ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6949–7]

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: Proposed amendments.

SUMMARY: *General Provisions (Subpart A).* 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 as amended in 1990 (CAA or Act) (59 FR 12408). In today's action, we are proposing amendments to the General Provisions that would revise and clarify several of the current provisions.

We are proposing 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. The proposed amendments also reflect internal EPA discussions on issues regarding implementation of the General Provisions.

Section 112(j) Provisions (Subpart B). In addition, in today's action, we are proposing amendments to rules that establish equivalent emission limitations by permit under section 112(j) of the Act. 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 (59 FR 26429).

These proposed 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. The proposed amendments also reflect internal EPA discussions regarding implementation of the section 112(j) rule.

DATES: *Comments.* Submit comments on or before May 22, 2001.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by April 2, 2001, a public hearing will be held on April 23, 2001.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2001–02, Part 63 General Provisions (Subpart A) and Section 112(j) Regulations (Subpart B) Litigation Settlement Amendments, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460. We request a separate copy also be sent to the appropriate contact person listed below in the **FOR FURTHER INFORMATION CONTACT** section.

Public Hearing. If a public hearing is held, it will be held at 10:00 a.m. on April 23, 2001 in our Office of Administration Auditorium, Research Triangle Park, North Carolina, or at an alternate site nearby.

Docket. Docket No. A–2001–02, Part 63 General Provisions (Subpart A) and Section 112(j) Regulations (Subpart B) Litigation Settlement Amendments, contains information relevant to today's proposed rulemaking. This docket is located at the U.S. Environmental Protection Agency, 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. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information about the proposed rule amendments, contact Mr. James Szykman, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5469, E-mail szykman.jim@epa.gov; or Mr. Rick Colyer, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5262, E-mail colyer.rick@epa.gov.

For questions about the public hearing, contact Ms. Dorothy Apple, Policy, Planning and Standards Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–4487, E-mail *apple.dorothy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number A–2001–02, Part 63 General Provisions (Subpart A) and section 112(j) Regulations (Subpart B) Litigation Settlement Amendments. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Rick Colyer, c/o OAQPS Document Control Officer (Room 740B), U.S. Environmental Protection Agency, 411 W. Chapel Hill Street, Durham, NC 27701. We will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when we receive it, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Dorothy Apple at least 2 days in advance of the public hearing. Persons interested in attending such a public hearing must also contact Ms. Apple to verify the time, date, and location of the hearing. The address, telephone number, and e-mail address for Ms. Apple are listed in the preceding **FOR FURTHER INFORMATION CONTACT SECTION.** If a public hearing is held, it will provide interested parties the opportunity to present data, views, or arguments concerning these proposed amendments.

Docket. The docket is an organized and complete file of all the information considered by us 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 proposed and promulgated standards and their preambles, 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.) The regulatory text and other materials related to this rulemaking 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 proposed 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
- 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 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 your source category specific section 112 regulation. 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.**

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

I. Background
A. General Provisions
B. Section 112(j) Provisions
II. Proposed Amendments to the General Provisions
A. Presumptive Applicability of the General Provisions
B. Definition of Affected Source
C. Other Definitions
D. Prohibited Activities and Circumvention
E. Preconstruction Review
F. Startup, Shutdown and Malfunction Plans
G. Compliance Provisions
H. Test Methods
I. Monitoring Requirements
J. Notification Requirements
K. Recordkeeping and Reporting Requirements
L. Lesser Quantity
M. Clarification and Consistency
III. Proposed Amendments to the Section 112(j) Provisions
A. Applicability
B. Definitions
C. Approval Process
D. Application Content
E. Preconstruction Review
F. Enforcement Liability
G. MACT Determinations
H. Case-by-Case MACT Requirements after Promulgation of a Subsequent MACT Standard
I. Section 112(j) Guidelines Document
IV. Additional Issues
A. Discussion of the Relationship Among Requirements Under Section 112(d), (g), and (j)
B. Potential to Emit
V. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13084, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
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. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act of 1995

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/yr of any one HAP or 25 tons/yr of any combination of HAP. Area sources of HAP are those sources that do not have potential to emit greater than 10 tons/yr of any one HAP and 25 tons/yr 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 of the Act. 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 air toxics standards. 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, and 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 have identified other changes that would clarify the EPA's original intent. The amendments to the General Provisions being proposed today constitute the outcome of settlement negotiations between the EPA and the petitioners and internal Agency discussions.

The amendments proposed in today's action would have the effect of clarifying certain sections of the General Provisions and of altering other sections.

B. Section 112(j) Provisions

The 1990 Amendments to section 112 of the CAA include 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 emission reductions are achieved by the missed promulgation date.

The proposed rule implementing section 112(j) of the CAA was published on July 13, 1993 (58 FR 37778). The public comments 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 Act, 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 subsection 112(j)(5) of the Act, 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. The amendments to the section 112(j) rule being proposed today constitute the outcome of settlement negotiations between the EPA and the litigants. In addition, we have made other clarifying changes we consider to be appropriate.

II. Proposed Amendments to the General Provisions

A. Presumptive Applicability of the General Provisions

We are proposing to amend the presumptive applicability of 40 CFR part 63, subpart A (General Provisions). The promulgated rule applies, in its entirety (§§ 63.1 through 63.15), to owners or operators of an affected source subject to a relevant subpart established under 40 CFR part 63, unless otherwise indicated in the subpart. This presumption was intended to eliminate the repetition of requirements that would be applicable to all owners or operators affected by the General Provisions. To date, relevant subparts typically include a General Provisions applicability table that delineates the provisions that apply and do not apply.

We recognized concern that potential confusion could result by applying the General Provisions presumptively when they are not tailored to the circumstances of each relevant subpart. For example, a relevant subpart could indicate that all of the monitoring requirements of § 63.8 of the General Provisions apply. Some of the requirements in § 63.8 are inappropriate for some sources and may confuse an owner or operator (e.g., requirements for continuous opacity monitoring systems (COMS) in § 63.8 are not appropriate for all sources).

The objective of the General Provisions, i.e., to avoid repetitive redrafting of common provisions in each subpart of the part, is valid and should be preserved. Therefore, today we are proposing a revised applicability of the General Provisions that would retain the benefits and reduce or eliminate the potential for confusion. This proposed action would not reduce or narrow the scope of applicable requirements. Instead, it would reduce the confusion as to the actual requirements of each applicable subpart.

We have determined that the dual objectives of efficiency and clarity can best be met by including in each part 63 subpart a table that specifies precisely which subpart A General Provisions are and are not included in such subpart. Many existing part 63 subparts already include such a table, and this has been very helpful for both the regulatory authorities and the regulated community. These tables specify applicability down to the subparagraph level of detail so that there is no doubt as to the total universe of applicable General Provisions. In some instances, we have determined that a general provision should apply but that a very minor change to that provision is appropriate for a specific standard. In such cases, we may indicate in the table that the general provision does apply but with that minor change, or we may indicate in the table that the general provision does not apply. In the latter case, the appropriate requirement would be set out in its entirety in the subpart. Either approach is acceptable provided there is no compromise to clarity.

To streamline part 63 subparts and to avoid imposing conflicting requirements on sources subject to more than one part 63 subpart or to subparts under other parts, we have often allowed compliance with one subpart (sometimes with some changes) to constitute compliance with the other(s). We recognize that each subpart incorporates some or all of the General Provisions of the part under which it is promulgated. Therefore, if a part 63 subpart incorporates portions of other subparts, we will clarify the precise extent to which the General Provisions that are incorporated in other subparts become incorporated in the part 63 subpart in a table of General Provision applicability for each part, and we will explicitly state the resolution of any conflicts between applicable General Provisions of the various parts. It is important to note that, in addition to the changes to the presumptive applicability of the General Provisions, today's proposal includes changes to a number of other sections of the General Provisions (e.g., definitions). The effect of the proposed changes on relevant subparts that have already been promulgated depends on the manner in which the General Provisions were incorporated into the relevant subparts. If a relevant subpart specifically set out General Provisions that are subject to today's proposal (i.e., wrote the relevant General Provision in the relevant subpart itself), then that subpart is not affected since today's proposal pertains only to the General Provisions and does not include a proposal to change the specific provisions of promulgated subparts.

However, if a relevant subpart incorporates by reference General Provisions that are subject to today's proposal or if the General Provisions presumptively applied to a relevant subpart, then the changes to the General Provisions being proposed today would apply to the extent that the changed provisions are incorporated by reference into, or presumptively apply to, the existing relevant subpart. Based on an analysis of the potential impact of these proposed changes on promulgated subparts, we do not believe they have disrupted the integrity of the promulgated subparts. We have not identified any conflicts that would result in contradictory or incompatible effects from the promulgation of today's proposed amendments. Also, we identified no cross-reference conflicts due to adding or deleting paragraphs or subparagraphs that were cross-referenced by previously promulgated part 63 subparts. However, we are requesting comment on any conflicts identified by others that result solely from applying these proposed amendments to the General Provisions to promulgated part 63 subparts.

B. Definition of Affected Source

1. Background on the Term ''Affected Source''

The General Provisions define the term ''affected source'' to be ''* * * the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to section 112 of the Act.'' (40 CFR 63.2). We have defined and used this term primarily as

a means of specifying for each part 63 subpart what equipment or activities are affected. In practice, each source-category-specific section 112(d) or (h) standard (MACT standard) promulgated to date has either directly or implicitly defined affected source to be the collection of processes, activities, or equipment to which a specific MACT standard applies. Thus, the term ''affected source'' has been principally used to define the applicability of MACT standards.

The term ''affected source'' also serves a second purpose in conjunction with other terms and provisions contained in the General Provisions; it defines where new source MACT applies under a relevant standard. Specifically, the General Provisions define the terms ''construction'' and ''reconstruction'' with reference to the term ''affected source'' (40 CFR 63.2) and provide that new source MACT applies when construction and reconstruction occur (40 CFR 63.5). For example, if an affected source is defined in a relevant standard to be an integrated process unit, then new source MACT would be triggered under that relevant standard by constructing a new integrated process unit or reconstructing an existing integrated process unit, unless that relevant standard provides otherwise.

It is important to note that, while the term ''affected source'' currently functions both to define the applicability of relevant standards and to specify where new source MACT applies, it has not had a significant bearing on the process of determining the MACT floor or establishing MACT emission limitations. Specifically, our practice in developing MACT standards for source categories or subcategories is to organize, as appropriate, the available information for the HAP-emitting equipment and activities within the category or subcategory and to perform the analyses to determine MACT for the category or subcategory. Available information leads us to organize equipment and activities within source categories into related groups (i.e., tanks, process vents, equipment leaks) and to determine the MACT floor and MACT for each group. In other situations, we are able to use available information collectively for all the HAP-emitting equipment and activities within the source category or subcategory in determining the MACT floor and MACT. In either situation, we ensure that MACT is at least as stringent as the MACT floor for the HAP-emitting equipment and activities fulfilling the requirements of CAA section 112(d)(2) and (3).

2. Questions Raised by the Petitioners

The principal concerns of the petitioners regarding the definition and use of the term ''affected source'' relate to its role in defining the scope of a section 112(c) source category or subcategory covered by a MACT standard, determining where new source MACT applies, and certain reporting obligations (e.g., notifications and approvals under § 63.5). For example, the petitioners contend that new source MACT should only be triggered by constructing or reconstructing significant collections of equipment. In other words, they believe that new source MACT should not be triggered by the installation of small sources, such as a single valve or a single reactor that is part of a larger, integrated process. Instead, they believe that the applicability of new source MACT should be guided by consideration of size, functional relationship, and other factors that would prescribe a measure of significance in the new source MACT applicability analysis.

The petitioners' specific concerns relate to the fact that the existing definition of ''affected source'' provides, without limitation, that the affected source may be defined to be any size, even as small as a piece of a stationary source (e.g., a single pump or valve). Since ''construction'' and ''reconstruction'' are defined with reference to ''affected source,'' the possible result is that new source MACT may be prescribed inappropriately for small activities, a result that is contrary to the petitioners' legal and practical view as to where new source MACT should apply.

Moreover, the petitioners are concerned that the dual roles of the term ''affected source'' (i.e., defining the applicability of relevant standards and prescribing where new source MACT applies) are confusing and potentially inconsistent. For example, when considering the role of ''affected source'' in defining the applicability of relevant standards, it may be useful to define the term broadly so that all the equipment in the section 112(c) source category or subcategory can be accommodated within a single unified subpart. However, when considering the role of ''affected source'' in determining where new and existing source MACT apply, circumstances may dictate that new source MACT should apply to a collection of equipment that is smaller than the entire collection subject to the subpart. In such a case, the use of the one term ''affected source'' for two roles is potentially irreconcilable.

3. Discussion of Affected Source

Although our interpretation of the statute differs from the petitioners' interpretation, we agree that new source MACT should be applied to units for which new source MACT is reasonable. We believe that using tools available under the statute, such as applicability cutoffs, subcategorization, and emission averaging, achieves this result. However, as a first step toward addressing the petitioners' concerns, we and the petitioners reviewed promulgated subparts to determine how ''affected source'' was defined and to assess whether new source MACT has been applied reasonably to these affected sources.

We found that our decisions on affected sources have appropriately considered the application of MACT to new sources. We believe we have reasonably determined when construction of a collection of equipment should be subject to new source MACT. Specifically, where we have determined that new source MACT should apply to less than the entire collection of regulated equipment, the results have not produced the kind of unreasonable outcomes that were expressed by the petitioners.

As noted above, in selecting the affected source(s) for particular MACT standards, our primary task is to ensure that MACT is applied to all the HAP-emitting equipment within the source category being regulated and, therefore, affected by the MACT standards for that source category. The collection of equipment evaluated in determining MACT (including the MACT floor) is usually the collection of equipment used in defining the affected source. Because of the data structures for estimating the MACT floor and the interactions of equipment types within the source category, we have occasionally performed the MACT floor analysis on subsets of all the equipment in the category. While available data requires us to evaluate such subsets of equipment, the overall result of this evaluation is that MACT can be determined. Accordingly, the aggregated collection of equipment would constitute the affected source for the MACT standards. For example, MACT for equipment leaks of organic chemicals is based on an overall program of leak detection and repair that is not practicable for single pieces of equipment. Similarly, many process vents are controlled after they are brought together by a collection system. Such engineering solutions are common throughout the source categories for which MACT standards have been or

are being developed. For such situations, it is necessary to define the affected source broadly to address these practical considerations in determining and implementing MACT. We have occasionally defined the affected source differently for equipment affected by existing source MACT and equipment affected by new source MACT. This has resulted from the differences in existing source MACT and new source MACT, as well as a desire to provide owners with flexibility through emissions averaging across a broad array of existing equipment at plant sites. Some source categories are essentially comprised of a small number of independent HAP-emitting equipment that has no functional interactions at the process level and is controlled separately. In such cases, it may be reasonable from a MACT implementation perspective to have separate affected sources for purposes of focusing new source MACT applicability.

When a MACT standard is based on total emissions from all the equipment in a source category, we select an affected source based on such equipment. This approach makes sense for industries where a categorywide emission standard provides the opportunity and incentive for owners and operators to utilize control strategies that are significantly more cost effective than if standards were established for each emission point within a plant. In selecting such an affected source, we ensure that the overall emission reduction is equivalent to that obtained through a MACT standard established for each emission point within a plant. Examples of where we have adopted this approach include the standards for Wood Furniture Operations (40 CFR part 63, subpart JJ) and Polymers and Resins II (40 CFR part 63, subpart W).

In other situations, we have designated all or a portion of the collection of equipment within the source category or subcategory as the affected source. For example, in the NESHAP for Halogenated Solvent Cleaning (degreasing) (part 63, subpart T), the affected source is defined as each individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machine that uses specified solvents. However, in the Hazardous Organic NESHAP (HON) (part 63, subparts F, G, and H), we selected an aggregate of all equipment in the chemical manufacturing process units (CMPU) at a major source in the synthetic organic chemical manufacturing industry as the affected source for existing source MACT. In this case, we developed MACT after evaluating equipment in groups (*e.g.*, tanks, process vents, and equipment leaks) with the affected source as the aggregated equipment, allowing emissions averaging provisions to be implemented. At the same time, we selected a major emitting CMPU as the basis for the affected source for new source MACT.

We recognize that an implication of selecting a narrow definition of affected source (*e.g.*, a dry cleaning tank and associated equipment) is that new source MACT requirements could be triggered more easily than if the affected source were defined as a plant or a collection of equipment. We believe that this is appropriate where the emission reduction and cost impacts are reasonable. For example, under the perchloroethylene dry cleaning standards, a new cleaning machine added to an existing facility in the source category would be a new source, subject to new source MACT. We determined that new source MACT controls were readily available and economically feasible for major source dry cleaners.

