

specified in § 63.8035 of the proposed rule.

Response: The final rule references the QA/QC requirements for continuous parameter monitoring systems (CPMS) in 40 CFR part 63, subpart SS. We deleted the proposed requirements for the same reasons we decided not to implement similar proposed QA/QC requirements in subpart SS (67 FR 46260, July 12, 2002). Specifically, we are currently developing performance specifications for CPMS to be followed by owners and operators of all sources subject to standards under 40 CFR part 63, which includes subpart HHHHH. Also, subpart SS currently specifies requirements for CPMS, and the requirements of subpart SS are referenced by the final rule. Even though they may not be as specific as those proposed, we decided it would be premature to promulgate performance specifications for subpart HHHHH when the performance specifications that would ultimately be promulgated for all 40 CFR part 63 may be significantly different. Until those performance specifications are ready, we consider the requirements in subpart SS to be the best choice because they are consistent with other rules applied to source categories containing similar control and monitoring equipment as in this source category. Further, references to these standard standards streamline compliance requirements for facilities with operations in numerous source categories. The procedures in subpart SS require monitoring equipment to be installed, calibrated, maintained, and operated according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately. These provisions are consistent with the commenters' suggestions.

K. Recordkeeping and Reporting

Comment: According to one commenter, the initial notification requirements are unnecessary because facilities in the miscellaneous coating source category have already submitted an initial notification under CAA section 112(j). Another commenter considers the notification to be unnecessary because it is already required under title V.

Response: The requirement to submit an initial notification is part of the General Provisions, which apply to all NESHAP. If the required information is already in the sources' title V permit applications, the requirement for sources to copy this information into their one-time initial notifications

should not be unduly burdensome. Having this information will help the regulatory authorities and the public better understand what is being regulated, especially since a source's initial notification may be submitted before its title V permit is issued or renewed.

Comment: Three commenters requested that the notification of compliance status report be due no earlier than 150 days or 180 days after the compliance date, as in other rules and the General Provisions. According to the commenters, facilities will need the full 3 years (if not longer) after the promulgation date to respond to actions taken by their customers and to evaluate their own compliance options, particularly to determine whether they can make changes such that they are no longer major sources.

Response: We accept the argument that some facilities may need the full 3 years after the effective date to bring controls online or to make product formulation changes to meet new customer requirements in response to the surface coating MACT rules. Therefore, we have decided to change the due date for the notification of compliance status report. In the final rule, the report is due no later than 150 days after the compliance date, as in many other rules.

L. Startup, Shutdown and Malfunction

Comment: According to one commenter, the startup, shutdown, and malfunction (SSM) provisions are unlawful because they allow sources to avoid enforcement actions merely by complying with their startup, shutdown, and malfunction plan (SSMP), but the CAA requires compliance continuously except for unavoidable deviations during SSM.

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, "we 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." 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: Two commenters recommended that "startup" be defined as in the Amino and Phenolic Resins NESHAP (40 CFR part 63, subpart OOO). According to the commenters, the proposed definition more accurately defines a "new process."

Response: We clarified the definition of "startup" for the final rule. However, we did not use the definition from the Amino and Phenolic Resins final rule because we do not consider the language regarding flexible operation units and continuous processes to be appropriate for the miscellaneous coatings manufacturing source category. For the final rule, we removed the term "family of coatings," and we removed the list of actions that are not startup so that the definition focuses only on items that are startup. In addition, since it is possible that actions taken to bring equipment back online after it has been configured and used to produce a different product, we also decided to specify that the first time equipment is put into operation at the start of a campaign, even if the same product has been produced in the past, is startup if the actions taken differ from routine operation.

Comment: One commenter recommended that we clearly apply the SSMP to the emission control equipment rather than to individual process vessels on a batch to batch basis. According to the commenter, tracking the startup and shutdown of individual process vessels would require thousands of records, it would be nearly impossible to insure that all information is collected properly, and