

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of the permit containing it under section 112(j)(5), and it remains applicable to the source until it is revised or superseded, regardless of the subsequent status of the permit in which it was initially contained.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

#### *B. New Schedule for Part 2 Applications*

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

We note that commenters were generally supportive of the new approach to scheduling of section 112(j) Part 2 applications which we proposed. We agree with commenters that the proposed schedule will permit us to avoid a wasteful expenditure of public and private resources, so long as there

are no further delays in promulgation of the remaining MACT standards. We note also that the prompt and significant consequences if a promulgation deadline is missed will create new incentives for EPA and the other stakeholders to assure that the agreed promulgation deadlines are met.

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

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

considered both in this rulemaking and as part of the section 113(g) process.

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

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

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

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