

APPENDIX F

REGULATIONS GOVERNING EQUIVALENT EMISSION LIMITATIONS BY PERMIT

40 CFR 63 Subpart B §63.50 through §63.56

(a.k.a., Permit Hammer Rule)

CAA SECTION 112(j)

REGULATION STATUS

The final rule was promulgated 20 May 94 (59 FR 26429). The rule and guidance took effect on 19 Jun 94. Subsequent corrections and amendments are reflected in the latest version of the Code of Federal Regulations, Volume 40, Part 63, Subpart B §§63.50-63.56 and are also highlighted in the Subsequent Regulatory Activity section of this appendix.

RULE SUMMARY

Congress developed section 112(j) to ensure that HAP sources get controlled with or without EPA's help. If EPA doesn't produce, State regulators and source owners must work together to determine the appropriate control technology.

Applicability

Section 112(j) establishes requirements for regulation of existing major HAP sources in the event that EPA lags more than 18 months behind schedule in promulgating a NESHAP. Section 112(j) will only take effect when there is an EPA authorized Title V Permit Program.

Table 1. Section 112(j) Permit Hammer Deadlines

NESHAP Promulgation Deadline	Section 112(j) Deadline*	Comments
For 2-year NESHAPs 15 Nov 92	15 May 94	EPA issued the 2-year NESHAPs before the §112(j) deadline. §112(j) was not triggered.
For 4-year NESHAPs 15 Nov 94	15 May 96 15 Nov 96	EPA extended the 15 May 96 deadline to 15 Nov 96. (61 FR 21370) EPA issued the 4-year NESHAPs before the revised deadline. §112(j) was not triggered.
For 7-year NESHAPs 15 Nov 97	15 May 99 15 Dec 99	EPA extended the 15 May 99 deadline to 15 Dec 99. (64 FR 18824) EPA plans to issue the 7-year NESHAPs before the revised deadline.
For 10-year NESHAPs 15 Nov 00	15 May 02	

*But not before the effective date of Title V Permit program.

If EPA fails to promulgate by the 18 month §112(j) deadline, the owner or operator of the existing major source is required to request (by application to the permitting authority) a Maximum Achievable Control Technology (MACT) determination. This rule specifies what information the major source owner or operator must include in an application for a MACT determination. Once the permitting authority makes a MACT determination, the major source must comply with MACT by the date set by the permitting authority. This date must be no later than three years after the permit is issued.

This process is formally known as an “equivalent emission limitation by permit”. However, it is most often referred to as the “Permit Hammer”. An “equivalent emission limitation by permit” is determined on a case-by-case basis by the permitting authority. The emission limitation is considered to be equivalent to the limit EPA would have established, had the Federal MACT standard been published.

Section 112(j) is triggered on the date 18 months after the deadline listed in the final schedule for a source category as shown in Table 1.

Table 1 shows the four deadlines. EPA fulfilled its requirements with respect to the 2-year MACT standards. EPA amended the Permit Hammer Rule to delay the permit application deadlines for both the 4-year and 7-year source categories. EPA issued all of the 4-year NESHAPs before the extended deadline and hopes to do the same with the 7-year NESHAPs.

Key Definitions

Emission point means any part or activity of a major source that emits or has the potential to emit, under current operational design, any hazardous air pollutant.

Emission unit means any building, structure, facility, or installation. This could include an emission point or collection of emission points, within a major source, which the permitting authority determines is the appropriate entity for making a MACT determination under section 112(j), i.e., any of the following:

- 1) An emission point that can be individually controlled.
- 2) The smallest grouping of emission points, that, when collected together, can be commonly controlled by a single control device or work practice.
- 3) Any grouping of emission points, that, when collected together, can be commonly controlled by a single control device or work practice.
- 4) A grouping of emission points that are functionally related. Equipment is functionally related if the operation or action for which the equipment was specifically designed could not occur without being connected with or without relying on the operation of another piece of equipment.
- 5) The entire geographical entity comprising a major source in a source category subject to a MACT determination under section 112(j).

Existing major source means a major source, construction or reconstruction of which is commenced before EPA proposed a standard, applicable to the major source, under section 112(d) or (h), or if no proposal was published, then on or before the section 112(j) deadline.

Equivalent emission limitation means an emission limitation, established under section 112(j) of the Act, which is at least as stringent as the MACT standard that EPA would have promulgated under section 112(d) or section 112(h) of the Act.

MACT emission limitation for existing sources means the emission limitation reflecting the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reductions, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or subcategory to which such emission standard applies. This limitation shall not be less stringent than the MACT floor.

MACT emission limitation for new sources means the emission limitation which is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or subcategory to which such emission standard applies.

