

ENVIRONMENTAL PROTECTION AGENCY
40 CFR Parts 60 and 63
[OAR-2002-0029, FRL-7599-9]
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: Final rule; amendments.

SUMMARY: On August 18, 1983, we promulgated Standards of Performance for Bulk Gasoline Terminals (48 FR 37590). The 1983 standards of performance limit and control emissions of volatile organic compounds (VOC) that react with other pollutants to form ozone (or smog) which has been linked to respiratory impairment and eye irritation, and negatively affects vegetation and ecosystems. On December 14, 1994, we promulgated National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) (59 FR 64318). The 1994 national emission standards limit and control hazardous air pollutants (HAP) that are known or suspected to cause cancer or have other serious health or environmental effects.

On September 20, 2002, we proposed amendments to the 1983 standards of performance and 1994 national emission standards to provide for the use of alternative leak test procedures for railcars under the 1994 national emission standards, a clarification on monitoring flares and thermal oxidation systems used to comply with the 1994 national emission standards, alternative recordkeeping requirements for tank trucks and railcars under the 1983 standards of performance and 1994 national emission standards, and the use of flare design specifications under the 1983 standards of performance by incorporating the allowance in the text of that final rule. This document takes final action on those proposed amendments. The amendments do not change the level of control or compromise the environmental protection achieved by the 1983 standards of performance and 1994 national emission standards, but provide clarification and alternatives that enhance the flexibility of the recordkeeping and testing requirements of the two final rules.

DATES: This rule is effective December 19, 2003. The incorporation by reference of certain publications listed in today's final amendments is approved by the Director of the Federal Register as of December 19, 2003.

ADDRESSES: Docket Nos. OAR-2002-0029 and A-92-38 contain supporting information used in developing the standards. The docket is located at the

EPA Docket Center (Air Docket), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, and may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: For further information concerning applicability to a facility, contact the appropriate State or local agency representative. If no State or local agency representative is available, contact the appropriate EPA Regional Office Director listed in 40 CFR 63.13. For further information on compliance issues, contact Ms. Julie Tankersley, U.S. EPA, Office of Enforcement and Compliance Assurance, 2223A, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564-7002, electronic mail (e-mail) address: tankersley.julie@epa.gov. For further information concerning analyses performed in the development of the final amendments, 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:

Regulated entities. The regulated categories and entities affected by this action include:

Category	NAICS ^a	(SIC ^b)	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/State/local/tribal governments.			

^a North American Industry Classification System.

^b 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 40 CFR 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.

Docket. We have established an official public docket for this action under Docket ID Nos. A-92-38 and

OAR-2002-0029. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final amendments. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available

for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744. The telephone number for the Air Docket is (202) 566-1742. A reasonable fee may be charged for copying docket materials.

Electronic Access. An electronic version of the public docket (Docket ID

No. OAR–2002–0029) is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number (OAR–2002–0029). Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in the above paragraph entitled "Docket."

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's final amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final 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.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final amendments is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 17, 2004. Only those objections to the final amendments which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's final amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

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

- I. Introduction
- II. Summary of Comments and Responses
- III. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Analysis
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks

- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act
- J. Congressional Review Act

I. Introduction

We received eight public comment letters on the September 20, 2002 proposed amendments. Six of the comment letters were from industry representatives, one was from a control device manufacturer, and one was from a State air pollution control agency. The commenters addressed the alternative leak test procedures for railcars, the definitions and monitoring requirements for flares and thermal oxidation systems, and the alternative recordkeeping requirements for tank trucks. The commenters expressed support for certain provisions of the amendments, disagreed with one provision, and requested an additional alternative to one that was proposed. This preamble summarizes the comments, presents our responses to the comments, and identifies changes made to the amendments as proposed.

II. Summary of Comments and Responses

Comment: Several commenters (two trade organizations, three oil companies, and one control device manufacturer) objected to the proposed amendments concerning thermal oxidation systems, stating that the current national emission standards allow three monitoring options for devices they referred to as "enclosed flares," which are flare-like burner systems enclosed by a stack or other enclosure. They stated that the proposed amendments amounted to an unnecessary and inappropriate narrowing of the monitoring alternatives for enclosed flares. They stated that monitoring of the pilot flame provides adequate assurance that the enclosed flare is operating in compliance with the emission standard, and that the temperature monitoring alternative should be applied only to enclosed flares that are not meeting the design specification requirements of 40 CFR 63.11(b), operated similarly to thermal incinerators, or operated by a facility that prefers to use this monitoring method.

