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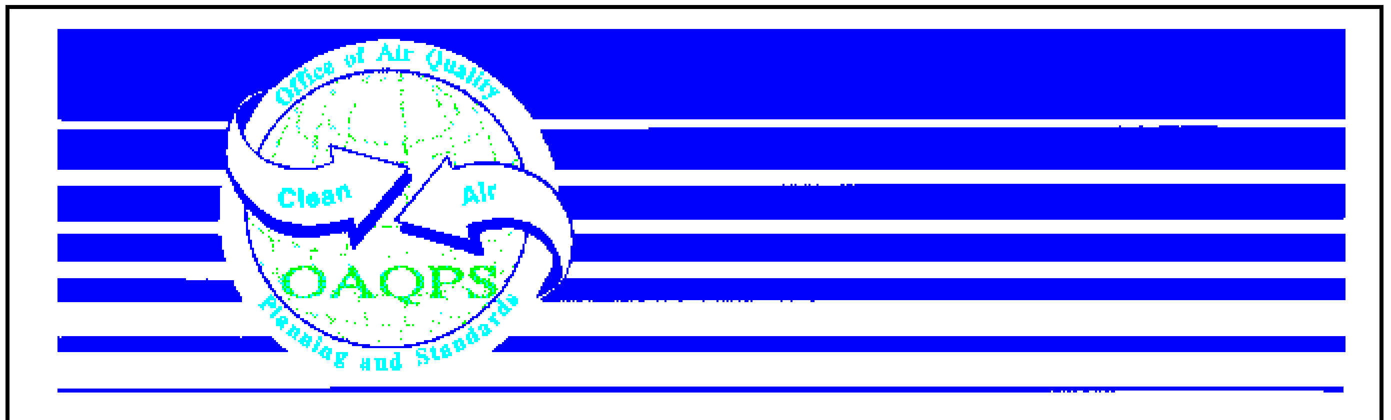
National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)-

Background Information for Promulgated Standards



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Emissions Standards Division (ESD)
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Acronym List

BACT	Best Available Control Technology
CAA	Clean Air Act
CAR	Consolidated Air Rule
CBI	Confidential Business Information
CEMS	Continuous Emission Monitoring System
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
CMS	Continuous Monitoring System
COMS	Continuous Opacity Monitoring System
CPMS	Continuous Parameter Monitoring System
EPA	United States Environmental Protection Agency
FR	Federal Register
HAP	Hazardous Air Pollutant
HON	Hazardous Organic NESHAP
LAER	Lowest Achievable Emissions Rate
MACT	Maximum Achievable Control Technology
NESHAP	National Emission Standard for Hazardous Air Pollutants
NSPS	New Source Performance Standards
OAQPS	Office of Air Quality Planning and Standards
OECA	Office of Enforcement and Compliance Assurance
OPPT	Office of Prevention, Pesticides, and Toxic Substances
PSD	Prevention of Significant Deterioration
SARA	Superfund Amendments and Reauthorization Act
SIC	Standard Industrial Classification
SIP	State Implementation Plan
SSM	Startup, Shutdown, and Malfunction
SSMP	Startup, Shutdown, and Malfunction Plan
STAPPA/ALAPCO	State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials
VOC	Volatile Organic Compound

Chapter 1- Introduction

On March 23, 2001, we proposed to amend the regulations in 40 CFR part 63, subpart A, the General Provisions for National Emission Standards for Hazardous Air Pollutants for Source Categories (66 FR 16318). In the same notice, we also proposed amendments to 40 CFR part 63, subpart B, Requirements for Control Technology Determinations in Accordance with Clean Air Act sections 112(g) and 112(j). These amendments were proposed in part as a result of decisions reached in settlement negotiations conducted between petitioners, who filed for review of the General Provisions and the 112(j) rule, and the EPA. The proposed amendments also reflect internal EPA discussions on issues regarding implementation of the General Provisions and the 112(j) rule.

The opportunity for written and oral public comment on the regulations was announced with the proposal. No one requested to speak at a public hearing, therefore, none was held. The period for written public comments on the proposed changes ended on May 22, 2001.

There were 27 comment letters (see Table 1) submitted by facility owners and operators, trade associations, and State and local air pollution control agencies (IV-D-01 through IV-D-27).

This document summarizes the written comments that were submitted in response to the March 23 Federal Register Notice. These include comments on proposed amendments to subparts A and B, as well as comments on the section 112(j) Guidelines Document. This comment summary and our responses served as the basis for the revisions made to the standards between proposal and promulgation.

Table 1- Public Comments

Docket Number	Commenter
IV-D-01	J.A. Hudspeth, P.E., Environmental Analyst IV, Environmental Services, Xcel Energy, Amarillo, TX
IV-D-02	R.V. Vantuyl, Corporate Environmental Manager, Ash Grove Cement Company, Overland Park, KS
IV-D-03	D.L. Arfmann, Attorney for the Colorado Association of Commerce and Industry (CACI), Denver, CO
IV-D-04	R.H. Colby, Chair, ALAPCO Air Toxics Committee and B.L. Higgins, STAPPA Air Toxics Committee, State and Territorial Air Pollution Program Administrators (STAPPA)/Association of Local Air Pollution Control Officials (ALAPCO), Washington, D.C.
IV-D-05	K. Garbin, Executive Director, National Coil Coating Association, Chicago, IL
IV-D-06	N. Dee, Ph.D., Director, Environmental Affairs, National Petrochemical & Refiners Association (NPRA), Washington, D.C.
IV-D-07	D.C. Ailor, P.E., Director of Regulatory Affairs, National Oilseed Processors Association (NOPA), Vegetable Oil MACT Coalition, Washington, D.C.
IV-D-08	R. Wood, Environmental Services, Health, Safety and Environment, Eastman Kodak Company, Rochester, NY
IV-D-09	M.L. Fleischaker and D.M. Ottaviano, Arent Fox Kintner Plotkin & Kahn, P.L.L.C., Washington, D.C. counsel to the Motor and Equipment Manufacturers Association (MEMA) and the Original Equipment Suppliers Association (OESA), Washington, D.C.
IV-D-10	L.S. Ritts, Counsel, National Environmental Development Association's Clean Air Regulatory Project (NEDA/CARP), Washington, D.C.
IV-D-11	K.B. Isakower, Chair, Coalition for Clean Air Implementation (CCAI)
IV-D-12	W.H. Lewis, Counsel, Morgan, Lewis & Bockius, L.L.P., Washington, D.C. representing the Clean Air Implementation Project (CAIP)
IV-D-13	V. Ughetta, Director, Stationary Sources, Alliance of Automobile Manufacturers (AAM), Washington, D.C.
IV-D-14	A.T. O'Hare, Vice President, Regulatory Affairs, American Portland Cement Alliance (APCA), Washington, D.C.
IV-D-15	M.E. Keener, Ph.D., Executive Director, Coalition for Responsible Waste Incineration (CRWI), Washington, D.C.

Docket Number	Commenter
IV-D-16	W.F. Pedersen, Counsel, Composites Fabricators Association (CFA), Washington, D.C.
IV-D-17	M.H. Levin, Leonard Hurt Frost Lilly & Levin, P.C., Counsel, Can Manufacturers Institute (CMI), Washington, D.C.
IV-D-18	R.B. Thompson, Manager, Air Toxics Section, Compliance Management Division, Bureau of Air Quality, Department of Health and Environmental Control, State of South Carolina, Columbia, SC
IV-D-19	L. Swaim, Regulatory Management Expertise Center, The Dow Chemical Company, Freeport, TX
IV-D-20	B.L. Higgins, Assistant Secretary, Department of Environmental Quality, State of Louisiana, Baton Rouge, LA
IV-D-21	M.G. Lusk, Director, Government Affairs, Cement Kiln Recycling Coalition (CKRC), Washington, D.C.
IV-D-22	M.Y. Kinter, Vice president - Government Affairs, Screenprinting and Graphic Imaging Association International and G. Jones, Manager, Environmental, Health and safety Services, Graphic Arts Technical Foundation
IV-D-23	C.L. Phillips, P.E., Bureau of Air Regulation, Department of Environmental Protection, State of Florida
IV-D-24	J. Sell, Senior Counsel, National Paint and Coatings Association (NPCA)
IV-D-25	M.A. McCord, Counsel, Morgan, Lewis & Bockius, L.L.P., Washington, D.C. representing the American Chemistry Council
IV-D-26	Valerie Ughetta, Alliance of Automobile Manufacturers
IV-D-27	Michael McCord, Counsel, Morgan, Lewis & Bockius, L.L.P., Washington, D.C., representing the American Chemistry Council and the Clean Air Implementation Project

Chapter 2 - Comments and Responses on Part 63 General Provisions

2.1 Overview

The public comments on the proposed amendments to the General Provisions concerned applicability, definitions, preconstruction review and notification, startup, shutdown, and malfunction (SSM) provisions, compliance, performance testing, monitoring, and notifications. These comments are summarized and responded to below.

2.2 General Comments on Subpart A

2.2.1 Support Proposal

Comment:

Several commenters endorsed all of the proposed changes to 40 CFR part 63, subpart A, the General Provisions. These commenters urged EPA to promulgate the proposal with no substantial changes. They believed it would clarify obligations, streamline procedures, provide greater certainty for sources and permitting authorities, and reduce administrative burdens. (IV-D-06, 11, 12, 25) A few commenters generally endorsed the proposal. (IV-D-02, 03, 10, 14, 17, 19, 22, 24)

Response:

We appreciate the support of these commenters.

2.2.2 Uniform Language

Comment:

One commenter stated that EPA sometimes uses traditional legal language in the proposed amendments and sometimes uses plain language. The Agency should use one or the other form consistently. (IV-D-19) Another commenter opposed the use of plain language, believing it too difficult for the regulated community to interpret. (IV-D-01)

Response:

Plain language is used in the preamble, while the more traditional regulatory language is used in the regulatory amendments. Because we are amending a regulation that was written prior to President Clinton's June 1, 1998 executive memorandum on plain language, we proposed the amendments in the traditional regulatory style for consistency. Furthermore, since only regulatory language is used in the amendments, commenter IV-D-01's concern about the use of plain language in the rule is not valid. Since issuance of the executive memorandum on plain language, which requires the use of plain language in most government documents, we have incorporated plain language wherever possible, such as in preambles. For the commenter's concerns over the use of the term "source" see comment 4.2.7 in this document.

2.2.3 Remove Universally Non-Applicable Requirements

Comment:

One commenter maintained that certain requirements in subpart A are consistently removed from specific Maximum Achievable Control Technology (MACT) standards because the MACT standards each have language that supersedes subpart A. The commenter advocated that EPA remove these sections from the General Provisions. (IV-D-19)

Response:

We do not agree with the commenter's suggestion. The intent behind presumptive applicability of the General Provisions is to avoid the repetition of common provisions in each subpart, and this intention should be preserved, as discussed in the proposal preamble at 16321/2. The regulatory development process for each NESHAP provides the best mechanism for deciding which General Provisions are technically infeasible or otherwise inappropriate. For example, many NESHAP regulate emissions of HAP that are VOC, and in such cases, opacity requirements are moot and therefore overridden by the individual standard. The proposed amendments clarify how to best communicate these decisions, through the inclusion in each individual NESHAP of a table that specifies whether requirements in the General Provisions are or are not applicable to the rule in question. The commenter did not identify which provisions were "consistently removed."

2.2.4 Once In, Always In

Comment:

One commenter stated that the General Provisions should include language to reflect agreements reached between EPA and the commenter regarding the effect of the "once in, always in" policy on sources interested in reducing emissions through pollution prevention. (IV-D-04)

Response:

*We stated in Enclosure B, Response to STAPPA/ALAPCO Recommendations on MACT/Title V Interface Issues, of our May 20, 1999 policy memo to Robert Hodanbosi from John Seitz (*http://www.epa.gov/ttn/oarpg/t5pgm.html*), that "a workgroup consisting of representatives from STAPPA/ALAPCO, OECA, OPPT, and OAQPS has been established to address this issue. Our staff continues to work on this issue with the workgroup. Once the workgroup has completed its efforts and has made a recommendation, a decision will be made by EPA and sent to STAPPA/ALAPCO." Any amendments to this policy will be proposed in a separate action, and are not part of these amendments.*

2.3 Comments on §63.1, Applicability

2.3.1 More Stringent Emission Limitation [§63.1(a)(3)]

Comment:

One commenter preferred that EPA replace the last sentence in §63.1(a)(3) with the following text: ". . .a facility need only comply with a single set of provisions of a standard as determined by the Administrator." The commenter stated that this approach would clarify the source's obligations and reduce the burden and confusion that could result from having multiple standards apply to a source. (IV-D-19)

Response:

We agree with the commenter's intent but do not believe the comment's suggested language is necessary. The proposed language clearly states that the Administrator may do what the commenter suggests. Individual subparts will specify which emission limitations and other requirements will apply and which will not. This will clarify requirements for sources and reduce the burden of potentially duplicative requirements.

Comment:

One commenter believed that the phrase "more stringent" in §63.1(a)(3) is ambiguous and open to interpretation. The commenter maintained that it is unclear whether that clause may apply only to the applicability or emission control provisions in the standard, or if it also applies to inspection, monitoring, recordkeeping and reporting requirements. The commenter maintained that evaluating the stringency of all parts of a standard for each emission point would be difficult, if not impossible. (IV-D-19)

Response:

The language referred to by the commenter was not proposed to be amended in this action. We disagree with the commenter's statement that evaluating the stringency of all parts of a standard would be unduly difficult. Furthermore, monitoring, recordkeeping, reporting, and inspection requirements are an integral part of any regulation and must be considered in a stringency determination (for example, averaging time affects the stringency of an emission limit).

Comment:

One commenter requested that EPA add language to §63.1(a)(3) to clarify that when an affected source subject to a MACT standard no longer produces the primary product, or changes the primary product so that it becomes subject to another standard, the original MACT standard no longer applies to the source. In such cases, the requirement in §63.1(a)(3) to meet the more stringent standard would not apply. (IV-D-19)

Response:

The language referred to by the commenter was not proposed to be amended in this action. We disagree with the commenter's requested language change. The primary product concept applies only in limited cases (for example, the Polyether Polyols Production NESHAP), and it would not be appropriate to incorporate language addressing this issue in the General Provisions. Individual NESHAP may address this issue when appropriate.

2.3.2 NESHAP Identifies Applicable GP Requirements [§63.1(a)(4)(i)]

Comment:

One commenter supported EPA's proposal that each NESHAP developed under Clean Air Act (CAA) section112 (d) must identify the specific parts of the part 63 General Provisions that apply to sources subject to that NESHAP. (IV-D-19)

One commenter opposed §63.1(a)(4)(i), which they viewed as substantively amending promulgated standards. The commenter stated that EPA cannot revise Maximum Achievable Control Technology (MACT) standards that have already been promulgated without reopening them and taking public comment. The commenter was concerned that the proposed amendments would apply to the Vegetable Oil NESHAP (40 CFR part 63, subpart GGGG), which they did not want changed. They enumerated a number of specific provisions in subpart GGGG, especially those relating to SSM, that differed from those in the proposal. The commenter requested that EPA state in the preamble to the final regulations that the SSM provisions do not apply to the Vegetable Oil NESHAP. (IV-D-07)

Response:

We appreciate the support of commenter IV-D-19.

