

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 63 and 65

[OAR–2004–0094; FRL–7934–8]

RIN 2060–AM89

### National Emission Standards for Hazardous Air Pollutants; General Provisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of reconsideration of final rule; proposed amendments; request for public comment.

**SUMMARY:** On May 30, 2003, EPA promulgated amendments to the General Provisions to the national emission standards for hazardous air pollutants (NESHAP). On July 29, 2003, we were petitioned to reconsider certain aspects of the final rule amendments. This notice announces our reconsideration and requests public comment.

**DATES:** *Comments.* Comments must be received on or before September 12, 2005.

*Public Hearing.* If anyone contacts us requesting to speak at a public hearing by August 8, 2005, a public hearing will be held on August 15, 2005. Persons interested in attending the public hearing should contact Ms. Janet Eck at (919) 541–7946 to verify that a hearing will be held.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OAR–2004–0094, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Agency Web Site:* <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- *Email:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov), Attention Docket ID No. OAR–2004–0094.

- *Facsimile:* (202) 566–1741, Attention Docket ID No. OAR–2004–0094.

- *Mail:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room: B108, Mail Code: 6102T, Washington, DC, 20460, Attention E-Docket ID No. OAR–2004–0094.

- *Hand Delivery:* EPA Docket Center, (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room: B102, Mail Code: 6102T, Washington, DC, 20460, Attention Docket ID No. OAR–2004–

0094. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. OAR–2004–0094. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://www.regulations.gov), or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, U.S. EPA (C404–02), Attention Docket ID No. OAR–2003–0161, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. The EPA EDOCKET and the Federal [regulations.gov](http://www.regulations.gov) Web sites are “anonymous access” systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Public Hearing:* If a public hearing is held, it will be held at EPA's Campus located in Research Triangle Park, NC or an alternate site nearby.

*Docket:* All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI 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 in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 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 Air and Radiation Docket is (202) 566–1742.

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

#### 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 part 63 that must develop and implement a startup, shutdown, and malfunction plan.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today's proposal 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 proposed rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

##### II. Background

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 the final rule, *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 rule,

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 also proposed to require that all sources subject to § 63.6(e)(3) submit their SSM plans to their permitting authority, instead of only when requested.

Many commenters vigorously opposed the proposed new requirement to routinely submit their SSM plans instead of maintaining the plans on site and submitting them only when requested. They cited the burden of untangling the plans from operating procedures and CBI. They also noted the significant paperwork burden that would be imposed on the permitting authority.

We agreed with the commenters regarding the unnecessary burden and that access to the plans can still be maintained in less burdensome ways. We issued final amendments (68 FR 32586, May 30, 2003) that pared the broad requirement for submittal of all plans and 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."

Today, we are announcing our reconsideration of these issues arising from the final amendments of May 30, 2003, regarding SSM plans, and are requesting public comment on these issues.

### III. Proposed Response to NRDC's Reconsideration Petition

The General Provisions to 40 CFR part 63 require that "at all times, including periods of startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. During a period of startup, shutdown, or malfunction, this general duty to minimize emissions requires that the owner or operator reduce emissions from the affected source to the greatest extent which is consistent with safety and good air pollution control practices." This is the so-called "general duty" clause and the applicable requirement under MACT standards for emission reductions during periods of SSM.

This general duty clause is modeled on the general duty clause in the General Provisions to 40 CFR part 60, which governs new source performance standards (NSPS). These NSPS are technology based as are the MACT standards developed under 40 CFR part 63. The general duty clause is designed to recognize that technology-based standards may not always be met, as technology fails occasionally beyond the control of the owner or operator. Because emission control technology is normally designed to minimize emissions under normal operating conditions, periods of startup and shutdown may also cause technology standards to be exceeded beyond the control of the owner or operator. It is during these periods of SSM that the general duty clause becomes most prominent. If the standards cannot be met during a period of SSM, then the owner or operator must take steps to minimize emissions to the extent practicable. It is important to note that, for certain source categories where startups and shutdowns occur frequently and where the Agency was able to develop specific standards or additional provisions for emission control during startups and shutdowns, those standards have been included in

specific MACT standards. One example is contained in the NESHAP for Halogenated Solvent Cleaners (40 CFR part 63, subpart T). In these cases, the specific MACT standards take precedence over the General Provisions at issue in this rulemaking.

