

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 60 and 63

[AD-FRL-7379-3]

RIN 2060-AJ42

#### Standards of Performance for Bulk Gasoline Terminals and National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; amendments.

**SUMMARY:** On August 18, 1983, we promulgated Standards of Performance for Bulk Gasoline Terminals (1983 New Source Performance Standards (NSPS)). The 1983 NSPS limit and control emissions of volatile organic compounds (VOC) that react with other pollutants to form ozone (or smog) that has been linked to respiratory impairments and eye irritation, and that negatively affect vegetation and ecosystems. On December 14, 1994, we promulgated National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations). The 1994 National Emission Standards for Hazardous Air Pollutants (NESHAP) limit and control hazardous air pollutants (HAP) that are known or suspected to cause cancer or have other serious health or environmental effects.

The proposed amendments would provide: The opportunity to use alternative leak test procedures for railcars under the 1994 NESHAP, a clarification on monitoring flares and thermal oxidation systems used to comply with the 1994 NESHAP, an alternative recordkeeping requirement for tank trucks and railcars under the 1983 NSPS and 1994 NESHAP, and the use of flare design specifications under the 1983 NSPS by incorporating the allowance in the text of that final rule. The proposed amendments do not change the level of control or compromise the environmental protection achieved by the 1983 NSPS and 1994 NESHAP, but provide clarification and alternatives that enhance the flexibility of the recordkeeping and testing requirements of the two final rules. The scope of the proposed amendments and comment period is limited to the proposed changes to the 1983 NSPS and 1994 NESHAP.

**DATES:** *Comments.* Submit comments on or before November 19, 2002.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing by October 20, 2002, a public hearing will be held on October 18, 2002.

**ADDRESSES:** *Comments.* Written comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-92-38, Room M-1500, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-92-38, U.S. EPA, 401 M Street, SW, Room M-1500, Washington, DC 20460. EPA requests that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

*Public Hearing.* If a public hearing is held, it will begin at 10:00 a.m. and will be held at the new EPA facility complex in Research Triangle Park, North Carolina or at an alternate facility nearby. You should contact Ms. JoLynn Collins, Waste and Chemical Processes Group, Emission Standards Division, U.S. EPA (C439-03), Research Triangle Park, NC 27711, telephone (919) 541-5671 to request a public hearing, or to find out if a hearing will be held.

*Docket.* Docket No. A-92-38 contains supporting information used in developing the standards. The docket is located at the U.S. EPA, 401 M Street, SW, Washington, DC 20460 in room M-1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, except for legal holidays. Copies of docket materials may be obtained by request from the Air Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Shedd, U.S. EPA, OAQPS, Emission Standards Division, Waste and Chemical Processes Group (C439-03), Research Triangle Park, North Carolina 27711, telephone (919) 541-5397, facsimile number (919) 685-3195, electronic mail (e-mail) address: "shedd.steve@epa.gov."

#### **SUPPLEMENTARY INFORMATION:**

*Comments.* Comments and data may be submitted by e-mail to: "a-and-r-docket@epa.gov." Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect(TM) file format. All comments and data submitted in electronic form must note the docket number: A-92-38. No confidential

business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention Mr. Stephen Shedd, c/o OAQPS Document Control Officer, U.S. EPA (C404-02), RTP, NC 27711.

EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

*Public Hearing.* Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held must contact JoLynn Collins of EPA at (919) 541-5671 at least 2 days in advance of the hearing. Persons interested in attending the public hearing should also call Ms. Collins to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed amendments.

*Docket.* The docket is an organized and complete file of all the information considered by EPA in the development of the proposed amendments. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and potentially affected industries to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, with certain exceptions, will serve as the record in case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to the proposed amendments are available for review in the docket, or copies may be mailed on request from the Air Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today's proposed amendments is also available on the

WWW through the Technology Transfer Network (TTN). Following signature, a copy of the proposed amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following

address: <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is

needed, call the TTN HELP line at (919) 541-5384.

*Regulated entities.* Categories and entities potentially regulated by this action include:

Category	NAICS <sup>a</sup>	(SIC <sup>b</sup> )	Examples of regulated entities
Industry .....	324110 493190 486910 422710	(2911) (4226) (4613) (5171)	Operations at major sources that transfer and store gasoline, including petroleum refineries, pipeline breakout stations, and bulk terminals.
Federal government			
State/local/tribal government			

<sup>a</sup> North American Industry Classification System.  
<sup>b</sup> Standard Industrial Classification.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 60.500 and 63.420. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Outline.* The information presented in this preamble is organized as follows:

- I. What is the statutory authority for this action?
- II. What are we proposing as alternatives for railcar leak testing?
  - A. What are the current EPA and DOT gasoline railcar leak testing requirements?
  - B. Why are we making changes to our railcar leak testing requirements?
- III. Which specific leak test methods can be used for railcars?
- IV. How is a flare defined for purposes of monitoring the presence of a flame instead of flame temperature?
- V. Can the flare design specifications be used for compliance with the 1983 NSPS?
- VI. Can cargo tank vapor tightness records be kept off-site?
- VII. Administrative Requirements
  - A. Executive Order 12866, Regulatory Planning and Review
  - B. Executive Order 13132, Federalism
  - C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments
  - D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks
  - E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - F. Unfunded Mandates Reform Act of 1995
  - G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.
  - H. Paperwork Reduction Act

- I. National Technology Transfer and Advancement Act of 1995
- J. Regulatory Review

**I. What Is the Statutory Authority for This Action?**

The statutory authority for this action is provided by sections 101, 111, 112, 114, 116, and 301 of the CAA, as amended (42 U.S.C. 7401 *et seq.*).