We agree with commenter IV-D-07's assessment that certain startup, shutdown, and malfunction provisions in the proposed amendments are inconsistent with the promulgated Vegetable Oil NESHAP (see section 2.8.7) . We had previously reviewed the existing rules and did not identify any substantive problems. However, the Vegetable Oil NESHAP were promulgated after proposal of the General Provision amendments. We have discussed the implications with the commenter and as a result are editing subpart GGGG to correct the inconsistencies.

We did not find, and the commenters did not note, any other instances in which promulgated standards were substantively affected by §63.1(a)(4)(i). Therefore we are promulgating §63.1(a)(4)(i) as proposed.

2.3.3 NESHAP Incorporates Other Requirements [§63.1(a)(4)(ii)]

Comment:

One commenter strongly supported proposed §63.1(a)(4)(ii). (IV-D-19)

The commenter advocated that where a part 63 subpart supersedes the monitoring, testing, recordkeeping, and reporting requirements of a part 60 subpart, the initial notification requirements in §60.7(a)(1), (3), (4), and the reconstruction requirements in §60.15(d) should

not apply because these requirements would be overlapping, duplicative, and burdensome. The commenter maintained that it would be pointless to notify EPA of construction or reconstruction commencing [§60.7(a)(1)], the actual date of initial startup [§60.7(a)(3)], a physical or operational change [§60.7(a)(4)], or reconstruction [§60.15(d)] when the Agency would be receiving such information in the reports required under part 63. Any new process units or new emission points added to an existing affected source would be included in a periodic report or in the application for approval of construction or reconstruction.

The commenter also stated that EPA should provide general guidelines on how to implement the standards when a part 63 standard incorporates a part 60, 61, or 63 standard, and there is contradicting, unclear, or absent information. The commenter requested clarification on how several specific provisions under the vinyl chloride NESHAP in part 61 would apply to their source, which is subject to the HON in part 63, subparts F and H. The commenter also asked several specific questions about implementing §63.523(c) of subpart W (National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-nylon Polyamides Production), which says that owners or operators of existing, new, or reconstructed affected basic liquid resin lines must comply with the HON subpart H requirements for equipment leaks. The commenter explained that there are minor differences between the definition of equipment leaks in subpart W at §63.522 and the definition of equipment in §63.161. (There is no definition of equipment leaks in the HON.)

Response:

We agree with the commenter that where a part 63 standard overlaps another standard, the part 63 standard must be clear which provisions apply or don't apply in the other standard. For this reason, we proposed to revise §63.1(a)(4)(ii). Subsequent NESHAP should incorporate this concept and should be clear which provisions of overlapping standards apply or don't apply . The public, including facilities that may be affected by the proposed NESHAP, is encouraged to identify any contradicting, unclear, or absent information for any part 63 standards proposed in the future during the public comment period so that any such issues may be resolved before promulgation.

We agree generally with the commenter that multiple notification and reporting requirements for the same emission unit under different standards is burdensome and undesirable. For part 63 standards that have already been promulgated, as well as other applicable requirements under parts 60 and 61, we have articulated our policy on streamlining multiple requirements that apply to a single emission unit in the March 5, 1996 policy memo, "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program," which you may find at

http://www.epa.gov/ttn/oarpg/t5wp.html. This memo provides general guidelines on how to implement standards when there are duplicative or overlapping requirements as follows:

"... Multiple emissions limits may be streamlined into one limit if that limit is at least as stringent as the most stringent limit. If no one requirement is unambiguously more stringent than the others, the applicant may synthesize the conditions of all the applicable requirements into a single new permit term that will assure compliance with all requirements. The streamlined monitoring, recordkeeping, and reporting requirements would generally be those associated with the most stringent emissions limit, providing they would assure compliance to the same extent as any subsumed monitoring. Thus, monitoring, recordkeeping, or reporting to determine compliance with subsumed limits would not be required where the source implements the streamlined approach."

The White Paper 2 also discusses in detail the procedures for permitting authority and source owner/operator involvement in developing, issuing, and implementing a title V permit containing streamlined permit terms and conditions.

2.3.4 Applicability Determinations For Source Category Only [§63.1(b)(3)]

Comment:

Two commenters supported the proposed changes to §63.1(b)(3) that would require a record of applicability determinations only for sources within the source category that the relevant standard regulates. (IV-D-02, 14)

Response:

We appreciate the commenters' support.

2.4 Comments on §63.2, Definitions

2.4.1 Affected Source

Comment:

A few commenters supported the definition of affected source, believing it would clarify the applicability of each NESHAP. (IV-D-12, 25).

A few commenters believed EPA still needed to clarify in the definition of affected source that sources that do not emit HAP are not part of the affected source. For example, transfer points and other manufacturing elements at a facility are totally enclosed, don't emit HAP, and should not be included in the affected source.
(IV-D-02, 14)

Response:

We appreciate the support of commenters IV-D-12 and 25. We disagree with the suggestion by commenters IV-D-02 and 14 that the definition of "affected source" requires further revision. The issue about sources that do not emit HAP will be addressed, if appropriate, in each NESHAP, which must clearly define the affected source. Each NESHAP should make clear what parts of the facility have reporting, recordkeeping, monitoring, or other compliance requirements. Not all of the processes in the affected source will necessarily have requirements; however, it may not always be technically feasible or practical to separate sources that do not emit HAP from the affected source.

2.4.2 Construction

Comment:

A few commenters supported EPA's proposed definition of construction, stating that sources should be allowed to move existing equipment without triggering new source requirements. (IV-D-16)

Two commenters believed relocated sources should be subject to standards for new sources. (IV-D-04, 23) One of the commenters stated that if a source owner/operator knows that equipment will be relocated, they don't have to plan how to accommodate it. Therefore, they don't need the longer time that existing sources have before complying with the NESHAP. (IV-D-23) The other commenter noted that the only time that EPA has issued a policy statement that relocated sources were not new sources was in the dry cleaning MACT, where consolidation of machines at other locations would not constitute a new source.) This commenter requested that EPA clarify this issue in the rule by treating relocation as a new source. (IV-D-04)

Another commenter preferred that EPA either delete the word "all" from the definition of construction or reword the definition, explaining that in some instances it wouldn't make sense to relocate every single piece of equipment in the affected source. For example, an

owner/operator might choose to eliminate a spare storage tank and the piping that runs to it. Since they would not be removing and reinstalling "all" of the equipment, they may not meet the definition of construction. (IV-D-19)

Response:

We disagree with the commenters who stated that relocation means a source should be treated as a new source. An existing source that relocates and makes no other changes is still an existing source. Changes to the source means changes to the source's process or control equipment, method of operation, or emissions. This is clear in the Part 60 rules at 60.14(e)(6) and the same logic applies here. This was also further clarified in section 2.3.1 of "General Provisions for 40 CFR Part 63; Background Information Document for Promulgated Regulations," EPA-450-3-91-019b, February 1994:

> *"...affected sources for which construction or reconstruction is commenced before the proposal date would be considered existing sources subject to MACT for existing sources, and affected sources for which construction or reconstruction is commenced after the proposal date would be considered new sources subject to MACT for new sources. If a new or existing source subsequently is relocated, and if no other changes are made to the source (other than a change of ownership) as a result of the relocation or in the process of relocation, that source generally would continue to be subject ot the same emission standard requirements that it was subject to under th relevant standard before the relocation took place."*

The source would be subject to new source requirements if, in the process of relocating, the source was reconstructed, that is there was significant replacement of components according to the definition of reconstructed.

Our intent in revising the definition of construction is to allow existing sources that may need to move for various reasons (losing a lease, change in ownership, etc.) to do so without being subject to standards for new sources. We originally anticipated that this might apply to smaller, discrete emission units such as tanks for electroplating or other uses. However, as the commenters have pointed out, in some cases there may be a need to move a more complex affected source comprising a process unit or units, including various pieces of minor ancillary equipment.

Our intent in including the word "all" in the definition of construction in proposed §63.2 was to ensure that an owner/operator could not "fragment" the affected source such that the standards no longer applied. We believe it is reasonable for an

owner/operator to move an existing affected source and to reinstall the existing affected source at another location without being subject to new source standards, as long as the existing source is not changed such that it is reconstructed as defined in §63.2. We agree with the commenters that in some instances it would not make sense to relocate every single piece of equipment in the affected source. When an existing affected source is relocated, the owner/operator should be able to replace minor ancillary equipment in the affected source, such as piping, ductwork, valves, and wiring for monitoring systems, without triggering the standards for new sources. However, the costs of reinstalling such new minor ancillary equipment must be considered in determining whether the source has been reconstructed. If the costs of reinstalling minor ancillary equipment meet the definition of reconstruction as defined in §63.2, the existing affected source that is relocated is reconstructed and subject to the standards for new sources. Determination of whether an existing affected source that is relocated has been reconstructed must be made by the permitting authority on a case-by-case basis.

We also note that relocation does not mean that the source gets three years to come into compliance at the new location. If an existing source is relocated after the compliance date has passed, it is an existing source and must remain in compliance.

We have revised the definition of construction in §63.2 to allow the replacement of minor ancillary equipment in the affected source, as long as the cost of reinstalling the minor ancillary equipment does not constitute a reconstruction. We have retained the word "all" in the definition, as otherwise it would be unclear if the relocation exemption applies to a situation where portions of several defunct plants were used to create a new plant.

2.4.3 Compliance Plan

Comment:

Two commenters supported deleting the definition of compliance plan. (IV-D-02, 14)

Response:

We appreciate the commenters' support.

2.4.4 Federally Enforceable

Comment:

One commenter requested that EPA delete "adequate" from paragraph (6)(v) of the definition of federally enforceable. The commenter maintained that adding the word adequate introduces an ambiguity into the rule that could subject many such requirements to legal challenge. (IV-D-10)

Response:

There was no substantive change made to the definition of "federally enforceable." In the General Provisions promulgated on March 16, 1994 at 15 FR 12430, paragraph (b)(6) of the definition of "federally enforceable" referenced the provisions for federal enforceability of requirements under the State Implementation Plan (SIP). These criteria were published in the Federal Register on June 28, 1989 at 54 FR 27274. In the proposed amendments, these criteria were incorporated verbatim into the definition. Therefore, we disagree with the commenter's suggestion.

2.4.5 Major Source

Comment:

One commenter appreciated EPA's discussion in the preamble of the effect of a public right of way on the definition of major source. (See 66 FR 16324-5.) The commenter requested that EPA change the definition of major source in the rule such that only facilities that are physically next to each other, or would be next to each other but for an intervening public right of way, are contiguous for purposes of regulations under section 112. The commenter maintained that both the statutory language and the legislative intent confirm this meaning. The commenter pointed out that often fabricators cannot expand at the same location and have therefore constructed new facilities. Their experience is that regulators have attempted to interpret facilities that were not next to each other, but were "close enough" in the judgment of the regulators, as contiguous. This view led to disputes and uncertainty. (IV-D-16)

Another commenter, however, requested that EPA revise the definition of major source by replacing "located within a contiguous area with "located on one or more contiguous or adjacent properties." The commenter noted that EPA policy is that two pieces of property do not have to be touching to be adjacent, they can just be near or close by. The commenter also recommended that EPA add language clarifying that properties do not actually have to be touching to be contiguous. (IV-D-23)

Response:

As commenter IV-D-16 noted, we discussed the definition of "major source" and the possible effects of a public right of way on the determination of whether facilities constitute a major source in the preamble at 16324-5. Because it is impossible to anticipate all possible situations that may occur regarding major source determinations and contiguous facilities, these decisions must be made by the permitting authority on a case-by-case basis. For this reason, it is not necessary or appropriate to amend the "major source" definition as the commenter suggests.

We also disagree with commenter IV-D-23's suggestion to add the word "adjacent" to the definition of "major source" and to clarify that properties do not have to be touching to be contiguous. "Adjacent" is a regulatory concept that applies to part 51, not part 63. New Source Review and MACT programs have different objectives; therefore it is reasonable that these definitions are distinct. Furthermore, as we noted above, the meaning of contiguous was discussed in the preamble. Further modifications to the definition are not necessary.

2.4.6 Malfunction

Comment:

Two commenters requested that EPA clarify the terms "sudden," "infrequent," and "not reasonably predictable" in the definition of malfunction. Otherwise, the definition of malfunction could be so broadly interpreted that there would never be a violation.
(IV-D-04, 18)

Response:

The terms "sudden," "infrequent," and "not reasonably preventable" (not "predictable") are included in the General Provisions as promulgated on March 16, 1994 at 15 FR 12430. They were not part of the litigation discussions or decisions, and were not proposed to be amended. We appreciate the commenters' concern that malfunctions must be appropriately defined in the SSMP to avoid circumvention of the regulatory requirements. The permitting authority will make case-by-case determinations where necessary, and owners or operators can discuss the meaning of these terms with the permitting agency if necessary. Individual rules may choose to provide examples of SSM, or what would not be considered SSM for the specific source category. The rule is not being changed as the commenters requested.

2.4.7 Monitoring

Comment:

One commenter suggested that EPA add the words "or to verify a work practice standard" be inserted after the word device in the definition of monitoring. This change would cover monitoring for work practice standards. (IV-D-03).

Response:

We agree that definition of monitoring should be revised to ensure that our intent of including monitoring for work practice standards is clear. We have, therefore, revised the definition to include the suggested phrase as well as included several additonal clarifying examples in the text of the definition.

2.4.8 New Affected Source

Comment:

A few commenters supported adding a definition for new affected source, believing it would clarify when the new source MACT standards apply. These commenters advocated the logic and the specific criteria that EPA identified for determining when the new affected source would be different from the affected source. (IV-D-12, 17, 25).

Response:

We appreciate the commenters' support.

2.4.9 Part 70 Permit

Comment:

Two commenters supported deleting the definition of "part 70 permit."
(IV-D-02, 14)

Response:

We appreciate the commenters' support.

2.4.10 Reconstruction

Comment:

One commenter supported adding the phrase "unless otherwise defined in a relevant standard" to the definition of "reconstruction." The commenter further stated that EPA should establish guidelines for evaluating technical and economic feasibility in determining the fixed capital cost basis for reconstruction. The commenter recommended that EPA clarify that, at a minimum, reconstruction is the replacement of at least 50% of the fixed capital cost of a source. (IV-D-19).

Response:

We appreciate the commenter's support. We did not propose to further amend this definition, and will not be promulgating a change.

2.5 Comments on §63.3, Units and Abbreviations

2.5.1 Corrections

Comment:

One commenter provided corrections for the symbols for microgram and microliter and suggested adding an abbreviation for cubic meters at standard conditions per minute. (IV-D-19)

Response:

We appreciate the commenter's corrections and have made the recommended changes.

2.6 Comments on §63.4, Prohibited Activities and Circumvention

2.6.1 Fragmentation

Comment:

Two commenters requested that EPA identify in the regulation a specific period of time over which replacing components would be considered upgrading a project rather than fragmenting it. The commenter noted EPA's statement in the preamble in the middle column of 16325 that "However, if the same process unit were expanded, debottlenecked, or upgraded over time by replacing these various components, the projects should not be considered together to determine whether the 50 percent of fixed capital cost is eventually exceeded since the projects were not phased (or fragmented) to avoid new source MACT. The commenter also requested that the Agency provide criteria for determining when a facility may be intentionally circumventing MACT requirements by phasing in a project. (IV-D-04, 18)

Response:

The determination of whether fragmentation (or deliberate circumvention) has occurred must be made by the permitting authority on a case-by-case basis, because the specific criteria will vary depending upon the sources involved, and it is not reasonable or possible to establish criteria for this determination that will adequately address all circumstances. For this reason, we decline to specify a period or specific criteria as the commenters requested. Individual rules may provide specific timeframes or additional criteria if appropriate.