While the NSPS rely solely on the general duty clause to minimize emissions during SSM periods, 40 CFR part 63 further requires that owners or operators develop and implement a written SSM plan that describes procedures for operating and maintaining the source during periods of SSM, and a program of corrective action for malfunctioning process, air pollution control, and monitoring equipment used to comply with the relevant standards. A primary purpose of the plan is to ensure that, during periods of SSM, the owner or operator operates and maintains each affected source, including associated air pollution control and monitoring equipment, in a manner which satisfies the general duty clause of 40 CFR 63.6(e)(1)(i). The Agency believes that by requiring owners or operators to anticipate possible SSM scenarios and to decide ahead of time how to minimize emissions in these situations, the requirement to prepare an SSM plan will play a valuable role. Therefore, an adequate SSM Plan must be developed consistent with the requirements of 40 CFR 63.6(e) and other 40 CFR part 63 subparts that have SSM-related requirements.

While the requirement is that an owner or operator develop and implement an SSM plan, the plan itself does not become part of, and is not incorporated into, the source's title V permit. Thus, the source is required to have an SSM plan, but the provisions in the plan are not applicable requirements. Again, the applicable requirement during periods of SSM is the general duty to minimize emissions.

The SSM plan documents procedures that source owners or operators should follow during periods of SSM. These plans are source-specific and often are not standalone documents. Many plans reference other in-plant operating procedures and also often contain CBI. Plans must remain flexible and for large facilities may be revised frequently. Establishing the specific procedures in SSM plans as applicable requirements may unnecessarily constrain a source during a period where unanticipated events call for maximum flexibility. While the SSM plan may go a long way toward minimizing emissions, making the plan an applicable requirement would not necessarily ensure that

emissions are minimized during these periods.

To clarify and emphasize that the applicable requirement is the general duty to minimize emissions and not the specifics in the SSM plan itself, we are proposing to retract the requirement to implement the plan during periods of SSM. This is consistent with the concept that the plan specifics are not applicable requirements and thus cannot be required to be followed. Nonetheless, the general duty to minimize emissions remains intact and is the applicable requirement; determination of whether a source met its obligation during periods of SSM can be made in part by whether a source followed an adequate plan. Although a source would not be required to follow the plan, it still must report periods of SSM and whether the plan was followed, as discussed below. Indeed, if, during an SSM event, a source is not in compliance with the emission limits or parameter values applicable under normal operations and has not followed its SSM plan, this may be evidence that the source has not complied with the general duty clause obligation. However, the source may be able to offer a defense for following an alternative approach that is more effective. In addition, we note that following the SSM plan itself is no "safe harbor" for sources if the plan is found to be deficient. That is, a source could not use "following the plan" as a defense for an inadequate program to minimize emissions.

We believe, however, that SSM plans help owners or operators by consciously having them focus on steps to minimize emissions during SSM prior to the events happening. It also establishes consistent operating procedures during these periods so that facility operators can address the same types of events the same way. The plan also aids permitting authorities so that each event does not have to be investigated individually. The inspector may review the plan, audit some SSM events to see if the plan was followed, and assess whether the plan was adequate.

The SSM plan required under 40 CFR part 63 is further tied to recordkeeping and reporting requirements that alert permitting authorities to continuing potential problems at a facility. All periods of SSM must be reported. If the SSM plan is not followed and the applicable emission limitation is exceeded, this fact, and the actions taken by the source, must be reported 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.

If the source follows the SSM plan (whether or not the applicable emission limitation is exceeded), or if the plan is not followed and the applicable emission limitation is not exceeded, reports are due semiannually.

These periodic and immediate SSM reports provide the permitting authority with adequate information to determine if the facility has SSM problems above and beyond what might normally be expected. The types and frequency of SSM events will vary from source category to source category. Sources that report much higher number of SSM events than other sources within the same source category would be subject to higher scrutiny by the permitting authority, by EPA, and presumably by the public. Inspectors would examine the facility's records and its SSM plan to determine its adequacy and whether it conformed to the general duty clause. If not, the facility could be cited for violating the general duty clause and required to revise its plan to minimize emissions to the satisfaction of the permitting authority. As such, the reports identify potential problems that can be followed up with appropriate action.

We are also proposing to make a conforming change to startup and shutdown recordkeeping consistent with a reporting change to startups and shutdowns we made to 40 CFR 63.10(d)(5)(i) on May 30, 2003 at 68 FR 32586. In that notice, we relieved the owner or operator from detailed reporting for startups and shutdowns when the applicable standards are not exceeded. In this notice, we propose to make similar changes for startup and shutdown recordkeeping. This change would not affect recordkeeping for malfunctions.

