at all times the affected source is operating. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to complete monitoring system repairs in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

(2) You may not use data recorded during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities in calculations used to report emissions or operating levels. You must use all the data collected during all other required data collection periods in assessing the operation of the control device and associated control system. You must report any periods for which the monitoring system failed to collect required data.

(d) A deviation means any of the cases listed in paragraphs (d)(1) through (7) of this section.

(1) Any instance in which an affected source subject to this subpart, or an owner or operator of such a source, fails to meet any requirement or obligation established by this subpart, including, but not limited to, any emission limit, operating limit or work practice standard.

(2) When a performance test indicates that emissions of a pollutant in Table 1 or 2 to this subpart are exceeding the emission standard for the pollutant specified in Table 1 or 2 to this subpart.

(3) When a 3-hour block average from a continuous emissions monitor, as required by §63.11925(c)(1) through (3), exceeds an emission limit in Table 1 or 2 to this subpart.

(4) When the average value of a monitored operating parameter, based on the data averaging period for compliance specified in Table 5 to this subpart, does not meet the operating limit established in §63.11880(b).

(5) When an affected source discharges directly to the atmosphere from any of the sources specified in paragraphs (d)(5)(i) through (iv) of this section.

(i) A pressure relief device, as defined in §63.12005.

(ii) A bypass, as defined in §63.12005.

(iii) A closed vent system in vacuum service.

(iv) A closure device on a pressure vessel.

(6) Any instance in which the affected source subject to this subpart, or an owner or operator of such a source, fails to meet any term or condition specified in paragraph (d)(6)(i) or (ii) of this section.

(i) Any term or condition that is adopted to implement an applicable requirement in this subpart.

(ii) Any term or condition relating to compliance with this subpart that is included in the operating permit for any affected source required to obtain such a permit.

(7) Any failure to collect required data, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments).

§63.11895 How do I assert an affirmative defense for exceedance of emission standard during malfunction?

In response to an action to enforce the standards set forth in §63.11880, you may assert an affirmative defense to a claim for civil penalties for violations of such standards that are caused by malfunction, as defined at 40 CFR 63.2. Appropriate penalties may be assessed, however, if you fail to meet your burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) Evidence. To establish the affirmative defense in any action to enforce such a standard, you must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that:

(1) The violation:

(i) Was caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring

equipment, process equipment, or a process to operate in a normal or usual manner.

(ii) Could not have been prevented through careful planning, proper design or better operation and maintenance practices.

(iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for.

(iv) Were not part of a recurring pattern indicative of inadequate design, operation or maintenance.

(2) Repairs were made as expeditiously as possible when violation occurred. Off-shift and overtime labor were used, to the extent practicable to make these repairs.

(3) The frequency, amount and duration of the violation (including any bypass) were minimized to the maximum extent practicable.

(4) If the violation resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

(5) All possible steps were taken to minimize the impact of the violations on ambient air quality, the environment and human health.

(6) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices.

(7) All of the actions in response to the violations were documented by properly signed, contemporaneous operating logs.

(8) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions.

(9) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the violations resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(b) Report. The owner or operator seeking to assert an affirmative defense shall submit a written report to the Administrator in the compliance report required by § 63.11985(b) with all necessary supporting documentation, that it has met the requirements set forth in this section.

§ 63.11896 What am I required to do if I make a process change at my affected source?

If you make a process change to an existing affected source that does not meet the criteria to become a new affected source in § 63.11870(d), you must comply with the requirements in paragraph (a) of this section and the testing and reporting requirements in paragraphs (c) and (d) of this section. If you make a process change to a new affected source, you must comply with the requirements in paragraph (b) of this section and the testing and reporting requirements in paragraphs (c) and (d) of this section. Refer to § 63.12005 for the definition of process changes.

(a) You must demonstrate that the changed process unit or component of the affected facility is in compliance with the applicable requirements for an existing affected source. You must demonstrate initial compliance with the emission limits and establish any applicable operating limits in § 63.11880 within 180 days of the date of start-up of the changed process unit or component of the affected facility. You must demonstrate compliance with any applicable work practice standards upon startup of the changed process unit or component of the affected facility.

(b) You must demonstrate that all changed emission points are in compliance with the applicable requirements for a new affected source. You must demonstrate initial compliance with the emission limits and establish any applicable operating limits in § 63.11880 within 180 days of the date of startup of the changed process unit or component of the affected facility. You must demonstrate compliance with any applicable work practice standards upon startup of the changed process unit or component of the affected facility.

(c) For process changes, you must demonstrate continuous compliance with your emission limits and standards, operating limits, and work practice standards according to the procedures and frequency in §§ 63.11910 through 63.11980.