The commenters offered several reasons why continuous temperature monitoring would not be appropriate for enclosed flares. They claimed that vapor oxidation efficiency does not directly correlate with combustion zone temperature in these systems. They said that temperature monitoring is most

appropriate for thermal incinerators where relatively constant flow rates and compositions and, thus, a constant temperature, are maintained. They explained that most enclosed flares operate on a cyclic, on-off basis and, when designed and operated properly, provide for energy conservation and maximum emissions reductions. The commenters noted that enclosed flares are designed and operated just like other flares, using the same technology and installed in the same applications.

Additionally, the commenters pointed out that enclosed flares may have to use additional supplemental fuel to achieve and maintain a specific temperature, which would lead to increased emissions of VOC, carbon monoxide, nitrogen oxides, and carbon dioxide. The amendments as proposed also could inadvertently promote the use of less desirable and less efficient open flame flares at facilities wishing to avoid the increased testing and monitoring requirements associated with the thermal oxidation definition. One commenter recommended that the parametric continuous monitoring requirements not be limited exclusively to firebox or stack temperature, and that no parametric monitoring methods be prohibited on a general basis as long as the parameter can be demonstrated to be reliable. Other commenters also requested that facilities continue to have the option of applying for an alternative operating parameter as provided in 40 CFR 63.427(a)(5).

Response: As discussed in the proposal preamble, the design and operating specifications for flares in the General Provisions of 40 CFR part 60 and 40 CFR part 63 were developed out of necessity, due to the fact that flares cannot be reasonably tested using the prescribed EPA source test methods. Further, it is not feasible to continuously monitor either emissions or an operating parameter of this type of control system. However, the thermal oxidation systems described by the commenters (enclosed flares) do contain an enclosed exhaust space (firebox, ductwork, stack, etc.) in which performance testing and continuous monitoring can be performed. We would have preferred to require continuous emission monitoring systems (CEMS) on all control devices since they directly monitor emissions to the atmosphere. Because viable CEMS were not identified (except for carbon adsorption systems), our intention has always been to apply, wherever possible, requirements for testing and for continuous monitoring of a direct indicator of compliance. Combustion temperature is a good indicator of

performance for combustion devices. Since open flares could not be directly measured for emissions or firebox temperature, we felt the next best indicator of continuing compliance was to require flares to meet minimum design specifications and to monitor for the presence of a flame. Studies conducted by EPA indicate that open flares meeting the design and monitoring requirements perform at a very high level of efficiency. However, the flare design requirements and the requirement to monitor for the presence of a flame were not intended for other thermal oxidation systems since there are more direct means of monitoring proper operation and maintenance.

While it may be possible that the types of devices described by the commenters are capable of operating as efficiently as open flares, the commenters did not provide any data or other information to demonstrate that a presence-of-flame indicator installed in a thermal oxidation system would ensure compliance with emission standards. They also did not describe alternate ways of ensuring that these systems are designed and operated properly if they were allowed to use presence-of-flame indicators. For compliance to be assured, the system needs to be properly designed, source tested initially to demonstrate compliance and to establish operating parameter values, and continuously monitored to ensure proper operation and continued compliance with the emission standards. We do not, however, mandate that the owner or operator adhere to a specific set of operating parameters to ensure continuing compliance. In fact, § 63.427(a)(5) of the final rule allows the owner or operator the flexibility of monitoring any parameters that can be demonstrated to ensure compliance with the emission standards. Commenters have stated that alternative parameters (other than temperature) for enclosed flares have already been approved by States and EPA. Those alternatives are acceptable under the national emission standards, as long as they have been properly demonstrated and approved as provided under § 63.427(a)(5).

As to the impacts of maintaining a specific temperature, we do not specify any certain temperature, averaging time, or monitoring frequency. Thus, if the owner or operator chooses to monitor temperature, they would develop and demonstrate (while considering the impacts on energy and other operating costs) the most appropriate maximum and minimum temperature values, averaging times, and monitoring

frequency to indicate that the device is continuously achieving the emission standards.

Due to these considerations, we have retained the proposed definitions for "flare" and "thermal oxidation system". Further, § 63.427(a)(5) of the final rule still allows the monitoring of alternative operating parameters for thermal oxidation systems, flares, or any other type of control device upon demonstration that the parameter demonstrates continuous compliance with the standards of performance or national emission standards.

