ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 65

[EPA–HQ–OAR–2004–0094; FRL–8055–5]

RIN 2060–AM89

National Emission Standards for Hazardous Air Pollutants: General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates amendments to certain aspects of startup, shutdown, and malfunction (SSM) requirements affecting sources subject to the national emission standards for hazardous air pollutants (NESHAP) in response to a July 29, 2003 petition to reconsider certain aspects of amendments to the NESHAP General Provisions published on May 30, 2003.

EFFECTIVE DATE: This final rule is effective on April 20, 2006.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0094. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, Docket ID No. EPA–HQ–OAR–2004–0094, EPA West, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The 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 Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

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SUPPLEMENTARY INFORMATION:

I. General Information

Regulated Entities. Categories and entities potentially regulated by this action include sources in all source categories regulated under 40 CFR parts 63 and 65 that must develop a startup, shutdown, and malfunction plan.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's final rule amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 19, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule amendments that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule amendments may not be challenged separately in any civil or criminal proceeding brought by EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

II. Summary of Final Amendments

The NESHAP General Provisions were first promulgated on March 16, 1994 (59 FR 12408). We subsequently proposed a variety of amendments to the 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 NESHAP, also known as 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).

On April 25, 2002, Sierra Club filed a petition seeking judicial review of those final amendments, *Sierra Club* v. *U.S. Environmental Protection Agency*, No. 02–1135 (DC Circuit). The Sierra Club also filed a petition seeking administrative reconsideration of certain provisions in the final amendments, pursuant to Clean Air Act (CAA) section 307(d)(7)(B).

Shortly after the filing of the petition, EPA commenced discussions with the Sierra Club concerning a settlement agreement. We reached initial agreement with the Sierra Club on the terms of a settlement and lodged the tentative agreement with the court on August 15, 2002, under which we agreed to propose a rule to make specified amendments to the General Provisions.

Following execution of the final settlement agreement, we published proposed amendments effectuating its terms (67 FR 72875; December 9, 2002). Most of the General Provisions amendments dealt with clarifying the general duty to minimize emissions and its relationship to the startup, shutdown, and malfunction (SSM) plans required under 40 CFR 63.6(e)(3).

We issued final amendments (68 FR 32586; May 30, 2003) that require that a source must promptly submit a copy of its plan to its permitting authority if and when the permitting authority requests that the plan be submitted. The final amendments also require the permitting authority to obtain a copy of the plan from a facility if a member of the public makes a specific and reasonable request to examine or receive a copy. We noted that the permitting authority should work with the requester to clarify any request if it is overly broad or insufficiently specific.

After promulgation of the amendments, the NRDC petitioned EPA on July 29, 2003, under section 307(d)(7)(D) of the CAA, to reconsider the public access aspects of the SSM plan provisions. Specifically, NRDC opposed the criteria for the public to access SSM plans, i.e., that a plan may be obtained only if the request is ''specific and reasonable.'' The NRDC concluded that the final amendments

allow the Administrator to block a citizen's access to SSM plans just by declaring the request not ''specific and reasonable.''

On July 29, 2005 (70 FR 43992), we announced our reconsideration of these issues arising from the final amendments of May 30, 2003, regarding SSM plans, and proposed additional amendments to the General Provisions and conforming amendments to other parts 63 and 65 subparts. Today's notice responds to comments on the July 29, 2005 proposal and promulgates final rule amendments.

By removing the requirement that the SSM plan must be followed during periods of SSM, the final amendments allow sources flexibility to address emissions during periods of SSM. This in no way alters the obligation and requirement set out at 40 CFR 63.6(e)(1)(i) that source owners or operators ''minimize emissions'' at all times, including periods of SSM. Root cause analysis of excess emissions events may generally be the most effective means in many industry sectors to assist a source in meeting its regulatory obligation to minimize emissions at all times including during periods of SSM. Appropriately conducted root cause analysis should determine the fundamental cause of an excess emissions event, and identify the steps and corrective action necessary to ensure that the excess emission does not arise again. Through this process, we have determined that fewer and fewer excess emission events occur over time. Thus, performing a root cause or similar analysis and implementing corrective action may often be relevant in determining whether a source has met the good air pollution control measures standard. The final amendments do not change the current approach to minimizing emissions during periods of SSM, and we fully expect owners or operators to follow their SSM plans during periods of SSM. Owners or operators are also still required to keep records of and report actions taken during SSM periods to minimize emissions whenever there is an exceedance of an emissions limit (or a potential exceedance in the case of a malfunction). (See discussion of recordkeeping and recording requirements below.) We expect few owners or operators to deviate from their plans, and only when necessary due to unanticipated types of malfunctions, emergencies that are not amenable to strict adherence to the plan at the time, safety considerations that preclude following the plan as written, or when emissions can be better minimized by taking steps that are different from those set forth in the plan. Even then, the owner or operator must report such deviations and demonstrate how emissions were minimized when the plan was not followed. This is consistent with the prior provisions, except that deviation from the plan is no longer a violation of the SSM requirements of the General Provisions regulations. This change has been made in all the parts 63 and 65 subparts that had previously required the plan to be followed.

We are also removing the requirement that the Administrator obtain a copy of a source's SSM plan whenever requested by a member of the public. The public may obtain a copy of any plan obtained by the Administrator from a source. This includes any permitting authority (state or local agency) that has been delegated the authority to enforce standards under parts 63 and 65. Under the amendments, any permitting authority with delegation will still have the discretion to obtain plans requested by the public, but will not be required to do so. EPA's position is that SSM plans should not be viewed as compliance plans under section 502(b)(8) or 503(c) of the Clean Air Act or under EPA's Title V regulations at 40 CFR 70.5(c)(8). This is the most reasonable interpretation of those statutory and regulatory provisions and is consistent with EPA's position on implementation issues associated with SSM plan requirements discussed in more detail in the response to comment section below.[1]

The definition of ''compliance schedule'' in section 501(3) of the CAA equates ''schedule of compliance'' to ''schedule of remedial measures.'' Nothing in this definition or in any other provision of the CAA suggests that SSM plans must be considered ''compliance plans.'' In fact, the definition of compliance schedule suggests that the primary purpose of ''compliance schedules'' and ''compliance plans'' is to set out measures to be taken to remedy noncompliance. EPA's title V regulations at 40 CFR 70.5(c)(8), which describe what is to be included in a compliance plan, further support the reasonableness of EPA's view that SSM plans should not be considered compliance plans. Those regulations provide that a compliance plan must include a description of the compliance status of the source, a statement that the source will continue to comply with applicable requirements and, if the source is not in compliance with an applicable requirement, a narrative describing how compliance will be achieved. SSM plans serve a purpose different from that of compliance plans (see discussion below) and do not include the components described above that are required in compliance plans. Thus, EPA's position that SSM plans are not compliance plans is reasonable.

Plans available to the public will have confidential business information removed. Startup, shutdown, and malfunction plans are similar to the risk management plans prepared under section 112(r) to prevent accidental releases of HAP and may likely contain information that is protected as CBI or that may be sensitive from a security standpoint. For these reasons, many facilities are reluctant to provide the details of their plans and permitting authorities are reluctant to request them except when necessary. While these plans may be redacted prior to public release to remove CBI, this imposes additional burden on both the facilities and the permitting agencies. Thus we believe the limitation we are imposing in the final rule strikes a reasonable balance between the public's right to know, protection against acts of terrorism, and protection of a facility's CBI.

The amendments also make clarifying edits that reporting and recordkeeping is only required when a startup or shutdown causes the applicable emission standards to be exceeded, and for any occurrence of malfunction which also includes potential exceedances[2] and that such recordkeeping and reporting shall include information on actions taken during such periods of SSM to minimize emissions in conformance with § 63.6(e)(1)(i). When such actions are consistent with the plan the report can include a checklist, as is currently allowed for recordkeeping. Reports would allow a member of the public to review the actions taken and whether or not they conform to the general duty to minimize emissions. We are also revising the definitions for malfunction

[1] In the preamble to the proposal, we suggested that EPA does not have the authority to treat SSM plans as compliance plans or to require permitting authorities to make such plans available to the public. (70 FR 43994–95; July 29, 2005). Upon further consideration, we believe that the term ''compliance plan'' is somewhat ambiguous. However, for the reasons set forth below and in the response to comment section, we believe that an interpretation that SSM plans are not compliance plans is reasonable and appropriate.

[2] A 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 which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded.

throughout parts 63 and 65 in various subparts for consistency with the previously revised definition in the General Provisions.

III. Responses to Comments

General

Comment: One commenter thought EPA should not have considered petitions from parties who did not participate in previous rulemakings, and that EPA should have denied NRDC's petition for reconsideration.

Response: The EPA granted reconsideration on a narrow issue and has properly followed Section 307(d) of the CAA.

Enforcement

Comment: Several commenters were concerned that the amendments would render the SSM provisions essentially unenforceable. They felt that removal of the requirement to follow the plan would allow owners or operators to do anything they want during SSM periods with no accountability and will lead to increases in emissions if the plan is not followed. More specifically, Sierra Club asserts that section 304 of the CAA guarantees a citizen's right to enforce CAA requirements and that section 504(a) of the CAA requires that title V permits contain enforceable limits and standards and conditions necessary to assure compliance. Sierra Club alleges that if the requirement that a source implement its SSM plan is eliminated, there would be no means by which to measure a source's compliance with the general duty to minimize emissions. Sierra Club further argues that without the ability to measure a source's actions during an SSM event against that source's SSM plans, the public can't enforce the general duty requirement.

Sierra Club also asserts that proving a violation of the general duty standard would be virtually impossible given the vagueness of the standard. Sierra Club argues that EPA's proposed scheme renders the MACT standard unenforceable because if the SSM plan is not incorporated into the title V permit as a requirement, there will be no information in the title V permit indicating when the limit applies. Sierra Club believes that EPA's seeks to create a system in which adherence to plan can be used as a defense, but failure to follow a plan is not a violation.

Comments submitted by Tulane Environmental Law Clinic on behalf of St. Benard Citizens for Environmental Quality and Louisiana Bucket Brigade argue that the requirement to develop an SSM plan is (even under EPA's proposal) an applicable requirement and that the only way to assure compliance with this applicable requirement is to require that it be submitted to the regulatory agency and be available to the public.

Response: As summarized in the previous section, we do not believe the amendments will change anything with respect to how owners and operators will react during periods of SSM except that they will have the flexibility to depart from a SSM plan when doing so makes sense under the circumstances. They are still required to develop SSM plans, minimize emissions during periods of SSM, and keep records and report SSM events if there is an exceedance (or could have been, in the case of malfunctions) of an applicable MACT standard. We expect owners and operators to continue to follow the SSM plans with respect to most SSM events because those plans should generally set forth the best way to minimize emissions. Those who fail to follow their plan will undergo additional scrutiny, as they do now, to determine if emissions were minimized during SSM periods. The amendments should have no practical effects on a source's obligation to minimize emissions during periods of SSM.

EPA's intention is that the recordkeeping and reporting requirements will provide the permitting authority and the public with information to determine whether the general duty to minimize emissions has been satisfied any time there is an exceedance (or could have been, in the case of malfunctions). We have evaluated the recordkeeping and reporting requirements in light of comments on the availability of information necessary to evaluate compliance with the general duty requirement and have decided to amend the recordkeeping and reporting requirements to clarify that a source must keep records of and report actions taken during an SSM event any time there is an exceedance. Revisions to § 63.10(d)(5)(i) and (ii) require that a description of actions taken to minimize emissions be included in SSM reports whether or not the SSM plan was followed. In the case where the plan is followed, a checklist may suffice, and in the case of multiple events, only one checklist is necessary (*e.g.*, multiple startups of batch processes where the procedure to minimize emissions is always the same). With respect to recordkeeping, the rules currently require sources to keep a record of actions taken during SSM events (40 CFR 63.10(b)(2)(iv) and (v)). Where actions were consistent with an SSM plan, the rules require records of ''all information necessary to demonstrate conformance'' with the plan and provide that such information can be recorded in the form of a checklist. (§ 63.10(b)(2)(v)) We are amending these rules today to clarify that such records or checklist must include all actions taken during the SSM event to minimize emissions. We are also making conforming changes to 40 CFR 63.6(e)(3)(iii).