2.7 Comments on §63.5, Preconstruction Review and Notification Requirements

2.7.1 Use of Term Nonmajor Emitters

Comment:

One commenter opposed EPA's use of the term nonmajor emitters in §63.5(a)(2) and other paragraphs. The commenter preferred that EPA use the term area source. If EPA does not use the term area source, then the Agency should define nonmajor emitters in §63.2. (IV-D-19)

Response:

A nonmajor emitter in this context is not the same as an area source. The term "nonmajor emitters" refers only to affected sources (the collection of equipment and emission points subject to the standard) that do not have the potential to emit, considering controls, in the aggregate 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any hazardous air pollutants. Area and major

sources are determined by the HAP emissions from all emission points at the plant site, not just the affected source, which is sometimes only a small part of the overall source.

However, there are some instances in the preamble and in the proposed regulations where we inadvertently omitted the term "affected source" when discussing nonmajor emitters. This omission may have created confusion regarding nonmajor emitters. Therefore, we have revised the regulations at §63.5(a) and (b) to clarify that we are referring to nonmajor-emitting affected sources.

2.7.2 Preconstruction Review Requirements [§63.5(a)(1)]

Comment:

One of the commenters stated that section 112(i)(1) as written would require preconstruction review for new sources affected by a MACT standard, regardless of whether the source starts up before or after the effective date of the MACT standard. The commenter maintained that this establishes unnecessary administrative burdens, because the source must comply with MACT in either case. The commenter recommended a "postcard notice" instead for these cases. (IV-D-24).

Response:

Section 63.5(a)(1) of the General Provisions implements section 112(i)(1) of the Act. We do not have the authority to alteror override the statutory provisions. The proposed preconstruction review and approval requirements apply to new affected sources or reconstructed sources that start up after the effective date of a relevant standard.

2.7.3 Construction and Reconstruction Requirements [§63.5(b)]

Comment:

One commenter stated that the proposed amendments would require full preconstruction review for any "major-emitting" unit or process within an affected source, even when the unit is not within any listed source category. The commenter disagreed with this approach and maintained that sources within categories or subcategories that have not been listed under section 112(c) should not be subject to preconstruction MACT determinations under section 112(g). (IV-D-24)

Response:

The meaning of the comment is not clear to us. Preconstruction review under §63.5 applies only to new or reconstructed affected sources. By definition, affected sources are subject to standards developed under section 112 and thus are part of the listed source categories. The commenter did not provide adequate information regarding the provisions that were of concern, and thus we are unable to adequately respond. The commenter appears to be concerned with section 112(g) provisions, rather than the General Provisions or section 112(j) and as such is not within the scope of these amendments.

Comment:

One commenter suggested that EPA reorder the phrase at the end of §63.5(b)(3), "without obtaining written approval in advance, from the Administrator in accordance with the procedures specified in paragraphs (d) and (e) of this section." The commenter recommended moving this phrase in front of the colon, before §63.5(b)(3)(i), so that it is clear that the phrase applies to §63.5(b)(3)(i) and (ii). (IV-D-03)

Response:

We agree with the commenter and have revised the rule accordingly.

2.7.4 Notification of Construction or Reconstruction for Nonmajor Emitters [§63.5(b)(4)]

Comment:

Several commenters recommended deleting the requirement that nonmajor emitters submit a notification of construction or reconstruction. (IV-D-02, 14, 19, 24)

Response:

We disagree with the commenters' recommendation that the notification of construction or reconstruction requirement be eliminated. This notification is not particularly burdensome to a source; yet it is important for the permitting authority to be aware of this information. The rule has not been changed in this regard.

2.7.5 Compliance Extension Requirements [§63.5(b)(5)]

Comment:

Two commenters supported the proposal to reserve §63.5(b)(5) concerning compliance extensions, as these requirements are covered elsewhere in the rule. (IV-D-02, 14)

Response:

We appreciate the commenters' support.

2.7.6 Adding Equipment and Making Process Changes [§63.5(b)(6)]

Comment:

One commenter requested that EPA clarify in §63.5(b)(6) that adding new equipment or making a process change does not trigger new source requirements. (IV-D-19) Another commenter suggested that EPA revise the proposed language by replacing the phrase "considered part of the affected source" with " considered part of the existing affected source." The commenter maintained that this change would clarify that something less than reconstruction will not subject the affected source to new source MACT. (IV-D-03)

Response:

Individual NESHAP will define what constitutes a new or reconstructed affected source for the purpose of such determinations. It is not appropriate to revise the rule as the commenter suggests, because the provisions in §63.5(b)(6) apply to both new and existing sources. If equipment is added to an existing affected source, that equipment becomes part of the existing affected source if such equipment is part of the affected source definition. Similarly, if equipment is added to a new affected source, that equipment becomes part of the new affected source. The determination of whether reconstruction has occurred is separate from the provisions in this paragraph.

2.7.7 Commence Construction

Comment:

A few commenters expressed support for EPA's amendments to §63.5(d)(1) of the General Provisions to specify the beginning, rather than commencement, of construction where appropriate. (IV-D-02, 14)

Response:

We appreciate the commenters' support.

2.7.8 Information in Construction or Reconstruction Application [§63.5(d)(2)]

Comment:

One commenter preferred that general expressions (for example, organic HAP from combustion of distillate fuels) be used in the approval of construction form in §63.5(d)(2), rather than listing each type of hazardous air pollutant emitted. (IV-D-03)

Response:

Section 63.5(d)(2) lists the requirements for the application for approval of construction. This paragraph states "Each application for approval of construction shall include...technical information...including an identification of each type of emission point for each type of hazardous air pollutant that is emitted..." We believe that this language adequately addresses the commenter's request, as the phrase "each type of hazardous air pollutant" does not require that each specific HAP be itemized, but rather it permits broader categorization of the HAP that are emitted.

2.7.9 Substantially Equivalent Preconstruction Review [§63.5(f)(1)]

Comment:

One commenter supported the concept in §63.5(f)(1) that construction and reconstruction approval for MACT standards can occur under State preconstruction review programs. (IV-D-03)

A few commenters disagreed with the provisions in proposed §63.5(f)(1)(i) and (ii), which they interpreted as requiring each owner/operator to demonstrate that the State or local agency review is substantially equivalent to the relevant requirements in §63.5. The commenters instead believed that EPA should determine which State or local air permit programs have substantially equivalent preconstruction review requirements. (IV-D-03, 19) One of the commenters noted that if EPA has delegated authority to a State or local agency to implement subpart A of part 63 and part 70, then EPA has already agreed that the preconstruction review and approval process is substantially equivalent to the federal

requirements. (IV-D-19) Another commenter said that the construction and reconstruction approval requirements in §63.5(e) would ensure that the permitting authority was enforcing adequate preconstruction review absent the notification requirements in §63.5(f)(1). (IV-D-03) The commenter also believed that the notification requirement was duplicative and burdensome, as EPA would already be receiving a copy of all notifications submitted to the permitting authority, as required under §63.13.
(IV-D-03)

Response:

We appreciate the commenter's support for the concept of allowing construction or reconstruction approval under State preconstruction review programs.

We generally agree with commenter IV-D-19 that a State or local agency that has taken delegation of part 63 standards has already probably demonstrated that their preconstruction review process is substantially equivalent to the Federal requirements. However, State requirements may differ from Federal requirements, and delegation of a Federal requirement does not ensure equivalency of a State requirement. When a State is the delegated authority, the State implements §63.5; we do not require two preconstruction review processes when the State and Federal requirements are substantially equivalent.

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

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

Finally, we do not agree with the commenters' suggestion that we determine which State or local programs have substantially equivalent preconstruction review requirements. Individual States or local agencies are in a better position to make such a determination.

2.8 Comments on Startup, Shutdown, and Malfunction Provisions

2.8.1 General Duty to Comply [§63.6(e)(1)(i)]

Comment:

A few commenters supported the proposed changes to §63.6(e)(1)(i). (IV-D-02, 12, 14, 19, 25) The commenters noted that the proposed change clarifies that compliance with the Startup, Shutdown, and Malfunction Plan (SSMP) during SSM constitutes compliance with the standards. (IV-D-02, 12, 14, 19, 25) They also supported the recognition that worker safety should be considered in determining what actions are taken during a SSM event. (IV-D-12, 25) Two of the commenters noted that the changes would not expose a source to double penalties for simultaneous violations or to enforcement liability every time the source failed to follow an instruction in an owner's manual. (IV-D-02, 14)

Two commenters questioned whether an action that is inconsistent with the SSMP is a violation of the requirement in §63.6(e)(1)(i) to operate and maintain the affected source to minimize emissions to the levels of the relevant standard. The commenters requested that EPA identify the criteria (other than minimizing emissions) that implementing agencies should use in determining whether the requirements in §63.6(e)(1)(i) are met. (IV-D-04, 18)

Response:

We appreciate the commenters' support for changes made to the SSMP provisions.

The question of whether an action that is inconsistent with the SSMP is a violation of the requirement to minimize emissions is for the enforcement agency to evaluate on a case-by-case basis. The General Provisions require that actions taken that are inconsistent with the SSMP be reported when the source exceeds the relevant emission standard. The purpose of this notification is to provide the State with an opportunity to evaluate whether the incident had an effect on the source's requirement to minimize emissions to the levels required by the relevant standard. It is possible to be inconsistent and still minimize emissions. The SSMP can be revised as necessary when new SSM procedures are warranted. In this way, the source owner/operator can minimize the likelihood of operating in a manner that is inconsistent with the SSMP. For these reasons, we have declined to identify general criteria for violation of minimizing emissions as the commenters request. Instead, we believe these determinations are best made by each implementing agency.

Comment:

One commenter believed that EPA should clarify control requirements for the time between the process shutdown (ceasing operation) and startup (putting into operation). The commenter requested that EPA accomplish this by revising the definitions of startup and shutdown. (IV-D-19)

Response:

Once a source is subject to a NESHAP that includes a requirement for a SSMP, the source must either meet the requirements of the standard or operate under the SSMP. It is the source's responsibility to determine how to operate during periods of SSM, and to specify such procedures in the SSMP.

"Shutdown" specifically means only the process of shutting off equipment or a process, and does not refer to the period of non-operation. Thus, during this period when a process is offline or between production runs, the source must meet the standard, including emission limits, as well as monitoring, recordkeeping, and reporting requirements. An owner or operator may apply to the Administrator for alternatives to monitoring during these periods. Other provisions may be waived during longer periods of non-operation, upon request.

2.8.2 Do Not Incorporate SSMP Into Title V Permit [§63.6(e)(3)]

Comment:

A few commenters supported removing the requirement in §63.6(e) that the SSMP be incorporated into the title V permit. The commenters noted that incorporating the SSMP into the title V permit is burdensome for sources and permitting authorities, as it requires revisions to the title V permit whenever the SSMP is changed. (IV-D-02, 12, 14, 21, 25)

Response:

We appreciate the commenters' support.

2.8.3 Criteria for Requiring SSMP Revisions [§63.6(e)(3)(vii)]

Comment:

Two commenters requested that EPA add a fourth instance in which a permitting authority may require a facility to revise its SSMP in §63.6(e)(3)(vii), which would be if the permitting authority determines that an event listed in the plan does not meet the definition of startup, shutdown, or malfunction outlined in the General Provisions. The commenter also requested that EPA specify whether any of the conditions in §63.6(e)(3)(vii) constitute a violation of the SSMP provisions. (IV-D-04, 18)

Response:

We believe that §63.6(e)(3)(vii) (A) already implicitly gives permitting agencies the authority to require a facility to revise its SSMP if an event listed in the SSMP does not meet the definition of startup, shutdown, or malfunction in §63.2. However, we are adding §63.6(e)(3)(vii) (D) to state this authority explicitly. The malfunction provisions in subpart A are not intended to allow a source to willingly or inadvertently circumvent the requirement to meet an emissions limitation or standard by labeling an event a malfunction when it does not meet the definition of malfunction in §63.2.

2.8.4 SSMP Revisions [§63.6(e)(3)(viii)]

Comment:

A few commenters opposed the requirement in §63.6(e)(3)(viii) that revisions to the SSMP be reported to the permitting authority in the semiannual report. (IV-D-03, 19)

One commenter considered the new requirements in §63.6(e)(3)(viii) burdensome and duplicative. The commenter believed that the requirements to submit reports of actions taken

that are consistent or inconsistent with the SSMP, to revise the SSMP, and to keep copies of superseded SSMP on site were sufficient to ensure the permitting authority is aware of changes to the SSMP. (IV-D-03)

One commenter stated that if the source can revise the plan without prior approval, it makes no sense to have to send a file copy to EPA and the requirement for revisions to be maintained on site in §63.6(e)(3)(v) should suffice. If EPA does mean that a revised SSMP must be submitted, the Agency should give more detail on how it should be formatted, including how the specific procedure or methodology relates to a particular SSM event. The commenter also recommended that the date on the new SSMP should be its effective date. On the other hand, if EPA only wants a notice that the SSMP has been revised in the semiannual report, then §63.6(e)(3)(viii) should be revised to state that. The commenter also requested clarification on what the "scope of activities" in §63.6(e)(3)(viii) means. (IV-D-19).

The commenter also recommended that EPA explain how malfunctions that meet the definition of SSM under §63.2, but are not covered in the existing SSMP, should be reported. EPA should add language to §63.6(e)(3)(viii) to cover this situation. The commenter cited §63.8(c)(1)(ii) and §63.10(d)(5)(ii) as requiring reports of malfunctions not covered by the SSMP, but noted that subpart A does not specify how these malfunctions should be reported. (IV-D-19)

Two commenters requested that EPA remove the last sentence of proposed §63.6(e)(3)(ix) regarding the permit shield. The commenter believed the sentence could be misconstrued to mean that the SSMP is part of the title V permit and yet ineligible for the permit shield. (IV-D-12, 25)

Response:

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

"Scope of activities" generally refers to the equipment and activities at the source covered by the SSMP. It is the owner or operator's responsibility to define the specific scope of activities that the SSMP covers, as this is source-dependent. Moreover, these provisions are designed to give the source owner/operator flexibility. Generally, the scope of activities would include all operations and equipment specified by the owner or

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

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

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

2.8.5 Immediate SSM Reports [§63.6(e)(3)(iv)]

Comment:

One commenter preferred that reports of SSM actions not consistent with the SSMP be submitted with the periodic report, rather than within 2 working days after commencing actions and 7 working days after the end of the event, as in §63.6(e)(3)(iv). The commenter maintained that most MACT standards allowed this, and EPA should be consistent in its approach. Also, title V, the Superfund Amendments and Reauthorization Act (SARA), and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) already require immediate reporting, so the MACT requirements are redundant anyway. (IV-D-19)

Response:

We decline to make the timeline change suggested by commenter. Each individual NESHAP has the discretion to change this requirement. The consequences of not being consistent with the SSMP vary for different sources and under different circumstances, and developers of each NESHAP are in the best position to evaluate appropriate actions, including the need to immediately report such inconsistencies, based on these consequences.

2.8.6 SSMP Requirements Apply to Monitoring Equipment [§63.6(e)(3)(iv)]

Comment:

Two commenters supported applying the SSMP provisions in §63.6(e)(3) to monitoring equipment as well as air pollution control equipment. (IV-D-02, 14)

Response:

We appreciate the commenters' support.