Comment: Two trade organizations commented that some of their member companies have agreements with local control agencies to maintain cargo tank vapor tightness documentation off-site but not necessarily have copies instantly available at the site. These facilities utilize a centralized computer system to maintain the records for each vehicle that would load at the terminal. Prior to allowing the vehicle operator to begin loading, the system automatically compares the vehicle identification number to the test records to ensure that the cargo tank has passed its test and that the test results have not expired. The facility maintaining the vapor tightness test results is able to provide a paper version to the terminal within a matter of minutes to hours (via facsimile), depending on the volume of records requested at any given time. The commenters said that the proposed requirement for facilities to provide the records "instantly" may prohibit these companies from continuing to operate using their current systems. They provided suggested rule language for incorporation into the 1983 standards of performance and 1994 national emission standards that would account for the recordkeeping procedure used by these companies. Their suggested provision would allow owners and operators using an automated vehicle lock-out system to maintain a record system in which a copy of the test documentation could be made available to inspectors either during a visit by EPA or at some other mutually agreeable time.

Response: The intent of the requirement for affected facilities to maintain vapor tightness test records is to provide a means of ensuring that noncertified gasoline cargo tanks do not load (or at least are not reloaded) at the facility. The computerized automation systems in use at many facilities could provide this assurance when they have the capability of automatically locking noncertified tanks out of the loading process, and when records are properly maintained and entered into the

computerized system. Therefore, we have agreed to add this option in addition to what was proposed.

Comment: Commenters agreed with all of the proposed changes for railcar testing. However, two of the commenters clarified a statement in the preamble (67 FR 59437, September 20, 2002) that, "according to owners of railcars, (railcar) leases usually run from 3 to 5 years and require leak testing at the start or renewal of the lease." They agreed that most leases range from 3 to 5 years, but pointed out that the lessee determines when the leak test will be run according to the lessee's pre-loading procedures and/or Department of Transportation (DOT) requirements. The commenters stated that "although determined by the lessee, it is normal practice for a leak test to be performed when a lessor starts a new lease, but a leak test is traditionally not performed when a lease is renewed by the same company until it is time to conduct the test during scheduled maintenance."

Response: After consideration of the information provided by the commenters, we have decided not to make any changes to the amendments as proposed. As discussed more fully at proposal, there are several factors involved in our decision to consider the DOT leak testing procedures as an acceptable alternative to Method 27. The DOT test procedures allow for no leaks during the test while Method 27 does allow some leakage. The DOT procedures require pre- and post-test inspections of the structural integrity of the cargo tank and also require a qualifying program for testing personnel. The EPA leak testing procedures do not require either of these items. Our procedures do, however, require an annual test while the DOT only requires testing once every 10 years or whenever the service equipment is reassembled on the tank. The difference in testing frequency is not a significant issue because the other factors balance the difference. Therefore, while we would prefer the lease to require that leak tests be performed and that the condition of the cargo tank be checked at the renewal of a lease as well as at the start of a new lease, DOT requirements control vapor leakage to levels equivalent to those required by the 1994 national emission standards.

III. Statutory and Executive Order Reviews

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

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

Today’s final amendments to the 1983 standards of performance and 1994 national emission standards will reduce the recordkeeping and testing burden for some terminals, but we do not have an estimate of the number of terminals affected. 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. Paperwork Reduction Act

The information collection requirements in the subject standards 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 promulgated 1983 standards of performance (OMB control number 2060–0006–ICR 0665.06) and 1994 national emission standards (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*, or by calling (202) 566–1672.

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

C. Regulatory Flexibility Analysis

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final amendments. The EPA has also determined that the final amendments will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impacts of today’s final amendments on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,500 employees, or a maximum of \$5 million to \$18.5 million in revenues, depending on the size definition for the affected North American Industry Classification System (NAICS) code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. It should be noted that the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration (SBA) size standards (13 CFR 121). For more information on size standards for particular industries, please refer to the economic impact analysis in the docket.

When EPA promulgated the 1994 national emission standards, it analyzed the potential impacts on small businesses, discussed the results of the analysis in the **Federal Register**, and concluded that the promulgated rule would not result in financial impacts that significantly or differentially stress affected small companies. The 1983 standards of performance were analyzed for potential impacts on small businesses under the Regulatory Flexibility Act (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 impacts of today’s final amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. Today’s final amendments will minimize the impact on small entities by adding 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.

D. Unfunded Mandates Reform Act

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.

