



# Federal Register

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## Part III

# Environmental Protection Agency

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40 CFR Part 63

**National Emission Standards for  
Hazardous Air Pollutants for Source  
Categories: General Provisions; and  
Requirements for Control Technology  
Determinations for Major Sources in  
Accordance With Clean Air Act Sections,  
Sections 112(g) and 112(j); Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 63**

[FRL-7155-8]

RIN 2060-AF31

**National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions; and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; amendments.

**SUMMARY:** On March 16, 1994, the EPA promulgated General Provisions for national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements that are established under section 112 of the Clean Air Act (CAA). In today's action, we are promulgating amendments to the General Provisions that revise and clarify several of the current provisions.

We are promulgating these amendments, in part, as a result of decisions reached in settlement negotiations conducted between petitioners who filed for review of the General Provisions and the EPA, as well as internal EPA discussions on issues regarding implementation of the General Provisions. The promulgated amendments also reflect our response to public comments.

In a separate action in today's **Federal Register**, we are also amending regulations on National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production, in a direct final rule in order to resolve inconsistencies between that rule and these amendments to the General Provisions.

In addition, in today's action, we are promulgating amendments to the rule that establishes equivalent emission limitations by permit under section 112(j) of the CAA. The "section 112(j)" rule establishes requirements and procedures for owners or operators of major sources of hazardous air pollutants (HAP) and permitting authorities to comply with section 112(j). The section 112(j) rule was promulgated on May 20, 1994.

These amendments have been developed in response to settlement negotiations conducted between petitioners who filed for review of the section 112(j) rule and the EPA, as well as internal EPA discussions regarding implementation of the section 112(j)

rule. The promulgated amendments to the section 112(j) rule also reflect our response to public comments.

**EFFECTIVE DATE:** April 5, 2002.

**ADDRESSES:** Docket No. A-2001-02, Part 63 General Provisions (Subpart A) and Section 112(j) Regulations (Subpart B) Litigation Settlement Amendments, contains supporting information used in developing these amendments. This docket is located at the U.S. EPA, 401 M Street, SW, Washington, DC 20460 in room M-1500, Waterside Mall (ground floor), and is available for public inspection and copying from 8:30 a.m. through 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** For information concerning applicability and rule determinations, contact your State or local permitting agency representative or the appropriate EPA Regional Office representative. For further information concerning the development of these rule amendments, contact Mr. Rick Colyer, U.S. EPA, Office of Air Quality Planning and Standards, Minerals and Inorganic Chemicals Group, C504-05, Research Triangle Park, North Carolina, 27711, telephone (919) 541-5262, e-mail [colyer.rick@epa.gov](mailto:colyer.rick@epa.gov).

**SUPPLEMENTARY INFORMATION:** *Docket.* The docket is an organized and complete file of the record compiled by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the background information document and the proposal and promulgation preamble and standards for this rulemaking, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) All these materials are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today's promulgated rule amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed

or promulgated rules: <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

*Regulated Entities.* Categories and entities potentially regulated by this action include all section 112 source categories listed under section 112(c) of the CAA.

**Industry Group: Source Category***Fuel Combustion*

Combustion Turbines  
Engine Test Facilities  
Industrial Boilers  
Institutional/Commercial Boilers  
Process Heaters  
Reciprocating Internal Combustion Engines  
Rocket Testing Facilities

*Non-Ferrous Metals Processing*

Primary Aluminum Production  
Primary Copper Smelting  
Primary Lead Smelting  
Primary Magnesium Refining  
Secondary Aluminum Production  
Secondary Lead Smelting

*Ferrous Metals Processing*

Coke By-Product Plants  
Coke Ovens: Charging, Top Side, and Door Leaks  
Coke Ovens: Pushing, Quenching, Battery Stacks  
Ferroalloys Production: Silicomanganese and Ferromanganese  
Integrated Iron and Steel Manufacturing  
Iron Foundries Electric Arc Furnace (EAF) Operation  
Steel Foundries  
Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration

*Mineral Products Processing*

Alumina Processing  
Asphalt Concrete Manufacturing  
Asphalt Processing  
Asphalt Roofing Manufacturing  
Asphalt/Coal Tar Application—Metal Pipes  
Clay Products Manufacturing  
Lime Manufacturing  
Mineral Wool Production  
Portland Cement Manufacturing  
Refractories Manufacturing  
Taconite Iron Ore Processing  
Wool Fiberglass Manufacturing

*Petroleum and Natural Gas Production and Refining*

Oil and Natural Gas Production  
Natural Gas Transmission and Storage  
Petroleum Refineries—Catalytic Cracking (Fluid and other) Units, Catalytic Reforming Units, and Sulfur Plant Units  
Petroleum Refineries—Other Sources Not Distinctly Listed

*Liquids Distribution*

Gasoline Distribution (Stage 1)  
Marine Vessel Loading Operations  
Organic Liquids Distribution (Non-Gasoline)

*Surface Coating Processes*

Aerospace Industries  
 Auto and Light Duty Truck  
 Large Appliance  
 Magnetic Tapes  
 Manufacture of Paints, Coatings, and Adhesives  
 Metal Can  
 Metal Coil  
 Metal Furniture  
 Miscellaneous Metal Parts and Products  
 Paper and Other Webs  
 Plastic Parts and Products  
 Printing, Coating, and Dyeing of Fabrics  
 Printing/Publishing  
 Shipbuilding and Ship Repair  
 Wood Building Products  
 Wood Furniture

*Waste Treatment and Disposal*

Hazardous Waste Incineration  
 Municipal Landfills  
 Off-Site Waste and Recovery Operations  
 Publicly Owned Treatment Works (POTW) Emissions  
 Sewage Sludge Incineration  
 Site Remediation  
 Solid Waste Treatment, Storage and Disposal Facilities (TSDF)

*Agricultural Chemicals Production*

Pesticide Active Ingredient Production

*Fibers Production Processes*

Acrylic Fibers/Modacrylic Fibers Production  
 Rayon Production  
 Spandex Production

*Food and Agriculture Processes*

Manufacturing of Nutritional Yeast  
 Cellulose Food Casing Manufacturing  
 Vegetable Oil Production

*Pharmaceutical Production Processes*

Pharmaceuticals Production

*Polymers and Resins Production*

Acetal Resins Production  
 Acrylonitrile-Butadiene-Styrene Production  
 Alkyd Resins Production  
 Amino Resins Production  
 Boat Manufacturing  
 Butyl Rubber Production  
 Carboxymethylcellulose Production  
 Cellophane Production  
 Cellulose Ethers Production  
 Epichlorohydrin Elastomers Production  
 Epoxy Resins Production  
 Ethylene-Propylene Rubber Production  
 Flexible Polyurethane Foam Production  
 Hypalon (tm) Production  
 Maleic Anhydride Copolymers Production  
 Methylcellulose Production  
 Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production  
 Methyl Methacrylate-Butadiene-Styrene Terpolymers Production  
 Neoprene Production  
 Nitrile Butadiene Rubber Production  
 Nitrile Resins Production  
 Non-Nylon Polyamides Production  
 Phenolic Resins Production  
 Polybutadiene Rubber Production  
 Polycarbonates Production  
 Polyester Resins Production  
 Polyether Polyols Production  
 Polyethylene Terephthalate Production

Polymerized Vinylidene Chloride Production  
 Polymethyl Methacrylate Resins Production  
 Polystyrene Production  
 Polysulfide Rubber Production  
 Polyvinyl Acetate Emulsions Production  
 Polyvinyl Alcohol Production  
 Polyvinyl Butyral Production  
 Polyvinyl Chloride and Copolymers Production  
 Reinforced Plastic Composites Production  
 Styrene-Acrylonitrile Production  
 Styrene-Butadiene Rubber and Latex Production

*Production of Inorganic Chemicals*

Ammonium Sulfate Production—Caprolactam By-Product Plants  
 Carbon Black Production  
 Chlorine Production  
 Cyanide Chemicals Manufacturing  
 Fumed Silica Production  
 Hydrochloric Acid Production  
 Hydrogen Fluoride Production  
 Phosphate Fertilizers Production  
 Phosphoric Acid Manufacturing  
 Uranium Hexafluoride Production

*Production of Organic Chemicals*

Ethylene Processes  
 Quaternary Ammonium Compounds Production  
 Synthetic Organic Chemical

*Miscellaneous Processes*

Benzyltrimethylammonium Chloride Production  
 Butadiene Dimers Production  
 Carbonyl Sulfide Production  
 Cellulosic Sponge Manufacturing  
 Chelating Agents Production  
 Chlorinated Paraffins  
 Chromic Acid Anodizing  
 Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines  
 Commercial Sterilization Facilities  
 Decorative Chromium Electroplating  
 Dry Cleaning (Petroleum Solvent)  
 Ethylidene Norbornene Production  
 Explosives Production  
 Flexible Polyurethane Foam Fabrication Operations  
 Friction Products Manufacturing  
 Halogenated Solvent Cleaners  
 Hard Chromium Electroplating  
 Hydrazine Production  
 Industrial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines  
 Industrial Dry Cleaning (Perchloroethylene)—Transfer Machines  
 Industrial Process Cooling Towers  
 Leather Tanning and Finishing Operations  
 OBPA/1,3-Diisocyanate Production  
 Paint Stripping Operations  
 Photographic Chemicals Production  
 Phthalate Plasticizers Production  
 Plywood and Composite Wood Products  
 Polyether Polyols Production  
 Pulp and Paper Production  
 Rubber Chemicals Manufacturing  
 Rubber Tire Manufacturing  
 Semiconductor Manufacturing  
 Symmetrical Tetrachloropyridine Production

*Categories of Area Sources*

Chromic Acid Anodizing  
 Commercial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines

Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines  
 Commercial Sterilization Facilities  
 Decorative Chromium Electroplating  
 Halogenated Solvent Cleaners  
 Hard Chromium Electroplating  
 Secondary Lead Smelting

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether you are regulated by this action, you should examine the section 112(d) regulation for your source category. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. Only source categories for which standards have not been promulgated by May 15, 2002, are affected by the section 112(j) regulation.

*Judicial Review.* The amendments to the General Provisions and the section 112(j) provisions were proposed on March 23, 2001 (66 FR 16318). Today's action announces EPA's final decision on the amendments. Under section 307(b)(1) of the CAA, judicial review of these amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 4, 2002. Under section 307(d)(7)(B) of the CAA, only those objections to this rule that were raised with reasonable specificity during the period for public comment may be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements that are the subject of today's final rule may not be challenged separately in civil or criminal proceedings brought by the EPA to enforce these requirements.

*Outline.* The information presented in this preamble is organized as follows:

- I. Background
  - A. General Provisions
  - B. Section 112(j) Provisions
- II. What significant comments did we consider and what are the major changes to the proposed amendments to the General Provisions?
  - A. Comments and Changes in Response to Our Requests for Comments
  - B. Other Comments and Changes
- III. What significant comments did we consider and what are the major changes to the proposed amendments to the section 112(j) provisions?
  - A. Impact of Missing the Section 112(j) Deadline
  - B. Comments and Changes in Response to our Requests for Comments
  - C. Other Comments and Changes
- IV. What is the section 112(j) process?
  - A. If I am an owner or operator of a source, what must I do?

- B. If I am the permitting authority for a source subject to section 112(j), what must I do?
- C. What happens when a rule comes out after the hammer date for a given source category?
- V. What are the environmental, energy, cost, and economic impacts of this rule?
- VI. What are the administrative requirements for this rule?
- A. Executive Order 12866, Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Executive Order 13132, Federalism
- D. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
- E. Unfunded Mandates Reform Act of 1995
- F. Regulatory Flexibility Act (RFA) as Amended by Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
- G. National Technology Transfer and Advancement Act of 1995
- H. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
- I. Congressional Review Act
- J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

## I. Background

### A. General Provisions

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Major sources of HAP are those that have the potential to emit greater than 10 tons per year of any one HAP or 25 tons per year of any combination of HAP. Area sources of HAP are those sources that do not have potential to emit greater than 10 tons per year of any one HAP and 25 tons per year of any combination of HAP. The General Provisions to 40 CFR part 63 establish the framework for emission standards and other requirements developed pursuant to section 112(d) of the CAA. The General Provisions eliminate the repetition of general information and requirements in individual NESHAP by consolidating all generally applicable information in one location. They include sections on applicability, definitions, compliance dates and requirements, monitoring, recordkeeping and reporting, among others. In addition, they include administrative sections concerning actions that the EPA (or delegated authorities) must take, such as making determinations of applicability, reviewing applications for approval of new construction, responding to requests for extensions or waivers of applicable requirements, and generally

enforcing national standards for controlling toxic air pollutants. The General Provisions become applicable to a section 112(d) source category rule when the source category rule is promulgated and becomes effective.

The General Provisions to part 63 were developed in a collaborative process that included input from industry and other interested parties. On August 11, 1993, we proposed the General Provisions in the **Federal Register** (58 FR 42760). We received numerous comments on that proposal from industry groups, environmental groups, and State and local agencies. Those comments addressed a wide range of issues and requirements in the proposed rulemaking. We published our final decisions regarding the General Provisions in the **Federal Register** on March 16, 1994 (59 FR 12408). In the preamble to the promulgated rule, we discussed major comments on the proposal and our responses to those comments. We addressed other comments in the Background Information Document (BID) for the promulgated rulemaking (EPA-450/3-91-019b). In responding to comments, we made some changes and some clarifications to the final package and retained other provisions where the Agency believed it was appropriate to do so.

On May 16, 1994, six petitioners filed for review of the General Provisions. They cited a variety of issues raised in comments on the proposed rule whose resolution they believed to be inappropriate. In addition, we identified other changes that would clarify the EPA's original intent. On March 23, 2001 (66 FR 16318), we proposed changes to the General Provisions based on the outcome of settlement negotiations between the EPA and the petitioners, as well as on other internal EPA deliberations. We received 27 public comment letters in response to our proposal. In section II of this preamble, we discuss our responses to these public comments and the specific changes that were made to the proposed amendments to reflect our responses. The amendments to the General Provisions being promulgated today reflect decisions which we made in connection with settlement negotiations between the EPA and the petitioners, and our responses to the public comments on the proposed amendments.

In a separate action, we are promulgating changes to the Vegetable Oil NESHAP in response to public comments on the proposed amendments to the General Provisions. These changes are discussed briefly in section

II of this preamble and more extensively in the preamble to the direct final action on the Vegetable Oil NESHAP.

The amendments finalized with today's action clarify and alter certain sections of the General Provisions.

### B. Section 112(j) Provisions

The 1990 Amendments to section 112 of the CAA included a new section 112(j) which is entitled "Equivalent Emission Limitation by Permit." Section 112(j)(2) provides that the provisions of section 112(j) apply if the EPA misses a deadline for promulgation of a standard under section 112(d) established in the source category schedule for standards. After the effective date of a title V permit program in a State, section 112(j)(3) requires the owner or operator of a major source in a source category for which the EPA failed to promulgate a section 112(d) standard to submit a permit application 18 months after the missed promulgation deadline. Section 112(j)(5) also specifies that if the applicable criteria for voluntary early reductions established under section 112(i)(5) are met, then this alternative emission limit satisfies the requirements of section 112(j), provided that the emissions reductions are achieved by the missed promulgation date.

The rule proposing to implement section 112(j) of the CAA was published on July 13, 1993 (58 FR 37778). Public comments received on the proposed rule were considered, and changes we deemed appropriate were made in developing a final rule.

On May 20, 1994 (59 FR 26429), we issued a final rule for implementing section 112(j). That rule requires major source owners or operators to submit a permit application by the date 18 months after a missed date on the regulatory schedule. As required under section 112(j) of the CAA, the section 112(j) rule establishes requirements for the content of permit applications, contains provisions governing the establishment of the maximum achievable control technology (MACT)-equivalent emission limitations by the permitting authority, includes the criteria for the reviewing authority to determine completeness, and allows the applicant up to 6 months to revise and resubmit the application. As required in section 112(j)(5) of the CAA, the rule also establishes compliance dates:

No such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and, as expeditiously as practicable, but not later than the date 3 years after the permit is issued for existing sources or such other compliance date as would apply under subsection (i).

Several petitioners filed for review of several provisions of the section 112(j) rule that they believed needed to be clarified or streamlined. On March 23, 2001 (66 FR 16318), we proposed changes to the section 112(j) rule based on the outcome of settlement negotiations between the EPA and the petitioners, as well as on other internal EPA deliberations. We received 27 public comment letters in response to our proposal. In section III of this preamble, we discuss our responses to these public comments and the specific changes that were made to the proposed section 112(j) amendments to reflect those public comments. The amendments to the section 112(j) rule being promulgated today reflect decisions which we made in connection with settlement negotiations between the EPA and the litigants, as well as our response to the public comments on the proposed amendments.

## II. What Significant Comments Did We Consider and What Are the Major Changes to the Proposed Amendments to the General Provisions?