**II. What Are We Proposing as Alternatives for Railcar Leak Testing?**

The Department of Transportation (DOT) has been regulating railcar shipments for many years. In 1994, EPA promulgated additional requirements to reduce gasoline vapor leakage during the loading and unloading of railcars at certain facilities using gasoline vapor recovery systems (59 FR 64318, December 14, 1994). The additional requirements are in the 1994 NESHAP for gasoline distribution facilities (40 CFR 63.420-63.429). This action proposes to amend the 1994 NESHAP to allow the use of existing DOT and other leak test methods as an alternative to methods specified in the 1994 NESHAP.

In summary, we are proposing the following amendments to the 1994 NESHAP:

- As an alternative to the annual certification test for railcars (40 CFR 63.425(e)) using EPA Method 27 (contained in appendix A of 40 CFR part 60), owners and operators may use certain DOT and other railcar test procedures as specified in the proposed amendments.
  - Those alternative DOT and other railcar test procedures may be used only for railcars that do not vapor balance with the end user's vapor collection equipment.
  - As an alternative to the pressure limit of 4,500 pascals (18 inches of water column) for vapor collection and liquid loading equipment (40 CFR 60.502(h)) and (i) as cross-referenced in (40 CFR 63.422(a)), railcars may be

loaded at higher pressures if the railcar and the facility's vapor collection and processing and liquid loading equipment are designed and leak tested to allow those higher pressures to be maintained.

Gasoline vapor released to the air is a concern since it contains VOC and HAP. The VOC in the presence of heat and sunlight, chemically react with oxides of nitrogen (NO<sub>x</sub>) to create an odorless and colorless gas called ozone. Ground-level ozone causes human health problems and damages crops and other vegetation. Also, ground-level ozone is a key ingredient of urban smog. Gasoline vapors contain HAP listed in section 112 of the CAA. The HAP are known or suspected to cause cancer and other serious health and environmental effects. The HAP contained in gasoline vapors include, but are not limited to benzene, toluene, hexane, ethyl benzene, naphthalene, cumene, xylene, and methyl tert-butyl ether.

*A. What Are the Current EPA and DOT Gasoline Railcar Leak Testing Requirements?*

1. EPA Requirements

Our current vapor leakage requirements for railcars loading gasoline grew out of earlier vapor leakage requirements for gasoline tank truck loading and unloading operations. EPA and the California Air Resources Board (CARB) found in the 1970's that gasoline vapor leakage from controlled transfer operations was a VOC control problem when gasoline was loaded into tank trucks at bulk terminals and plants and when unloaded at gasoline bulk plants and service stations. Those controlled facilities utilize a vapor collection system to collect displaced vapors during gasoline transfers and to pipe them to a vapor processing system such as a thermal oxidation system. Vapor leakage from points in the tank truck and vapor collection system often

allows the VOC and HAP in the gasoline vapors to escape to the atmosphere instead of being recovered by the vapor collection and processing systems. Additionally, the vapor balancing systems at bulk plants and service stations rely on a vapor-tight vessel to help create a vacuum in the truck's tank so that the vapors displaced from the service station or bulk plant storage tank being loaded will be efficiently returned (balanced) into the truck's tank.

To reduce gasoline vapor leakage from tank trucks, the CARB started a regulatory program to require testing and repair of gasoline tank trucks annually using a pressure and vacuum test. We followed that lead and issued a guidance document on gasoline tank truck leakage testing (Tank Truck Control Techniques Guideline, EPA-450/2-78-051, December 1978) for application in State implementation plans for areas not meeting the National Ambient Air Quality Standards for ozone. In August 1983, we promulgated the 1983 NSPS (48 FR 37590, August 18, 1983) which required further reductions in VOC emissions from gasoline tank trucks that load at new, modified, or reconstructed loading racks at bulk gasoline terminals nationwide. The 1983 NSPS include the same annual pressure and vacuum test program for tank trucks as recommended in the Tank Truck CTG. The CARB also continued to update their test program by adding additional components, such as an internal vapor valve test, lower allowable leakage rates, and test requirements and methods for year-round compliance.

In December 1994, we promulgated the 1994 NESHAP to reduce emissions of HAP from large bulk terminals and pipeline breakout stations located separately or collocated at plant sites with other emission sources (such as petroleum refineries). The 1994 NESHAP added gasoline railroad tank cars (railcars) to our Federal vapor recovery and leak test program. It also required the improvements to the leak testing program for gasoline tank trucks that the CARB and local districts made since the 1983 NSPS were promulgated. The rest of the discussion pertains only to the 1994 NESHAP vapor leakage requirements for railcar loading. Those requirements consist of the following four parts: the annual pressure and vacuum leak test, year-round testing, reporting and recordkeeping, and pressure limits for the vapor collection and liquid loading systems at bulk terminals.

The first part of the 1994 NESHAP requirements for gasoline railcars is the annual pressure/vacuum test. The 1983

NSPS specified use of an EPA test method (Method 27) that provides a step-by-step procedure for performing the test. Like the 1983 NSPS, the 1994 NESHAP specify that you must use Method 27, but under defined conditions as discussed below. The 1994 NESHAP require you to perform Method 27 annually at vessel pressures of 18 inches of water column of positive pressure and 6 inches of negative water column pressure (40 CFR 63.425(e)). The 1994 NESHAP specify an allowable pressure drop of not more than 1 inch of water in 5 minutes for railcar size tanks after being pressurized to the test pressure. Also, the 1994 NESHAP require you to test the vapor hoses and an internal vapor valve.

