

standards set forth in this subpart, the owner or operator may assert an affirmative defense to a claim for civil penalties for violations of such standards that are caused by malfunction, as defined at §63.2. Appropriate penalties may be assessed if the owner or operator fails to meet their burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(1) *Assertion of affirmative defense.* To establish the affirmative defense in any action to enforce such a standard, the owner or operator must timely meet the reporting requirements in paragraph (k)(2) of this section, and must prove by a preponderance of evidence that:

(i) The violation:

(A) Was caused by a sudden, infrequent, and unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner; and

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

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

(D) Was not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(ii) Repairs were made as expeditiously as possible when a violation occurred; and

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

(iv) 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; and

(v) All possible steps were taken to minimize the impact of the violation on ambient air quality, the environment, and human health; and

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

(vii) All of the actions in response to the violation were documented by

properly signed, contemporaneous operating logs; and

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

(ix) 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 violation resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of any emissions that were the result of the malfunction.

(2) *Report.* The owner or operator seeking to assert an affirmative defense shall submit a written report to the Administrator, with all necessary supporting documentation, that explains how it has met the requirements set forth in paragraph (k)(1) of this section. This affirmative defense report shall be included in the first periodic compliance report, deviation report, or excess emission report otherwise required after the initial occurrence of the violation of the relevant standard (which may be the end of any applicable averaging period). If such compliance report, deviation report, or excess emission report is due less than 45 days after the initial occurrence of the violation, the affirmative defense report may be included in the second compliance report, deviation report, or excess emission report due after the initial occurrence of the violation of the relevant standard.

[61 FR 48229, Sept. 12, 1996, as amended at 65 FR 38094, June 19, 2000; 66 FR 36937, July 16, 2001; 71 FR 20460, Apr. 20, 2006; 79 FR 17363, Mar. 27, 2014]

§63.1311 Compliance dates and relationship of this subpart to existing applicable rules.

(a) Affected sources are required to achieve compliance on or before the dates specified in paragraphs (b) through (d) of this section. Paragraph (e) of this section provides information on requesting compliance extensions. Paragraphs (f) through (n) of this section discuss the relationship of this subpart to subpart A of this part and to

Environmental Protection Agency

§ 63.1311

other applicable rules. Where an override of another authority of the Act is indicated in this subpart, only compliance with the provisions of this subpart is required. Paragraph (o) of this section specifies the meaning of time periods.

(b) New affected sources that commence construction or reconstruction after March 29, 1995 shall be in compliance with this subpart (except § 63.1331(a)(9)(iii)) upon initial start-up or by June 19, 2000, whichever is later, except that new affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET shall be in compliance with § 63.1331 (except § 63.1331(a)(9)(iii)) upon initial start-up or August 6, 2002, whichever is later. New affected sources that commenced construction or reconstruction after March 25, 1995, but on or before January 9, 2012, shall be in compliance with the pressure relief device monitoring requirements of § 63.1331(a)(9)(iii) no later than March 27, 2017. New affected sources that commenced construction or reconstruction after January 9, 2012, shall be in compliance with the pressure relief device monitoring requirements of § 63.1331(a)(9)(iii) upon initial startup or by March 27, 2014, whichever is later.

(c) Existing affected sources shall be in compliance with this subpart (except for § 63.1331 for which compliance is covered by paragraph (d) of this section) no later than June 19, 2001, as provided in § 63.6(c), unless an extension has been granted as specified in paragraph (e) of this section, except that the compliance date for the provisions contained in § 63.1329 is extended to March 27, 2014, for existing affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET using a continuous terephthalic acid high viscosity multiple end finisher process.

(d) Except as provided for in paragraphs (d)(1) through (7) of this section, existing affected sources shall be in compliance with § 63.1331 no later than June 19, 2001, unless an extension has been granted pursuant to paragraph (e) of this section.

