

Attachment 3

Guidance for Section 112(g) Program Certification

Who Is This Guidance For?

This guidance is intended solely for districts which have not yet submitted Section 112(g) program certification to U.S. EPA IX and is intended as an update to the CAPCOA Toxics Committee's final draft guidance on Section 112(g), dated May 18, 1998.

Why Does Your District Need to Certify to a Section 112(g) Program?

The U.S. EPA IX can not grant final Title V program approval if a district has failed to submit a letter certifying to a local Section 112(g) implementation program.

Does Your District Need to Adopt a Rule to Implement Section 112(g)?

You may wish to consult county counsel before deciding whether or not to adopt (or revise) a rule to implement Section 112(g). The U.S. EPA's implementing regulation for Section 112(g) (i.e., 40 CFR Part 63 Subpart B), does not specifically require rule adoption. However, Subpart B does require each district to certify to a local program which mandates that case-by-case maximum achievable control technology (MACT) be required for the construction or reconstruction of major sources of hazardous air pollutants. U.S. EPA IX has approved the use of best available control technology for toxics (T-BACT) provided it would be at least as stringent as MACT. The ARB legal staff believes that publicly noticed rule adoption specific to 112(g) could forestall potential challenges and litigation when a district begins to implement and enforce its Section 112(g) program.

Does Your District Need to Submit a Letter Certifying to a Local Section 112(g) Program?

Yes. A letter clearly certifying that the district has a program to implement Section 112(g) must be submitted to U.S. EPA IX. Neither rule adoption nor the existence of rules already authorizing implementation and enforcement of Section 112(g) are sufficient by themselves.

What Does This Guidance Contain?

This guidance contains a model Section 112(g) rule (Attachment 3-1) and a sample letter to U.S. EPA IX certifying that a district has a local program to implement Section 112(g) (Attachments 3-2).

Attachment 3-1

CAPCOA Toxics Committee Model Rule Developed as Part of Final Draft Guidance for Implementing Section 112(g) (May 18, 1998)

REGULATION OF CONSTRUCTION OR RECONSTRUCTION OF MAJOR SOURCES OF HAZARDOUS AIR POLLUTANTS PURSUANT TO FEDERAL CLEAN AIR ACT SECTION 112 (g)

(a) PURPOSE

The purpose of this rule is to require the installation of best available control technology for toxics (T-BACT) at any constructed or reconstructed major source of hazardous air pollutants (HAPs). All T-BACT determinations shall ensure a level of control that the Air Pollution Control Officer (APCO) has determined to be, at a minimum, no less stringent than new source maximum achievable control technology (MACT) as required by the federal Clean Air Act (CAA), §112 (g)(2)(B) and implemented through 40 CFR, subpart B §§63.40-63.44.

(b) APPLICABILITY

The requirements of this rule shall apply to all owners or operators that construct or reconstruct a major source of HAPs, unless the major source is exempt pursuant to section (d).

Compliance with this rule does not relieve any owner or operator of a major source of HAPs from complying with all other District rules or regulations, any applicable State airborne toxic control measure (ATCM), or other applicable State and federal laws.

(Note: This sentence is optional.)

(c) EFFECTIVE DATE: This rule is effective on *[date of rule adoption]*.

Note: 40 CFR §63.41 defines an effective date of section 112 (g)(2)(B) as the date the permitting authority specifies when it adopts a program to implement section 112 (g)(2)(B) or June 29, 1998 whichever is earlier.

(d) EXEMPTIONS: The provisions of this rule do not apply to:

1. any major source that is subject to an existing National Emissions Standard (NESHAPs) for HAPs pursuant to sections 112 (d), 112 (h) or 112 (j) of the CAA,
2. any major source that has been specifically exempted from regulation under a NESHAP issued pursuant to sections 112 (d), 112 (h) or 112(j) of the CAA,

3. any major source that has received all necessary air quality permits for such construction or reconstruction project before June 29, 1998,
4. electric utility steam generating units, unless and until such time as these units are added to the source category list pursuant to section 112 (c)(5) of the CAA,
5. any stationary sources that are within a source category that has been deleted from the source category list pursuant to section 112 (c)(9) of the CAA,
6. research and development activities as defined in 40 CFR §63.41, and
7. any other stationary source exempted by section 112 of the CAA.

Note: A district may list the above exclusions in the rule or reference the specific exemptions in 40 CFR §63.40 (b), (c), (e), and (f).

(e) DEFINITIONS

Terms used in this rule that are not defined in this section have the meaning given to them in District rule [rule number].

Note: If you add new terms you need to make sure that the definitions are consistent with the meaning given to them in 40 CFR §§63.40 through 63.44.

Best Available Control Technology for Toxics (T-BACT)

T-BACT means the most effective emissions limitation or control technique which:

1. has been achieved in practice for such permit unit category or class of sources; or
2. is any other emissions limitation or control technique, including process and equipment changes of basic and control equipment, found by the Air Pollution Control Officer to be technologically feasible for such a category or class of sources, or for a specific source.

Construct a Major Source means the same as defined in 40 CFR §63.41 Definitions.

Hazardous Air Pollutants (HAPs) means any air pollutant listed in or pursuant to CAA, section 112 (b).

Major Source of HAPs means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of hazardous air pollutants or 25 tons per year or more of any combination of hazardous air pollutants.

Potential to Emit (PTE) means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitations or the effect it would have on emissions are incorporated into the applicable permit as enforceable permit conditions.

Reconstruct a Major Source means the same as defined in 40 CFR §63.41 Definitions.

(f) REQUIREMENTS

No person shall construct a major source or reconstruct a major source of HAPs unless the air pollution control officer determines that the T-BACT requirements of this rule will be met.

(g) CALCULATION PROCEDURES

The potential to emit for a source of HAP emissions shall equal the sum of the potentials to emit of the constructed or reconstructed source of HAPs. All fugitive HAP emissions associated with the construction or reconstruction shall be included in the potential to emit determination.

(h) ADMINISTRATIVE PROCEDURES

An application for authority to construct a major source or reconstruct a major source of HAPs shall be subject to the administrative procedures contained in *[District NSR rule]*. *(Identify the specific section of your New Source Review Rule which contains the administrative requirements that provide for public participation in the T-BACT determination and ensure that construction may not begin until the permitting authority determines that emission limitation equivalent to T-BACT will be met.)*

Attachment 3-2

Sample Section 112(g) Program Certification Letter

Ms. Amy Zimpfer
Acting Director, Air Division
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

Dear Ms. Zimpfer:

On [date of Board adoption], the [name of District] adopted [number and name of adopted, revised, existing pre-construction, or other rule] which requires best available control technology for toxics (T-BACT) for all new and reconstructed major sources of hazardous air pollutants. I hereby certify that this rule fully satisfies the requirements established by 40 CFR Part 63 Subpart B, Sections 63.40-63.44 (FR 68399-68404, December 27, 1996).

Attached is a copy of Rule [number of rule] and a description of our program to implement the requirements of Section 112(g). If you have any questions please contact me at [phone number of signatory] or have your staff contact [name of designated staff person] at [phone number of designated staff person].

Sincerely,

[Executive Officer or Air Pollution Control Officer]

cc: Mr. Dan Donohue, Chief
Emissions Assessment Branch
Air Resources Board
P.O. Box 2815
Sacramento, California 95812