

appropriate once a generally applicable Federal standard has been promulgated.

After reviewing all of the comments, we have decided to adopt amendments to the procedures for requests for applicability determination as we proposed them. We have added new language to 40 CFR 63.52(e)(2)(i) which effectuates this decision.

As we noted in the proposal, those major sources which elect to resubmit requests for applicability determination with respect to sources that may be governed by one of the MACT standards which are scheduled to be promulgated by August 31, 2003, may not be entitled to receive a determination by the permitting authority on the resubmitted request until shortly after the scheduled promulgation date. If such a standard is delayed, and there is no negative determination by the permitting authority on the resubmitted request, the Part 2 application for sources within the category in question will be due on October 30, 2003. This tight time frame underscores the importance of careful coordination between such sources and the permitting authority if it appears that a MACT standard will be delayed. As discussed above, EPA will endeavor to provide timely information to affected sources and permitting authorities if it becomes apparent that the promulgation schedule for any of the remaining MACT standards will not be met.

#### *D. Prior Section 112(g) Determinations*

As part of our proposal to establish a single uniform Part 2 application deadline for all sources in a given category or subcategory, we also proposed some changes to the procedures governing CAA section 112(j) applications for those sources which have previously received a case-by-case determination pursuant to CAA section 112(g). To understand the effect of this proposal, it is helpful to review the substantive relationship between these separate statutory requirements.

In general, we anticipate that emission control requirements established as part of a previous case-by-case determination under section 112(g) will subsequently be adopted by the permitting authority to satisfy any applicable 112(j) requirements as well. This is because the determination required for any sources subject to CAA section 112(g) is supposed to be based on new source MACT, and the subsequent application of section 112(j) requirements to those same sources will be based on existing source MACT. Moreover, to assure that inconsequential differences in emission control do not result in unduly burdensome sequential

case-by-case determinations, the section 112(j) rule requires the permitting authority to adopt any prior case-by-case determination under section 112(g) as its determination for the same sources under section 112(j) if it "determines that the emission limitations in the prior case-by-case determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j)." See 40 CFR 63.52(a)(3), (b)(2), and (e)(2)(ii).

Under the rule as it was amended on April 5, 2002, sources which had previously obtained a case-by-case determination under CAA section 112(g) were generally required to submit a request for an "equivalency determination" to decide if the applicable section 112(g) requirements are "substantially as effective" as the requirements which would otherwise apply under section 112(j). As explained above, we believe that this determination will generally be positive. However, the rule as amended on April 5, 2002 provided that, if such a determination were negative, the source would then be required to submit a Part 2 application within 24 months. As in the case of requests for applicability determination, changes to the old language are required to place all sources in a given category or subcategory on the same schedule for submission of Part 2 applications.

Thus, we proposed to adopt the Part 2 application deadline for a given category or subcategory as the final deadline for submission of a request for an "equivalency determination" by any affected source that previously obtained a case-by-case determination under CAA section 112(g). Those sources who submitted such requests earlier under the provisions of the existing rule need not resubmit them. However, we also proposed to construe all requests for an equivalency determination, regardless of when they were submitted, as a section 112(j) Part 2 application as well.

Under the amendments we proposed, the permitting authority must first make an equivalency determination. In the event of a negative determination, the permitting authority will then proceed to adopt a separate set of case-by-case requirements pursuant to section 112(j). This process will be completed in the same 18-month period that applies to the processing of all other Part 2 applications.

In the proposal, we explained that this revised process would not impose any new burden on sources or permitting authorities, because the permitting authority should already

have all of the information required for a Part 2 application in any instance where it is already administering section 112(g) requirements applicable to the same source.

As in the case of requests for applicability determination, relatively few comments were received concerning this element of our proposal. Commenters generally accepted our view that a source which has already received a case-by-case determination under section 112(g) should not need to submit additional information in a section 112(j) application. A couple of commenters requested that the deadline for submission of a request for an equivalency determination be delayed if the promulgation of a MACT standard is delayed. Since we are proposing that the deadline for submission of requests for an equivalency determination be the same as the deadline for Part 2 applications, our discussion above of the effect of potential delays applies equally to this issue.

After reviewing all of the comments, we have decided to adopt amendments to the procedures for requests for equivalency determination exactly as we proposed them. We have added new language to 40 CFR 63.52(e)(2)(ii) which effectuates this decision.

#### *E. Later Part 1 Applications*

In drafting new language to effectuate our amendments to the section 112(j) rule, we identified one additional conforming change in the prior rule language which is necessary. There are a few instances where a source may be required to submit a Part 1 application meeting the requirements of 40 CFR 63.53(a) for the first time on a date which is after the otherwise uniform date for submission of Part 2 applications which we are establishing. This may occur under 40 CFR 63.52(b) when new emission units are installed at a major source, when there is an increase in the potential to emit that causes an area source to become a major source, or when EPA establishes a lesser quantity emission rate that causes an area source to become a major source. This may also occur under 40 CFR 63.52(c) if a source that has previously obtained a section 112(j) determination changes the equipment or activities which were previously covered by that determination.

We consider it relatively unlikely that any of these provisions will be triggered, even if there is a delay in the promulgation of one or more MACT standards which results in submission of some Part 2 applications. However, in the event that any Part 1 applications must be submitted for the first time after