(1) Compliance with the compressor provisions of § 63.164 shall occur no later than February 27, 1998, for any

compressor meeting one or more of the criteria in paragraphs (d)(1)(i) through (d)(1)(iv) of this section, if the work can be accomplished without a process unit shutdown:

- (i) The seal system will be replaced;
- (ii) A barrier fluid system will be installed;
- (iii) A new barrier fluid will be utilized which requires changes to the existing barrier fluid system; or
- (iv) The compressor will be modified to permit connecting the compressor to a fuel gas system or a closed vent system or modified so that emissions from the compressor can be routed to a process.

(2) Compliance with the compressor provisions of § 63.164 shall occur no later than March 12, 1998 for any compressor meeting all the criteria in paragraphs (d)(2)(i) through (d)(2)(iv) of this section:

- (i) The compressor meets one or more of the criteria specified in paragraphs (d)(1)(i) through (d)(1)(iv) of this section;
- (ii) The work can be accomplished without a process unit shutdown ;
- (iii) The additional time is actually necessary due to the unavailability of parts beyond the control of the owner or operator; and
- (iv) The owner or operator submits the request for a compliance extension to the appropriate Environmental Protection Agency (EPA) Regional Office at the address listed in § 63.13 no later than June 16, 1997. The request for a compliance extension shall contain the information specified in § 63.6(i)(6)(i)(A), (B), and (D). Unless the EPA Regional Office objects to the request for a compliance extension within 30 days after receipt of the request, the request shall be deemed approved.

(3) If compliance with the compressor provisions of § 63.164 cannot reasonably be achieved without a process unit shutdown, the owner or operator shall achieve compliance no later than September 12, 1998. The owner or operator who elects to use this provision shall submit a request for a compliance extension in accordance with the requirements of paragraph (d)(2)(iv) of this section.

(4) Compliance with the compressor provisions of § 63.164 shall occur not

later than September 12, 1999 for any compressor meeting one or more of the criteria in paragraphs (d)(4)(i) through (d)(4)(iii) of this section. The owner or operator who elects to use these provisions shall submit a request for an extension of compliance in accordance with the requirements of paragraph (d)(2)(iv) of this section.

(i) Compliance cannot be achieved without replacing the compressor;

(ii) Compliance cannot be achieved without recasting the distance piece; or

(iii) Design modifications are required to connect to a closed-vent or recovery system.

(5) Compliance with the provisions of §63.170 shall occur no later than June 19, 2001.

(6) Notwithstanding paragraphs (d)(1) through (5) of this section, existing affected sources whose primary product, as determined using the procedures specified in §63.1310(f), is PET shall be in compliance with §63.1331 (except §63.1331(a)(9)(iii)) no later than August 6, 2002.

(7) Compliance with the pressure relief device monitoring provisions of §63.1331(a)(9)(iii) shall occur no later than March 27, 2017.

(e) Pursuant to Section 112(i)(3)(B) of the Act, an owner or operator may request an extension allowing the existing affected source up to 1 additional year to comply with Section 112(d) standards. For purposes of this subpart, a request for an extension shall be submitted to the permitting authority as part of the operating permit application or to the Administrator as a separate submittal or as part of the Precompliance Report. Requests for extensions shall be submitted no later than 120 days prior to the compliance dates specified in paragraphs (b) through (d) of this section, or as specified elsewhere in this subpart, except as provided in paragraph (e)(3) of this section. The dates specified in §63.6(i) for submittal of requests for extensions shall not apply to this subpart.

(1) A request for an extension of compliance shall include the data described in §63.6(i)(6)(i) (A), (B), and (D).

(2) The requirements in §63.6(i)(8) through §63.6(i)(14) shall govern the review and approval of requests for ex-

tensions of compliance with this subpart.

(3) An owner or operator may submit a compliance extension request after the date specified in paragraph (e) of this section, provided that the need for the compliance extension arose after that date, and the need arose due to circumstances beyond reasonable control of the owner or operator. This request shall include, in addition to the information specified in paragraph (e)(1) of this section, a statement of the reasons additional time is needed and the date when the owner or operator first learned of the circumstances necessitating a request for compliance extension under this paragraph (e)(3).

