

Response: We recently adopted final amendments to the General Provisions which address the concerns raised by the commenter (68 FR 32586, May 30, 2003). The final amendments clarify that § 63.6(e)(1)(i) establishes a general duty to minimize emissions. During a period of SSM, that general duty requires an owner or operator to reduce emissions to the greatest extent consistent with safety and good air pollution control practices. However, “during an SSM event, the general duty to minimize emissions does not require an owner or operator to achieve the levels required by the applicable MACT standard at other times, or to make further efforts to reduce emissions if such levels have been successfully achieved.” As discussed in the preamble to the final amendments, we disagree with the commenter’s legal position that sources’ compliance with SSMP requirements in lieu of applicable emission standards is permissible only where violations of emission limitations are “unavoidable.” As stated in the preamble to the final amendments to the General Provisions, “[w]e believe that we have discretion to make reasonable distinctions concerning those particular activities to which the emission limitations in a MACT standard apply * * * However, we note that the general duty to minimize emissions is intended to be a legally enforceable duty which applies when the emission limitations in a MACT standard do not apply, thereby limiting exceedances of generally applicable emission limitations to those instances where they cannot be reasonably avoided.” (68 FR 32590, May 30, 2003). We further explained that the general duty to minimize emissions requires that owners or operators review their SSMP on an ongoing basis and make appropriate improvements to ensure that excess emissions are avoided.

Comment: Several commenters disagreed with a number of the proposed SSM requirements. They indicated that monitored parameter values during periods of SSM should not be included in daily averages, and that to do so distorts the results for periods of normal operation and is inconsistent with the General Provisions and previous rules. Commenters also stated that it is not possible to have a deviation from the emission limit or work practice standard during SSM periods because the only requirement during such periods is to comply with the SSMP. Therefore, the commenters stated that the definition of “deviation” is inconsistent with the General Provisions and should be changed to

delete the statement that conflicts with this point, and there should be no requirement to document deviations during SSM periods in the compliance reports. According to the commenters, records of every SSM event, as required by the General Provisions, are unnecessary and wasteful. The commenters recommended replacing this provision, like in many other rules, with a requirement to keep records only of events during which excess emissions occur. Finally, commenters recommended deleting the requirement to submit an immediate SSM report each time actions taken differ from the SSMP.

Response: We disagree with the comment that the definition of deviation is inconsistent with the General Provisions. As recently amended, 40 CFR 63.6(e)(1)(i) requires operation at all times (including periods of SSM) in a manner consistent with safety and good air pollution control practices for minimizing emissions. The General Provisions state that the general duty to minimize emissions during a period of SSM does not require the owner or operator to achieve emission levels that would be required by the applicable standard at other times if this is not consistent with safety and good air pollution control practices, thus allowing for compliance with the SSMP in the event that the standard cannot otherwise be met. However, we further clarified in the recent amendments that a source will not be considered to have satisfied the duty to minimize emissions merely because it complied with an inadequate SSMP. Furthermore, the General Provisions do not say there cannot be a deviation during periods of SSM. They only state (in § 63.7(e)(1)) that emissions in excess of the level of the relevant standard during periods of SSM shall not be considered a violation of the relevant standard, unless a determination of noncompliance is made under § 63.6(e). As discussed in response to the previous comment, recent final amendments to the General Provisions changed § 63.6(e) to clarify a source’s compliance obligations during SSM events. As noted previously, the final rule references most of the requirements in 40 CFR part 63, subpart SS. For calculating daily averages, subpart SS specifies that monitoring data collected during periods of SSM are to be excluded. However, we excluded this provision from 40 CFR part 63, subpart FFFF. If data from SSM events are excluded from the daily (or block) average, then we would not have sufficient information to assess whether a deviation has occurred for a day

containing a reported SSM event that we subsequently determine is not properly an SSM event.

Another requirement in subpart SS is that records of SSM events (*i.e.*, confirmation that actions taken were consistent with the SSMP or a description of any inconsistent actions) must be maintained only if excess emissions occur. For the final subpart FFFF, we decided that this requirement, rather than records of every SSM event as specified in the General Provisions, provides sufficient information about SSM events (note that it applies for all SSM periods, not just those subject to subpart SS), which means determination of excess emissions is critical. The final rule defines excess emissions as “emissions greater than those allowed by the emission limit.” When a CMS is used to demonstrate compliance with an operating limit, this means excess emissions occur when the operating limit is not met. As noted above, compliance with an operating limit is based on a daily or block average, not an average over shorter periods such as a period of SSM. Thus, SSM records are required for each SSM event that occurs when you have a deviation of the operating limit for the day or block.

We disagree with the commenter’s contention that sources should not be required to report deviations that occur during SSM events. Reporting of deviations from emission limits, operating limits, and work practice standards that occur during SSM events is necessary because events claimed to be SSM events by the source may not be viewed as approved SSM events by EPA. Furthermore, § 63.998(c)(1)(ii)(E) and (d)(3) of subpart SS already require records of each SSM event during which excess emissions occur, and as such the additional requirement to report such records is not unduly burdensome.

We agree that immediate notifications are not necessary. The industries covered by this source category generally have extensive upset/SSM reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act and state reporting requirements that should be adequate in supplying timely notification of events. Further, the final rule requires information regarding actions inconsistent with the SSMP to be submitted in semiannual compliance reports. For these reasons, and to maintain consistency with the HON and the CAR rules, we have overridden the immediate SSM reporting required by §§ 63.6(e)(3)(iv) and 63.10(d)(5)(ii) of the General Provisions.