With these clarifications, any time there is an exceedance of an emission limit (or could have been in the case of malfunctions) and thus a possibility that the general duty requirement was violated, there will be a report filed that will describe what actions were taken to minimize emissions that will be available to the public.

Any member of the public could use the information in these reports to evaluate whether adequate steps were taken to meet the general duty requirement. This information is likely to be of as much if not more use in determining compliance with the general duty requirement than a facility's general SSM plan because the information will be specific to the particular SSM event that caused the exceedance. We note that the public can also request that the permitting authority obtain the SSM plan if information in the SSM report suggests that the contents of the SSM plan would help determine if there was a violation of the general duty requirement. However, even if the permitting authority is not willing to obtain the SSM plan, the required reports should provide adequate information to determine whether there is a violation of the general duty requirement and thus a basis for a citizen suit. In any such citizen suit, plaintiffs can seek to obtain the SSM plan through discovery.

The general duty to minimize emissions is not too vague to be enforced as suggested by Sierra Club. Though the general duty to minimize emissions may not provide absolute certainty in all cases, there will be many circumstances in which compliance or non-compliance will be clear. A regulation that does not reach constitutionally protected conduct is not facially vague unless it is impermissibly vague in all its applications. (*Village of Hoffman Estates* v. *Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 496(1982); *Sweet Home Chapter of Communities for a Greater Oregon* v. *Babbit*, 1.F.3d. 1, 4 (D.C. Cir. 1994).

Further, it is not impossible to know when the MACT applies without knowing how the facility defines startup, shutdown and malfunction in

its SSM plan. EPA regulations define the terms startup shutdown and malfunction and it is these definitions that apply when determining whether a facility is legitimately claiming to be experiencing a period of SSM.

With respect to the argument that the only way to assure compliance with the duty to develop a plan is to require that it be submitted to permitting authority and be available to the public, assuring compliance does not require that the Agency observe compliance first hand. It is perfectly appropriate for the Agency to rely on certifications (title V regulations require sources to certify compliance with all applicable requirements (40 CFR 70.5(c)(9))) or on inspection, record keeping and reporting authorities of section 114 of the CAA to decide on a case by case basis when to inspect or request copies of documents

Comment: Two commenters said that emissions during SSM events should be required to comply with the NESHAP standard. One commenter said EPA had failed to support a general assumption that sources cannot meet emission limitations during periods of SSM or that setting emission limitations during these periods is not feasible.

Response: These commenters raise issues that are outside of the scope of this rulemaking. The general duty provision has been in place since 1994. Moreover, comments concerning whether a particular source type can meet a particular emission standard during periods of startup, shutdown or malfunction could be raised when the emissions standards for that source are developed. As one commenter noted, ''EPA can, and in some instances has, included requirements for compliance during SSM in source-specific NESHAP standards.''

Though these comments raise issues that are outside the scope of this rulemaking, we note that in the May 8, 2004 **Federal Register** notice EPA stated ''EPA believes that it has discretion to make reasonable distinctions concerning those particular activities to which the emission limitations in a MACT standard apply'' (68 FR 32586, 32590; May 30, 2003). We also note that the EPA SIP guidance cited by one commenter is not relevant to the scope of EPA's authority to consider periods of SSM in promulgating NESHAP standards.

Comment: Several commenters stated that the sources should be required to provide the permitting authorities with copies of SSM plans even absent a request because the permitting authorities need to review SSM plans before problems arise. These commenters also felt that greater public access to the plans is beneficial because such scrutiny can help ensure that the plans are adequate and the general duty to minimize emissions can be met.

Response: We do not believe that it is necessary to have each owner or operator automatically submit its SSM plan. Our regulations make it clear that all a permitting authority has to do is request the SSM plan and the owner or operator is required to provide it. While the authority to request the plan is derived from section 114, there is no special order or document that needs to be issued to obtain the SSM plan. Thus, the permitting authority may review any plan and may also make it available to the public. We do not believe prior review and approval of plans are necessary; rather, in most cases, review of reports required to be submitted by a facility when emission limitations are exceeded (or could have been in the case of malfunctions) will allow the permitting authority and the public to determine whether emissions were minimized during periods of SSM. However, if it so chooses, a permitting authority is free to request SSM plans and review them prior to any SSM events occurring. Typically, permitting authorities will more often review and assess SSM plan of sources with numerous and frequent periods of SSM. It may not be necessary to review plans of sources with few or infrequent SSM events, allowing the permitting authority to direct its resources to more productive endeavors. The permitting authority has the discretion to review as many plans as it wants in order to ensure, that emissions are minimized during periods of SSM.

Comment: Several commenters thought it made no sense to require that plans be developed but not require them to be followed.

Response: We disagree. Development of SSM plans help sources to think through and document actions to take during SSM events. Plans will help sources more expeditiously address SSM events to minimize emissions during those periods. Once the plans are developed, sources will have every incentive to follow the plans if appropriate, or face additional scrutiny if the plans are not followed. In any event, sources are required to minimize emissions regardless of whether the plans are followed. By not requiring strict adherence to the SSM plan, we are allowing the source additional flexibility as to how it will minimize emissions. Plans also may help permitting authorities streamline determinations of whether emissions are minimized. If it is established that emissions are minimized by following the plan during a particular SSM event, making that determination when a subsequent similar SSM event occurs should be much less burdensome assuming the plan has not been revised.

Comment: Several commenters felt that if an SSM plan is developed in good faith and is not ''obviously deficient,'' it should be considered a ''safe harbor.'' Others felt that following the plan should not be a safe harbor.

Response: We believe that following the SSM plan should not be a safe harbor. Where the SSM plan is out of date or deficient or the circumstances clearly called for other steps to minimize emissions, blind adherence to the plan should not be sufficient. We leave to the discretion of the permitting authority the question of how much weight to give the SSM plan in a particular situation. However, assuming that the plan was made in good faith and not deficient, we believe that in most cases following the SSM plan should help establish that the source was minimizing emissions.

Comment: Several commenters thought there should be a requirement that sources periodically review and update their SSM plans. Two commenters stated that because implementation of SSM plans will no longer be required, sources will be less likely to periodically review and update SSM plans.

Response: Our regulations already require sources to keep their SSM plans current, *i.e.*, up to date, and to review and change the plans to ensure that emissions are minimized. ''The owner or operator must maintain at the affected source a current startup, shutdown, and malfunction plan and must make the plan available upon request for inspection and copying by the Administrator'' (§ 63.6(e)(3)(v)). Plans are required to address potential expected SSMs to minimize emissions. Plans should be updated whenever changes are necessary to address new or different types of SSM events as provided for in paragraphs 63.6(e)(3)(vii) and (viii). Moreover, the Administrator (or delegated authority) has the ability under § 63.6(e)(3)(vii) to require that SSM plans be revised if they are deficient or not current.

Applicable Requirements

Comment: Numerous commenters agreed with the EPA's position at proposal that the SSM plan details themselves are not the applicable requirements under the Act, but the general duty clause (§ 63.6(e)(1)) is. They further agreed that the plan

elements should not be incorporated into the title V permits.

One commenter believed that the SSM plan elements should be applicable requirements. Another commenter thought that the requirement to follow the plan should be an applicable requirement in the title V permit but the individual elements of the SSM plan should not be considered incorporated into the permit.

Response: As explained in our proposal (70 FR 43992; July 29, 2005), we believe that the general duty to minimize emissions is the applicable requirement, not the SSM plan itself. However, we note that the SSM plan is a useful tool for sources to demonstrate—and for permitting authorities to confirm—that the general duty to minimize emissions is met. We do not agree that requiring implementation of the SSM plan is necessary to assure compliance with general duty requirement. The SSM plan is a useful tool that may help the permitting authority determine compliance depending on the circumstances, but it is not ''necessary.'' As explained above, compliance with the general duty requirement can be achieved through different means such as examining SSM reports to determine whether general duty has been satisfied. The case law cited by Sierra Club is not on point. Both *Waterkeeper Alliance, Inc.* v *EPA*, 399 F.3d. 486 (2nd Cir. 2005) and *Environmental Defense Center, Inc.* v. *EPA*, 344 F.2d. 832 (9th Cir.2003) involved EPA regulatory schemes under which plans developed by the regulated entity, which were not reviewed or approved by the regulatory agency (nutrient development plans and stormwater management plans under the Clean Water Act, respectively), served to establish binding requirements, compliance with which would automatically satisfy an underlying statutory or regulatory requirement. SSM plans are not binding requirements and, as explained above, adherence with an SSM plan does not necessarily establish compliance with the general duty requirement.

Comment: One commenter wanted clarification on the relationship of the SSM plan requirements to title V, specifically what language should be included in the permit regarding the requirement to develop a plan. The commenter notes that § 63.6(e)(3)(ix) explicitly refers to a title V requirement whereas other provisions do not; the comment suggests an edit to the paragraph that would clarify the provision.

Response: The intent of § 63.6(e)(3)(ix) was to ensure that the only requirement with respect to the title V permit was that an SSM plan be developed, that the elements of the plan are not to be incorporated into the permit, and that changes to the plan would not trigger a permit modification. The commenter's suggested edits are helpful and have been incorporated into the paragraph.

Conforming Changes to Other Subparts

Comment: Several commenters supported the conforming changes to the other subparts with respect to the requirement to follow the plan. One commenter stated that EPA failed to explain its reason for changing specific part 63 subparts and how the changes would affect the specific source categories.

Response: Although there was no explicit statement explaining why the other subparts were being amended, these changes were made merely to conform to the changes being made in the General Provisions. Many of the part 63 subparts repeated requirements in the General Provisions about following the SSM plan and had to be revised to be consistent with the changes to the General Provisions. Because the changes in the individual subparts are necessary for conformance with the General Provisions, we felt that no explanation was required.

Impacts

Comment: One commenter stated that EPA failed to comply with Executive Order 12898 on Environmental Justice. The commenter asserts that the amendments will adversely affect minority and low income communities around the sources.

Response: Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency actions by directing agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority and low-income populations. The EPA has considered the impact of the proposal on minority and low income populations. We do not believe that these amendments will have any adverse effects on emissions during periods of SSM. Therefore, there should not be any adverse impact on minority and low income populations as a result of these amendments. The amendments do not affect the underlying requirement to minimize emissions during SSM events. Owners or operators are still required to develop SSM plans to address emissions during these periods. They are required to report immediately when the plans are not followed and semiannually when the plans are followed and emission limitations are exceeded (or could have been in the case of malfunctions) and describe steps taken to minimize emissions. The only difference from current regulations is that the source is not required to follow the plan, especially when the situation may call for other action or when safety considerations override following the plan as written.

Comment: One commenter stated that EPA failed to comply with Executive Order 13045 on Protection of Children for Environmental Health and Safety Risk. The commenter disagrees with EPA's position that the Executive Order only applies to regulations that are based on health or safety risks.

Response: Executive Order 13045 does not apply to this proposal because, as is explained above, it does not change any emission standard, it is not economically significant and because it is not based on health and safety risks.

SSM Plan Availability

Comment: There were numerous comments on SSM plan availability to permitting authorities and the public. Some governmental commenters stated that it is difficult to obtain SSM plans using section 114 of the Act, and that permitting authorities should not be required to obtain the information through a request made under section 114 of the Act. One commenter stated that part 63 does not clearly state that permitting authorities can request and receive copies of the plans and that the provisions should be amended to make this clear and to require that the plan be provided within 30 days. The commenter stated that state laws allowing access to information vary from state to state and are sometimes vague. Several industry commenters stated that SSM plans should be available only through CAA section 114 requests.

Response: The existing part 63 regulations already require a source to (1) allow the permitting authority to inspect the SSM plan at the premises or (2) ''promptly'' submit the plan to the permitting authority if the permitting authority makes a written request for it. The regulations state that the ''Administrator may at any time request in writing that the owner or operator submit a copy of any startup, shutdown, and malfunction plan (or portion thereof) * * * [and] the owner or operator must promptly submit a copy of the requested plan (or a portion thereof) to the Administrator'' (§ 63.6(d)(3)(v)). The authority for this provision is section 114(a) of the Act.