While we received many comments on the proposed amendments to the General Provisions, most commenters expressed general support for the proposed changes. For this reason, the majority of amendments were promulgated as proposed. A comprehensive summary of public comments and responses can be found in "National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)—Background Information for Standards," (EPA 453/R-02-002). This preamble discusses the significant comments received and major changes made. Additional minor changes and clarifications are discussed in the Background Information Document (BID) cited above. In the proposed amendments to the General Provisions, we specifically discussed and solicited comments on certain issues. In addition, we received comments on other proposed amendments to the General Provisions.

### A. Comments and Changes in Response to Our Requests for Comments

In the proposal preamble, we discussed the presumptive applicability of the General Provisions, which has been an issue of concern for industry petitioners. We believe that the presumptive applicability of the General Provisions serves an important and

valid purpose by eliminating the repetition of common provisions in individual NESHAP. While we reiterated that the General Provisions do apply unless specifically overridden, we acknowledged the potential for confusion regarding the actual requirements for sources when General Provisions requirements are not tailored to specific source categories. For several years, we have included a table for most part 63 subparts that indicates the applicability of each provision of the General Provisions to a particular subpart. To codify this practice, we proposed to amend the General Provisions to require individual subparts to explicitly state which General Provisions requirements are included in the relevant standard and which are not.

In addition, we requested comment on "any conflicts \* \* \* that result solely from applying these proposed amendments to the General Provisions to promulgated part 63 subparts." One commenter identified such a conflict between the startup, shutdown, malfunction (SSM) provisions of the Vegetable Oil Production NESHAP and those provisions in the General Provisions. Specifically, the commenter noted that proposed 40 CFR 63.6(e)(3)(iv), which requires reporting of actions inconsistent with the Startup, Shutdown, and Malfunction Plan (SSMP) if the emissions exceed the relevant standard, does not comport with subpart GGGG. The Vegetable Oil NESHAP require reporting of such actions regardless of whether the standard was exceeded. The commenter also specifically noted that proposed 40 CFR 63.6(e)(3)(viii), the requirement to report modifications to the SSMP in the semiannual report, should not apply to sources subject to subpart GGGG, as subpart GGGG does not require a semiannual report.

We agree that the proposed amendments would have had a substantive impact on the Vegetable Oil NESHAP. However, the commenter has misinterpreted the intent of the changes, which was to reduce burden.

We agree with the commenter's assessment that certain SSM provisions in the proposed amendments are inconsistent with the promulgated Vegetable Oil NESHAP. We had previously reviewed the existing rules and did not identify any substantive problems. However, the Vegetable Oil NESHAP were promulgated after our review and subsequent proposal of the amendments. We have discussed the implications with the commenter and as a result, we are amending, in a separate **Federal Register** notice, several

provisions in the Vegetable Oil NESHAP related to SSM requirements to eliminate unintended inconsistencies. The Vegetable Oil NESHAP include specifically tailored SSM provisions and, thus, sources covered by the Vegetable Oil NESHAP should look to that rule for their applicable SSM provisions.

Specifically, we are correcting the explanation column of Table 1 of 40 CFR 63.2870 as it applies to 40 CFR 63.6(e) to state, "implement your plan as specified in § 63.2852." Table 1 also now indicates specifically that 40 CFR 63.6(e)(3)(iii), (iv), and (viii) do not apply to Vegetable Oil NESHAP affected sources; this clarifies that not all of 40 CFR 63.6(e) applies, as the rule was originally promulgated.

We are also amending the first sentence of 40 CFR 63.2861(d) to clarify that owners or operators must submit an immediate SSM report if an SSM is handled differently from the procedures in the SSM plan and the emission standards are exceeded. We are also amending the third sentence of 40 CFR 63.2852 to clarify that the SSMP does not have to be incorporated into the title V permit, consistent with the General Provisions amendments.

These changes will ensure the minimization of emissions at all times, clarify the SSM requirements, and specify the relationship of the General Provisions to Vegetable Oil NESHAP affected sources.

### B. Other Comments and Changes

#### 1. Substantially Equivalent State Preconstruction Review

We proposed substantive amendments to the preconstruction review program, which were designed to clarify and streamline existing requirements. Included in these amendments was a provision that allows States or local agencies to use preconstruction review procedures used for other purposes for purposes of 40 CFR 63.5, provided their procedures are "substantially equivalent."

While one commenter generally supported this concept, a few commenters disagreed with the specific provisions in proposed 40 CFR 63.5(f)(1)(i) and (ii), which they interpreted as requiring each owner or operator to demonstrate that the State or local agency review is substantially equivalent to the relevant requirements in 40 CFR 63.5. The commenters instead believed that EPA should determine which State or local air permit programs have substantially equivalent preconstruction review requirements. One commenter noted that if EPA has

delegated authority to a State or local agency to implement subpart A of part 63 and part 70, then EPA has already agreed that the preconstruction review and approval process is substantially equivalent to the Federal requirements.

We agree that a State or local agency that has taken delegation of part 63 standards has already demonstrated that their preconstruction review process is substantially equivalent to the Federal requirements. When a State is the delegated authority, the State implements 40 CFR 63.5; we do not require two preconstruction review processes.

The intent of the provisions of 40 CFR 63.5(f) is not to place the burden on the source to demonstrate equivalency of a State preconstruction review program. The intent of the provisions is to allow owners or operators of affected sources to notify the EPA's Regional Office of a State's finding that their preconstruction review program requirements are substantially equivalent to the General Provisions' preconstruction review requirements. We agree that the proposed language in 40 CFR 63.5(f)(1) could lead to potential confusion. Therefore, in order to eliminate any potential for confusion, we have amended 40 CFR 63.5(f)(1) to no longer require that an owner or operator demonstrate to the Administrator's satisfaction that the conditions of 40 CFR 63.5(f)(1)(i) and (ii) are met. Instead, 40 CFR 63.5(f)(1) specifies that the Administrator will approve an application for construction or reconstruction if an owner or operator meets the conditions of 40 CFR 63.5(f)(1)(i) and (ii). Additionally, 40 CFR 63.5(f)(1)(ii) has been amended to require that an owner or operator provide a statement from "the State or other evidence (such as State regulations) that it considered the factors specified in 40 CFR 63.5(e)(1)" rather than requiring "the State (in its finding) consider factors substantially equivalent to those specified in § 63.5(e)(1)."

Paragraph (f)(1) of 40 CFR 63.5 states that preconstruction review procedures that a State utilizes for other purposes may be utilized if the procedures are substantially equivalent to those specified in the General Provisions. We believe this adequately refers to 40 CFR 63.5(e)(1) where the criteria for approval of construction or reconstruction are described.

Finally, we do not agree with the suggestion that we should determine which State or local programs have substantially equivalent preconstruction review requirements. Individual States

or local agencies are in a better position to make such a determination.

## 2. Revisions to the Startup, Shutdown, and Malfunction Plan

We received several comments regarding SSM and SSMP reporting requirements. A few commenters opposed the requirement in 40 CFR 63.6(e)(3)(viii) that revisions to the SSMP be reported to the permitting authority in the semiannual report. Another commenter considered the new requirements in 40 CFR 63.6(e)(3)(viii) to be burdensome and duplicative. The commenter believed that the requirements to submit reports of actions taken that are consistent or inconsistent with the SSMP, to revise the SSMP, and to keep copies of superseded SSMP on site were sufficient to ensure that the permitting authority is kept informed of changes to the SSMP.

One commenter stated that if the owner or operator of a source can revise the plan without prior approval, it makes no sense to require an owner or operator to send a file copy to EPA. The commenter expressed that the requirement for plan revisions to be maintained on site in 40 CFR 63.6(e)(3)(v) should suffice. The commenter suggested that if the EPA wants a revised SSMP to be submitted, they should provide more details on how it should be formatted, including how the specific procedure or methodology relates to a particular SSM event. The commenter also recommended that the date on the new SSMP be its effective date. If the EPA only wants a notice that the SSMP has been revised in the semiannual report, the commenter suggested that 40 CFR 63.6(e)(3)(viii) be revised to state that. The commenter also requested clarification on what the "scope of activities" in 40 CFR 63.6(e)(3)(viii) means.

We disagree with the commenters that the requirements in 40 CFR 63.6(e)(3)(viii) are burdensome. This section requires that EPA be notified in the semiannual report that revisions were made to the SSMP, but it does not require that a file copy of the entire revised plan be submitted.

We also disagree with the suggestion that a clarification in the rule of the meaning of "scope of activities" is necessary. It is the owner or operator's responsibility to define the specific scope of activities that the SSMP covers, as this is source-dependent. Moreover, these provisions are designed to give the source owner or operator flexibility. Generally, the scope of activities would include all operations and equipment

specified by the owner or operator that should be included in the SSMP. To the extent that these activities are changed in the plan, we are requiring that the permitting authority be notified.

One commenter recommended that we explain how malfunctions that meet the definition of SSM under 40 CFR 63.2, but are not covered in the existing SSMP, should be reported. The commenter believed that we should add language to 40 CFR 63.6(e)(3)(viii) to cover this situation. Another commenter requested that EPA require that facilities provide the number and a description of malfunctions that occurred in the semiannual report. The commenter stated that this information would be necessary to evaluate a facility's compliance with the SSMP, as regular site visits are infeasible due to limited resources.

To comply with the rule, sources must either meet the standard or comply with the SSMP. If a malfunction not covered by the SSMP occurs and the source meets the standard, there is no need to report. If a malfunction not covered by the SSMP occurs and the source does not meet the standard, the deviation must be reported. In any case, when a malfunction occurs that was not included in the SSMP, the plan should be revised to include the previously unreported malfunction.

However, we agree with the commenter who suggested that the number and description of malfunctions is necessary to evaluate compliance with the SSMP. Therefore, we have modified the provisions at 40 CFR 63.10(d)(5)(i) to state "Periodic startup, shutdown, and malfunction reports.

\* \* \* Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period, and they shall include the number, duration, and a brief description of each startup, shutdown, and malfunction.

\* \* \* This change provides the implementing agency with adequate information without placing an undue additional burden on the source. The types of malfunctions will already have been identified in the SSMP so a brief description could consist of simply identifying which types of malfunctions occurred during the reporting period, as well as the number and the duration of each.

Also, two commenters requested that we remove the last sentence of the proposed 40 CFR 63.6(e)(3)(ix), which states that none of the SSMP procedures fall within the permit shield. The commenter believed the sentence could be misconstrued to mean that the SSMP is part of the title V permit and yet ineligible for the permit shield.

Concerning the applicability of the permit shield, these commenters have misinterpreted the provisions of the rule. The proposed amendments to the General Provisions concerning SSM plans were intended in part to address concerns expressed by the petitioners, who believe that the language in the current General Provisions requiring that the SSM plan be "incorporated by reference into the source's Title V permit" could be construed to require that permit revision procedures be followed whenever an SSM plan is revised. We do not construe the existing General Provisions in this manner, but we understand the concern expressed by the petitioners. The amendments indicate that the permit must require that the owner or operator adopt an SSM plan and then operate and maintain the source in accordance with the plan, but they cannot reasonably be construed as requiring that each element of the SSM plan be made an element of the permit. The provisions within the SSM plan will not be terms and conditions of the permit except in the limited instance where a permitting authority elects to incorporate them. Since the SSM plan is not itself part of the operating permit, and it can be revised without revision of the permit, the SSM plan is not eligible for the permit shield.

A few commenters strongly opposed the statements in the proposal preamble that the SSMP must be submitted to the permitting authority and made publicly available if someone requests it. One of the commenters believed it would be burdensome to prepare a SSMP without Confidential Business Information (CBI) in it. The commenter also expressed that such a plan would be uninformative without CBI. Two other commenters stated that they preferred that the rule specifically state that the permitting agency has the authority to request a copy of the facility's SSMP and to review and comment on it. One commenter also preferred that State and local agencies have discretion to approve or disapprove the SSMP.

We believe that the proposal preamble discussion accurately reflects 40 CFR 70.4(b)(3)(viii) of the title V permit program, which requires that the permitting authority has legal authority to: "Make available to the public any permit application, compliance plan, permit, and monitoring and compliance certification report pursuant to section 503(e) of the Act, except for information entitled to confidential treatment pursuant to section 114(c) of the Act. The contents of a part 70 permit shall not be entitled to protection under section 114(c) of the Act." For this

reason, we do not agree with the commenters who oppose the requirements for the SSMP to be made publicly available if requested. Owners or operators may still identify the portions of the SSMP that are considered CBI; material claimed as CBI would not be available for public disclosure except as provided under the process established by 40 CFR Part 2. We further believe, pursuant to 40 CFR 70.4(b)(3)(viii), that the authority for permitting agencies to request a facility's SSMP already exists. Therefore, we do not believe it is appropriate at the present time to revise the rule as the commenters requested.

### 3. Compliance Extension Request 120 Days Before Compliance Date

The proposed amendments to the compliance extension provisions were met with favor by commenters. Several commenters supported the change to allow compliance extension requests to be submitted as late as 120 days before the compliance date, rather than 1 year in advance.

One commenter expressed that this change would reduce the number of compliance extension requests. Another commenter outlined circumstances that could arise that would necessitate a late request for a compliance extension (e.g., vendor strikes, acts of God, or damaged equipment).

One commenter specifically supported the proposed provision in 40 CFR 63.6(i)(4)(i)(B) postponing the applicability of MACT standards until the permitting authority either approves or denies a compliance extension request. This commenter noted that the proposed compliance extension revisions were particularly important for sources subject to 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Incinerators. Amendments to the performance test requirements of Hazardous Waste Incinerators rule have not been completed. The commenter noted that the amendments would have had to be promulgated by December 2001 for facilities to complete their comprehensive performance test plans by the March 2002 deadline. The ability to apply for a compliance extension would be critical if the amendments were not final by December 2001.

### 4. Readily Accessible Readout

The proposed amendments clarified the owner or operator's obligations with respect to the accessibility of readouts from monitoring systems required for compliance. Two commenters supported the requirement for such

readouts to be readily accessible. However, several commenters proposed deleting the requirement that the readout from the monitoring equipment be "readily accessible onsite for operational control or inspection by the operator of the equipment." One commenter maintained that the provision was unnecessary because 40 CFR 63.10(b) already requires files of all information to be readily available. A few of the commenters maintained that this requirement was technically infeasible, as the readout depends on the configuration of the source, type of control equipment, frequency, and whether monitoring data are read in central control booths or computers. One commenter stated that the optimal location of the readout should be left to the source. Another commenter stated that if EPA does not remove the phrase, it should be reworded to change the regulatory text from "readout" to "indication of operation," as audible or visual alarms may also alert the operator that a problem has occurred with the continuous monitoring system (CMS). The commenter further suggested removing the terms "in plain view" and "close proximity," as CMS readouts may be readily accessible but may not meet these requirements. For example, they may be in the control room but not in the line-of-sight of an operator, in the process unit operating block but not where the "operators are normally operated," or operated by a different process unit and monitoring unit.

We recognize the commenters' concerns with the provisions governing the availability of information from monitoring equipment. To address this issue, we have revised 40 CFR 63.8(c)(2)(ii) to refer to "readout or other indication of operation." This addresses the point that audible or visual alarms may be in use rather than a "readout." The terms "plain view" and "close proximity" were used in the proposal preamble, although not in the regulatory text, to explain what was meant by readily accessible and to assure that inspectors would have easy access to monitoring information. However, we agree with the commenter that the required information may be readily accessible although not in plain view. "Readily accessible" is the source owner or operator's responsibility to ensure that monitoring information is easily available. For this reason, we made no further rule changes to explain "readily accessible."

### 5. Zero and High Level Calibration Checks

A few commenters suggested that EPA revise 40 CFR 63.8(c)(6) to clarify that

the zero and high-level calibration checks only apply to continuous emission monitoring Systems (CEMS) and continuous opacity monitoring systems (COMS), not to all CMS. Some continuous parameter monitoring systems (CPMS), such as thermocouples and weight devices, cannot be automatically calibrated.

One commenter requested that EPA delete 40 CFR 63.8(c)(6), as promulgated MACT standards already contain calibration requirements and daily system checks for CPMS. The commenter cited §§ 63.118(a)(2) and 63.152(f) of 40 CFR part 63.

To address the commenters' concern about CPMS that cannot be automatically calibrated, we have revised 40 CFR 63.8(c)(6) as follows: "The owner or operator of a CMS that is not a CPMS, which is installed in accordance with the provisions of this part. . . ." The calibration specifications for a CPMS are described in the last sentence of this paragraph.

We do not agree it is appropriate to delete 40 CFR 63.8(c)(6) as requested by one of the commenters. Individual standards may change this as appropriate or necessary, but these monitoring provisions will remain in the General Provisions.

