

II. Where can I find more information about this proposal and corresponding direct final rule?

I. What Action Is EPA Taking Today?

The EPA is proposing to approve as a revision to the Indiana particulate matter SIP emission control regulations that pertain to Knauf Fiber Glass (Knauf) which is located in Shelbyville, Indiana, as requested by the State of Indiana on October 17, 2002. This SIP submission makes changes to federally enforceable Indiana air pollution control rules. Indiana made these changes at the request of Knauf, and they apply to the operation of the Knauf fiberglass plant in Shelbyville, Indiana. The rule revisions modify the PM emissions limits adopted by the State in the 1980s which EPA approved as part of the current Indiana SIP. The revised rules delete references to equipment no longer in use by Knauf and update names of equipment which remains in use. Because the revised rules reduce both allowable emissions and the allowable emissions rate and reflect current operations at the Knauf facility, EPA approval of these revisions should not result in an adverse impact on air quality.

II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules and regulations section of this **Federal Register**.

Authority: 42 U.S.C. 4201 *et seq.*

Dated: November 7, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 02-30938 Filed 12-6-02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-7419-6]

RIN 2060-AK52

National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions; and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: In this action, we are proposing specific amendments to the General Provisions for national emission standards for hazardous air pollutants (NESHAP), and to the rule establishing requirements for case-by-case determinations under Clean Air Act (CAA) section 112(j). We are proposing to establish a new timetable for the submission of section 112(j) Part 2 applications which is derived from our agreed timetable for promulgation of the remaining NESHAP. This new timetable for Part 2 applications is intended both to avoid the expenditure of unnecessary resources by affected sources and permitting authorities, and to create new incentives for prompt completion of the remaining standards. We are also proposing to make several changes in the section of the General Provisions rule that establishes general procedures for preparation, maintenance, and periodic revision of startup, shutdown, and malfunction (SSM) plans. These amendments are being proposed pursuant to a settlement agreement concerning a petition for judicial review of the prior amendments to these rules published on April 5, 2002. We are also proposing to revise a recordkeeping provision which we adopted in response to comments we received on the prior amendments because we have concluded that the recordkeeping provision should be more narrow in applicability.

DATES: *Comments.* Submit comments on or before January 20, 2003.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by December 16, 2002, a public hearing will be held on December 19, 2002.

ADDRESSES: *Comments.* Written comments may be submitted to: Air and Radiation Docket and Information Center, Attention Docket Number OAR-2002-0038, Part 63 General Provisions (Subpart A) and Section 112(j) Regulations (Subpart B) Litigation Settlement Amendments II, Mailcode 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

Public Hearing. If a public hearing is held, it will be held at 10 a.m. on December 19, 2002 in our EPA facility complex, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina, or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Colyer, Emission Standards Division (C504-05), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541-5262, e-mail colyer.rick@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Categories and entities potentially regulated by this action include all section 112 source categories listed under section 112(c) of the CAA.

Industry Group: Source Category

Fuel Combustion:

- Coal- and Oil-fired Electric Utility
- Steam Generating Units
- Combustion Turbines
- Engine Test Facilities
- Industrial Boilers
- Institutional/Commercial Boilers
- Process Heaters
- Reciprocating Internal Combustion Engines
- Rocket Testing Facilities

Non-Ferrous Metals Processing:

- Primary Aluminum Production
- Primary Copper Smelting
- Primary Lead Smelting
- Primary Magnesium Refining
- Secondary Aluminum Production
- Secondary Lead Smelting

Ferrous Metals Processing:

- Coke Ovens: Charging, Top Side, and Door Leaks
- Coke Ovens: Pushing, Quenching, Battery Stacks
- Ferroalloys Production: Silicomanganese and Ferromanganese
- Integrated Iron and Steel Manufacturing
- Iron Foundries
- Steel Foundries
- Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration

Mineral Products Processing:

- Asphalt Processing
- Asphalt Roofing Manufacturing
- Asphalt/Coal Tar Application—Metal Pipes
- Brick and Clay Products Manufacturing
- Ceramics Manufacturing
- Lime Manufacturing
- Mineral Wool Production
- Portland Cement Manufacturing
- Refractories Manufacturing
- Taconite Iron Ore Processing
- Wool Fiberglass Manufacturing

Petroleum and Natural Gas Production and Refining:

- Oil and Natural Gas Production
- Natural Gas Transmission and Storage
- Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Plant Units
- Petroleum Refineries—Other Sources Not Distinctly Listed

Liquids Distribution:

- Gasoline Distribution (Stage 1)
- Marine Vessel Loading Operations
- Organic Liquids Distribution (Non-

