

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 9 and 63**

[EPA-HQ-OAR-2006-0406, FRL-9092-1]

RIN 2060-AP16

**National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities**

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

**ACTION:** Proposed rule; reconsideration.

**SUMMARY:** EPA received two petitions for reconsideration from trade associations representing their stakeholders regarding the National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities, which EPA promulgated on January 10, 2008, and amended on March 7, 2008. In this action, EPA is proposing amendments and clarifications to certain definitions and applicability provisions of the final rules in response to some of the issues raised in the petitions for reconsideration. In addition, several other compliance-related questions posed by various individual stakeholders and State and local agency representatives are addressed in this proposed action. We are seeking comments only on the proposed amendments presented in this action. We will not respond to any comments addressing other provisions of the final rules or any related rulemakings.

**DATES:** *Comments.* Written comments must be received on or before February 16, 2010.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing by December 28, 2009, a public hearing will be held on December 30, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0406, by one of the following methods:

- *http://www.regulations.gov.* Follow the online instructions for submitting comments.

- *E-mail:* [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov).

- *Fax:* (202) 566-9744.

- *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

- *Hand Delivery:* In person or by courier, deliver your comments to: Air and Radiation Docket, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0406. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The 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, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

We request that you also send a separate copy of each comment to the contact persons listed below (**see FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:**

*General and Technical Information:* Mr. Stephen Shedd, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), U.S. EPA, Research Triangle Park, NC 27711, telephone: (919) 541-5397, facsimile number: (919) 685-3195, e-mail address: [shedd.steve@epa.gov](mailto:shedd.steve@epa.gov).

*Compliance Information:* Ms. Rebecca Kane, Office of Compliance, Air Compliance Branch (2223A), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone: (202) 564-5960, facsimile number: (202) 564-0050, e-mail address: [kane.rebecca@epa.gov](mailto:kane.rebecca@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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

Category	NAICS *	Examples of regulated entities
Industry .....	324110 493190 486910 424710 447110 447190	Operations at area sources that transfer and store gasoline, including bulk terminals, bulk plants, pipeline facilities, and gasoline dispensing facilities.
Federal/State/local/tribal governments.		

\* North American Industry Classification System.

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 is regulated by this action, you should examine the applicability criteria in 40 CFR part 63, subparts BBBBBB and CCCCCC. 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 your EPA regional representative as listed in 40 CFR 63.13.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today's proposal will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg/>. The TTN at EPA's Web site provides information and technology exchange in various areas of air pollution control.

*Public Hearing.* Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Janet Eck, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), Research Triangle Park, NC 27711; telephone number: (919) 541-7946, e-mail address: [eck.janet@epa.gov](mailto:eck.janet@epa.gov), at least 2 days in advance of the potential date of the public hearing. If a public hearing is held, it will be held at 10 a.m. at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby. If no one contacts EPA requesting to speak at a public hearing concerning this rule by December 28, 2009 this hearing will be cancelled without further notice.

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

- I. Background
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  - C. Regulatory Flexibility Act
  - 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 Risks and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

## I. Background

On January 10, 2008 (73 FR 1916) EPA promulgated National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities (40 CFR part 63, subparts BBBBBB and CCCCCC) pursuant to sections 112(c)(3) and 112(d)(5) of the Clean Air Act (CAA). On March 10, 2008, the Administrator received two petitions for reconsideration of the final rules. One petition was filed by the Alliance of Automobile Manufacturers (Alliance) and the other by the American Petroleum Institute (API) (Docket No. EPA-HQ-OAR-2006-0406, items 0174 and 0173). The Alliance also filed a petition for judicial review of the final rules in the U.S. Court of Appeals for the District of Columbia Circuit. In addition, the Alliance, API, and several other stakeholders (affected facilities and State and local government agencies) have contacted EPA with questions or issues related to the implementation of the final rules. We discuss these requests below.

### A. Petitions for Reconsideration

#### 1. The Alliance Petition

The Alliance petition identified three issues for reconsideration. The Alliance asserted:

1. The broad definition of "Bulk Gasoline Plant" and unclear language in 40 CFR part 63, subpart BBBBBB, section 63.11086, can be read to impose duplicative and redundant requirements on facilities also subject to 40 CFR part 63, subpart CCCCCC.

2. The broad definition of "Bulk Gasoline Plant" appears to regulate some specialized engine testing facilities under 40 CFR part 63, subpart BBBBBB when such facilities should be regulated only by 40 CFR part 63, subpart CCCCCC.

3. Emergency generators and fire pump gasoline storage tanks should be exempt from regulation under both 40

CFR part 63, subpart BBBBBB and 40 CFR part 63, subpart CCCCCC.

Today we are granting reconsideration of, and requesting comment on, the first two issues raised in the petition for reconsideration filed by the Alliance. These two issues raise concerns regarding the definition of "bulk gasoline plant" and allege that the ambiguous language in the definition may impose duplicative requirements on facilities under both subparts BBBBBB and CCCCCC, or improperly regulate certain facilities under subpart BBBBBB rather than subpart CCCCCC. The Alliance raised similar concerns in their comments submitted on the proposed rule; EPA included its response to those comments in the preamble to the final rule and in the December 19, 2007, Memorandum, "Summary of Comments and Responses to Public Comments on November 9, 2006 Proposal for Gasoline Distribution Area Sources" (Docket No. EPA-HQ-OAR-2006-0406, item 0141). Nonetheless, we grant reconsideration on these two issues in the Alliance petition for reconsideration so that we may more fully address these potential ambiguities in the definition and more clearly identify what facilities are "bulk gasoline plants" and therefore only subject to subpart BBBBBB. We discuss our proposed changes to this definition and to other applicable regulatory text for addressing these issues in Section III of this preamble.

