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PART 63--NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

**Subpart B--Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Section 112(g) and 112(j)**

**§ 63.50 Applicability.**

(a) *General applicability.*

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

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

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

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

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

(c) [Reserved]

**§ 63.51 Definitions.**

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

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

deadline, and that is addressed by an applicable MACT emission limitation established pursuant to this subpart.

*Available information* means, for purposes of conducting a MACT floor finding and identifying control technology options under this subpart, any information that is available as of the date on which the first Part 2 MACT application is filed for a source in the relevant source category or subcategory in the State or jurisdiction; and, pursuant to the requirements of this subpart, is additional relevant information that can be expeditiously provided by the Administrator, is submitted by the applicant or others prior to or during the public comment period on the section 112(j) equivalent emission limitation for that source, or information contained in the information sources in paragraphs (1) through (5) of this definition.

(1) A relevant proposed regulation, including all supporting information;

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

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

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

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

*Control technology* means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants including, but not limited to, measures which:

(1) Reduce the quantity, or eliminate emissions, of such pollutants through process changes, substitution of materials or other modifications;

(2) Enclose systems or processes to eliminate emissions;

(3) Collect, capture, or treat such pollutants when released from a process, stack, storage or fugitive emissions point;

(4) Are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in 42 U.S.C. 7412(h); or

(5) Are a combination of paragraphs (1) through (4) of this definition.

*Enhanced review* means a review process containing all administrative steps needed to ensure that the terms and conditions

resulting from the review process can be incorporated using title V permitting procedures.

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

*Maximum achievable control technology (MACT) emission limitation for existing sources* means the emission limitation reflecting the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reductions, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or subcategory to which such emission standard applies. This limitation shall not be less stringent than the MACT floor.

*Maximum achievable control technology (MACT) emission limitation for new sources* means the emission limitation which is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or subcategory to which such emission standard applies.

*Maximum Achievable Control Technology (MACT) floor* means:

(1) For existing sources:

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

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categories and subcategories of stationary sources with 30 or more sources; or

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

(2) For new sources, the emission limitation achieved in practice by the best controlled similar source.

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

- (1) Emission reduction impacts of controlling individual sources versus groups of sources;
- (2) Cost effectiveness of controlling individual equipment;
- (3) Flexibility to accommodate common control strategies;
- (4) Cost/benefits of emissions averaging;
- (5) Incentives for pollution prevention;
- (6) Feasibility and cost of controlling processes that share common equipment (e.g., product recovery devices);
- (7) Feasibility and cost of monitoring; and
- (8) Other relevant factors.

*Permitting authority* means the permitting authority as defined in part 70 of this chapter.

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

*Section 112(j) deadline* means the date 18 months after the date for which a relevant standard is scheduled to be promulgated under this part, except that for all major sources listed in the source category schedule for which a relevant standard is

scheduled to be promulgated by November 15, 1994, the section 112(j) deadline is November 15, 1996, and for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1997, the section 112(j) deadline is December 15, 1999.

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

*Source category schedule for standards* means the schedule for promulgating MACT standards issued pursuant to section 112(e) of the Act.

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

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

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

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

authorities are not required to make such notification.

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

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

(ii) When the owner or operator has submitted a title V permit application that incorporates a case-by-case MACT determination by the permitting authority under section 112(g), but has not received the permit incorporating the section 112(g)

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

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

(1) When one or more sources in a category or subcategory subject to the requirements of this subpart are installed at a major source, or result in the source becoming a major source due to the installation, and the installation does not invoke section 112(g) requirements, the owner or operator must submit an

application meeting the requirements of § 63.53(a) within 30 days of startup of the source. This application shall be reviewed using the procedures established in paragraph (e) of this section. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued pursuant to the requirements of this subpart, shall apply to such sources.

(2) The requirements in this paragraph apply when one or more sources in a category or subcategory subject to this subpart are installed at a major source, or result in the source becoming a major source due to the installation, and the installation does require emission limitations to be established and permitted under section 112(g), and the owner or operator has not submitted an application for a title V permit revision that addresses the emission limitation requirements of section 112(j). In this case, the owner or operator must apply for and obtain a title V permit that addresses the emission limitation requirements of section 112(g). Within 30 days of issuance of that title V permit, the owner or operator must submit an application meeting the requirements of § 63.53(a) for a revision to the existing title V permit. Using the procedures established in paragraph (e) of this section, the permitting authority must determine whether the emission limitations adopted pursuant to the prior case-by-case MACT determination under section 112(g) are substantially as effective as the emission limitations which the permitting authority would otherwise adopt pursuant to section 112(j) for the source in question. If the permitting authority determines that the emission limitations previously adopted to effectuate section 112(g) are substantially as effective as the emission limitations which the permitting authority would otherwise adopt to effectuate section 112(j) for the source, then the permitting authority must retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j). The title V permit applicable to that source must be revised accordingly. If the permitting authority does not retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j), the MACT requirements of this subpart are satisfied upon issuance of a revised title V permit incorporating any additional section 112(j) requirements.