In most NESHAP promulgated thus far, existing source MACT and new source MACT have been determined to be equivalent or only slightly different in terms of the emission reduction that must be achieved. This is also the case in the degreasing and chrome electroplating NESHAP. Thus, as a practical matter, the control requirements for a new electroplating tank would have been the same, regardless of whether that tank was considered a separate new affected source or an addition to an affected source. However, we recognize that there is an additional burden on owners and operators attributable to a narrower definition of affected source, mainly associated with reporting requirements. The General Provisions already address this burden by requiring only a routine notification when adding a new nonmajor-emitting affected source and not the preconstruction review required for major new affected sources.

As indicated in the above discussion, we believe we have followed a reasonable decision-making process in developing all NESHAP under section 112(d) while appropriately exercising our discretion based on industry-specific circumstances. Furthermore, we believe that our approach has not resulted in significant inconsistencies in how new source MACT is applied and the burden that may be imposed. However, in light of concerns raised by the petitioners, we agree that the potential for such inconsistencies to arise in future relevant standards is greater if the decision-making process is not more formally defined. Accordingly, we agreed to clarify the basis for selecting affected sources. In addition, we are proposing a minor amendment to the General Provisions to address this concern. We are proposing that for each future relevant standard we develop, we will explicitly define the terms ''affected source'' and ''new affected source.'' The use of two terms will clarify the applicability of existing source MACT and determine where new source MACT should apply. As a general matter, we are proposing that the affected source for a particular relevant standard will consist of all existing HAP-emitting equipment and activities at a single contiguous site which are within a specific section 112(c) source category or subcategory. During the standards-setting process, we may find it appropriate, after gathering sufficient information, to combine several listed categories into one, or to further divide the category into subcategories. This does not affect our authority to distinguish among classes, types, and sizes of sources in establishing emission standards. The statute and associated legislative history afford us substantial latitude in defining an affected source, but we are electing to adopt this general approach to the affected source definition because it is responsive to the concerns articulated by the petitioners, and it will foster greater predictability and consistency of regulatory outcomes. As noted above, combining disparate types of equipment and activities within a single affected source does not preclude a separate assessment of the emissions from particular types of equipment or activities. 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.

Although we have decided that it is generally sensible to define an affected source broadly, our experience in developing and promulgating NESHAP indicates that there will be instances where a broad definition will result in significant administrative, practical, or implementation problems, and a narrower definition would resolve those problems. Thus, today's proposal would allow us to more narrowly define affected source in a particular MACT standard, but the MACT standard must be accompanied by a justification of why defining the affected source as all equipment in the section 112(c) source category or subcategory would result in significant administrative, practical, or implementation problems, and why the

narrower definition would resolve the problems.

Defining the ''new affected source'' for each relevant standard will ensure a more formal consideration of the implications of applying new source MACT to affected sources potentially subject to new source MACT. The ''new affected source'' is a collection of equipment or activities that, if constructed, would be required to comply with new source MACT. In deciding what will constitute the new affected source for MACT applicability purposes, we would consider the following factors: (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.

When new source MACT can reasonably be applied considering the eight factors in the definition of ''new affected source,'' this collection may be different from the affected source. Accordingly, in selecting the new affected source, we would have considered whether an appropriate basis exists for establishing a definition for the new affected source that differs from the affected source definition. In selecting the new affected source, we will explain our basis for this selection. We will also consider the information and analyses that are offered by interested persons.

The new affected source definition will differ from the affected source definition in a particular MACT standard only where a distinction is warranted based on the foregoing identified factors. As discussed above, the proposal also affords us discretion to define affected source as different from all of the equipment in the source category or subcategory for a particular MACT standard where warranted based on special circumstances. Any exercise of our discretion with regard to the affected source definition is distinct from the question of the new affected source definition. Thus, even where we define affected source differently, we do not intend thereby to alter in any way the manner in which the foregoing specified factors will be applied to select an appropriate definition for new affected sources.

We believe that ''new affected sources'' defined in previously promulgated NESHAP are consistent with this new process. We are proposing the new process to ensure openness to the decisions on where to apply new source MACT. For example, in the HON rule, the affected source definition broadly encompasses a number of discrete processes at a facility. In this situation, it was reasonable to require new source MACT when a major-emitting chemical manufacturing process unit is constructed. The openness and consideration of relevant factors resulted in the reasonable application of new source MACT.

In setting a MACT standard, we will also consider whether a sufficient reason exists for defining ''reconstruction'' differently from the definition currently found in the General Provisions. The generic definition looks primarily to whether replaced equipment exceeds 50 percent of the fixed capital cost of an affected source, but also allows for consideration of technical and economic feasibility. We propose to amend the General Provisions to allow a different definition of ''reconstruction'' for specific MACT standards where warranted by technical and economic considerations. For example, we may find that because of the functional interrelationship of equipment encompassed by the affected source, it is reasonable to provide that new source MACT will apply only where 75 percent of the fixed capital cost of the source is replaced. We would then codify this definition of ''reconstruction'' into that specific MACT standard.

An explicit discussion of this decision-making process and the factors considered in developing standards under section 112(d) will also guide States in developing section 112(j) MACT determinations. In addition, we would also like to clarify that, if a State defines the new affected source in a section 112(j) determination as adding a major-emitting process or production unit (such as in 40 CFR 63.41), we would not object to such an approach.

C. Other Definitions

1. Construction

We are proposing to clarify in today's amendments the effect of relocating an existing source subject to MACT. The issue is whether or not a relocated source is ''constructed,'' and thus subject to new source MACT. In the Background Information Document for the Promulgated General Provisions Regulations for 40 CFR Part 63 (EPA 450/3–91–019b, Feb 94), which contains our response to comments for the part 63 General Provisions, we stated our intended outcome on the issue of relocation. In general, we stated that when an existing source relocates and no other changes are made to the source, the source retains its existing source status. Changes to the source means any changes to the source's process or control equipment, method of operation, or emissions. The source would be subject to new source requirements if, in the process of relocating, the source was reconstructed, i.e., significant replacement of components.

However, the definition of construction in the General Provisions does not lead to our intended outcome. The definition states that construction is ''* * * the on-site fabrication, erection, or installation of an affected source.''

We are proposing to amend the definition of construction in § 63.2 by adding: ''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. However, removal and reinstallation of an affected source will be construed as reconstruction if it satisfies the criteria for reconstruction as set forth below.'' Adding this language to the definition of construction will achieve our original intent.

2. Major Source

We are proposing to clarify the definition of a ''major source'' in the General Provisions, specifically pertaining to the effect of a public right of way through a major source. If a source would be a major source, except for the fact that it is intersected by a public right of way, such as a public road, it will still be considered a major source. However, if the sources would be considered separate plant sites without the public right of way, then the public right of way in and of itself does not create a single (possibly major) source.

The following examples illustrate this clarification. Suppose a plant site is a major source and a public road is built that intersects the plant site. Even though the public road may divide the plant site into two potentially nonmajor sources, the plant site will still be considered a major source because the source was considered a single plant site before the public right of way was built.

Suppose a nonmajor source, located along a public road, decides to build a new nonmajor source directly across the road. Even though the public road divides these two potentially nonmajor sources, they will be considered a single major source as long as the two sources are under common control and together

equal more than the major source threshold.

Finally, suppose a nonmajor source located along a public road decides to build a new nonmajor source down the road from the nonmajor source (the two sources are on tracts of land that are offset along the public right of way, such that they do not touch). If, without the public road (public right of way), there would be two noncontiguous plant sites and not a single plant site, the public right of way in and of itself would not create a major source. Therefore, both plant sites are considered nonmajor sources.

3. Working Day

We propose to add a definition for ''working day'' to clarify timeline requirements expressed in working days within the General Provisions. For example, § 63.6(e)(3) (startup, shutdown and malfunction plan requirements) requires that an owner or operator record actions taken during a startup, shutdown, or malfunction that are inconsistent with a startup, shutdown and malfunction plan within 2 working days after commencing the inconsistent actions. We are proposing to add a definition to clarify that a ''working day'' is 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 would not constitute a ''working day.''

4. Compliance Plan

We are proposing to delete the ''compliance plan'' definition from the General Provisions. Representatives of sources have commented that compliance plans were required under title V and not under section 112 of the CAA. We assessed and agreed that there would not be an adverse or unintended effect from its deletion.

5. Part 70 Permit

We are proposing to delete the definition of ''part 70 permit'' because the definition of ''title V permit'' is more generic and deletion is consistent with other streamlining efforts in this proposal to remove unnecessary references to other authorities.

D. Prohibited Activities and Circumvention

We are proposing to delete § 63.4(b)(3) and create a new § 63.4(c) that clarifies our position on ''fragmentation.'' Section 63.4(b)(3) of the General Provisions prohibits circumvention of relevant standards by fragmenting an operation. Some have suggested that dividing production between various manufacturing facilities to reduce the potential to emit below regulatory thresholds at one or more facilities and, thus, avoid control requirements or permitting obligations, should be considered a legitimate compliance strategy. The prohibition against fragmentation is intended to prevent dividing an operation within the same facility among various owners and, thus, avoid applicability where there is no real change in control. Merely changing the name of the owner of a portion of a facility to a new corporate entity which is nonetheless still under common control should not be a compliance strategy that would legitimately avoid compliance.

Sources also cannot phase reconstruction activities to avoid applicable new source requirements. While we do not intend to circumscribe legitimate business or compliance strategies, we are proposing that activities that are fragmented or phased to stay within the 50 percent of fixed capital cost criteria in item (1) of the definition of ''reconstruction'' in § 63.2 shall be considered together for applying that criteria. Periodic replacement of equipment to maintain production to meet product demands should not be aggregated for determining whether reconstruction has occurred. To illustrate, if a process modernization project involves a new reactor, heat exchange system, separation devices and storage vessels, and separate contracts are awarded for various portions of the project, limiting each one to less than 50 percent of the replacement cost of a comparable new affected source, these contracts should be considered together in applying that 50 percent criteria. However, if the same process unit were expanded, debottlenecked, or upgraded over time by replacing these various components, the projects should not be considered together to determine whether the 50 percent of fixed capital cost is eventually exceeded since the projects were not phased (or fragmented) to avoid new source MACT.

E. Preconstruction Review

We are also proposing to amend the requirements for preconstruction review. We are proposing to amend the title of § 63.5 to more accurately reflect the contents of the section. The proposed title is ''Preconstruction Review and Notification Requirements.'' The following paragraphs discuss the more substantive proposed amendments.

1. Preconstruction Review Applicability

Under the current General Provisions, owners or operators of sources that commence construction or reconstruction after the proposal date of a relevant standard, but do not start up before the effective date of such standard, are required to undergo preconstruction review. We recognize that this requirement could cause costly delays as the owner or operator may be forced to cease construction or delay startup until a preconstruction review is completed.

We have concluded that sources commencing construction prior to the effective date of a relevant standard should not have to undergo preconstruction review under the General Provisions. We are proposing to amend § 63.5(a) of the General Provisions to exempt these sources from the requirement for preconstruction review. Thus, only sources that commence construction or reconstruction after the effective date of a relevant standard would be required to undergo such preconstruction review. However, regardless of whether preconstruction review is required, sources that commence construction or reconstruction after the proposal date of a relevant standard are subject to new source MACT requirements, and they must be in compliance at startup, or by the promulgation date of the NESHAP, if startup occurs prior to the promulgation date.

Similarly, we are proposing to amend § 63.5(a) to require preconstruction notification only for nonmajor-emitting affected sources that commence construction or reconstruction after the effective date (even though all affected sources commencing construction and reconstruction after proposal must meet new source MACT). The owners or operators of these sources, while not subject to preconstruction review, are subject to notification requirements. We are proposing to revise the related notification requirements in § 63.9(b)(5) to allow the source to request a reduction in the information required in the application to construct or reconstruct (§ 63.9(b)(5)(iii)). This flexibility should reduce the burden on smaller sources to comply with the notification requirements. However, in the event the permitting authority grants the source permission to not submit portions or all of the standard information, the source would still be required to keep this information on file and available for inspection.

We note that some owners and operators will be otherwise required to apply for and obtain a case-by-case

MACT determination under section 112(g) before commencing construction or reconstruction of a process or production unit. The proposed revisions of the preconstruction review requirements in the General Provisions do not alter in any way the obligation of an owner or operator to meet the separate requirements established by the EPA under section 112(g).

2. State Preconstruction Review

We evaluated the State preconstruction review requirements and recognized that owners or operators may object to another approval process when a source has already gone through a similar State preconstruction review process. We are proposing to allow States that have taken delegation of the General Provisions and of a relevant subpart to use their preconstruction review procedures to meet the preconstruction review requirements of § 63.5 when they are substantially equivalent (§ 63.5(f)(1)).

Under this proposal, we would allow owners or operators of affected sources to notify the Regional Office of a State's finding that their preconstruction review program requirements are substantially equivalent to the General Provision's preconstruction review requirements.This proposed change would allow States with existing programs for review of new sources for toxics to utilize their programs as long as they are ''substantially equivalent'' to those required under § 63.5 of the General Provisions. For an owner or operator of an affected source, it would also eliminate the burden of having to go through two similar preconstruction review procedures. This proposed change provides flexibility and reduces the potential burden for both the permitting authority and owners and operators of affected sources.

F. Startup, Shutdown, and Malfunction Plans

1. Incorporation in Title V Permit

The current General Provisions include a requirement that an affected source's startup, shutdown, and malfunction (SSM) plan ''be incorporated by reference into the source's title V permit.'' Some of the litigants, as well as some others in the regulated community, have expressed concern that this language could be construed to require permit revision procedures to be followed each time that an SSM plan is revised. We believe that it would be unduly burdensome and inappropriate to require that permit revision procedures be utilized each time an affected source revises its SSM plan.

We are proposing to delete the current language concerning ''incorporation by reference,'' replacing it with new language stating that the title V permit for an affected source must require that the owner or operator adopt a SSM plan and operate and maintain the source in accordance with the procedures specified in the plan. The new language makes it clear that, unless the permitting authority provides otherwise, an affected source may make appropriate revisions to a SSM plan without prior approval by the Administrator or the permitting authority. Further, because there are no requirements for prior review and approval of a SSM plan, permit revision procedures are not required in connection with revising the SSM plan, and the permit shield in CAA section 504(f) does not apply to the contents of a SSM plan.

In developing the new language, it became apparent that the current General Provisions do not adequately describe the procedures to be followed when an affected source revises its SSM plan. Accordingly, we are proposing to add new language requiring each affected source to report each revision to its SSM plan in the semiannual report required by § 63.10(d)(5). Moreover, the proposed language would require prior written notice to the permitting authority if an affected source intends to revise its SSM plan in a manner which would alter the scope of the activities that are deemed to be a startup, shutdown, or malfunction, or would otherwise modify the applicability of MACT requirements to the source.

Petitioners also expressed concern that the SSM plans must be submitted with the permit application because they are voluminous and may contain confidential information. Extracting the confidential business information parts of the plan for public submission would be a burdensome and needless exercise. If the permit writer deems it appropriate, then the SSM plan must be submitted. Additionally, the title V program requires the permit writer to make publicly available all parts of the permit, including plans, under 40 CFR 70.4(b)(3)(viii), which also limits confidential matters to those specified in CAA section 114(c). Thus, to minimize the unnecessary production of the SSM plan, the permit authority must require that the SSM plan be made publicly available only if requested by any person. However, if no person seeks a copy of the SSM plan, then there is no need for a source to submit it.

The source must develop, operate, maintain, and report according to such a plan. The owner or operator of an affected source must keep a copy of the SSM plan on record and available for inspection upon request by the Administrator. The Administrator may also request a copy of the SSM plan with confidential business information removed to provide to interested members of the public. In addition, the owner or operator is required to report on a semiannual basis that actions taken in response to SSM events were consistent with the SSM plan. If the owner or operator takes actions inconsistent with the SSM plan and the source exceeds the relevant emission standards, the owner or operator must report such actions periodically. An initial report is required within 2 working days after commencing actions inconsistent with the plan, and a followup letter is required within 7 working days after the end of the startup, shutdown, or malfunction event. We believe that the reporting and recordkeeping requirements associated with the SSM plan will ensure that owners and operators comply with the intent of the plan.

2. Enforceability of Operation and Maintenance Requirements

Section 63.6(e) of the General Provisions establishes the requirement for good operation and maintenance of air pollution control and monitoring equipment. We do not see this requirement as exposing a source to enforcement liability every time a source fails to follow an instruction in an owner's manual that has a zero or negligible impact on actually minimizing emissions. For example, if a control equipment manufacturer recommends that lubricants be changed on a regular schedule, and the source is late in making the change, we are not suggesting that this is inconsistent with good air pollution control practices for minimizing emissions. Vendor specifications are not necessarily the best or only indication of good operating practices. Where appropriate, sources may alter their operation and maintenance practices to accommodate their actual situation. We expect to use this section to control bad practices where there is an indication of an actual increase in emissions or a significant risk of the same.