#### 6. Definition of Affected Source and New Affected Source

We proposed a new process for defining "affected source" and "new affected source" in future MACT standards. Over the period that EPA has been promulgating MACT standards, we have typically used the term "affected source" as an indication of the collection of processes, activities, or equipment to which each MACT standard will apply. We have adopted a broader or narrower definition of affected source depending on the nature of particular MACT requirements and the strategies available for meeting them. In some instances, we have adopted a definition as narrow as a single machine and in others, we have defined all processes, activities, and equipment at a source within the specified category or subcategory as the affected source. A broader definition of affected source permits emission requirements to apply to a larger group of processes, activities, and equipment, and may thereby facilitate more innovative and economically efficient control strategies.

In those instances where we have previously adopted a broader definition of affected source, we have sometimes established a narrower definition of the processes, activities, or equipment to which new source MACT will apply. In

some instances, we believe it is both practicable and reasonable to apply new source MACT controls to a narrower set of constructed or reconstructed equipment or activities and retaining a broad definition would operate to subvert the statutory intent to require more stringent controls for new sources.

When we have adopted a broader definition of affected source, we have still determined the MACT floor for the entire affected source by evaluating emissions and the feasibility of controls separately for particular types of "emission units" within the affected source. This approach can afford owners and operators the option of demonstrating separate compliance by individual emission units within the affected source or by adopting more flexible control strategies and demonstrating compliance for the affected source as a whole. Moreover, a standard for a larger affected source may still be a composite of sublimits or other elements expressly directed at particular types of equipment or activities.

In light of this flexibility, we agreed with the industry petitioners that it would be feasible to adopt a broader definition of affected source on a more consistent basis. Thus, we proposed to change the General Provisions to indicate that future MACT standards will generally adopt a definition of affected source which consists of all existing HAP-emitting equipment and activities which are at a single contiguous site and are within a specific category or subcategory. We do not believe we are required to adopt this policy, but we agree with the industry petitioners that it will foster greater predictability and consistency in regulatory outcomes.

We also proposed to permit a narrower definition of affected source in particular future MACT standards when a broad definition will result in significant administrative, practical, or implementation problems, and a narrower definition would resolve these problems. For example, in some instances, the facilities within a category or subcategory which must develop appropriate compliance strategies may consider a broader definition of affected source to be confusing. In other instances, the facilities may operate dissimilar equipment or processes which do not emit the same HAP or type of HAP, and a broader definition will have little or no utility in promoting more flexible or efficient control strategies. These examples are only illustrative and are not intended to limit our discretion to adopt a narrower affected source definition in particular future MACT

standards. However, when we adopt a narrower definition of "affected source," we will identify the specific problems created by the broader definition and specify why a narrower definition will resolve them.

We also proposed to develop and adopt a separate definition of "new affected source" for each future MACT standard after evaluating facilities in the category or subcategory according to eight factors. These eight factors are: (1) Emission reduction impacts of controlling individual sources versus groups of sources, (2) cost effectiveness of controlling individual equipment, (3) flexibility to accommodate common control strategies, (4) cost/benefits of emissions averaging, (5) incentives for pollution prevention, (6) feasibility and cost of controlling processes that share common equipment, (7) feasibility and cost of monitoring, and (8) other relevant factors. Under this process, the definition of "new affected source" for a particular MACT standard may be the same as "affected source" or it may differ. The factors which we deem most important in this assessment will differ from standard to standard. When we deem it appropriate based on our evaluation of the eight factors to establish a definition of "new affected source" less inclusive than "affected source," we will do so.

We did not receive any comments opposing the new definitions and procedures for specifying the affected source and new affected source for future MACT standards. Accordingly, we have decided to adopt these definitions and procedures as proposed.

Each future MACT standard subject to these new procedures will explicitly define "affected source" and "new affected source." Any decision to adopt a narrower definition of affected source or to adopt a definition of new affected source differing from the definition of affected source will be explained in the individual standard.

Our proposal made it clear that we only intend to apply this new approach prospectively. We will not reconsider or revise previously promulgated MACT standards according to the new definitions and procedures. However, our proposal did not specify an effective date or a specific transitional process for implementation of these new definitions and procedures. We anticipated that there could be inconsistencies between some of the new General Provisions and previously promulgated MACT standards, and that a variety of provisions might need to be solely prospective in application or require some sort of transitional process. We specifically solicited comment on this



issue. However, the only other problem in applying the new rule to existing MACT standards which was identified in comments concerns the provisions for SSM plans in this rule and in our previously promulgated vegetable oil MACT rule, which we discuss elsewhere in this preamble.

In selecting an appropriate effective date for the new definitions and procedures for specifying the affected source and new affected source, we note that our past practice has been considerably less uniform than the one we are adopting today. While we believe it is appropriate to bring greater clarity and consistency to this process in future MACT standards, we also note that EPA typically begins working with affected facilities to devise an appropriate structure for MACT standards well before they are proposed, and that this process is well advanced for many MACT standards currently under development. We do not believe it would be practicable to require all such standards to immediately conform to the new definitions and procedures we are adopting today. Therefore, we have decided that these new definitions and procedures will be mandatory only with respect to those MACT standards which are proposed after June 30, 2002. However, we note that many standards presently in development already utilize a similar approach, and that it may also be feasible to adopt a similar approach for additional standards during the pendency of future rulemakings on individual MACT standards.

### III. What Significant Comments Did We Consider and What Are the Major Changes to the Proposed Amendments to the Section 112(j) Provisions?

A comprehensive summary of public comments on the proposed section 112(j) provisions can be found in "National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections 112(g) and 112(j)—Background Information for Standards," (EPA 453/R-02-002). This section discusses the significant comments received on and major changes made to the section 112(j) provisions.

#### A. Impact of Missing the Section 112(j) Deadline

Several commenters expressed serious concern over the potential impact of EPA's failure to promulgate the 10-year MACT standards by the section 112(j) hammer date. Some commenters noted that there would be significant effort

expended to develop the Parts 1 and 2 permit applications and case-by-case permits and observed that this effort would be for naught if the standards were issued prior to the permit. Others offered suggestions on how to extend or delay applications such that the burden is minimized. All commenters urged EPA to issue the MACT standards prior to the hammer date to eliminate the impact of section 112(j).

We appreciate the commenters' concerns, and we are making every effort to promulgate the remaining MACT standards as soon as possible. However, we note that the previous permit application extensions for the 4- and 7-year MACT rules were established because the standards were to be issued very shortly after the deadline. This is not the situation now, with a significant number of the 10-year MACT standards not scheduled for promulgation until well after the deadline. The intent of the 2-part section 112(j) application process which we proposed was to alleviate unnecessary burdens by deferring the collection of the more detailed information necessary for a complete case-by-case MACT application until after the "hammer" date had passed. However, it is now apparent that the process for submission of section 112(j) applications as we proposed it will not significantly alleviate the burden on sources and permitting authorities.

Section 112(j) of the CAA was designed to be a "backstop" to our failure to issue MACT standards. Clearly, we will not complete promulgation of all MACT standards in the 10-year bin by the section 112(j) deadline of May 15, 2002, and in fact, we will miss the schedule for numerous source categories. The task to develop MACT standards on schedule to cover all the listed source categories has been enormous, and our past schedules projecting issuance by the hammer date have proved to be unduly optimistic. However, we are still committed to completing all MACT standards in as timely a manner as practicable. Although numerous standards will be late, we currently anticipate that many of the remaining standards in the 10-year bin will be proposed before the hammer date, and that all standards in that bin will be promulgated before any case-by-case MACT determinations would be required under the 24 month timetable for permit issuance which we proposed (consisting of 6 months for submission of the Part 2 application and 18 additional months for action by the permitting authority).

We agree with the commenters that a process in which the source must gather detailed information and then prepare

and submit a Part 2 title V permit application and the permitting authorities must then review each of the submitted applications and prepare for issuance of a case-by-case MACT determination represents an unnecessary burden if all MACT standards will be promulgated before any actual permits will be issued. We conclude that such resources would be better spent preparing for and implementing the MACT standards when they are promulgated. Thus, we have decided to revise the proposed rule to extend the amount of time between the Part 1 and Part 2 section 112(j) application to 24 months which coincides with the time period in which we expect to promulgate MACT standards for the remaining categories.

As the preamble to our proposal makes clear, we based our proposal to provide a 6 month period between the Part 1 and Part 2 applications in part on the concept that every applicant would automatically be given the maximum extension to supplement an incomplete application which is explicitly provided for by CAA section 112(j)(4). However, as one commenter noted, there is another provision in the statute which may be construed as providing authority to establish an incremental process for the submission of section 112(j) applications. The hammer provision in section 112(j)(2) itself establishes the requirement to submit permit applications "beginning 18 months after" the statutory date for promulgation of a standard. Reading this provision in context, we believe that the statute can be reasonably construed as authorizing us to provide a period of time after the hammer date in which the information necessary for a fully informative section 112(j) application can be compiled. This alternate construction also makes more practical sense because it retains the statutory process in which the permit authority can determine whether or not an application is complete and provides the applicant the extension of up to 6 months contemplated by section 112(j)(4). This assures that the time required to supplement an incomplete application will not be deducted from the time in which the permitting authority must complete its work.

While we recognize that compilation of the information needed for a Part 2 application is not likely to take 24 months, we are nevertheless reluctant to mandate that significant resources be devoted to an exercise which will ultimately be futile and unproductive. The burden of compiling a Part 2 application for simple sources containing only a small number of

emission points may not be particularly onerous, but the burden on more complex sources containing numerous sources and emission points could be significant. The sheer number of affected sources that would have to submit a Part 2 application by November 15, 2002, under the rule as proposed is very large, estimated at over 80,000. Such an exercise would also needlessly divert resources needed for other critical tasks at already overworked permitting authorities. We do not believe such an outcome was envisioned or intended by the drafters of section 112(j), particularly in the circumstance where the Federal MACT standards will actually be issued prior to the deadline for issuance of the case-by-case MACT determinations by the permitting authorities.

Accordingly, we have decided to revise our proposal to provide for a 24-month period between submission of the Part 1 application and submission of the Part 2 application. The 18-month period for issuance of the permit after receipt of a complete application which is provided by the current section 112(j) rule and by section 503(c) of title V will be retained. We are also restoring the statutory process in which the permitting authority may review the application for completeness and grant an extension of up to 6 months to remedy any deficiencies.

We received no adverse comment on requiring that the first portion (Part 1) of the section 112(j) application be due on the hammer date. We think that this is the minimum required by the statute. The Part 1 application is very short and simple, and we believe the burden is minimal. The Part 1 application will also help permitting authorities to identify sources potentially subject to the upcoming MACT standards. Sources must note that our decision to extend the time between the Part 1 and Part 2 applications is no excuse for not submitting a Part 1 application if the source can reasonably determine it is in one of the source categories or subcategories subject to the section 112(j) requirements. Failure to meet the section 112(j) requirements, including failure to make a timely Part 1 application, can lead to enforcement action. If a source is unsure about its applicability, it should submit a Part 1 application requesting an applicability determination to the permitting authority, which will then make a determination of MACT applicability.

### *B. Comments and Changes in Response to Our Requests for Comments*

#### 1. Notification by Permitting Authority Within 120 Days of Section 112(j) Hammer Date

In the preamble to the proposed section 112(j) amendments, we discussed changes made to clarify obligations for sources and permitting agencies when the section 112(j) deadline passes. Among the provisions included was the requirement that an owner or operator submit a Part 1 permit application within 30 days of being notified by the permitting agency that one or more sources at the major source belong to a section 112(j) category or subcategory. The permitting authority would have been required to make any such notification within 120 days after the section 112(j) deadline. We specifically requested comment on whether 120 days was sufficient time for permitting authorities to act.

In response, a few commenters expressed serious concerns about this requirement. These commenters noted that States do not always have up-to-date information on sources and that 120 days is not sufficient time for such notifications. Furthermore, these commenters recommended that this requirement be deleted because States may choose to identify and notify affected sources but should not be required to do so. A few commenters recommended that the final rule specify that owners or operators of affected sources must submit a title V permit application whether or not they receive notification.

We agree with the commenters that it is the responsibility of the affected source to submit a title V permit application regardless of notification if it can reasonably determine that it falls within a source category for which a standard has not been promulgated by the section 112(j) deadline. We believe, in most instances, that the owner or operator will be able to reasonably determine whether the source is in the category or subcategory subject to section 112(j) from provisions specified in the proposed rule for the category or subcategory. If an owner or operator is unable to make this determination, they may at their discretion contact the permitting authority for assistance in making the determination or submit a Part 1 applicability determination request. If there is doubt, the owner or operator should submit the Part 1 application. Most MACT standards will be proposed by the section 112(j) deadline of May 15, 2002, and applicability criteria will be specified in those proposals. In addition, we are

posting applicability criteria on EPA's Air Toxics Website for all source categories for which MACT standards have not yet been proposed (see [www.epa.gov/ttn/atw/eparules.html](http://www.epa.gov/ttn/atw/eparules.html)). The EPA project leads may also be directly contacted for additional information. Thus, owners or operators should know for all source categories whether or not their sources will be subject to the section 112(j) requirements. Therefore, we are retaining 40 CFR 63.52(a)(1) as proposed, which requires an owner or operator to submit an application for a title V permit or permit revision if the owner or operator can reasonably determine that one or more sources at the major source belong in the category or subcategory subject to section 112(j). The obligation is on the source owner or operator to submit the application. Failure to submit a Part 1 application when it can reasonably be determined the source is in an applicable source category would be considered a violation.

Moreover, we also agree with the commenters that 120 days may not be sufficient time to notify owners or operators of affected sources subject to section 112(j) if those sources did not submit a title V permit application because they could not reasonably determine if they were part of a source category on which the section 112(j) "hammer" fell. As the commenter pointed out, State agencies do not necessarily have this information and would not be able to identify each and every affected source within 120 days, especially those in source categories that contain thousands of sources. We do not want to create an opportunity to potentially circumvent the requirements of the rule when the State fails to notify the source owner or operator by a specified time because it does not have adequate information. Therefore, in the final rule amendments, we have removed the requirement that the permitting authority must notify the owner or operator that one or more sources at the major source belong to such category or subcategory within 120 days after the section 112(j) deadline. States may still choose to identify and notify affected sources, and we encourage them to do so when they have the available information.

The Part 1 application is intentionally brief so that completing it will not be a complicated, burdensome requirement. If there are isolated instances where a Part 1 application is erroneously submitted where none is required, it would be the responsibility of the permitting authority to notify the owner or operator that the source is not in a

category or subcategory subject to section 112(j). In addition, permitting authorities have the obligation to determine MACT applicability if requested in a Part 1 application.

## 2. Prohibition on Backsliding

Several commenters disagreed with EPA's proposed prohibition on backsliding, which prevents a State from adopting any section 112(d) emission limitations that are less stringent than the case-by-case MACT determinations by the permitting authority under section 112(j). The commenters maintained that this policy is inconsistent with the plain language of the CAA and prior EPA policy. The commenters stated that this policy should not be adopted. Instead, one commenter proposed that the rule be revised to require States to revise permits to conform to MACT standards issued after other emission limitations have been adopted. This commenter believed that the prohibition on backsliding would create unnecessary burden and uncertainty because permitting authorities and sources would have to spend significant time and resources to determine when a MACT standard is less stringent. One commenter maintained that implementing the anti-backsliding policy would result in uneven requirements for similar industries in different States and would also require Federal enforcement of regulations that were not subject to national review.

The current section 112(j) rule does not include any prohibition on backsliding, and the current 40 CFR 63.56(c) allows the permitting authority to exercise its discretion in determining whether or not to retain more stringent provisions from a prior section 112(j) MACT determination in the operating permit. Similarly, the rule governing case-by-case MACT determinations under section 112(g) does not contain any prohibition on backsliding, and 40 CFR 63.44(c) provides that the permitting authority may exercise its discretion in deciding whether or not to retain more stringent provisions from a section 112(g) case-by-case MACT determination as applicable requirements in the operating permit.

After considering the concerns raised by the commenters, we have decided that it is best to retain this basic policy in the amended section 112(j) rule. As reflected by the provisions in the existing section 112(j) rule, we do not agree with the argument by some commenters that the statute requires the permitting authority to backslide, but we do believe that the decision whether or not to retain any more stringent

provisions of a section 112(j) determination as applicable legal requirements following issuance of a section 112(d) standard should be committed to the discretion of the permitting authority that made the case-by-case determination in the first place. Accordingly, we have amended the proposed language to delete the prohibition on backsliding and to afford the permitting authority the discretion to determine whether or not backsliding is appropriate. The revisions in the language we proposed make it essentially identical to the language we adopted previously for section 112(g) determinations.

## C. Other Comments and Changes

A few commenters strongly encouraged EPA to continue striving to meet all the section 112(d) or (h) deadlines so that the provisions of section 112(j) might never be necessary. A few commenters specifically urged EPA to meet the deadlines for promulgating the section 112(d) standards for various combustion sources before the "hammer" drops for these standards. One commenter emphasized that meeting the deadlines for standards would be the most efficient use of EPA resources with the greatest public benefit and that avoiding use of section 112(j) should be the EPA's top priority. One commenter hoped that these provisions might never be implemented, but expressed concerns about their implementation if they are necessary.