Review of each SSM plan, from each facility, by the permitting authority, for adequacy prior to implementation is neither reasonable nor necessary. There are thousands of sources required to develop SSM plans, and each plan is tailored to its source. Some plans are closely tied and cross referenced to other operating materials at the source. Many, and perhaps most, plans contain CBI. The burden on the permitting authorities to review every plan would be enormous. We believe that the proposed SSM reporting regimen accomplishes the same result in a much more efficient way to identify poor performers and inadequate plans. The SSM provisions as a whole would form a coordinated program for minimizing emissions and alerting permitting authorities to problems and noncompliance with the general duty clause.

In its petition for reconsideration, NRDC argues that, under the CAA, SSM plans must be made available to the public because they are "compliance plans" within the meaning of sections 502(b)(8) and 503(e) of the CAA. We disagree. The term "compliance plan" (as well as the related term "schedule of compliance") has a specific meaning under the CAA. A compliance plan, which a source must submit along with its permit application, contains a brief description of method or methods that the source is using or plans to use to meet each applicable requirement.

The compliance plan must also include a "schedule of compliance." If a source is in compliance with all applicable requirements, and if there are no promulgated but not-yet-effective additional requirements that will become applicable to the source in the future, then the schedule of compliance simply notes these facts. If the source will become subject to a new EPA or State implementation plan (SIP) requirement that is not yet in effect but will become applicable in the future, or if the source is out of compliance with a currently applicable requirement, then the schedule of compliance takes on added importance. In either case, it must outline the steps that the source will take to come into compliance and include a time line for taking each of those steps. It is clear, however, that an SSM plan is neither a "compliance plan" nor a "schedule of compliance" as those terms are used in the CAA.

In arguing to the contrary, NRDC construes statements in our March 23, 2001, and December 9, 2002, proposed rules as recognizing that SSM plans are compliance plans. To the extent that these notices stated or implied that SSM plans are compliance plans, these statements are not consistent with sections 502(b)(8) and 503(e) of the CAA.

It is important to note that the Administrator (or an authorized permitting authority) may at any time require a facility owner or operator to submit a copy of an SSM plan under section 114(a) of the CAA. Under section 114(c), the public may also obtain a copy of any SSM plan obtained by the Administrator (or authorized permitting authority) under section 114(a). In its petition for reconsideration, NRDC cites a technical support document accompanying the May 30, 2003 final rule which suggests that, under sections 114(c) and 503(e), there is a general obligation to provide public access to SSM plans, regardless of whether EPA or the permitting authority had obtained an SSM plan from a source under section 114(a). We

no longer believe this to be a correct interpretation of section 114(c) or 503(e).

As noted above, section 114(c) of the CAA simply provides that, when EPA or an authorized permitting authority has taken action to request information such as an SSM plan under section 114(a), then the public may obtain a copy of that information (subject to statutory limitations about confidential information). Section 503(e) of the CAA states that “[a] copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this title, shall be available to the public.” As noted above, an SSM plan is not part of a permit application or a permit and is not a compliance plan, a schedule of compliance, an emissions or compliance monitoring report, or a certification within the meaning of section 503(e).

After reviewing NRDC’s petition for reconsideration, we have concluded that the CAA does not require EPA or a permitting authority to obtain SSM plans at the request of the public. Nor does the CAA provide EPA with authority to impose such a requirement on permitting authorities. As noted above, however, the public is entitled to have access to an SSM plan if EPA or a permitting authority takes action to obtain such a plan under section 114(a) of the CAA.

We do not believe that mandating public access to such plans is necessary for public oversight of the applicable requirement or of MACT during SSM periods. In fact, as noted above, we are concerned that any mandate for public access could make SSM plans less effective, because a source would be less likely to include in its plan sensitive details about its operations—details that are likely to be effective in minimizing emissions during periods of SSM. As previously explained in this notice, the general duty, rather than the SSM plan itself, is the applicable requirement during startup, shutdown, and malfunction periods. In effect, the general duty is MACT for these specified periods in which the control technology for normal operations is inapplicable.

To make the regulatory status and significance of SSM plans clear, we are proposing to remove the provision in 40 CFR 63.6(e)(3)(v) that requires a permitting authority to obtain an SSM plan under certain conditions. Consequently, we are proposing to deny NRDC’s request to revise the 40 CFR part 63 General Provisions to allow

unlimited public access to a source’s SSM plan.

