

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

C. Requests for Applicability Determination

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

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

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

To reconcile the processing of pending requests for applicability determination with the new uniform schedule for Part 2 applications, we proposed that each affected source

which still wishes to pursue a previously filed request for applicability determination under 40 CFR

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

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

adequate record for expedited decisions by the permitting authorities on those requests that are resubmitted.

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

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

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