

consistency with requirements established pursuant to title V during the review period under paragraph (d) of this section.

(h) *Equivalency under section 112(l)*. If a permitting authority requires preconstruction review for new source MACT determinations under this subpart, such requirement shall not necessitate a determination under subpart E of this part.

**§ 63.55 Maximum achievable control technology (MACT) determinations for emission units subject to case-by-case determination of equivalent emission limitations.**

(a) *Requirements for emission units subject to case-by-case determination of equivalent emission limitations*. The owner or operator of a major source submitting an application pursuant to § 63.52 or § 63.54 shall include elements specified in § 63.53, taking into consideration the following requirements:

(1) When the Administrator has proposed a relevant emission standard for the source category pursuant to section 112(d) or section 112(h) of the Act, then the control technologies recommended by the owner or operator under § 63.53(b)(12), when applied to the emission points recommended by the applicant for control, shall be capable of achieving all emission limitations and requirements of the proposed standard unless the application contains information adequate to support a contention that:

(i) Different emissions limitations represent the maximum achievable control technology emission limitations for the source category, or

(ii) Requirements different from those proposed by EPA will be effective in ensuring that MACT emissions limitations are achieved.

(2) When the Administrator or the permitting authority has issued guidance or distributed information establishing a MACT floor finding for the source category or subcategory by the section 112(j) deadline, then the recommended MACT emission limitations required by § 63.53(b)(11) must be at least as stringent as the MACT floor, unless the application contains information adequately supporting an amendment to such MACT floor.

(3)(i) When neither the Administrator nor the permitting authority has issued guidance or distributed information establishing a MACT floor finding and MACT determination for a source category or subcategory by the section 112(j) deadline, then the owner or operator shall submit an application for a permit or application for a Notice of MACT Approval, whichever is applicable, containing the elements required by § 63.53(b) (1) through (9) and (14), by the section 112(j) deadline.

(ii) The owner or operator may recommend a control technology that either achieves a level of control at least as stringent as the emission control that is achieved in practice by the best controlled similar source, or obtains at least the maximum reduction in emissions of hazardous air pollutants that is achievable considering costs, non air quality health and environmental impacts, and energy requirements.

(4) The owner or operator may select a specific design, equipment, work practice, or operational standard, or combination thereof, when it is not feasible to prescribe or enforce an equivalent emission limitation due to the nature of the process or pollutant. It is not feasible to prescribe or enforce a limitation when the Administrator determines that a hazardous air pollutant (HAP) or HAPs cannot be emitted through a conveyance designed and constructed to capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(b) *Requirements for permitting authorities*. The permitting authority will determine whether the permit application or application for a Notice of MACT Approval is approvable. If approvable, the permitting authority will establish hazardous air pollutant emissions limitations equivalent to the limitation that would apply if an emission standard had been issued in a timely manner under subsection 112 (d) or (h) of the Act. The permitting authority

will establish these emissions limitations consistent with the following requirements and principles:

(1) Emission limitations will be established for all emission units within a source category or subcategory for which the section 112(j) deadline has passed.

(2) Each emission limitation for an existing emission unit will reflect the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emission, where achievable) that the permitting authority, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable by emission units in the category or subcategory for which the section 112(j) deadline has passed. This limitation will not be less stringent than the MACT floor, and will be based upon available information and information generated by the permitting authority before or during the application review process, including information provided in public comments.

(3) Each emission limitation for a new emission unit will not be less stringent than the emission limitation achieved in practice by the best controlled similar source, and must reflect the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the permitting authority, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable. This limitation will be based at a minimum upon available information and information provided in public comments.

(4) When the Administrator has proposed a relevant emissions standard for the source category pursuant to section 112(d) or section 112(h) of the Act, then the equivalent emission limitation established by the permitting authority shall ensure that all emission limitations and requirements of the proposed standard are achieved, unless the permitting authority determines based on additional information that:

(i) Different emissions limitations represent the maximum achievable control technology emission limitations for the source category; or

(ii) Requirements different from those proposed by EPA will be effective in ensuring that MACT emissions limitations are achieved.