We recognize that, in some cases, members of the public may want to obtain SSM plans—especially where a source has reported (as required under our rules) an unusually high number of SSM events relative to similar sources. In such cases, public oversight of SSM plans could be useful to EPA, permitting authorities, and sources themselves. Many sources will be responsive to direct community requests without any governmental involvement at all. To the extent that government involvement is necessary, we believe that the mechanisms and conditions under which a permitting authority will respond to a request that it obtain an SSM plan is best left at the local level.

Finally, we also note that EPA and State and local environmental agencies are actively working with industrial facilities to reduce emissions associated with startups, shutdowns, and malfunctions. One major refining and chemical manufacturing company, Flint Hills Resources (FHR), recently approached EPA to propose a significant collaborative project intended to reduce SSM emissions from FHR refineries and chemical manufacturing facilities. The main goal of this collaboration, which is now under way, is to reduce emissions from SSM’s through development and implementation of an approach that establishes explicit operational expectations and defines good engineering practices and good air pollution control practices at its facilities. The project aims to evaluate and continuously improve SSM practices with the goal of establishing state-of-the-art practices that can be replicated by other facilities. The project will provide EPA and State regulators with information and data that could help inform how to improve SSM practices across the regulated community. The project will also provide the public with improved information on FHR’s SSM performance.

#### 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 the 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 “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

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

This action does not impose any new information collection burden. The amendments eliminate the requirement for sources to follow their SSM plan, but do not require any additional recordkeeping and reporting, or any other information collection obligation. However, OMB has previously approved the information collection requirements contained in the existing regulations of 40 CFR part 63 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 Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed 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 the proposed amendments on small entities, I certify 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 this proposal; 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.

Based on the considerations above, we have concluded that the proposed amendments will relieve regulatory burden for all affected small entities. Nevertheless, we continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

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

EPA has determined that these proposed amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Sources subject to MACT

standards would not be required to take any action under this proposal, including sources owned or operated by State, local, or tribal governments. Thus, the proposed amendments are not subject to the requirements of sections 202 and 205 of UMRA. EPA has determined that the proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Thus, the proposed amendments are not subject to the requirements of section 203 of the UMRA.

### E. Executive Order 13132: Federalism

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

The proposed amendments do not have federalism implications. They 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. These amendments would impose no new requirements. Thus, Executive Order 13132 does not apply to these proposed amendments.

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

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

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (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.” These proposed 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. Any tribal government that owns or operates a source subject to MACT standards would not be required to take any action under this proposal. Thus, Executive Order 13175 does not apply to these proposed amendments.

The EPA specifically solicits additional comment on the proposed amendments from tribal officials.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (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 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 proposed amendments are not subject to Executive Order 13045 because all MACT standards governed by the General Provisions are based on technology performance and not on health or safety risks.

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

The proposed amendments are not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply distribution, or use of energy. The proposed amendments would impose no new requirements.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law No. 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any VCS. EPA welcomes comments on this aspect of the proposed amendments, and specifically invites the public to identify potentially applicable VCS and to explain why such standards should be used in the proposed amendments.

**List of Subjects in 40 CFR Parts 63 and 65**

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

Dated: June 30, 2005.

**Stephen L. Johnson,**  
*Administrator.*

For the reasons cited in the preamble, title 40, chapter 1, parts 63 and 65 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 63—[AMENDED]**

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

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

**Subpart A—[Amended]**

- 2. Section 63.6 is amended by:
  - a. Revising the first sentence in paragraph (e)(1)(ii);
  - b. Revising the first sentence in paragraph (e)(3)(i) introductory text;
  - c. Removing and reserving paragraph (e)(3)(ii);
  - d. Revising the first sentence in paragraph (e)(3)(iii);
  - e. Removing the sixth sentence in paragraph (e)(3)(v); and
  - f. Revising the first sentence in paragraph (e)(3)(ix) to read as follows:

**§ 63.6 Compliance with standards and maintenance requirements.**

\* \* \* \* \*

(e) \* \* \*  
(1)(i) \* \* \*  
(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.

\* \* \*

\* \* \* \* \*

(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.

\* \* \*

\* \* \* \* \*

(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. \* \* \*

\* \* \* \* \*

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 revising paragraphs (b)(2)(i) and (ii), and the first sentence in paragraph (v) 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;

(v) All information necessary 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.

Subpart F—[Amended]

5. 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).

Subpart G—[Amended]

6. Section 63.152 is amended by: a. Revising paragraph (c)(2)(ii)(C)(1); and b. Revising paragraph (g)(2)(iv)(A) to read as follows:

§ 63.152 General reporting and continuous records.

