

and of itself emits or has that potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable process or production unit; and

(2) It is technically and economically feasible for the reconstructed major source to meet the applicable maximum achievable control technology emission limitation for new sources established under this subpart.

Research and development activities means activities conducted at a research or laboratory facility whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for sale or exchange for commercial profit, except in a *de minimis* manner.

Similar source means a stationary source or process that has comparable emissions and is structurally similar in design and capacity to a constructed or reconstructed major source such that the source could be controlled using the same control technology.

[61 FR 68399, Dec. 27, 1996]

§ 63.42 Program requirements governing construction or reconstruction of major sources.

(a) *Adoption of program.* Each permitting authority shall review its existing programs, procedures, and criteria for preconstruction review for conformity to the requirements established by §§ 63.40 through 63.44, shall make any additions and revisions to its existing programs, procedures, and criteria that the permitting authority deems necessary to properly effectuate §§ 63.40 through 63.44, and shall adopt a program to implement section 112(g) with respect to construction or reconstruction of major sources of HAP. As part of the adoption by the permitting authority of a program to implement section 112(g) with respect to construction or reconstruction of major sources of HAP, the chief executive officer of the permitting authority shall certify that

the program satisfies all applicable requirements established by §§ 63.40 through 63.44, and shall specify an effective date for that program which is not later than June 29, 1998. Prior to the specified effective date, the permitting authority shall publish a notice stating that the permitting authority has adopted a program to implement section 112(g) with respect to construction or reconstruction of major sources of HAP and stating the effective date, and shall provide a written description of the program to the Administrator through the appropriate EPA Regional Office. Nothing in this section shall be construed either:

(1) To require that any owner or operator of a stationary source comply with any requirement adopted by the permitting authority which is not intended to implement section 112(g) with respect to construction or reconstruction of major sources of HAP; or

(2) To preclude the permitting authority from enforcing any requirements not intended to implement section 112(g) with respect to construction or reconstruction of major sources of HAP under any other provision of applicable law.

(b) *Failure to adopt program.* In the event that the permitting authority fails to adopt a program to implement section 112(g) with respect to construction or reconstruction of major sources of HAP with an effective date on or before June 29, 1998, and the permitting authority concludes that it is able to make case-by-case MACT determinations which conform to the provisions of § 63.43 in the absence of such a program, the permitting authority may elect to make such determinations. However, in those instances where the permitting authority elects to make case-by-case MACT determinations in the absence of a program to implement section 112(g) with respect to construction or reconstruction of major sources of HAP, no such case-by-case MACT determination shall take effect until after it has been submitted by the permitting authority in writing to the appropriate EPA Regional Administrator and the EPA Regional Administrator has concurred in writing that the case-by-case MACT determination by the permitting authority is in conformity

with all requirements established by §§ 63.40 through 63.44. In the event that the permitting authority fails to adopt a program to implement section 112(g) with respect to construction or reconstruction of major sources of HAP with an effective date on or before June 29, 1998, and the permitting authority concludes that it is unable to make case-by-case MACT determinations in the absence of such a program, the permitting authority may request that the EPA Regional Administrator implement a transitional program to implement section 112(g) with respect to construction or reconstruction of major sources of HAP in the affected State of local jurisdiction while the permitting authority completes development and adoption of a section 112(g) program. Any such transitional section 112(g) program implemented by the EPA Regional Administrator shall conform to all requirements established by §§ 63.40 through 63.44, and shall remain in effect for no more than 30 months. Continued failure by the permitting authority to adopt a program to implement section 112(g) with respect to construction or reconstruction of major sources of HAP shall be construed as a failure by the permitting authority to adequately administer and enforce its title V permitting program and shall constitute cause by EPA to apply the sanctions and remedies set forth in the Clean Air Act section 502(I).

(c) *Prohibition.* After the effective date of section 112(g)(2)(B) (as defined in § 63.41) in a State or local jurisdiction and the effective date of the title V permit program applicable to that State or local jurisdiction, no person may begin actual construction or reconstruction of a major source of HAP in such State or local jurisdiction unless:

(1) The major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to section 112(d), section 112(h) or section 112(j) in part 63, and the owner and operator has fully complied with all procedures and requirements for preconstruction review established by that standard, including any applicable requirements set forth in subpart A of this part 63; or

(2) The permitting authority has made a final and effective case-by-case determination pursuant to the provisions of § 63.43 such that emissions from the constructed or reconstructed major source will be controlled to a level no less stringent than the maximum achievable control technology emission limitation for new sources.

[61 FR 68400, Dec. 27, 1996, as amended at 64 FR 35032, June 30, 1999]

§ 63.43 Maximum achievable control technology (MACT) determinations for constructed and reconstructed major sources.

(a) *Applicability.* The requirements of this section apply to an owner or operator who constructs or reconstructs a major source of HAP subject to a case-by-case determination of maximum achievable control technology pursuant to § 63.42(c).

(b) *Requirements for constructed and reconstructed major sources.* When a case-by-case determination of MACT is required by § 63.42(c), the owner and operator shall obtain from the permitting authority an approved MACT determination according to one of the review options contained in paragraph (c) of this section.

(c) *Review options.* (1) When the permitting authority requires the owner or operator to obtain, or revise, a permit issued pursuant to title V of the Act before construction or reconstruction of the major source, or when the permitting authority allows the owner or operator at its discretion to obtain or revise such a permit before construction or reconstruction, and the owner or operator elects that option, the owner or operator shall follow the administrative procedures in the program approved under title V of the Act (or in other regulations issued pursuant to title V of the Act, where applicable).

(2) When an owner or operator is not required to obtain or revise a title V permit (or other permit issued pursuant to title V of the Act) before construction or reconstruction, the owner or operator (unless the owner or operator voluntarily follows the process to obtain a title V permit) shall either, at the discretion of the permitting authority: