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40 CFR Part 63

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

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL –7498–8]

RIN 2060–AK52

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: In this action, we are adopting final amendments to the General Provisions for national emission standards for hazardous air pollutants (NESHAP) and to the rule which establishes criteria and procedures for equivalent emission limitations adopted pursuant to Clean Air Act (CAA) section 112(j). These final rule amendments establish a new timetable for the submission of section 112(j) Part 2 applications, which is based on the timetable we have agreed to follow for promulgation of the remaining NESHAP, and modify the content requirements for Part 2 applications. These final rule amendments also establish revised procedures for requests for applicability determination previously submitted under the section 112(j) rule, and for section 112(j) applications submitted by sources that previously obtained a case-by-case determination under CAA section 112(g). These final rule amendments also adopt various amendments to the NESHAP General Provisions governing startup, shutdown, and malfunction (SSM) plans, some of which were proposed by EPA pursuant to a settlement agreement in a judicial action concerning the prior amendments published on April 5, 2002.

EFFECTIVE DATE: May 30, 2003.

ADDRESSES: Docket No. OAR–2002–0038 (formerly A–2002–21) is located at the EPA Docket Center, EPA West, U.S. EPA (6102T), 1301 Constitution Avenue, NW., Room B–102, Washington, DC 20460.

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

SUPPLEMENTARY INFORMATION: *Docket.* We have established an official public docket for this action under Docket ID No. OAR–2002–0038. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Docket Access. You may access the final rule electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled ''Docket.'' Once in the system, select ''search,'' then key in the appropriate docket identification number.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's promulgated rule amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the rule amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

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

Industry Group: Source Category

Fuel Combustion

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

Non-Ferrous Metals Processing

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

Ferrous Metals Processing

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

Mineral Products Processing

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

Petroleum and Natural Gas Production and Refining

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

Liquids Distribution

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

Surface Coating Processes

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

Waste Treatment and Disposal

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

Agricultural Chemicals Production

Pesticide Active Ingredient Production

Fibers Production Processes

Acrylic Fibers/Modacrylic Fibers Production
Rayon Production
Spandex Production

Food and Agriculture Processes

Manufacturing of Nutritional Yeast
Cellulose Food Casing Manufacturing
Vegetable Oil Production

Pharmaceutical Production Processes

Pharmaceuticals Production

Polymers and Resins Production

Acetal Resins Production
Acrylonitrile-Butadiene-Styrene Production
Alkyd Resins Production
Amino Resins Production
Boat Manufacturing
Butyl Rubber Production
Carboxymethylcellulose Production
Cellophane Production
Cellulose Ethers Production
Epichlorohydrin Elastomers Production
Epoxy Resins Production
Ethylene-Propylene Rubber Production
Flexible Polyurethane Foam Production
Hypalon (tm) Production
Maleic Anhydride Copolymers Production
Methylcellulose Production
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production
Methyl Methacrylate-Butadiene-Styrene Terpolymers Production
Neoprene Production
Nitrile Butadiene Rubber Production
Nitrile Resins Production
Non-Nylon Polyamides Production
Phenolic Resins Production
Polybutadiene Rubber Production
Polycarbonates Production
Polyester Resins Production
Polyether Polyols Production
Polyethylene Terephthalate Production
Polymerized Vinylidene Chloride Production
Polymethyl Methacrylate Resins Production
Polystyrene Production
Polysulfide Rubber Production
Polyvinyl Acetate Emulsions Production
Polyvinyl Alcohol Production
Polyvinyl Butyral Production
Polyvinyl Chloride and Copolymers Production
Reinforced Plastic Composites Production
Styrene-Acrylonitrile Production
Styrene-Butadiene Rubber and Latex Production

Production of Inorganic Chemicals

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

Production of Organic Chemicals

Ethylene Processes
Quaternary Ammonium Compounds Production
Synthetic Organic Chemical

Miscellaneous Processes

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

Categories of Area Sources

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

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether you are regulated by this action, you should examine the section 112(d) regulation for your source category. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. Only source categories listed in Table 1 for which standards have not been promulgated are affected by the section 112(j) regulation.

TABLE 1.—SECTION 112(j) PART 2 APPLICATION DUE DATES

Due date	MACT standard
10/30/03	Combustion Turbines. Lime Manufacturing. Site Remediation. Iron and Steel Foundries. Taconite Iron Ore Processing. Miscellaneous Organic Chemical Manufacturing (MON) [1]. Organic Liquids Distribution. Primary Magnesium Refining. Metal Can (Surface Coating). Plastic Parts and Products (Surface Coating). Chlorine Production. Miscellaneous Metal Parts and Products (Surface Coating) (and Asphalt/Coal Tar Application—Metal Pipes) [2].
4/28/04	Industrial Boilers, Institutional/Commercial Boilers and Process Heaters [3] Plywood and Composite Wood Product Reciprocating Internal Combustion Engines [4] Auto and Light-Duty Truck (Surface Coating).
8/13/05	Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters [5] Hydrochloric Acid Production [6].

[1] Covers 23 source categories, *see* Table 2 of this preamble.
[2] Two source categories.
[3] Includes all sources in the three categories, Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters that burn no hazardous waste.
[4] Includes engines greater than 500 brake horsepower.
[5] Includes all sources in the three categories, Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters that burn hazardous waste.
[6] Includes furnaces that produce acid from hazardous waste at sources in the category Hydrochloric Acid Production.

TABLE 2.—MON SOURCE CATEGORIES

Manufacture of Paints, Coatings, and Adhesives.
Alkyd Resins Production.
Maleic Anhydride Copolymers Production.
Polyester Resins Production.
Polymerized Vinylidene Chloride Production.
Polymethyl Methacrylate Resins Production.
Polyvinyl Acetate Emulsions Production.
Polyvinyl Alcohol Production.
Polyvinyl Butyral Production.
Ammonium Sulfate Production-Caprolactam By-Product Plants.
Quaternary Ammonium Compounds Production.
Benzyltrimethylammonium Chloride Production.
Carbonyl Sulfide Production.
Chelating Agents Production.
Chlorinated Paraffins Production.
Ethylidene Norbornene Production.
Explosives Production.
Hydrazine Production.
OBPA/1,3-Diisocyanate Production.
Photographic Chemicals Production.
Phthalate Plasticizers Production.
Rubber Chemicals Manufacturing.
Symmetrical Tetrachloropyridine Production.

Judicial Review. The amendments to the General Provisions and the section 112(j) provisions were proposed on December 9, 2002 (67 FR 72875). Today's action announces EPA's final decision concerning the amendments. Under section 307(b)(1) of the CAA, judicial review of these amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by July 29, 2003. Under section 307(d)(7)(B) of the CAA, only those objections to this rule that were raised with reasonable specificity during the period for public comment may be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements that are the subject of today's final rule may not be challenged separately in civil or criminal proceedings brought by the EPA to enforce these requirements.

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

I. Background
A. General Provisions
B. CAA Section 112(j) Provisions
C. The Sierra Club Litigation
D. Review of Proposed Settlement Under CAA Section 113(g)
E. Proposed Rule
II. Final Amendments to the General Provisions
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B. Other Sections of the General Provisions
III. Final Amendments to the Section 112(j) Provisions
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B. New Schedule for Part 2 Applications
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D. Prior Section 112(g) Determinations
E. Later Part 1 Applications
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B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Background

A. General Provisions

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of hazardous air pollutants (HAP) and to establish NESHAP for the listed source categories and subcategories. Major sources of HAP are those that have the potential to emit 10 tons/yr or more of any one HAP or 25 tons/yr or more of any combination of HAP. Area sources of HAP are those sources that do not have potential to emit 10 tons/yr or more of any one HAP and 25 tons/yr or more of any combination of HAP.

The General Provisions in 40 CFR part 63 establish the framework for emission standards and other requirements developed pursuant to section 112 of the CAA. The General Provisions eliminate the repetition of general information and requirements in individual NESHAP by consolidating all generally applicable information in one location. They include sections on applicability, definitions, compliance dates and requirements, monitoring, recordkeeping and reporting, among others. In addition, they include administrative sections concerning actions that the EPA (or delegated authorities) must take, such as making determinations of applicability, reviewing applications for approval of new construction, responding to requests for extensions or waivers of applicable requirements, and generally enforcing national air toxics standards. The General Provisions become

applicable to a CAA section 112(d) source category rule when the source category rule is promulgated and becomes effective.

The NESHAP General Provisions were first promulgated on March 16, 1994 (59 FR 12408). We subsequently proposed a variety of amendments to that initial rule, based in part on settlement negotiations with industrial trade organizations which had sought judicial review of the rule and in part on our practical experience in developing and implementing NESHAP, also know as maximum achievable control technology (MACT) standards, under the General Provisions (66 FR 16318, March 23, 2001). We then promulgated final amendments to the General Provisions pursuant to that proposal (67 FR 16582, April 5, 2002).

B. CAA Section 112(j) Provisions

The 1990 Amendments to section 112 of the CAA included a new section 112(j), which is entitled ''Equivalent Emission Limitation by Permit.'' Section 112(j)(2) provides that the provisions of section 112(j) apply if 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.

We first promulgated a rule to implement section 112(j) on May 20, 1994 (59 FR 26429). We subsequently proposed a variety of amendments to that initial rule, based in part on settlement negotiations with industrial trade organizations which had sought judicial review of the rule and in part on our own further evaluation of the existing procedures (66 FR 16318, March 23, 2001). We then promulgated final amendments to the section 112(j) rule, along with our final amendments to the General Provisions (67 FR 16582, April 5, 2002).

C. The Sierra Club Litigation

We promulgated the final rule amending the NESHAP General Provisions and the requirements for case-by-case determinations under CAA section 112(j) on April 5, 2002 (67 FR 16582). The Sierra Club filed a petition seeking judicial review of that final rule on April 25, 2002, *Sierra Club* v. *U.S. Environmental Protection Agency,* No. 02–1135 (DC Circuit). The Sierra Club also filed a petition seeking administrative reconsideration of certain provisions in the final rule, pursuant to CAA section 307(d)(7)(B).

Shortly after the filing of the petition, EPA commenced discussions with the Sierra Club concerning a settlement agreement. We reached initial agreement with the Sierra Club on the terms of a settlement and lodged the tentative agreement with the court on August 15, 2002. Under the proposed settlement, we agreed to propose a rule to make specified amendments to the General Provisions and section 112(j) rules no later than 2 months after signature and to take final action on the proposed amendments within 7 months after signature.

D. Review of Proposed Settlement Under CAA Section 113(g)

As required by section 113(g) of the CAA, EPA published a notice in the **Federal Register** affording interested persons an opportunity to comment on the terms of the proposed settlement in *Sierra Club* v. *U.S. Environmental Protection Agency,* No. 02–1135 (DC Circuit) (67 FR 54804, August 26, 2002). In response to that notice, we received 110 timely comments, the vast majority of which opposed one or more provisions of the proposed settlement.

Virtually all of the commenters expressed concern about the practical consequences of a provision in the proposed settlement which required us to propose reducing the time between section 112(j) Part 1 and Part 2 applications from 24 months to 12 months. We agreed with the commenters that this approach would have resulted in wasteful expenditures by the applicants and the permitting agencies to prepare and to process applications which in all likelihood would never have been acted upon. Given the strong opposition to this approach reflected in the comments both by industry sources and organizations and by State and local permitting authorities, we were pleased when the Sierra Club agreed to discuss modifying the proposed settlement to establish an alternative timetable for submission of section 112(j) Part 2 applications.

The EPA and the Sierra Club then negotiated a revised settlement based on a new approach suggested by organizations representing State and local governments. In the revised settlement, we agreed to propose a schedule requiring that section 112(j) Part 2 applications for affected sources in those categories for which MACT standards were scheduled to be promulgated prior to May 15, 2002, be submitted by May 15, 2003, and section 112(j) Part 2 applications for all remaining source categories be submitted by 60 days after the scheduled promulgation date for the source category in question. We also agreed to propose the same amendments to the General Provisions concerning SSM plans which were set forth in the original settlement. The EPA and the Sierra Club executed a final settlement agreement in *Sierra Club* v. *U.S. Environmental Protection Agency,* No. 02–1135 (DC Circuit), and filed it with the court on November 26, 2002.

E. Proposed Rule

Following execution of the final settlement agreement, we published a proposed rule effectuating its terms (67 FR 72875, December 9, 2002). In addition to the proposed amendments required by the settlement, we also proposed to revise a new recordkeeping provision concerning SSM plans we adopted in the April 5, 2002 final rule, and we requested comment on issues presented by the section governing the content of section 112(j) Part 2 applications and on certain other sections in the NESHAP General Provisions we amended in the April 5, 2002 final rule.

We received 73 public comment letters in response to our proposal. We have carefully evaluated all of these comments and have modified the amendments we proposed in certain respects. Our responses to some of the major comments we received, and the decisions we have made concerning appropriate final amendments to the NESHAP General Provisions and the section 112(j) rule, are discussed in the sections which follow.

II. Final Amendments to the General Provisions

A. Startup, Shutdown, and Malfunction Plans

1. The General Duty To Minimize Emissions

We proposed revisions in the language in 40 CFR 63.6(e)(1)(i) to correct a potential problem in interpreting the relationship between the general duty to minimize emissions established by that section and the compliance of a source with its SSM plan. The section in question was modified in the April 5, 2002 final rule because the prior language appeared to impose on a source a general duty to further reduce emissions even when the source is already in full compliance with the applicable MACT standard. We deemed this result to be unreasonable and made corresponding changes in the language of the rule.

However, when we made that change, we inadvertently adopted some language which could be construed as contrary to the policies regarding the relationship between the general duty to minimize emissions and SSM plans which we stated in the proposal preamble for the preceding amendments. The SSM plans must be drafted in a manner which satisfies the general duty to minimize emissions (40 CFR 63.6(e)(3)(i)(A)). Thus, compliance with a properly drafted SSM plan during a period of startup, shutdown, or malfunction will necessarily also constitute compliance with the duty to minimize emissions, even though compliance with the MACT standard itself during a period of SSM may not be practicable. When we proposed the preceding amendments, we stated explicitly that ''* * * compliance with an inadequate or improperly developed SSM plan is no defense for failing to minimize emissions.'' (66 FR 16327, March 23, 2001).

The Sierra Club subsequently pointed out to us that the actual language of the section as promulgated could be construed to indicate that a facility that complies with its SSM plan—regardless of whether the plan is inadequate or improperly developed—thereby satisfies its general duty to minimize emissions. We did not intend this result. Such a construction could encourage abuse because SSM plans do not have to be reviewed or approved by the permitting authority before they take effect, and because such plans may also be revised by the owner or operator of the source without prior notice to the permitting authority. The revisions to 40 CFR 63.6(e)(1)(i) which we proposed in this rulemaking were intended to assure that this section would not be construed in this manner.

We received numerous comments from industry opposing the proposed revised language. In general, the commenters did not disagree with the general principles concerning the relationship between the general duty to minimize emissions and the compliance of a source with its SSM plan which we articulated in the proposal preamble. Rather, the commenters expressed concerns about the interpretation of the proposed language.

We believe that much of the concern expressed by the commenters is based on one alternative construction of the phrase ''to the levels required by the relevant standards,'' which replaced the phrase ''at least to the levels required by the relevant standards'' in several sections of the April 5, 2002 final rule. While we intended this phrase to mean that emissions must be minimized to the greatest extent which is practicable, unless and until the levels required by the applicable MACT standard are achieved, some commenters were concerned that this phrase would be construed to require that the standard be met at all times. While we believe that such a construction would be unreasonable in the context of the remainder of the rule, we do understand how the literal language could be construed in this manner. The parenthetical phrase which followed this language in one section of the April 5, 2002 final rule helped to mitigate the potential that readers might adopt this alternative construction. However, as we have explained, it also created the significant problem identified by the Sierra Club.

Many commenters suggested that we modify the language of the rule itself to more clearly establish those general principles which we stated in the proposal preamble. We agree with these commenters. Accordingly, we have adopted new language for § 63.6(e)(1)(i), which establishes the general duty to minimize emissions. This new language makes it clear that during a period of SSM, the general duty to minimize emissions requires the owner or operator to reduce emissions to the greatest extent consistent with safety and good air pollution control practices. However, during an SSM event, the general duty to minimize emissions does not require an owner or operator to achieve the levels required by the applicable MACT standard at other times, or to make further efforts to reduce emissions if such levels have been successfully achieved.

Rather than restating these principles in other sections of the rule, we have instead cross-referenced the revised language of § 63.6(e)(1)(i) in § 63.6(e)(3)(i)(A) and § 63.6(e)(3)(vii)(B). This assures that the same principles concerning the duty to minimize emissions will also be applied in the drafting of an SSM plan and in determining whether a particular SSM plan requires revision. We believe that this combination of amendments is responsive to the concerns expressed by the industry commenters. However, it also achieves our original purpose by assuring that a source will not be considered to have satisfied the duty to minimize emissions merely because it has complied with the provisions of an inadequate SSM plan.

We note that the Sierra Club argued in its comments that the whole concept that a MACT standard does not apply during periods of SSM has a questionable legal basis, and that any exemption for such activities should be strictly limited to those instances where violation of emission limitations is ''unavoidable.'' We believe that we have discretion to make reasonable distinctions concerning those particular activities to which the emission limitations in a MACT standard apply, and we, therefore, disagree with the legal position taken by the Sierra Club. However, we note that the general duty to minimize emissions is intended to be a legally enforceable duty which applies when the emission limitations in a MACT standard do not apply, thereby limiting exceedances of generally applicable emission limitations to those instances where they cannot be reasonably avoided.

The general duty to minimize emissions requires that owners or operators review their SSM plans on an ongoing basis and make appropriate improvements to assure that excess emissions are avoided. Our experience in another regulatory context illustrates how sources and regulatory authorities can work together to improve procedures for SSM events. We have been working with the petroleum refining industry to reduce the number and significance of refinery acid gas flaring episodes, and a refinery flaring reduction protocol has now been implemented at about 35 refinery facilities nationwide. The protocol helps sources to determine the root cause of certain flaring events, determine the corrective action(s) for such problems, and then to implement the corrections.

Use of this protocol has resulted in a dramatic drop in the number of SSM events. For example, one company reduced the percentage of time in flare at its refineries (including all startup, shutdown, maintenance, upset activities) from 29.0% in 1998 to 1.6% in 2002. The EPA intends to develop guidance this year that will highlight the best practices that have been implemented by various refiners around the country to improve their response to SSM events. We believe that the experience we have gained in this process may also be beneficial to other facilities as they work to improve the quality and comprehensiveness of their SSM plans.

2. Public Access to SSM Plans

We also proposed some changes to 40 CFR 63.6(e)(3)(v), the section that governs submission of SSM plans to the EPA Administrator, and to the State or local permitting authorities which operate as the Administrator's designated representatives. That section provides that the current SSM plan must be made available upon request to the Administrator for ''inspection and

copying.'' The ''Administrator'' is defined to include a State which has received delegation and is therefore the Administrator's ''authorized representative'' (40 CFR 63.2).

We stated in the proposal preamble for the previous rulemaking (66 FR 16326, March 23, 2001) that the permit writer or the Administrator may also require submission of the SSM plan. However, Sierra Club observed during settlement discussions that the rule as amended in April 5, 2002 did not expressly require that SSM plans be submitted to the Administrator or to the permitting authority upon request.

Because SSM plans are required for facilities subject to CAA section 112, they clearly are covered by CAA section 114(a). Therefore, to address the concern expressed by Sierra Club, we have revised the rule to make it clear that the owner or operator of an affected facility is required to submit its SSM plan to the Administrator or the permitting authority upon request. We also note that SSM plans are considered to be submitted to the Administrator under CAA section 114 even if they are submitted to a State or local agency acting on the Administrator's behalf (40 CFR 2.301(b)(2)). Under CAA section 114(c), any plan that is submitted to EPA or the permitting authority must also be made available to the public, unless the submitter makes a satisfactory showing that disclosure would divulge methods or processes that are entitled to protection under the Trade Secrets Act, 18 U.S.C. 1905.

During settlement discussions, the Sierra Club also expressed concern that some permitting authorities might not construe the rule to require that an SSM plan be obtained from the affected source when it is requested by a member of the public. We agreed to propose some revisions to the rule to facilitate better public access. We proposed to require sources to submit a copy of the SSM plan to the permitting authority at the time it is first adopted and each time it is subsequently revised.

Many commenters vigorously opposed these proposed amendments. A number of industry commenters argued that there is no general obligation to provide public access to SSM plans, and that only those plans that the States or EPA actually elect to obtain from the sources must be made available to the public. These commenters argued that EPA has incorrectly construed the SSM plan as an integral part of the permit documentation that must be made available to the public under CAA sections 114(c) and 503(e).

Industry commenters also argued that requiring routine submission of SSM plans would be very burdensome for sources, because SSM plans are often fully integrated into other operating procedures at a source, and production of a complete SSM plan might, therefore, require copying and compilation of other documents. Commenters also expressed concern about the burden on sources associated with identification and segregation of claimed Confidential Business Information (CBI), and the danger that permitting authorities might inadvertently disclose such information. Commenters also argued that routine submission of SSM plans would be burdensome for the permitting authorities.

A number of commenters suggested that appropriate public access to SSM plans could be assured by a less burdensome approach, focusing on the specific problems with the current rule that we identified in the proposal. Some commenters suggested that EPA could adopt new regulatory language specifically requiring sources to submit SSM plans when requested by the permitting authority. Others suggested that EPA provide clearer guidance to permitting authorities indicating that they are responsible and have the authority to obtain SSM plans when requested by the public. We think that these ideas are constructive.

We acknowledge that adopting a requirement that copies of SSM plans be routinely submitted to the permitting authorities would be burdensome. In particular, we think that significant resources would be expended on the process of identifying and segregating claimed CBI in each plan. We also acknowledge that the proper maintenance of these extra records would necessarily involve additional resource expenditures by the permitting authorities.

We have concluded that these additional burdens are not necessary to assure appropriate public access to SSM plans. As suggested by some commenters, we have decided instead to adopt a less burdensome approach tailored to the specific problems we identified in the proposal.

We believe that SSM plans will be most effective in minimizing emissions during periods of startup, shutdown, or malfunction if they are fully integrated with the detailed process and operating procedures of a facility. We also recognize that these types of procedures may contain trade secrets and other sensitive information, and that the integration of SSM plans with these other procedures may make it more difficult and costly for a facility to redact them in a way that would be suitable for public disclosure. We do not wish to discourage facilities from integrating SSM plans with other procedures.

On the other hand, we recognize that there will sometimes be substantial public interest in the details of SSM plans. There is increasing concern about emissions that may occur during a period of startup, shutdown, or malfunction. In addition, SSM plans may include basic information about when the emission limitations in a MACT standard apply to a particular facility and when they do not. To strike the right balance between public disclosure and the need to make SSM plans comprehensive and effective, we have adopted the following approach in this final rule.

First, we believe that the permitting authorities, acting on behalf of the public, can and should play the primary role in reviewing SSM plans and ensuring that affected sources take the necessary steps to minimize emissions during periods of startup, shutdown, or malfunction. We know that some permitting authorities review these plans during the process for initial permit issuance. In other instances, we expect that permitting authorities will review SSM plans in conjunction with inspections and other site visits, when they can more readily observe how the SSM plan relates to other operational procedures at the facility. In addition, under the language we are adopting, owners or operators must promptly submit a copy of any SSM plan (or any portion thereof) maintained at the affected source if requested by the permitting authority.

If a member of the public wishes to review the SSM plan for a particular facility, or a specific portion of that plan, he or she can ask that the permitting authority request the plan from the facility. We are also adding language requiring that the permitting authority request that the owner or operator submit to the permitting authority a particular SSM plan (or the relevant portion thereof) whenever a member of the public makes a specific and reasonable request to examine or receive a copy. Upon receipt of such a request, the permitting authority should take prompt action to make the plan available to the requestor. We also expect that, upon receiving a request that is insufficiently specific or may be overly broad, the permitting authority will work with the requestor to clarify the request and to assure that it is focused on the requestor's specific needs or interests.

As in our proposal, the owner or operator may elect to submit the

requested SSM plan in an electronic format, and any portion of the plan that is claimed to be CBI entitled to protection under CAA section 114(c) or the Trade Secrets Act must be clearly designated in the submission. Moreover, we want to encourage all parties to adopt procedures for providing public access to SSM plans which avoid unnecessary burdens or delays. Therefore, if an owner or operator and a requestor both agree that it would be more expedient or convenient for the requestor to examine the SSM plan (or a portion thereof) at the facility where it is maintained, this approach could be utilized instead of requiring submission of the SSM plan to the permitting authority. This on-site inspection procedure would be most practicable in those instances where the owner or operator has concluded that it is not necessary to redact claimed CBI when the plan is being examined at the facility that maintains it.

We think this approach assures appropriate public access to SSM plans, but dramatically reduces the aggregate expenditure of resources by sources and permitting authorities. We recognize that this approach could result in some additional delay before a member of the public could obtain a copy of the non-confidential portions of an SSM plan. However, we think that requiring routine submission of every SSM plan, without regard for whether any member of the public will ultimately seek access to it, involves a resource burden which is disproportionate to the time which may be saved when a specific plan is actually requested by a member of the public.

As for the concern of some commenters that claimed CBI information might be inadvertently disclosed, we think this is less probable when SSM plans must be submitted only on demand rather than routinely. If a submitter knows that the non-confidential portions of a plan will definitely be disclosed, we believe the submitter will be more likely to do a good job of segregating claimed CBI and preparing to properly substantiate its claim.

Some commenters expressed concern about the Homeland Security implications of public access to SSM plans. It may be that some information in a particular SSM plan could be sensitive from a Homeland Security perspective. In most instances, we think that such sensitive information would also be entitled to confidential treatment under CAA section 114(c). However, we note that the entire Federal government is presently reviewing public access requirements to assure that they are compatible with Homeland Security, and it is possible that we may in the future propose other changes in public access to SSM plans as part of this important effort.

3. Reporting Requirements

During the April 5, 2002, rulemaking concerning revisions to the General Provisions and section 112(j) rules, we received a comment from representatives of the State and local permitting authorities indicating that it would assist them in performing their oversight function if facilities were required to include the number and a description of all malfunctions that occurred during the prior reporting period in the required semiannual report. In response to that comment, we added a new reporting obligation to the language governing periodic SSM reporting in 40 CFR 63.10(d)(5)(i). However, the language we added was not limited to malfunctions and required that the facility report ''the number, duration, and a brief description of each startup, shutdown, and malfunction.'' We later concluded that the inclusion of startups and shutdowns in this reporting requirement was unnecessary and burdensome, and we proposed to delete these events from this provision.

Many commenters supported that proposal. The Sierra Club opposed the deletion of startups and shutdowns from this reporting requirement, arguing that sources might improperly define events as startups and shutdowns. We consider this type of abuse unlikely, and we do not believe in any case that the routine reporting of all startups and shutdowns would be particularly helpful in preventing it.

In some industries, startup and shutdown events are numerous and routine. So long as the provisions of the SSM plan are followed, there does not appear to be any real utility in requiring that each individual startup and shutdown be reported or described. As many commenters noted, in those instances where a startup or shutdown includes actions which do not conform to the SSM plan and the standard is exceeded, the facility is otherwise required to promptly report these deviations from the plan.

Some commenters objected to our retention of the new malfunction reporting requirement. These commenters argue that a requirement to report all malfunctions is duplicative of other requirements, except in those instances where an SSM plan was followed during an event and no excess emissions occurred. We do not agree with these commenters that the malfunction reporting requirement should be entirely eliminated, but we have concluded that its scope can be narrowed.

With respect to malfunctions, the rule expressly requires that the SSM plan must be revised by the facility if there is an event meeting the characteristics of a malfunction which is not addressed by the plan (40 CFR 63.6(e)(3)(vii)). At the time of proposal, we believed that reporting of all malfunctions is necessary to assure that this requirement is satisfied. However, after reviewing the comments and evaluating this issue in the context of the rule as a whole, we believe that the problem of identifying new kinds of malfunctions which would require revision of the SSM plan is adequately addressed by other provisions in the rule. If a type of malfunction is not addressed by the current SSM plan, we believe that any actions taken during such a malfunction cannot be reasonably construed as actions consistent with the plan and that such actions would otherwise be reportable under § 63.10(d)(5)(i) or § 63.10(d)(5)(ii). We discuss these reporting provisions further below.

However, we also agree with a comment by the Sierra Club that reporting of malfunctions would help permitting authorities determine whether sources are attempting to circumvent the standard by improperly defining events as malfunctions. To prevent this type of potential abuse, we do not think that all malfunctions need to be reported. Rather, we think this problem can be addressed by requiring that the affected source report only those malfunctions which occurred during the reporting period and which caused or may have caused an emission limitation in the relevant standard to be exceeded. Thus, we have decided to retain the requirement that the owner or operator report malfunctions in the periodic report, but to limit its scope to those malfunctions which caused or may have caused an emission limitation in the relevant standard to be exceeded.

Moreover, we stated in the proposal that minor or routine events that do not have a significant impact on the ability of a source to meet the standard need not be classified as a malfunction, addressed by the SSM plan, or included in periodic reports. We think there is no reason to classify an event as a malfunction if it does not cause, or have the potential to cause, the emission limitations in an applicable standard to be exceeded.

A number of commenters requested that we make this policy clear in the regulatory language, rather than only in the preamble. These commenters

suggested that the definition of malfunction could be revised to accomplish this. We think this is a good idea, and we have revised the definition accordingly. We think that this change will make it clear that events that do not cause, or have the potential to cause, emission limitations in an applicable standard to be exceeded need not be included either in the SSM plan or in periodic malfunction reports.

We note that 40 CFR 63.10(d) describes two distinct types of SSM reports. Periodic SSM reports are submitted on a semiannual basis and are described in § 63.10(d)(5)(i). Immediate SSM reports which are triggered by a particular event, and which require an oral or facsimile report within 2 working days and a written report within 7 working days, are described in § 63.10(d)(5)(ii). During our review of the comments concerning the various SSM reporting provisions, we realized that there is an unresolved conflict between an amendment we made in the April 5, 2002 final rule and the language of 40 CFR 63.10(d) as it is currently codified. Although we amended 40 CFR 63.6(e)(3)(iv) to limit the immediate reporting obligation for actions which are not consistent with the SSM plan to those instances where the source exceeds the relevant emission standard, we did not make a similar conforming change in 40 CFR 63.10(d)(5)(ii). This discrepancy was also specifically identified by one commenter. We are amending § 63.10(d)(5)(ii) to correct this problem.

We are also making another conforming amendment in § 63.10(d)(5)(i). Since immediate reports of actions not consistent with the SSM plan are not required if the emission limitations in the standard are not exceeded, we believe that the periodic SSM report should identify any instances in which actions taken were not consistent with the plan but no emission limitations were exceeded.

4. Correction of Plan Deficiencies

We proposed another small change to 40 CFR 63.6(e)(7). The rule as amended in April 5, 2002 provides that EPA or the permitting authority ''may'' require that an SSM plan be revised if certain specified deficiencies are found. In the proposal, we stated that we could not foresee any circumstance where revision of an SSM plan should not be mandatory if it has been specifically found to be deficient under one of the criteria set forth in this section. Therefore, we proposed to change the language to make such revisions mandatory rather than discretionary.

Some commenters objected to this proposal, but their principal concern was that the criterion requiring the SSM plan to satisfy the duty to minimize emissions might be interpreted in a manner contrary to the other general principles we have articulated. We believe this concern is fully resolved by the amendments to the provisions concerning the general duty to minimize emissions which we are adopting and described above.

Some commenters also argued that the current practice of giving permitting authorities discretion concerning whether to require changes in an SSM plan works well, and there is no reason to change it unless a problem can be demonstrated. We find this argument unpersuasive. If a permitting authority has specifically found that a plan is deficient according to one of the criteria, we see no reason why it should not be mandatory for corrective action to be taken.

B. Other Sections of the General Provisions

1. Monitoring Definition

During the April 5, 2002, rulemaking, one commenter suggested that we revise the definition of ''monitoring'' in 40 CFR 63.2 to include the phrase ''or to verify a work practice standard.'' There are times when we must adopt a work practice standard under CAA section 112(h) rather than an emission standard under CAA section 112(d), and compliance with such a work practice standard is sometimes verified by activities which are similar in character to those required to monitor compliance with an emission standard. Therefore, we thought that the suggested revision was a sensible one. However, because the additional language was not originally proposed by EPA, we decided to take additional comment concerning this language.

One industry commenter supported the revised monitoring definition. Other commenters expressed concern that the revised definition could make changes in work practice verification a significant permit modification, or that the revised definition might require verification of work practices beyond the procedures specified in a particular MACT standard. We do not intend either of these results, and we are not persuaded that the revised definition will cause either of these problems. Therefore, we have retained the revised definition without change.

2. Combined Compliance Reports

In the April 5, 2002, rulemaking, we also made a small change in the language of 40 CFR 63.9(h)(2)(ii), by adding the phrase ''(or activities that have the same compliance date)'' in response to a industry commenter. The commenter was concerned that separate compliance reports might be required for compliance obligations that have the same date and requested the option of filing a single compliance status report covering multiple compliance obligations. Because the new language we adopted was not originally proposed by EPA, and some questioned whether it clearly achieved the intended purpose, we decided to request additional comment concerning this revision and potential alternatives.

All commenters on this change agreed with our original intent in making the change, but some commenters suggested that the language is confusing and proposed alternative language. We have adopted new language for § 63.9(h)(2)(ii) which is similar to the alternative language suggested by one of these commenters.

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

A. General Applicability

In the proposed rule, we stated our intent to include new language concerning general applicability in the final amendments to the section 112(j) rule. We proposed to state explicitly that no further process to develop a case-by-case MACT determination under section 112(j) is required for any source once a generally applicable Federal MACT standard governing that source has been promulgated. In our view, it is obvious that no further process to implement section 112(j) with respect to a particular source is required or appropriate once a Federal standard governing that source has been promulgated under CAA section 112(d) or 112(h). All commenters who addressed this issue supported our proposal. A new paragraph effectuating it has been added to the general applicability provisions as 40 CFR 63.50(c).

Just as it is obvious that all activities to develop an equivalent emission limitation under CAA section 112(j) should end following promulgation of a generally applicable Federal standard, it is also clear from the statutory language that any final equivalent emission limitation which may be issued prior to adoption of such a standard is itself an enforceable Federal requirement, which remains in force until revised or supplanted pursuant to section 112(j)(6) and 40 CFR 63.56. Although it is clear from the statute that permitting authorities are expected to utilize the

title V permitting procedures to adopt and issue an equivalent emission limitation under section 112(j), it is also clear that the authority to establish and require compliance with such a limitation is provided by section 112(j) itself rather than title V. Section 112(j)(4) requires that each equivalent emission limitation be submitted for review and approval by EPA under the procedures established by CAA section 505, and upon final adoption at the time of permit issuance such an equivalent emission limitation is a binding order which may be enforced directly under Federal law. An equivalent emission limitation takes effect upon issuance of the permit containing it under section 112(j)(5), and it remains applicable to the source until it is revised or superceded, regardless of the subsequent status of the permit in which it was initially contained. For the sake of clarity, we have included additional general applicability language in 40 CFR 63.50(d) which embodies these principles.

B. New Schedule for Part 2 Applications

Under our final settlement agreement with the Sierra Club, we proposed to replace the existing schedule for submission of section 112(j) Part 2 applications (also referred to as Part 2 MACT applications or simply Part 2 applications), under which most Part 2 applications would have been due on May 15, 2004, with a new schedule establishing a specific deadline for submission of all Part 2 applications for all affected sources in a given category or subcategory. With respect to those categories or subcategories for which MACT standards are scheduled to be promulgated after this rulemaking is complete, we proposed specific Part 2 application deadlines which are 60 days after each respective scheduled promulgation date. For those categories or subcategories for which MACT standards were scheduled to be promulgated while this rulemaking was pending, we proposed a Part 2 application deadline of May 15, 2003. However, because all of the standards scheduled to be promulgated during this rulemaking process have in fact been promulgated, there is no need to take any further action concerning the proposed Part 2 application deadline for those categories.

We note that commenters were generally supportive of the new approach to scheduling of section 112(j) Part 2 applications which we proposed. We agree with commenters that the proposed schedule will permit us to avoid a wasteful expenditure of public and private resources, so long as there are no further delays in promulgation of the remaining MACT standards. We note also that the prompt and significant consequences if a promulgation deadline is missed will create new incentives for EPA and the other stakeholders to assure that the agreed promulgation deadlines are met.

The Part 2 application deadlines which we proposed for each category or subcategory were based on a separate agreement in principle we had reached with the Sierra Club on a schedule for promulgation of all remaining MACT standards which were included in the original schedule established pursuant to CAA section 112(e)(1) and 112(e)(3). While this rulemaking was pending, this agreed schedule was incorporated in a proposed consent decree and filed in *Sierra Club* v. *Whitman,* 01–1337 (D.D.C.). On March 27, 2003 (68 FR 14976), we published a notice pursuant to CAA section 113(g) affording interested persons 30 days to submit comments concerning the proposed consent decree. We have now reviewed all timely comments received concerning the proposed consent decree and have determined that there is no basis at this time for modification of the schedule incorporated in that decree.

We note that many commenters on this rulemaking opposed the promulgation schedule for particular MACT standards. We received comments arguing that the promulgation schedule should be extended for the MACT standards for Brick and Structural Clay Products, Combustion Turbines, Iron and Steel Foundries, Taconite Iron Ore Processing, Miscellaneous Organic Chemical Manufacturing (MON), and Metal Can Surface Coating. We understand why these comments were submitted on this rulemaking since the notice providing an opportunity to comment on the proposed consent decree had not been published at the time they were submitted. However, we also believe that the most appropriate context for consideration of these comments is the review of the proposed consent decree under CAA section 113(g). Accordingly, we have deemed all comments submitted on this rulemaking concerning the schedule for promulgation of particular MACT standards to also be comments concerning the proposed consent decree in *Sierra Club* v. *Whitman.* Although some commenters complained that they were denied due process or otherwise prejudiced by the failure of EPA to provide a comment opportunity concerning that consent decree, these objections are now moot in view of the fact that their comments have been considered both in this rulemaking and as part of the section 113(g) process.

In general, we believe that it is incumbent on EPA to issue all MACT standards for which the mandatory statutory promulgation date has already passed as rapidly as is practicable. We also believe that EPA is in the best position to evaluate those tasks that remain and the resources that are available to accomplish those tasks and then to establish an appropriate schedule for promulgation of overdue standards. We respectfully disagree with those commenters who argue that EPA will be unable to adhere to the agreed schedule for promulgation of particular standards.

After considering all of the comments, we have decided to adopt the schedule for section 112(j) Part 2 applications with respect to MACT standards that have not yet been promulgated, exactly as it was proposed. We have added appropriate implementing language and related tables to 40 CFR 63.52(e)(1).

Many commenters expressed concern about the possibility of additional delays in the promulgation of MACT standards and requested that EPA provide advance notice if it expects to miss one of the promulgation deadlines in the consent decree. As we stated in the proposal, we recognize that the schedule for submission of section 112(j) Part 2 applications leaves relatively little time for sources to prepare and submit such applications if a particular promulgation deadline is missed. In recognition of the tight time frames, we will try to provide prompt advance notice to affected sources and to permitting authorities if we have reason to believe that an impending promulgation deadline for a particular MACT standard will not be met.

Many commenters also requested that EPA extend the corresponding Part 2 application deadline in the event that the date for promulgation of a MACT standard in the consent decree is itself extended. We note that the dates we are adopting in this rulemaking for submission of Part 2 applications for particular categories and subcategories cannot be made automatically contingent on the content of a consent decree which has not itself been codified. We do not expect to consider any future revisions to the schedule for submission of Part 2 applications unless the schedule set forth in the consent decree is itself modified. If the deadline for promulgation of any MACT standard which appears in the consent decree is extended by the District Court in accordance with the provisions of that decree, we will consider at that time whether any corresponding adjustment

in the schedule for Part 2 applications set forth in this rule is necessary and appropriate. If we conclude that a change in the schedule for Part 2 applications is warranted, we will consider the use of expedited procedures including direct final rulemaking.

C. Requests for Applicability Determination

In the proposed rule, we noted that some additional structural changes in the section 112(j) rule are required to assure that the new schedule for Part 2 applications is as uniform as practicable for the sources in a given category or subcategory. To achieve this uniformity, we proposed certain changes in the procedures for those sources which have previously submitted a request for applicability determination under 40 CFR 63.52(e)(2)(i).

In the section 112(j) rule as amended on April 5, 2002, § 63.52(e)(2)(i) established a process by which major sources could request that the permitting authority determine whether or not specific sources at their facility belong in any category or subcategory requiring a case-by-case determination under section 112(j). All requests for applicability determination were due at the same time as the section 112(j) Part 1 applications (also referred to as Part 1 MACT applications or simply Part 1 applications) on May 15, 2002. Under the old procedures, a negative determination by the permitting authority concerning such a request meant that no further action was required, while a positive determination meant that the applicant was required to submit a Part 2 application within 24 months.

We lack precise information concerning how many requests for applicability determination were submitted to permitting authorities on or before May 15, 2002, but we believe that hundreds of such requests are pending. We know that some of these requests reflected genuine uncertainty concerning the scope of the activities or equipment governed by a particular category or subcategory. For some of these requests, the subsequent issuance of a proposed MACT standard or other subsequent events may have resolved such uncertainty. However, we also believe that many of these requests were filed merely because the filing of such a request operated to defer the deadline for submission of a Part 2 application.

To reconcile the processing of pending requests for applicability determination with the new uniform schedule for Part 2 applications, we proposed that each affected source which still wishes to pursue a previously filed request for applicability determination under 40 CFR 63.52(e)(2)(i) be required to resubmit and supplement that request within 60 days after EPA publishes final action in this rulemaking, or within 60 days after EPA publishes a proposed MACT standard for the category or subcategory in question, whichever is later. We proposed to delay the requirement to resubmit and supplement a request for applicability determination until after a proposed MACT standard is available because our experience tells us that most uncertainties regarding applicability can be resolved by examining the specific applicability language in the proposed MACT standard. We also proposed to require that each resubmitted request for an applicability determination be supplemented to specifically discuss the relation between the source(s) in question and the applicability provision in the proposed MACT standard for the category or subcategory in question, and to explain why there may still be uncertainties that require a determination of applicability. Finally, we proposed to require that the permitting authority act upon each resubmitted and supplemented request for applicability determination within an additional 60 days after the applicable deadline for the resubmitted request.

Comment on our proposals concerning processing of requests for applicability determination was more limited than on many other elements of our proposal. Some commenters requested that we provide for extensions of the deadline for action by the permitting authority. We understand that the time frame for action on a resubmitted request for applicability determination by the permitting authority is an expedited one, but we believe that extending this time frame would undermine our efforts to establish a single uniform schedule for Part 2 applications. We are hopeful that sources will act in a responsible manner and will resubmit only those requests for which genuine unresolved applicability issues remain after publication of a proposed MACT standard. This is a reasonable expectation because the procedural incentives for submission of such requests which existed previously will be eliminated. We also think that the availability of a proposed MACT standard, and the mandatory supplementation of the resubmitted request to address the effect of that proposed standard, should assure an adequate record for expedited decisions by the permitting authorities on those requests that are resubmitted.

Some commenters requested that we establish a presumption of negative applicability if the permitting authority does not make a timely decision concerning a resubmitted request. We disagree with this concept because it would establish a substantial new incentive for a source to resubmit a pending request, regardless of whether there are any genuine and significant remaining questions regarding applicability. However, we also believe it would not be appropriate to establish a presumption of positive applicability if the permitting authority does not act in a timely manner on a resubmitted request. This would penalize those sources who sincerely believe that they are not covered by the proposed rule, but are merely seeking confirmation of that conclusion by the permitting authority. We intend the absence of either a negative or a positive presumption to create a strong incentive for a source to work closely with the permitting authority to resolve any genuine applicability issues in a timely manner.

Several commenters requested that EPA make provision for the submission of new requests for applicability determination. We do not believe that the creation of a new adjudicatory process of this type in this rulemaking is either appropriate or practical. However, we encourage those sources that have new questions concerning the applicability of a proposed MACT standard to their operations or equipment to seek guidance from responsible personnel at the permitting authority and the appropriate EPA Regional Office.

One commenter requested that we make it clear that any decision by a permitting authority concerning a request for applicability determination is null and void once a final MACT standard has been promulgated. The commenter noted that a determination of applicability based on the language of the proposed standard may not always correctly anticipate the ultimate applicability of the final promulgated standard. We agree with this comment. Requests for applicability determination submitted under 40 CFR 63.52(e)(2)(i) are intended solely to determine whether a source must submit a section 112(j) application, not to resolve applicability issues which may arise in other contexts. As we discussed in the section concerning general applicability above, no further process to develop an equivalent emission limitation under section 112(j) is necessary or

appropriate once a generally applicable Federal standard has been promulgated.

After reviewing all of the comments, we have decided to adopt amendments to the procedures for requests for applicability determination as we proposed them. We have added new language to 40 CFR 63.52(e)(2)(i) which effectuates this decision.

As we noted in the proposal, those major sources which elect to resubmit requests for applicability determination with respect to sources that may be governed by one of the MACT standards which are scheduled to be promulgated by August 31, 2003, may not be entitled to receive a determination by the permitting authority on the resubmitted request until shortly after the scheduled promulgation date. If such a standard is delayed, and there is no negative determination by the permitting authority on the resubmitted request, the Part 2 application for sources within the category in question will be due on October 30, 2003. This tight time frame underscores the importance of careful coordination between such sources and the permitting authority if it appears that a MACT standard will be delayed. As discussed above, EPA will endeavor to provide timely information to affected sources and permitting authorities if it becomes apparent that the promulgation schedule for any of the remaining MACT standards will not be met.

D. Prior Section 112(g) Determinations

As part of our proposal to establish a single uniform Part 2 application deadline for all sources in a given category or subcategory, we also proposed some changes to the procedures governing CAA section 112(j) applications for those sources which have previously received a case-by-case determination pursuant to CAA section 112(g). To understand the effect of this proposal, it is helpful to review the substantive relationship between these separate statutory requirements.

In general, we anticipate that emission control requirements established as part of a previous case-by-case determination under section 112(g) will subsequently be adopted by the permitting authority to satisfy any applicable 112(j) requirements as well. This is because the determination required for any sources subject to CAA section 112(g) is supposed to be based on new source MACT, and the subsequent application of section 112(j) requirements to those same sources will be based on existing source MACT. Moreover, to assure that inconsequential differences in emission control do not result in unduly burdensome sequential case-by-case determinations, the section 112(j) rule requires the permitting authority to adopt any prior case-by-case determination under section 112(g) as its determination for the same sources under section 112(j) if it ''determines that the emission limitations in the prior case-by-case determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j).'' *See* 40 CFR 63.52(a)(3), (b)(2), and (e)(2)(ii).

Under the rule as it was amended on April 5, 2002, sources which had previously obtained a case-by-case determination under CAA section 112(g) were generally required to submit a request for an ''equivalency determination'' to decide if the applicable section 112(g) requirements are ''substantially as effective'' as the requirements which would otherwise apply under section 112(j). As explained above, we believe that this determination will generally be positive. However, the rule as amended on April 5, 2002 provided that, if such a determination were negative, the source would then be required to submit a Part 2 application within 24 months. As in the case of requests for applicability determination, changes to the old language are required to place all sources in a given category or subcategory on the same schedule for submission of Part 2 applications.

Thus, we proposed to adopt the Part 2 application deadline for a given category or subcategory as the final deadline for submission of a request for an ''equivalency determination'' by any affected source that previously obtained a case-by-case determination under CAA section 112(g). Those sources who submitted such requests earlier under the provisions of the existing rule need not resubmit them. However, we also proposed to construe all requests for an equivalency determination, regardless of when they were submitted, as a section 112(j) Part 2 application as well.

Under the amendments we proposed, the permitting authority must first make an equivalency determination. In the event of a negative determination, the permitting authority will then proceed to adopt a separate set of case-by-case requirements pursuant to section 112(j). This process will be completed in the same 18-month period that applies to the processing of all other Part 2 applications.

In the proposal, we explained that this revised process would not impose any new burden on sources or permitting authorities, because the permitting authority should already have all of the information required for a Part 2 application in any instance where it is already administering section 112(g) requirements applicable to the same source.

As in the case of requests for applicability determination, relatively few comments were received concerning this element of our proposal. Commenters generally accepted our view that a source which has already received a case-by-case determination under section 112(g) should not need to submit additional information in a section 112(j) application. A couple of commenters requested that the deadline for submission of a request for an equivalency determination be delayed if the promulgation of a MACT standard is delayed. Since we are proposing that the deadline for submission of requests for an equivalency determination be the same as the deadline for Part 2 applications, our discussion above of the effect of potential delays applies equally to this issue.

After reviewing all of the comments, we have decided to adopt amendments to the procedures for requests for equivalency determination exactly as we proposed them. We have added new language to 40 CFR 63.52(e)(2)(ii) which effectuates this decision.

E. Later Part 1 Applications

In drafting new language to effectuate our amendments to the section 112(j) rule, we identified one additional conforming change in the prior rule language which is necessary. There are a few instances where a source may be required to submit a Part 1 application meeting the requirements of 40 CFR 63.53(a) for the first time on a date which is after the otherwise uniform date for submission of Part 2 applications which we are establishing. This may occur under 40 CFR 63.52(b) when new emission units are installed at a major source, when there is an increase in the potential to emit that causes an area source to become a major source, or when EPA establishes a lesser quantity emission rate that causes an area source to become a major source. This may also occur under 40 CFR 63.52(c) if a source that has previously obtained a section 112(j) determination changes the equipment or activities which were previously covered by that determination.

We consider it relatively unlikely that any of these provisions will be triggered, even if there is a delay in the promulgation of one or more MACT standards which results in submission of some Part 2 applications. However, in the event that any Part 1 applications must be submitted for the first time after

the deadline for submission of Part 2 applications, we think it is appropriate to provide an additional 60 days for submission of a Part 2 application after the applicable deadline for the Part 1 application. We have added another sentence to 40 CFR 63.52(e)(1) which addresses this matter.

F. Content of Part 2 Applications

We intend to meet the obligations we will be assuming under the consent decree in *Sierra Club* v. *Whitman* to promulgate the remaining MACT standards in a timely manner. If we succeed in promulgating all remaining MACT standards by the applicable deadlines, there will be no need for submission of any Part 2 applications. However, we also made it clear in the proposed rule that we want to minimize any unnecessary burdens associated with the submission of Part 2 applications if such applications do become necessary. We do not want to require the submission of any information which is not truly necessary to prepare for potential issuance of case-by-case MACT determinations. To that end, our proposal included some general guidance concerning the relationship between Part 2 applications and an applicable proposed MACT standard, and we also asked some additional questions intended to assist us in further limiting any unnecessary burden associated with Part 2 applications.

In our proposal, we stated that we think it is reasonable for an affected source submitting a Part 2 application to rely directly on the content of the applicable proposed MACT standard in identifying affected emission points. We also stated that applicants could reasonably limit the information they submit concerning HAP emissions to those specific HAP or groups of HAP which would be subject to actual control in the applicable proposed MACT standard. Commenters were generally supportive of these principles. Rather than merely providing guidance, we have decided to revise the language of 40 CFR 63.53(b) to expressly incorporate these principles.

Many commenters argued that the burden of compiling a Part 2 application could be diminished by permitting cross-referencing of various other documents. We agree generally with this concept, although we think that the specific information which is being cross-referenced needs to be clearly identified and the information being cross-referenced should also be information that is readily available to the permitting authority. Rather than attempting to specify those particular documents that may be appropriately cross-referenced, we have decided to adopt language setting forth general principles regarding the cross-referencing of other documents in Part 2 applications. These general principles are included in a new paragraph codified as 40 CFR 63.53(b)(1).

We have concluded that an applicant should be permitted to cross-reference specific information in any prior submission to the permitting authority, so long as the applicant does not presume favorable action on any prior application or request which is still pending. Further, we have concluded that an applicant should be permitted to cross-reference any part of a standard proposed by EPA pursuant to CAA section 112(d) or 112(h) for a category or subcategory which includes sources to which the Part 2 application applies. We also want to assure applicants that they can cross-reference a proposed standard as part of their Part 2 application without necessarily supporting the proposal itself. Thus, an applicant who cross-references a proposed standard is free to argue that another approach (other than the approach proposed by EPA) should be used in making the case-by-case MACT determination.

We received numerous comments in response to our question asking whether the applicant needs to provide ''estimated total uncontrolled and controlled emission rates'' for HAP, and in response to our question asking whether new emission testing should be required if an applicant lacks sufficient information to make meaningful estimates. Many commenters argued that estimated emission rates are not necessary, and that no new emission testing should be required. Commenters also argued that such information can be requested by the permitting authority in those instances where it may be needed.

In evaluating these comments, we have considered whether estimates of controlled and uncontrolled emission rates are consistently needed to process a Part 2 application. In some instances, such emission data may be necessary to identify those emission points which would be subject to control under a proposed MACT standard, but we believe that the provision requiring the applicant to otherwise identify such emission points is sufficient in those instances where this is true. Such emission information may also be necessary in some cases to develop permit terms which apply the general requirements of a particular MACT standard or determination to the particular characteristics of an affected source. However, we believe that it is sufficient to assure that the permitting authority can request that an applicant provide specific emission information it needs for this purpose. We note that if such information is not provided in the Part 2 application, the permitting authority will still be able to obtain it in the context of the permitting process which follows. Based on this analysis, we have decided to delete the provision requiring estimates of total uncontrolled and controlled HAP emission rates in Part 2 applications, and to add a provision requiring the applicant to submit any additional emission data or other information specifically requested by the permitting authority.

Commenters generally argued that the applicant should not be required to submit ''information relevant to establishing the MACT floor.'' We agree with this conclusion. We do not think applicants should be required to submit such information, but we do think they should be free to do so if they wish to propose an alternative to the floor determination set forth in the proposed MACT standard. Accordingly, we have deleted this information as a mandatory requirement, but have retained the provision permitting the applicant to suggest an alternative set of emission limitations or work practice provisions on a discretionary basis.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

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

B. Paperwork Reduction Act

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

Approval of an ICR is not required for the General Provisions amendments because, for sources affected by CAA section 112 only, the General Provisions do not require any activities until source category-specific standards have been promulgated or until title V permit programs become effective. The actual recordkeeping and reporting burden that would be imposed by the General Provisions for each source category covered by 40 CFR part 63 will be estimated when standards applicable to such category are promulgated.

Approval of an ICR is not required for the section 112(j) rule amendments, either. The EPA fully expects to promulgate all remaining MACT standards before the Part 2 permit applications are due, thus eliminating the burden associated with preparing the application and developing case-by-case MACT determinations for individual sources.

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 review instructions; 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; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

C. Regulatory Flexibility Act (RFA)

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

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

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

Similarly, no analysis has been prepared for the amendments to the section 112(j) rule. The rule provides general guidance and procedures concerning the implementation of an underlying statutory requirement, but it does not by itself impose any regulatory requirements or prescribe the specific content of any case-by-case determination which might be made under section 112(j). Although the final amendments will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the rule amendments on small entities. We do not require the Part 2 permit applications until 60 days after the scheduled MACT standard promulgation date. We fully anticipate that all MACT standards will be promulgated before any Part 2 applications are due, thus eliminating the burden of submitting a Part 2 application.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these final amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The EPA has determined that this action is not a ''significant'' regulatory action within the meaning of Executive Order 12866, and it does not impose any additional Federal mandate on State, local and tribal governments or the private sector within the meaning of the UMRA. Thus, today's final rule amendments are not subject to the requirements of sections 202, 203, and 205 of the UMRA.

E. Executive Order 13132: Federalism

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

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

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

These final rule amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, or on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. There are currently no tribal governments that have approved title V permit programs to which sources would submit permit applications on May 15, 2002. Accordingly, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonable alternatives considered by the Agency.

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

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, Or Use

These final amendments are not subject to Executive Order 13211 (66 FR 26355, May 22, 2001), because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

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

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

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the SBREFA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Therefore, we will submit a report containing the final amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. These final amendments are not a ''major rule'' as defined by 5 U.S.C. 804(2), and therefore will be effective May 30, 2003.

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: May 8, 2003.

Christine Todd Whitman,

Administrator.

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

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

■ 2. Section 63.2 is amended by revising the first sentence in the definition of *Malfunction* to read as follows:

§ 63.2 Definitions.

* * * * *

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 which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. * * *

* * * * *

■ 3. Section 63.6 is amended by:
■ a. Revising paragraph (e)(1)(i);
■ b. Revising the first sentence in paragraph (e)(3)(i) introductory text;
■ c. Revising paragraph (e)(3)(i)(A);
■ d. Revising paragraph (e)(3)(iv);
■ e. Adding five sentences to the end of paragraph (e)(3)(v);
■ f. Revising paragraph (e)(3)(vi);
■ g. Revising the introductory text to paragraph (e)(3)(vii) and revising paragraph (e)(3)(vii)(B); and
■ h. Revising the last sentence in paragraph (e)(3)(viii).
■ The revisions and addition read as follows:

§ 63.6 Compliance with standards and maintenance requirements.

* * * * *

(e) * * *

(1)(i) At all times, including periods of startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. During a period of startup, shutdown, or malfunction, this general duty to minimize emissions requires that the owner or operator reduce emissions from the affected source to the greatest extent which is consistent with safety and good air pollution control practices. The general duty to minimize emissions during a period of startup, shutdown, or malfunction does not require the owner or operator to achieve emission levels that would be required by the applicable standard at other times if this is not consistent with safety and good air pollution control practices, nor does it require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. 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.

* * * * *

(3) *Startup, shutdown, and malfunction plan.* (i) The owner or operator of an affected source must develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction, and a program of corrective action for malfunctioning process and air pollution control and monitoring equipment used to comply with the relevant standard. * * *

(A) Ensure that, at all times, the owner or operator operates and maintains each affected source, including associated air pollution control and monitoring equipment, in a manner which satisfies the general duty to minimize emissions established by paragraph (e)(1)(i) of this section;

* * * * *

(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 any applicable emission limitation in the relevant emission standard, then the owner or operator must record the actions taken for that event and must report such actions within 2 working days after commencing actions inconsistent with the plan, followed by a letter within 7 working days after the end of the event, in accordance with § 63.10(d)(5) (unless the owner or operator makes alternative reporting arrangements, in advance, with the Administrator).

(v) * * * The Administrator may at any time request in writing that the owner or operator submit a copy of any startup, shutdown, and malfunction plan (or a portion thereof) which is maintained at the affected source or in the possession of the owner or operator. Upon receipt of such a request, the owner or operator must promptly submit a copy of the requested plan (or a portion thereof) to the Administrator. The Administrator must request that the owner or operator submit a particular startup, shutdown, or malfunction plan (or a portion thereof) whenever a member of the public submits a specific and reasonable request to examine or to receive a copy of that plan or portion of a plan. The owner or operator may elect to submit the required copy of any startup, shutdown, and malfunction plan to the Administrator in an electronic format. If the owner or operator claims that any portion of such a startup, shutdown, and malfunction plan is confidential business information entitled to protection from disclosure under section 114(c) of the Act or 40 CFR 2.301, the material which is claimed as confidential must be clearly designated in the submission.

(vi) To satisfy the requirements of this section to develop a startup, shutdown, and malfunction plan, the owner or operator may use the affected source's standard operating procedures (SOP) manual, or an Occupational Safety and Health Administration (OSHA) or other plan, provided the alternative plans meet all the requirements of this section and are made available for inspection or submitted when requested by the Administrator.

(vii) Based on the results of a determination made under paragraph (e)(1)(i) of this section, the Administrator may require that an owner or operator of an affected source make changes to the startup, shutdown, and malfunction plan for that source. The Administrator must require appropriate revisions to a startup, shutdown, and malfunction plan, if the Administrator finds that the plan:

* * * * *

(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 the general duty to minimize emissions established by paragraph (e)(1)(i) of this section;

* * * * *

(viii) * * * 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, or 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.

* * * * *

■ 4. Section 63.9 is amended by revising the first sentence in paragraph (h)(2)(ii) and adding a sentence to the end of paragraph (h)(2)(ii) to read as follows:

§ 63.9 Notification requirements.

* * * * *

(h) * * *

(2) * * *

(ii) The notification must be sent before the close of business on the 60th day following the completion of the relevant compliance demonstration activity specified in the relevant standard (unless a different reporting period is specified in the standard, in which case the letter must be sent before the close of business on the day the report of the relevant testing or monitoring results is required to be delivered or postmarked). * * * Notifications may be combined as long as the due date requirement for each notification is met.

* * * * *

■ 5. Section 63.10 is amended by revising paragraphs (d)(5)(i) and (ii) to read as follows:

§ 63.10 Recordkeeping and reporting requirements.

* * * * *

(d) * * *

(5)(i) *Periodic startup, shutdown, and malfunction reports.* If actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan (see § 63.6(e)(3)), the owner or operator shall state such information in a startup, shutdown, and malfunction report. Such a report shall identify any instance where any action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) is not consistent with the affected source's startup, shutdown, and malfunction plan, but the source does not exceed any applicable emission limitation in the relevant emission standard. Such a report shall also include the number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period. The startup, shutdown, and malfunction report shall consist of a letter, containing the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, that shall be submitted to the Administrator semiannually (or on a more frequent basis if specified otherwise in a relevant standard or as established otherwise by the permitting authority in the source's title V permit). The startup, shutdown, and malfunction report shall be delivered or postmarked by the 30th day following the end of each calendar half (or other calendar reporting period, as appropriate). If the owner or operator is required to submit excess emissions and continuous monitoring system performance (or other periodic) reports under this part, the startup, shutdown, and malfunction reports required under this paragraph may be submitted simultaneously with the excess emissions and continuous monitoring system performance (or other) reports. If startup, shutdown, and malfunction reports are submitted with excess emissions and continuous monitoring system performance (or other periodic) reports, and the owner or operator receives approval to reduce the frequency of reporting for the latter under paragraph (e) of this section, the frequency of reporting for the startup, shutdown, and malfunction reports also may be reduced if the Administrator does not object to the intended change. The procedures to implement the allowance in the preceding sentence shall be the same as the procedures specified in paragraph (e)(3) of this section.

(ii) *Immediate startup, shutdown, and malfunction reports.* Notwithstanding the allowance to reduce the frequency of reporting for periodic startup, shutdown, and malfunction reports under paragraph (d)(5)(i) of this section, any time an action taken by an owner or operator during a startup, shutdown, or malfunction (including actions 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 any applicable emission limitation in the relevant emission standard, the owner or operator shall report the actions taken for that event 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. The immediate report required under this paragraph (d)(5)(ii) shall consist of a telephone call (or facsimile (FAX) transmission) to the Administrator within 2 working days after commencing actions inconsistent with the plan, and it shall be followed by a letter, delivered or postmarked within 7 working days after the end of the event, that contains the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, explaining the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan, and describing all excess emissions and/or parameter monitoring exceedances which are believed to have occurred. Notwithstanding the requirements of the previous sentence, after the effective date of an approved permit program in the State in which an affected source is located, the owner or operator may make alternative reporting arrangements, in advance, with the permitting authority in that State. Procedures governing the arrangement of alternative reporting requirements under this paragraph (d)(5)(ii) are specified in § 63.9(i).

* * * * *

■ 6. Section 63.13 is amended by revising the address for EPA Region IV in paragraph (a) to read as follows:

§ 63.13 Addresses of State air pollution control agencies and EPA Regional Offices.

(a) * * *

EPA Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee). Director, Air, Pesticides and Toxics Management Division, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303–3104.