Year-round testing is the second part of the 1994 NESHAP provisions for gasoline railcars. We found that significant vapor leakage may occur at various times during the year after an annual test is performed. Therefore, the CARB and local districts and EPA developed the so-called anytime or year-round test program to augment the annual test. Anyone (air pollution inspector, facility owner, etc.) who identifies through sight, sound, or smell a possible problem with vapor leaks from a railcar can require one of three alternative test procedures to allow detection and repair of the leak. The three alternative year-round test procedures are provided in 40 CFR 63.425(f) through (h) of the 1994 NESHAP. They are, respectively, a leak test using a portable instrument, an in-field pressure test using nitrogen, and a pressure test using the Method 27 test procedure coupled with a less stringent leakage rate than required in the annual test. If a railcar fails any of the year-round test procedures, the 1994 NESHAP require that it be taken out of service and not loaded again at that facility until the railcar can be fixed and pass the Method 27 test at the annual certification limits.

The third part of the railcar vapor leakage program in the 1994 NESHAP is the reporting and recordkeeping requirements (40 CFR 63.422(c)(2)). Railcars in gasoline service may not be loaded at an affected loading rack unless the railcar owner or operator has provided documentation that the railcar has passed the annual pressure and vacuum tests discussed above. Railcars that have failed any of the year-round leakage tests since the last annual test must also have documentation that they were subsequently repaired and recertified to the annual certification limits. The owner or operator of the loading rack must take steps to assure that only railcars with the

documentation on file are loaded at the loading rack. Those steps include: recording the tank identification number of railcars loaded, cross-checking (within 2 weeks of loading) the identification numbers against the leak test documentation on file at the facility, notifying the owner or operator of non-documented railcars, assuring that such railcars are not loaded again until proper documentation is provided, and reporting the non-documented railcars in the semiannual compliance report to the permitting authority (40 CFR 63.428(g)). Some permitting authorities have also granted alternatives to allow electronic recordkeeping and reporting and the use of key-locks to lock out non-documented tank trucks or railcars from loading at the rack.

The last part of the 1994 NESHAP requirements concerning gasoline leakage from railcars is a design specification (40 CFR 60.502(h) and (i) as cross-referenced in (40 CFR 63.422(a)) for the liquid loading and vapor collection equipment at the terminal to prevent over-pressurizing of the railcar and vapor collection system. The requirement specifies that the vapor collection and liquid loading equipment be designed and operated to prevent the pressure in the railcar from exceeding the annual test pressure of 18 inches of water column. Also, we require that the pressure-vacuum safety vents in the facility's vapor collection system be designed to not open below the same 18 inches of water pressure limit. We have approved one gasoline loading facility's use of an alternative test procedure to load railcars at a higher pressure, provided they perform the Method 27 pressure test and the facility's vapor collection and recovery system is designed and operated to be leak-free at those higher pressures.

## 2. DOT Requirements

DOT, through its Research and Special Programs Administration and the Federal Railroad Administration, develops national requirements for the transportation of gasoline in railroad cargo tanks (railcars) and highway cargo tanks (tank trucks). Similar to EPA requirements discussed earlier, DOT requirements limit the degree of leakage from railroad cargo tanks, provide for test procedures, and specify the frequency of testing. DOT has codified some of those requirements in the Code of Federal Regulations, some have been developed by industry trade associations, and some are currently under development by DOT.

DOT requirements for liquid transport in railcars, including those cars used to transport gasoline, require a visual

inspection of the tank before transportation to determine if the tank is in proper condition for transport (49 CFR 173.31(d)). At that point, the inspection does not require the use of instruments to assess the fitness for service of the tank, such as tank shell thickness measurements or leak testing the mating surfaces of service equipment (valves, fittings, and pressure relief devices). DOT regulations do require, however, periodic maintenance of the tank and service equipment to ensure that such equipment conforms to the minimum Federal safety standards. Those latter standards require the use of nondestructive testing equipment and qualified personnel using qualified procedures.

Personnel performing periodic inspection and tests must be qualified for the type of nondestructive examination performed, such as ultrasonic testing, leak testing, or radiography (49 CFR 179.7(b)(9)). The tank car owner must ensure that the procedure has the sensitivity and reliability to find the flaw under observation (49 CFR 179.7(b)(10)); that is, the owner must qualify the procedure to determine that it can find a pre-defined flaw. Recent DOT regulations are not prescriptive in nature, but rather are end result driven. That means that DOT does not specify a particular nondestructive examination method or procedure for performing a test, but rather allows the tank car owner and the maintenance facility to develop site-specific procedures. End results are published by DOT as acceptance standards (49 CFR 180.511). For leakage pressure tests, the end result must show that all product piping, fittings, and closures show no indication of leakage (§ 180.511(f)).

In addition to the published DOT rules, the railroad industry has its own rules that have the effect of a national standard. The Association of American Railroads (AAR), a not-for-profit trade organization of the railroad industry, publishes the railroad industry rules. A working group under the AAR, the Tank Car Committee, develops rules and standards based on best practices. Appendix T in the AAR Tank Car Manual contains requirements and methods for performing nondestructive examinations. The AAR Appendix T parallels requirements issued by the American Society for Nondestructive Testing, an international standard writing body (ASNT SNT-TC-1A). Recently, DOT issued an exemption (DOT-E 12095) to over 70 parties that incorporates by reference the requirements of Appendix T. DOT plans to propose Federal rulemaking to

include Appendix T in the next few years.

With respect to leak testing, Appendix T provides four test procedures: bubble leak test, pressure change test, halogen diode detector test, and mass spectrometer test. The tank car industry generally uses the bubble leak test to test tanks in gasoline service. That leak test procedure requires pressurizing the tank car, holding the pressure for a defined period (dwell time), and then using a bubble forming solution at the mating interface of the service equipment under observation. Leaks will cause bubbles to appear. The actual details of the procedure and the equipment under observation are defined in the Federal rule and by the tank car owner. The Federal end result (acceptance criterion) is no leakage.