(5) When the Administrator or the permitting authority has issued guidance or collected information establishing a MACT floor finding for the source category or subcategory, the equivalent emission limitation for an emission unit must be at least as stringent as that MACT floor finding unless, based on additional information, the permitting authority determines that the additional information adequately supports an amendment to the MACT floor. In that case, the equivalent emission limitation must be at least as stringent as the amended MACT floor.

(6) The permitting authority will select a specific design, equipment, work practice, or operational standard, or combination thereof, when it is not feasible to prescribe or enforce an equivalent emission limitation due to the nature of the process or pollutant. It is not feasible to prescribe or enforce a limitation when the Administrator determines that a hazardous air pollutant (HAP) or HAPs cannot be emitted through a conveyance designed and constructed to capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(7) Nothing in this subpart will prevent a State or local permitting authority from establishing an emission limitation more stringent than required by Federal regulations.

(c) *Reporting to National Data Base.* The owner or operator shall submit additional copies of its application for a permit, permit modification, administrative amendment, or Notice of MACT Approval, whichever is applicable, to the EPA by the section 112(j) deadline for existing emission units, or by the date of the application for a permit or

**§ 63.56**

Notice of MACT Approval for new emission units.

**§ 63.56 Requirements for case-by-case determination of equivalent emission limitations after promulgation of a subsequent MACT standard.**

(a) If the Administrator promulgates an emission standard that is applicable to one or more emission units within a major source before the date a permit application under this paragraph is approved, the permit shall contain the promulgated standard rather than the emission limitation determined under § 63.52, and the owner or operator shall comply with the promulgated standard by the compliance date in the promulgated standard.

(b) If the Administrator promulgates an emission standard under section 112(d) or (h) of the Act that is applicable to a source after the date a permit is issued pursuant to § 63.52 or § 63.54, the permitting authority shall revise the permit upon its next renewal to reflect the promulgated standard. The permitting authority will establish a compliance date in the revised permit that assures that the owner or operator shall comply with the promulgated standard within a reasonable time, but not longer than 8 years after such standard is promulgated or 8 years after the date by which the owner or operator was first required to comply with the emission limitation established by permit, whichever is earlier.

(c) Notwithstanding the requirements of paragraph (a) or (b) of this section, if the Administrator promulgates an emission standard that is applicable to a source after the date a permit application is approved under § 63.52 or § 63.54, the permitting authority is not required to change the emission limitation in the permit to reflect the promulgated standard if the level of control required by the emission limitation in the permit is at least as stringent as that required by the promulgated standard.

**40 CFR Ch. I (7–1–00 Edition)**

**Subpart C—List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List**

**§ 63.60 Deletion of caprolactam from the list of hazardous air pollutants.**

The substance caprolactam (CAS number 105602) is deleted from the list of hazardous air pollutants established by 42 U.S.C. 7412(b)(1).

[61 FR 30823, June 18, 1996]

**§§ 63.61–63.69 [Reserved]**

**Subpart D—Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants**

**§ 63.70 Applicability.**

The provisions of this subpart apply to an owner or operator of an existing source who wishes to obtain a compliance extension from a standard issued under section 112(d) of the Act. The provisions of this subpart also apply to a State or local agency acting pursuant to a permit program approved under title V of the Act. The Administrator will carry out the provisions of this subpart for any State that does not have an approved permit program.

**§ 63.71 Definitions.**

All terms used in this subpart not defined in this section are given the same meaning as in the Act.

*Act* means the Clean Air Act as amended.

*Actual emissions* means the actual rate of emissions of a pollutant, but does not include excess emissions from a malfunction, or startups and shutdowns associated with a malfunction. Actual emissions shall be calculated using the source's actual operating rates, and types of materials processed, stored, or combusted during the selected time period.