

However, we have written the final rule to clarify that only one copy of any operating scenario must be submitted. Specifically, we wrote the final rule to require that the actual operating scenarios for planned processes, rather than just a list of operating scenarios, must be submitted in the NOCS report. Any operating scenarios in the future for new processes must be submitted in the compliance report for the reporting period in which the operating scenario is first operated. The notification of process change, which for the final rule is included as part of the compliance report, must contain revised operating scenarios for changes to existing processes. We also eliminated the statement in the provisions for notification of process changes that specifies "a process change means the startup of a new process" because it is inconsistent with the above mentioned clarifications. Finally, we deleted the requirement to submit operating scenarios with other information about deviations in the compliance report because the operating log, by definition, is a listing of the scheduled operating scenarios, and a copy of the operating scenarios themselves would already have been submitted either as part of the NOCS report or in a previous compliance report.

Comment: According to the proposed definition, one type of deviation is any instance in which an affected source fails to meet any term or condition that is adopted to implement an applicable requirement in 40 CFR part 63, subpart FFFF, and that is included in the operating permit for any affected source required to obtain such a permit. One commenter recommended deleting this language from the definition because it appears to extend the definition to requirements imposed under title V, rather than subpart FFFF. For example, the commenter suggested that if a permitting authority imposes a throughput requirement on a storage tank subject to subpart FFFF or a NO_x limit on a control device used to comply with subpart FFFF, this language could be read to make any deviation of those limits reportable and a potential violation under subpart FFFF, as well as under title V.

Response: We have not deleted the cited language because we disagree with the commenter's interpretation that it extends deviations to requirements under title V. Paragraph (2) of the proposed definition of "deviation" is an important clarification. Sources are obligated under title V and 40 CFR part 70 to report as deviations any failure to meet "any term or condition that is adopted to implement an applicable

requirement in [subpart FFFF] and that is included in the operating permit for any affected source required to obtain such a permit." As such, the paragraph does not add any additional obligations. However, it does clarify for source owners and operators reviewing subpart FFFF that this is their obligation for deviation reporting under title V.

Comment: Four commenters recommended using different terms or significantly changing the definition of deviation. Two commenters recommended replacing the term "deviation" with the term "excursion" throughout the rule to avoid confusion that could be caused because the proposed definition of deviation differs from the meaning normally ascribed to the term in the title V program. One commenter suggested using "excursion" to apply to situations where the monitored parameter is outside of the required range, and using the term "deviation" to represent an actual demonstrated excess emissions event or nonconformance with a published standard in the rule.

Response: We have not changed the terminology. According to the definition, a deviation includes any instance in which an owner or operator fails to meet any requirement or obligation established by 40 CFR part 63, subpart FFFF, including but not limited to any emission limit, operating limit, or work practice standard. An "excursion," as defined in 40 CFR part 63, subparts G and SS, is a failure to meet an operating limit. Therefore, excursions are a deviation under subpart FFFF.

Comment: One commenter asserted that the attempt to extend deviation reporting to work practices in § 63.2520(d)(5) and (e) of the proposed rule is unclear, arbitrary, and capricious. The commenter stated that each work practice standard itself identifies what has to be reported in the compliance report. According to the commenter, adding a new, undefined requirement to report "deviations from the requirements for work practice standards in Table 19" just adds confusion and appears to add a new arbitrary class of deviation that is not supported in any rulemaking record. In addition, the commenter was unsure how we expect facilities to measure deviations from some of the work practices (e.g., fugitive monitoring) listed in Table 19. Therefore, the commenter recommended that we remove the requirement for deviation reporting for work practice standards from § 63.2520(d)(5)(i) and (ii), including the list of information items in § 63.2520(d)(5)(ii)(A) through (C)

(operating time, deviations, and operating logs/scenarios). The commenter also recommended deleting the phrase "or work practice standard" from § 63.2520(e). This commenter stated that § 63.2520(d)(5)(ii)(B) and (iii)(D) and the availability of more detailed records are all that are needed to identify deviations.

Response: A deviation is defined, in part, as "any instance in which an affected source fails to meet any requirement or obligation established by this subpart, including * * * any * * * work practice standard." Specifically, a source must report "any instance" where it has not complied with any work practice standard. For instance, compliance with the work practice standard for equipment leaks includes monitoring and inspecting on the applicable schedule, monitoring for the correct leak definition, repairing leaks within the specified timeframe, and keeping records, as well as reporting the information specified in § 63.1018(a) of 40 CFR part 63, subpart TT, or § 63.1039(b) of 40 CFR part 63, subpart UU. We would also find this information useful in assessing compliance with the work practice standards. If a source failed to repair a leak within the specified timeframe, it would be required to report that as a deviation. However, we have decided that submitting operating logs is unnecessary for deviations from the work practice standard for equipment leaks.

Comment: One commenter requested clarification of the time period when deviations can occur. According to the commenter, it is not possible to have a deviation until operating limits and continuous monitoring system (CMS) parameters have been established. The commenter noted that, as provided in the General Provisions, compliance with these limits begins with the submission of the NOCS report.

Response: We disagree with the commenter's conclusion. Section 112(i)(3) of the CAA statutorily forbids allowing more than 3 years from the effective date of the standards to achieve compliance. Therefore, at any time after the compliance date, a source may be found out of compliance, even if that is before the NOCS report is due or the date that performance tests are conducted.

Comment: Two commenters recommended deleting the requirement to submit operating logs as part of the compliance report when there are deviations. According to the commenters, this requirement is unclear, in part because it does not define "operating logs," which could be