The typical railcar is loaded about seven times per year. In comparison, tank trucks are loaded as many as seven times per day for high-volume commodities such as gasoline. The disparity in the loading and unloading cycles and the volumetric size of the equipment between railcars and tank trucks suggests a need to consider different leak identification strategies. The DOT leak test interval for railcars is once every 10 years, or whenever the service equipment is reassembled on the tank (49 CFR 180.509(c)(3)(i) and (j)). Beyond those Federal rules, DOT and AAR continue to work on procedures to determine the appropriate in-use frequencies for leak testing. An appropriate in-use frequency considers the material of construction of the service equipment, the service equipment mating surface, gasket specifications, the compatibility of the product with the gasket, the life-limit of the gasket, the bolting arrangement and specified torque on the joint, and the loading and unloading cycle time. In addition to those considerations, the length of the railcar lease also drives the test frequency. According to owners of railcars, leases usually run from 3 to 5 years and require leak testing at the start or renewal of the lease. The DOT and industry standard will take into consideration all aspects of fleet operations and maintenance.

DOT and the AAR are also currently working on the development of an industry standard that outlines which items to inspect, how to inspect those items, the acceptance criteria, data collection and analysis of test results, and statistical tools for predicting inspection frequencies based on a reliability-centered approach. In developing the new standard, the railroad industry surveyed maintenance practices in other industries and the

industry is now working toward a document that is very similar to the Federal Aviation Administration's maintenance scheme for commercial aircraft.

#### *B. Why Are We Making Changes to Our Railcar Leak Testing Requirements?*

Over the last few years, both EPA and DOT have received requests to clarify and reduce any overlapping requirements between DOT's test procedures and those in the 1994 NESHAP. Additionally, we received and approved one loading facility's request for alternative test procedures for gasoline railcars. We met and reviewed the overlapping requirements with both DOT and industry representatives. As discussed below, we believe that DOT requirements control vapor leakage to levels equivalent to those required by the 1994 NESHAP. Therefore, we are proposing to allow certain DOT test procedures to be used as alternatives to our test procedures at gasoline distribution facilities affected under the 1994 NESHAP. Additionally, railcars have historically been loaded and tested at higher pressures than tank trucks, so we are proposing to allow them to load at those higher pressures when using vapor recovery systems.

As discussed earlier, there are many differences between our rules and DOT's rule for leak testing of gasoline railcars. Our test procedures allow for some leakage during the test, are performed annually and affect additional vapor-handling equipment, are for both pressure and vacuum, and include checks for excessive leakage between the annual tests. DOT requirements allow for no leaks during the test when using the most common test procedure, provide for less frequent testing than ours, test only under positive pressure, and include both pre-test and post-test inspections of the railcar tank.

We believe the difference in test frequency is not a significant issue because other factors balance the difference. As discussed above, under DOT procedures and industry practices railcars are commonly pressure tested every 3 to 5 years and, in the worst case, as long as 10 years. We require an annual test, but our test allows for some leakage, we do not require pre- and post-test inspections of the cargo tank, and we do not have a program for qualifying the personnel performing the test. Additionally, we will still have the safety net of our year-round field tests and the ongoing studies by DOT and shippers to determine the appropriate test frequency for railcars. Considering all of those factors, we are proposing

today to allow DOT frequency requirements and the no-leakage test procedure (bubble test) to be used as an alternative to our test method and procedures. In using that alternative, railcar operators must still meet all of the recordkeeping, reporting, and monitoring requirements as mentioned earlier for the 1994 NESHAP.

The remaining difference is that DOT bubble pressure test only identifies positive pressure leakage and we require the tanks to be tested for negative pressure (vacuum) leakage. Today's proposed amendments would limit the use of DOT bubble test to those railcars that do not vapor balance with the customer tanks. We are not aware of any vapor balancing of gasoline railcars, and industry representatives have reported that there are very few, if any, railcars that are being vapor balanced. However, since maintaining vacuum is critical to the capture and control of cargo tank unloading emissions, we are proposing to limit DOT alternative procedures to railcars that do not vapor balance.

Lastly, industry representatives have reported that gasoline railcars load at higher pressures than the design and test pressure in the 1994 NESHAP. As discussed earlier, the 1994 NESHAP require the total system (railcar and vapor collection and loading equipment) to be designed, tested, and operated below the same specified pressure (18 inches of water column). We have allowed one gasoline railcar loading facility to operate under higher pressures<sup>1</sup> which may be set by the facility, provided they have designed and tested the complete loading and vapor collection system for the specified higher pressures. Today, we are proposing to provide a similar higher pressure allowance for all affected facilities loading gasoline into railcars.

### III. Which Specific Leak Test Methods Can be Used for Railcars?

As we describe in section VII.I of this preamble, we conducted a search to identify railroad tank car test procedures that could serve as

<sup>1</sup> Instead of limiting the positive pressure for the test to 18 inches of water as required under the 1994 NESHAP, the testing pressure must be at or above the maximum operating pressure expected when loading multiple railcars. The testing pressure is the maximum operating pressure plus 20 percent, but will in no case be greater than 25 pounds per square inch. Instead of the 25 mm (1 inch) of water pressure change allowed in 40 CFR 63.425(e), the allowable pressure change shall be no greater than 5.0 percent of the maximum pressure. In complying with the test run repetition requirements as specified in section 5.2.5 of Method 27, the tester must repeat positive pressure test runs until two consecutive runs agree within 2.5 percent of the maximum pressure. Maintain records of the railcar pressure limits as required in § 63.428(b).

alternatives to DOT's referenced bubble leak test procedure in the AAR Tank Car Manual. Our search located two additional test methods that we and DOT believe are equivalent to DOT's approach. Those test procedures are: ASTM E 515-95 (Reapproved 2000), "Standard Test Method for Leaks Using Bubble Emission Techniques," and British Standard (BS) EN 1593:1999, "Non-destructive Testing: Leak Testing-Bubble Emission Techniques." The procedure ASTM E 515-95 and BS EN 1593:1999 are procedures for the detection and location of leaks in vessels by bubble emission techniques and are similar to DOT's current procedure. The procedure BS EN 1593 covers certification of personnel, creation of a pressure differential across the vessel, the type of bubble forming solution to be used, preparation of the vessel surface, dwell time for establishment of bubble emissions, surface temperature, and direct and indirect visual examination procedures. The procedure ASTM E 515-95 includes specifications for personnel performing the leak testing, creation of a pressure differential across the vessel, and the type of bubble forming solution to be used, and also addresses the application of the solution to the test surface and provides estimates of precision and bias for the procedure.