MACT floor means:

- 1) For existing sources:
 - a) The average emission limitation achieved by the best performing 12 percent of the existing sources in the United States (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined in section 171 of the Act) applicable to the source category and prevailing at the time, in the category or subcategory, for categories and subcategories of stationary sources with 30 or more sources; or
 - b) The average emission limitation achieved by the best performing five sources in the United States (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory, for a category or subcategory of stationary sources with fewer than 30 sources;
- 2) For new sources, the emission limitation achieved in practice by the best controlled similar source.

New emission unit means an emission unit for which construction or reconstruction is commenced after the section 112(j) deadline, or after proposal of a relevant standard under section 112(d) or section 112(h) of the Clean Air Act (as amended in 1990), whichever comes first, except that, as provided by §63.52(f)(1), an emission unit, at a major source, for which construction or reconstruction is commenced before the date upon which the area source becomes a major source, shall not be considered a new emission unit if, after the addition of such emission unit, the source is still an area source.

New major source means a major source for which construction or reconstruction is commenced after the section 112(j) deadline, or after proposal of a relevant standard under section 112(d) or section 112(h) of the Clean Air Act (as amended in 1990), whichever comes first.

Section 112(j) deadline means the date 18 months after the date for which a relevant standard is scheduled to be promulgated under this part. The applicable date for categories of major sources is contained in the source category schedule for standards.

The §112(j) Permit Hammer Process

MACT Determination

Source owners are allowed to determine and recommend MACT in their application for a MACT Determination, but are not required to do so. Ultimately, it is the responsibility of the permitting authority to determine MACT. The MACT determination must demonstrate how an emission unit will obtain the degree of emission reduction that is at least as stringent as the emission reduction that would have been obtained had EPA promulgated the relevant emission standard.

Principles Of MACT Determination

The permitting authority must determine MACT using the following general principles. The MACT Determination:

- Shall not be less stringent than best controlled similar source.
- Shall achieve the maximum degree of reduction in emissions of HAP considering non-air quality health and environmental impacts and energy requirements.
- Contains specific design, work practice, and/or operational standards if an emission limitation can't be established.
- Shall be at least as stringent as the presumptive MACT or proposed emission standard for the source category, if one of these documents are available.

Review Options (See Figures 1 and 2)

- Obtain or revise a Part 70 (or Part 71) Permit or any other Title V administrative review options.
- Apply for Notice of MACT Approval under §112(j).
- Use §112(g) Administrative procedures if applicable.

Note: All options require the opportunity for public comment.

Notice of MACT Approval

At the end of the review process, EPA will issue a Notice of MACT Approval which will contain emission limitations or work practice requirements to control HAP. This notice will also specify applicable notification, operation, maintenance, performance testing, monitoring, reporting and recordkeeping requirements. ***All provisions in the Notice of MACT Approval are Federally Enforceable.***

NESHAP Standards Promulgated After §112(j) Review Begins

Subpart B contains guidance on how subsequently promulgated NESHAPs affect sources undergoing the §112(j) Permit Hammer process.