(c) (2) (ii) (C) (1) During periods of startup, shutdown, or malfunction when the source is operated during such periods in accordance with § 63.6(e).

(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 § 63.6(e).

Subpart L—[Amended]

7. Section 63.310 is amended by: a. Revising paragraph (b); and b. Revising paragraph (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]

8. 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]

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

10. 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.

(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).

Subpart Y—[Amended]

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

§ 63.562 Standards.

(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]

12. 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]**

13. 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]**

14. 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); or

**Subpart GG—[Amended]**

15. 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]**

16. 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); or

**Subpart LL—[Amended]**

17. 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. \* \* \*

\* \* \* \* \*

18. 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]**

19. Section 63.864 is amended by revising paragraph (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. \* \* \*

\* \* \* \* \*

20. 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 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 SS—[Amended]**

21. 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 § 63.6(e) 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 § 63.6(e) 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 § 63.6(e)) 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]**

22. 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 § 63.6(e)), or  
\* \* \* \* \*

23. 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.  
\* \* \* \* \*

**Subpart CCC—[Amended]**

24. 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]**

25. 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 take the corrective measures prescribed in § 63.6(e).  
\* \* \* \* \*

(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).  
\* \* \* \* \*

**Subpart GGG—[Amended]**

26. 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).  
\* \* \* \* \*

27. 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]**

28. 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); or  
\* \* \* \* \*

**Subpart JJJ—[Amended]**

**§ 63.1310 [Amended]**

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

30. Section 63.1335 is amended by revising the first sentence in paragraph (b)(1) introductory text 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). \* \* \*  
\* \* \* \* \*

**Subpart MMM—[Amended]**

31. 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).  
\* \* \* \* \*

32. 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]**

33. 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]**

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

35. Section 63.1413 is amended by revising the first sentence in paragraph (h)(4) introductory text and paragraph (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), 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), 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. \* \* \* \* \*

36. 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).

**Subpart PPP—[Amended]**

**§ 63.1420 [Amended]**

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

38. 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). \* \* \* \* \*

**Subpart QQQ—[Amended]**

39. 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).

40. 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). \* \* \* \* \*

**Subpart RRR—[Amended]**

41. 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]**

42. 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). \* \* \* \* \*

**Subpart UUU—[Amended]**

43. Section 63.1570 is amended by:

- a. Revising paragraph (d);
- b. Removing and reserving paragraph (e); and
- c. Revising the first sentence in 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). \* \* \*

**Subpart XXX—[Amended]**

44. 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).

\* \* \* \* \*

**Subpart AAAA—[Amended]**

45. 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.

46. 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]**

47. 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. \* \* \*

48. 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).

\* \* \* \* \*

**§ 63.2171 [Amended]**

49. Section 63.2171 is amended by removing paragraph (d).

**Subpart DDDD—[Amended]**

50. 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).

\* \* \* \* \*

51. 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). \* \* \*

\* \* \* \* \*

**Subpart EEEE—[Amended]**

52. 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]**

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

54. 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**

[As stated in §§ 63.2382 and 63.2398, you must comply with the applicable General Provisions requirements as follows:]

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 GGGG—[Amended]**

55. 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 to (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 practicable throughout the initial startup period. Such measures should be described in the SSM plan.	Yes, you are required to minimize emissions to the extent practicable throughout the initial startup period. Such measures should be described in the SSM plan.
*	*	*	*

\* \* \* \* \*  
56. 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). \* \* \*

57. In § 63.2870 Table 1 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 for “§ 63.6(e)(3)(v)(iii)” and adding in its place “§ 63.6(e)(3)(iii)” 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.
*	*	*	*	*

58. 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]**

59. 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.

\* \* \* \* \*

60. 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]**

61. 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). \* \* \*

62. 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). \* \* \*

\* \* \* \* \*

**Subpart KKKK—[Amended]**

63. 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). \* \* \*

64. 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). \* \* \*

\* \* \* \* \*

65. 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). \* \* \*

\* \* \* \* \*

**Subpart MMMM—[Amended]**

66. 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]**

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

**Subpart NNNN—[Amended]**

68. 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). \* \* \*

69. 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).

\* \* \* \* \*

70. 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]**

71. 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).

\* \* \* \* \*

(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). \* \* \*

72. 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.

73. 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). \* \* \*

\* \* \* \* \*

74. 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). \* \* \*

**Subpart PPPP—[Amended]**

75. 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]**

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

**Subpart QQQQ—[Amended]**

77. 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). \* \* \*

78. 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). \* \* \*

\* \* \* \* \*

**Subpart RRRR—[Amended]**

79. 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]**

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

**Subpart UUUU—[Amended]**

81. 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).