We are proposing to allow those two test procedures, as well as the current DOT bubble leak test procedure, as acceptable alternatives through addition of a new paragraph to the 1994 NESHAP (40 CFR 63.425(i)).

### IV. How Is a Flare Defined for Purposes of Monitoring the Presence of a Flame Instead of Flame Temperature?

We found that the 1994 NESHAP were not clear on the difference between a flare system and a thermal oxidation system. The distinction is important because of the different monitoring requirements for those two types of control systems. The 1994 NESHAP require flares to be continuously monitored for the presence of a pilot flame, and thermal oxidation systems to be continuously monitored for firebox temperature. The 1994 NESHAP did not contain a definition for either type of unit. Today's proposed amendments would clarify the intent of the 1994 NESHAP by adding definitions for both units. The proposed amendments would also clarify the text of the monitoring requirements. Additionally, we are clarifying the use of the term flare in the test methods and procedures section of the 1994 NESHAP.

The continuous monitoring section of the 1994 NESHAP require thermal

oxidation systems to include a monitor to measure the temperature in the firebox or in the ductwork immediately downstream from the firebox (40 CFR 63.427(a)(3)). Flare systems, on the other hand, must use a heat-sensing device, such as an ultraviolet beam sensor or a thermocouple, installed in proximity to the pilot light, to indicate the presence of a flame (40 CFR 63.427(a)(4)). Flares are one type of thermal oxidation system that thermally oxidizes pollutants in an open flame without an enclosure. Other types of thermal oxidizers also thermally oxidize pollutants, but the combustion flame is enclosed in a box or cylinder. We intended that only non-enclosed flare systems meeting the design specifications in the General Provisions to this part (40 CFR 63.11(b)) be allowed to monitor for the presence of a flame. We found, through testing many types of flares, that flares meeting those design specifications have a high combustion efficiency. Therefore, due to the complexity of testing systems with an open flame and no enclosure, we do not require each flare to be performance tested if it meets the required design specifications. Also, due to their design, the flares need only monitor for the presence of a flame to show long-term or continuous compliance. For other enclosed thermal oxidation systems or recovery systems, a performance test measuring pollutant flow rate and concentration is feasible. The enclosed thermal oxidation system's oxidation temperature can vary and is easily measured, so temperature monitoring is important and required to demonstrate long-term compliance. For flares not meeting the 40 CFR 63.11(b) design specifications, you must develop your own test methods and procedures and monitoring techniques to determine short- and long-term compliance with the emissions standards specified in the 1994 NESHAP. Outlet emissions shall not exceed 10 milligrams of total organic compounds per liter of gasoline loaded.

Based on those considerations and how other standards have defined the control systems, we have developed definitions for flares and thermal oxidation systems to clarify the requirements for each type of system. We are also proposing to clarify the rule text to say that flares meeting the design specifications are the only flare systems allowed to use a flame monitor rather than a temperature monitor. For flares not meeting the design specifications, the owner or operator must determine and obtain approval for alternative

monitoring and test procedures as discussed below.

The test methods and procedures section of the 1994 NESHAP (40 CFR 63.425(a)) specifies that a performance test is required for all control systems. That provision also says that if you cannot measure emissions from a flare using the specified test methods, then the general design specifications for flares apply. The 1994 NESHAP neither defined a flare nor specified what happens if a flare does not meet the design specifications. The intent of the 1994 NESHAP and other rules using that approach is that if a flare meets the 40 CFR 63.11(b) design specifications, you must only demonstrate that those specifications are met without the need to conduct the performance test required for enclosed systems, where gas flow rate and pollutant concentration can be easily measured. Today, we are clarifying the intent of the 1994 NESHAP by amending the rule text language of 40 CFR 63.425(a). We are also clarifying that if a flare does not meet the flare design specifications and cannot be tested using the specified test procedures, then you must determine and demonstrate appropriate test methods and procedures and monitoring parameters as currently specified in 40 CFR 63.7(f) and 40 CFR 63.427(a)(5), respectively.

#### **V. Can the Flare Design Specifications Be Used for Compliance With the 1983 NSPS?**

When the 1983 NSPS were under development, flares were not being used at bulk gasoline terminals and the flare design specifications in 40 CFR 60.18(b) through (f) had not been promulgated. If a flare is designed and operated in accordance with these specifications, no efficiency or outlet performance testing is necessary to demonstrate performance. Since then, flares have been put into use at bulk terminals and we have been allowing the flare design specifications to be used for compliance demonstrations for flares with an open (without enclosure) flame.<sup>2</sup> Therefore, we are proposing to add a reference to the flare design specifications in the rule text.

The test methods and procedures section of the 1983 NSPS (40 CFR 60.503) provides detailed procedures for carrying out the required performance testing of vapor processing systems. One of those procedures includes measurement of volume and

concentration of total organic compounds exhausted from the control device (40 CFR 60.503(c)). Open flame flares, due to their design, do not allow the easy measurement of volume and concentration of total organic compounds exhausted. For that reason, in 1986 we promulgated open flame flare design specifications in the General Provisions of 40 CFR part 60. However, we stipulated that those design specifications do not apply unless a particular subpart of part 60 refers to them (40 CFR 60.18(a)). We found if a flare is designed and operated in accordance with those specifications, no efficiency or outlet emissions testing is necessary to show that the flare achieves a control efficiency of at least 98 percent. However, we require some testing to demonstrate that the flare meets the design specifications. We have determined that those specifications are applicable under the 1983 NSPS, so we are proposing to add a reference to them in the rule text.