We appreciate the commenters' concerns, and we are making every effort to meet the statutory deadlines so that section 112(j) is not triggered. Nevertheless, at this point, it will not be feasible for us to complete all the MACT standards by the section 112(j) deadline. For an update on the status of section 112 rulemakings, see our website at <http://www.epa.gov/ttn/atw/eparules.html>.

One commenter maintained that most agencies would want to receive the information listed in 40 CFR 63.53(b)(2) and wondered why EPA had designated it as an optional part of the Part 2 MACT application.

The information listed in 40 CFR 63.53(b)(2) includes information about appropriate emission limitations and control technologies to meet those limitations. While the source owner or operator may choose to submit this information, it is not their responsibility to conduct the research and analysis necessary to make MACT determinations. This responsibility resides with the State or other designated permitting authority. For this

reason, it is appropriate that the information listed in this paragraph be an optional part of the Part 2 MACT application.

## IV. What Is the Section 112(j) Process?

Since we proposed amendments to section 112(j), we have received many questions regarding the provisions. The following paragraphs provide a general overview of the section 112(j) program.

### A. If I Am an Owner or Operator of a Source, What Must I Do?

If you are an owner or operator of a major source in a source category or subcategory for which the statutory deadline for a section 112(d) emission standard is missed by 18 months, you are subject to the provisions of section 112(j). If you are unsure whether you are subject to section 112(j), you should review the appropriate proposed MACT rule to which you may be subject, you should review information on EPA's Air Toxics Website at <http://www.epa.gov/ttn/atw/eparules.html>, you may contact the EPA project lead directly, or you may submit a Part 1 MACT application to ask the State for an applicability determination. If the section 112(j) deadline arrives before you can determine your applicability, you should submit a Part 1 application. In most cases, even if the section 112(d) emission standard statutory deadline is missed by 18 months, there will be published proposed standards that you can refer to that will assist you in determining whether your source is subject to the provisions of section 112(j).

If you are subject to the provisions of section 112(j), you must apply for a title V permit or permit revision. The content of the required applications, details of the application approval process, timing of submittals, reviews, and permit issuance are specified in §§ 63.52 and 63.53 of 40 CFR part 63. The application process is a two-part process. Part 1 of the permit application requests very basic information about the affected source; the substantive information required by the permitting authority to make its MACT determination is tied to submittal of the Part 2 permit application. The Part 1 permit application must be submitted to the permitting authority by the section 112(j) deadline if it can reasonably be determined the source is in the source category or subcategory, or within 30 days after being notified in writing by the permitting authority that one or more sources at the major source belong in a subject category or subcategory.

The application content for a MACT determination is contained in 40 CFR

63.53. Information available as of the date on which the first Part 2 MACT application is filed for a source in the relevant source category or subcategory in the State or jurisdiction will be considered by the permitting authority in making its case-by-case MACT determination. The definition of "available information" in 40 CFR 63.51 specifies the type of information and sources of information available to the affected source owner or operator for use in completing the application.

Your Part 1 application for a MACT determination must contain the following information:

- The name and address (physical location) of your source.
- A brief description of the major source and an identification of the relevant source category.
- An identification of the types of emission points belonging to the relevant source category.
- An identification of any affected sources for which a section 112(g) MACT determination has been made.

As mentioned previously, if you are unsure whether you are subject to section 112(j), you should submit a Part 1 MACT application to ask the State for an applicability determination. If you have not submitted a Part 1 MACT application and the permitting authority notifies you that you are subject to section 112(j), you must submit an application for a title V permit or for a revision to an existing title V permit or pending title V permit within 30 days of being notified.

Your Part 2 Application for a MACT determination must contain the following information:

- For new affected sources, the anticipated date of startup of operation.
- The HAP emitted by each affected source in the relevant source category and an estimated total uncontrolled and controlled emission rate for HAP from the affected source.
- Any existing Federal, State, or local limitations or requirements applicable to the affected source.
- For each affected emission point or group of affected emission points, an identification of control technology in place.
- Information relevant to establishing the MACT floor, and, at the option of the owner or operator, a recommended MACT floor.
- Any other information reasonably needed by the permitting authority including, at the discretion of the permitting authority, information required pursuant to subpart A of 40 CFR part 63.

Your Part 2 MACT application may also, but is not required to, include the following:

- Recommended emission limitations for the affected source and support information consistent with 40 CFR 63.52(f). You may recommend a specific design, equipment, work practice, or operational standard, or combination thereof, as an emission limitation.
- A description of the control technologies that you would apply to meet the emission limitation including technical information on the design, operation, size, estimated control efficiency and any other information deemed appropriate by the permitting authority, and identification of the affected sources to which the control technologies shall be applied.
- Relevant parameters to be monitored and frequency of monitoring to demonstrate continuous compliance with the MACT emission limitation over the applicable reporting period.

You are required to submit your Part 2 MACT application within 24 months after submittal of your Part 1 MACT application.

*B. If I Am the Permitting Authority for a Source Subject to Section 112(j), What Must I Do?*

As the permitting authority for a source subject to section 112(j), you may, but are not required to, notify an owner or operator of a source of their applicability when you have available information that allows you to identify subject sources. In such cases, you should submit the notification prior to the source's Part 1 MACT application deadline. Sources that can reasonably determine they are subject must submit a Part 1 application, regardless of any notification (or lack thereof). You may notify a source that has not submitted a Part 1 application to do so, but your discretion to do this does not relieve the source of its obligation to submit an application in the absence of such a notification. You also have the responsibility of notifying owners or operators of sources that erroneously submit a Part 1 MACT application (i.e., the source is not subject to section 112(j)) that they are not subject to section 112(j), as well as notifying owners or operators of sources of their applicability when requested by an owner or operator of a source with their Part 1 MACT application.

Once you have received a Part 2 MACT application from a source, you must notify the owner or operator of the source in writing whether the application is complete or incomplete within 60 days. If you do not notify the owner or operator in writing within 60

days after the submittal, it will be assumed that the application is complete.

Potential sources that would be affected by section 112(j) would be those categories or subcategories of major sources listed for regulation under section 112(c) of the CAA for which the statutory deadline for a section 112(d) emission standard is missed by 18 months. You should start the affected source identification by first identifying those source categories and subcategories for which a section 112(d) emission standard has been missed. Using available information from the EPA obtained in the rule development process for subject sources, and other available information (e.g., EPA databases, State inventories, available literature), you should be able to identify sources subject to section 112(j) within your jurisdiction.

If you are the permitting authority for a source subject to section 112(j), you must determine case-by-case MACT for the source. You should use all available information, as described in 40 CFR 63.51. The most prominent and useful piece of information will be the proposed MACT rule and its supporting documentation. You can also supplement that information with whatever other information is available, including information submitted by the source itself.

Permitting authorities must determine a MACT emission limitation equivalent to the limitation that would apply had the MACT standard been promulgated on time. You may conduct an independent analysis to determine MACT using available information to identify the 12 percent of the best performing sources (if there are 30 or more sources) or the best performing 5 (if less than 30 sources). Alternately, you may simply look to the proposed MACT standard and use the information and analysis already prepared by EPA. Regardless of the approach adopted to issue or revise the source's title V permit under section 112(j), you must determine MACT as an equivalent emission limitation on a case-by-case basis for each category of sources. Guidance to assist you in your case-by-case MACT determination is presented in "Guidelines for MACT Determinations under Section 112(j) Requirements," (EPA 453/R-02-001).

For sources in existence and subject to section 112(j) at the deadline, sources that become subject to section 112(j) after the section 112(j) deadline, and sources that make a change subject to section 112(j) after a permit is issued, you are required to issue a section 112(j) permit or a revised section 112(j) permit

with case-by-case MACT within 18 months after receiving a complete Part 2 application.

### C. What Happens When a Rule Comes Out After the Hammer Date for a Given Source Category?

If the EPA promulgates emission standards under section 112(d) for a source category before the date a permit application is approved by the permitting authority, the title V permit must contain the promulgated standards rather than the section 112(j) case-by-case MACT level of control. If, however, the EPA promulgates emission standards under section 112(d) for a source after the date a permit application is approved by the permitting authority, the permitting authority must incorporate the requirements of the promulgated standards in the title V permit upon its next renewal. In such cases, the permitting authority must establish a compliance date in the revised permit that assures that the owner or operator shall comply with the promulgated standards within a reasonable time, not to exceed 8 years after the standards are promulgated. The permitting authority is not required to revise the emission limit in the permit to reflect the promulgated standards if it determines that the level of control required by the emission limitation in the permit is substantially as effective as that required by the promulgated standards. If the requirements you established in a case-by-case determination under section 112(j) are more stringent than the standards promulgated under section 112(d), you may elect to revise the permit to incorporate the less stringent requirements but you are not required to do so.

### V. What Are the Environmental, Energy, Cost, and Economic Impacts of This Rule?

The General Provisions do not apply until specific relevant standards are promulgated. At that time, the impacts of the individual NESHAP will be analyzed, including the impacts of the General Provisions requirements.

The section 112(j) rule provides general guidance and procedures concerning the implementation of an underlying statutory requirement. We estimate that approximately 84,000 affected sources may have to prepare and submit a Part 1 permit application. The total estimated cost of this 1-time event is about \$9,000,000. We currently anticipate no other impacts since we plan to promulgate all the 10-year MACT standards before the need to submit a Part 2 permit application.

### VI. What Are the Administrative Requirements for This Rule?

#### A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the amendments are not a "significant regulatory action" under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

#### B. Paperwork Reduction Act

As required by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, the OMB must approve any reporting and recordkeeping requirements that qualify as an information collection request (ICR) under the PRA.

Approval of an ICR is not required for the General Provisions because, for sources affected by CAA section 112 only, the General Provisions do not require any activities until source category-specific standards have been promulgated or until title V permit programs become effective. The actual recordkeeping and reporting burden that would be imposed by the General Provisions for each source category covered by part 63 will be estimated when standards applicable to such category are promulgated.

However, approval of an ICR is required for the section 112(j) rule. The information collection requirements in today's amendments to the final section 112(j) rule have been submitted to OMB for approval under the provisions of the PRA. The EPA has prepared an ICR

document (ICR No. 1648.04), and you may obtain a copy from Sandy Farmer by mail at Office of Environmental Information, Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at [farmer.sandy@epa.gov](mailto:farmer.sandy@epa.gov), or by calling (202) 260-2740. You may also download a copy off the Internet at <http://www.epa.gov/icr>. The information requirements are not effective until OMB approves them.

The collection of information required by today's amendments to the final section 112(j) rule have an estimated nationwide recordkeeping and reporting burden of 172,480 hours (\$8,984,976). This burden is a short 1-time permit application.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to (1) review instructions; (2) develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; (3) adjust the existing ways to comply with any previously applicable instructions and requirements; (4) train personnel to be able to respond to a collection of information; (5) search data sources; (6) complete and review the collection of information; and (7) transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

#### C. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." Policies that have federalism implications is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government."

Executive Order 13132 identifies 2 types of rules with Federalism implications—rules that impose substantial compliance costs, unless

they are expressly required by statute or there are federal funds available to cover the costs, and rules that preempt State or local law. The EPA has interpreted that rules containing "substantial compliance costs" are those that contain a "significant federal intergovernmental mandate" under Section 202 of the Unfunded Mandates Reform Act (UMRA)—i.e., it is likely to result in the expenditure by State, local, and Tribal governments in the aggregate of \$100 million or more in any one year. In addition, EPA will conclude a rule also has Federalism implications if the impacts of the rule on small governments is likely to equal or exceed 1% of their revenues.

Because these final amendments do not exceed either threshold for substantial costs described above or preempt State or local law, they do not have federalism implications and will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in Executive Order 13132. Nevertheless, in the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA, State and local governments, EPA specifically solicited comment on the rule amendments from State and local officials.

#### *D. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments*

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

These final rule amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, or on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. There are currently no tribal governments that have approved title V permit programs to which sources

would submit permit applications on May 15, 2002. Accordingly, Executive Order 13175 does not apply to this action.

#### *E. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these final amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. These amendments will clarify existing requirements and reduce regulatory burden. The EPA has determined that this action is not a "significant" regulatory action within the meaning of Executive Order 12866, and it does not impose any additional

Federal mandate on State, local and tribal governments or the private sector within the meaning of the UMRA. Thus, today's final rule amendments are not subject to the requirements of sections 202, 203, and 205 of the UMRA.

#### *F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with these final amendments. The EPA has also determined that these amendments will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule amendments on small entities, small entities are defined as: (1) A small business whose parent company has fewer than 1,000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

A regulatory flexibility analysis is not necessary for the General Provisions amendments because it is unknown at this time which requirements from the General Provisions will be applicable to any particular source category, whether such category includes small businesses, and how significant the impacts of those requirements would be on small businesses. Impacts on small entities associated with the General Provisions will be assessed when specific emission standards affecting those sources are developed. "Small entities" will be defined in the context of the applicability of those standards.

Similarly, no analysis has been prepared for the amendments to the section 112(j) rule. The rule provides general guidance and procedures concerning the implementation of an underlying statutory requirement, but it does not by itself impose any regulatory requirements other than a permit application to the permitting authority or prescribe the specific content of any case-by-case determination which might be made under section 112(j). Although the final amendments will not have a significant economic impact on a substantial number of small entities,

EPA nonetheless has tried to reduce the impact of the rule amendments on small entities. We have extended the time between application deadlines for the Part 1 and Part 2 submittals so that all 10-year MACT standards would be promulgated before any Part 2 applications are due. We have also minimized the required information in the Part 1 permit application. Although we expect some small businesses to be affected by the section 112(j) permit application requirement, we cannot determine how many. In any event, the impact would be insignificant. Furthermore, the net effect of these rule amendments to the existing rule will be to reduce potential regulatory burdens.

#### G. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, (Public Law No. 104-113) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final amendments to the General Provisions do not include any technical standards; they consist primarily of revisions to the generally applicable procedural and administrative requirements that the General Provisions overlay on NESHAP. The final amendments to the section 112(j) rule, which establishes requirements and procedures for owners or operators of major sources of HAP and permitting authorities to follow if the EPA misses the deadline for promulgation of section 112(d) standards, clarify and amend current procedural and administrative provisions to establish equivalent emissions limitations by permit. Therefore, section 112(j) is also not a vehicle for the application of voluntary consensus standards.

#### H. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive

Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonable alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. The final amendments to the General Provisions are not subject to Executive Order 13045 because the provisions provide general technology performance and compliance guidelines for section 112(d) standards, which are not based on health or safety risks. Likewise, the final amendments to the section 112(j) rule are not subject to Executive Order 13045 because they establish the process for developing case-by-case MACT, and thus are based on technology performance and not on safety or health risks.

#### I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the SBREFA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Therefore, we will submit a report containing the final amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. These final amendments are not a "major rule" as defined by 5 U.S.C. 804(2), and therefore will be effective April 5, 2002.

#### J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

The final amendments are not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant

regulatory action under Executive Order 12866.

#### List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 5, 2002.

**Christine Todd Whitman,**  
*Administrator.*

For the reasons cited in the preamble, part 63, title 40, chapter I of the Code of Federal Regulations is amended as follows:

#### PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

#### Subpart A—[Amended]

2. Section 63.1 is amended by:
  - a. Revising paragraphs (a)(3) and (4);
  - b. Removing and reserving paragraphs (a)(7) and (a)(8);
  - c. Removing paragraphs (a)(13) and (14);
  - d. Removing and reserving paragraph (b)(2);
  - e. Revising paragraph (b)(3);
  - f. Revising paragraphs (c)(1), (c)(2) introductory text and (c)(2)(iii);
  - g. Removing and reserving paragraph (c)(4); and
  - h. Revising paragraph (e).

The revisions read as follows:

#### § 63.1 Applicability.

(a) \* \* \*

(3) No emission standard or other requirement established under this part shall be interpreted, construed, or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established by the Administrator pursuant to other authority of the Act (section 111, part C or D or any other authority of this Act), or a standard issued under State authority. The Administrator may specify in a specific standard under this part that facilities subject to other provisions under the Act need only comply with the provisions of that standard.

(4)(i) Each relevant standard in this part 63 must identify explicitly whether each provision in this subpart A is or is not included in such relevant standard.

(ii) If a relevant part 63 standard incorporates the requirements of 40 CFR part 60, part 61 or other part 63 standards, the relevant part 63 standard

must identify explicitly the applicability of each corresponding part 60, part 61, or other part 63 subpart A (General) provision.

(iii) The General Provisions in this subpart A do not apply to regulations developed pursuant to section 112(r) of the amended Act, unless otherwise specified in those regulations.

\* \* \* \* \*

(7) [Reserved]

(8) [Reserved]

\* \* \* \* \*

(b) \* \* \*

(2) [Reserved]

(3) An owner or operator of a stationary source who is in the relevant source category and who determines that the source is not subject to a relevant standard or other requirement established under this part must keep a record as specified in § 63.10(b)(3).