However, there is no special procedure or order required; the Administrator or the permitting authority need only request the SSM plan in writing. The Administrator or permitting authority may also inspect and copy the SSM plan at the premises: ''The owner or operator must maintain at the affected source a current startup, shutdown, and malfunction plan and must make the plan available upon request for inspection and copying by the Administrator'' (§ 63.6(e)(3)(v)). The authority for this inspection provision is also section 114(a). Under section 114(b), states may develop and submit to the Administrator a procedure for carrying out section 114 in the state, and the Administrator may delegate his/her authority to the state. All permitting authorities that have obtained delegation of part 63 standards have already demonstrated that they have state authority equivalent to section 114 to monitor, to inspect, and to obtain records, including SSM plans. Accordingly, permitting authorities should have no difficulty in obtaining plans. The underlying authority for the part 63 provisions allowing permitting authorities to inspect or obtain copies of SSM plans is based on section 114(a) or its state equivalent. Because all SSM plans are obtained under section 114(a) or its state equivalent, any plans so obtained must be available to the public under section 114(c) of the Act, which provides that any records obtained under section 114(a) ''shall be available to the public,'' with the exception of portions considered confidential.

Comment: Several commenters agreed that permitting authorities should not be required to obtain SSM plans whenever a member of the public requests one. Other commenters disagreed and believed that any member of the public should be able to request an SSM plan. Several commenters thought the public should be able to review the plans to determine if emissions are minimized and argued that denying public access makes general duty unenforceable.

Response: As discussed above, we do not believe that the details of SSM plans are compliance plans or are required to be available under title V. As discussed above, recordkeeping and reporting requirements will provide regulators and the public with adequate information concerning actions taken during periods of SSM. Permitting authorities can obtain and review plans as necessary, and all plans that are obtained will be available to the public subject to limitation on availability of CBI.

Comment: Several commenters believed the proposal effectively cut off public access to plans.

Response: We disagree. Public access to SSM plans is still available, in the case where the permitting authority has obtained a plan. We believe that most permitting authorities will request a plan from a source when presented with a reasonable request for the plan. There is no federal requirement to do so, however, and unless otherwise specified under state statute or regulations, state and local authorities have the discretion to obtain the plan upon public request.

Comment: Several commenters argued that companies will not be responsive to requests for SSM plans from the public.

Response: We recognize that some companies might choose not to respond to requests from the public. However, we hope and expect that other companies would indeed respond to public requests. Moreover, as explained above, the public may ask the permitting authority to obtain the SSM plan. Where the public has made a reasonable request, we believe that the permitting authority would likely be responsive and obtain the plan from the source. Because the authority to obtain such plan is based on section 114 of the Act or its state equivalent, any plan obtained by the permitting authority will be available to the public.

Comment: Another commenter noted that the difficulty of ''untangling'' SSM plans from facility operating procedures and CBI are not good reasons for restricting public access.

Response: As stated earlier, all SSM plans obtained by the permitting authority are publicly accessible. We are sensitive to the effort involved by some sources to create a standalone SSM plan for submittal, but do not believe requiring all plans to be submitted automatically for review is justified. However, permitting authorities will obtain SSM plans as necessary, regardless of the burden imposed on the source to develop a standalone document.

Comment: The same commenter maintained that the paperwork burden on permitting authorities also should not be a reason for not requiring submittal of SSM plans.

Response: Permitting authorities may obtain any SSM plan that it wants. Thousands of sources are required to prepare SSM plans, and we believe the permitting authority should have the discretion to obtain those it feels are appropriate. For the reasons discussed above, we do not think it is necessary to impose a requirement that all plans be automatically submitted to the permitting authority, especially if this results in the permitting authority reallocating resources from enforcement and implementation to handling paper. We think it is best for the individual permitting authority to make that decision. If they so choose, they can routinely ask all sources to submit SSM plans.

Confidential Business Information (CBI)

Comment: Two commenters noted that plans can be sanitized of their CBI-sensitive information prior to submittal to the permitting authority, but other commenters insisted that SSM plans not be released because of sensitive information. One commenter additionally noted that SSM plans may contain security-sensitive information and provide a roadmap to terrorists seeking to disrupt a facility.

Response: Plans may be submitted with CBI identified; such submittals will be treated in accordance with requirements applicable to claims of CBI. We also agree that plans can be ''cleansed'' of CBI and other sensitive information and submitted. The public will have access to any non-CBI submittal and non-CBI portions of plans with CBI identified. This is what happens now.

Comment: Some commenters stated that limiting public access to plans and removing the requirement to implement the SSM plan makes it difficult for the public to determine when an emission exceedance constitutes a violation of a MACT standard. These commenters also stated that reducing public access to SSM plans hinders citizen enforcement efforts.

Response: These amendments do not change the ability of the public to determine when an emissions exceedance constitutes a violation of a MACT standard and shouldn't make enforcement of the general duty requirement more difficult. Plans previously available are still available for public review. Permitting authorities may obtain any SSM plan from any source and allow the public to examine it. Sources must report what procedures and actions it did take during periods of SSM if there was an exceedance of an emission limit (or could have been in the case of malfunctions). Such reports are also available to the public. As explained above, this information can be used by the public and the permitting authority to support enforcement efforts.

Reporting

Comment: One commenter stated that without a requirement to implement SSM plans, the regulation should require reporting of all SSM events so that the general duty can be evaluated

for each event. Another commenter added that only those SSM events that exceeded the emission standards be reported.

Response: We agree that all SSM events that exceed (or could have exceeded, in the case of malfunctions) the emission limitations be reported. We also agree that as long as the emission limitations are being met, SSM events need not be reported (except those malfunctions that could have exceeded the emission limitations), *i.e.*, as long as the relevant standards are being met, there is no benefit to a reporting requirement in terms of assuring compliance with the general duty standard. We have made clarifying edits in the regulatory language.

Comment: One commenter did not think that facilities should have to report whether or not they followed their SSM plan. Another commenter did not think sources should have to report immediately if the SSM plan was not followed.

Response: We disagree. Information on whether or not an SSM plan was followed gives the permitting authority and the public information that can help them determine if further scrutiny of a source is in order. If the permitting authority has reviewed a source's SSM plan and determined that it is adequate, information that the source followed that plan during an SSM event could be helpful to the regulator in determining whether to investigate the event. Not following the plan may or may not indicate a problem, but such information would be very helpful to the permitting authority and the public in order to determine if additional scrutiny or investigation of the event is necessary. Immediate reporting if the plan was not followed is appropriate to alert the permitting authority and the public of a potential problem.

Comment: One commenter questioned why SSM events still have to be reported as deviations if emission limitations do not apply.

Response: The general duty to minimize emissions is the applicable requirement during SSM events. In order to effectively enforce this requirement, it is important to have information about SSM events that involve exceedances (or potential exceedances in the case of malfunctions) in order to determine whether further scrutiny is appropriate. Deviations do not necessarily equate to violations.

Recordkeeping

Comment: Numerous commenters agreed with the elimination of certain recordkeeping requirements for startups and shutdowns when relevant emission standards are not exceeded. One commenter was not clear on how burden had been relieved; the commenter cites § 63.6(e)(3)(iii) and asked what documentation was necessary.

Response: The amendments and the clarifications we are promulgating today relieve the recordkeeping burden for startups and shutdowns that do not result in a exceedance of an emissions limitation.

Regulatory Language

Comment: Several commenters pointed out that some subparts have their own SSM provisions and do not cite subpart A as the applicable requirements. The proposal should have not referenced subpart A but instead continued to reference the applicable provisions within their subparts.

Response: We agree with the commenters and have made the suggested edits.

Comment: Several commenters noted that the reference to § 63.6(e) instead of the requirement to follow the SSM plan was overly broad, and in fact should have referred more narrowly to the general duty to minimize emissions since that is the applicable requirement.

Response: We agree with the commenters and have made the suggested edit to refer to § 63.6(e)(1).

Comment: One commenter suggested clarifying changes to ensure reporting and recordkeeping for startups and shutdowns is required only when the applicable emission limitation is exceeded.

Response: We agree and have made the suggested edits. As explained above, as long as the standards are being attained there is no need to report.

Comment: Several commenters recommended revising the definition for ''malfunction'' in other subparts where it occurs to be consistent with the definition in subpart A. One commenter also suggested revising the general duty provision where it occurs in other subparts to be consistent with subpart A.

Response: We agree this is appropriate for consistency and have revised the definitions and provisions accordingly.

Comment: A couple of commenters recommended incorporating paragraph § 63.6(e)(3)(ix) into the General Provisions applicability table in all of the applicable subparts.

Response: We agree that § 63.6(e)(3)(ix) should apply to all the applicable part 63 subparts. We have revised all of the applicable General Provisions applicability tables accordingly.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. 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 these final amendments. 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 which have their own ICRs. In any case, we believe that adoption of the 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.

However, OMB has previously approved the information collection requirements contained in the existing regulations of 40 CFR parts 63 and 65 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* A copy of the OMB approved Information Collection Request (ICR) for any of the existing regulations may be obtained from Susan Auby, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, or by calling (202) 566–1672.

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 in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

For purposes of assessing the impacts of the final rule amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201 for each applicable subpart; (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 that is not dominant in its field.

After considering the economic impacts of today's final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives which minimize any significant economic impact on a substantial number of small entities (5 U.S.C. 603–604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Small entities that are subject to MACT standards would not be required to take any action under the final rule amendments; the amendments simply remove the requirement that sources must follow their SSM plan. However, we do not expect sources will address periods of SSM any differently than they do now.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess effects of their regulatory actions on State, local, and tribal governments and 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 to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 the 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 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 the final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any 1 year. Thus, today's final rule amendments are not subject to sections 202 and 205 of the UMRA. The EPA has also determined that the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final rule amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (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 the States, or on the distribution of power and responsibilities among the various levels of government.''

The final rule amendments do not have federalism implications and will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final rule amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 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.'' The final rule amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to the final rule amendments.

G. Executive Order 13045: Protection of Children From Environmental Health 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, the Agency 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 considered by the Agency.

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. The final rule amendments are not subject to Executive Order 13045 because they are not ''economically significant'' and are based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

The final rule 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 do not have an economically significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable VCS.

The final rule amendments do not involve technical standards. Therefore, EPA did not consider the use of any VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The final rule amendments are not a ''major rule'' as defined by 5 U.S.C. 804(2). The final rule amendments are effective on April 20, 2006.

List of Subjects in 40 CFR Parts 63 and 65

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 31, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons cited in the preamble, title 40, chapter I, parts 63 and 65 of the Code of Federal Regulations are 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 the first sentence in paragraph (e)(1)(ii);
■ b. Removing the first sentence in paragraph (e)(3)(i) introductory text and adding two new sentences in its place;
■ c. Removing and reserving paragraph (e)(3)(ii);
■ d. Revising the first through third sentences in paragraph (e)(3)(iii);
■ e. Removing the sixth sentence in paragraph (e)(3)(v); and
■ f. Revising the first and second sentences in paragraph (e)(3)(ix) to read as follows:

§ 63.6 Compliance with standards and maintenance requirements.

* * * * *

(e) * * *

(1) * * *

(ii) Malfunctions must be corrected as soon as practicable after their occurrence. * * *

* * * * *

(3) * * *

(i) The owner or operator of an affected source must develop a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction; and a program of corrective action for malfunctioning process, air pollution control, and monitoring equipment used to comply with the relevant standard. The startup, shutdown, and malfunction plan does not need to address any scenario that would not cause the source to exceed an applicable emission limitation in the relevant standard. * * *

* * * * *

(ii) [Reserved]

(iii) When actions taken by the owner or operator during a startup or shutdown (and the startup or shutdown causes the source to exceed any applicable emission limitation in the relevant emission standards), or malfunction (including actions taken to correct a malfunction) are consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator must keep records for that event which demonstrate that the procedures specified in the plan were followed. These records may take the form of a ''checklist,'' or other effective form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan and describes the actions taken for that

event. In addition, the owner or operator must keep records of these events as specified in paragraph 63.10(b), including records of the occurrence and duration of each startup or shutdown (if the startup or shutdown causes the source to exceed any applicable emission limitation in the relevant emission standards), or malfunction of operation and each malfunction of the air pollution control and monitoring equipment. * * *

* * * * *

(ix) The title V permit for an affected source must require that the owner or operator develop a startup, shutdown, and malfunction plan which conforms to the provisions of this part, but may do so by citing to the relevant subpart or subparagraphs of paragraph (e) of this section. However, any revisions made to the startup, shutdown, and malfunction plan in accordance with the procedures established by this part shall not be deemed to constitute permit revisions under part 70 or part 71 of this chapter and the elements of the startup, shutdown, and malfunction plan shall not be considered an applicable requirement as defined in § 70.2 and § 71.2 of this chapter. * * *

* * * * *

■ 3. Section 63.8 is amended by revising paragraph (c)(1)(iii) to read as follows:

§ 63.8 Monitoring requirements.