We do not intend to seek double penalties for situations that involve simultaneous violations of the good operations and maintenance requirements and any otherwise applicable emission standard, including work practice requirements. We may

allege both violations in the alternative, but do not intend to seek double penalties. If a source has proof that it has complied with the emissions standard, then there should be no allegation of bad operation and maintenance during such period.

We are proposing to amend § 63.6(e)(1)(i) to clarify the ''general duty'' of owners or operators to ''operate and maintain any affected source, 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.'' However, this general duty does not require a source to reduce emissions below the level required by the standard. Furthermore, when the source is in a period such that the SSM plan applies, this general duty would not necessarily require the source to meet the standard so long as the source is in compliance with the plan.

We are proposing to amend language in § 63.6(e)(1)(ii) of the General Provisions by adding language to recognize that there will inevitably be situations at facilities that were not contemplated when the SSM plan was developed. Because there is no protocol in the SSM plan for such a situation, it would be impossible for a source to follow the plan. During such circumstances, a source must do the best it can, consistent with safety and good air pollution control practices, to minimize emissions, relying on its best engineering judgment, expertise and familiarity with the equipment, as well as on the protocols for similar malfunctions that are in the SSM plan, if any. Conversely, compliance with an inadequate or improperly developed SSM plan is no defense for failing to minimize emissions.

We also acknowledge that there may be situations that cannot be prevented by owners or operators through better design or preventive maintenance. Some petitioners commented that there may be instances that require an owner or operator to bypass emission control devices until emissions can be vented to other control equipment to avert personal injury, equipment failure, or property damages. It was always our intent to consider safety in addition to good air pollution control practices when operating and maintaining affected sources. Therefore, where appropriate, we are proposing to clarify this intent in the General Provisions.

As noted in the regulatory text, where such unusual situations arise, a report justifying the procedure followed must be filed. If the Administrator or designee responds to this report by requiring a revision to the SSM plan, then the source must do so. The incident may be minor in its consequences or unlikely to arise again, in which case the Administrator may determine that it is not necessary to revise the SSM plan. However, sources are not excused from exerting best efforts to minimize emissions merely because there is no protocol listed in the SSM plan for the unique circumstances. Failure to minimize emissions is a violation of operation and maintenance requirements established under section 112 of the CAA.

3. Report Submittal Requirements

We have identified reporting requirements in the current General Provisions that establish different timelines for related reporting requirements associated with the SSM plans. In order to facilitate reporting for the owner or operator, we are proposing to amend these timelines to make them consistent with each other.

Section 63.8(c)(1)(ii) requires that for those malfunctions (or other events) that affect the continuous monitoring system (CMS), the owner or operator must report actions not consistent with the SSM plans if the relevant standard is exceeded, within 24 hours after commencing actions inconsistent with the plan. A followup report is required within 2 weeks after commencing actions inconsistent with the plan. Section 63.6(e)(3)(iv) requires that an owner or operator who takes an action inconsistent with the SSM plan report such actions within 2 days after commencing such actions. This must be followed by a letter within 7 working days after the end of the event.

We have considered these provisions and agree that it is reasonable to require these reports on the same schedule. We are proposing to revise the requirements in § 63.8(c)(1) to ensure that SSM monitoring reports are filed consistently with the timeframes of reports required in § 63.6(e)(3)(iv), which would require an initial report within 2 working days and a followup report within 7 working days. Consistency in these provisions should have the effect of simplifying reporting requirements for owners and operators.

4. Applicability of the Startup, Shutdown and Malfunction Plan

We are proposing to clarify that the SSM plan includes procedures for operating and maintaining both air pollution control devices and monitoring equipment. Although the intent of coverage of the plan is explicitly stated at the beginning of § 63.6, we recognize that it is unclear that the provisions also apply to monitoring equipment in other parts of the section. Therefore, we are proposing to clarify where necessary that the SSM plan provisions apply to monitoring equipment, as well as control device equipment.

5. Routine Maintenance

We recognize that routine maintenance of air pollution control devices is essential to ensure that control devices function properly on a long-term basis and achieve the emissions reductions that they can achieve. Many facilities can plan and schedule the routine maintenance in conjunction with scheduled downtime of the process equipment that generates the streams being treated by the air pollution control device. In these instances, no compliance issues are raised by the outage of the control device for planned routine maintenance. We believe that this is the case for the majority of facilities that have emission sources subject to MACT standards.

However, we also recognize that there are times when planned routine maintenance of an air pollution control device cannot be scheduled to coincide with scheduled downtime of the process equipment. In these instances, the facility would have to shutdown the process equipment or install redundant air pollution controls. In some circumstances, shutdown to perform planned routine maintenance and subsequent startup would generate greater emissions than allowing some level of emissions to continue to be emitted from the source, either at a reduced control efficiency or uncontrolled.

We believe that relevant standards should incorporate flexibility as necessary to assure that emission control equipment is properly maintained without causing inappropriate disruptions of source operations or unnecessary increases in HAP emissions. There is no uniform approach to this issue which will be appropriate for every MACT standard. We encourage affected sources to suggest potential allowances for routine maintenance in each instance where it would be helpful for the relevant standard to expressly address this issue. We will consider all such suggestions, incorporate provisions addressing routine maintenance into MACT standards where we conclude that flexibility is appropriate, and explain our decision not to incorporate such provisions in circumstances where we conclude that it is not appropriate.

G. Compliance Provisions

1. Compliance Extensions

The petitioners requested us to provide additional opportunities for owners and operators to request compliance extensions under CAA section 112(i)(3). The General Provisions require an owner or operator to make such requests 12 months before the compliance date for a relevant standard. The petitioners pointed out that events could happen within the 12-month period before a compliance date that would warrant a compliance extension.

In general, we anticipate that most sources will have ample time to achieve compliance given the 3-year compliance period for many requirements. The compliance extension under section 112(i)(3) is available for adding controls and other compliance measures requiring time beyond that which we anticipated in establishing the compliance date for NESHAP. For example, other compliance measures may include obtaining or implementing technology hardware or software systems and process changes to accommodate pollution prevention or other emission reduction measures.

Such a compliance extension is not appropriate for the failure of an owner or operator to properly plan and carry out the installation by the compliance date. However, there may be situations where sources acting in good faith to anticipate and fulfill their compliance obligations can still not achieve compliance in a timely manner because of circumstances or events not entirely of their own making. Work stoppages at a control equipment supplier's factory are cited as one example of a reason that sources, acting in good faith, might not be able to achieve compliance on time. Shortages of skilled design and construction engineers who are needed to build new facilities to meet relevant standards, as well as shortages of available technology to meet the demand from sources who must comply with industry-specific MACT requirements, may also contribute to delays in achieving compliance. Based on the merits of such requests, we expect to issue compliance extensions.

We are proposing to revise this requirement, which is in § 63.6(i)(4)(i)(B), to allow requests up to 120 days before the compliance date. We are also proposing to add a new paragraph (C) to § 63.6(i)(4)(i) to allow requests during the last 120 days before the compliance date, if the need arose during that 120 days and if the need was due to circumstances beyond the reasonable control of the owner or operator.

We recognize that there may be some situations where applicants for a compliance extension recognize that, for the reasons stated above, they are unable to comply, and hence file an extension request shortly before the compliance date, as is now provided by the General Provisions. Operating affected sources after the compliance date of a NESHAP creates a potential enforcement situation for companies which, despite their best efforts, are unable to meet the deadlines for MACT compliance. As a practical matter, companies may choose to shut down operations rather than operate without a compliance extension. For sources who act in good faith in filing an extension request, we will try to act promptly. In the interim, we intend to use other temporary measures to address the situation. In such cases, we intend to be receptive to entering administrative consent orders without penalty during the pendency of the review if the company complies with such an order and cooperates by providing all requested information to us for processing the good faith extension request.

For a standard promulgated under CAA section 112(f), § 63.6(i)(4)(ii) requires a source to submit a request for compliance extension within 15 days after the effective date of the NESHAP. We are proposing to increase the time allowed for a source to submit a request for a compliance extension from 15 to 90 calendar days after the effective date of a relevant standard promulgated under CAA section 112(f). The longer time period appears needed and reasonable to allow source owners or operators sufficient time to prepare a complete request. We are also proposing to eliminate the requirement in § 63.6(i)(4)(i)(B) that establishes a different timeframe for sources that include emission points in an emissions average. We believe that this specific issue is better dealt with in the respective NESHAP.

We are proposing to delete the interim milestone information required in a § 63.6(i)(6) request for a compliance extension under § 63.6(i)(4) and direct the focus of the request toward supplying information on the date and manner in which final compliance would be achieved.

2. Title V Enforcement

Several sections in the current General Provisions refer to title V obligations and general compliance obligations. We are proposing to delete these cross references because they are redundant or unnecessary. For example, § 63.4(a)(5) requires an owner or operator of a source subject to a relevant standard to comply with the requirements of that standard regardless of whether a title V permit has been issued to the source incorporating the standard. It is clear from section 113(b)(2) and (c)(1) that standards promulgated under section 112 are enforceable apart from their incorporation into title V permits, and nothing in title V or the part 70 operating permits rules suggests the contrary. We are also proposing to delete the severability clause of § 63.4(c) because it is unnecessary.

We are proposing to delete § 63.5(b)(5), which states that no person may operate without complying with the General Provisions and the relevant standard unless that person has obtained a compliance extension or exemption under § 63.6. We believe the § 63.6 requirements are sufficient to define compliance obligations.

3. Area Sources That Become Major

We are proposing to revise § 63.6(b)(7) and (c)(5) of the General Provisions. These paragraphs address the compliance timing requirements that result when an area source subsequently increases emissions, thus becoming a major source after 1 or more applicable NESHAP have been proposed. These sections establish the timing requirements when a subsequently affected source at the former area source is considered a new source or an existing source under the relevant standard.

The current General Provisions require new source MACT for area sources that become major after the effective date of the relevant standard, regardless of when the portion of the source affected by the standard (the affected source) actually commenced construction (including those that commenced construction long before the proposal date of the NESHAP). This would cause affected sources to unnecessarily retrofit new source control measures on existing equipment not designed to accommodate such measures. We are proposing to revise § 63.6(b)(7) and (c)(5) to require new source MACT only on affected sources that commenced construction or reconstruction after the proposal date of the NESHAP. Those affected sources must comply with new source MACT upon startup. Affected sources at former area sources that become major that have not constructed or reconstructed after the proposal date of the NESHAP would be subject only to existing source MACT, and would comply by the date

specified in the standard for existing area sources that become major, or if no such compliance date is specified, be given the same amount of time to comply as specified for existing sources in the standard. These revisions are consistent with the definition of new source in section 112(a)(4) of the CAA, which defines a new source as one that commences construction or reconstruction after the Administrator first proposes NESHAP under section 112 establishing an emission standard applicable to such a source. Such a source would be able to reasonably anticipate control requirements and construct the source to include such controls as Congress intended in the CAA.

H. Test Methods

1. Performance Test Dates

We are proposing to streamline the performance test date requirements of § 63.7(a)(2). As currently written, the section outlines several different scenarios for establishing performance test dates. However, all are tied to a 180-day period of some triggering event, usually the compliance date. Upon review, these multiple scenarios add more confusion than clarity, and we propose to replace them with a blanket requirement that sources conduct their performance tests with 180 days of the compliance date. Section 63.7(a)(2)(i) through (viii) would be reserved as a result. However, we would retain § 63.7(a)(2)(ix) to address the scenario where a relevant standard is promulgated that is more stringent than the proposed standard.

2. Alternative Test Methods

We propose to amend § 63.7(c)(3)(ii)(B) to ensure that a request to use an alternative test method does not delay the performance test process. If amended, the section would authorize the owner or operator to conduct the performance test using an alternative method in the absence of notification of approval after submitting the site-specific test plan or the request to use an alternative method. The performance test would then be conducted within 60 days after authorization to conduct the test. A source owner or operator's decision to proceed with using an alternative method in the absence of a notification that the method is approved would not preclude the owner or operator's legal responsibility to comply with the applicable provisions of the relevant standard. We are also proposing conforming amendments in § 63.7(f), use of an alternative test method, to implement this approach.

3. Approval of Alternative Test Methods and Monitoring Requirements

In 1998, we issued guidance regarding delegation of the 40 CFR part 63 General Provisions authorities to State and local air pollution control agencies (Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, July 10, 1998). In our September 14, 2000, promulgation of revisions to 40 CFR part 63, subpart E (65 FR 55810), we have codified this guidance. We are now proposing a number of revisions to §§ 63.7 and 63.8 of the General Provisions, which cover performance testing and monitoring requirements, to harmonize these sections with the 1998 guidance and subpart E rulemaking, particularly in regard to Administrator approval of alternative test methods and monitoring requirements. The specific revisions and sections affected are explained below.

First, the 1998 guidance and subpart E rulemaking introduced a new category of changes or alternatives to test methods and monitoring referred to as ''intermediate changes.'' Because this new category modifies the major alternative category previously referred to in §§ 63.7 and 63.8, we are proposing to revise §§ 63.7(e)(2)(i) and (ii), 63.7(f)(1), 63.8(b)(1)(i) and (ii), and 63.8(f)(1) to cite the definitions for minor, intermediate, and major changes to test methods and monitoring requirements in § 63.90(a).

Second, we have noted recent confusion in distinguishing test methods from monitoring for the purposes of deciding who has the delegated authority for approving alternatives; consequently, we are proposing revisions to the language in § 63.8(f)(4)(iv) and (5)(i) to clarify this difference.

Third, we have also noticed significant inconsistencies regarding the instruments for requesting and granting approval of intermediate and major changes to test methods, in specific, the combination of the site-specific test plan/test plan approval versus a letter of request coupled with an official letter of approval. In consideration of the significance of approvals of major and intermediate changes on the compliance decision, and a level of documentation appropriate to the decision itself, we believe that only an official letter should be used to approve intermediate and major changes to test methods. Also, the potential delegated authorities for approval of test plans versus those for approval of intermediate or major changes to test methods are often not the same. We are, therefore, proposing revisions to § 63.7(c)(3)(ii), 63.7(e)(2)(i), and (e)(3) to clarify that major and intermediate changes to test methods cannot be requested through test plans nor approved in the course of test plan approval. To parallel this approach for monitoring, we are proposing the addition of language to § 63.8(f)(4)(iv) to allow requests for minor changes to monitoring to be submitted in the site-specific performance evaluation plan and for these changes, where appropriate, to be approved in conjunction with approval of this plan.

In addition, we are updating the information in § 63.7(c)(4)(i) regarding contacts for requesting performance audit materials. We are also clarifying the requirements for proposing an alternative monitoring system by citing in § 63.8(f)(4)(ii) and adding to § 63.2 a definition of the basic elements that constitute a monitoring system.

I. Monitoring Requirements

1. Combined Emission Streams

We are proposing to change the requirement that a continuous monitoring system be installed on each emission stream that is combined prior to release to the atmosphere or on each emission point for mass emissions standards. We recognize that there may be cases where a blanket requirement that each stream have a CMS may not add compliance assurance but would add costs and burden to the owner or operator. Therefore, we are proposing a change to § 63.8(b)(2) that would allow for the use of a single CMS for monitoring combined emission streams, provided that the monitoring is sufficient to demonstrate compliance with the relevant standard. This will be evaluated in the development of each standard.

For example, a relevant standard could specify the use of a condenser for which compliance could be demonstrated by monitoring and maintaining the temperature of the cooling coils below a specified level. The compliance temperature level would not be compromised by controlling one or more emission streams. Therefore, a single CMS for monitoring combined emission streams would be sufficient to demonstrate compliance.

Alternatively, the combination of emission streams for monitoring could result in the inadvertent averaging of affected and nonaffected sources. For example, if the CMS is designed to monitor the concentration of a compound in the stream, a nonaffected source stream with a low concentration of the compound would mask a high

concentration of the compound in the affected stream. Where the combined stream might meet the relevant standard, the single affected stream would not. In this case, the individual standard requirements might override the General Provisions to prevent the ''dilution'' of the streams from occurring.

2. Monitor Readouts

We are clarifying in the proposed amendments the owner or operator's obligation regarding the accessibility of readouts from monitoring systems required for compliance with emission standards. In today's proposed amendments, we are proposing language in § 63.8(c)(2) that requires monitor readouts to be ''readily accessible on site.'' This phrase ''readily accessible on site'' means the monitor readout must be in plain view or in close proximity where the operators normally are located when operating such equipment. This requirement does not mean that the monitor readout must be in plain view of the operator at all times, but that the device is readily or reasonably accessible so the operator or an inspector can view the readout without unnecessary delay.