Gasoline)	Butadiene-Styrene Production	Industrial Dry Cleaning (Perchloroethylene)—Dry-to-dry Machines
<i>Surface Coating Processes:</i>	Methyl Methacrylate-Butadiene- Styrene Terpolymers Production	Industrial Dry Cleaning (Perchloroethylene)—Transfer Machines
Aerospace Industries	Neoprene Production	Industrial Process Cooling Towers
Auto and Light Duty Truck (Surface Coating)	Nitrile Butadiene Rubber Production	Leather Finishing Operations
Large Appliance (Surface Coating)	Nitrile Resins Production	Miscellaneous Viscose Processes
Magnetic Tapes (Surface Coating)	Non-Nylon Polyamides Production	OBPA/1,3-Disocyanate Production
Manufacture of Paints, Coatings, and Adhesives	Phenolic Resins Production	Paint Stripping Operations
Metal Can (Surface Coating)	Polybutadiene Rubber Production	Photographic Chemicals Production
Metal Coil (Surface Coating)	Polycarbonates Production	Phthalate Plasticizers Production
Metal Furniture (Surface Coating)	Polyester Resins Production	Plywood and Composite Wood Products
Miscellaneous Metal Parts and Products (Surface Coating)	Polyether Polyols Production	Pulp and Paper Production
Paper and Other Webs (Surface Coating)	Polyethylene Terephthalate Production	Rubber Chemicals Manufacturing
Plastic Parts and Products (Surface Coating)	Polymerized Vinylidene Chloride Production	Rubber Tire Manufacturing
Printing, Coating, and Dyeing of Fabrics	Polymethyl Methacrylate Resins Production	Semiconductor Manufacturing
Printing/Publishing (Surface Coating)	Polystyrene Production	Symmetrical Tetrachloropyridine Production
Shipbuilding and Ship Repair (Surface Coating)	Polysulfide Rubber Production	Wet-formed Fiberglass Mat Production
Wood Building Products (Surface Coating)	Polyvinyl Acetate Emulsions Production	<i>Categories of Area Sources:</i>
Wood Furniture (Surface Coating)	Polyvinyl Alcohol Production	Chromic Acid Anodizing
<i>Waste Treatment and Disposal:</i>	Polyvinyl Butyral Production	Commercial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines
Hazardous Waste Incineration	Polyvinyl Chloride and Copolymers Production	Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines
Municipal Solid Waste Landfills	Reinforced Plastic Composites Production	Commercial Sterilization Facilities
Off-Site Waste and Recovery Operations	Styrene-Acrylonitrile Production	Decorative Chromium Electroplating
Publicly Owned Treatment Works (POTW)	Styrene-Butadiene Rubber and Latex Production	Halogenated Solvent Cleaners
Site Remediation	<i>Production of Inorganic Chemicals:</i>	Hard Chromium Electroplating
<i>Agricultural Chemicals Production:</i>	Ammonium Sulfate Production— Caprolactam By-Product Plants	Hazardous Waste Incinerators
Pesticide Active Ingredient Production	Carbon Black Production	Portland Cement Production
<i>Fibers Production Processes:</i>	Chlorine Production	Secondary Aluminum Production
Acrylic Fibers/Modacrylic Fibers Production	Cyanide Chemicals Manufacturing	Secondary Lead Smelting
Spandex Production	Fumed Silica Production	This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether you are regulated by this action, you should examine your source category specific section 112 regulation. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section.
<i>Food and Agriculture Processes:</i>	Hydrochloric Acid Production	
Manufacturing of Nutritional Yeast	Hydrogen Fluoride Production	
Solvent Extraction for Vegetable Oil Production	Phosphate Fertilizers Production	
<i>Pharmaceutical Production Processes:</i>	Phosphoric Acid Manufacturing	
Pharmaceuticals Production	<i>Production of Organic Chemicals:</i>	
<i>Polymers and Resins Production:</i>	Ethylene Processes	
Acetal Resins Production	Quaternary Ammonium Compounds Production	
Acrylonitrile-Butadiene-Styrene Production	Synthetic Organic Chemical Manufacturing	
Alkyd Resins Production	<i>Miscellaneous Processes:</i>	
Amino Resins Production	Benzyltrimethylammonium Chloride Production	
Boat Manufacturing	Carbonyl Sulfide Production	
Butyl Rubber Production	Chelating Agents Production	
Cellulose Ethers Production	Chlorinated Paraffins Production	
Epichlorohydrin Elastomers Production	Chromic Acid Anodizing	
Epoxy Resins Production	Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines	
Ethylene-Propylene Rubber Production	Commercial Sterilization Facilities	
Flexible Polyurethane Foam Production	Decorative Chromium Electroplating	
Hypalon (tm) Production	Ethylidene Norbornene Production	
Maleic Anhydride Copolymers Production	Explosives Production	
Methyl Methacrylate-Acrylonitrile-	Flexible Polyurethane Foam Fabrication Operations	
	Friction Materials Manufacturing	
	Halogenated Solvent Cleaners	
	Hard Chromium Electroplating	
	Hydrazine Production	

Docket

EPA has established an official public docket for this action under Docket ID No. OAR-2002-0038. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Part 63 General Provisions (Subpart A)

and Section 112(j) Regulations (Subpart B) Litigation Settlement Amendments II Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Part 63 General Provisions (Subpart A) and Section 112(j) Regulations (Subpart B) Litigation Settlement Amendments II Docket is (202) 566-1742. A reasonable fee may be charged for copying docket materials.

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility previously identified.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or

other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions below. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket> and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OAR-2002-0038. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *a-and-r-Docket@epa.gov*, Attention Docket ID No. OAR-2002-0038. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

Send your comments to: Part 63 General Provisions (Subpart A) and Section 112(j) Regulations (Subpart B) Litigation Settlement Amendments II, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC 20460, Attention Docket ID No. OAR-2002-0038.

Deliver your comments to: Public Reading Room, Room B102, EPA West, 1301 Constitution Avenue, NW, Washington, DC, Attention Docket ID No. OAR-2002-0038. Such deliveries are only accepted during the Docket's normal hours of operation.

Fax your comments to 202-566-1741, Attention Docket ID No. OAR-2002-0038.

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Attention: Mr. Rick Colyer, c/o OAQPS Document Control Officer, Mailcode C404-02, U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. OAR-2002-

0038. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comments that includes any information claimed as CBI, a copy of the comments that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the FOR FURTHER INFORMATION CONTACT section.

Public Hearing

Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Janet Eck, U.S. EPA, Mailcode C539-03, Research Triangle Park, NC 27711, telephone (919) 541-7946, no later than December 17, 2002. Persons interested in attending the public hearing must also contact Ms. Eck to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed amendments.

Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of today's proposed rule amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

Applicable Law

This rulemaking is being undertaken pursuant to the procedures established by CAA section 307(d). The special procedures for rulemakings governed by

section 307(d) were utilized when EPA originally promulgated, and when EPA subsequently amended, each of the rules to which this proposal applies. The Administrator has specifically determined that it is appropriate to utilize the procedures in section 307(d) for this rulemaking.

Outline

The information presented in this preamble is organized as follows:

- I. Background
 - A. General Provisions
 - B. CAA Section 112(j) Provisions
 - C. The Sierra Club Litigation
 - D. Review of Proposed Settlement Under CAA Section 113(g)
- II. Proposed Amendments to the General Provisions
- III. Proposed Amendments to the Section 112(j) Provisions
 - A. New Schedule for Part 2 Applications
 - B. Requests for Applicability Determination
 - C. Prior Section 112(g) Determinations
 - D. Content of Part 2 Applications
- IV. Administrative Requirements
 - A. Executive Order 12866, Regulatory Planning and Review
 - B. Executive Order 13132, Federalism
 - C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
 - D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
 - E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
 - F. Unfunded Mandates Reform Act of 1995
 - G. Regulatory Flexibility Act (RFA) as Amended by Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.
 - H. Paperwork Reduction Act
 - I. National Technology Transfer and Advancement Act of 1995

I. Background

A. General Provisions

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of Hazardous Air Pollutants (HAP) and to establish NESHAP for the listed source categories and subcategories. Major sources of HAP are those that have the potential to emit equal to or greater than 10 tons/yr of any one HAP or 25 tons/yr of any combination of HAP. Area sources of HAP are those sources that do not have potential to emit equal to or greater than 10 tons/yr of any one HAP and 25 tons/yr of any combination of HAP.

The General Provisions in 40 CFR part 63 establish the framework for emission standards and other requirements developed pursuant to section 112 of the CAA. The General Provisions

eliminate the repetition of general information and requirements in individual NESHAP by consolidating all generally applicable information in one location. They include sections on applicability, definitions, compliance dates and requirements, monitoring, recordkeeping and reporting, among others. In addition, they include administrative sections concerning actions that the EPA (or delegated authorities) must take, such as making determinations of applicability, reviewing applications for approval of new construction, responding to requests for extensions or waivers of applicable requirements, and generally enforcing national air toxics standards. The General Provisions become applicable to a CAA section 112(d) source category rule when the source category rule is promulgated and becomes effective.