2.8.7 SSM Requirements Should Not Apply

Comment:

One commenter noted numerous specific provisions of proposed 40 CFR part 63, subpart GGGG, National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production, conflicted with the proposed SSM requirements for the General Provisions. The commenter urged EPA to clarify in the preamble to the final General Provisions that the SSM requirements in the General Provisions do not apply to sources subject to subpart GGGG. The commenter noted that EPA cannot effectively reopen each affected regulation without taking and responding to public comment on the changes.

The commenter indicated that proposed §63.6(e)(3)(iii), which requires records related to malfunctions under §63.10(b), should not apply to subpart GGGG, as subpart GGGG states that §63.10(b)(2)(ii-iii) relating to malfunction records do not apply. Also, proposed §63.6(e)(3)(iv), which requires reporting of actions inconsistent with the SSMP if the emissions exceed

the relevant standard, does not comport with subpart GGGG. The Vegetable Oil NESHAP require reporting of such actions regardless of whether the standard was exceeded. The commenter also specifically noted that proposed §63.6(e)(3)(viii), requirement to report modifications to the SSM plan in the semiannual report, should not apply to sources subject to subpart GGGG, as subpart GGGG does not require a semiannual report. (IV-D-07)

Response:

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

We agree with commenter IV-D-07's assessment that certain startup, shutdown, and malfunction provisions in the proposed amendments are inconsistent with the promulgated Vegetable Oil NESHAP. We had previously reviewed the existing rules and did not identify any substantive problems. However, the Vegetable Oil NESHAP were promulgated after our review and subsequent proposal of the amendments. We have discussed the implications with the commenter and as a result, we are amending, in a separate Federal Register notice, several provisions in the Vegetable Oil NESHAP related to SSM requirements to eliminate unintended inconsistencies. The Vegetable Oil NESHAP include specifically tailored SSM provisions and, thus, sources covered by the Vegetable Oil NESHAP should look to that rule for their applicable SSM provisions.

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

We are also amending the first sentence of §63.2861(d) to clarify that owner/operators must submit an immediate SSM report if an SSM is handled differently from the procedures in the SSM plan and the emission standards are exceeded. We are amending the first sentence of §63.2861(d) to read as follows:

> *(d) Immediate SSM reports. If you handle a SSM during an initial startup period subject to §63.2850(c)(2) or (d)(2) or a malfunction period subject to §63.2850(e)(2) differently from procedures in the SSM plan and the relevant emission requirements in §63.2840 are exceeded, then you must submit an immediate SSM report.*

We are also amending the third sentence of §63.2852 to clarify that the SSMP does not have to be incorporated into the title V permit. We are amending the third sentence of §63.2852 as follows:

> *<u>§63.2852 What is a startup, shutdown, and malfunction plan?</u>*
> *You must develop a written SSM plan in accordance with §63.6(e)(3) and implement the plan when applicable. You must complete the SSM plan before the compliance date for your source. You must also keep the SSM plan on-site and readily available as long as the source is operational.*

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

2.8.8 Availability of SSMP

<u>Comment:</u>

A few commenters strongly opposed the statements in the proposal preamble on page 16326 that the SSMP must be submitted to the permitting authority and made publicly available if someone requests it. (IV-D-02, 03, 14) One of the commenters believed it would be burdensome to prepare a SSMP without Confidential Business Information (CBI) in it. Also, such a plan would be uninformative without the CBI. (IV-D-03)

Two other commenters preferred that the rule specifically state that the permitting agency has the authority to request a copy of the facility's SSMP and to review and comment on it. This commenter also preferred that State and local agencies have discretion to approve or disapprove the SSMP. (IV-D-04, 18)

<u>Response:</u>

We believe that the proposal preamble discussion on page 16326 accurately reflects §70.4(b)(3)(viii) of the title V permit program, which requires that the permitting authority has legal authority to: "Make available to the public any permit application, compliance plan, permit, and monitoring and compliance certification report pursuant to section 503(e) of the Act, except for information entitled to confidential treatment pursuant to section 114(c) of the Act. The contents of a part 70 permit shall not be entitled to protection under section 114(c) of the Act." For this reason, we do not agree

with the commenters who oppose the requirements for the SSMP to be made publicly available if requested. Owners or operators may still identify the portions of the SSMP that are considered Confidential Business Information (CBI); material claimed as CBI would not be available for public disclosure except as provided under the process established by 40 CFR Part 2.

We further believe, pursuant to §70.4(b)(3)(viii), that the authority for permitting agencies to request a facility's SSMP already exists. Therefore, we do not believe it is appropriate at the present time to revise the regulation as commenters IV-D-04 and 18 request.

2.8.9 Contents of SSMP

Comment:

One commenter requested that EPA require that facilities provide the number and a description of malfunctions that occurred in the semiannual report. The commenter stated that this information would be necessary to evaluate a facility's compliance with the SSMP, as regular site visits are infeasible due to limited resources. (IV-D-04)

Response:

We agree with the commenter and we have modified the provisions at §63.10(d)(5)(i) to state "Periodic startup, shutdown, and malfunction reports . . . . Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period, ***and they shall include the number, duration, and a brief description of each startup, shutdown, and malfunction****..." This change provides the implementing agency with adequate information, without placing an undue additional burden on the source. The types of malfunctions will already have been identified in the SSMP, so a brief description could consist of simply identifying which types of malfunctions occurred during the reporting period, as well as the number and the duration of each.*

Comment:

One commenter requested that EPA identify in the regulation the minimum required elements of a SSMP. (IV-D-04)

Response:

The minimum criteria that are generally applicable for a SSMP are included in §63.6(e)(3)(i). Other requirements may be specified in an individual NESHAP if necessary, because the possible requirements for a SSMP are too varied depending on the particular source categories and sources concerned to specify all such elements in the General Provisions. If the permitting authority is not satisfied with a particular SSMP, the permitting authority may require that it be revised.

2.9 Other Comments on §63.6, Compliance with Standards and Maintenance Requirements

2.9.1 Compliance Requirements for Area Sources That Become Major [§63.6(b)(7) and (c)(5)]

Comment:

Two commenters supported the proposed revisions to §63.6(b)(7) and (c)(5) regarding compliance requirements for area sources that become major. (IV-D-02, 14)

Response:

We appreciate the commenters' support.

Comment:

One commenter requested that EPA clarify its statements in the preamble on page 16328 regarding area sources that become major. The commenter believed that EPA had improperly characterized the regulatory requirements for such sources. The commenter believed that EPA was incorrect in stating that §63.6(b)(7) and (c)(6) were being revised regarding the applicability of MACT to area sources. The commenter stated that the current rule *is* that when minor sources become major, they are subject to MACT for existing sources. The commenter believed that making minor sources subject to new source MACT would effectively shut down such sources because they would not be able to operate with new source MACT on the date that they became major. (IV-D-10)

Response:

We agree with the commenter that the preamble improperly characterized the requirements for area sources that become major in the following text from page 16328 :

"The current General Provisions require new source MACT for area sources that become major after the effective date of the relevant standard, regardless of when the portion of the source affected by the standard (the affected source) actually commenced construction (including those that commenced construction long before the proposal date of the NESHAP)." The commenter is correct that under the General Provisions promulgated on March 16, 1994 at 59 FR 12430, an existing area source that becomes a major source is subject to existing source standards. [§63.6(c)(5)]. Under the 1994 regulations, an unaffected new area source (that is, an area source for which construction or reconstruction was commenced after the proposal date of the standard) that becomes a major source is subject to the new source standards.

However, the changes were made to §63.6(c)(5), not §63.6(c)(6), as the commenter indicated. Our statements in the preamble regarding the proposed changes to §63.6(b)(7) and §63.6(c)(5) are accurate.

2.9.2 Compliance Extension 120 Days Before Compliance Date [§63.6(i)(4)(i)(B)]

Comment:

Several commenters supported allowing compliance extension requests to be submitted as late as 120 days before the compliance date, rather than 1 year out. (IV-D-03, 12, 15, 20, 21, 25) One commenter believed this change would reduce the number of compliance extension requests. (IV-D-15) Another commenter outlined many circumstances that could arise that would necessitate a late request for a compliance extension, such as vendor strikes, acts of God, or damaged equipment. (IV-D-03)

One commenter supported the proposed provision in §63.6(i)(4)(i)(B) postponing the applicability of MACT standards until the permitting authority either approves or denies a compliance extension request. This commenter noted that the proposed compliance extension revisions were extremely important for sources subject to 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Incinerators. Amendments to the performance test requirements of the Hazardous Waste Incinerator rule have not been completed. The commenter noted that the amendments would have had to be promulgated by December 2001 for facilities to complete their comprehensive performance test plans by the March 2002 deadline. The ability to apply for a compliance extension would be critical if the amendments were not final by December 2001. (IV-D-21)

Response:

We appreciate the commenters' support.

2.9.3 Compliance Extension Later Than 120 Days Before Compliance Date [§63.6(i)(4)(i)(C)]

Comment:

A few commenters supported allowing compliance extension requests to be submitted even later than 120 days before the compliance date when the need arose due to circumstances beyond the reasonable control of the owner/operator. (IV-D-12, 20, 25) One of the commenters identified various unforeseen and uncontrollable problems that would create a need for a compliance extension later than 120 days before the compliance date, including strikes, transportation delays, acute labor shortages, software glitches, and natural disasters. In such circumstances, the ability to submit a compliance extension request later than 120 days before the compliance date would help to avoid facility shutdowns. (IV-D-25)

Response:

We appreciate the commenters' support.

2.9.4 Criteria for Compliance Extension [§63.6(i)]

Comment:

A few commenters requested that EPA add specific minimum criteria for granting a compliance extension in the regulations at §63.6(i). The commenter recommended that the criteria include a good faith effort to comply (that is, a list of actions taken to date), circumstances beyond the reasonable control of the facility, and a reasonable compliance schedule. The commenter noted that minimum criteria would ensure consistency, especially when a company owns sources in multiple States. (IV-D-04, 18)

Response:

Some of the criteria mentioned by the commenter are included in the General Provisions at §63.6(i)(6)(i). Beyond the elements identified in that paragraph, which include a description of controls, compliance schedule, and interim emission control

steps, it is at the permitting authority's discretion to evaluate compliance extension requests on a case-by-case basis. If the permitting authority does not agree that a compliance extension is warranted, they have the authority to disapprove the request.

2.9.5 Routine Maintenance Not During Scheduled Downtime

Comment:

A few commenters applauded EPA's recognition on page 16327 of the proposal preamble that there are times when planned routine maintenance of an air pollution control device cannot be scheduled to coincide with scheduled downtime of the process equipment. (IV-D-02, 03, 14, 20) One of the commenters urged EPA to indicate whether they intend to revise the regulations to incorporate this concept. (IV-D-03) Another commenter endorsed the preamble language asking affected sources to suggest potential allowances for routine maintenance in individual MACT standards (for example, allowing the use of thermal oxidizers to control emissions from Group 1 process vents under the HON). (IV-D-20)

Another commenter advised EPA to require offsets for any excess emissions occurring during routine maintenance by using a back-up control device or by reducing emissions elsewhere in the plant if there is no back-up control device. The offset amounts must be equal or greater than the excess emissions. Risk assessments or hazard evaluations would not be required. The definition of shutdown in the General Provisions does not include air pollution control equipment, so this definition would need to be revised. (IV-D-18)

Response:

We appreciate the commenters' support. As we indicated in the preamble, there is no uniform approach to this issue that will be appropriate for every MACT standard. Therefore, this issue will be addressed if needed during regulatory development for the various MACT standards. As we also indicated in the preamble, we encourage the public to actively participate in the development of each MACT by suggesting potential allowances for routine maintenance if appropriate.

2.10 Comments on §63.7, Performance Testing Requirements

2.10.1 Conduct Performance Test Within 180 Days of Compliance Date [§63.7(a)(2)]

Comment:

A few commenters supported the proposed change to §63.7(a)(2), which would require performance tests to be conducted within 180 days of the compliance test date in all cases. (IV-D-02, 14, 19)

Response:

We appreciate the commenters' support for the proposed changes.

Comment:

One commenter recommended that EPA add a paragraph to allow extensions of the performance test date for control devices that have already demonstrated initial compliance but need to be retested. The commenter stated that §63.6(i) provides some allowances for performance test extensions (such as for existing sources demonstrating compliance with early reductions, BACT or LAER requirements, or for existing sources that need additional time to install controls), but does not address the situation where an existing source has already installed controls and demonstrated compliance. The commenter expressed two concerns: (1) lack of clarity regarding compliance dates or testing requirements under particular circumstances; and (2) reaching representative operating conditions during initial start-up. For example:

- Some MACT standards (like the HON) specify the compliance date for process units added to existing affected sources for which new source requirements do *not* apply, while others do not. The commenter recommended that EPA clarify this. Further, some MACT standards permit the use of previous performance tests for demonstrating compliance, provided that either no process changes have occurred or the test can "reliably demonstrate compliance" despite process changes. The commenter assumed that a re-test is needed when this standard is not met, but requested clarification from EPA.

- The commenter noted that initial startup is a process whose length can vary depending on the equipment involved, and that it is not defined in the regulation. To meet the requirement to conduct performance testing within 180 days, affected sources may be required to test under conditions that are not representative of normal operating conditions,

and then to re-test at a later date when the source is running as intended. The commenter stated that such additional testing is expensive and gave several examples of situations where representative operating conditions might not occur in the 180-day time period.

The commenter maintained that the circumstances described above illustrate the need for provisions to allow sources to request performance test extensions. The commenter suggested that one or a combination of the following options could be used:

- Add a paragraph to §63.7(a)(2) to allow EPA or the permitting agency to grant requests to extend the date for performance testing (or re-testing) of existing control devices that have already demonstrated initial compliance.

- Add language to §63.6(i) or §63.7(h)(3)(ii) to provide such performance test date extensions.

- Clarify that §63.7(e)(1) allows an affected source to delay a performance test when representative operating conditions are not reached during initial start-up.

The commenter recommended that the first option be implemented. (IV-D-19)

Response:

While we acknowledge the commenter's concerns, we do not agree that a regulatory change to the General Provisions is warranted to address these issues. As the commenter noted, some MACT standards, such as the HON, specify compliance dates for additions or changes to existing affected sources that do not result in new source requirements. Where a situation is particularly complex, the individual standard will address the question of compliance dates, and we believe that this is the appropriate way to handle such concerns. A source owner/operator can always request a determination from the permitting agency if the compliance or performance testing requirements are in doubt.

With respect to the commenter's concern about performance testing under representative operating conditions, we believe that this issue is already adequately addressed. First of all, for existing sources, the source has already been in operation for some time, and thus, representative operating conditions are known by the

owner/operator. For new sources, the compliance date is sufficiently far in the future that the question of reaching representative operating conditions should be moot. Furthermore, most of the 10-year MACT standards are being written to address these types of situations. Again, this is a matter best addressed by individual rules when necessary.

Finally, a source owner/operator also has the discretion to apply for permission to use an alternative test method under §63.7(f), or for the waiver of a performance test under §63.7(h).

2.10.2 Notify of Performance Test Delay As Soon As Practicable [§63.7(b)(2)]

Comment:

Two commenters supported the proposed change in §63.7(b)(2) that would allow owners to notify EPA as soon as practicable rather than 60 days prior when a performance test date must be rescheduled. The commenters noted that it is often difficult to give advance notice of testing dates, as operators are often at the mercy of overburdened testing facilities in scheduling a test. (IV-D-02, 14)

One commenter noted a discrepancy between the preamble language discussing performance testing notification requirements and the actual proposed language. The commenter quoted text from the preamble that indicated that when an owner/operator was unable to provide at least 60 days calendar notice *before* a performance test was scheduled, notification must be submitted within 5 days of the test date. However, the commenter pointed out that the rule language in question discusses only notification periods for the case when a performance test cannot be conducted on the scheduled date. The commenter requested that EPA clarify its intent. (IV-D-19)

Response:

We appreciate the commenters' support for the proposed changes.