* * * * *

(c) * * *

(1) * * *

(iii) The owner or operator of an affected source must develop a written startup, shutdown, and malfunction plan for CMS as specified in § 63.6(e)(3).

* * * * *

■ 4. Section 63.10 is amended by:

■ a. Revising paragraphs (b)(2)(i), (ii), and (iv), and the first sentence in paragraph (b)(2)(v); and

■ b. Revising the first four sentences in paragraph (d)(5)(i) and the first and second sentences in (d)(5)(ii) to read as follows:

§ 63.10 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(2) * * *

(i) The occurrence and duration of each startup or shutdown when the startup or shutdown causes the source to exceed any applicable emission limitation in the relevant emission standards;

(ii) The occurrence and duration of each malfunction of operation (*i.e.*, process equipment) or the required air pollution control and monitoring equipment;

* * * * *

(iv)(A) Actions taken during periods of startup or shutdown when the source exceeded applicable emission limitations in a relevant standard and when the actions taken are different from the procedures specified in the affected source's startup, shutdown, and malfunction plan (see § 63.6(e)(3)); or

(B) Actions taken during periods of malfunction (including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation) when the actions taken are different from the procedures specified in the affected source's startup, shutdown, and malfunction plan (see § 63.6(e)(3));

(v) All information necessary, including actions taken, to demonstrate conformance with the affected source's startup, shutdown, and malfunction plan (see § 63.6(e)(3)) when all actions taken during periods of startup or shutdown (and the startup or shutdown causes the source to exceed any applicable emission limitation in the relevant emission standards), and malfunction (including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation) are consistent with the procedures specified in such plan. * * *

* * * * *

(d) * * *

(5)(i) * * * If actions taken by an owner or operator during a startup or shutdown (and the startup or shutdown causes the source to exceed any applicable emission limitation in the relevant emission standards), or malfunction of an affected source (including actions taken to correct a malfunction) are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan (see § 63.6(e)(3)), the owner or operator shall state such information in a startup, shutdown, and malfunction report. Actions taken to minimize emissions during such startups, shutdowns, and malfunctions shall be summarized in the report and may be done in checklist form; if actions taken are the same for each event, only one checklist is necessary. Such a report shall also include the number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. Reports shall only be required if a startup or shutdown caused the source to exceed any applicable emission limitation in the relevant emission standards, or if a malfunction occurred during the reporting period. * * *

(ii) * * * Notwithstanding the allowance to reduce the frequency of reporting for periodic startup, shutdown, and malfunction reports under paragraph (d)(5)(i) of this section, any time an action taken by an owner or operator during a startup or shutdown that caused the source to exceed any applicable emission limitation in the relevant emission standards, or malfunction (including actions taken to correct a malfunction) is not consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall report the actions taken for that event within 2 working days after commencing actions inconsistent with the plan followed by a letter within 7 working days after the end of the event. The immediate report required under this paragraph (d)(5)(ii) shall consist of a telephone call (or facsimile (FAX) transmission) to the Administrator within 2 working days after commencing actions inconsistent with the plan, and it shall be followed by a letter, delivered or postmarked within 7 working days after the end of the event, that contains the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, explaining the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan, describing all excess emissions and/or parameter monitoring exceedances which are believed to have occurred (or could have occurred in the case of malfunctions), and actions taken to minimize emissions in conformance with § 63.6(e)(1)(i). * * *

* * * * *

Subpart F—[Amended]

■ 5. Section 63.102 is amended by revising paragraph (a)(4) to read as follows:

§ 63.102 General standards.

(a) * * *

(4) During start-ups, shutdowns, and malfunctions when the requirements of this subpart F, subparts G and/or H of this part do not apply pursuant to paragraphs (a)(1) through (a)(3) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions to the extent practical. The general duty to minimize

emissions during a period of startup, shutdown, or malfunction does not require the owner or operator to achieve emission levels that would be required by the applicable standard at other times if this is not consistent with safety and good air pollution control practices, nor does it require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether such 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 § 63.6(e)(3)), review of operation and maintenance records, and inspection of the source. The measures to be taken may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the source. Back-up control devices are not required, but may be used if available.

* * * * *

■ 6. Section 63.105 is amended by revising paragraph (d) to read as follows:

§ 63.105 Maintenance wastewater requirements.

* * * * *

(d) The owner or operator shall incorporate the procedures described in paragraphs (b) and (c) of this section as part of the startup, shutdown, and malfunction plan required under § 63.6(e)(3).

* * * * *

■ 7. Table 3 to Subpart F is amended by adding in numerical order a new entry for 63.6(e)(3)(ix) to read as follows:

Table 3 to Subpart F of Part 63—General Provisions Applicability to Subparts F, G, and H to Subpart F

Reference	Applies to subparts F, G, and H	Comment
* *	* * *	* *
63.6(e)(3)(ix)	Yes.	
* *	* * *	* *

* * * * *

Subpart G—[Amended]

■ 8. Section 63.152 is amended by revising paragraphs (c)(2)(ii)(C)(*1*) and (g)(2)(iv)(A) to read as follows:

§ 63.152 General reporting and continuous records.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(C) * * *

(*1*) *Periods of startup, shutdown, or malfunction.* During periods of startup, shutdown, or malfunction when the source is operated during such periods in accordance with § 63.102(a)(4).

* * * * *

(g) * * *

(2) * * *

(iv) * * *

(A) The daily average value during any startup, shutdown, or malfunction shall not be considered an excursion for purposes of this paragraph (g)(2), if the owner or operator operates the source during such periods in accordance with § 63.102(a)(4).

* * * * *

Subpart L—[Amended]

■ 9. Section 63.301 is amended by revising the first sentence in the definition of *malfunction* to read as follows:

§ 63.301 Definitions.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. * * *

* * * * *

■ 10. Section 63.310 is amended by revising paragraphs (b) and (c) to read as follows:

§ 63.310 Requirements for startups, shutdowns, and malfunctions.

* * * * *

(b) Each owner or operator of a coke oven battery shall develop, according to paragraph (c) of this section, a written startup, shutdown, and malfunction plan that describes procedures for operating the battery, including associated air pollution control equipment, during a period of a startup, shutdown, or malfunction in a manner consistent with good air pollution control practices for minimizing emissions, and procedures for correcting malfunctioning process and air pollution control equipment as quickly as practicable.

(c) Malfunctions shall be corrected as soon as practicable after their occurrence.

* * * * *

Subpart N—[Amended]

■ 11. Section 63.342 is amended by:

■ a. Revising paragraphs (f)(1)(i) and (ii); and

■ b. Revising the first sentence in paragraph (f)(3)(i) introductory text to read as follows:

§ 63.342 Standards.

* * * * *

(f) * * *

(1)(i) At all times, including periods of startup, shutdown, and malfunction, owners or operators shall operate and maintain any affected source, including associated air pollution control devices and monitoring equipment, in a manner consistent with good air pollution control practices.

(ii) Malfunctions shall be corrected as soon as practicable after their occurrence.

* * * * *

(3) *Operation and maintenance plan.* (i) The owner or operator of an affected source subject to paragraph (f) of this section shall prepare an operation and maintenance plan no later than the compliance date, except for hard chromium electroplaters and the chromium anodizing operations in California which have until January 25, 1998. * * *

* * * * *

Subpart U—[Amended]

§ 63.480 [Amended]

■ 12. Section 63.480 is amended by removing the third sentence in paragraph (j)(1).

■ 13. Section 63.506 is amended by:

■ a. Revising the first sentence in paragraph (b)(1) introductory text; and

■ b. Revising paragraph (h)(2)(iv)(A) to read as follows:

§ 63.506 General recordkeeping and reporting provisions.

* * * * *

(b) * * *

(1) * * * The owner or operator of an affected source shall develop a written startup, shutdown, and malfunction plan as specified in § 63.6(e)(3). * * *

* * * * *

(h) * * *

(2) * * *

(iv) * * *

(A) The daily average or batch cycle daily average value during any startup, shutdown, or malfunction shall not be considered an excursion for purposes of paragraph (h)(2) of this section, if the owner or operator operates the source during such periods in accordance with § 63.6(e)(1).

* * * * *

■ 14. Table 1 to Subpart U is amended by adding in numerical order a new entry for 63.6(e)(3)(ix) to read as follows:

Table 1 to Subpart U of Part 63—Applicability of General Provisions to Subpart U Affected Sources

Reference	Applies to subpart U	Explanation
* *	* * *	* *
§ 63.6(e)(3)(ix)	Yes.	
* *	* * *	* *

* * * * *

Subpart W—[Amended]

■ 15. Section 63.526 is amended by revising paragraph (c) to read as follows:

§ 63.526 Monitoring requirements.

* * * * *

(c) Periods of time when monitoring measurements exceed the parameter values do not constitute a violation if they occur during a startup, shutdown, or malfunction, and the facility is operated in accordance with § 63.6(e)(1).

* * * * *

Subpart Y—[Amended]

■ 16. Section 63.562 is amended by revising the first sentence of paragraph (e)(2) introductory text to read as follows:

§ 63.562 Standards.

* * * * *

(e) * * *

(2) The owner or operator of an affected source shall develop a written operation and maintenance plan that describes in detail a program of corrective action for varying (*i.e.*, exceeding baseline parameters) air pollution control equipment and monitoring equipment, based on monitoring requirements in § 63.564, used to comply with these emissions standards. * * *

* * * * *

Subpart AA—[Amended]

■ 17. Section 63.600 is amended by revising paragraph (e) to read as follows:

§ 63.600 Applicability.

* * * * *

(e) The emission limitations and operating parameter requirements of this subpart do not apply during periods of startup, shutdown, or malfunction, as those terms are defined in § 63.2, provided that the source is operated in accordance with § 63.6(e)(1)(i).

Subpart BB—[Amended]

■ 18. Section 63.620 is amended by revising paragraph (e) to read as follows:

§ 63.620 Applicability.

* * * * *

(e) The emission limitations and operating parameter requirements of this subpart do not apply during periods of startup, shutdown, or malfunction, as those terms are defined in § 63.2, provided that the source is operated in accordance with § 63.6(e)(1)(i).

Subpart DD—[Amended]

■ 19. Section 63.695 is amended by revising paragraph (e)(6)(i)(A) to read as follows:

§ 63.695 Inspection and monitoring requirements.

* * * * *

(e) * * *

(6) * * *

(i) * * *

(A) During a period of startup, shutdown, or malfunction when the affected facility is operated during such period in accordance with § 63.6(e)(1); or

* * * * *

Subpart GG—[Amended]

■ 20. Section 63.743 is amended by revising the first sentence in paragraph (b) introductory text as follows:

§ 63.743 Standards: General.

* * * * *

(b) * * * Each owner or operator that uses an air pollution control device or equipment to control HAP emissions shall prepare a startup, shutdown, and malfunction plan in accordance with § 63.6. * * *

* * * * *

Subpart HH—[Amended]

■ 21. Section 63.773 is amended by revising paragraph (d)(8)(i)(A) to read as follows:

§ 63.773 Inspection and monitoring requirements.

* * * * *

(d) * * *

(8) * * *

(i) * * *

(A) During a period of startup, shutdown, or malfunction when the affected facility is operated during such period in accordance with § 63.6(e)(1); or

* * * * *

■ 22. Table 2 to Subpart HH is amended by adding in numerical order a new entry for 63.6(e)(3)(ix) to read as follows:

Table 2 to Subpart HH of Part 63—Applicability of 40 CFR Part 63 General Provisions to Subpart HH

General provisions reference	Applies to subpart HH	Explanation
* * * * * * *		
§ 63.6(e)(3)(ix)	Yes.	
* * * * * * *		

Subpart LL—[Amended]

■ 23. Section 63.848 is amended by revising the first sentence in paragraph (h) to read as follows:

§ 63.848 Emission monitoring requirements.