\* \* \* \* \*

82. 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 according to § 63.6(e). 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).

83. 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

[As required in §§ 63.5515(h) and 63.5600, you must comply with the appropriate General Provisions requirements specified in the following table]

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]**

84. 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.

85. 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)(i).

(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). \* \* \*

**Subpart XXXX—[Amended]**

86. 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]**

87. 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 full conformity with the general duty to minimize emissions established by § 63.6(e)(1)(i).

88. 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* means \* \* \*

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

\* \* \* \* \*

**Subpart ZZZZ—[Amended]**

89. 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). \* \* \*

\* \* \* \* \*

90. Section 63.6675 is amended by revising paragraph (4) under the definition of *deviation* to read as follows:

**§ 63.6675 What definitions apply to this subpart?**

\* \* \* \* \*

*Deviation* means \* \* \*

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

\* \* \* \* \*

**Subpart AAAAA—[Amended]**

91. 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).

92. 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). \* \* \*

\* \* \* \* \*

**Subpart BBBB—[Amended]**

93. 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]**

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

**Subpart CCCC—[Amended]**

95. 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).

96. 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).

\* \* \* \* \*

**Subpart DDDDD—[Amended]**

97. 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).

98. 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). \* \* \*

99. 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**  
 [As stated in § 63.7565, you must comply with the applicable General Provisions according to the following]

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]**

100. 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). \* \* \*

101. 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). \* \* \* \* \*

**Subpart FFFFF—[Amended]**

102. 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).

103. 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). \* \* \* \* \*

**Subpart GGGGG—[Amended]**

104. 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 according to § 63.6(e). \* \* \*

\* \* \* \* \*

**Subpart IIIII—[Amended]**

105. 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).

106. 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 according to the requirements of § 63.6(e). \* \* \* \* \*

**Subpart JJJJJ—[Amended]**

107. 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).

\* \* \* \* \*

108. 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 according to the requirements of § 63.6(e) and your OM&M plan. \* \* \*

**Subpart KKKKK—[Amended]**

109. 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).

\* \* \* \* \*

110. 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 according to the requirements of § 63.6(e) and your OM&M plan. \* \* \*

\* \* \* \* \*

**Subpart LLLLL—[Amended]**

111. 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).

\* \* \* \* \*

112. 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). \* \* \*

113. 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	Applicable
* * * * *	* * * * *	* * * * *	* * * * *
§ 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]**

114. 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).

\* \* \* \* \*

115. 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). \* \* \*

\* \* \* \* \*

**Subpart NNNNN—[Amended]**

116. 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).

\* \* \* \* \*

117. 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). \* \* \*

**Subpart P P P P P—[Amended]**

118. 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). \* \* \*

119. 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).

\* \* \* \* \*

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

**TABLE 7 TO SUBPART P P P P P OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART P P P P P**

[As stated in § 63.9365, you must comply with the General Provisions in §§ 63.1 through 63.15 that apply to you according to the following table]

Citation	Subject	Brief description	Applicable
* * * * *	* * * * *	* * * * *	* * * * *
§ 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 Q Q Q Q Q—[Amended]**

121. 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).

122. 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). \* \* \*

**Subpart R R R R R—[Amended]**

123. 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).

124. 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).

\* \* \* \* \*

**Subpart S S S S S—[Amended]**

125. 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).

\* \* \* \* \*

126. 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 according to § 63.6(e) and your OM&M plan. \* \* \*

**Subpart T T T T T—[Amended]**

127. 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).

128. 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).

\* \* \* \* \*

**PART 65—[Amended]**

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

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

**Subpart A—[Amended]**

130. Section 65.3 is amended by a. Revising the first sentence in paragraph (a)(4); and

b. Revising paragraph (b)(2)(i) to read as follows:

**§ 65.3 Compliance with standards and operation and maintenance requirements.**

(a) \* \* \*

(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 § 63.3(a)(3)), a monitoring parameter is outside its established range or monitoring data cannot be collected; or

\* \* \* \* \*

131. Section 65.6 is amended by revising the first and fourth sentence in paragraph (b)(1) introductory text and revising paragraph (b)(2) 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).

\* \* \* \* \*

132. 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).

\* \* \* \* \*

[FR Doc. 05-13497 Filed 7-28-05; 8:45 am]

BILLING CODE 6560-50-P