Commenter IV-D-19 is correct regarding the discrepancy between the preamble statement and the proposed requirements in §63.7(b)(2). The proposal preamble (see page 16330, section J.2) stated: "Section 63.7(b) of the General Provisions provides performance test notification requirements that we and/or the delegated State agencies be notified at least 60 calendar days before the scheduled date of the performance test."

Our intent is reflected in the rule language of §63.7(b)(2). However, to better distinguish between the requirements of §63.7(b)(1) and (2), we amended §63.7(b)(1) to state that an owner or operator must notify the Administrator of his or her intent to conduct a performance test at least 60 calendar days before the performance test is "initially" scheduled to begin.

2.10.3 Use Alternative Method If Not Approved Within 45 Days [§63.7(c)(3)(ii)(B)]

Comment:

One commenter supported the proposed changes to §63.7(c)(3)(ii)(B), which would allow the owner/operator to conduct a performance test using an alternative method if the Administrator has not notified the owner of approval within 45 days after the request or a site-specific test plan containing the proposed alternative method was submitted. (IV-D-21)

Response:

We appreciate the commenter's support.

2.10.4 Alternatives to Method 301 [§63.7(f)(2)(ii)]

Comment:

A few commenters supported the proposed changes to §63.7(f)(2)(ii) allowing the use of specific procedures in Method 301, rather than the entire Method. (IV-D-02, 14, 19)

Response:

We appreciate the commenters' support.

2.10.5 Permitting Authority Approves Alternative Test Methods [§63.7(f)(2)(i) and §63.7(f)(3)]

Comment:

One commenter believed the permitting authority should be able to approve the use of alternative test methods after a title V permit has been issued to the source owner/operator. The commenter suggested specific language for §63.7(f)(2)(i) and (3) to implement this change. The commenter believed the State agency would be more familiar with the facility since they are closely involved with the facility during the construction permit phase. The commenter asserted that the permitting authority should have the same goals and objectives as EPA does for considering alternative requests, as the title V permit must meet federal requirements. Having the permitting authority approve the alternative test methods would relieve the facility of the burden to submit requests to both the permitting authority and EPA. (IV-D-19)

Response:

We stated our policy regarding approval of alternative test methods in our November 12, 1986 memo from Jack Farmer, New Section for all NSPS and NESHAP Regulations: Delegation of Authority. A memorandum from John Seitz on July 10, 1998, Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies, updated the policy. This policy is also included in Delegation 7-121, Performance Test, of our Delegations Manual. All of these documents are included in our publication 305-B-99-004, How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring, which you can find at http://www.epa.gov/clariton/clhtml/pubtitle.html. *We also made changes to the regulations at 40 CFR Part 63, Subpart E, Approval of State Programs and Delegation of Federal Authorities to allow EPA to approve the use of alternative test methods. The preamble to the final rule discusses our rationale for this change. You'll find the preamble at 65 FR 55810. As these documents and the promulgated regulations state, only the Administrator may approve alternatives to test methods for demonstrating compliance with emission limitations under section 112(d). We disagree with the commenter that the permitting authority is in the best position to make these decisions. Intermediate changes without a thorough review have the potential to decrease the stringency of the standard, and typically require substantial technical information. Major changes or alternatives to test methods have national significance, and therefore must be reviewed and approved by the Administrator. Furthermore, §63.7(f) requires Method 301 validation for intermediate and major changes to test methods; this is an extensive validation method for which the permitting authority generally does not have adequate time or resources. Finally, for the permitting authority to make these decisions could result in different decisions for similar sources.*

2.10.6 Definition of Minor, Intermediate and Major Changes [§63.7(e)(2)(i) and (ii), §63.8(b)(i) and (ii), 63.8(f)(1)]

Comment:

One commenter stated that the definitions of minor, intermediate, and major changes were not included in §63.90(a), and it is therefore difficult to understand the criteria for each. If the definitions are not available in a currently promulgated rule, EPA should add them to subpart A. (IV-D-19)

Response:

The definitions are included in amended §63.90(a), which was promulgated on September 14, 2000 at 65 FR 55810.

2.11 Comments on §63.8, Monitoring Requirements

2.11.1 CMS Operation and Maintenance [§63.8(b)(2)]

Comment:

Two commenters supported the proposed changes to §63.8(b)(2) that allow the use of a single CMS for monitoring combined emission streams. The commenters noted that this provision would reduce cost and burden. (IV-D-02, 14)

Response:

We appreciate the commenters' support.

2.11.2 CMS Operation and Maintenance [§63.8(c)(1)]

Comment:

A few commenters supported EPA's proposal to delete the requirement in §63.8(c)(1)(ii) for reporting actions not consistent with the SSMP with 24 hours. The commenters appreciated making the requirements consistent with initial reporting within 2

working days and final reporting within 7 working days, as required in §63.6(e)(3), which §63.8(c)(1) now references. (IV-D-02, 14, 19)

Response:

We appreciate the commenters' support.

2.11.3 Readily Accessible Readout [§63.8(c)(2)]

Comment:

Two commenters supported the requirement for readouts to be readily accessible. (IV-D-02, 14)

Several commenters proposed deleting the requirement that readout from the monitoring equipment be "readily accessible onsite for operational control or inspection by the operator of the equipment." (IV-D-10, 13, 19) One commenter maintained that the provision was unnecessary because §63.10(b) already requires files of all information to be readily available. (IV-D-19) A few of the commenters maintained this requirement was technically infeasible, as the readout depends on the configuration of the source, type of control equipment, frequency, and whether monitoring data are read in central control booths or computers. (IV-D-10, 13, 19) One commenter (IV-D-13) stated that the optimal location of the readout should be left to the source.

One of the commenters stated that if EPA does not remove the phrase, it should be reworded to change the regulatory text from "read out" to "indication of operation," as audible or visual alarms may also alert the operator that a problem has occurred with the continuous monitoring system (CMS). The commenter further suggested removing the terms "in plain view" and "close proximity," as CMS readouts may be readily accessible but may not meet these requirements. For example, they may be in the control room but not in the line-of-sight of an operator, in the process unit operating block but not where the "operators are normally operated," or operated by a different process unit and monitoring unit. The commenter proposed the following language if EPA does not delete §63.8(c)(2)(ii) entirely. (IV-D-19)

> "Unless the individual subpart states otherwise, the owner/operator shall ensure that the response (indication of operation) from each CMS required for compliance with the standard is readily accessible on-site for operational control or inspection by the operator of the equipment."

Response:

We recognize the commenters' concerns with the provisions governing the availability of information from monitoring equipment. We have revised §63.8(c)(2)(ii) to refer to "read out or other indication of operation." This addresses the point made by commenter IV-D-19, who pointed out that audible or visual alarms may be in use rather than a "read out." The terms "in plain view" and "close proximity" were used in the preamble, although not in the regulatory text, to explain what was meant by readily accessible and to assure that inspectors would have easy access to monitoring information. However, we agree with the commenter that the required information may be readily accessible although not in plain view. "Readily accessible" is the source owner/operator's responsibility to ensure that monitoring information is easily available. No rule changes were made to address this issue.

2.11.4 Zero and High Level Calibration Checks [§63.8(c)(6)]

Comment:

A few commenters suggested that EPA revise §63.8(c)(6) to clarify that the zero and high-level calibration checks only apply to continuous emission monitoring systems (CEMS) and continuous opacity monitoring systems (COMS), not to all CMS. Some continuous parameter monitoring systems (CPMS), such as thermocouples and weight devices, cannot be automatically calibrated. (IV-D-08, 12, 15, 25)

One commenter preferred that EPA delete §63.8(c)(6), as promulgated MACT standards already contain calibration requirements and daily system checks for CPMS. The commenter cited §63.118(a)(2) and §63.152(f). (IV-D-19)

Response:

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

It is not appropriate to delete §63.8(c)(6) as commenter IV-D-19 suggests. Individual standards may change this as appropriate or necessary, but these monitoring provisions will remain in the General Provisions.

2.11.5 Permitting Authority Approves Alternative Monitoring [§63.8(f)(1)]

Comment:

One commenter believed the permitting authority should be able to approve the use of alternative monitoring after a title V permit has been issued to the source owner/operator. The commenter suggested specific language for §63.8(f)(1) to implement this change. The commenter believed the State agency would be more familiar with the facility since they are closely involved with the facility during the construction permit phase. The commenter asserted that the permitting authority should have the same goals and objectives as EPA does for considering alternative requests, as the title V permit must meet federal requirements. Having the permitting authority approve the alternative monitoring would relieve the facility of the burden to submit requests to both the permitting authority and EPA. (IV-D-19)

Response:

We stated our policy regarding approval of alternatives to any monitoring methods in Delegation 7-121, Alternative Methods, of our Delegations Manual. A memorandum from John Seitz on July 10, 1998, Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies, updated the policy. These documents are included in our publication 305-B-99-004, How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring, which you can find at http://www.epa.gov/clariton/clhtml/pubtitle.html. *We also made changes to the regulations at 40 CFR Part 63, Subpart E, Approval of State Programs and Delegation of Federal Authorities to allow EPA to approve the use of alternative test methods. The preamble to the final rule discusses our rationale for this change. You'll find the preamble at 65 FR 55810. As these documents and the promulgated regulations state, only the Administrator may approve alternatives to any monitoring methods for demonstrating compliance with emission limitations under section 112(d). We disagree with the commenter that the permitting authority is in the best position to make these decisions. Intermediate changes without a thorough review have the potential to decrease the stringency of the standard, and typically require substantial technical information. Major changes or alternatives to monitoring methods have national*

significance, and therefore must be reviewed and approved by the Administrator. Finally, for the permitting authority to make these decisions could result in different decisions for similar sources. For discussion of major, intermediate, and minor changes to testing and monitoring, please see our July 10, 1998 policy memo, Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies, which is Attachment 1 of our publication 305-B-99-004.

2.12 Comments on §63.9, Notification Requirements

2.12.1 Initial Notifications [§63.9(b)]

Comment:

A few commenters supported removing the requirements to include design capacity and information about each emission point in the Initial Notification under §63.9(b)(2)(iv). (IV-D-02, 14, 19)

One of the commenters preferred that EPA remove the Initial Notification requirements completely. The commenter maintained that EPA identifies all potential existing sources in the MACT rule development process and has made that information available to the permitting authorities and the public. The few and relatively small sources that EPA does not identify in the regulatory development process will have to file precompliance reports. Sources that are to be constructed, reconstructed, or that become major by increasing emissions are already required to submit an application for preconstruction review and approval; therefore EPA will have information about sources that become subject to the standards after promulgation. The commenter explained that the start-up date and whether the source was an area source were the only two pieces of information that EPA would not have if the Initial Notification report were deleted. Each MACT rule could address whether this information was needed. The commenter also stated that removing the Initial Notification requirement from subpart PPP, Polyether Polyols Production, has not created a problem. (IV-D-19)

Another commenter opposed the initial notification requirements, stating that they are superfluous because the same information is required in the application for a new or revised permit. (IV-D-22)

One commenter also believed the provisions in §63.9(b)(1), (2), and (5) concerning submitting applications for approval of construction or reconstruction were intended to apply to nonmajor emitters. The commenter preferred that EPA clarify that these provisions do not apply to nonmajor emitters. (IV-D-19)

Response:

We disagree with the commenters' suggestions to remove all or part of the Initial Notification requirements. Individual NESHAP may remove the initial notification requirements but it is not appropriate to take them out of the General Provisions. It is not our experience that every rule development process identifies every source that a NESHAP affects; furthermore, sources may change over time. Therefore, initial notification is a valid requirement, and does not impose an undue burden on source owners or operators.

The requirements in §63.9(b)(1), (2), and (5) referred to by commenter IV-D-19 refer to notifications of the intent to construct or reconstruct, not applications for approval of construction or reconstruction. These notifications apply to nonmajor-emitting affected sources, although the applications for approval do not.

2.12.2 No Analysis of Area Source Status in Notification of Compliance Status [§63.9(h)(2)(i)(E)]

Comment:

Two commenters supported the proposed changes to §63.9(h)(2)(i)(E), in which area sources are no longer required to submit an analysis demonstrating that the source is an area source. (IV-D-02, 14)

Response:

We appreciate the commenters' support.

2.12.3 Notification Requirements for Nonmajor Sources

Comment:

One commenter requested clarification on the notification requirements for nonmajor-emitting sources. The commenter believed text was missing from the following sentence in the last sentence of column 1 of the preamble on page 16330: "...we are proposing to revise §63.9(b)(5) to allow a nonmajor-emitting sources that is not subject to the requirements to submit an application for preconstruction review and approval..." The commenter noted that a nonmajor source would not be subject to the General Provisions and would not have to submit any notification. (IV-D-03)

<u>Response:</u>

*We agree with the commenter that the sentence in question is confusing, because it did not specify that the sources being discussed were nonmajor-emitting **affected** sources. The text should have read " ... we are proposing to revise §63.9(b)(5) to allow a nonmajor-emitting affected source that is not subject to the requirements to submit an application for preconstruction review and approval to request a reduction in the information required in the application to construct or reconstruct." Also, the proposal preamble discussion at 16325/3 explains these requirements in §63.9(b)(5) further. A nonmajor-emitting affected source is not required to submit an application for approval of construction or reconstruction. However, a nonmajor-emitting affected source must notify the Administrator of its intent to construct or reconstruct. Note that a nonmajor emitting <u>affected source</u> could be part of a major <u>source</u>.*

2.12.4 Timing of Notification of Compliance Status [§63.9(h)(2)(ii)]

<u>Comment:</u>

One commenter requested revisions to the timing of submittal of compliance status reports. This commenter noted that §63.9(h)(2)(ii) requires that the Notification of Compliance Status report be submitted within 60 days of completing a compliance demonstration as specified in the relevant standard. However, the commenter stated that a typical affected source may consist of more than one device that requires performance testing or other compliance demonstrations. This would then result in the need for multiple compliance status reports. The commenter recommended that §63.9(h)(2)(ii) be revised to require only a single Notification of Compliance Status for an affected source, to be submitted 60 days after the completion of *all* required compliance demonstrations. Where opacity or visible emission observations are required, the commenter suggested that the notification be required within 30 days of completion of the observations. The commenter further recommended adding language to specify that the notification is due by these dates "or as stated in the relevant standard." (IV-D-19)

<u>Response:</u>

We believe that the commenter has misinterpreted the provisions of the rule. Our intent in the rule is to do what the commenter suggests, as long as the requirements have a common compliance date. The notification of compliance status is to demonstrate compliance with the emission limitations and standards in their entirety, not just a

portion of them. This does not mean that if one portion of a standard has a different compliance date (for example, the 6 month compliance period for equipment leaks under the HON) that compliance with those requirements can be delayed until the later compliance dates. Although not part of the proposal, we are making a clarification. We have revised §63.9(h)(2)(ii) to state " ...following completion of the relevant compliance demonstration activity ***(or activities that have the same compliance date)*** *specified in the relevant standard..." to clarify. In addition, as a matter of EPA policy, all the 10-year MACT standards will include a specific compliance date, which will further clarify these requirements.*

2.12.5 Adjustments to Timelines [§63.9(i)(3)]

Comment:

One commenter noted that §63.9(i)(3) contains provisions for approvals of requests for adjustments to time periods or postmark deadlines and requires the Administrator to respond to such a request "within 15 calendar days of receiving sufficient information to evaluate the request." The commenter stated that in practice this process does not work well and gave examples of where this has resulted in lengthy delays between the request and approval. The commenter recommended that §63.9(i)(3) be modified to allow the owner/operator to assume approval of the request if written disapproval is not received within 90 days. (IV-D-19)

Response:

The language referred to by the commenter was not proposed to be amended in this action, and will not be modified here. We appreciate the commenter's concern regarding timely review of requests to alter time periods or deadlines, and we are making every effort to meet these time periods. We regret any inconvenience or difficulty that occurs when review and approval are late.