The EPA has determined that today’s final amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more to State, local, and tribal governments in the aggregate, or to the private sector in any 1 year. Thus, today’s final action is not subject to the requirements of sections 202 and 205 of the UMRA.

E. 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.”

Today’s final amendments do 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. Thus, the requirements of section 6 of the Executive Order do not apply to today’s amendments.

F. 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.”

Today’s final 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. Thus, Executive Order 13175 does not apply to today’s final amendments.

G. Executive Order 13045: Protection of Children From Environmental Health & 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.

We interpret 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. Today’s final amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health and safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Today’s final 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.

I. National Technology Transfer Advancement Act

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 final amendments involve technical standards. The 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 final amendments, Docket Nos. A–92–38 and OAR–2002–0029.

Two VCS are cited in the final 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.” These two standards are discussed below.

The VCS BS EN–1593 cited in the final 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 final 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 standard cubic centimeters per second or greater.

The methods that are included in the final 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 EPA testing methods.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing these final amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). The final amendments become effective on December 19, 2003.

List of Subjects

40 CFR Part 60

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

40 CFR Part 63

Environmental protection, Administrative practice and procedures,

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 12, 2003.

Michael O. Leavitt,
Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, parts 60 and 63 of the Code of Federal Regulations are 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 in alphabetical order definitions for “flare” and “thermal oxidation system” 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 shall demonstrate that the flare and associated vapor collection system is in compliance with the requirements in §§ 60.18(b) through (f) and 60.503(a), (b), and (d).

(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 either paragraph (e)(1) or (2) of this section.

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

(i) 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.

(ii) The permitting authority is notified in writing that each terminal using this alternative is in compliance with paragraph (e)(1) of this section.

(2) For facilities that utilize a terminal automation system to prevent gasoline cargo tanks that do not have valid cargo tank vapor tightness documentation from loading (e.g., via a card lock-out system), a copy of the documentation is made available (e.g., via facsimile) for inspection by permitting authority representatives during the course of a site visit, or within a mutually agreeable time frame.

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

(ii) The permitting authority is notified in writing that each terminal using this alternative is in compliance with paragraph (e)(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.*

■ 6. Section 63.14 is amended by adding new paragraphs (b)(30) and (j) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) * * *

(30) ASTM E 515—95 (Reapproved 2000), Standard Test Method for Leaks Using Bubble Emission Techniques, IBR approved for § 63.425(i)(2).

* * * * *

(j) The following material is available for purchase from: British Standards Institute, 389 Chiswick High Road, London W4 4AL, United Kingdom.

(1) BS EN 1593:1999, Non-destructive Testing: Leak Testing—Bubble Emission Techniques, IBR approved for § 63.425(i)(2).

(2) [Reserved]

* * * * *

Subpart R—[AMENDED]

■ 7. Section 63.421 is amended by inserting the following definitions in alphabetical order 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.

* * * * *

■ 8. 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 40 CFR 60.502(h) and (i) 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 40 CFR 60.503(d) of this chapter.

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

■ 9. 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 40 CFR 60.112b(a)(3)(ii) 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 40 CFR 60.503 of this chapter, except a reading of 500 ppm shall be used to determine the level of

leaks to be repaired under 40 CFR 60.503(b), 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 40 CFR 60.503(c) do not apply to flares defined in § 63.421 and meeting the flare requirements in § 63.11(b). The owner or operator shall demonstrate that the flare and associated vapor collection system is in compliance with the requirements in § 63.11(b) and 40 CFR 60.503(a), (b), and (d), 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 (incorporated by reference, *see* § 63.14), BS EN 1593:1999 (incorporated by reference, *see* § 63.14), 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) may 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.

10. Section 63.427 is amended by revising paragraphs (a)(3) and (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 must 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, must be installed in proximity to the pilot light to indicate the presence of a flame.

* * * *

■ 11. 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); and

* * * *

(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 either paragraph (k)(1) or (2) of this section.

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

(i) 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.

(ii) The permitting authority is notified in writing that each terminal using this alternative is in compliance with paragraph (k)(1) of this section.

(2) For facilities that utilize a terminal automation system to prevent gasoline cargo tanks that do not have valid cargo tank vapor tightness documentation from loading (*e.g.*, via a card lock-out system), a copy of the documentation is made available (*e.g.*, via facsimile) for inspection by permitting authority representatives during the course of a site visit, or within a mutually agreeable time frame.

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

(ii) The permitting authority is notified in writing that each terminal using this alternative is in compliance with paragraph (k)(2) of this section.

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