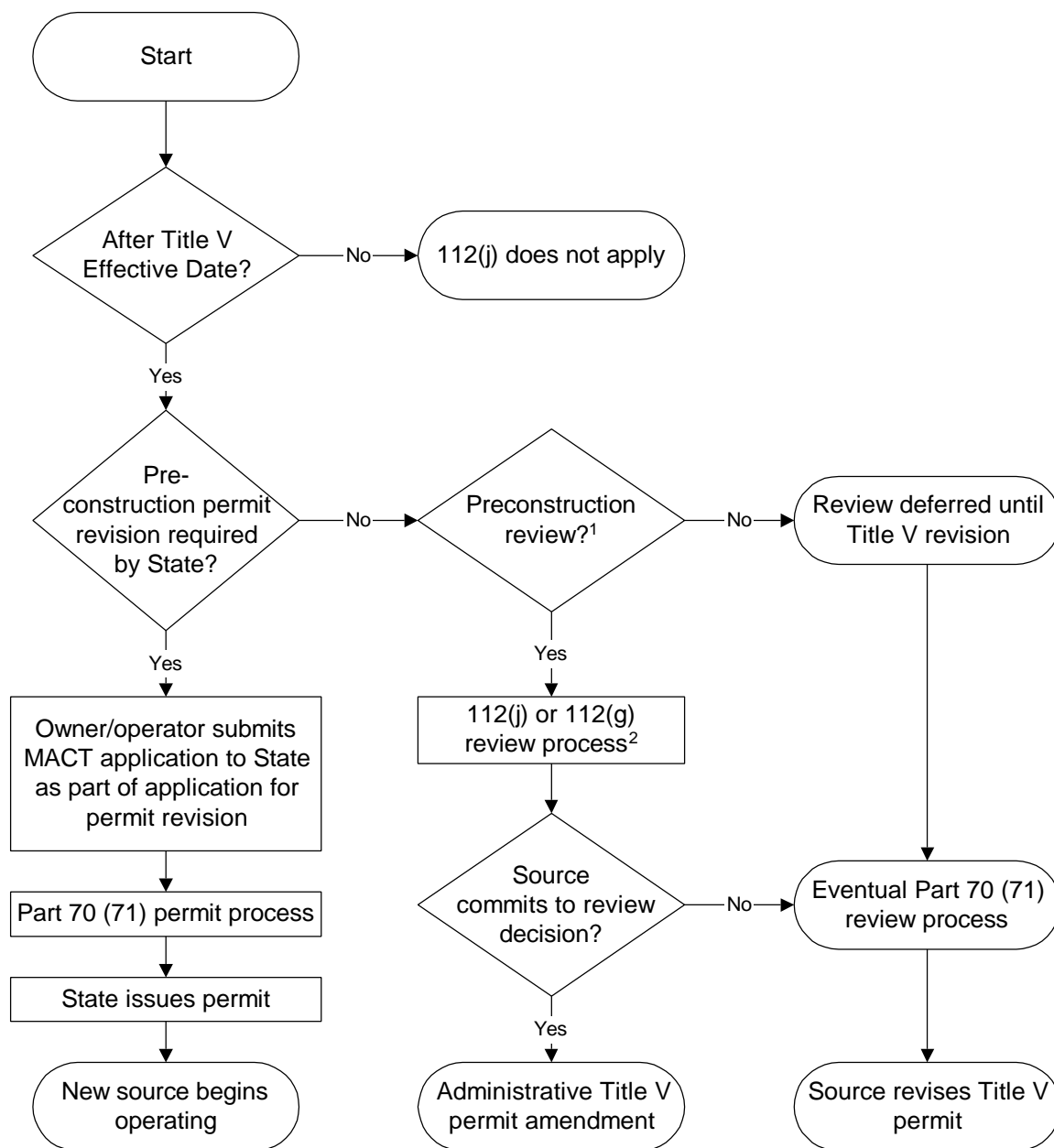
If a NESHAP is promulgated before issuance of a Notice of MACT Approval, the §112(j) permit process ends and a Notice of MACT Approval will not be issued. Source(s) must comply with the NESHAP.

If a NESHAP is promulgated after issuance of a Notice of MACT Approval, a compliance extension may be granted. At some point the sources will become subject to the NESHAP. The subsequently promulgated NESHAP may specify a compliance date for sources that received a MACT Determination. Alternatively, the permitting authority will establish a compliance date. In either case, the compliance date cannot be longer than 8 years after the NESHAP is promulgated or 8 years after the Notice of MACT Approval is issued, whichever is earlier.

Compliance Deadlines

The compliance deadline will be determined by the permitting authority and specified in the facility's Title V Permit.

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Notes:

1: Preconstruction review may be required under 112(g) for some sources or may occur at the applicant's request.

2: 112(j) review process is detailed in Figure 2.