The NESHAP General Provisions were first promulgated on March 16, 1994 (59 FR 12408). We subsequently proposed a variety of amendments to that initial rule, based in part on settlement negotiations with industrial trade organizations which had sought judicial review of the rule and in part on our practical experience in developing and implementing maximum achievable control technology (MACT) standards under the General Provisions (66 FR 16318, March 23, 2001). We then promulgated final amendments to the General Provisions pursuant to that proposal (67 FR 16582, April 5, 2002).

B. CAA Section 112(j) Provisions

The 1990 Amendments to section 112 of the CAA include a new section 112(j), which is entitled "Equivalent Emission Limitation by Permit." Section 112(j)(2) provides that the provisions of section 112(j) apply if the EPA misses a deadline for promulgation of a standard under section 112(d) established in the source category schedule for standards. After the effective date of a title V permit program in a State, section 112(j)(3) requires the owner or operator of a major source in a source category, for which the EPA failed to promulgate a section 112(d) standard, to submit a permit application 18 months after the missed promulgation deadline.

We first promulgated a rule to implement section 112(j) on May 20, 1994 (59 FR 26429). We subsequently proposed a variety of amendments to that initial rule, based in part on settlement negotiations with industrial trade organizations which had sought judicial review of the rule and in part on our own further evaluation of the existing procedures (66 FR 16318, March 23, 2001). We then promulgated

final amendments to the section 112(j) rule, along with our final amendments to the General Provisions (67 FR 16582, April 5, 2002).

C. *The Sierra Club Litigation*

We promulgated the final rule amending the MACT General Provisions and the requirements for case-by-case determinations under Clean Air Act section 112(j) on April 5, 2002 (67 FR 16582). The Sierra Club filed a petition seeking judicial review of that final rule on April 25, 2002, *Sierra Club v. U.S. Environmental Protection Agency*, No. 02-1135 (D.C. Circuit). Sierra Club also filed a petition seeking administrative reconsideration of certain provisions in the final rule, pursuant to CAA section 307(d)(7)(B).

Shortly after the filing of the petition, EPA commenced discussions with Sierra Club concerning a settlement agreement. We reached initial agreement with Sierra Club on the terms of a settlement and lodged the tentative agreement with the court on August 15, 2002. Under the proposed settlement, we agreed to propose a rule to make specified amendments to the General Provisions and section 112(j) rules no later than 2 months after signature and to take final action on the proposed amendments within 7 months after signature.

D. *Review of Proposed Settlement Under CAA Section 113(g)*

As required by section 113(g) of the CAA, EPA published a notice in the **Federal Register** affording interested persons an opportunity to comment on the terms of the proposed settlement in *Sierra Club v. U.S. Environmental Protection Agency*, No. 02-1135 (D.C. Circuit) (67 FR 54804, August 26, 2002). In response to that notice, we received 110 timely comments, the vast majority of which opposed one or more provisions of the proposed settlement.

While we do not believe we are legally required to discuss or summarize our review of the comments on the proposed settlement we received as part of the process required by section 113(g), we think it is appropriate in this instance to describe our assessment of and response to certain of these comments.

Virtually all of the commenters expressed concern about the practical consequences of the proposal to reduce the time between the section 112(j) Part 1 and Part 2 applications from 24 months to 12 months. We agree with the commenters that this approach would have resulted in wasteful expenditures by the applicants and the permitting agencies to prepare and to process

permit applications which in all likelihood would never have been acted upon. Given the strong opposition to this approach reflected in the comments both by industry sources and organizations and by State and local permitting authorities, we were pleased when Sierra Club agreed to discuss modifying the proposed settlement to establish an alternative timetable for submission of Part 2 section 112(j) applications.

Organizations representing the State and local permitting authorities played a very helpful role in the discussions concerning a revised settlement. These organizations noted that EPA had already reached an agreement with Sierra Club on a schedule for promulgation of all remaining MACT standards that were included on the original schedule established pursuant to CAA section 112(e)(1) and (3). We anticipate that this agreed upon schedule for promulgation of the remaining MACT standards will be incorporated in a forthcoming consent decree in *Sierra Club v. Whitman*, 01-1337 (D.D.C.). The State and local governmental organizations suggested that a timetable which would require submission of section 112(j) Part 2 applications only if the agreed upon schedule is not met would both eliminate the expenditure of significant resources on an ultimately futile process and create new incentives for EPA and the other stakeholders to cooperate in meeting the promulgation schedule.

After Sierra Club agreed to consider the alternative approach suggested by the State and local governmental organizations, EPA and Sierra Club then negotiated a revised settlement based on that approach. Under the timetable we are proposing pursuant to the revised settlement, section 112(j) Part 2 applications for affected sources in those categories for which MACT standards are scheduled to be promulgated while this rulemaking is pending will be due on May 15, 2003, and section 112(j) Part 2 applications for affected sources in categories for which the MACT standards are scheduled to be promulgated thereafter will be due 60 days after the corresponding scheduled promulgation dates.

In the revised settlement, we have also agreed to propose the same amendments to the General Provisions concerning startup, shutdown, and malfunction (SSM) plans which were set forth in the original settlement. Although we received numerous comments opposing these amendments as well, we believe that many of these comments materially misconstrued both the intent and the effect of these

proposed amendments. In any case, we note that there will be a full opportunity for those who have concerns regarding either the need for or the effect of these amendments to comment during this rulemaking. We also believe these comments are likely to be more constructive and appropriately focused when the commenters have had an opportunity to review our explanation of the basis for these proposed amendments set forth below.

The EPA and Sierra Club executed a final settlement agreement in *Sierra Club v. U.S. Environmental Protection Agency*, No. 02-1135 (DC Circuit), and filed it with the Court on November 26, 2002. This rulemaking is being conducted in accordance with the provisions of that final agreement.

II. Proposed Amendments to the General Provisions

In today's action, we are proposing to make several changes in the section of the General Provisions rule that establishes general procedures for preparation, maintenance, and periodic revision of SSM plans. We consider these proposed revisions to be modest in character, and we believe they are generally consistent with the policies articulated in the preamble when we proposed the last set of amendments concerning SSM plans. We are also proposing to revise a new recordkeeping provision which we adopted in the prior rulemaking in response to a comment we received, because we have concluded that the new recordkeeping provision is too broad in its effect.

We are proposing some minor changes in the language in 40 CFR 63.6(e)(1)(i) to correct a potential problem in interpreting the relationship between the general duty to minimize emissions established by that section and a facility's compliance with its SSM plan. That section was modified in the last rulemaking because it appeared at that time to impose on a source a general duty to further reduce emissions, even when the source is already in full compliance with the applicable MACT standards. We deemed this result to be unreasonable and made corresponding changes in the language of the rule. We emphasize that nothing in today's proposal is intended to alter our determination that the general duty to minimize emissions is satisfied when emission levels required by the MACT standard have been achieved.