(c) \* \* \*

(1) If a relevant standard has been established under this part, the owner or operator of an affected source must comply with the provisions of that standard and of this subpart as provided in paragraph (a)(4) of this section.

(2) Except as provided in § 63.10(b)(3), if a relevant standard has been established under this part, the owner or operator of an affected source may be required to obtain a title V permit from a permitting authority in the State in which the source is located. Emission standards promulgated in this part for area sources pursuant to section 112(c)(3) of the Act will specify whether—

\* \* \* \* \*

(iii) If a standard fails to specify what the permitting requirements will be for area sources affected by such a standard, then area sources that are subject to the standard will be subject to the requirement to obtain a title V permit without any deferral.

\* \* \* \* \*

(4) [Reserved]

\* \* \* \* \*

(e) If the Administrator promulgates an emission standard under section 112(d) or (h) of the Act that is applicable to a source subject to an emission limitation by permit established under section 112(j) of the Act, and the requirements under the section 112(j) emission limitation are substantially as effective as the promulgated emission standard, the owner or operator may request the permitting authority to revise the source's title V permit to reflect that the emission limitation in the permit satisfies the requirements of the promulgated emission standard. The process by which the permitting authority determines whether the

section 112(j) emission limitation is substantially as effective as the promulgated emission standard must include, consistent with part 70 or 71 of this chapter, the opportunity for full public, EPA, and affected State review (including the opportunity for EPA's objection) prior to the permit revision being finalized. A negative determination by the permitting authority constitutes final action for purposes of review and appeal under the applicable title V operating permit program.

3. Section 63.2 is amended by:

a. Revising the definition of *Affected source*;

b. Revising the definition of *Commenced*;

c. Revising the definition of *Construction*;

d. Revising paragraph (2) in the definition of *Effective date*;

e. Revising the definition of *Equivalent emission limitation*;

f. Revising paragraph (6) in the definition of *Federally enforceable*;

g. Revising the first sentence in the definition of *Malfunction*;

h. Revising the definition of *New source*;

i. Revising the introductory text in the definition of *Reconstruction*;

j. Amending the definition of *Relevant standard* by revising the first sentence of paragraph (4); running the undesignated paragraph at the end of paragraph (4) into paragraph (4), and revising the last sentence of newly designated text in paragraph (4);

k. Revising the definition of *Shutdown*;

l. Revising the definition of *Startup*;

m. By adding in alphabetical order definitions for *Monitoring*, *New affected source*, and *Working day*; and

n. By removing definitions for *Compliance plan*, *Lesser quantity*, and *Part 70 permit*.

The revisions and additions read as follows:

**§ 63.2 Definitions.**

\* \* \* \* \*

*Affected source*, for the purposes of this part, means the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established pursuant to section 112 of the Act. Each relevant standard will define the "affected source," as defined in this paragraph unless a different definition is warranted based on a published justification as to why this definition would result in significant

administrative, practical, or implementation problems and why the different definition would resolve those problems. The term "affected source," as used in this part, is separate and distinct from any other use of that term in EPA regulations such as those implementing title IV of the Act. Affected source may be defined differently for part 63 than affected facility and stationary source in parts 60 and 61, respectively. This definition of "affected source," and the procedures for adopting an alternative definition of "affected source," shall apply to each section 112(d) standard for which the initial proposed rule is signed by the Administrator after June 30, 2002.

\* \* \* \* \*

*Commenced* means, with respect to construction or reconstruction of an affected source, that an owner or operator has undertaken a continuous program of construction or reconstruction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

\* \* \* \* \*

*Construction* means the on-site fabrication, erection, or installation of an affected source. Construction does not include the removal of all equipment comprising an affected source from an existing location and reinstallation of such equipment at a new location. The owner or operator of an existing affected source that is relocated may elect not to reinstall minor ancillary equipment including, but not limited to, piping, ductwork, and valves. However, removal and reinstallation of an affected source will be construed as reconstruction if it satisfies the criteria for reconstruction as defined in this section. The costs of replacing minor ancillary equipment must be considered in determining whether the existing affected source is reconstructed.

\* \* \* \* \*

*Effective date* means: \* \* \*

(2) With regard to an alternative emission limitation or equivalent emission limitation determined by the Administrator (or a State with an approved permit program), the date that the alternative emission limitation or equivalent emission limitation becomes effective according to the provisions of this part.

\* \* \* \* \*

*Equivalent emission limitation* means any maximum achievable control technology emission limitation or requirements which are applicable to a



major source of hazardous air pollutants and are adopted by the Administrator (or a State with an approved permit program) on a case-by-case basis, pursuant to section 112(g) or (j) of the Act.

\* \* \* \* \*

*Federally enforceable* \* \* \*

(6) Limitations and conditions that are part of an operating permit where the permit and the permitting program pursuant to which it was issued meet all of the following criteria:

(i) The operating permit program has been submitted to and approved by EPA into a State implementation plan (SIP) under section 110 of the CAA;

(ii) The SIP imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA;

(iii) The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "federally enforceable";

(iv) The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter; and

(v) The permit in question was issued only after adequate and timely notice and opportunity for comment for EPA and the public.

\* \* \* \* \*

*Malfunction* means any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner. \* \* \*

*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:

(1) 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.

(2) 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.

(3) 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.

(4) 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.

*New affected source* means the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory that is subject to a section 112(d) or other relevant standard for new sources. This definition of "new affected source," and the criteria to be

utilized in implementing it, shall apply to each section 112(d) standard for which the initial proposed rule is signed by the Administrator after June 30, 2002. Each relevant standard will define the term "new affected source," which will be the same as the "affected source" unless a different collection is warranted based on consideration of factors including:

(1) Emission reduction impacts of controlling individual sources versus groups of sources;

(2) Cost effectiveness of controlling individual equipment;

(3) Flexibility to accommodate common control strategies;

(4) Cost/benefits of emissions averaging;

(5) Incentives for pollution prevention;

(6) Feasibility and cost of controlling processes that share common equipment (e.g., product recovery devices);

(7) Feasibility and cost of monitoring; and

(8) Other relevant factors.

*New source* means any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under this part establishing an emission standard applicable to such source.

\* \* \* \* \*

*Reconstruction*, unless otherwise defined in a relevant standard, means the replacement of components of an affected or a previously nonaffected source to such an extent that:

\* \* \* \* \*

*Relevant standard* means: \* \* \*

(4) An equivalent emission limitation established pursuant to section 112 of the Act that applies to the collection of equipment, activities, or both regulated by such standard or limitation. \* \* \* Every relevant standard established pursuant to section 112 of the Act includes subpart A of this part, as provided by § 63.1(a)(4), and all applicable appendices of this part or of other parts of this chapter that are referenced in that standard.

\* \* \* \* \*

*Shutdown* means the cessation of operation of an affected source or portion of an affected source for any purpose.

\* \* \* \* \*

*Startup* means the setting in operation of an affected source or portion of an affected source for any purpose.

\* \* \* \* \*

*Working day* means any day on which Federal Government offices (or State government offices for a State that has obtained delegation under section

112(l)) are open for normal business. Saturdays, Sundays, and official Federal (or where delegated, State) holidays are not working days.

4. Section 63.3 is amended by adding the abbreviation for standard cubic meter per minute in paragraph (b).

The revisions read as follows:

§ 63.3 Units and abbreviations.

\* \* \* \*

(b) \* \* \*

scmm = cubic meter at standard conditions per minute

\* \* \* \*

5. Section 63.4 is amended by:

- a. Revising paragraph (a)(1);
b. Removing and reserving paragraphs (a)(3) through (a)(5);
c. Removing paragraph (b)(3); and
d. Revising paragraph (c).

The revisions read as follows:

§ 63.4 Prohibited activities and circumvention.

(a) \* \* \* (1) No owner or operator subject to the provisions of this part must operate any affected source in violation of the requirements of this part. Affected sources subject to and in compliance with either an extension of compliance or an exemption from compliance are not in violation of the requirements of this part. An extension of compliance can be granted by the Administrator under this part; by a State with an approved permit program; or by the President under section 112(i)(4) of the Act.

\* \* \* \*

(3)-(5) [Reserved]

\* \* \* \*

(c) Fragmentation. Fragmentation after November 15, 1990 which divides ownership of an operation, within the same facility among various owners where there is no real change in control, will not affect applicability. The owner and operator must not use fragmentation or phasing of reconstruction activities (i.e., intentionally dividing reconstruction into multiple parts for purposes of avoiding new source requirements) to avoid becoming subject to new source requirements.

6. Section 63.5 is amended by:

- a. Revising the section heading;
b. Revising paragraphs (a)(1) and (2);
c. Revising paragraphs (b)(1), (b)(3) and (4);
d. Removing and reserving paragraph (b)(5);
e. Revising paragraph (b)(6);
f. Revising paragraphs (d)(1)(i), (d)(1)(ii)(B), and (d)(1)(ii)(E);
g. Removing and reserving paragraph (d)(1)(ii)(G);
h. Revising paragraph (d)(2);

- i. Revising paragraph (d)(3)(vi); and
j. Revising paragraphs (f)(1) and (f)(2).
- The revisions read as follows:

§ 63.5 Preconstruction review and notification requirements.

(a) \* \* \*

(1) This section implements the preconstruction review requirements of section 112(i)(1). After the effective date of a relevant standard, promulgated pursuant to section 112(d), (f), or (h) of the Act, under this part, the preconstruction review requirements in this section apply to the owner or operator of new affected sources and reconstructed affected sources that are major-emitting as specified in this section. New and reconstructed affected sources that commence construction or reconstruction before the effective date of a relevant standard are not subject to the preconstruction review requirements specified in paragraphs (b)(3), (d), and (e) of this section.

(2) This section includes notification requirements for new affected sources and reconstructed affected sources that are not major-emitting affected sources and that are or become subject to a relevant promulgated emission standard after the effective date of a relevant standard promulgated under this part.

(b) Requirements for existing, newly constructed, and reconstructed affected sources. (1) A new affected source for which construction commences after proposal of a relevant standard is subject to relevant standards for new affected sources, including compliance dates. An affected source for which reconstruction commences after proposal of a relevant standard is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

\* \* \* \*

(3) After the effective date of any relevant standard promulgated by the Administrator under this part, no person may, without obtaining written approval in advance from the Administrator in accordance with the procedures specified in paragraphs (d) and (e) of this section, do any of the following:

- (i) Construct a new affected source that is major-emitting and subject to such standard;
(ii) Reconstruct an affected source that is major-emitting and subject to such standard; or
(iii) Reconstruct a major source such that the source becomes an affected source that is major-emitting and subject to the standard.

(4) After the effective date of any relevant standard promulgated by the Administrator under this part, an owner or operator who constructs a new affected source that is not major-emitting or reconstructs an affected source that is not major-emitting that is subject to such standard, or reconstructs a source such that the source becomes an affected source subject to the standard, must notify the Administrator of the intended construction or reconstruction. The notification must be submitted in accordance with the procedures in § 63.9(b).

(5) [Reserved]

(6) After the effective date of any relevant standard promulgated by the Administrator under this part, equipment added (or a process change) to an affected source that is within the scope of the definition of affected source under the relevant standard must be considered part of the affected source and subject to all provisions of the relevant standard established for that affected source.

\* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) An owner or operator who is subject to the requirements of paragraph (b)(3) of this section must submit to the Administrator an application for approval of the construction or reconstruction. The application must be submitted as soon as practicable before actual construction or reconstruction begins. The application for approval of construction or reconstruction may be used to fulfill the initial notification requirements of § 63.9(b)(5). The owner or operator may submit the application for approval well in advance of the date actual construction or reconstruction begins in order to ensure a timely review by the Administrator and that the planned date to begin will not be delayed.

(ii) \* \* \*

(B) A notification of intention to construct a new major affected source or make any physical or operational change to a major affected source that may meet or has been determined to meet the criteria for a reconstruction, as defined in § 63.2 or in the relevant standard;

\* \* \* \*

(E) The expected date of the beginning of actual construction or reconstruction;

\* \* \* \*

(G) [Reserved]

\* \* \* \*

(2) Application for approval of construction. Each application for approval of construction must include, in addition to the information required

in paragraph (d)(1)(ii) of this section, technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including an identification of each type of emission point for each type of hazardous air pollutant that is emitted (or could reasonably be anticipated to be emitted) and a description of the planned air pollution control system (equipment or method) for each emission point. The description of the equipment to be used for the control of emissions must include each control device for each hazardous air pollutant and the estimated control efficiency (percent) for each control device. The description of the method to be used for the control of emissions must include an estimated control efficiency (percent) for that method. Such technical information must include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations.

(3) \* \* \*

(vi) If in the application for approval of reconstruction the owner or operator designates the affected source as a reconstructed source and declares that there are no economic or technical limitations to prevent the source from complying with all relevant standards or other requirements, the owner or operator need not submit the information required in paragraphs (d)(3)(iii) through (d)(3)(v) of this section.

\* \* \* \* \*

(f) \* \* \*

(1) Preconstruction review procedures that a State utilizes for other purposes may also be utilized for purposes of this section if the procedures are substantially equivalent to those specified in this section. The Administrator will approve an application for construction or reconstruction specified in paragraphs (b)(3) and (d) of this section if the owner or operator of a new affected source or reconstructed affected source, who is subject to such requirement meets the following conditions:

(i) The owner or operator of the new affected source or reconstructed affected source has undergone a preconstruction review and approval process in the State in which the source is (or would be) located and has received a federally enforceable construction permit that contains a finding that the source will meet the relevant promulgated emission standard, if the source is properly built and operated.

(ii) Provide a statement from the State or other evidence (such as State

regulations) that it considered the factors specified in paragraph (e)(1) of this section.

(2) The owner or operator must submit to the Administrator the request for approval of construction or reconstruction under this paragraph (f)(2) no later than the application deadline specified in paragraph (d)(1) of this section (see also § 63.9(b)(2)). The owner or operator must include in the request information sufficient for the Administrator's determination. The Administrator will evaluate the owner or operator's request in accordance with the procedures specified in paragraph (e) of this section. The Administrator may request additional relevant information after the submittal of a request for approval of construction or reconstruction under this paragraph (f)(2).

7. Section 63.6 is amended by:

- a. Revising paragraph (a)(1) introductory text;
- b. Revising paragraphs (b)(1), (b)(2), (b)(3)(i), (b)(4), (b)(5), and (b)(7);
- c. Revising paragraphs (c)(2) and (c)(5);
- d. Revising paragraphs (e)(1)(i) and (ii);
- e. Removing and reserving paragraph (e)(2);
- f. Revising paragraphs (e)(3)(i) introductory text, (e)(3)(i)(A), (e)(3)(ii), the first three sentences of (e)(3)(iii) and (e)(3)(v), revising paragraphs (e)(3)(iv), (e)(3)(vii)(B), (e)(3)(vii)(C), adding paragraph (e)(3)(vii)(D), revising paragraph (e)(3)(viii) and adding paragraph (e)(3)(ix);
- g. Revising paragraphs (f)(1), (f)(2)(iii)(D), and (f)(3);
- h. Revising paragraph (h)(1);
- i. Revising paragraph (h)(2)(iii)(C);
- j. Revising paragraph (i)(4)(i)(B);
- k. Revising the last sentence of paragraph (i)(4)(ii);
- l. Revising paragraphs (i)(6)(i)(B)(1) and (2) and removing and reserving paragraphs (i)(6)(i)(C) & (D);
- m. Revising paragraph (i)(12)(i);
- n. Revising paragraph (i)(14); and
- o. Adding paragraph (i)(4)(i)(C).

The revisions and additions read as follows:

**§ 63.6 Compliance with standards and maintenance requirements.**

(a) \* \* \*

(1) The requirements in this section apply to the owner or operator of affected sources for which any relevant standard has been established pursuant to section 112 of the Act and the applicability of such requirements is set out in accordance with § 63.1(a)(4) unless—

\* \* \* \* \*

(b) *Compliance dates for new and reconstructed affected sources.* (1) Except as specified in paragraphs (b)(3) and (4) of this section, the owner or operator of a new or reconstructed affected source for which construction or reconstruction commences after proposal of a relevant standard that has an initial startup before the effective date of a relevant standard established under this part pursuant to section 112(d), (f), or (h) of the Act must comply with such standard not later than the standard's effective date.

(2) Except as specified in paragraphs (b)(3) and (4) of this section, the owner or operator of a new or reconstructed affected source that has an initial startup after the effective date of a relevant standard established under this part pursuant to section 112(d), (f), or (h) of the Act must comply with such standard upon startup of the source.