(f) Table 1 of this subpart specifies the provisions of subpart A of this part that apply and those that do not apply to owners and operators of affected sources subject to this subpart.

(g)(1) After the compliance dates specified in this section, an affected source subject to this subpart that is also subject to the provisions of subpart I of this part, is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said affected source shall no longer be subject to subpart I of this part.

(2) Said affected sources that elected to comply with subpart I of this part through a quality improvement program, as specified in §63.175 or §63.176 or both, may elect to continue these programs without interruption as a means of complying with this subpart. In other words, becoming subject to this subpart does not restart or reset the “compliance clock” as it relates to reduced burden earned through a quality improvement program.

(h) After the compliance dates specified in this section, a storage vessel that is assigned to an affected source subject to this subpart and that is also subject to the provisions of 40 CFR part 60, subpart Kb, is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said storage vessel shall no longer be subject to 40 CFR part 60, subpart Kb.

(i)(1) Except as provided in paragraphs (i)(2) and (i)(3) of this section, after the compliance dates specified in

this section, affected sources producing PET using a continuous terephthalic acid process, producing PET using a continuous dimethyl terephthalate process, or producing polystyrene resin using a continuous process subject to this subpart that are also subject to the provisions of 40 CFR part 60, subpart DDD, are required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said sources shall no longer be subject to 40 CFR part 60, subpart DDD.

(2) Existing affected sources producing PET using a continuous terephthalic acid high viscosity multiple end finisher process shall continue to be subject to 40 CFR 60.562-1(c)(2)(ii)(C). Once said affected source becomes subject to and achieves compliance with § 63.1329(c) of this subpart, said affected source is no longer subject to the provisions of 40 CFR part 60, subpart DDD.

(3) Existing affected sources producing PET using a continuous terephthalic acid process, but not using a continuous terephthalic acid high viscosity multiple end finisher process, that are subject to and complying with 40 CFR 60.562-1(c)(2)(ii)(B) shall continue to comply with said section. Existing affected sources producing PET using a continuous dimethyl terephthalic process that are subject to and complying with 40 CFR 60.562-1(c)(1)(ii)(B) shall continue to comply with said section.

(j) Owners or operators of affected sources subject to this subpart that are also subject to the provisions of subpart Q of this part shall comply with both subparts.

(k) After the compliance dates specified in this section, an affected source subject to this subpart that is also subject to the provisions of 40 CFR part 60, subpart VV, is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said source shall no longer be subject to 40 CFR part 60, subpart VV.

(l) After the compliance dates specified in this section, a distillation operation that is assigned to an affected source subject to this subpart that is also subject to the provisions of 40 CFR part 60, subpart NNN, is required to

comply only with the provisions of this subpart. After the compliance dates specified in this section, the distillation operation shall no longer be subject to 40 CFR part 60, subpart NNN.

(m) *Applicability of other regulations for monitoring, recordkeeping or reporting with respect to combustion devices, recovery devices, or recapture devices.* After the compliance dates specified in this subpart, if any combustion device, recovery device or recapture device subject to this subpart is also subject to monitoring, recordkeeping, and reporting requirements in 40 CFR part 264 subpart AA or CC, or is subject to monitoring and recordkeeping requirements in 40 CFR part 265 subpart AA or CC and the owner or operator complies with the periodic reporting requirements under 40 CFR part 264 subpart AA or CC that would apply to the device if the facility had final-permitted status, the owner or operator may elect to comply either with the monitoring, recordkeeping and reporting requirements of this subpart, or with the monitoring, recordkeeping and reporting requirements in 40 CFR parts 264 and/or 265, as described in this paragraph, which shall constitute compliance with the monitoring, recordkeeping and reporting requirements of this subpart. The owner or operator shall identify which option has been selected in the Notification of Compliance Status required by § 63.1335(e)(5).