J. Notification Requirements

1. Initial Notification Requirements

We are proposing to reduce the source description information that an owner or operator of an affected source subject to a relevant standard is required to submit in the initial notification under § 63.9(b). The intent of the initial notification is to identify and alert the EPA and/or delegated State agencies of those sources for which a relevant standard applies.

We have evaluated and decided that it was both unnecessary for us to receive and burdensome for sources to supply information regarding the operating design capacity of an affected source and the identity of each emission point for each emitted HAP in the initial notification. Therefore, we are proposing that the initial notification not require that an owner or operator report the operating design capacity of the source, and only require that the owner or operator identify the types of emission points and HAP emitted in lieu of each emission point for each emitted HAP.

As discussed in section II.E of this preamble, we are proposing to revise § 63.9(b)(5) to allow a nonmajor emitting source that is not subject to the requirements to submit an application for preconstruction review and approval and to request a reduction in the information required in the application to construct or reconstruct. This flexibility should reduce the burden on smaller sources to comply with the notification requirements.

In general, we propose to streamline the requirements of § 63.9(b), initial notifications, to eliminate duplicative or unnecessary information (e.g., § 63.9(b)(4)(ii) through (iv)). We are proposing to delete § 63.9(b)(3) and revise § 63.9(b)(4) and (5) to clarify the applicability and responsibility of sources under these requirements. In particular, we would clarify the responsibilities of sources that have an initial startup date before the effective date of the relevant standard, as well as sources that construct or reconstruct after the effective date of the relevant standard.

2. Performance Test Notification

Section 63.7(b) of the General Provisions provides performance test notification requirements that we and/or delegated State agencies be notified at least 60 calendar days before the scheduled date of the performance test. In cases where circumstances did not allow for such notice, the requirement was that the notice be submitted within 5 days of the date that an affected source intends to conduct the performance test.

Performance tests often are conducted by persons contracted to do the work, and an owner or operator may not be able to control when a performance test will be performed. We agree that if an owner or operator cannot inform the Administrator that it is unable to conduct a performance test because of unforeseeable circumstances, the intent of the provisions would be met as long as an owner or operator notifies the Administrator as soon as practicable and without delay of an intent to conduct a performance test. Therefore, we are proposing to amend § 63.7(b)(2) accordingly.

3. Area Source Analysis

We are proposing to eliminate the requirement in § 63.9(h)(2)(i)(E) that an owner or operator of an area source submit, as part of the Notification of Compliance Status when a relevant standard applies to both major and area sources, the analysis demonstrating that the source is an area source. After further review, we decided that submission of an analysis demonstrating that the source is not major is only necessary for enforcement purposes when a relevant standard applies to both major and area sources. The proposed change would eliminate the need for nonaffected area sources to submit an analysis, and the need for affected area sources to submit the analysis with their compliance notification. This proposed change does not relieve an owner or operator of a source from the responsibility to determine whether the source is a major source or an area source. Refer to section II.K of this preamble for the discussion on the applicability determination recordkeeping requirement for unaffected sources.

K. Recordkeeping and Reporting Requirements

1. Recordkeeping Requirement for Unaffected Sources

The current General Provisions include a requirement in §§ 63.1(b)(3) and 63.10(b)(3) for sources both to determine applicability and to keep a record of this determination if the source determines that it is not an affected source for a relevant standard. In enacting this provision, it was our intent to enable an owner or operator of a source in a given source category to document its determination that the source is not subject to a NESHAP promulgated for that source category. However, an unintended interpretation of the General Provisions could be to require owners and operators of any source, including facilities not in the source category being regulated, to perform applicability determinations each time any NESHAP are promulgated. It was not our intent that the General Provisions require owners and operators to make a determination that they are not subject to every NESHAP that is issued. In this proposal, we are clarifying our intent. We are proposing to revise the language in §§ 63.1(b)(3) and 63.10(b)(3) to limit requirements to the sources within the source category of the relevant standards. Area sources that would be required to retain a certified applicability determination include sources that are subject to limitations on the source's potential to emit; sources that are specifically excluded from the relevant standards (e.g., research and development facilities); and sources that are below applicability thresholds established in the source category-specific rule (e.g., annual raw material use, production thresholds, emissions). If a source has failed to retain the documentation of its original determination but can reestablish that documentation to the satisfaction of the Administrator and proves that it has not been and is not subject to the relevant standard affecting the source category, we will consider such a violation to be a low enforcement priority.

In addition, we are proposing to amend § 63.10(b)(3) to clarify that the requirements to determine the applicability of a relevant standard under § 63.1(b)(3) and to record the results of that determination under § 63.10(b)(3) do not by themselves create an obligation for the owner or operator to obtain a title V operating permit.

2. Preconstruction Review Application Submittal

We are proposing to change the submittal requirements for an application for approval of construction or reconstruction. The current General Provisions require owners or operators of an affected source to submit an application for approval of the construction of a new major affected source, the reconstruction of a major affected source, or the reconstruction of a major source such that the source becomes a major affected source subject to the relevant standard. The application submittal is required as soon as practicable before the date that construction or reconstruction is planned to commence, but no sooner than the effective date of a relevant standard. The application submittal for an affected source for which construction or reconstruction had commenced and initial startup had not occurred before the NESHAP effective date is required as soon as practicable before startup but no later than 60 days after the effective date.

The petitioners commented that specified time constraints for application submittal were unnecessary because an owner or operator would not risk constructing or reconstructing a source without receiving approval. We specified timeline submittal requirements to ensure that owners or operators proceeded through the preconstruction review application process in such a way as to allow us sufficient time for review. We agree that it is in an owner's or operator's best interest to obtain approval for construction or reconstruction before expending time and money, which should provide a sufficient incentive for sources to submit applications as early as possible. Therefore, we are proposing to require that the application be submitted as soon as practicable before construction or reconstruction is planned without specifying time constraints (§ 63.5(d)(1)(i)). However, even though we would not specify time constraints within the relevant standard, we would recommend that owners or operators allow us at least 90 days for the review process.

L. Lesser Quantity

The petitioners expressed concern that the definition of ''lesser quantity'' in § 63.2 could create serious compliance problems and inequities in situations where equipment/operations in more than one source category are present at a facility. For example, the petitioners have noted that equipment/operation in each of two or more source categories at an area source when a relevant section 112 standard is adopted would not be subject to the standard, unless the section 112 standard applied to area sources. However, if a lesser quantity determination is subsequently made for a HAP emitted by the equipment/operations in one of the source categories at the facility such that facility became a major source, the other regulated source categories would also then become major sources without regard to the HAP they emit.

As part of today's amendments, we are proposing to delete the definition of lesser quantity from § 63.2 of the General Provisions. It is not our intent by deleting the definition of ''lesser quantity,'' to indicate one way or other whether we agree with the litigants' concerns. It is our intent that, if a lesser quantity determination would affect the major/area source status of sources in categories for which a section 112 standard was previously promulgated, we would address appropriate applicability and compliance procedures when such a determination is made.

M. Clarification and Consistency

We are proposing other changes to the General Provisions where necessary for clarification and consistency. These are not substantive changes and do not change the requirements of the General Provisions. Instead, these proposed changes would make the General Provisions easier to understand and to use. Minor editorial and clarifying changes are discussed by way of example in the following paragraphs. More substantive changes are addressed in other sections of this preamble.

1. Preconstruction Review and Title V Interaction

In the current General Provisions, several paragraphs under § 63.5 (e.g., paragraphs (b)(3), (4), and (5)) include the phrase ''whether or not an approved permit program is effective in the State in which an affected source is (or would be) located.'' The intent of this phrase is to indicate that the preconstruction review provisions that are included in the General Provisions are established pursuant to section 112(i) of the CAA. These preconstruction review provisions do not rely upon a title V permit program for implementation; rather, they are completely independent and are implemented solely through the General Provisions. Consequently, this phrase does not affect the requirements for preconstruction review; it merely distinguishes those requirements from other requirements that may subsequently come into place under an approved title V program. Upon review, we have determined that this phrase may be confusing to owners or operators who must comply with the relevant standard or to State and local agencies required to implement the relevant standard. Therefore, we are proposing to delete this phrase from the General Provisions.

2. Continuous vs. Continuous Parameter Monitoring Systems

We are proposing clarifying changes to § 63.8(c)(6) to identify those requirements that are for continuous parameter monitoring systems (CPMS) versus those that apply to CMS. The change is intended to avoid possible confusion by the owner or operator as to which provisions apply when the requirements are not clearly delineated in a relevant standard.

3. Applicability of Standards Developed Under the CAA

We are proposing to clarify in § 63.1(a)(3) that the Administrator can specify in a relevant standard that an affected source subject to other provisions under the CAA need only comply with the provisions of that standard. This clarification reflects what is already being done in relevant standards. We do this in relevant standards so that an owner or operator of an affected source subject to other standards under the CAA is not burdened with the need to determine the ''more stringent'' requirements for compliance purposes or to duplicate recordkeeping and reporting for each standard. Both the HON and petroleum refineries NESHAP specify in the applicability section the requirements that would apply when there are overlapping requirements with other standards developed under the CAA. For example, in the Petroleum Refineries NESHAP (60 FR 43244), we specified that after the compliance dates for that NESHAP, a storage vessel that is part of an existing source that is subject to 40 CFR part 60, subpart Kb, would only be required to comply with 40 CFR part 60, subpart Kb.

4. Unnecessary Additional Information

We are proposing to delete unnecessary additional information from the General Provisions. For example, we are proposing to delete § 63.1(a)(7) and (8) because they discuss the content of 40 CFR part 63, subparts D and E, and do not provide information or requirements relevant for compliance with the General Provisions.

5. Actual Emissions or Control Efficiency Data

We are proposing to eliminate the requirement in § 63.5(d)(2) to submit ''actual'' emissions or control efficiency data with the Notification of Compliance Status when a relevant standard does not require this information to demonstrate compliance. We believe that this requirement as stated can cause confusion because it is often not feasible or required that ''actual'' emissions or control efficiency data be submitted for ''affected sources'' to demonstrate compliance.

6. Commence Versus Begin Actual Construction

Section 63.5(d) of the current General Provisions contains requirements for new and reconstructed affected sources. The petitioners commented that the use of the term ''commence construction'' as a trigger for submittal of the application was inappropriate. Similarly, they commented that the expectation that the notification of intent to construct a new major affected source include ''the expected commencement date of the construction or reconstruction'' was inappropriate. The General Provisions define ''commenced'' in such a way that an owner or operator would be obligated to submit an application for construction or reconstruction if they enter into a contractual obligation to undertake and complete a construction or reconstruction. Petitioners explained that such contractual obligations may be in place, but actual construction plans or design information necessary for completion of an application may be unknown.

We evaluated those places within the current General Provisions, § 63.5(d), where petitioners commented that the use of the terms ''commence'' or ''commencement'' are inappropriate. We are proposing to amend the regulatory language to specify the beginning of actual construction rather than the commencement of construction. This proposal reflects our original intent and addresses the petitioners' concerns.

7. Consistency With Statutory Language

In some cases, the current General Provisions contain terminology that is inconsistent with what is in the CAA. We have corrected inconsistent language where appropriate. For example, § 63.1(a)(3) contains language inconsistent with the parallel language of section 112(d)(7) of the CAA. We are proposing parallel regulatory language to match that of the CAA.

8. Use of Alternative Test Methods

We are proposing to amend § 63.7(f)(2)(ii) to clarify that the use of defined aspects of Method 301 procedures may be sufficient to validate the data and the test method used to obtain the data. Currently, the language implies that a complete Method 301 validation would be required to make this demonstration in all cases, which was not our intent.

Method 301 establishes acceptance criteria as well as a demonstration procedure for test method development and validation and alternative method demonstrations. Such criteria and procedures did not exist before Method 301; therefore, the many emission test methods in the United States and abroad did not have a standard procedure underlying their validation. Method 301 defines how good a proposed method is in terms of bias and precision either standing alone or compared to an existing (reference) method.

During the proposal and promulgation of Method 301, we recognized that other acceptable validation procedures for demonstrating a method's acceptance (precision and bias) do exist, e.g., ASTM. We acknowledged this in Sections 1.1.1 and 12 of Method 301, which allow different validation approaches under certain conditions, including other reasonable statistical approaches, ruggedness testing of method modifications, similar exhaust matrix demonstrations, etc.

III. Proposed Amendments to the Section 112(j) Provisions

We are proposing to clarify and correct the existing rules (59 FR 26429) (part 63, subpart B, §§ 63.50 through 63.56) promulgated May 20, 1994, implementing section 112(j) of the CAA to better address timing and applicability issues. A key point of clarification is how and when new source MACT and the associated new affected source are defined. The current rules establish the section 112(j) hammer date as the date for determining whether new source MACT should apply and what it should be. However, because this date could occur before a source had received a title V permit containing MACT emission limitation requirements for new sources, sources would be left to ''guess'' at what new source MACT would be. If the source didn't guess correctly, and new source MACT were different than anticipated at the commencement of construction, it may incur significant rebuilding expense or delays to accommodate new MACT controls when finally issued in a title V permit. Although we considered this difficulty in knowing the exact nature of new source MACT, and discussed it extensively in the promulgation preamble (59 FR 26435), the petitioners pointed out that our solution was unworkable.

With these amendments, we are proposing an alternative remedy to the timing requirements associated with new source MACT determinations. As discussed in section III.C of this preamble, we propose to change the new source MACT applicability date to the date on which an affected source is issued a title V permit containing requirements establishing new and existing source MACT for that affected source. From this date onward, future changes at the facility can be made with knowledge of what new source MACT is for that facility. This change in the applicability date also affects area sources (i.e., nonmajor sources) that become major sources. For example, an existing area source (in a category or subcategory for which the section 112(j) permit hammer date has passed) that increases emissions such that the source becomes a major source would be subject to existing source MACT because the new source MACT applicability date has not yet been established for the source.

The other major clarification we are proposing today is the creation of a two-part MACT application process. Part 1 would be a brief informational submittal, followed by a substantive application for MACT requirements, or Part 2. We discuss this process in more detail in section III.D of this preamble.

A. Applicability

We are proposing several changes to clarify § 63.50 applicability requirements. We have reorganized § 63.50(a) to clarify that the section 112(j) program places obligations on source owners and operators (§ 63.50(a)(2)(i)) and on permitting authorities (§ 63.50(a)(2)(ii)). We also propose to exempt research or laboratory activities whose primary purpose is to conduct research and development into new processes and products. This proposed exemption (§ 63.50(a)(1)) would remain until research and development activities are listed as a source category for regulation pursuant to section 112(c)(7) of the

CAA. We propose to add a definition to § 63.51 for research or laboratory facilities, which is discussed in more detail in section III.B of this preamble.

We are proposing to amend § 63.50(a)(2)(i) to clarify that only equipment or activities within the relevant source category or subcategory located at major sources are affected by the regulatory requirements implementing section 112(j). Currently, the rule could be interpreted to apply to emission sources at the facility but outside of the relevant category or subcategory, which was not our intent. For example, assume that a source is subject to section 112(j) emission limitations for operations in a relevant category or subcategory. Other operations at the same facility in a different category or subcategory would not be subject to section 112(j) emission limitations unless and until the section 112(j) deadline for this different category or subcategory passes.

We are also proposing to clarify the relationship of section 112(j) applicability to the effective date of the permitting authority's title V program in § 63.50(a)(2)(i). In particular, petitioners raised the concern that, in the case of a title V program that receives source category-limited interim approval, section 112(j) should apply only to those sources subject to permitting in that title V program, or should apply only to sources located in those geographic areas covered by the title V permit program receiving partial approval in a given State. We agree that if the approved title V program is limited to specific source categories or subcategories, then section 112(j) should not be triggered for sources in categories or subcategories not covered by the title V program.

The petitioners objected to the language in § 63.50(b) which states that the current rule does not prevent a State or local regulatory authority from imposing more stringent requirements than those contained in the rule. They contended that limitations established under section 112(j) must be equivalent to section 112(d) limitations, and that States can only be more stringent as a matter of State law. The petitioners interpreted the current language as articulating a State's ability to be more stringent than MACT as a matter of Federal law.

We plan to retain the current language. As noted in the promulgation preamble (59 FR 26433; May 20, 1994), many State and local regulatory authorities maintain regulatory programs that involve air toxic pollutant reviews for stationary sources. Section 63.50(b) clarifies that section 112(j) does not pre-empt any requirements of these programs that are at least as stringent as the current rule. However, we are requesting comment on this issue and will consider revising § 63.50(b) in the promulgated amendments if further clarification is needed.