2.13 Comments on §63.10, Recordkeeping and Reporting Requirements

2.13.1 Applicability Determinations [§63.10(b)(3)]

Comment:

Two commenters supported the proposed changes to §63.10(b)(3) that would require a record of applicability determinations only for sources within the source category that the relevant standard regulates. (IV-D-02, 14)

One commenter requested that EPA clarify specifically what the applicability determination certification must state. (IV-D-02)

Response:

We appreciate the support of commenters IV-D-02 and 14. In general, the applicability determination must state that the stationary source is in the source category regulated by a relevant standard, for the reasons identified in an analysis or other information prepared by the owner/operator.

2.13.2 Quarterly Reporting After Excess Emissions [§63.10(e)(3)]

Comment:

One commenter opposed increasing the reporting frequency for CMS under §63.10(e)(3)(i)(C) when excess emissions occur. The commenter believed this change would double the regulatory burden without improving compliance. The commenter also requested that EPA drop the term "directly for compliance purposes" since it is unclear what data are used directly for compliance purposes. (IV-D-03)

Response:

We agree with the commenter. Section 63.10(e)(3)(i)(C), containing the requirement to increase the reporting frequency after the occurrence of excess emissions, was reserved in the General Provisions during burden reduction efforts. (See 64 FR 7467, 2/12/1999). We inadvertently, and incorrectly, reinstated it in the proposed amendments. We have reserved this paragraph in the promulgated rule.

Comment:

One commenter requested that EPA delete the summary report items listed in §63.10(e)(3)(vi)(I) - (J), which include emissions and CMS performance summary data, and the criteria under §63.10(e)(3)(vii)-(viii), which explain whether the summary report or the full report must be submitted. The commenter stated that the criteria for calculating percentages of

excess emissions and CMS downtime were vague enough that it is difficult and burdensome to calculate the total duration of excess emissions. Also, the term excess emissions is never really defined in subpart W, National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production. The commenter recommended that the percentages in the summary report [items §63.10(e)(3)(vi)(I) -(J) and criteria in §63.10(e)(3)(vii)-(viii)] be deleted and the sources be required to submit the full excess emissions and monitoring system performance report. If excess emissions occur during SSM, the report would include actions taken for the event, circumstances of the event, reasons for not following the SSMP, and whether excess emissions or parameter monitoring exceedances are believed to have occurred. The commenter noted that EPA eliminated the requirement to calculate the percentage of time an SSM event occurs and the reporting exemption associated with it in the Consolidated Air Rule (CAR).

Next, the commenter stated that if EPA does retain the Summary Report items and criteria, then EPA should clarify what SSM information the source must include in the excess emissions and monitoring system performance report. Specifically, EPA should clarify what to report if there are multiple CMS within a process unit, what periods of CMS inoperation or malfunction should be included in the percentage calculation, and which periods of CMS inoperation or malfunction should be included in the excess emissions and monitoring system performance reports. The EPA should also clarify what periods of SSM should be included in the percentage calculation, and which periods of SSM should be included in the excess emissions and monitoring system performance report. The commenter recommended that the percentage of excess emissions be calculated for each emission point, considering the operating time of each individual emission point. If only one emission point exceeds 1 percent of the affected source's operating time, the report would only contain the information for that emission point. (IV-D-19)

Response:

The provisions referred to by the commenter were not proposed to be amended in this rulemaking, and will not be changed at this time. While we appreciate the commenter's concern, we believe that, in practice, this concern will be alleviated by the fact that individual NESHAP have the discretion to override these requirements as appropriate.

Chapter 3 - Comments and Responses on Section 112(j)

3.1 Overview

The comments on the proposed amendments to subpart B of 40 CFR part 63 [Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)] were primarily concerned with the relationship between MACT determinations under different sections of the Act, changes to the title V permit application and approval process, and the Agency's proposed prohibition on backsliding.

3.2 General Comments on Section 112(j)

3.2.1 Support Proposal

Comment:

Several commenters generally endorsed the proposed amendments to section 112(j). (IV-D-06, 11, 12, 17, 24, 25) A few of these commenters also stated that the proposed regulations reasonably reflect the resolution of issues negotiated between EPA and industry petitioners. (IV-D-06, 11, 12, 25)

Response:

We appreciate the commenters' support.

3.2.2 Agency Authority to Defer Case-by-Case MACT

Comment:

Two commenters requested that EPA explicitly confirm its discretionary authority to defer case-by-case MACT proceedings under section 112(j) when a national MACT standard is under development. (IV-D-17, 24) Furthermore, one commenter maintained that EPA should codify its intent to do this and the criteria it would use to grant such deferrals. (IV-D-17) The commenter believed that without this provision, many case-by-case MACT determinations could be unnecessarily triggered for certain facilities before the section 112(d) MACT standard is final. This commenter gave specific examples of why this is of particular concern to the can manufacturing industry.

As a related matter, the commenter suggested that for cases where a section 112(d) MACT standard has not been proposed by, for example, January 2002, the application deadline for submittal of the Part 2 MACT application should be 12 months, rather than 6 months, after submittal of the Part 1 application. (IV-D-17)

Another commenter (IV-D-26) requested two changes regarding application submittals to reduce burden on facilities and permitting authorities. The commenter asked that EPA revise the rule to provide that the Part 2 application is due 12 months, not 6 months after the Part 1 MACT is submitted. The commenter noted that this would move the deadline from November 15, 2002 ro May 15, 2003. This change would be necessary for MACT rules for which it is unlikely that promulgation will occur by May 15, 2002 due to delays created by lawsuits. The commenter noted that a Part 2 application is a substantial effort. Due to the delay, facilities would have to submit the Part 2 application, a costly and time consuming effort that would be moot as soon as the 112(d) rule is completed. The commenter believed that extending the Part 2 application submittal date would reduce the risk of burdening facilities and permitting authorities while giving EPA more time to promulgate the 112(d) standards.

The commenter (IV-D-26) also requested that the final rule state that a Part 1 notification is unnecessary if EPA proposes a MACT standard before the statutory hammer date of May 15, 2002. The commenter believed this approach would eliminate the need for fruitless paperwork to be developed.

The commenter (IV-D-26) also proposed an alternative to changing the rules, which would be to incorporate by reference or repeat the terms of any settlement extending the schedule for 112(d) promulgation and a schedule for extensions of the section 112(j) applications. The commenter explained that this approach would be preferable if there will have to be a staggered schedule in which proposals cannot all be published by May 15, 2002, or completed before May 15, 2003. (the date an additional 6-month extension for Part II applications would provide)

The commenter explained that the publication of either approach in a final rule would need to occur before May 15, 2002.

Still another commenter (IV-D-27) argued for an 18-month period between Parts 1 and 2 applications to alleviate the burden faced by sources and permitting authorities.

Response:

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

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

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

As the preamble to our proposal makes clear, we based our proposal to provide a 6 month period between the Part 1 and Part 2 applications in part on the concept that every applicant would automatically be given the maximum extension to supplement an incomplete application which is explicitly provided for by CAA section 112(j)(4).

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

While we recognize that compilation of the information needed for a Part 2 application is not likely to take 24 months, we are nevertheless reluctant to mandate that significant resources be devoted to an exercise which will ultimately be futile and unproductive. The burden of compiling a Part 2 application for simple sources containing only a small number of emission points may not be particularly onerous, but the burden on more complex sources containing numerous sources and emission points could be significant. The sheer number of affected sources that would have to submit a Part 2 application by November 15, 2002, under the rule as proposed is very large, estimated at over 80,000. Such an exercise would also needlessly divert resources needed for other critical tasks at already overworked permitting authorities. We do not believe such an outcome was envisioned or intended by the drafters of section 112(j), particularly in the circumstance where the Federal MACT standards will actually be issued prior to the deadline for issuance of the case-by-case MACT determinations by the permitting authorities.

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

We received no adverse comment on requiring that the first portion (Part 1) of the section 112(j) application be due on the hammer date. We think that this is the minimum required by the statute. The Part 1 application is very short and simple, and we believe the burden is minimal. The Part 1 application will also help permitting authorities to identify sources potentially subject to the upcoming MACT standards. Sources must note

that our decision to extend the time between the Part 1 and Part 2 applications is no excuse for not submitting a Part 1 application if the source can reasonably determine it is in one of the source categories or subcategories subject to the section 112(j) requirements. Failure to meet the section 112(j) requirements, including failure to make a timely Part 1 application, can lead to enforcement action. If a source is unsure about its applicability, it should submit a Part 1 application requesting an applicability determination to the permitting authority, which will then make a determination of MACT applicability.

3.2.3 Avoid Triggering Section 112(j)

Comment:

A few commenters strongly encouraged EPA to continue striving to meet all the section 112(d) or (h) deadlines so that the provisions of section 112(j) might never be necessary. (IV-D-06, 11, 13) A few commenters urged EPA to meet the deadlines for promulgating the 112(d) standards due in 2002 for various combustion sources. (IV-D-06, 11) One commenter emphasized that this is the most efficient use of EPA resources with the greatest public benefit, and that avoiding use of section 112(j) should be a top Agency priority. (IV-D-13) One commenter hoped that these provisions might never be implemented, but expressed concerns about their implementation if they are necessary. (IV-D-03)

Response:

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

3.3 Comments on §63.50, Applicability

3.3.1 Clarification of General Applicability [§63.50(a)]

Comment:

One commenter supported the proposed change to clarify that MACT standards will apply only to the affected sources within a subject category or subcategory. The commenter

also recommended that EPA specify in each MACT standard's applicability statement those subcategories of equipment or processes that are *not* covered by the standard. This would help facilities clearly define their compliance obligations. The commenter believed that discussion of such applicability issues in the preamble is not adequate, and failure to include this information in regulations could result in inappropriate application of the rule by permitting authorities. (IV-D-22)

Response:

We appreciate the commenter's support. We agree also that each standard should be as specific and clear as possible as to what is covered. We do not agree that listing everything at a source that is not covered is necessary. Individual MACT standards may specify what is not covered, if appropriate. If there is a question regarding what is covered, it should be raised during the public comment period or with the permitting authority.

3.3.2 Imposition of More Stringent Requirements Than MACT [§63.50(b)]

Comment:

One commenter stated that EPA should clarify that State or local agencies can impose more stringent requirements than MACT only as a matter of State or local law, not as a matter of federal law. The commenter cited language in the Act that specifies that section 112(j) limitations be *equivalent* to those that would be in effect under a section 112(d) standard. The commenter maintained that EPA's proposed language exceeds the Agency's statutory authority, because it does not reflect this explicit limitation. The commenter proposed adding the phrase "as a matter of State or local law" to §63.50(b) to explicitly clarify that more stringent limitations are permitted only under State or local law, not federal law. (IV-D-03)

Response:

We agree with the commenter that the statute specifies that section 112(j) limitations must be equivalent to those that would be in effect under a section 112(d) standard. We also agree with the commenter and the petitioners that States can be more stringent only as a matter of State law. Although we believe that the ability of a State to establish a more stringent emission limitation was already implicit in the promulgated and proposed regulations, we have revised proposed §63.50(b) by adding the phrase "as a matter of State or local law" to read "Nothing in §§63.50 through 63.56 shall prevent

a State or local regulatory agency from imposing more stringent requirements ***as a matter of State or local law*** *than those contained in these subsections."*

If we fail to promulgate a 112(d) standard by the statutory deadline, the State or local permitting authority must make a case-by-case determination of MACT. The revision to §63.50(b) does not change this statutory requirement. As a matter of State law, the emission limitation or standard may be more stringent than the MACT. In such a case, the portion of the limitation or standard that is more stringent than MACT would only be enforceable by the State. However, it should be noted that the permitting authority defines MACT in the absence of a 112(d) standard. Until a section 112(d) standard is established, one cannot determine whether case-by-case MACT is more stringent than the 112(d) standard.

3.4 Comments on §63.51, Definitions

3.4.1 Affected Source

Comment:

Two commenters believed EPA still needed to clarify in the definition of affected source that sources that do not emit HAP are not part of the affected source. For example, many conveying system transfer points and other manufacturing elements at a facility are totally enclosed, do not emit HAP, and should not be included in the affected source. (IV-D-02, 14)

Response:

We disagree with the commenters' assessment that the definition of "affected source" requires further revision. The issue about sources that do not emit HAP will be addressed in each NESHAP, which must clearly define the affected source. Each NESHAP should make clear what parts of the facility have reporting, recordkeeping, monitoring, or other compliance requirements. Not all of the processes in the affected source will necessarily have requirements; however it may not always be technically feasible or practical to separate sources that do not emit HAP from the affected source.

3.5 Comments on §63.52, Approval Process

3.5.1 Relationship of Regulations under Sections 112(g), (j), (d), and (h) [§63.52(a)(3) and 63.56(c)(1)]

Comment:

Two commenters supported the proposed approach for addressing sequential MACT determinations under different sections of the Act through application of the "substantially as effective" test. (IV-D-12, 25) One commenter stated that this clarification to case-by-case MACT determinations constitutes a commonsense, workable approach to handling transitions from one type of MACT limitation to another. The commenter believed that without such an approach, permitting authorities might impose new MACT requirements that would be burdensome, yet achieve no environmental benefits. Requiring a source to make capital expenditures to meet a new MACT standard when the existing MACT determination is "substantially as effective" in controlling HAP would be unreasonable. (IV-D-25)

Response:

We appreciate the commenters' support.

Comment:

One commenter maintained that State determinations of what constitutes "substantially as effective" requirements when integrating case-by case MACT limitations with section 112(d) MACT standards should be driven by practical considerations of compliance and emissions reduction rather than "regulatory legalisms and forms." (IV-D-24)

Response:

We agree with the commenter. Our intent in proposing the 'substantially as effective" test is to do exactly what the commenter suggests: provide a means to avoid "...substantial additional burdens...imposed...regardless of the significance of the resultant impact on emission reductions." See the detailed discussion of this test in the proposal preamble at 16339. The proposal preamble also described the results of implementing the substantially as effective test using several examples on pages 16340-1. "By evaluating the actual effect from both sets of requirements, the decision is focused on the practical benefit to the environment rather than an exercise in paperwork."

Comment:

One commenter maintained that compliance with a case-by-case MACT determination under section 112(g) should constitute compliance with any subsequent case-by-case

requirement under section 112(j). This commenter stated that requiring a section 112(j) determination subsequent to a section 112(g) determination is overly burdensome and is unlikely to achieve any environmental benefits. The commenter said that EPA's proposed approach of determining whether a prior section 112(g) emission limitation is "substantially as effective" as a section 112(j) requirement will not significantly alleviate that burden and will still require considerable resources from sources. (IV-D-13)

Response:

We disagree with the commenter's evaluation that applying the "substantially as effective" test will not alleviate burden on sources. Again, see our extensive discussion of this policy in the proposal preamble at 16339. Also, case-by-case MACT determinations under 112(g) are only applicable to major source construction or reconstruction and require compliance with new source MACT. Sources under section 112(g) may not be the same as sources under section 112(j). Any source subject to subsequent standards pursuant to sections 112(j) or (d) or (h) will likely be considered an existing source under those standards.