(n) *Applicability of other requirements for heat exchange systems or waste management units.* Paragraphs (n)(1) and (n)(2) of this section address instances in which certain requirements from other regulations also apply for the same heat exchange system(s) or waste management unit(s) that are subject to this subpart.

(1) After the applicable compliance date specified in this subpart, if a heat exchange system subject to this subpart is also subject to a standard identified in paragraphs (n)(1)(i) or (ii) of this section, compliance with the applicable provisions of the standard identified in paragraphs (n)(1)(i) or (ii) of this section shall constitute compliance with the applicable provisions of this subpart with respect to that heat exchange system.

(i) Subpart F of this part.

§63.1312

40 CFR Ch. I (7–1–14 Edition)

(ii) A subpart of this part which requires compliance with §63.104 (e.g., subpart U of this part).

(2) After the applicable compliance date specified in this subpart, if any waste management unit subject to this subpart is also subject to a standard identified in paragraph (n)(2)(i) or (ii) of this section, compliance with the applicable provisions of the standard identified in paragraph (n)(2)(i) or (ii) of this section shall constitute compliance with the applicable provisions of this subpart with respect to that waste management unit.

(i) Subpart G of this part.

(ii) A subpart of this part which requires compliance with §§63.132 through 63.147.

(o) All terms in this subpart that define a period of time for completion of required tasks (e.g., weekly, monthly, quarterly, annual), unless specified otherwise in the section or paragraph that imposes the requirement, refer to the standard calendar periods.

(1) Notwithstanding time periods specified in this subpart for completion of required tasks, such time periods may be changed by mutual agreement between the owner or operator and the Administrator, as specified in subpart A of this part (e.g., a period could begin on the compliance date or another date, rather than on the first day of the standard calendar period). For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(2) Where the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in paragraphs (o)(2)(i) or (o)(2)(ii) of this section, as appropriate.

(i) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs, if there remain at least 3 days for tasks that must be performed weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3

months for tasks that must be performed annually; or

(ii) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(3) In all instances where a provision of this subpart requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during the specified period, provided that the task is conducted at a reasonable interval after completion of the task during the previous period.

[61 FR 48229, Sept. 12, 1996, as amended at 62 FR 1838, Jan. 14, 1997; 62 FR 30995, June 6, 1997; 63 FR 9945, Feb. 27, 1998; 63 FR 15315, Mar. 31, 1998; 64 FR 11547, Mar. 9, 1999; 64 FR 30409, June 8, 1999; 64 FR 35028, June 30, 1999; 65 FR 38100, June 19, 2000; 66 FR 11236, Feb. 23, 2001; 66 FR 11546, Feb. 26, 2001; 66 FR 36937, July 16, 2001; 66 FR 40907, Aug. 6, 2001; 79 FR 17364, Mar. 27, 2014]

§63.1312 Definitions.

(a) The following terms used in this subpart shall have the meaning given them in §63.2, §63.101, §63.111, §63.161, or the Act, as specified after each term:

Act (§63.2)
Administrator (§63.2)
Automated monitoring and recording system (§63.111)
Boiler (§63.111)
Bottoms receiver (§63.161)
By compound (§63.111)
By-product (§63.101)
Car-seal (§63.111)
Closed-vent system (§63.111)
Combustion device (§63.111)
Commenced (§63.2)
Compliance date (§63.2)
Connector (§63.161)
Continuous monitoring system (§63.2)
Distillation unit (§63.111)
Duct work (§63.161)
Emission limitation (Section 302(k) of the Act)
Emission standard (§63.2)
Emissions averaging (§63.2)
EPA (§63.2)
Equipment leak (§63.101)
External floating roof (§63.111)
Fill or filling (§63.111)
First attempt at repair (§63.161)
Fixed capital cost (§63.2)
Flame zone (§63.111)
Floating roof (§63.111)
Flow indicator (§63.111)
Fuel gas system (§63.101)
Halogens and hydrogen halides (§63.111)