Finally, we are proposing to delete § 63.50(c) because the requirement that States must have legal authority to incorporate and enforce requirements of section 112(j) is found in 40 CFR part 70. Deletion of this provision does not remove the obligation of a permitting authority to have section 112(j) authority as a prerequisite for title V permit program approval.

B. Definitions

We are proposing to amend several of the § 63.51 definitions for clarity and consistency. Other proposed changes are more substantive and, in some cases, are needed to implement broader concepts being addressed elsewhere in this preamble. For example, we are proposing to add or amend several definitions related to the concept of affected source as discussed in section II.B of this preamble. We are proposing to add definitions of ''affected source'' and ''new affected source'' to § 63.51 as they relate to implementation of this concept. We are proposing to revise the definition of ''similar source'' to be consistent with implementing the new affected source concept. We are proposing to define ''similar source'' as ''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 that is practical for use on the new affected source.'' ''Practical for use'' contemplates that the State permitting authority would consider whether the control technology would achieve similar efficiencies. We are proposing to delete the definitions of ''emission point,'' ''emissions unit,'' ''existing major source,'' ''new emission unit,'' and ''new major source'' in § 63.51 for consistency in implementing both subparts A and B proposed amendments. Where appropriate, we are proposing edits that reflect these proposed definition changes when these terms are used.

1. Available Information

We are proposing to revise the ''available information'' definition to specify the type and timing of information that the owner or operator must submit in an equivalent MACT determination application under the section 112(j) rule. As promulgated, the deadline for submission of this information is the section 112(j) deadline, which is the date on which the section 112(j) hammer falls. However, consistent with proposed changes in §§ 63.52 and 63.53 to make the permit application a two-part process, the substantive information required by the permitting authority to make its case-by-case MACT determination is now tied to submittal of the Part 2 MACT application.

As part of the section 112(j) MACT determination process, the proposed concept of ''available information'' is used in such a way as to limit the introduction of ''new'' information to the MACT determination process beyond the date on which the first Part 2 MACT application is filed for an equivalent emission limitation for a source in the relevant source category or subcategory in the State or jurisdiction. This approach of setting a date certain to limit the universe of ''available information'' is consistent with the approach being proposed in the new source review program. For example, the development of a new emission control technology after the date of the first Part 2 MACT application would not be considered ''available information'' for another source's MACT determination. However, if the technology were developed before the first Part 2 MACT application, but the information was only brought to the permitting authority's attention after that date, this information would be considered ''available,'' and it could be used in making the MACT determination. Also, we propose to add language to the definition of ''available information'' to make clear that permitting authorities can and should consider information from the public as well as from the applicant. The proposed definition would require the permitting authority to consider any information submitted by the applicant or others before or during the public comment period on the section 112(j) equivalent emission limitation.

We believe that both the States and the sources will have substantial incentive to identify and obtain the full body of information that should be considered in the case-by-case MACT determination as expeditiously as possible. We also note that available information includes, among other things, ''additional relevant information that can be expeditiously provided by the Administrator'' before the date on which the first Part 2 application is filed for a source in the relevant source category or subcategory in the State or jurisdiction. For example, such available information could include

relevant information provided on EPA's Air Toxics Home Page before the first Part 2 application date. The better supported a section 112(j) MACT determination is, the more likely it is that the effects of subsequent section 112(d), 112(h), and 112(g) standards on the affected source will be minimal.

We are proposing to move the content of items 6, 7, and 8 of the definition to the introductory text of the definition to clarify the role and timing of the more general types of ''available'' information that may be provided to the permitting authority. The intent of the current language is preserved with the change.

2. Research and Development Activities

We propose to add a definition of ''research or laboratory activities'' to clarify proposed language in § 63.50(a)(1) that certain research and development activities are exempt from this subpart. We would limit this exemption to sources that are not engaged in the manufacture of products for commercial sale, except in a de minimis manner, and where the source is not subject to a source category specifically addressing research or laboratory activities that is listed pursuant to section 112(c)(7) of the CAA. Section 112(c)(7) requires the Administrator to establish a separate category covering research or laboratory facilities, as necessary to assure the equitable treatment of such facilities.

3. Other Definition Changes

We propose to amend the definition of ''equivalent emission limitation.'' We are proposing to replace the phrase ''at least as stringent as'' with ''equivalent to'' so that the language in this definition is consistent with the language in the CAA. Similarly, the proposed definition of ''maximum achievable control technology (MACT) floor'' contains minor amendments to ensure consistency with the definition in the Act. We are also proposing a minor change to the definition of ''section 112(j) deadline'' to clarify that the deadline is the date 18 months after the date on which a relevant standard is scheduled to be promulgated. We are also proposing to delete the definition of ''United States,'' which is considered unnecessary in the context of the rule. Finally, we are proposing to amend the definition of ''permitting authority'' to clarify that this term means a permitting authority under either 40 CFR part 70 or part 71.

C. Approval Process

We are proposing to expand and modify § 63.52 with proposed new paragraphs (a) through (d) to clarify the obligations of owners or operators of 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 the applicable section 112(j) deadline. As discussed in section IV.A of this preamble, the purpose of some of these proposed changes is to ensure that existing MACT determinations (e.g., those developed under the section 112(g) program) are given appropriate consideration and weight in the section 112(j) MACT determination process.

We have identified three situations for major sources related to the timing of applicability of section 112(j) to a source and related to existing requirements in a source's permit that could be affected by the section 112(j) rule. Revised § 63.52(a) through (c) address each of these situations.

The first situation, described in proposed § 63.52(a), covers 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. Owners or operators of these sources would be required to submit a Part 1 MACT application to the permitting authority by the section 112(j) deadline if the owner or operator can reasonably determine that one or more sources at the major source belong to a category or subcategory that would be subject to the section 112(j) MACT requirements. We believe, in most cases, that it will be clear to owners or operators which affected sources are subject to section 112(j) MACT requirements. However, in a few instances, there may be legitimate confusion as to the applicability of the requirements. In these cases, proposed § 63.52(a)(2) would require the owner or operator to submit a Part 1 MACT application within 30 days of being notified in writing by the permitting authority that one or more sources at the major source belong to a section 112(j) category or subcategory.

The proposed language would require the permitting authority to notify the owner or operator within 120 days of the section 112(j) deadline that section 112(j) requirements apply to a facility. We believe that permitting authorities will have information available at the time of the section 112(j) deadline through existing title V permits and permit applications, as well as information from the EPA and other sources, to identify and notify owners or operators within a fairly short time period. The purpose of placing a cap on the notification period is to provide major sources with some certainty that, if they and the permitting authority both determine that their facilities are not subject to section 112(j), then they will not be brought into the section 112(j) process months or years after a good-faith determination was made. We request comment on whether the 120-day time period is sufficient for permitting authorities to act.

Also addressed in proposed § 63.52(a) is the case where an owner or operator has a title V permit that addresses the emission limitation requirements of section 112(g) by the section 112(j) deadline. Such an owner or operator would be required to submit a Part 1 MACT application, but additional provisions would allow the owner or operator to request a determination that the section 112(g) emission limitations already in its permit are ''substantially as effective as'' the requirements otherwise adopted under section 112(j) for the source. As discussed in section IV.A of this preamble, we believe that MACT determinations made under separate programs should be substantially equivalent when the same procedures for determining MACT are used. Therefore, an affected source with a section 112(g) new source MACT determination should, in most cases, already be subject to applicable requirements substantially as effective as those that would be required under section 112(j). In these cases, the source's title V permit must be revised to reflect that the source's continued compliance with the section 112(g) MACT determination satisfies the requirements of section 112(j).

The second situation, addressed in proposed § 63.52(b), covers owners or operators of sources in a category or subcategory affected by a section 112(j) deadline, but who were not subject to section 112(j) emission limitations at the time of the deadline. Proposed § 63.52(b)(1) would address sources that install equipment in a category or subcategory subject to section 112(j) requirements, and where the installation does not trigger the section 112(g) process (i.e., the new equipment is not a major-emitting source). These sources may be major sources before the installation, or they may become major sources as a result of the installation. In either case, the owner or operator must submit a Part 1 MACT application within 30 days after startup of the source.

Proposed § 63.52(b)(2) is similar to proposed § 63.52(a)(3) in that it addresses sources that have entered the section 112(g) process through installation of a major-emitting source. In the case of proposed § 63.52(b)(2), the source installs a major-emitting source

after the section 112(j) deadline for sources in the same category or subcategory. Where the source already has a title V permit addressing section 112(g) requirements, the owners or operators of these sources would be required to submit a Part 1 MACT application to revise the title V permit addressing section 112(g) requirements. The Part 1 MACT application must be submitted within 30 days after startup of the source. Where the source has applied for but not yet received a title V permit addressing section 112(g) requirements, the owners or operators of these sources would be required to submit a Part 1 MACT application to revise the title V permit to address section 112(j) requirements within 30 days after issuance of the title V permit addressing section 112(g) requirements. Once the Part 1 MACT application is submitted, the permitting authority would make an equivalency determination for the source as discussed above for sources subject to proposed § 63.52(a)(3).

The relevant provisions of current § 63.52(f), which address area (i.e., nonmajor) sources that become major sources, were incorporated and expanded in the proposed new § 63.52(b)(3) and (4) to consolidate in proposed § 63.52(b) the applicable requirements for sources that become subject to section 112(j) after the section 112(j) deadline. These provisions address the status of area sources that become major sources after the section 112(j) deadline either through the relaxation of a federally enforceable limitation on potential to emit or because the source becomes major because the EPA established a lesser quantity emission rate pursuant to section 112(a) of the CAA.

In one case, we are proposing to change the Part 1 MACT application submittal date from the current § 63.52(f) provisions. The current rule requires the source to comply with the section 112(j) emission limitations on or before the date of becoming a major source. Under today's proposal, if an area source increases its potential to emit HAP such that the source becomes a major source subject to subpart B, due to a relaxation in any federally enforceable emission limitation, then the owner or operator must submit a Part 1 MACT application within 30 days after the source becomes a major source. We are proposing this change to implement the concept discussed earlier that the resulting affected source is subject to existing source MACT and should have timing requirements similar to other sources that become subject to section 112(j) requirements after the section 112(j) deadline.

A similar situation exists for area sources that subsequently become major due to the establishment of a lesser quantity emissions rate under section 112(a) of the CAA for an affected source at the area source. Currently, owners or operators of sources in categories or subcategories subject to 112(j) requirements must submit a MACT application within 6 months of the date such a source becomes a major source. We solicit comments on whether this timeline should be retained, or whether it would be beneficial to make it more consistent with the application deadline requirements for other sources, i.e., 30 days from the triggering event.

The third situation is addressed in proposed § 63.52(c). This section covers owners or operators of sources who have a title V permit that addresses the requirements of section 112(j), and subsequent actions occur at the source that trigger section 112(j) requirements. In the simplest case, when events such as the addition of a new process unit occur, the permit already contains the relevant section 112(j) requirements, and the source complies with the permit conditions. In other cases, the permit may not contain sufficient requirements to address the section 112(j) requirements. For example, a source in a given category or subcategory may have a title V permit that addresses section 112(j) emission limitations for the production of chemical ''A.'' If the source then installs a new process unit to produce chemical ''B,'' and the new process unit includes equipment that is in the same source category but was not previously addressed in the source's title V permit, section 112(j) emission limitations would need to be developed to address this scenario. In this case, the owner or operator must submit a Part 1 MACT application within 30 days after beginning construction. In the case where a new affected source is constructed after the issuance of the permit, the owner or operator must obtain a title V permit revision with applicable limits prior to startup of the new affected source.

We are proposing to add § 63.52(d) to provide a process by which the owner or operator of a source could obtain up front determinations from the permitting authority. Proposed § 63.52(d)(1) would allow the owner or operator to request an applicability determination from the permitting authority in the case of uncertainty regarding the source's status with respect to section 112(j) requirements. The form of the request would be the submission of a Part 1 MACT application. Some sources might prefer to obtain an up front determination from the permitting authority rather than wait 120 days for the permitting authority to notify them of their applicability or in order to have documentation of their nonapplicability.

Proposed § 63.52(d)(2) provides that an owner or operator of a new affected source may submit an application for a Notice of MACT Approval before construction, under § 63.54. This provision is contained in the current rule as § 63.52(a)(4).

Proposed § 63.52(e) would incorporate the two-part permit application process. The rationale and content of each of the two applications are discussed in section III.D of this preamble. The timing of the submittal of the Part 1 application has already been addressed in the proposed changes to § 63.52, paragraphs (a) through (d). The focus of proposed § 63.52(e) is the review process for the Part 2 MACT application.

Proposed § 63.52(e)(1) would require submittal of the Part 2 MACT application within 6 months after submittal of the Part 1 MACT application. This timeline is analogous to the current rule, which allows a source 6 months to submit a revised application upon determination that the original application, submitted at the section 112(j) deadline, is incomplete. Today's proposal would provide this 6-month extension as a matter of course in recognition of the fact that the Part 1 MACT application is not required to be complete enough to support a MACT determination.

Proposed § 63.52(e)(2) would provide a process by which both equivalency determinations and applicability determinations can proceed. An owner or operator who requests an applicability determination under proposed § 63.52(d)(1) must comply with the remaining provisions of this subpart if the permitting authority determines the source is subject to section 112(j) requirements. If the permitting authority determines the section 112(j) requirements do not apply to the source, no further action by the owner or operator is necessary.

Given the importance of the outcome in an equivalency determination under proposed § 63.52(a)(3) or (b)(2), the proposed process for an equivalency determination includes the opportunity for full public, EPA, and affected State review. If the permitting authority determines that the existing section 112(g) permit terms and conditions satisfy the section 112(j) requirements, the requirements of section 112(j) are satisfied once the source's title V permit

is revised to reflect that the source's continued compliance with the section 112(g) MACT determination satisfies the requirements of section 112(j). If the permitting authority determines that the section 112(g) permit terms and conditions are not sufficient to satisfy the section 112(j) requirements, the source must proceed with submittal of a Part 2 MACT application.

Proposed application completeness provisions in § 63.52(e)(3) and (4) would provide that if the permitting authority fails to notify the source that the application is incomplete, in writing and within 60 days, the MACT application would be considered complete. A Part 2 MACT application is considered complete if the information is sufficient to begin or continue processing the application. Similarly, as provided in proposed § 63.52(e)(4), a completeness determination should not limit the permitting authority's ability to request additional information from the source owner or operator; such a request should receive a timely response.

We are proposing minor edits to § 63.52(c)(2) to use more generic terms when referring to the title V permit process. The use of these terms in this paragraph and throughout the rule is to ensure that the rules implementing the section 112(j) provisions of the CAA can be used in the context of the title V permitting process under parts 70 and 71.

Proposed amended § 63.52(e)(5) would clarify that, given timely submittal of a complete application, a failure to receive a permit under section 112(j) within 18 months would not be a violation of section 112(j).

We are proposing to retitle § 63.52(d) from ''Emission limitation'' to ''Permit content'' to more accurately reflect the contents of the section. In addition, we are proposing to clarify § 63.52(f) to ensure that the permit contains notification, operation and maintenance, performance testing, monitoring, and reporting and recordkeeping requirements consistent with the part 63, subpart A, General Provisions. In addition, proposed § 63.52(f)(2)(i) replaces the term ''Federal enforceability'' with ''practicable enforceability.'' The former term was borrowed from the EPA's June 28, 1989 **Federal Register** notice (54 FR 27274) on potential to emit. There, ''Federal enforceability'' was used as a short-hand reference to several attributes, including enforceability as a practical matter. Today's change would clarify the intent of this provision to ensure achievement of this goal.

We are proposing clarifications to make the compliance date for a new affected source the date of startup of the new affected source, as opposed to the date the title V permit is issued, as currently promulgated.

We are proposing § 63.52(f)(1) to implement the requirement for the permitting authority to include in each permit implementing section 112(j) the definition of affected source and new affected source arising from each case-by-case MACT determination. As discussed elsewhere, delineation of these terms is integral to the proposed changes to clarify the approval process for new and existing sources under the section 112(j) program.

We are proposing to add § 63.52(g) to clarify the dates by which a permit must be issued. In most cases, that date is within 24 months after submittal of the Part 1 MACT application. However, if the source's owner or operator requests an applicability or equivalency determination under proposed § 63.52(e)(2), the permitting authority must issue the permit within 18 months after receiving the Part 2 MACT application.