We believe that in most, if not all, situations section 112(g) determinations should suffice for section 112(j) determinations. The case-by-case process should be replicable and when done by the same permitting authority should lead to essentially the same results, unless new information has come to light after a section 112(g) determination. The amendments provide that if a permitting authority concludes that the section 112(g) determination is substantially as effective as what the permitting authority would have established under section 112(j), then the permit would be revised to simply reflect that fact and retain the section 112(g) requirements to satisfy section 112(j).

Comment:

One commenter stated that the final rule should more vigorously encourage States to adopt prior section 112(g) or (j) MACT determinations. This commenter recommended that the final rule adopt the *rebuttable presumption* that the first MACT determination *is* "substantially as effective" as any subsequent MACT determination in order to protect sources from multiple MACT determinations. The commenter believed that this would be consistent with the intent of the proposed changes, and that it would be consistent with other rebuttable presumptions in the proposal (such as the assumption that the new affected source is the entire affected source unless a different approach is justified). (IV-D-17)

Response:

*We disagree with the commenter. While it may be that the first MACT **is** substantially as effective as any subsequent MACT determinations, it is possible to have better information at a later date and important "...to afford the permitting authority some discretion to consider the substantive adequacy of section 112(g) requirements when it makes a subsequent decision concerning...section 112(j)" and the same is true for subsequent 112(d) or (h) standards. The rule has not been changed in this regard.*

Comment:

One commenter questioned the section 112(j) permit application process for sources with a pending permit application under section 112(g). The commenter interpreted §§63.52(a) (3) and (b) (2) to require that the source wait for the section 112(g) permit to be issued, then apply for a change to the permit to incorporate section 112(j) requirements. The commenter was concerned about the situation where a MACT standard is promulgated before issuance of the source's 112(g) permit, but after the section 112(j) deadline. The commenter recommended that a provision be added to specify that in such a case, the source could forgo the section 112(j) application and request a determination of whether the section 112(g) requirements are "substantially as effective as" the promulgated MACT standard. (IV-D-03)

Response:

The commenter is correct. Pending section 112(g) applications must be completed and then the owner or operator must apply for a section 112(j) permit within 30 days after the section 112(g) permit is issued. However, the permitting authority may deem the section 112(g) requirements substantially as effective as what section 112(j) would require. In this case, the permit would be revised to reflect that the section 112(j) requirements are the same as the section 112(g) requirements.

Comment:

A few commenters maintained that EPA had not clearly specified what actions the permitting agency should take when a new major source is constructed or reconstructed after the section 112(j) deadline and both sections 112(g) and 112(j) apply. These commenters stated that a facility should be allowed to submit a single application to meet both sets of requirements, and that the section 112(j) regulation should clearly outline the permitting procedure for this situation. (IV-D-04, 18)

Response:

Section 112(j) would apply only to major sources in source categories listed pursuant to section 112(c). Section 112(g) applies to any major source with potential to emit HAP. Therefore, section 112(g) does not necessarily apply to the same sources that would be subject to case-by-case determinations under section 112(j). However, in the instances where sections 112(g) and 112(j) both apply, the source owner/operator would still need to submit separate permit applications to satisfy the requirements of each program. Nothing in section 112(j) allows it to be waived when an application pursuant to section 112(g) has been submitted.

We believe the number of occasions where both applications would need to be submitted will be limited. We do not believe these requirements would be burdensome. In the instances where a source is required to submit both applications, the section 112(g) application should contain most of the information necessary for a Part 2 section 112(j) permit application. However, we encourage the permitting authority to streamline the specific permit application forms for sections 112(g) and 112(j) where possible to reduce any potential burden on source owner/operators and on permitting authority staff. Section 112(j) requirements can be deemed substantially as effective as the section 112(g) requirements.

3.5.2 Permit Application Process [§63.52(a) and (b)]

Comment:

A few commenters supported the proposed permit application procedures, which consist of a Part 1 and Part 2 application. (IV-D-12, 18, 25)

Response:

We appreciate the commenters' support.

3.5.3 Timing of Title V Permit Applications [§63.52(a) and (b)]

Comment:

A few commenters expressed concern about the requirement for permitting authorities to notify affected sources within 120 days of the section 112(j) deadline. (IV-D-04, 18, 20) These commenters noted that States do not always have up-to-date information on sources and that 120 days is not sufficient time for such notifications. Furthermore, these commenters recommended that this requirement be deleted because States may choose to identify and notify

affected sources but should not be required to do so. A few commenters recommended that the final rule specify that owners or operators of affected sources must submit a title V permit application whether or not they receive notification. (IV-D-04, 20) One commenter believed that State notification, if required, would be most appropriate before the Part 1 MACT deadline; thus, EPA should give States sufficient notice of which MACT standards are unlikely to be promulgated by the deadline. This commenter also suggested that §63.52(a)(2) should specify whether a Part 1 or Part 1 and 2 application is required after notification by the State. Finally, this commenter stated that 30 days may be insufficient for facilities to submit a Part 1 and Part 2 application. (IV-D-18)

Response:

We agree with the commenters that it is the responsibility of the affected source to submit a title V permit application regardless of notification if it can reasonably determine that it falls within a source category for which a standard has not been promulgated by the section 112(j) deadline. We believe in most instances that the owner/operator will be able to reasonably determine whether the source is in the category or subcategory subject to section 112(j), generally from the provisions in the proposal rule or on EPA's Air Toxic's Website, http://www.epa.gov/ttn/atw/. *If an owner/operator is unable to make this determination, they may, at their discretion, contact the permitting authority for assistance in making the determination or submit a Part 1 application with an applicability determination request. If there is doubt, the owner or operator must submit the Part 1 application. Most MACT standards will be proposed by the section 112(j) deadline of May 15, 2002, and applicability criteria will be specified in those proposals. In addition, we are posting applicability criteria on EPA's Air Toxics Website for all source categories for which MACT standards have not yet been proposed (see www.epa.gov/ttn/atw/eparules.html). The EPA project leads may also be directly contacted for additional information. Thus, owners or operators should know for all source categories whether or not their sources will be subject to the section 112(j) requirements. Therefore, we are retaining §63.52(a)(1) as proposed, which requires an owner or operator to submit an application for a title V permit or permit revision if the owner or operator can reasonably determine that one or more sources at the major source belong in the category or subcategory subject to section 112(j). The obligation is on the source owner or operator to submit the application. Failure to submit a Part 1 application when it can reasonably be determined the source is in an applicable source category would be considered a violation.*

Moreover, we also agree with the commenters that 120 days may not be sufficient time to notify owner or operators of affected sources subject to section 112(j) if those

sources did not submit a title V permit application because they could not reasonably determine if they were part of a source category on which the section 112(j) "hammer" fell. As the commenter pointed out, State agencies may not necessarily already have this information and would not be able to identify each and every affected source within 120 days, especially those in source categories that contain tens of thousands of sources. We do not want to create an opportunity to potentially circumvent the requirements of the rule when the State fails to notify the source owner/operator by a specified time because it does not have adequate information. Therefore, in the final rule amendments we have removed from proposed §63.52(a)(2) the requirement that the permitting authority must notify the source owner or operator within 120 days of the section 112(j) deadline. States may still choose to identify and notify affected sources and we encourage them to do so when they have the available information.

The Part 1 application is intentionally brief so that completing it will not be a complicated, burdensome requirement. If there are isolated instances where a Part 1 application is erroneously submitted where none is required, it would be the responsibility of the permitting authority to notify the owner or operator that the source is not in a category or subcategory subject to section 112(j). In addition, the permitting authorities have the obligation to determine MACT applicability if requested in a Part 1 application.

Comment:

A few commenters supported the 120-day notification period for permitting authorities to notify sources that do not submit an application by the section 112(j) deadline. These commenters believed that this is an adequate period for permitting authorities to act, and should not be extended, as a longer period might result in lingering questions about applicability. (IV-D-12, 25)

Response:

See previous response. If there are any questions about applicability, the source should contact the permitting authority prior to the section 112(j) deadline or submit a Part 1 application with a request for applicability determination.

3.5.4 MACT Applications for Area Sources That Become Major [§63.52(b)(3) and (4)]

Comment:

One commenter suggested that §63.52(b)(3) should be revised to more clearly distinguish its provisions from those in §63.52(b)(1). The commenter stated that an area source that becomes major through the installation of equipment [as discussed in §63.52(b)(1)] would also require a relaxation in its emission limitation to allow the installation to occur. Thus, the commenter proposed that §63.52(b)(3) be revised to say "...due to a modification or solely to a relaxation in any federally enforceable emission limitation." (IV-D-03)

Response:

Section 63.52(b)(3) specifically refers to a relaxation of a federally enforceable emission limitations on potential to emit, and §63.52(b)(1) does not. Thus, we believe that the section is clear as written, and it has not been changed.

Comment:

One commenter supported EPA's retention of the 6-month timeline established in §63.52(b)(4) for submitting a Part 1 MACT application for sources who become subject to a MACT standard due to the establishment of a lesser quantity emissions rate. The commenter believed that implementing a 30-day timeline would be too short, because nonmajor sources operate under the assumption that they will not be subject to a MACT standard. When a lesser quantity emissions rate is established, they become subject to a standard through no action of their own. Unless these sources were already major for a criteria pollutant, they would not have submitted a title V permit application, and could therefore be required to prepare the permit and the MACT application in a short time period. For all these reasons, the commenter urged EPA to give such sources 6 months to submit a Part 1 MACT application. (IV-D-03)

Response:

We appreciate the commenter's support.

3.5.5 Compliance Extensions [§63.52(d)(1)]

Comment:

A few commenters observed that the section 112(j) regulation identified a permit as the only mechanism for granting a compliance extension. However, some agencies use compliance or consent agreements to grant MACT compliance extensions; therefore, the commenters recommended that §63.52(d)(1) be revised to include such written agreements as valid mechanisms for compliance extensions. (IV-D-04, 18).

Response:

Section 112(i)(3)(B) of the Act states that the title V permit is the only mechanism for compliance extensions; thus, we have no authority to change the rule as recommended by the commenters.

The paragraph referred to by the commenters was amended, and compliance extension provisions are no longer contained within the section 112(j) regulation. Instead, these provisions are all found in §63.6 of the General Provisions.

3.5.6 Permit Application Review [§63.52(e)(2)(ii)]

Comment:

One commenter disagreed with the requirement to submit a Part 2 MACT application within 6 months after receiving a negative determination that its section 112(g) requirements are substantially as effective as what section 112(j) would require. The commenter proposed that if a petition for review of a negative determination is filed, the requirement to submit a Part 2 MACT application should be stayed until a court decides the case, because it is unlikely that such a review would be complete within 6 months. (IV-D-03)

Response:

The section 112(j) requirements, including the requirement to submit a Part 2 MACT application, apply in this case. Section 63.52(e)(2)(ii) states that "A negative determination under this section constitutes final action for purposes of judicial review..." The rule has been revised to allow 24 months to submit a Part 2 application after receiving a negative determination.

3.5.7 Enhanced Monitoring Requirements [§63.52(h)]

Comment:

One commenter stated that the preamble language that refers to "posting all compliance reports on a publicly available bulletin board" (page 16336) as an example of what §63.52(h) requires, should be retracted in the preamble to the final rule. The commenter maintained that this statement exceeds EPA's authority to specify such requirements. (IV-D-03)

Response:

We included the statement in the preamble that the commenter referred to as an example of a way to ensure that States incorporate monitoring, recordkeeping and reporting mechanisms that comport with enhanced monitoring provisions. The rule does not require that this specific suggestion be implemented. We do not believe the statement exceeds our authority, nor is it necessary to retract the statement in the preamble to the final rule.

3.6 Comments on §63.53, Application Content for Case-by-Case MACT Determinations

3.6.1 Content of MACT Application [§§63.53(a) and (b)]

Comment:

A few commenters supported the content specified in the proposed rule for each portion of the application. (IV-D-12, 25)

Response:

We appreciate the commenters' support.

Comment:

One commenter recommended that the description of information required in the Part 1 MACT application would be clearer if the word "sources" in §63.53(a)(3) was replaced with "emission points." The commenter also recommended revising §63.53(b)(1)(iv) to specify the control technology in place for each "affected emission point or group of affected emission points" instead of "each piece of equipment or activity or source." The commenter believed that EPA's proposed language would result in a burdensome requirement to list every single valve, flange or pump controlled by a leak detection and repair program, instead of noting that there are valves, flanges and pumps controlled by such a program. Finally, this commenter recommended that §63.53(b)(2)(ii) be changed to refer to control technologies that "would" be applied to meet the emission limitation rather than "shall" be applied, since the source completing the MACT application is not the final judge of whether the proposed controls will be acceptable. (IV-D-03)

Response:

We agree that the changes recommended by the commenter clarify, and are consistent with, the provisions of the rule, so we have revised §§63.53(a)(3), (b)(1)(iv), and (b)(2)(ii) as the commenter suggested.

Comment:

Representatives of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) commented that most agencies would want to receive the information listed in §63.53(b)(2) and wondered why EPA had designated it as an optional part of the Part 2 MACT application. (IV-D-04)

Response:

The information listed in §63.53(b)(2) includes information and analyses about appropriate emission limitations and control technologies to meet those limitations. While the source owner/operator may choose to submit this information, it is not their responsibility to conduct the research and analysis necessary to make MACT determinations. This responsibility resides with the State or other designated permitting authority. For this reason, it is appropriate that the information listed in this paragraph be an optional part of the Part 2 MACT application.

3.7 Comments on §63.54, Preconstruction Review Procedures

3.7.1 Preconstruction Review Plan

Comment:

One commenter supported the provisions established in §63.54(a)(2), which allow an owner/operator to seek a Notice of MACT approval before constructing a source. The commenter requested assurance that such an approval would ensure that a new source meets MACT, and would not be subject to additional requirements subsequent to construction. The commenter stated that this was particularly important because MACT limitations will be part of a title V permit, which is issued after construction. The commenter believed that a MACT determination that took place only during the title V permit process could result in a facility being subject to more stringent limitations than it was built to meet. (IV-D-01)

Response:

We appreciate the commenter's support, but believe that the concern expressed is unwarranted. The substance of these provisions was not proposed to be amended; only a minor change in phraseology from "emission unit" to "affected source."

3.8 Comments on §63.55, Case-by-case MACT Determinations

3.8.1 Reference to National Database [§63.55(c)]

Comment:

One commenter stated that the section 112(j) regulation mentions a "National Data Base" at §63.55(c) and the section 112(g) regulation mentions a MACT data base at §63.43(m). The commenter requested that these statements be clarified. (IV-D-18)

Response:

The title of paragraph 63.55(b) (not §63.55(c) as the commenter stated) has been revised from "Reporting to national database" to "Reporting to EPA" to address the commenter's concern and more accurately reflect the contents of the paragraph.