* * * * *

(h) * * * If a monitoring device for a primary control device measures an operating parameter outside the limit(s) established pursuant to § 63.847(h), if visible emissions indicating abnormal operation are observed from the exhaust stack of a control device during a daily inspection, or if a problem is detected during the daily inspection of a wet roof scrubber for potline secondary emission control, the owner or operator shall initiate corrective action procedures within 1 hour. * * *

* * * * *

■ 24. Section 63.850 is amended by revising the first sentence in paragraph (c) introductory text to read as follows:

§ 63.850 Notification, reporting, and recordkeeping requirements.

* * * * *

(c) * * * The owner or operator shall develop a written plan as described in § 63.6(e)(3) that contains specific procedures to be followed for operating the source and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and control systems used to comply with the standards. * * *

* * * * *

Subpart MM—[Amended]

■ 25. Section 63.864 is amended by revising paragraphs (k)(1) introductory text and the first sentence in paragraph (k)(2)(v) to read as follows:

§ 63.864 Monitoring requirements.

* * * * *

(k) * * * (1) Following the compliance date, owners or operators of all affected sources or process units are required to implement corrective action if the monitoring exceedances in paragraphs (k)(1)(i) through (vi) of this section occur:

* * * * *

(2) * * *

(v) For the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. HD–14), when corrective action is not initiated within 1 hour of a bag leak detection system alarm and the alarm is engaged for more than 5 percent of the total operating time in a 6-month block reporting period. * * *

* * * * *

■ 26. Section 63.866 is amended by revising the first sentence in paragraph (a) introductory text to read as follows:

§ 63.866 Recordkeeping requirements.

(a) * * * The owner or operator must develop a written plan as described in § 63.6(e)(3) that contains specific procedures for operating the source and maintaining the source during periods of startup, shutdown, and malfunction, and a program of corrective action for malfunctioning process and control systems used to comply with the standards. * * *

* * * * *

Subpart SS—[Amended]

■ 27. Section 63.998 is amended by:
■ a. Revising paragraph (b)(2)(iii);
■ b. Revising paragraph (b)(6)(i)(A); and
■ c. Revising the second sentence in paragraph (b)(6)(ii) to read as follows:

§ 63.998 Recordkeeping requirements.

* * * * *

(b) * * *

(2) * * *

(iii) Startups, shutdowns, and malfunctions, if the owner or operator operates the source during such periods in accordance with § 63.1111(a) and maintains the records specified in paragraph (d)(3) of this section.

* * * * *

(6)(i) * * *

(A) The daily average value during any startup, shutdown, or malfunction shall not be considered an excursion if the owner or operator operates the source during such periods in accordance with § 63.1111(a) and maintains the records specified in paragraph (d)(3) of this section.

* * * * *

(ii) * * * If a source has developed a startup, shutdown and malfunction plan, and a monitored parameter is outside its established range or monitoring data are not collected during periods of start-up, shutdown, or malfunction (and the source is operated during such periods in accordance with § 63.1111(a)) or during periods of nonoperation of the process unit or portion thereof (resulting in cessation of the emissions to which monitoring applies), then the excursion is not a violation and, in cases where continuous monitoring is required, the excursion does not count as the excused excursion for determining compliance.

* * * * *

Subpart YY—[Amended]

■ 28. Section 63.1101 is amended by revising the first sentence in the definition of *malfunction* to read as follows:

§ 63.1101 Definitions.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. * * *

* * * * *

■ 29. Section 63.1108 is amended by:
■ a. Removing the second sentence in paragraph (a)(1) introductory text;
■ b. Revising paragraph (a)(6); and
■ c. Revising paragraph (b)(2)(i) to read as follows:

§ 63.1108 Compliance with standards and operation and maintenance requirements.

(a) * * *

(6) Malfunctions shall be corrected as soon as practical after their occurrence.

* * * * *

(b) * * *

(2) * * *

(i) During periods of startup, shutdown, or malfunction (and the source is operated during such periods in accordance with § 63.1111(a)), or

* * * * *

■ 30. Section 63.1111 is amended by revising the first and fifth sentences in paragraph (a)(1) introductory text and revising paragraph (a)(2) to read as follows:

§ 63.1111 Startup, shutdown, and malfunction.

(a) * * * (1) *Description and purpose of plan.* The owner or operator of an affected source shall develop a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the affected source during periods of startup, shutdown, and malfunction. * * * The requirement to develop this plan shall be incorporated into the source's title V permit. * * *

* * * * *

(2) *Operation of source.* During periods of startup, shutdown, and malfunction, the owner or operator of an affected source subject to this subpart YY shall operate and maintain such affected source (including associated air pollution control equipment and CPMS) in a manner consistent with safety and good air pollution control practices for minimizing emissions to the extent practical. The general duty to minimize emissions during a period of startup, shutdown, or malfunction does not require the owner or operator to achieve emission levels that would be required by the applicable standard at other times if this is not consistent with safety and good air pollution control practices, nor does it require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether such 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 by this section), review of operation and maintenance records, and inspection of the source.

* * * * *

Subpart CCC—[Amended]

■ 31. Section 63.1164 is amended by revising the last sentence in paragraph (c) introductory text and revising paragraph (c)(1) to read as follows:

§ 63.1164 Reporting requirements.

* * * * *

(c) * * * Malfunctions must be corrected as soon as practicable after their occurrence.

(1) *Plan.* As required by § 63.6(e)(3) of subpart A of this part, the owner or operator shall develop a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, or malfunction, and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the relevant standards.

* * * * *

Subpart EEE—[Amended]

■ 32. Section 63.1206 is amended by revising paragraphs (c)(2)(v)(A)(*2*) and (c)(2)(v)(B)(*4*) to read as follows:

§ 63.1206 When and how must you comply with the standards and operating requirements?

* * * * *

(c) * * *

(2) * * *

(v) * * *

(A) * * *

(*2*) Although the automatic waste feed cutoff requirements continue to apply during a malfunction, an exceedance of an emission standard monitored by a CEMS or COMS or operating limit specified under § 63.1209 is not a violation of this subpart EEE if you operate in accordance with § 63.6(e)(1).

* * * * *

(B) * * *

(*4*) Although the automatic waste feed cutoff requirements of this paragraph (c)(2)(v)(B)(*4*) apply during startup and shutdown, an exceedance of an emission standard or operating limit is not a violation of this subpart EEE if you operate in accordance with § 63.6(e)(1).

* * * * *

Subpart GGG—[Amended]

■ 33. Section 63.1251 is amended by revising the first sentence in the definition of *malfunction* to read as follows:

§ 63.1251 Definitions.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, emissions monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. * * *

* * * * *

■ 34. Section 63.1256 is amended by revising paragraph (a)(4)(iii) to read as follows:

§ 63.1256 Standards: wastewater.

(a) * * *

(4) * * *

(iii) The owner or operator shall incorporate the procedures described in paragraphs (a)(4)(i) and (ii) of this section as part of the startup, shutdown, and malfunction plan required under § 63.6(e)(3).

* * * * *

■ 35. Section 63.1258 is amended by revising paragraph (b)(8)(iv) to read as follows:

§ 63.1258 Monitoring requirements.

* * * * *

(b) * * *

(8) * * *

(iv) Periods of time when monitoring measurements exceed the parameter values as well as periods of inadequate monitoring data do not constitute a violation if they occur during a start-up, shutdown, or malfunction, and the facility operates in accordance with § 63.6(e)(1).

* * * * *

■ 36. Section 63.1259 is amended by revising the first sentence in paragraph (a)(3) introductory text to read as follows:

§ 63.1259 Recordkeeping requirements.

(a) * * *

(3) * * * The owner or operator of an affected source shall develop a written startup, shutdown, and malfunction plan as specified in § 63.6(e)(3). * * *

* * * * *

Subpart HHH—[Amended]

■ 37. Section 63.1283 is amended by revising paragraph (d)(8)(i)(A) to read as follows:

§ 63.1283 Inspection and monitoring requirements.

* * * * *

(d) * * *

(8) * * *

(i) * * *

(A) During a period of startup, shutdown, or malfunction when the affected facility is operated during such period in accordance with § 63.6(e)(1); or

* * * * *

■ 38. Table 2 to Subpart HHH is amended by adding in numerical order a new entry for 63.6(e)(3)(ix) to read as follows:

Appendix: Table 2 to Subpart HHH of Part 63—Applicability of 40 CFR Part 63 General Provisions to Subpart HHH

General provisions reference	Applies to subpart HHH	Explanation
* *	* * * * *	*
§ 63.6(e)(3)(ix)	Yes.	
* *	* * * * *	*

Subpart JJJ—[Amended]

§ 63.1310 [Amended]

■ 39. Section 63.1310 is amended by removing the third sentence in paragraph (j)(1).

■ 40. Section 63.1335 is amended by:

■ a. Revising the first sentence in paragraph (b)(1) introductory text; and

■ b. Revising paragraph (h)(2)(iv)(A) to read as follows:

§ 63.1335 General recordkeeping and reporting provisions.

* * * * *

(b) * * *

(1) * * * The owner or operator of an affected source shall develop a written startup, shutdown, and malfunction plan as specified in § 63.6(e)(3). * * *

* * * * *

(h) * * *

(2) * * *

(iv) * * *

(A) The daily average or (batch cycle daily average) value during any startup, shutdown, or malfunction shall not be considered an excursion for purposes of paragraph (h)(2) of this section, if the owner or operator follows the applicable provisions of § 63.6(e)(1).

* * * * *

■ 41. Table 1 to Subpart JJJ is amended by adding in numerical order a new entry for 63.6(e)(3)(ix) to read as follows:

Table 1 to Subpart JJJ of Part 63—Applicability of General Provisions to Subpart JJJ Affected Sources

Reference	Applies to subpart JJJ	Explanation
* *	* * * * *	*
§ 63.6(e)(3)(ix)	Yes.	
* *	* * * * *	*

Subpart MMM—[Amended]

■ 42. Section 63.1361 is amended by revising the first sentence in the definition of *malfunction* to read as follows:

§ 63.1361 Definitions.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, emissions monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. * * *

* * * * *

■ 43. Section 63.1366 is amended by revising paragraph (b)(8)(iv) to read as follows:

§ 63.1366 Monitoring and inspection requirements.

* * * * *

(b) * * *

(8) * * *

(iv) Periods of time when monitoring measurements exceed the parameter values as well as periods of inadequate monitoring data do not constitute a violation if they occur during a startup, shutdown, or malfunction, and the facility operates in accordance with § 63.6(e)(1).

* * * * *

■ 44. Section 63.1367 is amended by revising the first sentence in paragraph (a)(3) introductory text to read as follows:

§ 63.1367 Recordkeeping requirements.

(a) * * *

(3) * * * The owner or operator of an affected source shall develop a written startup, shutdown, and malfunction plan as specified in § 63.6(e)(3). * * *

* * * * *

Subpart NNN—[Amended]

■ 45. Section 63.1386 is amended by revising the first sentence in paragraph (c)(1) introductory text to read as follows:

§ 63.1386 Notification, recordkeeping, and reporting requirements.

* * * * *

(c) * * *

(1) The owner or operator shall develop a written plan as described in § 63.6(e)(3) that contains specific procedures to be followed for operating the source and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process modifications and control systems used to comply with the standards. * * *

* * * * *

Subpart OOO—[Amended]

§ 63.1400 [Amended]

■ 46. Section 63.1400 is amended by removing the third sentence in paragraph (k)(1) and by removing the last sentence in paragraph (k)(2).

■ 47. Section 63.1402 is amended by revising the first sentence in the definition of *malfunction* in paragraph (b) to read as follows:

§ 63.1402 Definitions.

* * * * *

(b) * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment or process equipment, or failure of a process to operate in a normal or usual manner, or opening of a safety device which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. * * *

* * * * *

■ 48. Section 63.1413 is amended by revising the first sentence in paragraph (h)(4) introductory text and paragraph (h)(5) introductory text to read as follows:

§ 63.1413 Compliance demonstration procedures.