We propose to redesignate § 63.52(e) as § 63.52(h) and clarify its existing position on enhanced monitoring. In particular, we expect States to incorporate monitoring, recordkeeping and reporting mechanisms and other means of assuring compliance, such as posting all compliance reports on a publicly available electronic bulletin board, that comport with the enhanced monitoring approach in section 114(a)(3). This is the approach we endeavor to utilize in the development of new MACT standards under section 112(d). In many instances, this will require an improvement over existing compliance assurance provisions, if the source has such preexisting requirements, to provide the superior enforceability contemplated in the MACT program.

We are proposing to add § 63.52(i) to clarify for all affected sources which sources must comply with MACT for existing sources versus MACT for new sources. The application of new source MACT is limited to new affected sources, as defined in the title V permit addressing section 112(j) MACT emission limitations for those affected sources. This language reflects our proposed approach to implement the concepts of ''affected source'' and ''new affected source.''

For example, as currently promulgated, an existing area source could become a major source subject to new source MACT through the addition of a single piece or collection of equipment such that the source's potential to emit increases by only a small amount (e.g., from 9.9 tons/year to 10.1 tons/year). We agree with the petitioners that the possible costs and burdens faced by a source in this case could be unreasonable because the change in status could entail installation of new source MACT on existing equipment. Therefore, we are proposing to limit new source MACT to sources that become major emitters because they add a new affected source as defined by § 63.51; new source MACT would only apply to the new affected source. This approach is also consistent with the proposed definition of ''new affected source.''

D. Application Content

We are proposing to delete current § 63.53(a) because it is redundant given the provisions in § 63.55, which address MACT determinations for affected sources subject to case-by-case determination of equivalent emission limitations.

We are proposing to revise and move § 63.53(b) and proposing to add new § 63.53(b) to reflect the proposed change from a single MACT permit application due on the section 112(j) deadline to a 2-part MACT permit application due over a 6-month time period, as discussed in the previous section. However, the majority of currently required information is included in proposed new § 63.53(a) and (b).

Proposed § 63.53(a) describes the required content of the Part 1 MACT application, which includes basic information such as name, address, a brief description of the relevant major source, and an identification of the relevant source category and types of emission units belonging to the relevant source category. Sources for which a section 112(g) determination has been made should identify any relevant equipment or activities as well. The purpose of allowing the more streamlined Part 1 application at the section 112(j) deadline rather than a complete permit application is in acknowledgment that the source may require more time to compile the detailed information required for the permitting authority to make a MACT floor determination, and that the determination process is an iterative one with the permitting authority. The Part 1 application content is analogous to the § 63.9(b) initial notification content.

Proposed § 63.53(b) describes the contents of the Part 2 MACT application and lists additional relevant process, pollutant, and control information. Proposed § 63.53(b) incorporates the ''affected source'' language, where applicable. Requirements for new affected sources to report the expected

date of commencement of construction and the expected date of completion of construction were deleted because this information is irrelevant to the overall application review process. We are also proposing to add the phrase ''in the relevant source category'' in § 63.53(b)(1)(ii) to clarify that information is not required for HAP emissions from source categories other than the relevant source categories. We are also proposing to add the phrase ''estimated total uncontrolled and controlled emission rate'' to clarify that information on both uncontrolled and controlled emission rates is needed.

Proposed § 63.53(b)(1)(iii) language includes the phrase ''Federal, State, or local limitations or requirements'' to clarify the universe of potentially applicable requirements that could be considered by the permitting authority. Current § 63.53(b)(8), which includes a request for detailed capacity utilization information, would be eliminated because we believe this information would not be generally available at the time the permit application is due. However, the requirement to include information on uncontrolled emissions would be incorporated into the proposed § 63.53(b)(1)(ii) language. Similarly, we are proposing to delete the language regarding controlled emissions at maximum capacity from § 63.53(b)(9), but other required information would be retained in proposed § 63.53(b)(1)(iv) such as the requirement to include identification of control technology in place.

We are proposing to delete the current § 63.53(b)(10) requirement to include the MACT floor because the floor determination will be made by the permitting authority, thereby obviating the mandate for the source to report information on the floor to the permitting authority. This change is consistent with proposed changes to § 63.55, discussed in section III.F of this preamble. While a MACT floor determination is not required of the owner or operator, proposed § 63.53(b)(1)(v) would allow the owner or operator the option of recommending a MACT floor.

The information currently required in promulgated § 63.53(b)(11) through (13) would be retained in proposed § 63.53(b)(2), but only as optional information to be provided at the source's discretion. Proposed § 63.53(b)(1)(vi) mirrors the current § 63.53(b)(14) language allowing the permitting authority to request any other information reasonably needed in the permit application. The information provided under § 63.53(b)(1)(vi) is subject to the confidential business information protections provided under the CAA.

E. Preconstruction Review

We are proposing clarifying language to the introduction of § 63.54 to emphasize that the purpose of the section is to describe alternative review processes that the permitting authority may select from to make a MACT determination for new affected sources. We believe that preconstruction review, although optional in the context of section 112(j), is a useful tool for States and sources in making case-by-case MACT determinations for new affected sources. Therefore, we do not want to preclude the ability of the States to employ existing preconstruction review programs or to develop ''enhanced'' review programs using the § 63.54(b) optional administrative procedures for sources subject to the section 112(j) provisions.

We are proposing to delete § 63.54(e) and (f) because language in proposed § 63.52(f)(2)(iii) addresses the issues raised by these sections.

F. Enforcement Liability

Petitioners raised several questions regarding exposure to enforcement liability that relate to sources which have not been clearly identified as sources within the particular source category that are subject to section 112(j) requirements. We hope that all such questions of applicability for a source will be clarified before the section 112(j) permit application is due so that these issues will not arise. However, there may initially be a lack of clarity, and it is also possible that some applicability issues may not be resolved before a final section 112(d) MACT standard is issued. Accordingly, certain hypothetical situations are discussed below in order to provide guidance regarding our intent in implementing section 112(j).

The first situation involves a source that the permitting authority has identified in the section 112(j) process as not being a source covered by section 112(j). If a subsequently promulgated section 112(d) MACT standard clarifies that this source is indeed covered, does the source face liability for not complying with section 112(j) previously? We have concluded that such a source would not face any liability so long as it came into compliance with the section 112(d) standard as required, since it had no regulatory duty under section 112(j), and provided that the permitting authority actually identified the source in the section 112(j) process as not being a source covered by section 112(j).

A second situation involves a source that obtains assurance from the appropriate officials within the permitting authority that the source is not in the section 112(j) source category and is, thus, not covered by section 112(j). If a citizen disagrees and sues arguing that the source should be in the source category, what liability exposure does the source face? It is our position that the source should face no liability in such a circumstance, provided that the source did obtain assurances from the appropriate officials within the permitting authority that it is not in the section 112(j) source category. The source is only obligated to abide by the requirements under section 112(j) as articulated by the permitting authority. If a citizen wishes to assert that the section 112(j) applicability criteria are inappropriate, then the remedy is to convince or force the permitting authority to modify its regulatory requirements.

A third concern involves a situation where the permitting authority or EPA has not clearly defined the source category and the source does not submit an application by the deadline. If, however, the permitting authority later determines that the source is in the section 112(j) source category and, thus, an application is due, what enforcement liability does the source face for failing to submit the application by the deadline? Again, in all instances involving the section 112(j) program, either the permitting authority or the EPA should identify the source category with sufficient specificity to eliminate any such problem. But in case such a situation should arise, it is unreasonable to assert that a source is liable if the source was not provided sufficient notice that an application was due. In other words, the permitting authority and the EPA are responsible for defining the section 112(j) source category with sufficient clarity so that a source can reasonably determine whether it falls within that source category. Absent such clarity and adequate notice—provided within the original source category description, in subsequent EPA documents (either in the **Federal Register** or on EPA's Air Toxics Home Page, provided that specific notice is made in the **Federal Register** to the availability of such a document on the Air Toxics Home Page) or through subsequent notification by the permitting authority pursuant to proposed § 63.52(a)(2)—a source should not be liable for failing to submit a section 112(j) application. On the other hand, a source would be liable for failing to submit a section 112(j)

application if the section 112(j) source category was clearly defined.

G. MACT Determinations

In today's action, we are proposing to delete § 63.55(a) because it is redundant given the other changes proposed today, and it results in an unintended presumptive effect on the section 112(j) standard development process. For example, the contents of current § 63.55(a)(3) and (4) are found largely in the proposed Part 2 application requirements although the information may now be supplied on an optional basis unless specifically requested by the permitting authority. This movement from a requirement to an optional submission reflects the concept that the MACT determination process is iterative, and that the responsibility for determining MACT lies with the permitting authority.

We are proposing to delete § 63.55(a)(1) because it suggests that a proposed relevant emission standard is a presumptive MACT determination. While a proposed relevant standard should be given serious consideration in the MACT determination process, there have been instances where key elements of a proposed MACT standard change significantly between proposal and promulgation. Similarly, retaining the language in § 63.55(a)(2) would result in the presumptive use of any ''guidance or distributed information establishing a MACT floor finding for the source category or subcategory by the section 112(j) deadline.'' We agree that the quality of information embraced by this provision could vary widely and may not have been developed with the benefit of public notice and comment.

Proposed § 63.55(a) contains new language to ensure that there are no gaps in the MACT determination process between obtaining the application and making the determination. We are proposing to revise § 63.55(a)(2) and (3) to clarify that the MACT determination will be established according to the requirements of section 112(d)(3) of the CAA and based on available information. The revisions to the definition of ''available information,'' discussed in section III.B of this preamble, would ensure that the permitting authority has the needed information to make the MACT determination. The proposed deletion of the explicit consideration of ''information provided in public comments'' would eliminate redundant information. The section 112(j) process already requires the inclusion of provisions for notice and public comment. We are proposing to delete § 63.55(b)(4) and (5) consistent with deleting related requirements regarding the presumptive use of proposed rules and other MACT floor guidance in the current § 63.55(a)(1) and (2).

H. Case-by-case MACT Requirements After Promulgation of a Subsequent MACT Standard

Section 63.56 describes the case-by-case handling of requirements for determining equivalent emission limitations after promulgation of a subsequent MACT standard. We are proposing to amend § 63.56(a) to clarify the relevance of emission standards to affected sources. We are proposing to revise § 63.56(b) to clarify that the subsequently promulgated MACT standard will be incorporated into the title V permit upon its renewal. Section 63.56(b) would also assure affected sources that the period for compliance for existing sources would be no shorter than the time provided in the promulgated MACT standard.

We are proposing to amend the introductory text to § 63.56(c) by revising § 63.56(c)(1) and adding § 63.56(c)(2). Section 63.56(c)(1) would clarify that the permitting authority does not need to change the emission level in the permit to the promulgated MACT standard level of control if the level of control in the permit is substantially as effective as the level of control in the promulgated MACT standard. This language implements the concepts discussed in section IV.A of this preamble. We are proposing to add § 63.56(c)(2) to state that the permitting authority must not incorporate any less stringent emission limitation of the promulgated standard in the title V permit and may consider more stringent terms due to the requirements of section 112(d) and (h). This section precludes the possibility of sources being required to change previously approved control technologies when the ''new'' standard is found to be as substantially as effective as the previous MACT determination, but it also precludes sources from changing controls in the case the ''new'' standard is less stringent than the previous MACT determination. Taken together, § 63.56(c)(1) and (2) maintains the status quo of previous MACT determinations that are found to be substantially as effective as a subsequent MACT.

I. Section 112(j) Guidelines Document

We have published a guidance document titled ''Guidelines for MACT Determinations under Section 112(j),'' EPA 453/R–94–026, May 1994. The purpose of the document is to give permitting authorities additional guidance in making MACT determinations based on the principles established in proposed § 63.55. We have revised this document to incorporate relevant clarifications and revisions proposed today. The draft revised document is available on the TTN (**SUPPLEMENTARY INFORMATION**). Comments on the draft revised document should be submitted together with comments on today's proposed rule changes. The guidance document contains procedures for evaluating whether a control technology is consistent with the minimum requirements established in section 112(d) of the CAA. Because section 112(j)(5) requires that case-by-case MACT determinations be ''equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d),'' we believe that consideration of this guidance document is a crucial component of the section 112(j) case-by-case MACT determination process.

IV. Additional Issues

A. Discussion of the Relationship Among Requirements Under Section 112(d), (g), (h), and (j)

1. Background and Summary of Issue

One area of concern the petitioners identified involves the substantive relationship between a case-by-case MACT emission limitation issued under section 112(j) and a MACT standard subsequently issued under section 112(d) or (h). Petitioners are also concerned regarding the relationship between a case-by-case MACT determination under section 112(g) and a subsequently issued case-by-case MACT emission limitation under section 112(j), or MACT standard under section 112(d) or (h). In general, the petitioners believe that compliance with a case-by-case MACT determination should constitute compliance with a subsequent case-by-case MACT determination or MACT standard.

Throughout the development of the section 112 program, we have maintained as one of our primary goals consistency among the different section 112 requirements of the CAA. As stated in the final section 112(j) rule, ''EPA's primary goal is to create as much consistency as possible between case-by-case MACT determinations under section 112(j) and implementation of subsequent 112(d) standards * * * the agency intends to ensure the greatest possible consistency among section 112(d), (g), and (j) provisions.''

In general, we do not disagree with the petitioners in that if the four MACT standard setting provisions of the CAA

are appropriately implemented, they will be based on substantially similar types of information concerning emission controls and will reflect similar regulatory policies concerning the feasibility of further emission reductions. However, we do not agree that it would be appropriate to conclude that a previous case-by-case MACT limitation automatically satisfies subsequent section 112 MACT requirements.

With respect to the subsequent applicability of a section 112(d) or (h) standard or a section 112(j) MACT determination to a source for which a section 112(g) MACT determination has been made, this issue is resolved by the section 112(g) regulations and accompanying preamble, promulgated on December 27, 1996 at 61 FR 68399. Consistent with that **Federal Register** action, a source that receives a case-by-case MACT determination under section 112(g) must comply with the subsequent case-by-case MACT determination or MACT standard, although the source may have a period of up to 8 years to achieve such compliance. The subsequent case-by-case MACT determination or MACT standard may stipulate that compliance with the prior case-by-case MACT constitutes compliance with the subsequent determination or standard.

In general, we believe that requiring a source that has received a case-by-case MACT determination under section 112(g) to comply with subsequently adopted MACT requirements will not result in any inappropriate regulatory burden. This is primarily because we have required the implementation of section 112(g) only with respect to construction or reconstruction of major sources of HAP, and the resultant case-by-case determination would require new source MACT. Even though any section 112(g) MACT determination will incorporate MACT for new sources, the major source in question will likely be considered an existing source by the time of issuance of any subsequent MACT limitation for the source under section 112(j) or MACT standard applicable to the source under section 112(d) or (h).

We note that any case-by-case MACT limitation adopted for a source under section 112(j) will normally be made by the same permitting authority that would have issued any prior case-by-case MACT determination for the same source under section 112(g). We believe that it is appropriate to afford the permitting authority some discretion to consider the substantive adequacy of existing section 112(g) requirements when it makes a subsequent decision concerning the emission limitations required by section 112(j).

We believe that the concerns petitioners expressed are most significant in the context of a potential transition from a case-by-case MACT determination made by the permitting authority under section 112(j) for an individual source to a generally applicable MACT standard adopted by the EPA under section 112(d) or (h). Although the statutory criterion for establishing the subsequent standard under section 112(d) or (h) may be identical to the criterion governing the issuance of the case-by-case MACT determination under section 112(j), in practice there may be differences in the conclusions reached by the permitting authority and the EPA. Such differences could easily arise due to differing data bases, differing approaches to analysis of the same data, or differences in the form of the standard adopted. Thus, unless the permitting authority has some measure of discretion to reconcile the different regulatory outcomes, the potential exists for sources subject to a case-by-case MACT determination to be forced to take action to respond to control, monitoring, recordkeeping, and reporting requirements that differ from those required by a subsequent case-by-case MACT or generally applicable MACT standard, even though the results of the case-by-case requirements do not differ from the standard in any consequential way. We see this as an irrational outcome that would undermine effective and efficient environmental policy, and we do not believe that Congress intended substantial additional burdens to be imposed (e.g., capital investments in new emission controls) regardless of the significance of the resultant impact on actual emission reductions.

Accordingly, we are proposing two basic clarifications in which sequential MACT requirements under section 112(d), (g), (h), and (j) will be implemented by the responsible permitting authority. First, the permitting authority would adopt a prior case-by-case new source MACT determination for a process or production unit under section 112(g) as its case-by-case MACT limitation under section 112(j) for the same process or production unit if the permitting authority determines that the prior requirements are ''substantially as effective'' in controlling HAP emissions as the requirements which the permitting authority would otherwise have adopted under section 112(j). Similarly, if the permitting authority determines that the controls required by a prior case-by-case MACT limitation for a source under section 112(j) are ''substantially as effective'' in controlling HAP emissions as a MACT standard governing that same source subsequently promulgated under section 112(d) or (h), the permitting authority would construe compliance with the prior section 112(j) emission limitation as compliance with the promulgated standard and revise the operating permit accordingly. As explained below, we and the petitioners evaluated several approaches to define quantitatively the criterion ''substantially as effective'' and concluded that it is appropriate to leave it qualitative with substantial discretion vested in the permitting authority. Also as explained below, this discretion will be tempered by use of the title V process to ensure public, EPA, and affected State review of the permitting authorities' conclusions.