(3) \* \* \*

(i) The promulgated standard (that is, the relevant standard) is more stringent than the proposed standard; for purposes of this paragraph, a finding that controls or compliance methods are "more stringent" must include control technologies or performance criteria and compliance or compliance assurance methods that are different but are substantially equivalent to those required by the promulgated rule, as determined by the Administrator (or his or her authorized representative); and

\* \* \* \* \*

(4) The owner or operator of an affected source for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of a relevant standard established pursuant to section 112(f) shall not be required to comply with the section 112(f) emission standard until the date 10 years after the date construction or reconstruction is commenced, except that, if the section 112(f) standard is promulgated more than 10 years after construction or reconstruction is commenced, the owner or operator must comply with the standard as provided in paragraphs (b)(1) and (2) of this section.

(5) The owner or operator of a new source that is subject to the compliance requirements of paragraph (b)(3) or (4) of this section must notify the Administrator in accordance with § 63.9(d).

\* \* \* \* \*

(7) When an area source becomes a major source by the addition of equipment or operations that meet the definition of new affected source in the relevant standard, the portion of the

existing facility that is a new affected source must comply with all requirements of that standard applicable to new sources. The source owner or operator must comply with the relevant standard upon startup.

(c) \* \* \*

(2) If an existing source is subject to a standard established under this part pursuant to section 112(f) of the Act, the owner or operator must comply with the standard by the date 90 days after the standard's effective date, or by the date specified in an extension granted to the source by the Administrator under paragraph (i)(4)(ii) of this section, whichever is later.

\* \* \* \* \*

(5) Except as provided in paragraph (b)(7) of this section, the owner or operator of an area source that increases its emissions of (or its potential to emit) hazardous air pollutants such that the source becomes a major source shall be subject to relevant standards for existing sources. Such sources must comply by the date specified in the standards for existing area sources that become major sources. If no such compliance date is specified in the standards, the source shall have a period of time to comply with the relevant emission standard that is equivalent to the compliance period specified in the relevant standard for existing sources in existence at the time the standard becomes effective.

\* \* \* \* \*

(e) \* \* \*

(1)(i) At all times, including periods of startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions to the levels required by the relevant standards, i.e., meet the emission standard or comply with the startup, shutdown, and malfunction plan. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section), review of operation and maintenance records, and inspection of the source.

(ii) Malfunctions must be corrected as soon as practicable after their occurrence in accordance with the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this

section. To the extent that an unexpected event arises during a startup, shutdown, or malfunction, an owner or operator must comply by minimizing emissions during such a startup, shutdown, and malfunction event consistent with safety and good air pollution control practices.

\* \* \* \* \*

(2) [Reserved]

(3) \* \* \*

(i) The owner or operator of an affected source must develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction; a program of corrective action for malfunctioning process; and air pollution control and monitoring equipment used to comply with the relevant standard. This plan must be developed by the owner or operator by the source's compliance date for that relevant standard. The purpose of the startup, shutdown, and malfunction plan is to—

(A) Ensure that, at all times, the owner or operator operate and maintain affected sources, including associated air pollution control and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions to the levels required by the relevant standards;

\* \* \* \* \*

(ii) During periods of startup, shutdown, and malfunction, the owner or operator of an affected source must operate and maintain such source (including associated air pollution control and monitoring equipment) in accordance with the procedures specified in the startup, shutdown, and malfunction plan developed under paragraph (e)(3)(i) of this section.

(iii) When actions taken by the owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) are consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator must keep records for that event which demonstrate that the procedures specified in the plan were followed. These records may take the form of a "checklist," or other effective form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan for that event. In addition, the owner or operator must keep records of these events as specified in § 63.10(b), including records of the occurrence and duration of each startup, shutdown, or

malfunction of operation and each malfunction of the air pollution control and monitoring equipment. \* \* \*

(iv) If an action taken by the owner or operator during a startup, shutdown, or malfunction (including an action taken to correct a malfunction) is not consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, and the source exceeds the relevant emission standard, then the owner or operator must record the actions taken for that event and must report such actions within 2 working days after commencing actions inconsistent with the plan, followed by a letter within 7 working days after the end of the event, in accordance with § 63.10(d)(5) (unless the owner or operator makes alternative reporting arrangements, in advance, with the Administrator).

(v) The owner or operator must maintain at the affected source a current startup, shutdown, and malfunction plan and must make the plan available upon request for inspection and copying by the Administrator. In addition, if the startup, shutdown, and malfunction plan is subsequently revised as provided in paragraph (e)(3)(viii) of this section, the owner or operator must maintain at the affected source each previous (i.e., superseded) version of the startup, shutdown, and malfunction plan, and must make each such previous version available for inspection and copying by the Administrator for a period of 5 years after revision of the plan. If at any time after adoption of a startup, shutdown, and malfunction plan the affected source ceases operation or is otherwise no longer subject to the provisions of this part, the owner or operator must retain a copy of the most recent plan for 5 years from the date the source ceases operation or is no longer subject to this part and must make the plan available upon request for inspection and copying by the Administrator. \* \* \*

\* \* \* \* \*

(vii) \* \* \*

(B) Fails to provide for the operation of the source (including associated air pollution control and monitoring equipment) during a startup, shutdown, or malfunction event in a manner consistent with safety and good air pollution control practices for minimizing emissions to the levels required by the relevant standards;

(C) Does not provide adequate procedures for correcting malfunctioning process and/or air pollution control and monitoring equipment as quickly as practicable; or

(D) Includes an event that does not meet the definition of startup, or

shutdown, or malfunction listed in § 63.2.

(viii) The owner or operator may periodically revise the startup, shutdown, and malfunction plan for the affected source as necessary to satisfy the requirements of this part or to reflect changes in equipment or procedures at the affected source. Unless the permitting authority provides otherwise, the owner or operator may make such revisions to the startup, shutdown, and malfunction plan without prior approval by the Administrator or the permitting authority. However, each such revision to a startup, shutdown, and malfunction plan must be reported in the semiannual report required by § 63.10(d)(5). If the startup, shutdown, and malfunction plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction but was not included in the startup, shutdown, and malfunction plan at the time the owner or operator developed the plan, the owner or operator must revise the startup, shutdown, and malfunction plan within 45 days after the event to include detailed procedures for operating and maintaining the source during similar malfunction events and a program of corrective action for similar malfunctions of process or air pollution control and monitoring equipment. In the event that the owner or operator makes any revision to the startup, shutdown, and malfunction plan which alters the scope of the activities at the source which are deemed to be a startup, shutdown, malfunction, or otherwise modifies the applicability of any emission limit, work practice requirement, or other requirement in a standard established under this part, the revised plan shall not take effect until after the owner or operator has provided a written notice describing the revision to the permitting authority.

(ix) The title V permit for an affected source must require that the owner or operator adopt a startup, shutdown, and malfunction plan which conforms to the provisions of this part, and that the owner or operator operate and maintain the source in accordance with the procedures specified in the current startup, shutdown, and malfunction plan. However, any revisions made to the startup, shutdown, and malfunction plan in accordance with the procedures established by this part shall not be deemed to constitute permit revisions under part 70 or part 71 of this chapter. Moreover, none of the procedures specified by the startup, shutdown, and malfunction plan for an affected source shall be deemed to fall within the

permit shield provision in section 504(f) of the Act.

(f) \* \* \*

(1) *Applicability.* The non-opacity emission standards set forth in this part shall apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart. If a startup, shutdown, or malfunction of one portion of an affected source does not affect the ability of particular emission points within other portions of the affected source to comply with the non-opacity emission standards set forth in this part, then that emission point must still be required to comply with the non-opacity emission standards and other applicable requirements.

(2) \* \* \*

(iii) \* \* \*

(D) The performance test was appropriately quality-assured, as specified in § 63.7(c).

\* \* \* \* \*

(3) *Finding of compliance.* The Administrator will make a finding concerning an affected source's compliance with a non-opacity emission standard, as specified in paragraphs (f)(1) and (2) of this section, upon obtaining all the compliance information required by the relevant standard (including the written reports of performance test results, monitoring results, and other information, if applicable), and information available to the Administrator pursuant to paragraph (e)(1)(i) of this section.

\* \* \* \* \*

(h) \* \* \*

(1) *Applicability.* The opacity and visible emission standards set forth in this part must apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart. If a startup, shutdown, or malfunction of one portion of an affected source does not affect the ability of particular emission points within other portions of the affected source to comply with the opacity and visible emission standards set forth in this part, then that emission point shall still be required to comply with the opacity and visible emission standards and other applicable requirements.

(2) \* \* \*

(iii) \* \* \*

(C) The opacity or visible emission test was conducted and the resulting data were reduced using EPA-approved test methods and procedures, as specified in § 63.7(e); and

\* \* \* \* \*

(i) \* \* \*

(4)(i) \* \* \*

(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) \* \* \* 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.

\* \* \* \* \*

(6)(i) \* \* \*

(B) \* \* \*

(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.

(C) [Reserved]

(D) [Reserved]

\* \* \* \* \*

(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.

\* \* \* \* \*

(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.

\* \* \* \* \*

8. Section 63.7 is amended by:
- a. Revising paragraphs (a)(1) and (a)(2) introductory text;
  - b. Removing and reserving paragraphs (a)(2)(i) through (viii);
  - c. Revising paragraph (b)(1);
  - d. Revising the first sentence of paragraph (b)(2);
  - e. Revising paragraphs (c)(3)(ii)(A) through (B);
  - f. Revising paragraph (c)(4)(i);
  - g. Revising paragraphs (e)(2)(i) through (iii);
  - h. Revising paragraph (f)(1);
  - i. Revising paragraphs (f)(2)(i) through (ii); and
  - j. Revising paragraph (f)(3).
- The revisions read as follows:

**§ 63.7 Performance testing requirements.**

- (a) \* \* \*
- (1) The applicability of this section is set out in § 63.1(a)(4).
- (2) 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.

(i)—(viii) [Reserved]

\* \* \* \* \*

(b) \* \* \*

(1) The owner or operator of an affected source must notify the Administrator in writing of his or her intention to conduct a performance test at least 60 calendar days before the performance test is initially scheduled to begin to allow the Administrator, upon request, to review an approve the site-specific test plan required under paragraph (c) of this section and to have an observer present during the test.

(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. \* \* \*

- (c) \* \* \*
- (3) \* \* \*
- (ii) \* \* \*

(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.

\* \* \* \* \*

(4)(i) *Performance test method audit program.* The owner or operator must analyze performance audit (PA) samples during each performance test. The owner or operator must request performance audit materials 30 days prior to the test date. Audit materials including cylinder audit gases may be obtained by contacting the appropriate EPA Regional Office or the responsible enforcement authority.

\* \* \* \* \*

- (e) \* \* \*
- (2) \* \* \*

(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

\* \* \* \* \*

- (f) \* \* \*

(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) \* \* \*

(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

\* \* \* \* \*

(3) The Administrator will determine whether the owner or operator's validation of the proposed alternative test method is adequate and issue an approval or disapproval of the alternative test method. 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. However, the owner or operator is authorized to conduct the performance test using an alternative method in the absence of notification of approval/disapproval 45 days after submission of the request to use an alternative method and the request satisfies the requirements in paragraph (f)(2) of this section. 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.

\* \* \* \* \*

9. Section 63.8 is amended by:

- a. Revising paragraph (a)(1);
- b. Revising paragraphs (b)(1)(i) and (ii);
- c. Revising paragraphs (b)(2)(i) and (ii);
- d. Revising paragraphs (c)(1)(i) through (iii);
- e. Revising paragraph (c)(2);
- f. Revising paragraph (c)(6);
- g. Revising paragraph (f)(1);
- h. Revising paragraphs (f)(4)(i) through (ii);
- i. Adding paragraph (f)(4)(iv);
- j. Revising the heading of paragraph (f)(5) and revising paragraph (f)(5)(i) introductory text;
- k. Revising paragraph (g)(1); and
- l. Revising paragraph (g)(5).

The revisions and additions read as follows:

#### § 63.8 Monitoring requirements.

(a) \* \* \*

(1) The applicability of this section is set out in § 63.1(a)(4).

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(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).

\* \* \* \* \*

(2)(i) When the emissions from two or more affected sources are combined before being released to the atmosphere, the owner or operator may install an applicable CMS for each emission stream or for the combined emissions streams, provided the monitoring is sufficient to demonstrate compliance with the relevant standard.

(ii) If the relevant standard is a mass emission standard and the emissions from one affected source are released to the atmosphere through more than one point, the owner or operator must install an applicable CMS at each emission point unless the installation of fewer systems is—

\* \* \* \* \*

(c) \* \* \*

(1)(i) The owner or operator of an affected source must maintain and operate each CMS as specified in § 63.6(e)(1).

(ii) The owner or operator must keep the necessary parts for routine repairs of the affected CMS equipment readily available.

(iii) The owner or operator of an affected source must develop and implement a written startup, shutdown, and malfunction plan for CMS as specified in § 63.6(e)(3).

(2)(i) All CMS must be installed such that representative measures of emissions or process parameters from the affected source are obtained. In addition, CEMS must be located according to procedures contained in the applicable performance specification(s).

(ii) Unless the individual subpart states otherwise, the owner or operator must ensure the read out (that portion of the CMS that provides a visual display or record), or other indication of operation, from any CMS required for compliance with the emission standard is readily accessible on site for operational control or inspection by the operator of the equipment.

\* \* \* \* \*

(6) The owner or operator of a CMS that is not a CPMS, which is installed

in accordance with the provisions of this part and the applicable CMS performance specification(s), must check the zero (low-level) and high-level calibration drifts at least once daily in accordance with the written procedure specified in the performance evaluation plan developed under paragraphs (e)(3)(i) and (ii) of this section. The zero (low-level) and high-level calibration drifts must be adjusted, at a minimum, whenever the 24-hour zero (low-level) drift exceeds two times the limits of the applicable performance specification(s) specified in the relevant standard. The system shall allow the amount of excess zero (low-level) and high-level drift measured at the 24-hour interval checks to be recorded and quantified whenever specified. For COMS, all optical and instrumental surfaces exposed to the effluent gases must be cleaned prior to performing the zero (low-level) and high-level drift adjustments; the optical surfaces and instrumental surfaces must be cleaned when the cumulative automatic zero compensation, if applicable, exceeds 4 percent opacity. The CPMS must be calibrated prior to use for the purposes of complying with this section. The CPMS must be checked daily for indication that the system is responding. If the CPMS system includes an internal system check, results must be recorded and checked daily for proper operation.

\* \* \* \* \*

(f) \* \* \*

(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.

\* \* \* \* \*

(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.

\* \* \* \* \*

(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—

\* \* \* \* \*

(g) *Reduction of monitoring data.*

(1) The owner or operator of each CMS must reduce the monitoring data as specified in paragraphs (g)(1) through (5) of this section.

\* \* \* \* \*

(5) Monitoring data recorded during periods of unavoidable CMS breakdowns, out-of-control periods, repairs, maintenance periods, calibration checks, and zero (low-level) and high-level adjustments must not be included in any data average computed under this part. For the owner or operator complying with the requirements of § 63.10(b)(2)(vii)(A) or (B), data averages must include any data recorded during periods of monitor breakdown or malfunction.

10. Section 63.9 is amended by:

- a. Revising paragraph (a)(1);
b. Revising paragraph (b)(2)(iv);
c. Removing and reserving paragraph (b)(3);

d. Revising the introductory text of paragraph (b)(4);

e. Revising paragraph (b)(4)(i);
f. Removing and reserving paragraphs (b)(4)(ii) through (iii).

g. Revising paragraph (b)(5);
h. Revising paragraph (h)(2)(i)(E); and
i. Revising the first sentence of paragraph (h)(2)(ii);

The revisions and additions read as follows:

§ 63.9 Notification requirements.

(a) \* \* \*

(1) The applicability of this section is set out in § 63.1(a)(4).

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iv) A brief description of the nature, size, design, and method of operation of the source and an identification of the types of emission points within the affected source subject to the relevant standard and types of hazardous air pollutants emitted; and

\* \* \* \* \*

(3) [Reserved]

(4) The owner or operator of a new or reconstructed major affected source for which an application for approval of construction or reconstruction is required under § 63.5(d) must provide the following information in writing to the Administrator:

(i) A notification of intention to construct a new major-emitting affected source, reconstruct a major-emitting affected source such that the source becomes a major-emitting affected source with the application for approval of construction or reconstruction as specified in § 63.5(d)(1)(i); and

(ii) [Reserved]

(iii) [Reserved]

\* \* \* \* \*

(5) The owner or operator of a new or reconstructed affected source for which an application for approval of construction or reconstruction is not required under § 63.5(d) must provide the following information in writing to the Administrator:

(i) A notification of intention to construct a new affected source, reconstruct an affected source, or reconstruct a source such that the source becomes an affected source, and

(ii) A notification of the actual date of startup of the source, delivered or postmarked within 15 calendar days after that date.

(iii) Unless the owner or operator has requested and received prior permission from the Administrator to submit less than the information in § 63.5(d), the notification must include the

information required on the application for approval of construction or reconstruction as specified in § 63.5(d)(1)(i).

