

the tracking adds no environmental value.

*Response:* Startup and shutdown do apply to control equipment because the definitions specify that they apply to "equipment required or used to comply with this subpart." Similarly, the definition of "malfunction" in § 63.2 specifies that it applies to control equipment. However, startup, shutdown, and malfunction also apply to the processing equipment. We disagree with the commenter's characterization that applying startup, shutdown, and malfunction to process vessels will result in the need to generate thousands of records because startup only applies to new sources, new equipment, and possibly the start of campaigns; and malfunctions, by definition, are infrequent failures of equipment. In addition, the definition of shutdown has been changed to specify that shutdown applies to the cessation of operation of process vessels only if the steps taken to cease operation differ from routine procedures for removing the vessel or equipment from service. This change also makes the definition of shutdown consistent with the revised definition of startup.

*Comment:* Several commenters recommended excluding periods of SSM from the definition of "deviation" and reporting deviations separately from reporting of SSM events. One commenter noted that periods of SSM are exempt from compliance under the rule as proposed and concluded that the proposed requirements are redundant and provide no useful information regarding compliance. Another commenter also noted that requirements in previous rules and the General Provisions differentiate between SSM events and deviations (or exceedances and excursions, in the terminology of previous rules). According to the commenter, changing the terminology and requirements for the final rule will at a minimum be confusing for facilities that also must comply with previous rules.

*Response:* We disagree with the commenter's contention that the proposed requirements are redundant. Section 63.6(e) of the General Provisions requires operation at all times (including during periods of SSM) in a manner consistent with safety and good air pollution control practices for minimizing emissions to the levels required by the relevant standards (*i.e.*, meet the standards or comply with the SSMP). Nothing in the General Provisions says the standards do not apply during periods of SSM, but compliance with the SSMP is allowed in the event the standard cannot

otherwise be met. Furthermore, although a deviation may occur for a day during which an SSM event also occurs, the recordkeeping and reporting requirements associated with the deviation differ from the recordkeeping and reporting requirements for the SSM event; thus, there is no redundancy. Information about all periods during which an emission limit, operating limit, or work practice standard is not met and the reasons for noncompliance is important. Thus, we have not changed the intent of the requirements for the final rule.

*Comment:* One commenter considers the proposed requirement for immediate reporting of actions taken that are inconsistent with the SSMP to be overly burdensome. According to the commenter, reporting these events with other SSM events on a semi-annual basis in the compliance report is sufficient, and the commenter noted that this approach has been used in 40 CFR part 63, subpart JJJ (Polymers and Resins) and subpart PPP (Polyether Polyols).

*Response:* 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 Consolidated Air Rule (CAR), we have overridden the immediate SSM reporting required by §§ 63.6(e)(3)(iv) and 63.10(d)(5)(ii) of the General Provisions.

## V. 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 review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "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 entitlement, 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

The information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information requirements are not enforceable until OMB approves them. The ICR number is 2115.01.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all owners or operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7412). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The final NESHAP require maintenance inspections of the control devices but do not require any notifications or reports beyond those required by the NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping requirements collect only the specific information needed to determine compliance.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the final rule) is estimated to average 79 labor hours per year at an annual cost of \$3,500 for 129 respondents. These estimates include one-time submissions of notifications and precompliance reports, preparation of an SSMP with