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 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 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.

[59 FR 26449, May 20, 1994, as amended at 61 FR 21372, May 10, 1996; 64 FR 26314, May 14, 1999; 67 FR 16605, Apr. 5, 2002]

§ 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 after 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) 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.

(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) Each owner or operator who is required to submit to the permitting authority a Part 1 MACT application which meets the requirements of §63.53(a) for one or more sources in a category or subcategory subject to section 112(j) must also submit to the permitting authority a timely Part 2 MACT application for the same sources which meets the requirements of §63.53(b). Each owner or operator shall submit the Part 2 MACT application for the sources in a particular category or subcategory no later than the applicable date specified in Table 1 to this subpart. The submission date specified in Table 1 to this subpart for Miscellaneous Organic Chemical Manufacturing shall apply to sources in each of the source categories listed in Table 2 to this subpart. When the owner or operator is required by §§63.50 through 63.56 to submit an application meeting the requirements of

§ 63.53(a) by a date which is after the date for a Part 2 MACT application for sources in the category or subcategory in question established by Table 1 to this subpart, the owner or operator shall submit a Part 2 MACT application meeting the requirements of § 63.53(b) within 60 additional days after the applicable deadline for submission of the Part 1 MACT application. Part 2 MACT applications must be reviewed by the permitting authority according to procedures established in § 63.55. The resulting MACT determination must be incorporated into the source's title V permit according to procedures established under title V, and any other regulations approved under title V in the jurisdiction in which the affected source is located.

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

(i) Each owner or operator who submitted a request for an applicability determination pursuant to paragraph (d)(1) of this section on or before May 15, 2002, which remains pending before the permitting authority on May 30, 2003, and who still wishes to obtain such a determination, must resubmit that request by July 29, 2003, or by the date which is 60 days after the Administrator publishes in the FEDERAL REGISTER a proposed standard under section 112(d) or 112(h) of the Act for the category or subcategory in question, whichever is later. Each request for an applicability determination which is resubmitted under this paragraph (e)(2)(i) must be supplemented to discuss the relation between the source(s) in question and the applicability provision in the proposed standard for the category or subcategory in question, and to explain why there may still be uncertainties that require a determination of applicability. The permitting authority must take action upon each properly resubmitted and supplemented request for an applicability determination within an additional 60 days after the applicable deadline for the resubmitted request. If the applicability determination is positive, the owner or operator must submit a Part 2 MACT application meeting the requirements of § 63.53(b) by the date specified for the category or subcategory in question in Table 1 to this subpart. If the applicability determination is negative, then no further action by the owner or operator is necessary.

(ii) As specified in paragraphs (a) and (b) of this section, an owner or operator who has submitted an application meeting the requirements of § 63.53(a) may request a determination by the permitting authority of whether emission limitations adopted pursuant to a prior case-by-case MACT determination under section 112(g) that apply to one or more sources at a major source in a relevant category or subcategory are substantially as effective as the emission limitations which the permitting authority would otherwise adopt pursuant to section 112(j) for the source in question. Such a request must be submitted by the date for the category or subcategory in question specified in Table 1 to this subpart. Any owner or operator who previously submitted such a request under a prior version of this paragraph (e)(2)(ii) need not resubmit the request. Each request for an equivalency determination under this paragraph (e)(2)(ii), regardless of when it was submitted, will be construed in the alternative as a complete application for an equivalent emission limitation under section 112(j). The process for determination by the permitting authority of whether the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j) must include the opportunity for full public, EPA, and affected State review prior to a final determination. If the permitting authority determines that the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j), then the permitting authority must adopt the existing emission limitations in the permit as the emission limitations to effectuate section 112(j) for the source in question. If

more than 3 years remain on the current title V permit, the owner or operator must submit an application for a title V permit revision to make any conforming changes in the permit required to adopt the existing emission limitations as the section 112(j) MACT emission limitations. If less than 3 years remain on the current title V permit, any required conforming changes must be made when the permit is renewed. If the permitting authority determines that the emission limitations in the prior case-by-case MACT determination under section 112(g) are not substantially as effective as the emission limitations which the permitting authority would otherwise adopt for the source in question under section 112(j), the permitting authority must make a new MACT determination and adopt a title V permit incorporating an appropriate equivalent emission limitation under section 112(j). Such a determination constitutes final action for purposes of judicial review under 40 CFR 70.4(b)(3)(x) and corresponding State title V program provisions.

(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 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 subpart 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 after 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.

[67 FR 16606, Apr. 5, 2002; 68 FR 32602, May 30, 2003]

§ 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) In compiling a Part 2 MACT application, the owner or operator may cross-reference specific information in any