2. Legal Authority and Statutory Limitations

We believe that our authority to implement a policy that allows the permitting authority to use the ''substantially as effective'' test is supported by both the language of section 112(j) and the *Alabama Power* de minimis doctrine. The language in section 112(j) implies a measure of statutory flexibility with regard to this issue. The language in section 112(j)(6) states, ''* * * the Administrator (or the State) shall revise such permit upon the next renewal to reflect the standard promulgated by the Administrator providing such source a reasonable time to comply, but no longer than 8 years * * *'' We believe that this language requires the Administrator or State to consider the subsequent section 112(d) standard in revising the source's permit.

The de minimis doctrine set forth in *Alabama Power Co.* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1979), allows the EPA to promulgate a ''categorical exemption . . . as an exercise of agency power inherent in most statutory regimes'' if: (1) ''Congress has (not) been extraordinarily rigid,'' id. at 361; and (2) ''the burdens of regulation (would) yield a gain of trivial or no value,'' id., ''in the sense of furthering goals of the statute,'' *Sierra Club* v. *EPA*, 719 F.2d 436, 462 (D.C. Cir. 1983). We believe that both tests are met here. With respect to the first criterion, nothing in the language of section 112 (g) or (j), or the implementing regulations precludes the proposed approach. Under the second criterion, as explained above, the intent is that the permitting authority would be afforded discretion to find prior requirements to be ''substantially as effective'' as new requirements, unless

the new requirements would result in meaningful emission reductions over those achieved by the case-by-case determination.

Invocation of the de minimis doctrine is appropriate here for two reasons. First, the MACT requirements that are the subject of the comparison may not be in the same form, meaning it cannot strictly be said that compliance with one would necessarily entail compliance with the other. Today's proposal would allow a somewhat broader basis for analysis, one that focuses on the effect on emissions of the different determinations rather than strict compliance with specific control, monitoring, recordkeeping, and reporting requirements.

Secondly, the ''substantially as effective'' test contemplates that in some instances the prior MACT determination may not reduce HAP emissions as much as a subsequent case-by-case MACT determination or MACT standard. As the difference in emission reduction effectiveness increases between the prior and subsequent MACT requirements, it will be increasingly difficult for the permitting authority to find that the prior requirements satisfy the test of ''substantially as effective.''

3. Other Factors Considered

In addition to considering whether such a policy is supported by the Act, we considered several other factors in reevaluating our policy on this issue. These factors included: (1) The anticipated outcome among section 112 (d), (g), (h), and (j) requirements; (2) issues associated with quantifying exact equivalency; and (3) the public's input into source specific decisions.

To a large extent, we consider the MACT process replicable; that is, when the same question is asked, whether in the context of section 112 (g), (j), (d), or (h), the outcome will more often than not be substantially the same with the same environmental result.

We anticipate that in the vast majority of cases, section 112(g) new source MACT determinations will result in a level of control equivalent to or better than the level of control required by a subsequent section 112(j) case-by-case emission limitation or subsequent section 112 (d) or (h) MACT standard. In most cases, the process or production units required to meet new source MACT under section 112(g) will be subject to existing source MACT requirements under any subsequent 112(j) MACT limitation or promulgated subsequent section 112 (d) or (h) MACT standard. New source MACT under section 112(g) should rarely, if ever, be less stringent than existing source MACT under a section 112 (d) or (h) MACT standard or section 112(j) MACT emission limitation. We believe it is appropriate to afford the permitting authority some discretion to promote consistency in sequential case-by-case determinations under section 112 (g) and (j), but consider that appropriately made section 112(g) MACT determinations will rarely, if ever, present any potential conflict with subsequent MACT requirements.

We believe there are cases where two properly conducted MACT analyses could arrive at somewhat different conclusions. This situation is most likely to occur in source categories with relatively few sources that also exhibit some variability in their operations. Another scenario is where there is a significant body of data comprising the information to be considered in the MACT floor analyses and MACT analyses, and different regulators arrive at different conclusions. For example, a different outcome could be reached if one regulator bases a decision on the mean performance of a group of sources and another regulator uses the median performance. Similarly, different rounding techniques and other analytical decisions could result in somewhat different outcomes.

However, in most cases, the MACT determinations for emission limitations under section 112(j) and MACT standards under section 112 (d) and (h) should result in outcomes that are substantially equivalent. We believe that sufficient communication channels and information exist, such as MACT partnerships and the MACT database, that any required case-by-case determinations under section 112(j) should not be made ignorant of existing information. Although the availability of controls may change over time, we do not foresee a long period of time elapsing between adoption of any necessary section 112(j) MACT emission limitations and subsequent promulgation of a generally applicable MACT standard.

We evaluated several issues associated with determining equivalency among section 112 (d), (g), (h), and (j) MACT emission limitations. As a result, we concluded that the level of quantitative analysis required to show exact equivalency among standards that are different in such areas as the form, applicability, test methods, or technology can be a very difficult and resource intensive process. In addition, as noted above, we believe that exact equivalency is not required by the CAA or the *Alabama Power* de minimis doctrine.

Some examples will illustrate how different forms of a standard and different emission limits can still result in equivalent outcomes on a source-specific basis. The first example relies on the nature of flares as a control technology and the fact that we have determined that flares provide at least 98 percent efficient destruction of emission streams, provided that the flares and emission streams meet the flare specification criteria found at § 63.11(b) of the General Provisions. For example, the flares must be steam-assisted, air-assisted, or non-assisted, operated at all times, and operated with a flame present at all times. Flares must only be used with the net heating value of the gas being combusted at 11.2 megaJoules per standard cubic meter (MJ/scm) (300 British thermal units per standard cubic foot (BTU/scf)) or greater if the flare is steam-assisted or air-assisted; or with the net heating value of the gas being combusted at 7.45 MJ/scm (200 BTU/scf) or greater if the flare is non-assisted. Flares must also be designed to satisfy specific exit velocity constraints.

At least two scenarios could occur where a case-by-case MACT determination could appear to be less stringent on paper, but in reality would be ''substantially as effective'' as a subsequent MACT standard. For example, a MACT standard applicable to a given source could be an equipment standard requiring use of flares to ensure at least a 98 percent emission reduction. However, a case-by-case MACT could have required at least a 95 percent emission reduction, but examination of the individual source's permit revealed that the affected emission stream is ducted to a flare. It would be relatively simple to determine if the actual flare and emission stream would meet the flare specifications. If they meet the flare specifications, the ''difference'' in required control efficiencies is moot, because the design and operation of the control technology would drive the true performance level. Alternatively, the source could have elected to send the emission stream to an incinerator. Review of the incinerator design, combined with performance test data, would allow the permitting authority to determine whether the actual reductions are likely to achieve at least 98 percent efficiency.

The second example is based on the fact that the performance of some controls is variable and highly dependent on how they are operated. For example, condensation systems can be designed and operated to meet a fairly wide range of emission reduction scenarios. Condensation systems are

often selected as control devices because it is desirable to recover a product in the emission stream. The cost of operating the condensation system is largely driven by the temperature reduction necessary to condense the solvent-laden air to the dew point and the cost of purifying the condensate to obtain a usable product. To compare a case-by-case MACT determination based on a condensation system to a subsequent MACT standard requiring a specific level of control would require an engineering analysis of the system design, characterization of the emission stream, and the evaluation of test data. Depending on the outcome of this site-specific analysis, a finding that the initial MACT determination is ''substantially as effective'' as a subsequent MACT standard is entirely possible.

Given issues associated with quantifying exact equivalency, we see it as beneficial to focus the decision regarding the adequacy of a past MACT emission limitation on the actual emission reductions associated with that limitation, rather than on strict compliance with differing requirements. By evaluating the actual effect from both sets of requirements, the decision is focused on the practical benefit to the environment rather than an exercise in paperwork.

We are concerned about ensuring sufficient public input into decisions made concerning the substantive adequacy of a prior MACT emission limitation to satisfy subsequent requirements. Case-by-case MACT emission limitations under section 112(j) and MACT standards promulgated under sections 112 (d) and (h), and the implementation of these requirements through issuance of title V operating permits, all involve a process in which the public may participate. However, the issues in these proceedings are broader than whether a source's section 112(g) case-by-case MACT determination should be adopted under section 112(j), or a source's section 112(j) MACT emission limitation satisfies subsequent section 112 (d) or (h) requirements. Therefore, we believe it is necessary to assure that any determination by a permitting authority under the ''substantially as effective'' criterion will be adopted and implemented only after public and EPA review.

We believe that the permit review process in title V provides the best vehicle to satisfy this concern without adding additional burden to the source or the permitting agency. The proposal, therefore, would require that any such determination be made through a title V permitting action that involves all the elements required at permit issuance. The part 70 process should provide sufficient review by the public, EPA, and affected States to ensure that the test of ''substantially as effective'' is applied in a manner consistent with our stated legal and policy rationale.

4. Proposed Solution

We are proposing in today's amendments two basic clarifications to: (1) The process in which a case-by-case MACT determination under section 112(g) is replaced by a case-by-case MACT emission limitation under section 112(j), and (2) the process in which a generally applicable MACT standard promulgated under section 112 (d) or (h) is implemented for a source subject to a prior case-by-case MACT emission limitation under section 112(j).

We are proposing to amend § 63.1(e) of the General Provisions and §§ 63.52(a)(3), (b)(2), (e)(2)(ii), and 63.56(c)(1) of the section 112(j) rule. First, the permitting authority would adopt a prior case-by-case MACT determination for a process or production unit under section 112(g) as its case-by-case MACT limitation for the same process or production unit under section 112(j), if it determines that the prior requirements are ''substantially as effective'' in controlling HAP emissions as the requirements which the permitting authority would otherwise have adopted under section 112(j). Second, if the permitting authority determines that the requirements of a prior case-by-case MACT emission limitation for a source under section 112(j) are ''substantially as effective'' in controlling HAP emissions as a MACT standard subsequently promulgated under section 112 (d) or (h), the permitting authority would construe compliance with the prior emission limitation as compliance with the promulgated standard and revise the operating permit accordingly. In either case, the determination by the permitting authority would be subject, consistent with parts 70 and 71, to both public and EPA review (including EPA's opportunity to object) through its incorporation in the source's title V permit. If the source's current MACT determination is not ''substantially as effective'' as the new MACT requirements, then any permit must assure compliance with the subsequent MACT requirements.

In today's amendments, we are proposing that ''substantially as effective'' not be defined in a rigid manner, given the multitude of factors that go into determining MACT. Rather, permitting authorities must have sufficient latitude to make judgments—both qualitative and quantitative—as to whether a particular case-by-case MACT determination applies air pollution control requirements in a manner that achieves the overall environmental results of the particular section 112(d) standard.

The ''substantially as effective'' approach is based on the practicalities of developing MACT requirements in accordance with the statutory language and structure of section 112. Section 112 provides criteria for establishing MACT along with a minimum level of stringency, but is not so rigid as to consistently yield the same exact result by different decision makers. Section 112(d)(2) makes clear that MACT must be determined based on all relevant technical, economic and other factual circumstances of the particular manufacturing operations encompassed by a source category or subcategory (''* * * shall require the maximum degree of reduction in emissions * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements * * *''). Section 112(d)(3) addresses the minimum level of stringency required for new source standards (''* * * shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source'') and for existing source standards (''* * * shall not be less stringent, and may be more stringent than * * * the average emission limitation achieved by the best performing 12 percent of the existing sources * * * for categories or subcategories with 30 or more sources, or * * * the average emission limitation achieved by the best performing sources * * * for categories or subcategories with fewer than 30 sources''). In those instances where we have made a clear determination in a final section 112(d) or (h) standard regarding the applicable MACT floor for a category, a positive ''substantially as effective'' finding can be made if the permitting authority determines that a prior case-by-case MACT limitation under section 112(j) is ''substantially as effective'' in controlling HAP emissions, and the actual emission reductions achieved are consistent with the MACT floor determination.

While we do not intend to establish any mandatory criteria that would govern the ''substantially as effective'' determination by the permitting authority, we believe that it could be useful to establish some analytic benchmarks to guide the permitting authority in exercising its discretion. It

should be recognized at the outset that no one of these benchmarks would necessarily be dispositive on the ''substantially as effective'' judgment by the permitting authority, and other factors also might need to be considered depending on the particular manufacturing operation in question.

One benchmark is the difference in control equipment requirements and efficiencies between the two MACT requirements. On one hand, in those cases where a section 112(j) review leads to a decision not to further limit emissions, and a subsequently issued MACT standard requires significant emission reductions, there is little latitude to construe the prior section 112(j) outcome as ''substantially as effective'' as the promulgated standard. On the other hand, a difference in requirements such as types of control equipment and/or control efficiency levels would not preclude a ''substantially as effective'' judgment. For example, such a judgment might be reasonable where the section 112(j) determination: (1) Reflects a different compliance approach as compared with the section 112(d) standard, (2) mandates control equipment different from the section 112(d) standard that has benefits in terms of ''other nonair quality health and environmental impacts and energy requirements,'' or (3) combines control equipment requirements with work practices and/or pollution prevention measures not prescribed by the section 112(d) standard.

Another benchmark could be capital investments to comply with MACT requirements following the issuance of the prior case-by-case MACT determination. Such a benchmark would afford the permitting authority some latitude in those situations where a source has made significant expenditures in good-faith reliance on a case-by-case MACT determination. We believe that requiring the source to undertake such expenditures to meet subsequent section 112(d) MACT requirements, particularly where the differences in resultant control of HAP emissions are not significant, would be irrational. Arguably, this concern is not presented in instances where a source has not made any capital expenditures to come into compliance with the previous case-by-case MACT determination and would not be economically disadvantaged compared to other sources that must implement new controls.

We request comment on the ''substantially as effective'' approach and these benchmarks for evaluating a source's ''substantially as effective'' claim, and on our decision reflected in today's proposal to proceed with a flexible test that affords permitting authorities the latitude to exercise reasonable judgments—both quantitative and qualitative—in accordance with the statutory language and structure.

5. Timing and Implementation Issues

Another issue is when the ''hand-off'' occurs among the various section 112 program requirements. As discussed above, promulgated MACT standards replace section 112(j) and (g) determinations. Once section 112(d) or (h) requirements have been established for a given category or subcategory of sources, no subsequent actions under section 112(j) or (g) will be required because the section 112(d) or (h) requirements establish the requirements for that particular affected source. Of course, section 112(j) or (g) requirements could eventually be triggered for other operations at the facility in different categories or subcategories for which a section 112(d) or (h) standard has not been issued.

Because the length of time required to obtain a title V permit addressing section 112(j) emission limitations could be up to 24 months after the section 112(j) hammer date, and because process or production units meeting the section 112(g) threshold could be constructed after that date, we believe it is essential that section 112(g) MACT determinations continue to be made, even in cases where the source is in a category or subcategory for which the section 112(j) deadline has passed. Such sources would first obtain a MACT determination under the section 112(g) requirements, and then obtain a determination as to whether that MACT determination satisfies the section 112(j) requirements. As described above, we believe that, in the majority of cases, the section 112(g) requirements will be found to be substantially as effective as the section 112(j) requirements, and the permitting authority can then adopt the existing section 112(g) determination as its case-by-case new source MACT determination under section 112(j). In fact, since in this case the section 112(g) and (j) determinations would be essentially contemporaneous, the likelihood of a meaningful discrepancy would be further reduced. However, since the source must obtain the applicable case-by-case determination under section 112(g) before actual construction or reconstruction, a timely new source MACT determination will be assured.

6. Prohibition of Backsliding

This final issue concerns language in the existing section 112(j) rule, which would give the permitting authority discretion to relax applicable emission requirements when the level of control required for a source by an emission standard under section 112(d) or (h) is less stringent than the level of control required by a prior section 112(j) MACT determination for the same source. We have concluded that it is inappropriate to permit such ''backsliding'' in instances when more stringent emission controls have already been required by the permitting authority. Accordingly, we are proposing to amend the existing section 112(j) rule to provide that any more stringent emission limitations for a source previously adopted by the permitting authority under section 112(j) will continue to apply and must be retained by the permitting authority when it issues or revises a title V permit applicable to the source.