(3) The owner or operator of an area source that, due to a relaxation in any

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

(4) On or after April 5, 2002, if the Administrator establishes a lesser quantity emission rate under section 112(a)(1) of the act that results in an area source becoming a major source that is subject to this subpart, then the owner or operator of such a major source must submit an application meeting the requirements of § 63.53(a) for a title V permit or for a change to an existing title V permit or pending title V permit on or before the date 6 months after the date that such source becomes a major source. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued pursuant to the requirements of this subpart, shall apply to such sources.

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

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

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

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

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

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

*(e) Permit application review.*

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

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

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

(ii) As specified in paragraphs (a) and (b) of this section, an owner or operator may request, through submittal of an application meeting the requirements of § 63.53(a), a determination by the permitting authority of whether emission limitations adopted pursuant to a prior case-by-case MACT determination under section 112(g) that apply to one or more sources at a major source in a relevant category or subcategory are substantially as effective as the emission limitations which the permitting authority would otherwise adopt pursuant to section 112(j) for the source in question. The process for determination by the permitting authority of whether the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j), then the permitting authority must adopt the existing emission limitations in the permit as the emission limitations to effectuate section 112(j) for the source in question. If more than 3 years remain on the current title V permit, the owner or operator must submit an application for a title V permit revision to make any conforming changes in the permit required to adopt the existing emission limitations as the section 112(j) MACT emission limitations. If less than 3 years remain on the current title V permit,

any required conforming changes must be made when the permit is renewed. If the permitting authority determines that the emission limitations in the prior case-by-case MACT determination under section 112(g) are not substantially as effective as the emission limitations which the permitting authority would otherwise adopt for the source in question under section 112(j), the owner or operator must comply with the applicable provisions of this subpart. The owner or operator must submit a Part 2 MACT application within 24 months of being notified of such a negative determination. A negative determination under this section constitutes final action for purposes of judicial review under 40 CFR 70.4(b)(3)(x) and corresponding state title V program provisions.

(3) Within 60 days of submittal of the Part 2 MACT application, the permitting authority must notify the owner or operator in writing whether the application is complete or incomplete. The part 2 MACT application shall be deemed complete on the date it was submitted unless the permitting authority notifies the owner or operator in writing within 60 days of the submittal that the Part 2 MACT application is incomplete. A Part 2 MACT application is complete if it is sufficient to begin processing the application for a title V permit addressing section 112(j) requirements. In the event that the permitting authority disapproves a permit application or determines that the application is incomplete, the owner or operator must revise and resubmit the application to meet the objections of the permitting authority. The permitting authority must specify a reasonable period in which the owner or operator is required to remedy the deficiencies in the disapproved or incomplete application. This period may not exceed 6 months from the date the owner or operator is first notified that the application has been disapproved or is incomplete.

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

(5) If the owner or operator has submitted a timely and complete application as required by this section, any failure to have a title V permit addressing section 112(j) requirements shall not be a violation of section 112(j), unless the delay in final

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action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application. Once a complete application is submitted, the owner or operator shall not be in violation of the requirement to have a title V permit addressing section 112(j) requirements.

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

(1) The title V permit must contain an emission standard or emission limitation that is equivalent to existing source MACT and an emission standard or emission limitation that is equivalent to new source MACT for control of emissions of hazardous air pollutants. The MACT emission standards or limitations must be determined by the permitting authority and must be based on the degree of emission reductions that can be achieved if the control technologies or work practices are installed, maintained, and operated properly. The permit must also specify the affected source and the new affected source. If construction of a new affected source or reconstruction of an affected source commences after a title V permit meeting the requirements of section 112(j) has been issued for the source, the new source MACT compliance dates must apply.

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

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

ensure practicable enforceability of the MACT emission limitation.