Under today's proposed amendments affecting 40 CFR 60.503, we are allowing owners and operators under the 1983 NSPS to demonstrate that their flare meets the 40 CFR 60.18(b)–(f) design specifications rather than conducting an outlet volume and concentration performance test (40 CFR 60.503(c)). If you have an open flame flare that does not meet the flare design specifications and cannot be tested using the specified outlet volume and concentration test procedures, then you must determine and demonstrate appropriate methods and procedures that will demonstrate the control performance of the flare. Those methods must be capable of demonstrating that the flare provides a level of emissions control that is at least equivalent to the applicable emission limit in the 1983 NSPS. We still require all vapor processing systems, including flares meeting the above open flame flare design specifications, to meet the additional leak and pressure test methods and procedures in 40 CFR 60.503 for vapor collection and vapor processing systems (40 CFR 60.503(a), (b), and (d)). Also, we are adding the flare definition to 40 CFR 60.501 to clarify that the flare design provisions only apply in the 1983 NSPS to flares with an open (without enclosure) flame.

#### **VI. Can Cargo Tank Vapor Tightness Records Be Kept Off-Site?**

Recently, a company requested and we approved the off-site storage of cargo tank vapor tightness records, instead of on-site record retention as specified in 40 CFR 63.428(b) of the 1994 NESHAP. That company and others operating

multiple terminals need and have a centralized recordkeeping system. The company is now allowed to keep the records off-site if the records are instantly accessible at the affected facility in a centralized computer system that will produce an exact duplicate image of the original paper record with certifying signatures. Also, they must notify the permitting authority in writing when they have completed the scanning of all required records and have the system of instant access to all terminals fully functional.

The 1994 NESHAP and the 1983 NSPS require (in 40 CFR 63.428(b) and 40 CFR 60.505(a), (b), and (d), respectively) terminal owners and operators to maintain an on-site record of vapor tightness test results for each gasoline cargo tank loaded at a 1994 NESHAP or 1983 NSPS affected terminal. Those records are used by terminal owners and operators and compliance inspectors to determine if the cargo tanks loading at the terminal have passed the required vapor tightness test. If an exact duplicate electronic copy of those records is instantly available at the terminal, we believe that that is an equivalent alternative to the original requirement. Today, we are proposing an alternative for both the 1994 NESHAP and the 1983 NSPS that allows a terminal owner or operator to keep paper copies of those records off-site, provided that the same records are instantly available (in electronic form) on-site.

#### **VII. Administrative Requirements**

##### *A. Executive Order 12866, Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulation is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "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 government 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 entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

<sup>2</sup> The industry also uses enclosed flares. You can test the performance of enclosed flares with test procedures currently in the 1983 NSPS; therefore, the discussion and the proposed amendments do not apply to enclosed flares.

(4) Raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The promulgation of the 1994 NESHAP was treated as a "significant regulatory action" within the meaning of the Executive Order. An estimate of the cost and benefits of the 1994 NESHAP was prepared as part of the draft background information document (BID) and was updated in the final BID at promulgation to reflect public comments and changes made in finalizing the rule. The 1983 NSPS were promulgated when an earlier form (Executive Order 12291) of the Executive Order was administered. We concluded that it was not a major rule under Executive Order 12291. Today's proposed amendments to the 1983 NSPS and 1994 NESHAP would reduce the recordkeeping and testing burden for some terminals, but we do not have an estimate of the number of terminals affected by the proposed amendments. Therefore, the cost impacts of the subject standards are less than previously estimated but our estimates have not been revised. The OMB evaluated the action and determined it to be nonsignificant; therefore, the action did not require OMB review.

#### *B. Executive Order 13132, Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

The proposed amendments would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed amendments would not impose directly enforceable requirements on States, nor would they preempt them from adopting their own more stringent programs. Moreover, States are not required under the CAA to take delegation of Federal NESHAP or NSPS and bear their implementation costs, although States are encouraged and often choose to do so. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed amendments. Although section 6 of Executive Order 13132 does not apply to the proposed amendments, EPA is providing State and local officials an opportunity to comment on the proposed amendments. A summary of the concerns raised during the notice and comment process and EPA's response to those concerns will be provided in the final rulemaking action.

#### *C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The proposed amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No affected plant sites are known to be owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to the proposed amendments. The proposed amendments add two alternatives to provide facilities with the flexibility to comply in the least costly manner while

maintaining a workable and enforceable rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on the proposed amendments from tribal officials.

#### *D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

As discussed earlier, OMB evaluated the action and determined it to be nonsignificant. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. The proposed amendments provide for equivalent alternative recordkeeping and testing and the promulgated 1994 NESHAP fall into that category only in part: the minimum rule stringency is set according to a congressionally-mandated, technology-based lower limit called the "floor," while a decision to increase the stringency beyond the floor can be partly based on risk-type considerations, although EPA does not conduct true risk assessments when deciding to regulate beyond the MACT floor under section 112(d). The 1983 NSPS are not based on health or safety risks, but are based on the best demonstrated technological systems of continuous emissions reduction, considering costs, nonair quality health, and environmental and energy impacts. No children's risk analysis was performed for the 1983 NSPS, 1994 NESHAP, or the proposed amendments because no alternative technologies exist that would provide greater stringency at a reasonable cost; therefore, the results of any such analysis would have no impact on the stringency decision.

*E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The proposed amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

*F. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's proposed amendments do not include a Federal mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate, or to the private sector.

Therefore, the requirements of the UMRA do not apply to this action.