3.9 Comments on §63.56, Case-by-Case Determination After MACT Promulgated

3.9.1 Prohibition of Backsliding [§63.56(c)(2)]

Comment:

Several commenters disagreed with EPA's proposed prohibition of backsliding, which prevents a State from adopting any section 112(d) emission limitations that are less stringent than emission controls already required by the permitting authority [such as those adopted under section 112(j) or 112(g)]. (IV-D-01, 5, 10, 17, 24) The commenters maintained that this policy is inconsistent with the plain language of the Act and prior EPA policy. The commenters stated that this policy should not be adopted. Instead, one commenter proposed that the rule be revised to *require* States to revise permits to conform to MACT standards issued after other emission limitations have been adopted. (IV-D-05) This commenter believed that the prohibition on backsliding would create unnecessary burden and uncertainty because permitting authorities and sources would have to spend significant time and resources to determine when a MACT standard is less stringent. One commenter maintained that

implementing the anti-backsliding policy would result in uneven requirements for similar industries in different States and would also require Federal enforcement of regulations that were not subject to national review. (IV-D-01)

Response:

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

After considering the concerns raised by the commenters, we have decided that it is best to retain this basic policy in the amended section 112(j) rule. As reflected by the provisions in the existing section 112(j) rule, we do not agree with the argument by some commenters that the statute requires the permitting authority to backslide, but we do believe that the decision whether or not to retain any more stringent provisions of a section 112(j) determination as applicable legal requirements following issuance of a section 112(d) standard should be committed to the discretion of the permitting authority that made the case-by-case determination in the first place. Accordingly, we have amended the proposed language to delete the prohibition on backsliding and to afford the permitting authority the discretion to determine whether or not backsliding is appropriate. The revisions in the language we proposed make it essentially identical to the language we adopted previously for section 112(g) determinations.

3.10 Comments on 112(j) Guidance Document

3.10.1 No Case-by-Case MACT

Comment:

One commenter requested that EPA emphasize its authority to state in section 112(j) guidance that States should not start case-by-case 112(j) MACT determinations through title V permits because such costly determinations would be superseded by a national MACT standard. (IV-D-24)

Response:

Although the MACT standards will come out eventually, section 112(j) exists to put MACT provisions in place if standards are not issued in a timely manner. Once section 112(j) applies, permitting authorities have a non-discretionary statutory duty to develop case-by-case MACT until a standard is actually issued. The EPA has no authority to nullify the statutory requirements. We recognize the burden and scheduling implications of the section 112(j) process and hope to avoid or minimize this whenever possible. For an update on the progress of regulations, see our website at http://www.epa.gov/ttn/atw/eparules.html.

3.10.2 Separate Comment Process for Guidance Document

Comment:

One commenter was unaware of the request for comments on the section 112(j) guidance document until late in the comment period, because this request was not highlighted in the beginning of the preamble. This commenter suggested that requests for comments on such documents be made separately from the proposed rule changes in order to ensure that the public is adequately notified and has time to develop comments. The commenter noted that they would be unable to submit comments by the May 22, 2001 deadline. (IV-D-21)

Similarly, another commenter stated that the guidance document is an important part of the section 112(j) process; therefore, any further information or changes proposed to the guidance should undergo a public notice and comment process. (IV-D-03)

Response:

We believe that the public was given adequate notice and opportunity to comment on the draft guidance document. There is no requirement under the Administrative Procedures Act for public comment on guidance, but we chose to provide that opportunity in this proposed rulemaking.

3.10.3 Guidance Document on EPA Website

Comment:

One commenter requested that EPA remove the old section 112(j) guidance document from the Unified Air Toxics Website and replace it with the updated guidance referenced in this proposal. (IV-D-10)

Response:

This has been done.

3.10.4 MACT Database

Comment:

A few commenters stated that the MACT database referred to in the section 112(j) Guidance Document is not functional and therefore all references to it should be deleted. The commenters further noted that some states do provide information to EPA for posting on the "112(g) MACT Determination State Permit Engineers Clearinghouse" on EPA's website, and that providing this information is optional. The commenters requested that if this is what the guidelines refer to, they should be revised to not mistakenly refer to it as a database. (IV-D-04, 18)

Response:

The commenters are correct, and we have revised the guidance document accordingly. The MACT database has not been fully developed.

3.10.5 Compliance Provisions [Section 2.2]

Comment:

One commenter stated that in section 2.2, EPA notes that short term emission limits are appropriate when operating parameters cannot be imposed. The commenter suggested that under these circumstances, rolling averages are more appropriate than absolute pound per hour limits, because rolling averages consider all operating variables over the averaging time, are easier to calculate, and are more accurate. Furthermore, measurement errors are magnified in a short-term emission limit, but are less significant in a rolling average. The commenter

recommended that rolling averages be considered the preferred alternative when operating parameters cannot be imposed. (IV-D-03)

Response:

The decision whether to require rolling averages rather than other types of emission limits would be made in individual MACT determinations, as each MACT determination will include requirements for compliance demonstration, emission limitations, performance testing, and work practice standards. In many cases short-term limits are preferred because compliance can be determined contemporaneously. A short-term limit is easier to enforce and provides the source with immediate feedback. Rolling averages have been and will be used where appropriate.

3.10.6 Similar Emission Units [Section 3.4]

Comment:

One commenter agreed with the EPA that the two questions laid out in section 3.4 should both be answered in the affirmative for emission units to be considered similar, and suggested that this be clarified in the final guidelines. (IV-D-03)

Response:

We appreciate the commenter's support.

Chapter 4 - Other Comments

4.1 Overview

Other comments on the General Provisions and section 112(j) generally concerned issues that affect MACT standards more generally, such as the definition of "source"among different regulations, the basis for the MACT floor, the interaction between MACT standards and the title V permit program, and other EPA policies.

4.2 Miscellaneous Comments

4.2.1 Definition of Source Among Various Air Regulations

Comment:

One commenter suggested that EPA clarify the definition of source among the various regulations. The commenter noted that the New Source Performance Standards (NSPS) and Prevention of Significant Deterioration (PSD) regulations both initially considered a discrete piece of equipment or individual process. In recent regulations, however, the term source has come to mean all of the equipment at one or more plant properties. The commenter believed that EPA's revision of the definition of source had expanded applicability and regulatory requirements, which is confusing and burdensome. (IV-D-01)

Response:

While we appreciate the commenter's concerns, the different definitions of "source"are necessitated by the different statutory requirements that exist for NSPS, PSD, and MACT programs. Applicability is not determined in the same way under these different programs.

Under the MACT program, a "major source" is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP.

An "area source" under the MACT program is any source that is not a major source.

The term "stationary source" is defined the same under both the NSPS and MACT programs as any building, structure, facility, or installation which emits or may emit any air pollutant. In the NSPS program, a stationary source has been further termed an "affected facility" and in the MACT program it is referred to as an "affected source."

In the NSPS and MACT programs, the affected facility or affected source is decided for each rule - this may be the entire plant site or part of the plant site, but has often been defined at less than the plant site level.

In the PSD program, the definition of major stationary source is a stationary source in a given 2-digit Standard Industrial Classification (SIC) code, on contiguous and adjacent property under common control. Once subject to PSD for a particular pollutant, the permitting authority makes a case-by-case determination regarding the emission limitation that reflects BACT. These emission limitations to meet PSD requirements have sometimes been applied to one or more discrete emission units. However, some of the PSD limits are plantwide. In addition, monitoring, recordkeeping, and reporting requirements may be established for one, several, or many emission units.

We have recently clarified in the proposal preamble the meaning of "contiguous" for the MACT program to improve a source owner/operator's understanding of when sources that are separated by a public right of way are part of the same affected source.

Comment:

One commenter requested that EPA specifically identify in each NESHAP which subcategories are not affected by the standards. The commenter explained that the Printing and Publishing NESHAP did not cover screen printing or offset lithographic operations. The commenter maintained that these processes should have been clearly exempt from the NESHAP, not just discussed in the preamble, as some permitting authorities are inappropriately applying the standards to these operations. By including the exemptions in the rule, it would be clear what the compliance obligations for the facility are. Also, outreach materials for NESHAP should include which units are covered and not covered. (IV-D-22)

Response:

Each NESHAP will specifically identify the source category and the affected source to which the standard applies. As discussed in the proposal preamble at 16323/3: "...for each future relevant standard...we will explicitly define the terms "affected

source" and "new affected source." The use of two terms will clarify the applicability of existing source MACT and determine where new source MACT should apply."

Listing or identifying everything to which a standard does not apply would be practically impossible. Proposed rules should be read closely and obvious questions regarding applicability and clarity should be raised during the public comment period.

In the case of the Printing and Publishing NESHAP discussed by the commenter, these issues must be resolved with the permitting authority or elevating them to EPA.

4.2.2 Definition of Affected Source in MACT Standards

Comment:

One commenter encouraged EPA to adopt a policy of defining affected source broadly in all MACT standards. This approach would allow emissions averaging across all process units and emission points throughout the facility. (IV-D-24)

Response:

In general, we agree with the commenter about a broad definition of "affected source," and this has been adopted in the General Provisions' definition of "affected source." As discussed in the proposal preamble at 16323, we proposed, as a general matter, that the affected source will consist of all existing HAP-emitting equipment and activities at a single contiguous site within a specific source category; however, it may be appropriate under any individual NESHAP to consolidate, or subdivide, or distinguish among affected sources in other ways; if so, additional rational must be provided for doing so.

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

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

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

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

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

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

4.2.3 Surface Coating Regulations for Motor and Equipment Manufacturers

Comment:

One commenter urged EPA not to regulate HAP from coatings through two separate source categories, one for metal parts and one for plastic parts. Instead, it would be more appropriate and more technologically feasible for EPA to regulate these HAP sources using subcategories within the category destinations, including one or more subcategories for automotive applications, such as thermo plastic olefin (TPO) olefin systems, lighting fixture coatings, and certain other automotive applications. The commenter noted that vehicle equipment manufacturers often apply coatings to both metal parts and plastic parts in the same space. It would be difficult to follow two sets of requirements, especially when those rules are likely to develop different HAP limits and different MACT for each application. The commenter believed that the section 114 data are not accurate. The commenter further stated that even if the data were accurate, the covered industries are so divergent that the average HAP limit from the top performers would be technically infeasible for many automotive companies. The commenter urged EPA to subcategorize adhesives, glues, and putties, as these are different types of materials that would not be able to meet the same emission limits as paints. (IV-D-09)

Response:

The regulations discussed by the commenter will be proposed in a separate Federal Register *Notice. The commenter's concerns should be articulated in comments on that rulemaking.*

4.2.4 MACT Floor Based on 94th percentile

Comment:

One commenter disagreed with EPA's decision to base the MACT floor on the emission limitations achieved by the 94th percentile for each class of equipment. The commenter characterized this policy as an arbitrary reinterpretation of the statutory requirement that the MACT floor be based on the average emission limitation achieved by the best performing 12 percent of the existing sources. The commenter preferred that MACT emission limits be based on the technology achieved by the median performer. (IV-D-01)

Response:

The MACT floor policy was not discussed or proposed to be changed in these amendments. We disagree with the commenter's assessment of the policy. We have determined that "average" means any measure of central tendency, whether it be the arithmetic mean, median, or mode, or some other measure base on the best measure decided for determining the central tendency of a data set. For further information, see our discussion of this policy at 59 FR 29196 on June 6, 1994.

4.2.5 Enforcing More Stringent State NESHAP through Title V

Comment:

If a State promulgates a NESHAP that is more restrictive than the federal regulations, the provisions of that NESHAP should not be included in a Title V permit. The commenter believed this would create an uneven playing field for similar industries in different states. (IV-D-01)

Response:

State or local agencies may establish emission limitations more stringent than those promulgated under 112(d), a process which has and continues to be the prerogative of State and local agencies. This prerogative is codified in §63.12(a)(1). In such a case, the portion of the limitation or standard that is more stringent than MACT would only be enforceable by the State. However, the portion of the emission limitation required under 112(d) would still be an applicable requirement under §70.2 that must be included in the title V permit according to §70.1(b).

4.2.6 Applicability of NESHAP to Minor Sources

Comment:

One commenter believed that many permitting authorities were incorrectly interpreting the applicability of NESHAP to minor sources (either true minor sources or minor sources collocated at major sources) and requested EPA clarification on this issue. The commenter believed that each affected source, as identified in the NESHAP, must be major itself to be subject to the NESHAP. Minor HAP sources or minor HAP sources at a major facility should not necessarily be subject to NESHAP. The commenter believed many permitting authorities were improperly interpreting NESHAP applicability such that if a source is major for one NESHAP, it is subject to all NESHAP covered emission units at the source, even if the emission units were minor sources and would not otherwise be subject. (IV-D-22)

Response:

The commenters are incorrect in their assertion that affected sources must be major by themselves in order to be classified as a major source. Standards apply to major sources (and sometimes area sources when so stated) regardless of the size or potential to emit of the affected source located at the major source. Thus, to qualify as a major source, an affected source may be major by itself or may be located at or part of a contiguous facility that emits or has the potential to emit 10 tons per year or more of any individual HAP or 25 tons per year or more of any combination of HAP. This interpretation is affirmed in National Mining Association, et al. v. EPA. (95-1006, U.S. District Court of Appeals for the D.C. Circuit.)

4.2.7 Use of Term "Source" in Preamble

Comment:

One commenter found the use of the term "source" in the preamble confusing. The commenter indicated two sentences in the preamble in which source was used in two different ways. These included the last sentence beginning on page 16334 ("...the source installs a major-emitting source after the section 112(j) deadline for sources in the same category or subcategory.") and the first sentence of Part F. on page 16337 (...sources which have not been clearly identified as sources within the particular source category.) The commenter requested that EPA clarify its use of source in the preamble. (IV-D-01)

Response:

We agree with the commenter that these concepts are not easy to understand. We have summarized the different source definitions in our response to comment 4.2.1.

The discussion on page 16334 to which this commenter refers deals with sources affected by the section 112(g) requirements. These are sources that meet the definition of major source in section 112(a)(1) of the CAA or are major-emitting units by themselves. The section 112(g) requirements do not apply to processes or units that fall below the major source emission thresholds.

In the commenter's second example, referring to page 16337, "source" in this context refers to a source within a source category (that is, an"affected source"), and whether or not such sources would be part of the source category affected by 112(j). Until a 112(d) standard is promulgated, the "affected source" has not been actually established, and the source owner or operator must rely on the source category description or a proposed rule. In such cases, it may not be clear if a particular source is part of a source category affected by 112(j).

4.2.8 Delisting Policy

<u>Comment:</u>

A few commenters disagreed with EPA's policy that only a final, formal delisting of a source category will terminate preconstruction MACT determinations under section 112(g). The commenters maintained that sources within categories or subcategories that have received a grant of a delisting petition should not be subject to these requirements. (IV-D-17, 24)

<u>Response:</u>

Until a source category has been formally delisted, all requirements of the NESHAP apply. The fact that a delisting petition has been granted merely indicates that the process has begun.

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15. SUPPLEMENTARY NOTES

16. ABSTRACT

The General Provisions, 40 CFR 63 subpart A, and the section 112(j) rule, 40 CFR 63 subpart B, are amended as the result of a litigation settlement agreement. The General Provisions establish general requirements that apply to each subpart under part 63, where indicated. The section 112(j) rule establishes the process for developing case-by-case maximum achievable control technology for major sources in source categories for which standards are not promulgated within 18 months after the date established under section 112(e). This document responds to comments received on the March 23, 2001 proposal of the amendments.

17. KEY WORDS AND DOCUMENT ANALYSIS

a. DESCRIPTORS	b. IDENTIFIERS/OPEN ENDED TERMS	c. COSATI Field/Group
Hazardous Air Pollutants General Provisions Section 112(j)	Air Pollution Control	
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