However, as part of these changes, we adopted some language which could be construed as contrary to the policies regarding the relationship between the general duty to minimize emissions and

SSM plans which we stated in the preamble of the proposal of the original amendments. We note at the outset that SSM plans must be drafted in a manner which satisfies the general duty to minimize emissions (40 CFR 63.6(e)(3)(i)(A)). Thus, compliance with a properly drafted SSM plan during a period of startup, shutdown, or malfunction will necessarily also constitute compliance with the duty to minimize emissions, even though compliance with the MACT standards themselves during a period of startup, shutdown, or malfunction may not be practicable. However, in the proposal preamble to the original amendments, we stated explicitly that "compliance with an inadequate or improperly developed SSM plan is no defense for failing to minimize emissions" (66 FR 16327, March 23, 2001). We note that this understanding of the effect of the amendments was explicitly restated in comments by the organizations that represent the agencies that generally enforce these requirements, the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO). See Docket A-2001-02.

Sierra Club subsequently pointed out to us that the actual language of the section as promulgated could be construed to indicate that a facility that complies with its SSM plan—regardless of whether the plan is inadequate or improperly developed—thereby satisfies its general duty to minimize emissions. We did not intend this result. We believe such a construction could encourage potential abuse, particularly because SSM plans do not have to be reviewed or approved by the permitting authority before they take effect, and because such plans may also be revised by the facility without prior notice to the permitting authority. The revisions to 40 CFR 63.6(e)(1)(i) which we are proposing today are intended to assure that this section is not construed in this manner. Nothing in these revisions is intended either to change the general principle that compliance with a MACT standard is not mandatory during periods of startup, shutdown, or malfunction, or to require a source to further minimize emissions during periods of startup, shutdown, or malfunction once it has achieved levels which would constitute compliance with the MACT standard at other times.

We are also proposing some changes to 40 CFR 63.6(e)(3)(v), the section that governs submission of SSM plans to the EPA Administrator, and to the State or local permitting authorities which operate as the Administrator's authorized

representatives. The present rule provides that the current SSM plan must be made available upon request to the Administrator for "inspection and copying." The "Administrator" is defined to include a State which has received delegation and is therefore the Administrator's "authorized representative" (40 CFR 63.2).

We stated in the preamble of the proposal for the previous amendments that the permit writer or the Administrator may also require submission of the SSM plan (66 FR 16326, March 23, 2001). This is sensible because the SSM plan is an integral part of the permit file, regardless of whether the plan is physically available at the EPA Regional Office or the permitting authority that has received delegation or is maintained only at the affected source. However, we note that the present rule does not expressly require that SSM plans be submitted to the Administrator or to the permitting authority upon request. This potential omission was also noted in previous comments by STAPPA/ALAPCO. See Docket A-2001-02.

SSM plans are developed in connection with individual MACT standards promulgated under CAA section 112 and are therefore covered by CAA section 114(a). Under CAA section 114(c) and 40 CFR 70.4(b)(3)(viii), information in SSM plans must be made available to the public, unless the submitter makes a satisfactory showing that disclosure would divulge methods or processes that are entitled to protection under the Trade Secrets Act, 18 U.S.C. 1905. SSM plans are considered to be submitted to the Administrator under CAA Section 114 even if they are submitted to a State or local agency acting on the Administrator's behalf (40 CFR 2.301(b)(2)).

Sierra Club has expressed concern about the adequacy of the provisions in the present rule to assure the degree of public access to SSM plans required by law. In particular, Sierra Club is concerned that some permitting authorities might not construe the rule to require that an SSM plan be obtained from the affected source when it is requested by a member of the public, and that the rule does not expressly require submission of an SSM plan when the permitting authority or Administrator requests it. Although the rule clearly requires that such plans must be made available for inspection and copying by EPA or the permitting authority, Sierra Club believes that interested members of the public may encounter protracted delays in obtaining

access to the non-confidential portions of an SSM plan.

We understand these concerns about the practicality of public access under the present system, and we have agreed to propose some revisions to the rule to facilitate better public access. The new language requires sources to submit a copy of the SSM plan to the permitting authority at the time it is first adopted and when it is subsequently revised. In most instances, revised versions of the SSM plan may be submitted with the semiannual report required by 40 CFR 63.10(d)(5). Under our proposal, the source may elect to submit the SSM plan in an electronic format. If the submitter claims that any portion of an SSM plan, or any revision of an SSM plan, is CBI entitled to protection under section 114(c) of the CAA or 40 CFR 2.301, the material which is claimed as confidential must be clearly designated in the submission.

While the applicable law generally requires that we provide public access to those portions of SSM plans which are not entitled to confidentiality under the Trade Secrets Act, we note that it is hypothetically possible that some information in a particular SSM plan would be deemed to be sensitive from a Homeland Security perspective. In most instances, we think that such sensitive information would also be entitled to confidential treatment under CAA section 114(c). However, we note that the entire Federal government is presently reviewing public access requirements to assure that they are compatible with Homeland Security, and it is possible that we may in the future propose other changes in public access to SSM plans as part of this important effort.

We note that many sources have already adopted SSM plans, and that the language we are proposing does not establish a specific transitional process for submission of those existing plans to permitting authorities. If we adopt the proposed changes, we want to minimize the burden and disruption associated with this transition, and we are requesting comment on how this may best be accomplished. One option would be to provide a specific time period within which the existing plans must be submitted. Another option would be to require that the plans be submitted as part of the next semiannual compliance report.

We are also proposing a change to 40 CFR 63.6(e)(3)(vii). The current rule provides that EPA or the permitting authority "may" require that an SSM plan be revised if certain specified deficiencies are found. However, we cannot envision any circumstance

where revision of an SSM plan should not be mandatory if it is specifically found to be deficient by EPA or the permitting authority according to one of the criteria set forth in this section. Therefore, we have agreed to propose to change the language to make such revisions mandatory rather than discretionary.

We are required to propose all of the foregoing amendments to the SSM plan provisions in the MACT General Provisions rule by the final settlement agreement that we executed with Sierra Club. We solicit comments on all these proposals.

In addition to the proposals required under our final settlement agreement with Sierra Club, we are also proposing to revise a provision concerning reporting of SSM events which we adopted in the previous rulemaking in response to comments we received. We have concluded that the new language we adopted was unnecessarily broad in its scope and we are proposing to substantially narrow its applicability.

During the previous rulemaking concerning revisions to the General Provisions and section 112(j) rules, we received comments from STAPPA/ALAPCO indicating that it would assist permitting agencies in performing their oversight function if facilities were required to include the number and a description of all malfunctions that occurred during the prior reporting period in the required semiannual report. See Docket A-2001-02. In response to that comment, we added a new reporting obligation to the language governing periodic SSM reporting in 40 CFR 63.10(d)(5)(i). However, the language we added was not limited to malfunctions and required that the facility report "the number, duration, and a brief description of each startup, shutdown, and malfunction." We have concluded that the inclusion of startups and shutdowns in this reporting requirement is unnecessary and burdensome.