*G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

When EPA promulgated the 1994 NESHAP, it analyzed the potential impacts on small businesses, discussed the results of the analysis in the **Federal Register**, and concluded that the promulgated regulation would not result in financial impacts that significantly or differentially stress affected small companies. The 1983 NSPS were analyzed for potential impacts on small businesses under the RFA of 1980, and it was determined that the RFA did not apply. We analyzed and considered the impacts, and no significant impacts were expected.

After considering the economic impact of today's proposed amendments on small entities, we certify that this action will not have a significant impact on a substantial number of small entities. The proposed amendments would minimize the impact on small entities and, therefore, would not have a significant economic impact on a substantial number of small entities. The proposed amendments add two alternatives to provide facilities with the flexibility to comply in the least costly manner while maintaining a workable and enforceable rule. Both alternatives were requested by impacted bulk terminal and railcar owners and operators, and we worked with them to develop the alternatives.

*H. Paperwork Reduction Act*

The information collection requirements in this rule have been previously submitted to OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 et seq., and were approved by OMB under the previously promulgated 1983 NSPS (OMB control number 2060-0006-ICR 0665.06) and 1994 NESHAP (OMB control number 2060-0325-ICR 1659.04). A copy of the Information Collection Request (ICR) documents may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies

Division (2822T), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at [Auby.Susan@epa.gov](mailto:Auby.Susan@epa.gov), or by calling (202) 566-1672.

Today's proposed amendments would reduce the recordkeeping and testing burden for some terminals. We do not have an estimate of the number of terminals affected by the proposed amendments. Therefore, the ICR burden is less than previously estimated but the ICR has not been revised.

*I. National Technology Transfer and Advancement Act of 1995*

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when the agency does not use available and applicable VCS.

The proposed amendments involve technical standards. EPA cites DOT railcar procedures that reference the AAR Tank Car Manual bubble test. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to that method. The search and review results have been documented and are placed in the docket for the proposed amendments, Docket No. A-92-38.

Two VCS are cited in the proposed amendments as alternatives to DOT's bubble test. The two standards are British Standard (BS) EN-1593:1999, "Non-destructive Testing: Leak Testing-Bubble Emission Techniques," and ASTM E515-95 (Reapproved 2000), "Standard Test Method for Leaks Using Bubble Emission Techniques." Those two standards are discussed below.

The VCS BS EN-1593 cited in the proposed amendments is a detailed method that contains procedures that are either equivalent to those of DOT bubble test specifications or that provide additional quality control, including: certification of personnel, creating a pressure differential, type of liquids to be used, preparation of the surface, dwell time appropriate for the establishment of bubble emissions, required surface temperature range, and

specifications for direct and indirect visual examination procedures.

The VCS ASTM E515 cited in the proposed amendments is also an acceptable method that contains procedures that are either equivalent to those of DOT bubble test specifications or provide additional quality control, including: the type of liquids to be used; application of fluid; creating a pressure differential; applying pressure before liquid is applied; and accuracy, repeatability, and reproducibility of locating leaks of 0.0001 Std cm<sup>3</sup>/sec or greater.

The methods that are included in the proposed amendments are listed in 40 CFR 63.425(i)(2). Under 40 CFR 63.7(f) of subpart A (General Provisions), a source may apply to EPA for permission to use alternative test methods in place of any of EPA testing methods.

J. Regulatory Review

In accordance with sections 112(d)(6) and (f)(2) of the CAA, the 1994 NESHAP will be reviewed 8 years from the date of promulgation. That review may include an assessment of such factors as evaluation of the residual health risk, any overlap with other programs, the existence of alternative methods of control, enforceability, improvements in emissions control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects for 40 CFR Parts 60 and 63

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 12, 2002.

Christine Todd Whitman, Administrator.

For the reasons set out in the preamble, title 40, chapter I, parts 60 and 63 of the Code of Federal Regulations are proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart XX—[Amended]

2. Section 60.501 is amended by adding the following definitions in alphabetical order to read as follows:

§ 60.501 Definitions.

\* \* \* \* \*

Flare means a thermal oxidation system using an open (without enclosure) flame.

\* \* \* \* \*

Thermal oxidation system means a combustion device used to mix and ignite fuel, air pollutants, and air to provide a flame to heat and oxidize hazardous air pollutants. Auxiliary fuel may be used to heat air pollutants to combustion temperatures.

\* \* \* \* \*

3. Section 60.503 is amended by adding paragraphs (e) and (f) to read as follows:

§ 60.503 Test methods and procedures.

\* \* \* \* \*

(e) The performance test requirements of paragraph (c) of this section do not apply to flares defined in § 60.501 and meeting the requirements in § 60.18(b) through (f). The owner or operator of the flare and associated vapor collection system shall demonstrate compliance with the requirements in §§ 60.18(b) through (f) and 60.503(a), (b), and (d), respectively.

(f) The owner or operator shall use alternative test methods and procedures in accordance with the alternative test method provisions in § 60.8(b) for flares that do not meet the requirements in § 60.18(b).

4. Section 60.505 is amended by adding paragraph (e) to read as follows:

§ 60.505 Reporting and recordkeeping.

\* \* \* \* \*

(e) As an alternative to keeping records at the terminal of each gasoline cargo tank test result as required in paragraphs (a), (c), and (d) of this section, an owner or operator may comply with the requirements in paragraphs (e)(1) through (3) of this section.

(1) An electronic copy of each record is instantly available at the terminal.

(2) The copy of each record in paragraph (e)(1) of this section is an exact duplicate image of the original paper record with certifying signatures.

(3) The permitting authority is notified in writing that each terminal using this alternative is in compliance with paragraphs (e) (1) and (2) of this section.

\* \* \* \* \*

PART 63—[AMENDED]

5. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart R—[Amended]

6. Section 63.421 is amended by adding the following definitions in alphabetical order to read as follows:

§ 63.421 Definitions.

\* \* \* \* \*

Flare means a thermal oxidation system using an open (without enclosure) flame.