\* \* \* \* \*

(h) \* \* \*

(2)(i) \* \* \*

(E) If the relevant standard applies to both major and area sources, an analysis demonstrating whether the affected source is a major source (using the emissions data generated for this notification);

\* \* \* \* \*

(ii) The notification must be sent before the close of business on the 60th day following the completion of the relevant compliance demonstration activity (or activities that have the same compliance date) specified in the relevant standard (unless a different reporting period is specified in the standard, in which case the letter must be sent before the close of business on the day the report of the relevant testing or monitoring results is required to be delivered or postmarked).

\* \* \* \* \*

11. Section 63.10 is amended by:

- a. Revising paragraph (a)(1);
b. Revising paragraphs (b)(2)(ii) through (b)(2)(v);
c. Revising paragraph (b)(3); and
d. Revising the second sentence of paragraph (d)(5)(i).

The revisions read as follows:

§ 63.10 Recordkeeping and reporting requirements.

(a) \* \* \*

(1) The applicability of this section is set out in § 63.1(a)(4).

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) The occurrence and duration of each malfunction of the required air pollution control and monitoring equipment;

(iii) All required maintenance performed on the air pollution control and monitoring equipment;

(iv) Actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation) when such actions are different from the procedures specified in the affected source's startup, shutdown, and malfunction plan (see § 63.6(e)(3));

(v) All information necessary to demonstrate conformance with the affected source's startup, shutdown, and malfunction plan (see § 63.6(e)(3)) when all actions taken during periods of



startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation) are consistent with the procedures specified in such plan. (The information needed to demonstrate conformance with the startup, shutdown, and malfunction plan may be recorded using a "checklist," or some other effective form of recordkeeping, in order to minimize the recordkeeping burden for conforming events);

\* \* \* \* \*

(3) *Recordkeeping requirement for applicability determinations.* If an owner or operator determines that his or her stationary source that emits (or has the potential to emit, without considering controls) one or more hazardous air pollutants regulated by any standard established pursuant to section 112(d) or (f), and that stationary source is in the source category regulated by the relevant standard, but that source is not subject to the relevant standard (or other requirement established under this part) because of limitations on the source's potential to emit or an exclusion, the owner or operator must keep a record of the applicability determination on site at the source for a period of 5 years after the determination, or until the source changes its operations to become an affected source, whichever comes first. The record of the applicability determination must be signed by the person making the determination and include an analysis (or other information) that demonstrates why the owner or operator believes the source is unaffected (e.g., because the source is an area source). The analysis (or other information) must be sufficiently detailed to allow the Administrator to make a finding about the source's applicability status with regard to the relevant standard or other requirement. If relevant, the analysis must be performed in accordance with requirements established in relevant subparts of this part for this purpose for particular categories of stationary sources. If relevant, the analysis should be performed in accordance with EPA guidance materials published to assist sources in making applicability determinations under section 112, if any. The requirements to determine applicability of a standard under § 63.1(b)(3) and to record the results of that determination under paragraph (b)(3) of this section shall not by themselves create an obligation for the

owner or operator to obtain a title V permit.

\* \* \* \* \*

(d) \* \* \*

(5)(i) \* \* \* Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period, and they must include the number, duration, and a brief description of each startup, shutdown, or malfunction. \* \* \*

\* \* \* \* \*

12. Section 63.11 is amended by revising paragraph (a) to read as follows:

**§ 63.11 Control device requirements.**

(a) *Applicability.* The applicability of this section is set out in § 63.1(a)(4).

\* \* \* \* \*

**Subpart B—[Amended]**

13. Section 63.50 is amended by:

1. Revising paragraph (a);
2. Revising paragraph (b); and
3. Removing and reserving paragraph (c) as follows:

**§ 63.50 Applicability.**

(a) *General applicability.* (1) The requirements of this section through § 63.56 implement section 112(j) of the Clean Air Act (as amended in 1990). The requirements of this section through § 63.56 apply in each State beginning on the effective date of an approved title V permit program in such State. The requirements of this section through § 63.56 do not apply to research or laboratory activities as defined in § 63.51.

(2) The requirements of this section through § 63.56 apply to:

(i) The owner or operator of affected sources within a source category or subcategory under this part that are located at a major source that is subject to an approved title V permit program and for which the Administrator has failed to promulgate emission standards by the section 112(j) deadlines. If title V applicability has been deferred for a source category, then section 112(j) is not applicable for sources in that category within that State, local or tribal jurisdiction until those sources become subject to title V permitting requirements; and

(ii) Permitting authorities with an approved title V permit program.

(b) Relationship to State and local requirements. Nothing in §§ 63.50 through 63.56 shall prevent a State or local regulatory agency from imposing more stringent requirements, as a matter of State or local law, than those contained in §§ 63.50 through 63.56.

(c) [Reserved]

14. Section 63.51 is amended by:

a. Revising the introductory text of this section;

b. Adding in alphabetical order the definition of *affected source*;

c. In the definition of *Available information* by revising the introductory text and paragraphs (2) through (5);

d. Removing the definition of *emission point*;

e. Removing the definition of *emission unit*;

f. Revising the definition of *enhanced review*;

g. Revising the definition of *equivalent emission limitation*;

h. Removing the definition of *existing major source*;

i. Revising paragraphs (1)(i) and (ii) of the definition of *maximum achievable control technology (MACT) floor*;

j. Adding in alphabetical order the definition of *new affected source*;

k. Removing the definition of *new emission unit*;

l. Removing the definition of *new major source*;

m. Adding in alphabetical order the definition of *research or laboratory activities*.

n. Revising the definition of *section 112(j) deadline*;

o. Revising the definition of *similar source*; and

p. Removing the definition of *United States*;

The revisions and additions read as follows:

**§ 63.51 Definitions.**

Terms used in §§ 63.50 through 63.56 that are not defined in this section have the meaning given to them in the Act, or in subpart A of this part.

*Affected source* means the collection of equipment, activities, or both within a single contiguous area and under common control that is in a section 112(c) source category or subcategory for which the Administrator has failed to promulgate an emission standard by the section 112(j) deadline, and that is addressed by an applicable MACT emission limitation established pursuant to this subpart.

*Available information* means, for purposes of conducting a MACT floor finding and identifying control technology options under this subpart, any information that is available as of the date on which the first Part 2 MACT application is filed for a source in the relevant source category or subcategory in the State or jurisdiction; and, pursuant to the requirements of this subpart, is additional relevant information that can be expeditiously provided by the Administrator, is submitted by the applicant or others prior to or during the public comment

period on the section 112(j) equivalent emission limitation for that source, or information contained in the information sources in paragraphs (1) through (5) of this definition.

(1) \* \* \*

(2) Relevant background information documents for a draft or proposed regulation.

(3) Any relevant regulation, information or guidance collected by the Administrator establishing a MACT floor finding and/or MACT determination.

(4) Relevant data and information available from the Clean Air Technology Center developed pursuant to section 112(l)(3) of the Act.

(5) Relevant data and information contained in the Aerometric Information Retrieval System (AIRS).

\* \* \* \* \*

*Enhanced review* means a review process containing all administrative steps needed to ensure that the terms and conditions resulting from the review process can be incorporated using title V permitting procedures.

*Equivalent emission limitation* means an emission limitation, established under section 112(j) of the Act, which is equivalent to the MACT standard that EPA would have promulgated under section 112(d) or (h) of the Act.

\* \* \* \* \*

*Maximum achievable control technology (MACT) floor* means:

(1) \* \* \*

(i) The average emission limitation achieved by the best performing 12 percent of the existing sources in the United States (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined in section 171 of the Act) applicable to the source category and prevailing at the time, in the category or subcategory, for categories and subcategories of stationary sources with 30 or more sources; or

(ii) The average emission limitation achieved by the best performing five sources (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory, for categories or subcategories with fewer than 30 sources;

\* \* \* \* \*

*New affected source* means the collection of equipment, activities, or both, that if constructed after the issuance of a section 112(j) permit for the source pursuant to § 63.52, is subject to the applicable MACT emission limitation for new sources. Each permit must define the term “new affected source,” which will be the same as the “affected source” unless a different collection is warranted based on consideration of factors including:

(1) Emission reduction impacts of controlling individual sources versus groups of sources;

(2) Cost effectiveness of controlling individual equipment;

(3) Flexibility to accommodate common control strategies;

(4) Cost/benefits of emissions averaging;

(5) Incentives for pollution prevention;

(6) Feasibility and cost of controlling processes that share common equipment (e.g., product recovery devices);

(7) Feasibility and cost of monitoring; and

(8) Other relevant factors.

\* \* \* \* \*

*Research or laboratory activities* means activities whose primary purpose is to conduct research and development into new processes and products where such activities are operated under the close supervision of technically trained personnel and are not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner; and where the source is not in a source category, specifically addressing research or laboratory activities, that is listed pursuant to section 112(c)(7) of the Act.

*Section 112(j) deadline* means the date 18 months after the date for which a relevant standard is scheduled to be promulgated under this part, except that for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1994, the section 112(j) deadline is November 15, 1996, and for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1997, the section 112(j) deadline is December 15, 1999.

*Similar source* means that equipment or collection of equipment that, by virtue of its structure, operability, type of emissions and volume and concentration of emissions, is substantially equivalent to the new affected source and employs control technology for control of emissions of

hazardous air pollutants that is practical for use on the new affected source.

\* \* \* \* \*

15. Section 63.52 is revised to read as follows:

**§ 63.52 Approval process for new and existing affected sources.**

(a) *Sources subject to section 112(j) as of the section 112(j) deadline.* The requirements of paragraphs (a)(1) and (2) of this section apply to major sources that include, as of the section 112(j) deadline, one or more sources in a category or subcategory for which the Administrator has failed to promulgate an emission standard under this part on or before an applicable section 112(j) deadline. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued to the source pursuant to the requirements of the subpart, must apply to such sources.

(1) The owner or operator must submit an application for a title V permit or for a revision to an existing title V permit or a pending title V permit meeting the requirements of § 63.53(a) by the section 112(j) deadline if the owner or operator can reasonably determine that one or more sources at the major source belong in the category or subcategory subject to section 112(j).

(2) If an application was not submitted under paragraph (a)(1) of this section and if notified by the permitting authority, the owner or operator must submit an application for a title V permit or for a revision to an existing title V permit or a pending title V permit meeting the requirements of § 63.53(a) within 30 days after being notified in writing by the permitting authority that one or more sources at the major source belong to such category or subcategory. Permitting authorities are not required to make such notification.

(3) The requirements in paragraphs (a)(3)(i) through (ii) of this section apply when the owner or operator has obtained a title V permit that incorporates a case-by-case MACT determination by the permitting authority under section 112(g) or has submitted a title V permit application for a revision that incorporates a case-by-case MACT determination under section 112(g), but has not submitted an application for a title V permit revision that addresses the emission limitation requirements of section 112(j).

(i) When the owner or operator has a title V permit that incorporates a case-by-case MACT determination by the permitting authority under section 112(g), the owner or operator must submit an application meeting the requirements of § 63.53(a) for a title V

permit revision within 30 days of the section 112(j) deadline or within 30 days of being notified in writing by the permitting authority that one or more sources at the major source belong in such category or subcategory. Using the procedures established in paragraph (e) of this section, the permitting authority must determine whether the emission limitations adopted pursuant to the prior case-by-case MACT determination under section 112(g) are substantially as effective as the emission limitations which the permitting authority would otherwise adopt pursuant to section 112(j) for the source in question. If the permitting authority determines that the emission limitations previously adopted to effectuate section 112(g) are substantially as effective as the emission limitations which the permitting authority would otherwise adopt to effectuate section 112(j) for the source, then the permitting authority must retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j). The title V permit applicable to that source must be revised accordingly. If the permitting authority does not retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j), the MACT requirements of this subpart are satisfied upon issuance of a revised title V permit incorporating any additional section 112(j) requirements.

(ii) When the owner or operator has submitted a title V permit application that incorporates a case-by-case MACT determination by the permitting authority under section 112(g), but has not received the permit incorporating the section 112(g) requirements, the owner or operator must continue to pursue a title V permit that addresses the emission limitation requirements of section 112(g). Within 30 days of issuance of that title V permit, the owner or operator must submit an application meeting the requirements of § 63.53(a) for a change to the existing title V permit. Using the procedures established in paragraph (e) of this section, the permitting authority must determine whether the emission limitations adopted pursuant to the prior case-by-case MACT determination under section 112(g) are substantially as effective as the emission limitations which the permitting authority would otherwise adopt pursuant to section 112(j) for the source in question. If the permitting authority determines that the emission limitations previously adopted to effectuate section 112(g) are substantially as effective as the emission limitations which the permitting

authority would otherwise adopt to effectuate section 112(j) for the source, then the permitting authority must retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j). The title V permit applicable to that source must be revised accordingly. If the permitting authority does not retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j), the MACT requirements of this subpart are satisfied upon issuance of a revised title V permit incorporating any additional section 112(j) requirements.

(b) *Sources that become subject to section 112(j) after the section 112(j) deadline and that do not have a title V permit addressing section 112(j) requirements.* The requirements of paragraphs (b)(1) through (4) of this section apply to sources that do not meet the criteria in paragraph (a) of this section on the section 112(j) deadline and are, therefore, not subject to section 112(j) on that date, but where events occur subsequent to the section 112(j) deadline that would bring the source under the requirements of this subpart, and the source does not have a title V permit that addresses the requirements of section 112(j).

(1) When one or more sources in a category or subcategory subject to the requirements of this subpart are installed at a major source, or result in the source becoming a major source due to the installation, and the installation does not invoke section 112(g) requirements, the owner or operator must submit an application meeting the requirements of § 63.53(a) within 30 days of startup of the source. This application shall be reviewed using the procedures established in paragraph (e) of this section. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued pursuant to the requirements of this subpart, shall apply to such sources.

(2) The requirements in this paragraph apply when one or more sources in a category or subcategory subject to this subpart are installed at a major source, or result in the source becoming a major source due to the installation, and the installation does require emission limitations to be established and permitted under section 112(g), and the owner or operator has not submitted an application for a title V permit revision that addresses the emission limitation requirements of section 112(j). In this case, the owner or operator must apply for and obtain a title V permit that addresses the emission limitation requirements of

section 112(g). Within 30 days of issuance of that title V permit, the owner or operator must submit an application meeting the requirements of § 63.53(a) for a revision to the existing title V permit. Using the procedures established in paragraph (e) of this section, the permitting authority must determine whether the emission limitations adopted pursuant to the prior case-by-case MACT determination under section 112(g) are substantially as effective as the emission limitations which the permitting authority would otherwise adopt pursuant to section 112(j) for the source in question. If the permitting authority determines that the emission limitations previously adopted to effectuate section 112(g) are substantially as effective as the emission limitations which the permitting authority would otherwise adopt to effectuate section 112(j) for the source, then the permitting authority must retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j). The title V permit applicable to that source must be revised accordingly. If the permitting authority does not retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j), the MACT requirements of this subpart are satisfied upon issuance of a revised title V permit incorporating any additional section 112(j) requirements.

(3) The owner or operator of an area source that, due to a relaxation in any federally enforceable emission limitation (such as a restriction on hours of operation), increases its potential to emit hazardous air pollutants such that the source becomes a major source that is subject to this subpart, must submit an application meeting the requirements of § 63.53(a) for a title V permit or for an application for a title V permit revision within 30 days after the date that such source becomes a major source. This application must be reviewed using the procedures established in paragraph (e) of this section. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued pursuant to the requirements of this subpart, must apply to such sources.

(4) On or after April 5, 2002, if the Administrator establishes a lesser quantity emission rate under section 112(a)(1) of the Act that results in an area source becoming a major source that is subject to this subpart, then the owner or operator of such a major source must submit an application meeting the requirements of § 63.53(a) for a title V permit or for a change to an

existing title V permit or pending title V permit on or before the date 6 months after the date that such source becomes a major source. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued pursuant to the requirements of this subpart, shall apply to such sources.

(c) *Sources that have a title V permit addressing section 112(j) requirements.* The requirements of paragraphs (c)(1) and (2) of this section apply to major sources that include one or more sources in a category or subcategory for which the Administrator fails to promulgate an emission standard under this part on or before an applicable section 112(j) deadline, and the owner or operator has a permit meeting the section 112(j) requirements, and where changes occur at the major source to equipment, activities, or both, subsequent to the section 112(j) deadline.

(1) If the title V permit already provides the appropriate requirements that address the events that occur under paragraph (c) of this section subsequent to the section 112(j) deadline, then the source must comply with the applicable new source MACT or existing source MACT requirements as specified in the permit, and the section 112(j) requirements are thus satisfied.

(2) If the title V permit does not contain the appropriate requirements that address the events that occur under paragraph (c) of this section subsequent to the section 112(j) deadline, then the owner or operator must submit an application for a revision to the existing title V permit that meets the requirements of § 63.53(a). The application must be submitted within 30 days of beginning construction and must be reviewed using the procedures established in paragraph (e) of this section. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued pursuant to the requirements of this subpart, shall apply to such sources.