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

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

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

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

(g) *Permit issuance dates.*

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

(h) *Enhanced monitoring.* In accordance with section 114(a)(3) of the act, monitoring shall be capable of demonstrating continuous compliance for each compliance period during the applicable reporting period. Such monitoring data shall be of sufficient quality to be used as a basis for directly enforcing all applicable requirements established under this subpart, including emission limitations.

(i) *MACT emission limitations.*

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

(2) The owner or operator of new affected sources subject to paragraph (c)(1) of this section must comply with all requirements

of this subpart that are applicable to new affected sources, including the compliance date for new affected sources established in paragraph (f)(2)(iii)(B) of this section.

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

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

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

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

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

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

(b) *Part 2 MACT application*

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

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

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

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

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

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

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

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

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

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

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

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

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

##### *(a) Review process for new affected sources.*

(1) If the permitting authority requires an owner or operator to obtain or revise a title V permit before construction of the new affected source, or when the owner or operator chooses to obtain or revise a title V permit before construction, the owner or operator must follow the procedures established under the applicable title V permit program before construction of the new affected source.

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

(3) Regardless of the review process, the MACT determination shall be consistent with the principles established in § 63.55. The application for a Notice of MACT

Approval or a title V permit, permit modification, or administrative amendment, whichever is applicable, shall include the documentation required by § 63.53.

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

(1) The permitting authority will notify the owner or operator in writing as to whether the application for a MACT determination is complete or whether additional information is required.

(2) The permitting authority will approve an applicant's proposed control technology, or the permitting authority will notify the owner or operator in writing of its intention to disapprove a control technology.

(3) The owner or operator may present in writing, within a time frame specified by the permitting authority, additional information, considerations, or amendments to the application before the permitting authority's issuance of a final disapproval.

(4) The permitting authority will issue a preliminary approval or issue a disapproval of the application, taking into account additional information received from the owner or operator.

(5) A determination to disapprove any application will be in writing and will specify the grounds on which the disapproval is based.

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

(c) *Opportunity for public comment on Notice of MACT Approval.* The permitting authority will provide opportunity for public comment on the preliminary Notice of MACT Approval prior to issuance, including, at a minimum,

(1) Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of the permitting authority's tentative determination;

(2) A period for submittal of public comment of at least 30 days; and

(3) A notice by prominent advertisement in the area affected of the location of the source information and analysis specified in § 63.52(f). The form and content of the

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

(4) An opportunity for a public hearing, if one is requested. The permitting authority will give at least 30 days notice in advance of any hearing.

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

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

(f) *Equivalency under section 112(l).* If a permitting authority requires preconstruction review for new source MACT determinations under this subpart, such requirement shall not necessitate a determination under subpart E of this part.

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

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

**PLEASE NOTE:** This is a 'cut & paste' version of the complete Section 112(j) regulation compiled by the Air Quality Division. It is for informational purposes only, and is no way intended to represent an official version of the regulation. This document is subject to revision.

permitting authority must establish these emissions limitations consistent with the following requirements and principles:

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

(2) Each emission limitation for an existing affected source must reflect the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emission, where achievable) that the permitting authority, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable by affected sources in the category or subcategory for which the section 112(j) deadline has passed. This limitation must not be less stringent than the MACT floor which must be established by the permitting authority according to the requirements of section 112(d)(3)(A) and (B) and must be based on available information.

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

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

class of sources is not practicable due to technological and economic limitations.

(5) Nothing in this subpart will prevent a State or local permitting authority from establishing an emission limitation more stringent than required by Federal regulations.

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

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

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

(b) If the Administrator promulgates a relevant emission standard under section 112 (d) or (h) of the Act that is applicable to a source after the date a permit is issued pursuant to § 63.52 or § 63.54, the permitting authority must incorporate the requirements of that standard in the title V permit upon its next renewal. The permitting authority must establish a compliance date in the revised permit that assures that the owner or operator must comply with the promulgated standard within a reasonable time, but not longer than 8 years after such standard is promulgated or 8 years after the date by which the owner or operator was first required to comply with the emission limitation established by permit, whichever is earlier. However, in no event shall the period of compliance for existing sources be shorter than that provided for existing sources in the promulgated standard.

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

(1) If the Administrator promulgates an emission standard under section 112(d) or (h) that is applicable to an affected source

after the date a permit application under this paragraph is approved under § 63.52 or § 63.54, the permitting authority is not required to change the emission limitation in the permit to reflect the promulgated standard if the permitting authority determines that the level of control required by the emission limitation in the permit is substantially as effective as that required by the promulgated standard pursuant to § 63.1(e).

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