With respect to malfunctions, the rule expressly requires that the SSM plan must be revised by the facility if there is an event meeting the characteristics of a malfunction which is not addressed by the plan (40 CFR 63.6(e)(3)(vii)). Although the facility is required by 40 CFR 63.6(e)(3)(iv) to immediately report those instances where the actions it takes are not in conformity with the SSM plan and the standard is exceeded, this provision may not be sufficient to give the permitting authority all the information it needs to assure that SSM plans properly address all types of malfunctions. Thus, we think that the requirement that the owner or operator

report the number, duration, and type of malfunctions which occurred during the prior reporting period may provide useful information to the permitting authority.

We recognize that some sources are concerned that the requirement to periodically report malfunctions may be interpreted to require reporting of minor problems that have no impact on emissions. However, we do not construe the provision in this manner. Under our regulations, "malfunction" is defined as "any sudden, *infrequent*, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner." See 40 CFR 63.2. Only those events that meet this definition would be subject to the reporting requirement. During an event that meets this definition, the facility is not required to comply with otherwise applicable emission limits, and the SSM plan must specify alternative procedures which satisfy the general duty to minimize emissions. Minor or routine events that have no appreciable impact on the ability of a source to meet the standard need not be classified by the source as a malfunction, addressed in the SSM plan, or included in periodic reports. Thus, if a source experiences a minor problem that does not affect its ability to meet the applicable emission standard, the problem need not be addressed by the SSM plan and would not be a reportable "malfunction" under our regulations.

Unlike malfunctions, we think that the extension of this requirement to startups and shutdowns was unwarranted. In some industries, startup and shutdown events are numerous and routine. So long as the provisions of the SSM plan are followed, there does not appear to be any real utility in requiring that each individual startup and shutdown be reported or described. In those instances where a startup and shutdown includes actions which do not conform to the SSM plan and the standard is exceeded, the facility is otherwise required to promptly report these deviations from the plan. We encourage all interested parties to comment both on our proposal to delete startups and shutdowns from this reporting provision, and on our rationale for the retention of the periodic reporting of malfunctions.

In addition to seeking comment on the revisions to the provisions governing SSM plans described above, we are also requesting comment concerning two other changes to the General Provisions which we made

during the prior rulemaking in response to industry comments. During the prior rulemaking, the Colorado Association of Commerce and Industry suggested that we revise the definition of "monitoring" in 40 CFR 63.2 to include the phrase "or to verify a work practice standard." See Docket item No. IV-D-03. There are times when we must adopt a work practice standard under CAA section 112(h) rather than an emission standard under CAA section 112(d), and compliance with such a work practice standard is sometimes verified by activities which may not require " * * * collection and use of measurement data or other information to control the operation of a process or pollution control device * * * " Therefore, we thought that the suggested revision was a sensible one. However, because the additional language was not originally proposed by EPA, and it has been subsequently suggested that this revision might have unintended consequences, we have decided to take additional comment concerning the value of this language and the effects it might have when read in conjunction with other regulatory requirements, including other provisions of the General Provisions.

In the prior rulemaking, we also made a small change in the language of 40 CFR 63.9(h)(2)(ii) by adding the phrase "(or activities that have the same compliance date)" in response to a comment submitted by Dow Chemical Company. See Docket item No. IV-D-19. Although separate notices are appropriate for compliance obligations with different compliance dates (e.g., equipment leaks versus process vents), Dow was concerned that separate compliance reports might be required for compliance obligations that have the same date and requested the option of filing a single compliance status report covering multiple compliance obligations. Because the new language in question was not originally proposed by EPA, and some have questioned whether it clearly achieves the intended purpose, we have decided to request additional comment concerning the need for this change and potential alternatives.

III. Proposed Amendments to the Section 112(j) Provisions

A. New Schedule for Part 2 Applications

The final settlement agreement which we have executed with Sierra Club requires us to propose to replace the existing schedule for submission of section 112(j) Part 2 applications, under which most Part 2 applications would have been due on May 15, 2004, with

a schedule which will establish a specific deadline for submission of Part 2 applications for all affected sources in a given category or subcategory. With respect to those listed categories or subcategories for which MACT standards are scheduled to be promulgated by November 30, 2002 or by February 28, 2003, we are proposing

a Part 2 application deadline of May 15, 2003. Establishing an earlier deadline for these sources would not be practicable because we do not anticipate completing this rulemaking until April 2003. With respect to those categories or subcategories for which MACT standards are scheduled to be promulgated at a later time, we are

proposing Part 2 application deadlines which are 60 days after each respective scheduled promulgation date. The deadlines for Part 2 applications which we are proposing for each category or subcategory are set forth below in Tables 1 and 2 of this preamble.

TABLE 1.—SECTION 112(j) PART 2 APPLICATION DUE DATES

Due date	MACT standard
5/15/03	Municipal Solid Waste Landfills Flexible Polyurethane Foam Fabrication Operations Coke Ovens: Pushing, Quenching, and Battery Stacks Reinforced Plastic Composites Production Semiconductor Manufacturing Refractories Manufacturing ¹ Brick and Structural Clay Products Manufacturing, and Clay Ceramics Manufacturing ² Asphalt Roofing Manufacturing and Asphalt Processing ³ Integrated Iron and Steel Manufacturing Hydrochloric Acid Production and Fumed Silica ⁴ Engine Test Facilities and Rocket Testing Facilities ³ Metal Furniture (Surface Coating) Printing, Coating, and Dyeing of Fabrics Wood Building Products (Surface Coating)
10/30/03	Combustion Turbines Lime Manufacturing Site Remediation Iron and Steel Foundries Taconite Iron Ore Processing Miscellaneous Organic Chemical Manufacturing (MON) ⁵ Organic Liquids Distribution Primary Magnesium Refining Metal Can (Surface Coating) Plastic Parts and Products (Surface Coating) Chlorine Production Miscellaneous Metal Parts and Products (Surface Coating) (and Asphalt/Coal Tar Application—Metal Pipes) ³
4/28/04	Industrial Boilers, Institutional/Commercial Boilers and Process Heaters ⁶ Plywood and Composite Wood Products Reciprocating Internal Combustion Engines Auto and Light-Duty Truck (Surface Coating)
8/13/05	Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters ⁷ Hydrochloric Acid Production ⁸

¹ Includes Chromium Refractories Production.
² Two subcategories of Clay Products Manufacturing.
³ Two source categories.
⁴ Includes all sources within the category Hydrochloric Acid Production that burn no hazardous waste, and all sources in the category Fumed Silica.
⁵ Covers 23 source categories, see Table 2 of this preamble.
⁶ Includes all sources in the three categories, Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters that burn no hazardous waste.
⁷ Includes all sources in the three categories, Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters that burn hazardous waste.
⁸ Includes furnaces that produce acid from hazardous waste at sources in the category Hydrochloric Acid Production.