(d) *Requests for applicability determination or notice of MACT approval.*

(1) An owner or operator who is unsure of whether one or more sources at a major source belong in a category or subcategory for which the Administrator has failed to promulgate an emission standard under this part may, on or before an applicable section 112(j) deadline, request an applicability determination from the permitting authority by submitting an application meeting the requirements of § 63.53(a)

by the applicable deadlines specified in paragraphs (a), (b), or (c) of this section.

(2) In addition to meeting the requirements of paragraphs (a), (b), and (c) of this section, the owner or operator of a new affected source may submit an application for a Notice of MACT Approval before construction, pursuant to § 63.54.

(e) *Permit application review.*

(1) Within 24 months after an owner or operator submits a Part 1 MACT application meeting the requirements of § 63.53(a), the owner or operator must submit a Part 2 MACT application meeting the requirements of § 63.53(b). Part 2 MACT applications must be reviewed by the permitting authority according to procedures established in § 63.55. The resulting MACT determination must be incorporated into the source's title V permit according to procedures established under title V, and any other regulations approved under title V in the jurisdiction in which the affected source is located.

(2) Notwithstanding paragraph (e)(1) of this section, the owner or operator may request either an applicability determination or an equivalency determination by the permitting authority as provided in paragraphs (e)(2)(i) and (ii) of this section.

(i) As specified in paragraph (d)(1) of this section, an owner or operator may request, through submittal of an application pursuant to § 63.53(a), a determination by the permitting authority of whether one or more sources at a major source belong in a category or subcategory for which the Administrator has failed to promulgate an emission standard under this part. If the applicability determination is positive, the owner or operator must comply with the applicable provisions of this subpart. The owner or operator must submit a Part 2 MACT application within 24 months after being notified of the positive applicability determination. If the applicability determination is negative, then no further action by the owner or operator is necessary.

(ii) As specified in paragraphs (a) and (b) of this section, an owner or operator may request, through submittal of an application meeting the requirements of § 63.53(a), a determination by the permitting authority of whether emission limitations adopted pursuant to a prior case-by-case MACT determination under section 112(g) that apply to one or more sources at a major source in a relevant category or subcategory are substantially as effective as the emission limitations which the permitting authority would otherwise adopt pursuant to section 112(j) for the source in question. The process for

determination by the permitting authority of whether the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j) must include the opportunity for full public, EPA, and affected State review prior to a final determination. If the permitting authority determines that the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j), then the permitting authority must adopt the existing emission limitations in the permit as the emission limitations to effectuate section 112(j) for the source in question. If more than 3 years remain on the current title V permit, the owner or operator must submit an application for a title V permit revision to make any conforming changes in the permit required to adopt the existing emission limitations as the section 112(j) MACT emission limitations. If less than 3 years remain on the current title V permit, any required conforming changes must be made when the permit is renewed. If the permitting authority determines that the emission limitations in the prior case-by-case MACT determination under section 112(g) are not substantially as effective as the emission limitations which the permitting authority would otherwise adopt for the source in question under section 112(j), the owner or operator must comply with the applicable provisions of this subpart. The owner or operator must submit a Part 2 MACT application within 24 months of being notified of such a negative determination. A negative determination under this section constitutes final action for purposes of judicial review under 40 CFR 70.4(b)(3)(x) and corresponding State title V program provisions.

(3) Within 60 days of submittal of the Part 2 MACT application, the permitting authority must notify the owner or operator in writing whether the application is complete or incomplete. The Part 2 MACT application shall be deemed complete on the date it was submitted unless the permitting authority notifies the owner or operator in writing within 60 days of the submittal that the Part 2 MACT application is incomplete. A Part 2 MACT application is complete if it is sufficient to begin processing the application for a title V permit addressing section 112(j) requirements. In the event that the permitting

authority disapproves a permit application or determines that the application is incomplete, the owner or operator must revise and resubmit the application to meet the objections of the permitting authority. The permitting authority must specify a reasonable period in which the owner or operator is required to remedy the deficiencies in the disapproved or incomplete application. This period may not exceed 6 months from the date the owner or operator is first notified that the application has been disapproved or is incomplete.

(4) Following submittal of a Part 1 or Part 2 MACT application, the permitting authority may request additional information from the owner or operator. The owner or operator must respond to such requests in a timely manner.

(5) If the owner or operator has submitted a timely and complete application as required by this section, any failure to have a title V permit addressing section 112(j) requirements shall not be a violation of section 112(j), unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application. Once a complete application is submitted, the owner or operator shall not be in violation of the requirement to have a title V permit addressing section 112(j) requirements.

(f) *Permit content.* The title V permit must contain an equivalent emission limitation (or limitations) for the relevant category or subcategory determined on a case-by-case basis by the permitting authority, or, if the applicable criteria in subpart D of this part are met, the title V permit may contain an alternative emission limitation. For the purposes of the preceding sentence, early reductions made pursuant to section 112(i)(5)(A) of the Act must be achieved not later than the date on which the relevant standard should have been promulgated according to the source category schedule for standards.

(1) The title V permit must contain an emission standard or emission limitation that is equivalent to existing source MACT and an emission standard or emission limitation that is equivalent to new source MACT for control of emissions of hazardous air pollutants. The MACT emission standards or limitations must be determined by the permitting authority and must be based on the degree of emission reductions that can be achieved if the control technologies or work practices are installed, maintained, and operated properly. The permit must also specify the affected source and the new affected

source. If construction of a new affected source or reconstruction of an affected source commences after a title V permit meeting the requirements of section 112(j) has been issued for the source, the new source MACT compliance dates must apply.

(2) The title V permit must specify any notification, operation and maintenance, performance testing, monitoring, and reporting and recordkeeping requirements. In developing the title V permit, the permitting authority must consider and specify the appropriate provisions of subpart A of this part. The title V permit must also include the information in paragraphs (f)(2)(i) through (iii) of this section.

(i) In addition to the MACT emission limitation required by paragraph (f)(1) of this section, additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure practicable enforceability of the MACT emission limitation.

(ii) Compliance certifications, testing, monitoring, reporting and recordkeeping requirements that are consistent with requirements established pursuant to title V and paragraph (h) of this section.

(iii) Compliance dates by which the owner or operator must be in compliance with the MACT emission limitation and all other applicable terms and conditions of the permit.

(A) The owner or operator of an affected source subject to the requirements of this subpart must comply with the emission limitation(s) by the date established in the source's title V permit. In no case shall such compliance date be later than 3 years after the issuance of the permit for that source, except where the permitting authority issues a permit that grants an additional year to comply in accordance with section 112(i)(3)(B) of the Act, or unless otherwise specified in section 112(i), or in subpart D of this part.

(B) The owner or operator of a new affected source, as defined in the title V permit meeting the requirements of section 112(j), that is subject to the requirements of this subpart must comply with a new source MACT level of control immediately upon startup of the new affected source.

(g) *Permit issuance dates.*

The permitting authority must issue a title V permit meeting section 112(j) requirements within 18 months after submittal of the complete Part 2 MACT application.

(h) *Enhanced monitoring.* In accordance with section 114(a)(3) of the Act, monitoring shall be capable of demonstrating continuous compliance

for each compliance period during the applicable reporting period. Such monitoring data shall be of sufficient quality to be used as a basis for directly enforcing all applicable requirements established under this subpart, including emission limitations.

(i) *MACT emission limitations.*

(1) The owner or operator of affected sources subject to paragraphs (a), (b), and (c) of this section must comply with all requirements of this subpart that are applicable to affected sources, including the compliance date for affected sources established in paragraph (f)(2)(iii)(A) of this section.

(2) The owner or operator of new affected sources subject to paragraph (c)(1) of this section must comply with all requirements of this subpart that are applicable to new affected sources, including the compliance date for new affected sources established in paragraph (f)(2)(iii)(B) of this section.

16. Section 63.53 is revised to read as follows:

**§ 63.53 Application content for case-by-case MACT determinations.**

(a) *Part 1 MACT application.* The Part 1 application for a MACT determination must contain the information in paragraphs (a)(1) through (4) of this section.

(1) The name and address (physical location) of the major source.

(2) A brief description of the major source and an identification of the relevant source category.

(3) An identification of the types of emission points belonging to the relevant source category.

(4) An identification of any affected sources for which a section 112(g) MACT determination has been made.

(b) *Part 2 MACT application.*

(1) The Part 2 application for a MACT determination must contain the information in paragraphs (b)(1)(i) through (vi) of this section.

(i) For a new affected source, the anticipated date of startup of operation.

(ii) The hazardous air pollutants emitted by each affected source in the relevant source category and an estimated total uncontrolled and controlled emission rate for hazardous air pollutants from the affected source.

(iii) Any existing Federal, State, or local limitations or requirements applicable to the affected source.

(iv) For each affected emission point or group of affected emission points, an identification of control technology in place.

(v) Information relevant to establishing the MACT floor, and, at the option of the owner or operator, a recommended MACT floor.

(vi) Any other information reasonably needed by the permitting authority including, at the discretion of the permitting authority, information required pursuant to subpart A of this part.

(2) The Part 2 application for a MACT determination may, but is not required to, contain the following information:

(i) Recommended emission limitations for the affected source and support information consistent with § 63.52(f). The owner or operator may recommend a specific design, equipment, work practice, or operational standard, or combination thereof, as an emission limitation.

(ii) A description of the control technologies that would be applied to meet the emission limitation including technical information on the design, operation, size, estimated control efficiency and any other information deemed appropriate by the permitting authority, and identification of the affected sources to which the control technologies must be applied.

(iii) Relevant parameters to be monitored and frequency of monitoring to demonstrate continuous compliance with the MACT emission limitation over the applicable reporting period.

17. Section 63.54 is amended by:

- a. Revising the section heading and adding introductory text;
- b. Revising paragraph (a)(1) through (2);
- c. Revising paragraph (b) introductory text;
- d. Revising paragraph (b)(6);
- e. Revising paragraph (c)(3);
- f. Revising paragraph (d);
- g. Removing paragraph (e);
- h. Removing paragraph (f);
- i. Redesignating paragraph (g) as (e) and revising newly designated paragraph (e); and
- j. Redesignating paragraph (h) as (f).

The revisions and addition read as follows:

**§ 63.54 Preconstruction review procedures for new affected sources.**

The requirements of this section apply to an owner or operator who constructs a new affected source subject to § 63.52(c)(1). The purpose of this section is to describe alternative review processes that the permitting authority may use to make a MACT determination for the new affected source.

(a) *Review process for new affected sources.* (1) If the permitting authority requires an owner or operator to obtain or revise a title V permit before construction of the new affected source, or when the owner or operator chooses to obtain or revise a title V permit before construction, the owner or operator

must follow the procedures established under the applicable title V permit program before construction of the new affected source.

(2) If an owner or operator is not required to obtain or revise a title V permit before construction of the new affected source (and has not elected to do so), but the new affected source is covered by any preconstruction or preoperation review requirements established pursuant to section 112(g) of the Act, then the owner or operator must comply with those requirements in order to ensure that the requirements of section 112(j) and (g) are satisfied. If the new affected source is not covered by section 112(g), the permitting authority, in its discretion, may issue a Notice of MACT Approval, or the equivalent, in accordance with the procedures set forth in paragraphs (b) through (f) of this section, or an equivalent permit review process, before construction or operation of the new affected source.

\* \* \* \* \*

(b) *Optional administrative procedures for preconstruction or preoperation review for new affected sources.* The permitting authority may provide for an enhanced review of section 112(j) MACT determinations for review procedures and compliance requirements equivalent to those set forth in paragraphs (b) through (f) of this section.

\* \* \* \* \*

(6) Approval of an applicant's proposed control technology must be set forth in a Notice of MACT Approval (or the equivalent) as described in § 63.52(f).

(c) *Opportunity for public comment on notice of MACT approval.* \* \* \*

\* \* \* \* \*

(3) A notice by prominent advertisement in the area affected of the location of the source information and analysis specified in § 63.52(f). The form and content of the notice must be substantially equivalent to that found in § 70.7 of this chapter.

\* \* \* \* \*

(d) *Review by the EPA and affected States.* The permitting authority must send copies of the preliminary notice (in time for comment) and final notice required by paragraph (c) of this section to the Administrator through the appropriate Regional Office, and to all other State and local air pollution control agencies having jurisdiction in affected States. The permitting authority must provide EPA with a review period for the final notice of at least 45 days and shall not issue a final Notice of MACT Approval until EPA objections are satisfied.

(e) *Compliance with MACT determinations.* An owner or operator of a major source that is subject to a MACT determination must comply with notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements established under § 63.52(h), under title V, and at the discretion of the permitting authority, under subpart A of this part. The permitting authority must provide the EPA with the opportunity to review compliance requirements for consistency with requirements established pursuant to title V during the review period under paragraph (d) of this section.

\* \* \* \* \*

18. Section 63.55 is revised to read as follows:

**§ 63.55 Maximum achievable control technology (MACT) determinations for affected sources subject to case-by-case determination of equivalent emission limitations.**

(a) *Requirements for permitting authorities.* The permitting authority must determine whether the § 63.53(a) Part 1 and § 63.53(b) Part 2 MACT application is complete or an application for a Notice of MACT Approval is approvable. In either case, when the application is complete or approvable, the permitting authority must establish hazardous air pollutant emissions limitations equivalent to the limitations that would apply if an emission standard had been issued in a timely manner under section 112(d) or (h) of the Act. The permitting authority must establish these emissions limitations consistent with the following requirements and principles:

(1) Emission limitations must be established for the equipment and activities within the affected sources within a source category or subcategory for which the section 112(j) deadline has passed.

(2) Each emission limitation for an existing affected source must reflect the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the permitting authority, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable by affected sources in the category or subcategory for which the section 112(j) deadline has passed. This limitation must not be less stringent than the MACT floor

which must be established by the permitting authority according to the requirements of section 112(d)(3)(A) and (B) and must be based upon available information.

(3) Each emission limitation for a new affected source must reflect the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the permitting authority, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable. This limitation must not be less stringent than the emission limitation achieved in practice by the best controlled similar source which must be established by the permitting authority according to the requirements of section 112(d)(3). This limitation must be based upon available information.

(4) The permitting authority must select a specific design, equipment, work practice, or operational standard, or combination thereof, when it is not feasible to prescribe or enforce an equivalent emission limitation due to the nature of the process or pollutant. It is not feasible to prescribe or enforce a limitation when the Administrator determines that hazardous air pollutants cannot be emitted through a conveyance designed and constructed to capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(5) Nothing in this subpart shall prevent a State or local permitting authority from establishing an emission

limitation more stringent than required by Federal regulations.

(b) *Reporting to EPA.* The owner or operator must submit additional copies of its Part 1 and Part 2 MACT application for a title V permit, permit revision, or Notice of MACT Approval, whichever is applicable, to the EPA at the same time the material is submitted to the permitting authority.

19. Section 63.56 is revised to read as follows:

**§ 63.56 Requirements for case-by-case determination of equivalent emission limitations after promulgation of subsequent MACT standard.**

(a) If the Administrator promulgates a relevant emission standard that is applicable to one or more affected sources within a major source before the date a permit application under this paragraph (a) is approved, the title V permit must contain the promulgated standard rather than the emission limitation determined under § 63.52, and the owner or operator must comply with the promulgated standard by the compliance date in the promulgated standard.

(b) If the Administrator promulgates a relevant emission standard under section 112(d) or (h) of the Act that is applicable to a source after the date a permit is issued pursuant to § 63.52 or § 63.54, the permitting authority must incorporate requirements of that standard in the title V permit upon its next renewal. The permitting authority must establish a compliance date in the revised permit that assures that the owner or operator must comply with the promulgated standard within a reasonable time, but not longer than 8 years after such standard is promulgated or 8 years after the date by which the owner or operator was first required to comply with the emission limitation

established by the permit, whichever is earlier. However, in no event shall the period for compliance for existing sources be shorter than that provided for existing sources in the promulgated standard.

(c) Notwithstanding the requirements of paragraph (a) or (b) of this section, the requirements of paragraphs (c)(1) and (2) of this section shall apply.

(1) If the Administrator promulgates an emission standard under section 112(d) or (h) that is applicable to an affected source after the date a permit application under this paragraph is approved under § 63.52 or § 63.54, the permitting authority is not required to change the emission limitation in the permit to reflect the promulgated standard if the permitting authority determines that the level of control required by the emission limitation in the permit is substantially as effective as that required by the promulgated standard pursuant to § 63.1(e).

(2) If the Administrator promulgates an emission standard under section 112(d) or (h) of the Act that is applicable to an affected source after the date a permit application is approved under § 63.52 or § 63.54, and the level of control required by the promulgated standard is less stringent than the level of control required by any emission limitation in the prior MACT determination, the permitting authority is not required to incorporate any less stringent emission limitation of the promulgated standard in the title V permit and may in its discretion consider any more stringent provisions of the MACT determination to be applicable legal requirements when issuing or revising such a title V permit.

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