* * * * *

(h) * * *

(4) *Deviation from the emission standard.* If an affected source is not operated during periods of startup, shutdown, or malfunction in accordance with § 63.6(e)(1), there has been a deviation from the emission standard.

* * *

* * * * *

(5) *Situations that are not deviations.* If an affected source is operated during periods of startup, shutdown, or malfunction in accordance with § 63.6(e)(1), and any of the situations listed in paragraphs (h)(5)(i) through (iv) of this section occur, such situations shall not be considered to be deviations.

* * * * *

■ 49. Section 63.1416 is amended by:

■ a. Revising the first sentence in paragraph (b) introductory text; and

■ b. Revising paragraph (h)(2)(iv) to read as follows:

§ 63.1416 Recordkeeping requirements.

* * * * *

(b) * * * The owner or operator of an affected source shall develop a startup, shutdown, and malfunction plan as specified in § 63.6(e)(3) and shall keep the plan on-site. * * *

* * * * *

(h) * * *

(2) * * *

(iv) For purposes of paragraph (h)(2) of this section, a deviation means that the daily average, batch cycle daily average, or block average value of monitoring data for a parameter is greater than the maximum, or less than the minimum established value, except that the daily average, batch cycle daily average, or block average value during any startup, shutdown, or malfunction shall not be considered a deviation, if the owner or operator operates the source during such periods in accordance with § 63.6(e)(1).

■ 50. Table 1 to Subpart OOO is amended by adding in numerical order a new entry for 63.6(e)(3)(ix) to read as follows:

Table 1 to Subpart OOO of Part 63—Applicability of General Provisions to Subpart OOO Affected Sources

Reference	Applies to subpart OOO	Explanation
* *	* * *	* *
63.6(e)(3)(ix)	Yes.	
* *	* * *	* *

* * * * *

Subpart PPP—[Amended]

§ 63.1420 [Amended]

■ 51. Section 63.1420 is amended by removing the third sentence in paragraph (h)(1).

■ 52. Section 63.1439 is amended by:

■ a. Revising the first sentence in paragraph (b)(1) introductory text; and

■ b. Revising paragraph (h)(2)(iv)(A) to read as follows:

§ 63.1439 General recordkeeping and reporting provisions.

* * * * *

(b) * * *

(1) * * * The owner or operator of an affected source shall develop a written startup, shutdown, and malfunction plan as specified in § 63.6(e)(3). * * *

* * * * *

(h) * * *

(2) * * *

(iv) * * *

(A) The daily average value during any startup, shutdown, or malfunction shall not be considered an excursion for purposes of paragraph (h)(2) of this section, if the owner or operator operates the source during such periods in accordance with § 63.6(e)(1).

* * * * *

■ 53. Table 1 to Subpart PPP is amended by adding in numerical order a new entry for 63.6(e)(3)(ix) to read as follows:

Table 1 to Subpart PPP of Part 63—Applicability of General Provisions to Subpart PPP Affected Sources

Reference	Applies to subpart PPP	Explanation
* *	* * *	* *
63.6(e)(3)(ix)	Yes.	
* *	* * *	* *

* * * * *

Subpart QQQ—[Amended]

■ 54. Section 63.1448 is amended by revising paragraph (c) to read as follows:

§ 63.1448 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

■ 55. Section 63.1453 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 63.1453 How do I demonstrate continuous compliance with the emission limitations, work practice standards, and operation and maintenance requirements that apply to me?

* * * * *

(c) * * *

(1) * * *

(ii) Alarms that occur during startup, shutdown, or malfunction are not included in the calculation if the condition is described in the startup, shutdown, and malfunction plan, and you operated the source during such periods in accordance with § 63.6(e)(1).

* * * * *

Subpart RRR—[Amended]

■ 56. Section 63.1516 is amended by revising the first sentence in paragraph (a) introductory text as follows:

§ 63.1516 Reports.

(a) * * * The owner or operator must develop a written plan as described in

§ 63.6(e)(3) that contains specific procedures to be followed for operating and maintaining the source during periods of startup, shutdown, and malfunction, and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the standard. * * *

* * * * *

Subpart TTT—[Amended]

57. Section 63.1542 is amended by revising the first sentence in the definition of malfunction to read as follows:

§ 63.1542 Definitions.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. * * *

* * * * *

■ 58. Section 63.1547 is amended by revising paragraph (g)(2) to read as follows:

§ 63.1547 Monitoring requirements.

* * * * *

(g) * * *

(2) Alarms that occur during startup, shutdown, or malfunction shall not be included in the calculation if the condition is described in the startup, shutdown, and malfunction plan and the owner or operator operates the source during such periods in accordance with § 63.6(e)(1).

* * * * *

Subpart UUU—[Amended]

■ 59. Section 63.1570 is amended by:

■ a. Revising paragraph (d);

■ b. Removing and reserving paragraph (e); and

■ c. Revising paragraph (g) to read as follows:

§ 63.1570 What are my general requirements for complying with this subpart?

* * * * *

(d) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(e) [Reserved]

* * * * *

(g) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). The SSMP must include elements designed to minimize the frequency of such periods (i.e., root cause analysis). The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

■ 60. Table 44 to Subpart UUU is amended by adding in numerical order a new entry for 63.6(e)(3)(ix) to read as follows:

Table 44 to Subpart UUU of Part 63—Applicability of NESHAP General Provisions to Subpart UUU

* * * * *

Citation	Subject	Applies to subpart UUU	Explanation
*	*	*	*
§ 63.6(e)(3)(ix)		Yes.	
*	*	*	*

Subpart XXX—[Amended]

■ 61. Section 63.1651 is amended by revising the first sentence in the definition of malfunction to read as follows:

§ 63.1651 Definitions.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. * * *

* * * * *

■ 62. Section 63.1656 is amended by revising paragraph (e)(2)(ii) to read as follows:

§ 63.1656 Performance testing, test methods, and compliance demonstrations.

* * * * *

(e) * * *

(2) * * *

(ii) Do not include alarms that occur during startup, shutdown, and malfunction in the calculation if the condition is described in the startup, shutdown, and malfunction plan and the owner or operator operates the source during such periods in accordance with § 63.6(e)(1).

* * * * *

Subpart AAAA—[Amended]

■ 63. Section 63.1960 is amended by revising the fourth and sixth sentences to read as follows:

§ 63.1960 How is compliance determined?

* * * Finally, you must develop a written SSM plan according to the provisions in 40 CFR 63.6(e)(3). * * * Failure to write or maintain a copy of the SSM plan is a deviation from the requirements of this subpart.

* * * * *

■ 64. Section 63.1965 is amended by revising paragraph (c) to read as follows:

§ 63.1965 What is a deviation?

* * * * *

(c) A deviation occurs when a SSM plan is not developed or maintained on site.

Subpart CCCC—[Amended]

■ 65. Section 63.2150 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.2150 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written malfunction plan. * * *

■ 66. Section 63.2164 is amended by revising paragraph (a) to read as follows:

§ 63.2164 If I monitor brew ethanol, what are my monitoring installation, operation, and maintenance requirements?

(a) Each CEMS must be installed, operated, and maintained according to manufacturer's specifications and in accordance with § 63.6(e)(1).

* * * * *

§ 63.2171 [Amended]

■ 67. Section 63.2171 is amended by removing paragraph (d).

Subpart DDDD—[Amended]

■ 68. Section 63.2250 is amended by revising paragraph (c) to read as follows:

§ 63.2250 What are the general requirements?

* * * * *

(c) You must develop a written SSMP according to the provisions in § 63.6(e)(3).

* * * * *

■ 69. Section 63.2271 is amended by removing and reserving paragraph (b)(1) and revising the first sentence in paragraph (b)(2) to read as follows:

§ 63.2271 How do I demonstrate continuous compliance with the compliance options, operating requirements, and work practice requirements?

* * * * *

(b) * * *

(1) [Reserved]

(2) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the EPA Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

* * * * *

Subpart EEEE—[Amended]

■ 70. Section 63.2350 is amended by revising paragraph (c) to read as follows:

§ 63.2350 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction (SSM) plan according to the provisions in § 63.6(e)(3).

§ 63.2378 [Amended]

■ 71. Section 63.2378 is amended by removing the third sentence of paragraph (b)(1).

■ 72. Table 12 to subpart EEEE is amended by revising the citation to § 63.8(c)(1)(i)–(iii) to read as follows:

Table 12 to Subpart EEEE of Part 63—Applicability of General Provisions to Subpart EEEE

* * * * *

Citation	Subject	Brief description	Applies to subpart EEEE
*	*	*	*
§ 63.8(c) (1)(i)—(iii)	Routine and Predictable SSM.	Keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan..	Yes.
*	*	*	*

Subpart FFFF—[Amended]

■ 73. Table 12 to Subpart FFFF is amended by adding in numerical order a new entry for 63.6(e)(3)(ix) to read as follows:

Table 12 to Subpart FFFF of Part 63—Applicability of General Provisions to Subpart FFFF

* * * * *

Citation	Subject	Explanation
*	*	*
§ 63.6(e)(3)(ix)	SSMP incorporation into title V permit	Yes.
*	*	*

Subpart GGGG—[Amended]

■ 74. Table 1 to § 63.2850 is amended by revising the paragraph (a) entries to read as follows:

§ 63.2850 How do I comply with the hazardous air pollutant emission standards?

* * * * *

Table 1 to § 63.2850—Requirements for Compliance With HAP Emission Standards

Are you required to . . .	For periods of normal operation?	For initial startup periods subject to § 63.2850(c)(2) or (d)(2)?	For malfunction periods subject to § 63.2850(e)(2)?
(a) Operate and maintain your source in accordance with general duty provisions of § 63.6(e)?	Yes. Additionally, the HAP emission limits will apply.	Yes, you are required to minimize emissions to the extent practible throughout the initial startup period. Such measures should be described in the SSM plan.	Yes, you are required to minimizwe emissions to the extent practible throughout the initial startup period. Such measures should be described in the SSM plan.
*	*	*	*

* * * * *

■ 75. Section 63.2852 is amended by revising the first sentence to read as follows:

§ 63.2852 What is a startup, shutdown, and malfunction plan?

You must develop a written SSM plan in accordance with § 63.6(e)(3). * * *

■ 76. Table 1 to § 63.2870 is amended by revising the entry for ''§ 63.6(e)(1) through (e)(3)(ii) and § 63.6(e)(3)(v) through (vii)''; by removing the entry

''§ 63.6(e)(3)(v)(iii)'' and adding in it's place a new entry for ''§ 63.6(e)(3)(iii)''; and by adding in numerical order a new entry for ''§ 63.6(e)(3)(ix)'' to read as follows:

§ 63.2870 What parts of the General Provisions apply to me?

* * * * *

Table 1 to § 63.2870—Applicability of 40 CFR Part 63, Subpart A, to 40 CFR, Part 63, Subpart GGGG

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
* *	*	* *	* *	
§ 63.6(e)(1) through (e)(3)(ii) and § 63.6(e)(3)(v) through (vii).	Operation and maintenance requirements.	.....	Yes	Minimize emissions to the extent practical.
§ 63.6(e)(3)(iii)	Operation and maintenance requirements.	.....	No	Minimize emissions to the extent practical
* *	*	* *	* *	
§ 63.6(e)(3)(ix)	Title V permit	.....	Yes.	
* *	*	* *	* *	

■ 77. Section 63.2872(c) is amended by:

■ a. Revising the second sentence in the definition of *initial startup period;* and

■ b. Revising the third sentence in the definition of *malfunction period* to read as follows:

§ 63.2872 What definitions apply to this subpart?

* * * * *

(c) * * *

Initial startup period means * * * During an initial startup period, a source complies with the standards by minimizing HAP emissions to the extent practical. * * *

* * * * *

Malfunction period means * * * During a malfunction period, a source complies with the standards by minimizing HAP emissions to the extent practical. * * *

* * * * *

Subpart HHHH—[Amended]

■ 78. Section 63.2984 is amended by revising paragraph (b) to read as follows:

§ 63.2984 What operating limits must I meet?

* * * * *

(b) When during a period of normal operations you detect that an operating parameter deviates from the limit or range established in paragraph (a) of this section, you must initiate corrective actions within 1 hour according to the provisions of your OMM plan. The corrective actions must be completed in an expeditious manner as specified in the OMM plan.

