

the deadline for submission of Part 2 applications, we think it is appropriate to provide an additional 60 days for submission of a Part 2 application after the applicable deadline for the Part 1 application. We have added another sentence to 40 CFR 63.52(e)(1) which addresses this matter.

F. Content of Part 2 Applications

We intend to meet the obligations we will be assuming under the consent decree in *Sierra Club v. Whitman* to promulgate the remaining MACT standards in a timely manner. If we succeed in promulgating all remaining MACT standards by the applicable deadlines, there will be no need for submission of any Part 2 applications. However, we also made it clear in the proposed rule that we want to minimize any unnecessary burdens associated with the submission of Part 2 applications if such applications do become necessary. We do not want to require the submission of any information which is not truly necessary to prepare for potential issuance of case-by-case MACT determinations. To that end, our proposal included some general guidance concerning the relationship between Part 2 applications and an applicable proposed MACT standard, and we also asked some additional questions intended to assist us in further limiting any unnecessary burden associated with Part 2 applications.

In our proposal, we stated that we think it is reasonable for an affected source submitting a Part 2 application to rely directly on the content of the applicable proposed MACT standard in identifying affected emission points. We also stated that applicants could reasonably limit the information they submit concerning HAP emissions to those specific HAP or groups of HAP which would be subject to actual control in the applicable proposed MACT standard. Commenters were generally supportive of these principles. Rather than merely providing guidance, we have decided to revise the language of 40 CFR 63.53(b) to expressly incorporate these principles.

Many commenters argued that the burden of compiling a Part 2 application could be diminished by permitting cross-referencing of various other documents. We agree generally with this concept, although we think that the specific information which is being cross-referenced needs to be clearly identified and the information being cross-referenced should also be information that is readily available to the permitting authority. Rather than attempting to specify those particular

documents that may be appropriately cross-referenced, we have decided to adopt language setting forth general principles regarding the cross-referencing of other documents in Part 2 applications. These general principles are included in a new paragraph codified as 40 CFR 63.53(b)(1).

We have concluded that an applicant should be permitted to cross-reference specific information in any prior submission to the permitting authority, so long as the applicant does not presume favorable action on any prior application or request which is still pending. Further, we have concluded that an applicant should be permitted to cross-reference any part of a standard proposed by EPA pursuant to CAA section 112(d) or 112(h) for a category or subcategory which includes sources to which the Part 2 application applies. We also want to assure applicants that they can cross-reference a proposed standard as part of their Part 2 application without necessarily supporting the proposal itself. Thus, an applicant who cross-references a proposed standard is free to argue that another approach (other than the approach proposed by EPA) should be used in making the case-by-case MACT determination.

We received numerous comments in response to our question asking whether the applicant needs to provide "estimated total uncontrolled and controlled emission rates" for HAP, and in response to our question asking whether new emission testing should be required if an applicant lacks sufficient information to make meaningful estimates. Many commenters argued that estimated emission rates are not necessary, and that no new emission testing should be required. Commenters also argued that such information can be requested by the permitting authority in those instances where it may be needed.

In evaluating these comments, we have considered whether estimates of controlled and uncontrolled emission rates are consistently needed to process a Part 2 application. In some instances, such emission data may be necessary to identify those emission points which would be subject to control under a proposed MACT standard, but we believe that the provision requiring the applicant to otherwise identify such emission points is sufficient in those instances where this is true. Such emission information may also be necessary in some cases to develop permit terms which apply the general requirements of a particular MACT standard or determination to the particular characteristics of an affected source. However, we believe that it is

sufficient to assure that the permitting authority can request that an applicant provide specific emission information it needs for this purpose. We note that if such information is not provided in the Part 2 application, the permitting authority will still be able to obtain it in the context of the permitting process which follows. Based on this analysis, we have decided to delete the provision requiring estimates of total uncontrolled and controlled HAP emission rates in Part 2 applications, and to add a provision requiring the applicant to submit any additional emission data or other information specifically requested by the permitting authority.

Commenters generally argued that the applicant should not be required to submit "information relevant to establishing the MACT floor." We agree with this conclusion. We do not think applicants should be required to submit such information, but we do think they should be free to do so if they wish to propose an alternative to the floor determination set forth in the proposed MACT standard. Accordingly, we have deleted this information as a mandatory requirement, but have retained the provision permitting the applicant to suggest an alternative set of emission limitations or work practice provisions on a discretionary basis.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.