days after the due date for presentation of additional information or arguments.

Path B: Section 112(f) Standard.

Path B depicts how the request is handled if it is for an owner/operator who is unable to comply with a section 112(f) standard for the reason that additional time is necessary for installation of controls (as in Case 4). [§63.6(i)(13)]

Within 15 calendar days after receiving the compliance extension request, the Administrator (or the State with an approved permit program) will notify the owner/operator in writing as to the status of the application (that is, whether it is complete--containing sufficient information with which to make a determination).

If the application is not complete, the notification of status will specify the information needed. The applicant has 15 calendar days after being notified of the incomplete application in which to present additional information or arguments toward further action on the application. After such additional information or arguments have been submitted by the owner/operator, the Administrator (or the State with an approved permit program), just as for the original request, will notify the owner/operator in writing within 15 calendar days as to the status of the application.

When the owner/operator has been notified that the application is complete, the clock starts for the 30-day approval or denial period. This means the Administrator (or the State with an approved permit program) will notify the owner/operator either of approval or of intent to deny approval of the compliance request within 30 calendar days after the owner/operator has been notified that the application is complete.

In the case where the Administrator (or the State with an approved permit program) notifies the owner/operator of intent to deny the compliance extension request, the notification will specify the basis for the intended denial, and it will allow the owner/operator 15 days in which to present in writing any additional information or arguments before a final determination is made.

A final determination to deny the request for a compliance extension will be in writing and will specify the basis for the denial. If additional information or arguments submitted by the owner/operator (following receipt of a notice of intent to deny) do not change the decision to deny, then the final determination of denial will be issued within 30 calendar days after the additional information or arguments were presented. If no additional information or arguments were submitted by the owner/operator, then the final determination of denial will be issued within 30 calendar days after the due date for presentation of additional information or arguments.