Figure 1: Administrative Process for New Source

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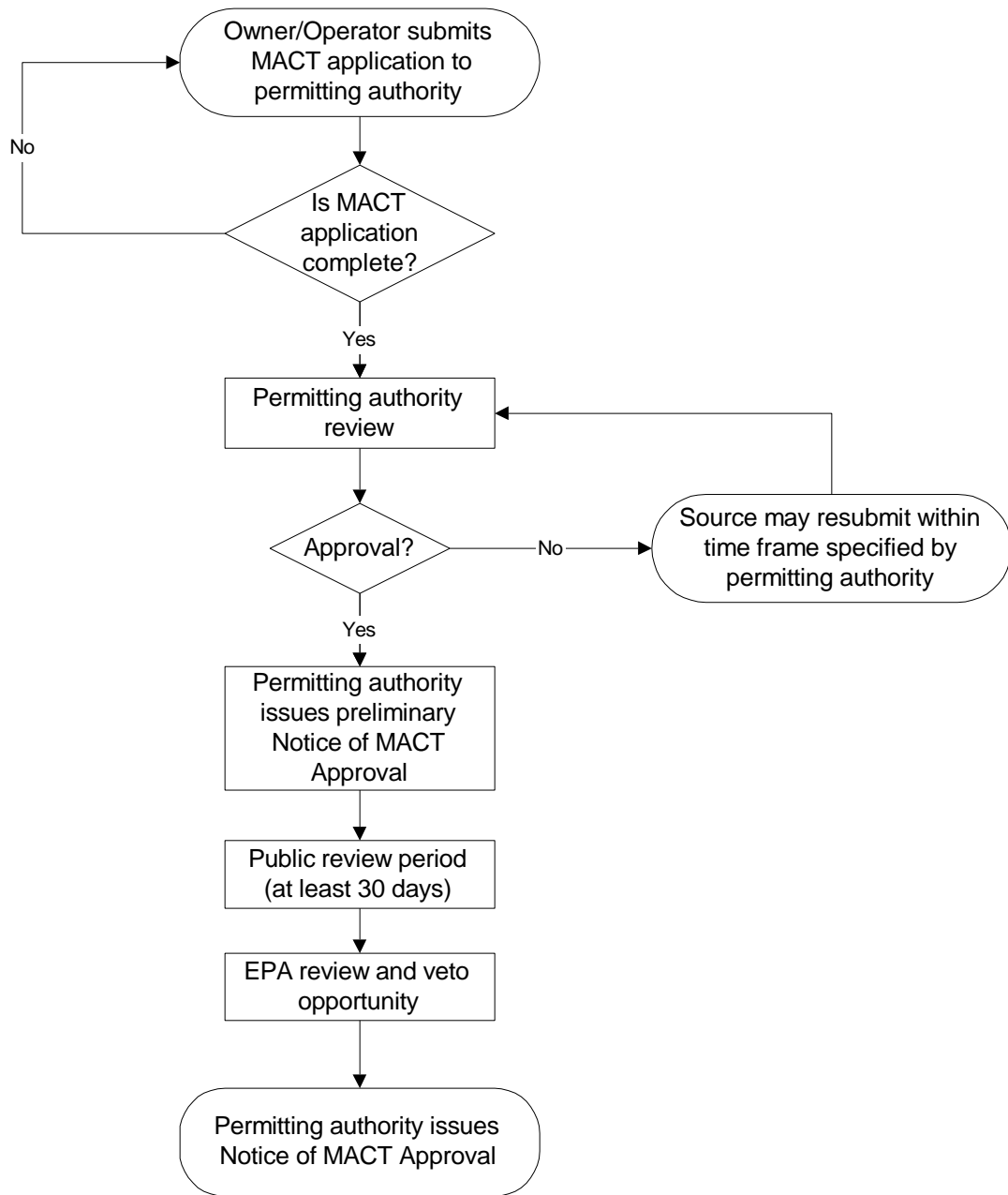


Figure 2: Optional 112(j) Review Process

SUBSEQUENT REGULATORY ACTIVITY

10 May 96 ([61 FR 21370](#)) Direct Final Amendments

EPA amended the Permit Hammer Rule to delay the permit application deadline for all 4-year source categories until 15 Nov 96. This prevented the permit hammer from falling on several outstanding source categories that were scheduled for NESHAP regulation in 1994.

14 May 99 ([64 FR 26312](#)) Final Amendment

EPA amended the Permit Hammer Rule to delay the permit application deadline for all 7-year source categories until 15 Dec 99. This prevented the permit hammer from falling on several outstanding source categories that were scheduled for NESHAP regulation in 1997.

MILITARY SOURCES

Any military source in a category not yet regulated by a NESHAP, has the potential to be affected by this rule. Hopefully, EPA will extend the Permit Hammer deadline for year 2000 NESHAPs as they did with the deadlines for 1994 and 1997 NESHAPs.

Deadline for 1997 NESHAP Source Categories

December 15, 1999 is the revised Permit Hammer deadline for NESHAP source categories scheduled for promulgation in 1997. Of the 1997 NESHAPs that may not be issued before the deadline, only one has the potential to affect military sources.

- Secondary Aluminum Production NESHAP. This rule was proposed in February 1999. It is possible that EPA will issue the final rule by the revised deadline, but not likely. The military may have a few sources in this category which would be affected if the Permit Hammer falls in December 1999.

Deadline for 2000 NESHAP Source Categories

May 15, 2002 is the Permit Hammer deadline for NESHAP source categories scheduled for promulgation in 2000. This is by far the biggest concern for the military. EPA would need to issue standards for nearly 90 source categories between May 1999 and May 2002 before the deadline. There are several year 2000 source categories that are likely to affect military sources including:

- Auto and Light Duty Truck (Surface Coatings)
- Dry Cleaning (Petroleum Solvent)
- Engine Test Facilities
- Miscellaneous Metal Parts and Products (Surface Coatings)
- Rocket Motor Test Firing
- Industrial/Institutional/Commercial Boilers

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- Organic Liquids Distribution
- Paint Stripping Operations
- Process Heaters
- Stationary IC Engines
- Stationary Turbines

CONTACTS

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