TABLE 2.—MON SOURCE CATEGORIES

Manufacture of Paints, Coatings, and Adhesives Alkyd Resins Production Maleic Anhydride Copolymers Production Polyester Resins Production Polymerized Vinylidene Chloride Production Polymethyl Methacrylate Resins Production Polyvinyl Acetate Emulsions Production Polyvinyl Alcohol Production Polyvinyl Butyral Production Ammonium Sulfate Production—Caprolactam By-Product Plants
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TABLE 2.—MON SOURCE CATEGORIES—Continued

Quaternary Ammonium Compounds Production Benzyltrimethylammonium Chloride Production Carbonyl Sulfide Production Chelating Agents Production Chlorinated Paraffins Production Ethylidene Norbornene Production Explosives Production Hydrazine Production OBPA/1,3-Diisocyanate Production
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TABLE 2.—MON SOURCE CATEGORIES—Continued

Photographic Chemicals Production Phthalate Plasticizers Production Rubber Chemicals Manufacturing Symmetrical Tetrachloropyridine Production
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We have always been reluctant to establish any timetable which would require submission of a large number of Part 2 applications which would in all likelihood never be acted upon by the

permitting authorities. Submission of Part 2 applications would generally be a futile exercise in those instances where a final Federal MACT standard governing the facilities in question is scheduled for promulgation prior to the 18-month deadline for action on the applications by the respective permitting authorities. It has been our consistent view that requiring submission of such applications would represent an unwarranted expenditure of private and public resources. Thus, we are pleased that the proposed schedule under the final settlement will permit us to avoid such a wasteful exercise unless there are 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 upon promulgation deadlines are met.

We recognize that the proposed 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 we will not be able to meet an impending promulgation deadline for a particular MACT standard.

We note that the MACT standards for which we are proposing a Part 2 application deadline of May 15, 2003 are actually scheduled to be promulgated while this rulemaking is in progress. There will be no need to adopt a Part 2 application deadline for affected sources in any category for which a final MACT standard has been promulgated under CAA section 112(d) and/or (h) prior to the completion of this rulemaking. We are proposing to state explicitly in the amendments to the section 112(j) rule that no further process to develop a case-by-case MACT determination under section 112(j) is required for any source once a generally applicable Federal MACT standard governing that source has been promulgated.

The revised timetable for submission of Part 2 applications we are proposing requires significant changes in the structure of the existing section 112(j) rule. In contrast to the current general timetable for Part 2 applications, which applies to all of the remaining MACT standards which were included in the schedule adopted under CAA section 112(e)(1) and (3), we are proposing a

phased timetable for Part 2 applications with different dates for sources in different categories based on the scheduled promulgation date. We are also proposing to make the new schedule as uniform as practicable for all affected sources in each category or subcategory, regardless of whether the source in question has previously requested an applicability determination under 40 CFR 63.52(e)(2)(i) or has previously obtained a case-by-case determination under CAA section 112(g).

These proposed changes will require that the existing section 112(j) rule be substantially rewritten. In order to allow the rulemaking process required by the final settlement agreement to proceed expeditiously and to encourage commenters to focus on the broad issues presented by the new approach, we are not proposing specific regulatory text. Rather, we are providing a detailed discussion in this preamble of the changes we are proposing to make. While we do not want to discourage those commenters who want to propose specific regulatory text for our consideration, we believe that comments will be most constructive if they focus on the larger question of how the existing rule should be restructured to achieve our proposed objectives.

When we first proposed the creation of a two-part process for section 112(j) applications, we specified a 6-month period between the submission of the general initial notification in the Part 1 application and the submission of more detailed supporting information in the Part 2 application. That initial proposal was based on the premise that every applicant would automatically be given the maximum extension of time to supplement an incomplete application that is authorized by CAA section 112(j)(4).

In the final rule, we observed that there is another provision in the statute which may be reasonably construed to provide authority for us to establish an incremental process for the submission of section 112(j) applications. The hammer provision in section 112(j)(2) itself establishes the requirement to submit permit applications "beginning 18 months after" the statutory date for promulgation of a standard. Reading this provision in context, we believe that the statute can be reasonably construed as authorizing us to provide a period of time after the hammer date in which the information necessary for a fully informative section 112(j) application can be compiled. We have not changed our view that this is a reasonable construction of the statutory provision in question, and we are

reiterating this construction of the statute as part of our rationale for these proposed rule amendments.

B. Requests for Applicability Determination

As we explained above, we are proposing to establish a single uniform Part 2 application deadline for all sources in a given category or subcategory, which is based in turn on the agreed upon promulgation date for the MACT standard for that category or subcategory. However, to achieve this objective it will be necessary to establish new procedures for those affected sources which have previously submitted a request for applicability determination under 40 CFR 63.52(e)(2)(i).

That provision establishes a process by which major sources can 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 determinations were due at the same time as the section 112(j) Part 1 applications, on May 15, 2002. Under the procedures in the current rule, a negative determination by the permitting authority concerning such a request means that no further action is required, while a positive determination means that the applicant must then submit a Part 2 application within 24 months. In order to adopt the single uniform deadline for Part 2 applications for each affected source in a category or subcategory which we are required to propose by the final settlement, it is necessary to amend the provisions governing requests for applicability determinations.

We lack precise information concerning how many such 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 reflect 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. Under the proposal required by the final settlement, such an indefinite deferral of the Part 2 application deadline will no longer be allowed.

We do not seek to limit the right of those affected sources who may have genuine uncertainty regarding the scope of a particular category or subcategory to obtain a decision on applicability issues by the permitting authority, but we also do not want to burden the permitting authorities with a process that requires them to take final action on those pending requests which do not present genuine applicability issues. Accordingly, we are proposing to require that each affected source which still wishes to pursue a previously filed request for applicability determination under 40 CFR 63.52(e)(2)(i) which is still pending must 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.

Our experience tells us that most uncertainties regarding applicability can be resolved by applying the specific applicability language in the proposed MACT standard. That is why we are proposing to delay any requirement to resubmit and supplement a request for applicability determination until after a proposed MACT standard is available. We are proposing 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. We are also proposing to require that the permitting authority act upon each resubmitted and supplemented request for an applicability determination within an additional 60 days after the applicable deadline for the resubmitted request.

We believe this approach will preserve the rights of those affected sources which still have legitimate applicability concerns even after issuance of a proposed MACT standard. We also expect there will be a significant reduction in the number of pending requests, since the current procedural incentives for submission of such requests will have been eliminated. With respect to those requests that are resubmitted, the proposed mandatory supplementation should delineate the issues more clearly and improve the record for a decision concerning the request by the permitting authority.

While we anticipate that the issuance of a proposed MACT standard will generally operate to resolve existing

applicability issues rather than raising new ones, it is hypothetically possible that a facility will have new questions based on the applicability provision in a proposed MACT standard. There is at present no formal process for addressing such issues, but we encourage all major sources that have 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 EPA Regional Office.