B. Potential to Emit

We are currently developing a separate rulemaking to address several potential-to-emit issues. That proposed rulemaking would amend the General Provisions. We will take final action on that separate proposal after receiving and considering public comments. Until we take final action on that future proposal, any determination of potential to emit made to determine a facility's applicability status under a relevant part 63 standard should be made according to requirements set forth in the relevant standard and in the promulgated General Provisions. Any determination of potential to emit should also take into consideration two EPA policy guidance memoranda, ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act,'' John S. Seitz and Robert I. Van Heuvelen, to Regional Offices, January 25, 1995; and ''Extension of January 25, 1995 Potential to Emit Transition Policy,'' John S. Seitz and Robert I. Van Heuvelen, to Regional Offices, August 27, 1997. Both of these policy memoranda can be found on EPA's Clean Air Act bulletin board under ''title V/policy guidance memos.''

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The 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 this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled, ''Federalism (64 FR 43255, August 10, 1999), requires 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'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national Government and States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national Government and States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The EPA recognizes that the provisions of the existing regulations governing case-by-case determinations by permitting authorities under CAA section 112(j), as set forth in 40 CFR part 63, subpart B, might be construed to have substantial effects on the distribution of responsibilities between the Federal Government, States, and localities. However, the revisions to the section 112(j) regulations set forth in today's proposal do not themselves have such effects. Thus, Executive Order 13132 does not apply to this rule.

Nevertheless, in the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA, State, and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

C. Executive Order 13084, Consultation and Coordination with Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. EPA developed this proposed rule, however, during the period when EO13084 was in effect; thus, EPA addressed tribal considerations under EO13084. EPA will analyze and fully comply with the requirements of EO 13175 before promulgating the final rule.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

D. 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, EPA 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 reasonably feasible alternatives that EPA considered.

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. This rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. Furthermore, this rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

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 by 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 objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows 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 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's 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 this proposed rule does 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. Because the regulatory revisions proposed here would clarify existing requirements and reduce regulatory burden, 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 proposed rule is not subject to the requirements of sections 202, 203, and 205 of the UMRA.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any proposed rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's amendments on small entities, small entity is defined as: (1) A small business as defined in each applicable subpart; (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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This analysis is not necessary for the General Provisions amendments, however, 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 is required 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 or prescribe the specific content of any case-by-case determination which might be made under section 112(j). Moreover, because the requirements of section 112(j) are only triggered in certain limited circumstances, it is not possible at this time to ascertain whether any determinations will be made under section 112(j) or whether any small business would be subject to such a determination. Finally, we note that we found that no regulatory flexibility analysis was required for the existing Section 112(j) rule, and the net effect of the proposed amendments to that rule will be to reduce potential regulatory burdens.

Pursuant to the provisions of 5 U.S.C. 605(b), I, hereby, certify that this proposed rule will not have a significant economic impact on a substantial number of small business entities. Under the RFA, an agency is not required to prepare a regulatory flexibility analysis for a rule that the agency head certifies will not have a significant economic impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis is not required and has not been prepared.

G. Paperwork Reduction Act

As required by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, the OMB must clear 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 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 a standard applicable to such category is promulgated.

The information collection requirements contained in the proposed amendments to the final Section 112(j) rule will be submitted to OMB for approval under the provisions of the PRA. The EPA has prepared an ICR document (ICR No. 1648.03), and you may obtain a copy from Sandy Farmer by mail at Office of Environmental Information, Collection Strategies Division (2822), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at 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 the proposed amendments to the final rule has an estimated nationwide recordkeeping and reporting burden of 319,305 hours ($40,032,198). The current ICR 1648–02 for the section 112(j) regulations was approved and covers the period from November 15, 1999 to November 15, 2001. The burden hours per occurrence for respondents has not changed. However, ICR 1648–02 spanned the period in which the section 112(j) rule would apply to any of the source categories covered by the MACT standards scheduled for promulgation by 1997. This ICR spans the period in which the section 112(j) rule would apply to any of the source categories covered by the MACT standards scheduled for promulgation by 2000, which is a different set of source categories. Therefore, because the number of respondents is different for this ICR, the burden estimated represents an increase of 299,562 hours from the currently approved ICR.

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.

H. National Technology Transfer and Advancement Act of 1995

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113), all Federal agencies are required to use voluntary consensus standards (VCS) 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 requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

These rules do not involve technical standards. Therefore, EPA is not considering the use of any VCS.

The proposed 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 proposed amendments to the section 112(j) rule, which establishes requirements and procedures for owner/operators of major sources of HAP and permitting authorities to follow if the EPA misses the deadline for promulgation of a section 112(d) standard, 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 VCS.

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: February 23, 2001.

Christine T. Whitman,

Administrator.

For the reasons cited in the preamble, part 63, title 40, chapter I of the Code of Federal Regulations is proposed to be 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 (8);

c. Removing and reserving paragraphs (a)(13) through (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 part 63 standard shall 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 part 60, part 61 or other part 63 standards, the relevant part 63 standard shall 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]

* * * * *

(13) [Reserved]

(14) [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 shall 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 shall 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 shall 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) and redesignating the flush paragraph to the end of 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,'' which will be the definition above unless a different definition is warranted based on a published justification as to why the definition above 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.

* * * * *

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. However, removal and reinstallation of an affected source will be construed as reconstruction if it satisfies the criteria for reconstruction set forth below.

* * * * *

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 Clean Air Act;

(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 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 (including opacity) measurements, operational parametric values that correspond to process or control device (and capture system) efficiency or emissions rates, and recorded findings of inspection of work practice activities or design characteristics. Indicators may be expressed as a single maximum or minimum value, a function of process variables (e.g., within a range of pressure drops), a particular operational or work practice status (e.g., a damper position, completion of a waste recovery task), or an interdependency between two or more 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. 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 63.4 is amended by:

a. Revising paragraph (a)(1);

b. Removing paragraphs (a)(3) through (a)(5);

c. Removing and reserving 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 shall 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]

(b) * * *

(3) [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. Owners and operators shall 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.

5. Section 63.5 is amended by:

a. Revising the section heading;

b. Revising paragraphs (a)(1) through (2);

c. Revising paragraph (b)(1);

d. Revising paragraphs (b)(3) through (4);

e. Removing and reserving paragraph (b)(5);

f. Revising paragraph (b)(6);

g. Revising paragraph (d)(1)(i);

h. Revising paragraph (d)(1)(ii)(B);

i. Revising paragraph (d)(1)(ii)(E);

j. Removing and reserving paragraph (d)(1)(ii)(G);

k. Revising paragraph (d)(2);

l. Revising paragraph (d)(3)(vi); and

m. Revising paragraphs (f)(1) through (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, paragraph (d), (f), or (h) of the Act, under this part, the preconstruction review requirements in this section apply to owners or operators 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 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:

(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, without obtaining written approval, in advance, from the Administrator in accordance with the procedures specified in paragraphs (d) and (e) of this section.

(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, shall notify the Administrator of the intended construction or reconstruction. The notification shall 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 shall 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 shall submit to the Administrator an application for approval of the construction or reconstruction. The application shall 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 shall 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 shall 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 shall include an estimated control efficiency (percent) for that method. Such technical information shall 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, demonstrates to the Administrator's satisfaction that the following conditions have been (or will be) met:

(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; and

(ii) In making its finding, the State has considered factors substantially equivalent to those specified in paragraph (e)(1) of this section.

(iii) [Reserved]

(iv) [Reserved]

(2) The owner or operator shall 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 shall 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.

6. Section 63.6 is amended by:

a. Revising paragraph (a)(1) introductory text;

b. Revising paragraphs (b)(1) through (b)(2);

c. Revising paragraph (b)(3)(i);

d. Revising paragraphs (b)(4) through (b)(5);

e. Revising paragraph (b)(7);

f. Revising paragraph (c)(2);

g. Revising paragraph (c)(5);

h. Revising paragraphs (e)(1)(i) through (ii);

i. Removing and reserving paragraph (e)(2):

j. Revising paragraphs (e)(3)(i) introductory text, (e)(3)(i)(A), (e)(3)(ii), the first three sentences of paragraphs (e)(3)(iii) and (e)(3)(v), revising paragraphs (e)(3)(iv), (e)(3)(vii)(B), (e)(3)(vii)(C), (e)(3)(viii) and adding paragraph (e)(3)(ix);

k. Revising paragraph (f)(1);

l. Revising paragraph (f)(2)(iii)(D);

m. Revising paragraph (f)(3);

n. Revising paragraph (h)(1);

o. Revising paragraph (h)(2)(iii)(C);

p. Revising paragraph (i)(4)(i)(B);

q. Revising the last sentence of paragraph (i)(4)(ii);

r. Revising paragraphs (i)(6)(i)(B)(*1*) and (*2*) and removing and reserving paragraphs (i)(6)(i)(C) & (D);

s. Revising paragraph (i)(12)(i)

t. Revising paragraph (i)(14); and

u. 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 owners or operators 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 shall 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 shall 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'' shall 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 shall 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 shall 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 shall comply with all requirements of that standard applicable to new sources. The source owner or operator shall 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 shall 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 shall 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, owners or operators shall 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 shall 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 shall 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 shall 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 shall 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, owners or operators 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 shall 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 shall 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 shall 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 shall record the actions taken for that event and shall 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 operator shall maintain at the affected source a current startup, shutdown, and malfunction plan and shall 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 shall maintain at the affected source each previous (i.e., superseded) version of the startup, shutdown, and malfunction plan, and shall 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 shall 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 shall 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; or

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

(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 shall 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 shall 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 shall 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 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

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 shall 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 effect 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 shall 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 effect 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 shall 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.

* * * * *

7. 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)(2);

d. Revising paragraphs (c)(3)(ii)(A) through (B);

e. Revising paragraph (c)(4)(i);

f. Revising paragraphs (e)(2)(i) through (iii)

g. Revising paragraph (f)(1);

h. Revising paragraphs (f)(2)(i) through (ii); and

i. 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 shall perform such tests within 180 days of the compliance date for such source.

(i)—(viii) [Reserved]

* * * * *

(b) * * *

(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 shall notify the Administrator as soon as practicable and without delay prior to the scheduled performance test date and specify the date when the performance test is rescheduled. This notification of delay in conducting the performance test shall not relieve the owner or operator of legal responsibility for compliance with any other applicable provisions of this part or with any other applicable Federal, State, or local requirement, nor will it prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(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 shall 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 shall analyze performance audit (PA) samples during each performance test. The owner or operator shall 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 to 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.

* * * * *

8. Section 63.8 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraphs (b)(1)(i) through (ii);

c. Revising paragraphs (b)(2)(i) through (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 shall 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 shall maintain and operate each CMS as specified in § 63.6(e)(1).

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

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

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

(ii) Unless the individual subpart states otherwise, the owner or operator

shall ensure the read out (that portion of the CMS that provides a visual display or record) 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 installed in accordance with the provisions of this part and the applicable CMS performance specification(s) shall 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 shall 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 must 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 shall be cleaned prior to performing the zero (low-level) and high-level drift adjustments; the optical surfaces and instrumental surfaces shall 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, 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall not be included in any data average computed under this part. For owners or operators 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.

9. Section 63.9 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraph (b)(2)(iv);

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

d. Revising paragraph (b)(4)(i);

e. Revising paragraph (b)(5);

f. Revising paragraph (h)(2)(i)(E);

g. Removing and reserving paragraph (b)(3); and

h. Removing and reserving paragraphs (b)(4)(ii) through (iii).

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) shall 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, or reconstruct a major 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) shall 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 shall 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);

* * * * *

10. 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);

d. Adding paragraph (e)(3)(i)(C); and

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 shall 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 shall 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) shall 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 shall 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.

* * * * *

(e) * * *

(3) * * *

(i) * * *

(C) The CMS data are to be used directly for compliance determination and the source experienced excess emissions, in which case quarterly reports shall be submitted. Once a source reports excess emissions, the source shall follow a quarterly reporting format until a request to reduce reporting frequency under paragraph (e)(3)(ii) of this section is approved.

* * * * *

11. 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]

12. Section 63.50 is amended by revising paragraph (a) and removing paragraph (c) to read 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) Owners or operators 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.

* * * * *

13. Section 63.51 is amended by:

a. Removing the definition of *emission point*;

b. Removing the definition of *emission unit*;

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

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

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

f. Removing the definition of *United States*;

g. Revising the introductory text of this section;

h. Amending the definition of *available information* by revising the introductory text and paragraphs (2) through (5);

i. Revising the definition of *enhanced review*;

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

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

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

m. Revising the definition of *similar source*;

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

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

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) including information in the MACT database.

* * * * *

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 (for which the Administrator has emissions information), * * *

(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 shall 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.

* * * * *

14. 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) through (3) 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, shall apply to such sources.

(1) The owner or operator shall 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 shall 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 of being notified in writing by the permitting authority that one or more sources at the major source belong to such category or subcategory. Such written notification shall be issued by the permitting authority within 120 days of the section 112(j) deadline.

(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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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, shall 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 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.

(4) After the effective date of this subpart, 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 shall 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 shall 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 shall submit an application for a revision to the existing title V permit that meets the requirements of § 63.53(a). The application shall be submitted within 30 days of beginning construction and 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.

(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 6 months after an owner or operator submits a Part 1 MACT application meeting the requirements of § 63.53(a), the owner or operator shall submit a Part 2 MACT application meeting the requirements of § 63.53(b). Part 2 MACT applications shall be reviewed by the permitting authority according to procedures established in § 63.55. The resulting MACT determination shall 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 shall comply with the applicable provisions of this subpart. The owner or operator shall submit a Part 2 MACT application within 6 months of 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) shall 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 shall 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 shall 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 shall 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 shall comply with the applicable provisions of this subpart. The owner or operator shall submit a Part 2 MACT application within 6 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 shall notify the owner or operator in writing whether the application is complete or incomplete. The Part 2 MACT application shall be deemed complete 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.

(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 shall 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 shall 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 shall 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 shall 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 shall be determined by the permitting authority and shall 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 shall 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 shall apply.

(2) The title V permit shall specify any notification, operation and maintenance, performance testing, monitoring, and reporting and recordkeeping requirements. In developing the title V permit, the permitting authority shall consider and specify the appropriate provisions of subpart A of this part. The title V permit shall 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 shall 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 shall 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 paragraph shall comply with a new source MACT level of control immediately upon startup of the new affected source.

(g) *Permit issuance dates.*

(1) Except as specified in paragraph (g)(2) of this section, the permitting authority shall issue a title V permit meeting section 112(j) requirements within 24 months of the submittal of the Part 1 MACT application, or

(2) The permitting authority shall issue a title V permit meeting section 112(j) requirements within 18 months of submittal of the complete Part 2 MACT application from a source owner or operator receiving a determination under paragraph (e)(2) of this section.

(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) Owners or operators of affected sources subject to paragraphs (a), (b), and (c) of this section shall 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) Owners or operators of new affected sources subject to paragraph (c)(1) of this section shall 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.

15. 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 shall 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 sources 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 shall contain the information in paragraphs (b)(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 piece of equipment or activity or source, 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 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 shall 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 shall 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.

16. Section 63.54 is amended by:

a. 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);

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 shall 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 shall 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 shall 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 shall be substantially equivalent to that found in § 70.7 of this chapter.

* * * * *

(d) *Review by the EPA and affected states.* The permitting authority shall 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 shall 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 shall 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 shall 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.

* * * * *

17. 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 shall 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 shall 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 shall establish these emissions

limitations consistent with the following requirements and principles:

(1) Emission limitations shall 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 shall 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 shall not be less stringent than the MACT floor which shall be established by the permitting authority according to the requirements of section 112(d)(3)(A) and (B) and shall be based upon available information.

(3) Each emission limitation for a new affected source shall 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 shall not be less stringent than the emission limitation achieved in practice by the best controlled similar source which shall be established by the permitting authority according to the requirements of section 112(d)(3). This limitation shall be based upon available information.

(4) The permitting authority shall 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 national data base.* The owner or operator shall 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.

18. 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 shall contain the promulgated standard rather than the emission limitation determined under § 63.52, and the owner or operator shall 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 shall incorporate requirements of that standard in the title V permit upon its next renewal. The permitting authority shall establish a compliance date in the revised permit that assures that the owner or operator shall 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 under this paragraph is approved under § 63.52 or § 63.54, and the level of control required by the promulgated emission standard is less stringent than the level of control required by any emission limitation in the prior MACT determination, the permitting authority shall not incorporate any less stringent emission limitation of the promulgated standard in the title V permit applicable to such source(s) and shall consider any more stringent provisions of the prior MACT determination to be applicable legal requirements when issuing or revising such a title V permit.

[FR Doc. 01–5251 Filed 3–22–01; 8:45 am]

BILLING CODE 6560–50–P