* * * * *

■ 79. Section 63.2986 is amended by revising the first sentence in paragraph (g)(3) to read as follows:

§ 63.2986 How do I comply with the standards?

* * * * *

(g) * * *

(3) You must develop a written SSMP according to the provisions in § 63.6(e)(3). * * *

Subpart IIII—[Amended]

■ 80. Section 63.3100 is amended by revising the first sentence in paragraph (f) to read as follows:

§ 63.3100 What are my general requirements for complying with this subpart?

* * * * *

(f) If your affected source uses emission capture systems and add-on control devices, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). * * *

■ 81. Section 63.3163 is amended by:

■ a. Removing and reserving paragraph (g); and

■ b. Revising the first sentence in paragraph (h) to read as follows:

§ 63.3163 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(g) [Reserved]

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

* * * * *

Subpart KKKK—[Amended]

■ 82. Section 63.3500 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.3500 What are my general requirements for complying with this subpart?

* * * * *

(c) If your affected source uses an emission capture system and add-on control device for purposes of complying with this subpart, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). * * *

■ 83. Section 63.3542 is amended by:

■ a. Removing and reserving paragraph (g); and

■ b. Revising the first sentence in paragraph (h) to read as follows:

§ 63.3542 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(g) [Reserved]

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

* * * * *

■ 84. Section 63.3552 is amended by:

■ a. Removing and reserving paragraph (f); and

■ b. Revising the first sentence in paragraph (g) to read as follows:

§ 63.3552 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(f) [Reserved]

(g) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

* * * * *

Subpart MMMM—[Amended]

■ 85. Section 63.3900 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.3900 What are my general requirements for complying with this subpart?

* * * * *

(c) If your affected source uses an emission capture system and add-on control device, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). * * *

§ 63.3963 [Amended]

■ 86. Section 63.3963 is amended by removing and reserving paragraph (g).

Subpart NNNN—[Amended]

■ 87. Section 63.4100 is amended by revising the first sentence in paragraph (d) to read as follows:

§ 63.4100 What are my general requirements for complying with this subpart?

* * * * *

(d) If your affected source uses an emission capture system and add-on control device, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). * * *

■ 88. Section 63.4110 is amended by revising paragraph (b)(9)(v) to read as follows:

§ 63.4110 What notifications must I submit?

* * * * *

(b) * * *

(9) * * *

(v) A statement of whether or not you developed the startup, shutdown, and malfunction plan required by § 63.4100(d).

* * * * *

■ 89. Section 63.4163 is amended by:

■ a. Removing and reserving paragraph (g); and

■ b. Revising the first sentence in paragraph (h) to read as follows:

§ 63.4163 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(g) [Reserved]

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e). * * *

* * * * *

Subpart OOOO—[Amended]

■ 90. Section 63.4300 is amended by:

■ a. Revising paragraph (a)(3)(i); and

■ b. Revising the first sentence in paragraph (c) to read as follows:

§ 63.4300 What are my general requirements for complying with this subpart?

(a) * * *

(3) * * *

(i) The web coating/printing or dyeing/finishing operation(s) must be in compliance with the applicable emission limit in Table 1 to this subpart or minimize emissions at all times as required by § 63.6(e)(1).

* * * * *

(c) If your affected source uses an emission capture system and add-on control device, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). * * *

■ 91. Section 63.4310 is amended by revising paragraph (c)(9)(iv) to read as follows:

§ 63.4310 What notifications must I submit?

* * * * *

(c) * * *

(9) * * *

(iv) A statement of whether or not you developed and implemented the work practice plan required by § 63.4293 and developed the startup, shutdown, and malfunction plan required by § 63.4300.

■ 92. Section 63.4342 is amended by:

■ a. Removing and reserving paragraph (g); and

■ b. Revising the first sentence in paragraph (h) to read as follows:

§ 63.4342 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(g) [Reserved]

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or web coating/printing or dyeing/finishing operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

* * * * *

■ 93. Section 63.4352 is amended by:

■ a. Removing and reserving paragraph (g); and

■ b. Revising the first sentence in paragraph (h) to read as follows:

§ 63.4352 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(g) [Reserved]

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or web coating/printing operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

* * * * *

Subpart PPPP—[Amended]

■ 94. Section 63.4500 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.4500 What are my general requirements for complying with this subpart?

* * * * *

(c) If your affected source uses an emission capture system and add-on control device, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). * * *

§ 63.4563 [Amended]

■ 95. Section 63.4563 is amended by removing and reserving paragraph (g).

Section QQQQ—[Amended]

■ 96. Section 63.4700 is amended by revising the first sentence in paragraph (d) to read as follows:

§ 63.4700 What are my general requirements for complying with this subpart?

* * * * *

(d) If your affected source uses an emission capture system and add-on control device, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). * * *

■ 97. Section 63.4763 is amended by:

■ a. Removing and reserving paragraph (g); and

■ b. Revising the first sentence in paragraph (h) to read as follows:

§ 63.4763 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(g) [Reserved]

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of SSM of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

* * * * *

Subpart RRRR—[Amended]

■ 98. Section 63.4900 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.4900 What are my general requirements for complying with this subpart?

* * * * *

(c) If your affected source uses an emission capture system and add-on control device to comply with the emission limitations in § 63.4890, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). * * *

§ 63.4962 [Amended]

■ 99. Section 63.4962 is amended by removing and reserving paragraph (g).

Subpart UUUU—[Amended]

■ 100. Section 63.5515 is amended by revising paragraph (c) to read as follows:

§ 63.5515 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction (SSM) plan according to the provisions in § 63.6(e)(3).

* * * * *

■ 101. Section 63.5555 is amended by:

■ a. Removing and reserving paragraph (c); and

■ b. Revising paragraph (d) to read as follows:

§ 63.5555 How do I demonstrate continuous compliance with the emission limits, operating limits, and work practice standards?

* * * * *

(c) [Reserved]

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

■ 102. Table 10 to subpart UUUU of part 63 is amended by revising the citation to § 63.8(c)(1)(i) to read as follows:

Table 10 to Subpart UUUU of Part 63—Applicability of General Provisions to Subpart UUUU

* * * * *

Citation	Subject	Brief description	Applies to subpart UUUU
*	*	*	*
§ 63.8(c)(1)(i)	Routine and Predictable SSM	Keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan.	Yes.
*	*	*	*

Subpart WWWW—[Amended]

■ 103. Section 63.5835 is amended by revising paragraph (d) to read as follows:

§ 63.5835 What are my general requirements for complying with this subpart?

* * * * *

(d) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3) for any organic HAP emissions limits you meet using an add-on control.

■ 104. Section 63.5900 is amended by:

■ a. Revising paragraph (d); and

■ b. Revising the first sentence in paragraph (e) to read as follows:

§ 63.5900 How do I demonstrate continuous compliance with the standards?

* * * * *

(d) When you use an add-on control device to meet standards in § 63.5805, you are not required to meet those standards during periods of startup, shutdown, or malfunction, but you must operate your affected source to minimize emissions in accordance with § 63.6(e)(1).

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of malfunction for those affected sources and standards specified in paragraph (d) of this section are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

Subpart XXXX—[Amended]

■ 105. Section 63.5990 is amended by revising paragraph (d) to read as follows:

§ 63.5990 What are my general requirements for complying with this subpart?

* * * * *

(d) For each affected source that complies with the emission limits in Tables 1 through 3 to this subpart using a control device, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

* * * * *

Subpart YYYY—[Amended]

■ 106. Section 63.6140 is amended by revising paragraph (c) to read as follows:

§ 63.6140 How do I demonstrate continuous compliance with the emission and operating limitations?

* * * * *

(c) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, and malfunction are not violations if you have operated your stationary combustion turbine in accordance with § 63.6(e)(1)(i).

■ 107. Section 63.6175 is amended by revising paragraph (4) under the definition of *deviation* to read as follows:

§ 63.6175 What definitions apply to this subpart?

* * * * *

Deviation * * *

* * * * *

(4) Fails to satisfy the general duty to minimize emissions established by § 63.6(e)(1)(i).

* * * * *

Subpart ZZZZ—[Amended]

■ 108. Section 63.6640 is amended by:

■ a. Removing and reserving paragraph (c); and

■ b. Revising the first sentence in paragraph (d) to read as follows:

§ 63.6640 How do I demonstrate continuous compliance with the emission limitations and operating limitations?

* * * * *

(c) [Reserved]

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations from the emission or operating limitations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

* * * * *

■ 109. Section 63.6675 is amended by revising paragraph (4) under the definition of *deviation* and by revising the first sentence in the definition of *malfunction* to read as follows:

§ 63.6675 What definitions apply to this subpart?

* * * * *

Deviation * * *

* * * * *

(4) Fails to satisfy the general duty to minimize emissions established by § 63.6(e)(1)(i).

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. * * *

* * * * *

Subpart AAAAA—[Amended]

■ 110. Section 63.7100 is amended by revising paragraph (e) to read as follows:

§ 63.7100 What are my general requirements for complying with this subpart?

* * * * *

(e) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

■ 111. Section 63.7121 is amended by:

■ a. Removing and reserving paragraph (c); and

■ b. Revising the first sentence in paragraph (d) to read as follows:

§ 63.7121 How do I demonstrate continuous compliance with the emission limitations standard?

* * * * *

(c) [Reserved]

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

* * * * *

Subpart BBBBB—[Amended]

■ 112. Section 63.7185 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.7185 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan (SSMP). * * *

* * * * *

§ 63.7187 [Amended]

■ 113. Section 63.7187 is amended by removing and reserving paragraph (d).

Subpart CCCCC—[Amended]

■ 114. Section 63.7310 is amended by revising paragraph (c) to read as follows:

§ 63.7310 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

■ 115. Section 63.7336 is amended by removing introductory text in paragraph (b) and revising paragraph (b)(1) to read as follows:

§ 63.7336 What other requirements must I meet to demonstrate continuous compliance?

* * * * *

(b) *Startup, shutdowns, and malfunctions.* (1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1).

* * * * *

Subpart DDDDD—[Amended]

■ 116. Section 63.7505 is amended by revising paragraph (e) to read as follows:

§ 63.7505 What are my general requirements for complying with this subpart?

* * * * *

(e) If you have an applicable emission limit or work practice standard, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

■ 117. Section 63.7540 is amended by:

■ a. Revising the first sentence in paragraph (a)(9);

■ b. Removing and reserving paragraph (c); and

■ c. Revising the first sentence in paragraph (d) to read as follows:

§ 63.7540 How do I demonstrate continuous compliance with the emission limits and work practice standards?

(a) * * *

(9) If your unit is controlled with a fabric filter, and you demonstrate continuous compliance using a bag leak detection system, you must initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions as soon as practical, and operate and maintain the fabric filter system such that the alarm does not sound more than 5 percent of the operating time during a 6-month period. * * *

* * * * *

(c) [Reserved]

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you

demonstrate to the EPA Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

■ 118. Table 10 to subpart DDDDD of part 63 is amended by revising the citation to § 63.8(c)(1)(iii) to read as follows:

Table 10 to Subpart DDDDD of Part 63—Applicability of General Provisions to Subpart DDDDD

* * * * *

Citation	Subject	Brief description	Applicable
*	*	*	*
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance.	Must develop an SSMP for CMS	Yes.
*	*	*	*

Subpart EEEEE—[Amended]

■ 119. Section 63.7720 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.7720 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). * * *

■ 120. Section 63.7746 is amended by removing introductory text in paragraph (b) and revising paragraph (b)(1) to read as follows:

§ 63.7746 What other requirements must I meet to demonstrate continuous compliance?

* * * * *

(b) *Startups, shutdowns, and malfunctions.* (1) Consistent with the requirements of §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1).

* * * * *

Subpart FFFFF—[Amended]

■ 121. Section 63.7810 is amended by revising paragraph (c) to read as follows:

§ 63.7810 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

■ 122. Section 63.7835 is amended by removing introductory text to paragraph (b) and revising paragraph (b)(1) to read as follows:

§ 63.7835 What other requirements must I meet to demonstrate continuous compliance?

* * * * *

(b) *Startups, shutdowns, and malfunctions.* (1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1).

