within six months after the compliance date whether or not the test plan is approved. And they have at least two years to prepare and submit these plans, and to work with regulatory officials even before doing so. For their part, permit officials recognize that they have the responsibility to review and approve the plan or notify the source of their intent to deny approval within the nine-month window given that the source must proceed with expensive testing on a fixed deadline whether or not the plan is approved. To the extent regulatory officials anticipate that many test plans will be submitted at about the same time, the agencies have at least two years to figure out ways to accommodate this scenario from a resource and a prioritization standpoint. If permit officials nevertheless fail to act within the nine-month review and approval period, a source could argue that this failure is tacit approval of the plan and that later ''second-guessing'' is not allowable. This should be a very strong incentive for regulatory officials to act within the nine months, especially with a two-year lead time to avoid this type of situation

In addition, the RCRA experience is not a particularly good harbinger of the future MACT test plan approval, as commenters suggest, because most sources will have already completed trial burn testing under RCRA. Thus, both the regulatory agencies and the facilities have been through one round of test plan submittal, review, and approval for their combustion units. Given that MACT testing is very similar to RCRA testing, approved RCRA test protocols can likely be modified as necessary to accommodate any changes required under the MACT rule. Although some of these changes may be significant, we expect that many will not be. For example, RCRA trial burn testing always included DRE testing. Under the MACT rule, DRE testing will not be required for most sources. And for sources where DRE testing is required under MACT, most will have already been through a RCRA approval of the DRE test protocol, which should substantially simplify the process under MACT.

The third reason that we maintain the nine-month review and approval window is appropriate is that discussions with several states leads us to conclude that they are prepared to meet their obligations under this provision. This is a highly significant indicator that the nine-month review and approval period is a reasonable period of time, particularly since all permitting agencies have at least two years to plan for submittal of test plans from the existing facilities in their jurisdictions.

In summary, sound reasons exist to expect that today's final rule provides sufficient time for the submittal, review, and approval of test plans. Furthermore, clear incentives exist for both owners and operators and permit officials to work together expeditiously to ensure that an approval or notice of intent to disapprove the test plan can be provided within the nine-months allotted.

On a separate issue, we also retain, in today's final rule, the 60-day time frame and requirements of § 63.7(b)(1) for submittal of the notification of performance test. Additionally, the final rule continues to provide an opportunity for, but does not require, the regulatory agency to review and oversee testing.

3. What Is the Provision for Time Extensions for Subsequent Performance Tests?

The Administrator may grant up to a one year time extension for any performance test subsequent to the initial comprehensive performance test. This enables you to consolidate MACT performance testing and any other emission testing required for issuance or reissuance of Federal/State permits.[182]

At the time of proposal, we were concerned about how to allow coordination of MACT performance tests and RCRA trial burns. As discussed elsewhere, the RCRA trial burn is superseded by MACT performance testing. However, a one-year time extension may still be necessary for you to coordinate performance of a RCRA risk burn. In addition, commenters state that there may be additional reasons to grant extension requests (*e.g.* some TSCA-regulated hazardous waste combustors may be required to perform stack tests beyond those required by MACT). Furthermore, some sources may have to comply with state programs requiring RCRA trial burn testing. To address these situations, to promote coordinated testing, and to avoid unnecessary source costs, the final rule allows up to a one-year time extension for the performance test.

When performance tests and other emission tests are consolidated, the deadline dates for subsequent comprehensive performance tests are adjusted correspondingly. For example, if the deadline for your confirmatory performance test is January 1 and your state-required trial burn is scheduled for September 1 of the same year, you can apply to adjust the deadline for the confirmatory performance test to September 1. If granted, this also would delay by a corresponding time period the deadline dates for subsequent comprehensive performance tests.

The procedures for granting or denying a time extension for subsequent performance tests are the same as those found in § 63.6(i), which allow the Administrator to grant sources up to one additional year to comply with standards.[183] These are also the same procedures apply to a request for a time extension for the initial NOC.

4. What Are the Provisions for Waiving Operating Parameter Limits During Subsequent Performance Tests?

Operating parameter limits are automatically waived during subsequent comprehensive performance tests under an approved performance test plan. See § 63.1207(h). This waiver applies only for the duration of the comprehensive performance test and during pretesting for an aggregate period up to 720 hours of operation. You are still required to be in compliance with MACT emissions standards at all times during these tests, however.

In the April 1996 NPRM, we proposed to allow the burning of hazardous waste only under the operating limits established during the previous comprehensive performance test (to ensure compliance with emission standards not monitored with a continuous emissions monitoring system). Two types of waivers from this requirement would have been provided during subsequent comprehensive performance tests: (1) An automatic waiver to exceed current operating limits up to 5 percent; and (2) a waiver that the Administrator may grant if warranted to allow the source to exceed the current operating limits without restriction. We proposed an automatic waiver because, without the waiver, the operating limits would become more and more stringent with subsequent comprehensive performance tests. This is because sources would be required to operate within the more stringent conditions to ensure that they did not exceed a current operating limit. This would result in a shrinking operating envelope over time.

A number of commenters question the comprehensive performance test's 5%

[182] In addition, this provision also may assist you when unforseen events beyond your control (*e.g.*, power outage, natural disaster) prevent you from meeting the testing deadline.

[183] Note, however, that § 63.6(i) applies to an entirely different situation: extension of time for initial compliance with the standards, not subsequent performance testing.