* * * * *

Subpart B—[Amended]

■ 7. Section 63.50 is amended by adding paragraph (c) and paragraph (d) to read as follows:

§ 63.50 Applicability.

* * * * *

(c) The procedures in §§ 63.50 through 63.56 apply for each affected source only after the section 112(j) deadline for the source category or subcategory in question has passed, and only until such time as a generally applicable Federal standard governing that source has been promulgated under section 112(d) or 112(h) of the Act. Once a generally applicable Federal standard governing that source has been promulgated, the owner or operator of the affected source and the permitting authority are not required to take any further actions to develop an equivalent

emission limitation under section 112(j) of the Act.

(d) Any final equivalent emission limitation for an affected source which is issued by the permitting authority pursuant to §§ 63.50 through 63.56 prior to promulgation of a generally applicable Federal standard governing that source under section 112(d) or 112(h) of the Act shall be deemed an applicable Federal requirement adopted pursuant to section 112(j) of the Act. Each such equivalent emission limitation shall take effect upon issuance of the permit containing that limitation under section 112(j)(5) of the Act, and shall remain applicable to the source until such time as it may be revised or supplanted pursuant to the procedures established by §§ 63.50 through 63.56. Such a final equivalent emission limitation, and all associated requirements adopted pursuant to § 63.52(f)(2), are directly enforceable under Federal law regardless of whether or not any permit in which they may be contained remains in effect.

■ 8. Section 63.52 is amended by revising paragraphs (e)(1) and (e)(2)(i) through (ii) to read as follows:

§ 63.52 Approval process for new and existing affected sources.

* * * * *

(e) *Permit application review.*

(1) Each owner or operator who is required to submit to the permitting authority a Part 1 MACT application which meets the requirements of § 63.53(a) for one or more sources in a category or subcategory subject to section 112(j) must also submit to the permitting authority a timely Part 2 MACT application for the same sources which meets the requirements of § 63.53(b). Each owner or operator shall submit the Part 2 MACT application for the sources in a particular category or subcategory no later than the applicable date specified in Table 1 to this subpart. The submission date specified in Table 1 to this subpart for Miscellaneous Organic Chemical Manufacturing shall apply to sources in each of the source categories listed in Table 2 to this subpart. When the owner or operator is required by §§ 63.50 through 63.56 to submit an application meeting the requirements of § 63.53(a) by a date which is after the date for a Part 2 MACT application for sources in the category or subcategory in question established by Table 1 to this subpart, the owner or operator shall submit a Part 2 MACT application meeting the requirements of § 63.53(b) within 60 additional days after the applicable deadline for submission of the Part 1 MACT application. Part 2 MACT applications must be reviewed by the permitting authority according to procedures established in § 63.55. The resulting MACT determination must be incorporated into the source's title V permit according to procedures established under title V, and any other regulations approved under title V in the jurisdiction in which the affected source is located.

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

(i) Each owner or operator who submitted a request for an applicability determination pursuant to paragraph (d)(1) of this section on or before May 15, 2002, which remains pending before the permitting authority on May 30, 2003, and who still wishes to obtain such a determination, must resubmit that request by July 29, 2003, or by the date which is 60 days after the Administrator publishes in the **Federal Register** a proposed standard under section 112(d) or 112(h) of the Act for the category or subcategory in question, whichever is later. Each request for an applicability determination which is resubmitted under this paragraph (e)(2)(i) must be supplemented to discuss the relation between the source(s) in question and the applicability provision in the proposed standard for the category or subcategory in question, and to explain why there may still be uncertainties that require a determination of applicability. The permitting authority must take action upon each properly resubmitted and supplemented request for an applicability determination within an additional 60 days after the applicable deadline for the resubmitted request. If the applicability determination is positive, the owner or operator must submit a Part 2 MACT application meeting the requirements of § 63.53(b) by the date specified for the category or subcategory in question in Table 1 to this subpart. 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 who has submitted an application meeting the requirements of § 63.53(a) may request 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. Such a request must be submitted by the date for the category or subcategory in question specified in Table 1 to this subpart. Any owner or operator who previously submitted such a request under a prior version of this paragraph (e)(2)(ii) need not resubmit the request. Each request for an equivalency determination under this paragraph (e)(2)(ii), regardless of when it was submitted, will be construed in the alternative as a complete application for an equivalent emission limitation under section 112(j). The process for determination by the permitting authority of whether the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j) must include the opportunity for full public, EPA, and affected State review prior to a final determination. If the permitting authority determines that the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j), then the permitting authority must adopt the existing emission limitations in the permit as the emission limitations to effectuate section 112(j) for the source in question. If more than 3 years remain on the current title V permit, the owner or operator must submit an application for a title V permit revision to make any conforming changes in the permit required to adopt the existing emission limitations as the section 112(j) MACT emission limitations. If less than 3 years remain on the current title V permit, any required conforming changes must be made when the permit is renewed. If the permitting authority determines that the emission limitations in the prior case-by-case MACT determination under section 112(g) are not substantially as effective as the emission limitations which the permitting authority would otherwise adopt for the source in question under section 112(j), the permitting authority must make a new MACT determination and adopt a title V permit incorporating an appropriate equivalent emission limitation under section 112(j). Such a determination constitutes final action for purposes of judicial review under 40 CFR 70.4(b)(3)(x) and corresponding State title V program provisions.

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■ 9. Section 63.53 is amended by:
■ a. Redesignating paragraphs (b)(1) and (2) as paragraphs (b)(2) and (3);
■ b. Adding a new paragraph (b)(1); and
■ c. Revising newly designated paragraph (b)(2).
■ The addition and revision read as follows:

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

* * * * *

(b) * * *

(1) In compiling a Part 2 MACT application, the owner or operator may cross-reference specific information in any prior submission by the owner or operator to the permitting authority, but in cross-referencing such information the owner or operator may not presume favorable action on any prior application or request which is still pending. In compiling a Part 2 MACT application, the owner or operator may also cross-reference any part of a standard proposed by the Administrator pursuant to section 112(d) or 112(h) of the Act for any category or subcategory which includes sources to which the Part 2 application applies.

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

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

(ii) Each emission point or group of emission points at the affected source which is part of a category or subcategory for which a Part 2 MACT application is required, and each of the hazardous air pollutants emitted at those emission points. When the Administrator has proposed a standard pursuant to section 112(d) or 112(h) of the Act for a category or subcategory, such information may be limited to those emission points and hazardous air pollutants which would be subject to control under the proposed standard.

(iii) Any existing Federal, State, or local limitations or requirements governing emissions of hazardous air pollutants from those emission points which are part of a category or subcategory for which a Part 2 application is required.

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

(v) Any additional emission data or other information specifically requested by the permitting authority.

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■ 10. Subpart B is amended by adding Tables 1 and 2 to the end of the subpart to read as follows:

Tables to Subpart B of Part 63

TABLE 1 TO SUBPART B OF PART 63.—SECTION 112(j) PART 2 APPLICATION DUE DATES

Due date	MACT standard
10/30/03	Combustion Turbines.
	Lime Manufacturing.
	Site Remediation.
	Iron and Steel Foundries.
	Taconite Iron Ore Processing.
	Miscellaneous Organic Chemical Manufacturing (MON).[1]
	Organic Liquids Distribution.
	Primary Magnesium Refining.
	Metal Can (Surface Coating).
	Plastic Parts and Products (Surface Coating).
	Chlorine Production.
	Miscellaneous Metal Parts and Products (Surface Coating) (and Asphalt/Coal Tar Application—Metal Pipes).[2]
4/28/04	Industrial Boilers, Institutional/Commercial Boilers and Process Heaters.[3]
	Plywood and Composite Wood Products.
	Reciprocating Internal Combustion Engines.[4]
	Auto and Light-Duty Truck (Surface Coating).
8/13/05	Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters.[5]
	Hydrochloric Acid Production.[6]

[1] Covers 23 source categories, see Table 2 to this subpart.

[2] Two source categories.

[3] Includes all sources in the three categories, Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters that burn no hazardous waste.

[4] Includes engines greater than 500 brake horsepower.

[5] Includes all sources in the three categories, Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters that burn hazardous waste.

[6] Includes furnaces that produce acid from hazardous waste at sources in the category Hydrochloric Acid Production.

TABLE 2 TO SUBPART B OF PART 63.—MON SOURCE CATEGORIES

Manufacture of Paints, Coatings, and Adhesives.
Alkyd Resins Production.
Maleic Anhydride Copolymers Production.
Polyester Resins Production.
Polymerized Vinylidene Chloride Production.
Polymethyl Methacrylate Resins Production.
Polyvinyl Acetate Emulsions Production.
Polyvinyl Alcohol Production.
Polyvinyl Butyral Production.
Ammonium Sulfate Production-Caprolactam By-Product Plants.
Quaternary Ammonium Compounds Production.
Benzyltrimethylammonium Chloride Production.
Carbonyl Sulfide Production.
Chelating Agents Production.
Chlorinated Paraffins Production.
Ethylidene Norbornene Production.
Explosives Production.
Hydrazine Production.
OBPA/1,3-Diisocyanate Production.
Photographic Chemicals Production.
Phthalate Plasticizers Production.
Rubber Chemicals Manufacturing.
Symmetrical Tetrachloropyridine Production.

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