* * * * *

Subpart GGGGG—[Amended]

■ 123. Section 63.7935 is amended by:

■ a. Revising paragraph (c);

■ b. Removing and reserving paragraph (d); and

■ c. Revising the first sentence in paragraph (f) to read as follows:

§ 63.7935 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) [Reserved]

* * * * *

(f) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

* * * * *

■ 124. Table 3 to subpart GGGGG of part 63 is amended by revising the citation to § 63.8(c)(1)(i) to read as follows:

Table 3 to Subpart GGGGG of Part 63—Applicability of General Provisions to Subpart GGGGG

* * * * *

Citation	Subject	Brief description	Applies to subpart GGGGG
*	*	*	*
§ 63.8(c)(1)(i)	Routine and Predictable SSM	Keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan.	Yes.
*	*	*	*

Subpart HHHHH—[Amended]

■ 125. Table 10 to Subpart HHHHH is amended by adding in numerical order a new entry for 63.6(e)(3)(ix) to read as follows:

Table 10 to Subpart HHHHH of Part 63—Applicability of General Provisions to Subpart HHHHH

* * * * *

Citation	Subject	Explanation
* * * * * * *		
§ 63.6(e)(3)(ix)	Title V permit	Yes.
* * * * * * *		

Subpart IIIII—[Amended]

■ 126. Section 63.8226 is amended by revising paragraph (b) to read as follows:

§ 63.8226 What are my general requirements for complying with this subpart?

* * * * *

(b) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

■ 127. Section 63.8248 is amended by removing introductory text in paragraph (b) and revising paragraph (b)(1) to read as follows:

§ 63.8248 What other requirements must I meet?

* * * * *

(b) *Startups, shutdowns, and malfunctions.* (1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1).

* * * * *

Subpart JJJJJ—[Amended]

■ 128. Section 63.8420 is amended by revising paragraph (c) to read as follows:

§ 63.8420 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

* * * * *

■ 129. Section 63.8470 is amended by:

■ a. Removing and reserving paragraph (d); and

■ b. Revising the first sentence in paragraph (e) to read as follows:

§ 63.8470 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(d) [Reserved]

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1) and your OM&M plan. * * *

* * * * *

Subpart KKKKK—[Amended]

■ 130. Section 63.8570 is amended by revising paragraph (c) to read as follows:

§ 63.8570 What are my general requirements for complying with this subpart?

* * * * *

(c) For each kiln that is subject to the emission limits specified in Table 1 to this subpart, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

* * * * *

■ 131. Section 63.8620 is amended by:

■ a. Removing and reserving paragraph (d); and

■ b. Revising the first sentence in paragraph (e) to read as follows:

§ 63.8620 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

* * * * *

(d) [Reserved]

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1) and your OM&M plan. * * *

* * * * *

Subpart LLLLL—[Amended]

■ 132. Section 63.8685 is amended by revising paragraph (c) to read as follows:

§ 63.8685 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

* * * * *

■ 133. Section 63.8691 is amended by:

■ a. Removing and reserving paragraph (c); and

■ b. Revising the first sentence in paragraph (d) to read as follows:

§ 63.8691 How do I demonstrate continuous compliance with the operating limits?

* * * * *

(c) [Reserved]

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

■ 134. Table 7 to subpart LLLLL of part 63 is amended by revising the citation to § 63.8(c)(1)(i) to read as follows:

Table 7 to Subpart LLLLL of Part 63—Applicability of General Provisions to Subpart LLLLL

Citation	Subject	Brief description	Applies to subpart LLLLL
* * * * * * *			
§ 63.8(c)(1)(i)	Routine and predictable CMS malfunction.	1. Keep parts for routine repairs readily available. 2. Reporting requirements for CMS malfunction when action is described in SSM plan.	Yes.
* * * * * * *			

Subpart MMMMM—[Amended]

■ 135. Section 63.8794 is amended by revising paragraph (e) to read as follows:

§ 63.8794 What are my general requirements for complying with this subpart?

* * * * *

(e) For each new or reconstructed flame lamination affected source, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

* * * * *

■ 136. Section 63.8812 is amended by:

■ a. Removing and reserving paragraph (c); and

■ b. Revising the first sentence in paragraph (d) to read as follows:

§ 63.8812 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(c) [Reserved]

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur at a new or reconstructed flame lamination affected source during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

* * * * *

Subpart NNNNN—[Amended]

■ 137. Section 63.9005 is amended by revising paragraph (c) to read as follows:

§ 63.9005 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

* * * * *

■ 138. Section 63.9040 is amended by:

■ a. Removing and reserving paragraph (d); and

■ b. Revising the first sentence in paragraph (e) to read as follows:

§ 63.9040 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

* * * * *

(d) [Reserved]

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

Subpart PPPPP—[Amended]

■ 139. Section 63.9305 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.9305 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written SSM plan (SSMP) for emission control devices and associated monitoring equipment according to the provisions in § 63.6(e)(3). * * *

■ 140. Section 63.9340 is amended by removing introductory text in paragraph (c) and revising paragraph (c)(1) to read as follows:

§ 63.9340 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(c) *Startups, shutdowns, and malfunctions.* (1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of SSM of control devices and associated monitoring equipment are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1).

* * * * *

■ 141. Section 63.9375 is amended by revising the first sentence in the definition of malfunction to read as follows:

§ 63.9375 What definitions apply to this subpart?

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. * * *

* * * * *

■ 142. Table 7 to subpart PPPPP of part 63 is amended by revising the citation to § 63.8(c)(1)(i) to read as follows:

Table 7 to Subpart PPPPP of Part 63—Applicability of General Provisions to Subpart PPPPP

* * * * *

Citation	Subject	Brief description	Applies to subpart PPPPP
*	*	*	*
§ 63.8(c)(1)(i)	Routine and predictable CMS malfunctions.	1. Keep parts for routine repairs of CMS readily available. 2. Reporting requirements for SSM when action is described in SSMP.	Yes.
*	*	*	*

Subpart QQQQQ—[Amended]

■ 143. Section 63.9505 is amended by revising paragraph (c) to read as follows:

§ 63.9505 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

■ 144. Section 63.9530 is amended by:

■ a. Removing and reserving paragraph (d); and

■ b. Revising the first sentence in paragraph (e) to read as follows:

§ 63.9530 How do I demonstrate continuous compliance with the emission limitation that applies to me?

* * * * *

(d) [Reserved]

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). * * *

Subpart RRRRR—[Amended]

■ 145. Section 63.9610 is amended by revising paragraph (c) to read as follows:

§ 63.9610 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

■ 146. Section 63.9637 is amended by removing introductory text in paragraph (b) and revising paragraph (b)(1) to read as follows:

§ 63.9637 What other requirements must I meet to demonstrate continuous compliance?

* * * * *

(b) *Startups, shutdowns, and malfunctions.* (1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1).

* * * * *

Subpart SSSSS—[Amended]

■ 147. Section 63.9792 is amended by revising paragraph (c) to read as follows:

§ 63.9792 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

* * * * *

■ 148. Section 63.9810 is amended by removing and reserving paragraph (e)(1) and revising the first sentence in paragraph (e)(2) to read as follows:

§ 63.9810 How do I demonstrate continuous compliance with the emission limits, operating limits, and work practice standards?

* * * * *

(e) * * *

(1) [Reserved]

(2) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1) and your OM&M plan. * * *

Subpart TTTTT—[Amended]

■ 149. Section 63.9910 is amended by revising paragraph (b) to read as follows:

§ 63.9910 What are my general requirements for complying with this subpart?

* * * * *

(b) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

■ 150. Section 63.9925 is amended by removing introductory text in paragraph (b) and revising paragraph (b)(1) to read as follows:

§ 63.9925 What other requirements must I meet to demonstrate continuous compliance?

* * * * *

(b) *Startups, shutdowns, and malfunctions.* (1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1).

* * * * *

PART 65—[AMENDED]

■ 151. The authority citation of part 65 continues to read as follows:

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

Subpart A—[Amended]

■ 152. Section 65.2 is amended by revising the first sentence in the definition of *malfunction* to read as follows:

§ 65.2 Definitions.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. * * *

* * * * *

■ 153. Section 65.3 is amended by
■ a. Revising the second sentence in paragraph (a)(3);
■ b. Revising the first sentence in paragraph (a)(4); and
■ c. Revising paragraph (b)(2)(i) to read as follows:

§ 65.3 Compliance with standards and operation and maintenance requirements.

(a) * * *

(3) * * * The measures to be taken may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the regulated source. * * *

(4) Malfunctions shall be corrected as soon as practical after their occurrence. * * *

* * * * *

(b) * * *

(2) * * *

(i) During periods of startup, shutdown, or malfunction (and the source is operated during such periods in accordance with § 65.3(a)(3)), a monitoring parameter is outside its established range or monitoring data cannot be collected; or

* * * * *

■ 154. Section 65.6 is amended by:
■ a. Revising the first and fourth sentences in paragraph (b)(1) introductory text;
■ b. Revising paragraph (b)(2); and
■ c. Revising paragraph (c)(3) to read as follows:

§ 65.6 Startup, shutdown, and malfunction plan and procedures.

* * * * *

(b) *Startup, shutdown, and malfunction plan*—(1) *Description and purpose of plan.* The owner or operator of a regulated source shall develop a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the regulated source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the relevant standard. * * * The requirement to develop this plan shall be incorporated into the source's title V permit. * * *

* * * * *

(2) *Operation of source.* During periods of startup, shutdown, and malfunction, the owner or operator of a regulated source shall operate and maintain such source (including associated air pollution control equipment and CPMS) in accordance with § 65.3(a). The general duty to minimize emissions during a period of startup, shutdown, or malfunction does not require the owner or operator to achieve emission levels that would be required by the applicable standard at other times if this is not consistent with safety and good air pollution control practices, nor does it require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether such 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 (b)(1) of this section), review of operation and maintenance records, and inspection of the source.

* * * * *

(c) * * *

(3) If actions taken by an owner or operator during a startup, shutdown, and malfunction of a regulated source, or of a control device or monitoring system required for compliance (including actions taken to correct a malfunction) are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan, then the owner or operator shall state such information in a startup, shutdown, and malfunction report, and describe the actions taken. Such description can take the form of a checklist; only one checklist is necessary if actions taken are the same for multiple events during the reporting period.

* * * * *

■ 155. Section 65.115 is amended by revising the last sentence in paragraph (b)(1) and the last sentence in paragraph (b)(2) to read as follows:

§ 65.115 Standards: Closed vent systems and control devices; or emissions routed to a fuel gas system or process.

* * * * *

(b) *Compliance standard.* (1) * * * Note that this includes the startup, shutdown, and malfunction provisions of § 65.6.

(2) * * * Note that this includes the startup, shutdown, and malfunction provisions of § 65.6.

■ 156. Section 65.156 is amended by revising paragraphs (d)(3)(i) and (ii) to read as follows:

§ 65.156 General monitoring requirements for control and recovery devices.

* * * * *

(d) * * *

(3) * * *

(i) Excursions which occur during periods of startup, shutdown, and malfunction, when the source is being operated during such periods to minimize emissions in accordance with § 65.3(a)(3).

(ii) Excursions which occur due to failure to collect a valid hour of data during periods of startup, shutdown, and malfunction, when the source is being operated during such periods in accordance with § 65.3(a)(3).

* * * * *

■ 157. Section 65.161 is amended by revising paragraph (e)(2)(iv)(A) to read as follows:

§ 65.161 Continuous records and monitoring data system handling.

* * * * *

(e) * * *

(2) * * *

(iv) * * *

(A) The daily average value during any startup, shutdown, or malfunction shall not be considered an excursion for purposes of this paragraph (e) if the owner or operator operates the source in accordance with § 65.3(a).

* * * * *

■ 158. Section 65.163 is amended by revising paragraph (c)(2) to read as follows:

§ 65.163 Other records.

* * * * *

(c) * * *

(2) For each startup, shutdown, and malfunction during which excess emissions occur, records whether the procedures specified in the source's startup, shutdown, and malfunction plan were followed, and a description of actions taken to minimize emissions. For example, if a startup, shutdown, and malfunction plan includes procedures for routing control device emissions to a backup control device (for example, the incinerator for a halogenated stream could be routed to a flare during periods when the primary control device is out of service), records must be kept of whether the plan was followed. These records may take the form of a checklist or other form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan for the event.

* * * * *

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