\* \* \* \* \*

Thermal oxidation system means a combustion device used to mix and ignite fuel, air pollutants, and air to provide a flame to heat and oxidize hazardous air pollutants. Auxiliary fuel may be used to heat air pollutants to combustion temperatures.

\* \* \* \* \*

7. Section 63.422 is amended by revising paragraph (c)(2)(i) and adding paragraph (e) to read as follows:

§ 63.422 Standards: Loading racks.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) The tank truck or railcar gasoline cargo tank meets the test requirements in § 63.425(e), or the railcar gasoline cargo tank meets applicable test requirements in § 63.425(i);

\* \* \* \* \*

(e) As an alternative to § 60.502(h) and (i) of this chapter as specified in paragraph (a) of this section, the owner or operator may comply with paragraphs (e)(1) and (2) of this section:

(1) The owner or operator shall design and operate the vapor processing system, vapor collection system, and liquid loading equipment to prevent gauge pressure in the railcar gasoline cargo tank from exceeding the applicable test limits in § 63.425(e) and (i) during product loading. This level is not to be exceeded when measured by the procedures specified in § 60.503(d) of this chapter.

(2) No pressure-vacuum vent in the bulk gasoline terminal's vapor processing system or vapor collection system shall begin to open at a system pressure less than the applicable test limits in § 63.425(e) or (i).

\* \* \* \* \*

8. Section 63.425 is amended by revising paragraph (a) and adding paragraph (i) to read as follows:

§ 63.425 Test methods and procedures.

(a) Each owner or operator subject to the emission standard in § 63.422(b) or § 60.112b(a)(3)(ii) of this chapter shall comply with the requirements in paragraphs (a)(1) and (2) of this section.

(1) Conduct a performance test on the vapor processing and collection systems

according to either paragraph (a)(1)(i) or (ii) of this section.

(i) Use the test methods and procedures in § 60.503 of this chapter, except a reading of 500 ppm shall be used to determine the level of leaks to be repaired under § 60.503(b) of this chapter, or

(ii) Use alternative test methods and procedures in accordance with the alternative test method requirements in § 63.7(f).

(2) The performance test requirements of § 60.503(c) of this chapter do not apply to flares defined in § 63.421 and meeting the flare requirements in § 63.11(b). The owner or operator of the flare and associated vapor collection system shall demonstrate compliance with the requirements in §§ 63.11(b) and 60.503(a), (b), and (d) of this chapter, respectively.

\* \* \* \* \*

(i) *Railcar bubble leak test procedures.* As an alternative to paragraph (e) of this section for annual certification leakage testing of gasoline cargo tanks, the owner or operator may comply with paragraphs (i)(1) and (2) of this section for railcar gasoline cargo tanks, provided the railcar tank meets the requirement in paragraph (i)(3) of this section:

(1) Comply with the requirements of 49 CFR 173.31(d), 179.7, 180.509, and 180.511 for the testing of railcar gasoline cargo tanks.

(2) The leakage pressure test procedure required under 49 CFR 180.509(j) and used to show no indication of leakage under 49 CFR 180.511(f) shall be ASTM E 515-95, BS EN 1593:1999, or another bubble leak

test procedure meeting the requirements in 49 CFR 179.7, 180.505, and 180.509.

(3) The alternative requirements in this paragraph (i) shall not be used for any railcar gasoline cargo tank that collects gasoline vapors from a vapor balance system permitted under or required by a Federal, State, local, or tribal agency. A vapor balance system is a piping and collection system designed to collect gasoline vapors displaced from a storage vessel, barge, or other container being loaded, and routes the displaced gasoline vapors into the railcar gasoline cargo tank from which liquid gasoline is being unloaded.

9. Section 63.427 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

**§ 63.427 Continuous monitoring.**

\* \* \* \* \*

(a) \* \* \*

(3) Where a thermal oxidation system other than a flare is used, a CPMS capable of measuring temperature shall be installed in the firebox or in the ductwork immediately downstream from the firebox in a position before any substantial heat exchange occurs.

(4) Where a flare meeting the requirements in § 63.11(b) is used, a heat-sensing device, such as an ultraviolet beam sensor or a thermocouple, shall be installed in proximity to the pilot light to indicate the presence of a flame.

\* \* \* \* \*

10. Section 63.428 is amended by revising paragraphs (b)(1), (b)(3)(i), and (b)(3)(viii), and by adding paragraph (k) to read as follows:

**§ 63.428 Reporting and recordkeeping.**

\* \* \* \* \*

(b) \* \* \*

(1) Annual certification testing performed under § 63.425(e) and railcar bubble leak testing performed under § 63.425(k).

\* \* \* \* \*

(3) \* \* \*

(i) Name of test: Annual Certification Test—Method 27 (§ 63.425(e)(1)); Annual Certification Test—Internal Vapor Valve (§ 63.425(e)(2)); Leak Detection Test (§ 63.425(f)); Nitrogen Pressure Decay Field Test (§ 63.425(g)); Continuous Performance Pressure Decay Test (§ 63.425(h)); or Railcar Bubble Leak Test Procedure (§ 63.425(i)).

\* \* \* \* \*

(viii) Test results: test pressure; pressure or vacuum change, mm of water; time period of test; number of leaks found with instrument; and leak definition.

\* \* \* \* \*

(k) As an alternative to keeping records at the terminal of each gasoline cargo tank test result as required in paragraph (b) of this section, an owner or operator may comply with the requirements in paragraphs (k)(1) through (3) of this section.

(1) An electronic copy of each record is instantly available at the terminal.

(2) The copy of each record in paragraph (k)(1) of this section is an exact duplicate image of the original paper record with certifying signatures.

(3) The permitting authority is notified in writing that each terminal using this alternative is in compliance with paragraphs (k)(1) and (2) of this section.

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