We note that there are special timing issues with respect to any requests for applicability determination which have been submitted concerning sources that may be in a category or subcategory for which the MACT standard in question is scheduled to be promulgated by November 30, 2002 or by February 28, 2003. There will be no need to address these concerns if the standards are promulgated on schedule. However, if any one of these standards is delayed, and if the delayed standard still has not been promulgated by the time we take final action concerning this proposal, special procedures will be required. Those facilities which have sources which may be in such a category or subcategory, and who previously submitted a request for applicability determination which is still pending, cannot be required to submit their Part 2 application on May 15, 2003. In such an instance, we propose that any Part 2 application will be required 120 days after EPA publishes final action in this rulemaking if the request for applicability determination is not resubmitted within 60 days after publication, or within 180 days after EPA publishes final action in this rulemaking if the request is resubmitted and a determination concerning the request by the permitting authority is required. We consider it improbable that we will need to adopt such procedures, but we are proposing them now in the unlikely event they are required.

We note also that 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 Agency will not meet the promulgation schedule for any of the remaining MACT standards.

C. Prior Section 112(g) Determinations

Our proposal to establish a single uniform Part 2 application deadline for all sources in a given category or subcategory also requires that we make some changes to the current 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). In evaluating this question, it is important to understand 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 section 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 current 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 applicable provisions of the present rule, sources which have previously obtained a case-by-case determination under CAA section 112(g) are 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, 40 CFR 63.52(e)(2)(ii) provides that, if such a determination is negative, the source must then submit a Part 2 application within 24 months. As in the case of requests for applicability determination, changes to the existing rule will be required to place all sources in a given category or subcategory on the same schedule for submission of Part 2 applications. However, in this instance, we believe that the solution is considerably simpler.

We are proposing to adopt the proposed 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). Under this proposal, those sources which submitted such requests earlier under the provisions of the existing rule need not resubmit them. However, we are also proposing that all requests for an equivalency determination, regardless of when they were submitted, will be construed in the alternative as a section 112(j) Part 2 application as well.

The effect of this proposal will be to require that the permitting authority first make an equivalency determination. In the event of a negative determination, the permitting authority will then proceed to adopt a separate set of requirements pursuant to section 112(j). Under this proposal, this process will be completed in the same 18-month period that applies to the processing of all other Part 2 applications.

This proposal will assure that the deadline for submission of Part 2 applications will be the same for all affected sources within a category or subcategory, regardless of whether a source previously obtained a case-by-case determination under section 112(g). We do not think this proposal imposes 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.

D. Content of Part 2 Applications

We are hopeful that no source will be required to submit a section 112(j) Part 2 application under the schedule we are proposing in this rulemaking. We also note that the Part 2 application requirements in the current section 112(j) rule are significantly narrower than the application requirements in the original section 112(j) rule. However, in

the event that some Part 2 applications must ultimately be submitted, we think it is appropriate to give some additional guidance concerning the information they must contain and to request comment on a few related issues.

We believe that an affected source submitting a Part 2 application may elect to rely directly on the content of the applicable proposed MACT standard in identifying affected emission points. We also think that applicants may 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. We encourage all section 112(j) Part 2 applicants to utilize the regulatory approach in the applicable proposed MACT standard as a practical template in compiling Part 2 applications. We also encourage applicants who have previously submitted to the permitting authority some of the information required in the Part 2 application to meet the requirements in question by cross-referencing such prior submissions.

Moreover, although the submission by an affected source of a proposed case-by-case MACT determination as part of its Part 2 application is entirely discretionary, we note that some industry representatives have stated that they would generally elect to include such information as a precautionary matter. While we do not seek to discourage this practice, we believe that the burden associated with inclusion of such information will not be significant in instances where a Federal MACT standard has already been proposed, the applicable proposed standard has already been evaluated by the facility, and the facility has already had an opportunity to comment on the applicable proposed standard.

We also want to do whatever we can to minimize any unnecessary burdens associated with submission of a Part 2 application. 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, we are requesting comment on the approach outlined above and whether there may be other ways to minimize any unnecessary burden. We also request comments on the following specific questions. Does the applicant need to provide "estimated total uncontrolled and controlled emission rates" to enable the permitting authority to prepare for a potential case-by-case determination? If the applicant does not have the information required to provide meaningful estimates of

emission rates, should new emission testing be required? Is it appropriate to require individual applicants to submit "information relevant to establishing the MACT floor" in their Part 2 applications? Are there any Part 2 application requirements which can be met simply by referring to the applicable proposed MACT standard?

IV. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The 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.

We have determined that neither the proposed amendments to the General Provisions nor the proposed amendments to the section 112(j) rule are a "significant regulatory action" under the terms of Executive Order 12866, and this proposal was therefore not submitted to OMB for review.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled, "Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government."

These proposed amendments do not have Federalism implications under the terms of this Executive Order. We do not believe that the proposed changes in the General Provisions rule have any significant federalism implications. With respect to the alteration in the schedule for submission of section 112(j) Part 2 applications, we note that the CAA itself requires that State and local permitting authorities receive and process applications for case-by-case MACT determinations pursuant to section 112(j). This is one of the responsibilities that State and local permitting authorities have agreed to assume. We have tried to construe the statutory provisions in question in a manner that minimizes the burden on these agencies associated with this responsibility. We have determined that the proposed change in the schedule for submission of such applications does not itself have a substantial direct effect on the States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government.

Nevertheless, in the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA, State, and local governments, EPA specifically solicits comment on these proposed amendments from State and local officials.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

These proposed amendments to the General Provisions and the section 112(j) rule would not have tribal implications. They would not have substantial direct effects on tribal governments, or on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. There are currently no tribal

governments that have approved title V permit programs to which sources would submit case-by-case permit applications under section 112(j). Accordingly, Executive Order 13175 would not apply to this action.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives that EPA considered.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These amendments are not subject to Executive Order 13045 because they are amending information collection requirements and do not affect health or safety risks. Furthermore, this rule has been determined not to be “economically significant” as defined under Executive Order 12866.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

These proposed amendments are not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local,

and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA’s regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these proposed amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, in any 1 year. We do not expect annual expenditures by State, local and tribal governments in connection with implementation of these amendments to exceed \$100 million. In any case, any obligation of State or local permitting authorities to take particular actions under these proposed amendments is not directly enforceable by a court of law, and any failure by a State or local permitting authority to meet such an obligation would at most result in a determination that the permitting authority is not adequately administering its permit program under CAA section 502(i). Thus, it can be argued that such obligations are not enforceable duties within the meaning of section 421(5)(A)(i) of UMRA, 2 U.S.C. 658(5)(A)(i). Moreover, even if such obligations were deemed to be enforceable duties, such duties might be viewed as falling within the exception for a condition of Federal assistance

under section 421(5)(A)(i)(I), 2 U.S.C. 658(5)(A)(i)(I).

