

copying." The "Administrator" is defined to include a State which has received delegation and is therefore the Administrator's "authorized representative" (40 CFR 63.2).

We stated in the proposal preamble for the previous rulemaking (66 FR 16326, March 23, 2001) that the permit writer or the Administrator may also require submission of the SSM plan. However, Sierra Club observed during settlement discussions that the rule as amended in April 5, 2002 did not expressly require that SSM plans be submitted to the Administrator or to the permitting authority upon request.

Because SSM plans are required for facilities subject to CAA section 112, they clearly are covered by CAA section 114(a). Therefore, to address the concern expressed by Sierra Club, we have revised the rule to make it clear that the owner or operator of an affected facility is required to submit its SSM plan to the Administrator or the permitting authority upon request. We also note that SSM plans are considered to be submitted to the Administrator under CAA section 114 even if they are submitted to a State or local agency acting on the Administrator's behalf (40 CFR 2.301(b)(2)). Under CAA section 114(c), any plan that is submitted to EPA or the permitting authority must also be made available to the public, unless the submitter makes a satisfactory showing that disclosure would divulge methods or processes that are entitled to protection under the Trade Secrets Act, 18 U.S.C. 1905.

During settlement discussions, the Sierra Club also expressed concern that some permitting authorities might not construe the rule to require that an SSM plan be obtained from the affected source when it is requested by a member of the public. We agreed to propose some revisions to the rule to facilitate better public access. We proposed to require sources to submit a copy of the SSM plan to the permitting authority at the time it is first adopted and each time it is subsequently revised.

Many commenters vigorously opposed these proposed amendments. A number of industry commenters argued that there is no general obligation to provide public access to SSM plans, and that only those plans that the States or EPA actually elect to obtain from the sources must be made available to the public. These commenters argued that EPA has incorrectly construed the SSM plan as an integral part of the permit documentation that must be made available to the public under CAA sections 114(c) and 503(e).

Industry commenters also argued that requiring routine submission of SSM

plans would be very burdensome for sources, because SSM plans are often fully integrated into other operating procedures at a source, and production of a complete SSM plan might, therefore, require copying and compilation of other documents. Commenters also expressed concern about the burden on sources associated with identification and segregation of claimed Confidential Business Information (CBI), and the danger that permitting authorities might inadvertently disclose such information. Commenters also argued that routine submission of SSM plans would be burdensome for the permitting authorities.

A number of commenters suggested that appropriate public access to SSM plans could be assured by a less burdensome approach, focusing on the specific problems with the current rule that we identified in the proposal. Some commenters suggested that EPA could adopt new regulatory language specifically requiring sources to submit SSM plans when requested by the permitting authority. Others suggested that EPA provide clearer guidance to permitting authorities indicating that they are responsible and have the authority to obtain SSM plans when requested by the public. We think that these ideas are constructive.

We acknowledge that adopting a requirement that copies of SSM plans be routinely submitted to the permitting authorities would be burdensome. In particular, we think that significant resources would be expended on the process of identifying and segregating claimed CBI in each plan. We also acknowledge that the proper maintenance of these extra records would necessarily involve additional resource expenditures by the permitting authorities.

We have concluded that these additional burdens are not necessary to assure appropriate public access to SSM plans. As suggested by some commenters, we have decided instead to adopt a less burdensome approach tailored to the specific problems we identified in the proposal.

We believe that SSM plans will be most effective in minimizing emissions during periods of startup, shutdown, or malfunction if they are fully integrated with the detailed process and operating procedures of a facility. We also recognize that these types of procedures may contain trade secrets and other sensitive information, and that the integration of SSM plans with these other procedures may make it more difficult and costly for a facility to redact them in a way that would be

suitable for public disclosure. We do not wish to discourage facilities from integrating SSM plans with other procedures.

On the other hand, we recognize that there will sometimes be substantial public interest in the details of SSM plans. There is increasing concern about emissions that may occur during a period of startup, shutdown, or malfunction. In addition, SSM plans may include basic information about when the emission limitations in a MACT standard apply to a particular facility and when they do not. To strike the right balance between public disclosure and the need to make SSM plans comprehensive and effective, we have adopted the following approach in this final rule.

First, we believe that the permitting authorities, acting on behalf of the public, can and should play the primary role in reviewing SSM plans and ensuring that affected sources take the necessary steps to minimize emissions during periods of startup, shutdown, or malfunction. We know that some permitting authorities review these plans during the process for initial permit issuance. In other instances, we expect that permitting authorities will review SSM plans in conjunction with inspections and other site visits, when they can more readily observe how the SSM plan relates to other operational procedures at the facility. In addition, under the language we are adopting, owners or operators must promptly submit a copy of any SSM plan (or any portion thereof) maintained at the affected source if requested by the permitting authority.

If a member of the public wishes to review the SSM plan for a particular facility, or a specific portion of that plan, he or she can ask that the permitting authority request the plan from the facility. We are also adding language requiring that the permitting authority request that the owner or operator submit to the permitting authority a particular SSM plan (or the relevant portion thereof) whenever a member of the public makes a specific and reasonable request to examine or receive a copy. Upon receipt of such a request, the permitting authority should take prompt action to make the plan available to the requestor. We also expect that, upon receiving a request that is insufficiently specific or may be overly broad, the permitting authority will work with the requestor to clarify the request and to assure that it is focused on the requestor's specific needs or interests.

As in our proposal, the owner or operator may elect to submit the