We have also determined that the proposed amendments will not result in expenditures by the private sector of \$100 million in any 1 year. We fully expect to promulgate the remaining MACT standards on or near schedule, eliminating the need for sources to prepare and submit section 112(j) Part 2 applications. We recognize that some sources may choose to begin preparing the Part 2 application, but cannot estimate the total expenditures this would entail, although we believe it to be only a small fraction of the \$100 million criterion. We also expect relatively few resubmissions of applicability determination requests. In any case, all such resubmissions will be done at the source's discretion, and we expect the aggregate expenditure on them to be small.

Based on these determinations, today's proposed amendments are not subject to the requirements of sections 202, 203, and 205 of the UMRA.

G. Regulatory Flexibility Act (RFA) as Amended by Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any proposed rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's amendments on small entities, small entity is defined as: (1) A small business as defined in each applicable subpart, as defined by the Small Business Administration; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. We have determined that the proposed amendments to the General Provisions would not themselves cause any economic impacts on small entities. Rather, any economic impacts on small entities would be associated with the

incorporation of specific elements of the General Provisions in the individual MACT standards which are promulgated for particular source categories.

We believe that adoption of the proposed amendments will not lead to a substantial impact on small entities through the incorporation of the General Provisions in individual MACT standards. For most MACT standards, we anticipate that any affected facilities will not be small entities. For those MACT standards where small entities would be affected, we believe any economic impact will be minimal since the only specific action which may be required is the submission to the permitting authority of an existing document which has already been prepared and is on file at the source.

We also have not prepared any regulatory flexibility analysis for the proposed amendments to the section 112(j) rule. At this time, we do not expect that any Part 2 applications will have to be submitted or case-by-case determinations will have to be made under section 112(j) and thus no small businesses would be affected by such determinations.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

H. Paperwork Reduction Act

As required by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, the OMB must clear any reporting and recordkeeping requirements that qualify as an information collection request (ICR) under the PRA.

Approval of an ICR is not required in connection with the proposed amendments to the General Provisions rule. This is because the General Provisions do not themselves require any reporting and recordkeeping activities, and no ICR was submitted in connection with their original promulgation or their subsequent amendment. Any recordkeeping and reporting requirements are imposed only through the incorporation of specific elements of the General Provisions in the individual MACT standards which are promulgated for particular source categories. In any case, we believe that adoption of the proposed amendments will not materially alter the burden imposed on affected sources through the incorporation of the General Provisions in individual MACT standards. We anticipate that any incremental changes in the recordkeeping and reporting burden estimate for individual MACT

standards will be addressed in the context of the periodic renewal process required by the PRA.

Approval is also not required for the proposed amendments to the section 112(j) rule. We expect to promulgate all remaining MACT standards before the Part 2 application due dates associated with those standards (see Table 1 of this preamble), which would eliminate the need for sources to submit the Part 2 application. Approval is also not necessary for resubmission of applicability determination requests. We expect there to be few resubmissions, and all of these will be entirely at the sources' discretion; the rule does not require submission or resubmission of such requests. Thus we do not project any recordkeeping or reporting burden to be incurred by sources as a result of these amendments.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

I. National Technology Transfer and Advancement Act of 1995

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104-113), all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with

explanations when an agency does not use available and applicable voluntary consensus standards.

These proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any VCS.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 3, 2002.

Christine Todd Whitman, Administrator.

For the reasons cited in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

Subpart A—[Amended]

2. Section 63.6 is amended by: a. Revising paragraph (e)(1)(i); b. Adding 6 sentences to the beginning of paragraph (e)(3)(v); and c. Revising the introductory text to paragraph (e)(3)(vii).

The revisions and additions read as follows:

§ 63.6 Compliance with standards and maintenance requirements.

* * * * *

(e) * * *

(1)(i) At all times, including periods of startup, shutdown, and malfunction, owners or operators must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions to the levels required by the relevant standards. Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section), review of operation and maintenance records, and inspection of the source.

* * * * *

(3) * * *

(v) The owner or operator must submit to the Administrator a copy of the startup, shutdown, and malfunction plan at the time it is first adopted. The owner or operator must also submit to the Administrator a copy of any subsequent revisions of the startup, shutdown, and malfunction plan. Such revisions must be submitted at the time they are adopted if the revisions are required in order to adequately address an event involving a type of malfunction not included in the plan, or the revisions alter the scope of the activities at the source which are deemed to be a startup, shutdown, or malfunction, or otherwise modify the applicability of any emission limit, work practice requirement, or other requirement in a standard established under this part. All other revisions to the startup, shutdown, and malfunction plan may be submitted with the semiannual report required by § 63.10(d)(5). The owner or operator may elect to submit the required copy of the initial startup, shutdown, and malfunction plan, and of all subsequent revisions to the plan, in an electronic format. If the owner or operator claims that any portion of a startup, shutdown, and malfunction plan, or any revision of the plan, submitted to the Administrator is confidential business information entitled to protection under section 114(c) of the CAA or 40 CFR 2.301, the material which is claimed as confidential must be clearly designated in the submission. * * *

* * * * *

(vii) Based on the results of a determination made under paragraph (e)(1)(i) of this section, the Administrator may require that an owner or operator of an affected source make changes to the startup, shutdown, and malfunction plan for that source. The Administrator must require appropriate revisions to a startup, shutdown, and malfunction plan, if the Administrator finds that the plan:

* * * * *

3. Section 63.10 is amended by revising the second sentence of paragraph (d)(5)(i) to read as follows:

§ 63.10 Recordkeeping and reporting requirements.

* * * * *

(d) * * *

(5)(i) * * * Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period, and they must include the number, duration, and a brief description of each malfunction. * * *

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-7393-3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Industrial Latex Corp. Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II Office announces its intent to delete the Industrial Latex Corp. Superfund Site from the National Priorities List (NPL) and requests public comment on this action. The Industrial Latex site is located in the Borough of Wallington, Bergen County, New Jersey. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of New Jersey, through the Department of Environmental Protection, have determined that all appropriate remedial actions have been completed at the Industrial Latex site and no further fund-financed remedial action is appropriate under CERCLA. In addition, EPA and the State of New Jersey have determined that the remedial actions taken at the Industrial Latex site protect public health and the environment without any further monitoring or restriction.

DATES: The EPA will accept comments concerning its intent to delete on or before January 8, 2003.

ADDRESSES: Comments should be mailed to: Stephanie Vaughn, Remedial Project Manager, New Jersey Remediation Branch, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor New York, New York 10007-1866.

Comprehensive information on the Industrial Latex site is contained in the Administrative Record and is available for viewing, by appointment only, at: U.S. EPA Records Center, 290 Broadway—18th Floor, New York, New York 10007-1866.

Hours: 9 a.m. to 5 p.m.—Monday through Friday. Contact the Records Center at (212) 637-4308.

Information on the Site is also available for viewing at the Information