Moreover, on June 30, 2009 (74 FR 31273) we published a proposed settlement agreement with the Alliance in the **Federal Register** regarding the petition for judicial review filed by the Alliance in the DC Circuit Court of Appeals. After a 30-day public comment period, EPA and the Alliance formally entered into the settlement agreement. Under the terms of the settlement agreement, we are proposing the amendments contained in Attachment A of the agreement. The proposed amendments in Attachment A are those that address the issues for which we grant reconsideration above.

#### 2. The API Petition

The API petition identified four issues for reconsideration. API asserted:

1. The rule should be clarified so that facilities would be allowed 180 days from the compliance date to conduct a performance test and an additional 60 days to submit the Notice of Compliance Status. Additionally, API stated that the requirements under the rule should not be triggered prior to the compliance date regardless of whether or not a Notice of Compliance Status is submitted prior to

the compliance date specified in the rule.

2. The monitoring requirements do not appropriately accommodate daily monitoring and recording requirements for control equipment at facilities that are not manned daily or that have alternative control system configurations.

3. The identification of affected units in 40 CFR part 63, subparts BBBBBB and CCCCCC inadvertently regulate equipment not meant to be part of this rule.

4. EPA has identified startup/shutdown/malfunction (SSM) reporting requirements within the entries of Table 3 of the rule when there is no requirement for an SSM plan for facilities subject to 40 CFR part 63, subpart BBBBBB.

Additionally, on May 8, 2008, API sent a letter to EPA that further clarified the four issues raised in its March 10, 2008 petition. The May 8 letter also introduced seven new issues regarding the final rules. Since these seven issues were not included in the March 10 petition for reconsideration, EPA is not addressing them as part of the petition for reconsideration; instead, EPA is addressing them with the issues raised by other stakeholders (see section I.B. below). In section III. (Rationale for Proposed Amendments) of this preamble, API's issues are identified by the order in which they are listed in the May 8 letter.

Despite having ample time and opportunity to do so, API did not submit comments on any of the issues raised in its petition for reconsideration during the public comment period. The provisions that provoked all of these questions were included in the proposed rules, yet API did not seek to resolve them until after EPA promulgated the final rules. Under CAA section 307(d)(7)(B), EPA is not obligated to reconsider these issues as not being "properly noticed" as alleged by API in their petition for reconsideration. Nonetheless, EPA is today granting reconsideration on all four of the issues raised in API's petition for reconsideration. EPA recognizes the value of addressing these questions for the facilities that are attempting to implement the rules; providing clarity on possibly confusing provisions will enhance owner/operator compliance with these rules. Thus, EPA agrees that addressing these issues is appropriate at this time. Section III contains a detailed explanation of the issues as well as EPA's proposed methods for resolving those issues. The package also includes proposed changes to the regulatory text, where

appropriate, that address the four issues raised in API's petition for reconsideration.

Our final decision on reconsideration of all the issues for which we are not granting reconsideration today will be issued no later than the date by which we take final action on the issues discussed in today's action.

#### B. Other Stakeholder Issues

In addition to the petitions for reconsideration discussed above, several other compliance-related questions have been raised by various stakeholders, including the Alliance,<sup>1</sup> API, State and local air pollution control agencies, equipment suppliers, etc. The questions raised by stakeholders include topics such as: Clarification of the applicability of the two subparts to various types of gasoline-handling operations; options for submerged fill pipe lengths; applicability of the subparts to storage tanks that are used infrequently or used only for surge control at pipeline facilities; the definition of monthly throughput and how monthly throughput is to be calculated; the timing of certain recordkeeping activities and submittal of notifications; clarification of the rule text regarding continuous compliance monitoring; clarification of the frequency of required storage tank inspections; and the applicability of several General Provisions subparts. We are addressing these questions in today's action. Section III. of today's notice presents the details on each of the questions that have been raised and on our responses to the questions.

The amendments being proposed today addressing both the petitions for reconsideration and the additional questions from other stakeholders primarily clarify the final rules and do not substantially change the requirements of the final rules. Thus, the estimates of environmental, cost, and information collection impacts are not substantially different than estimated at promulgation of these rules, and no changes have been made to the estimates presented in the final rules.

## II. Summary of Proposed Amendments

### A. Proposed Amendments Applicable to 40 CFR Part 63, Subpart BBBBBB

As a result of our reconsideration of the issues raised by the petitions filed by the Alliance and API, as well as questions from other stakeholders regarding 40 CFR part 63, subpart

BBBBBB, we are proposing to amend certain rule provisions. The rationale for the amendments is fully presented in the next section of this preamble. We are proposing to:

- Add a provision to § 63.11081 clarifying that gasoline storage tanks located at bulk facilities, but used only for dispensing gasoline in a manner consistent with tanks located at a gasoline dispensing facility (GDF) as defined at § 63.11132, are not subject to any of the requirements in 40 CFR part 63, subpart BBBBBB. Instead, these tanks must comply with the applicable requirements of 40 CFR part 63, subpart CCCCCC.

- Add a provision to § 63.11081 stating that if a bulk facility's monthly throughput ever exceeds an applicable throughput threshold in the definition of "bulk gasoline terminal," or in Table 2, item 1 of this subpart, the affected source will remain subject to those requirements even if the affected source's throughput later falls below the applicable throughput threshold.

- Add to § 63.11086 a provision to allow storage tanks to have an additional option for submerged fill pipes that are further from the bottom of the tank than the distances previously specified in § 63.11086 if adequate recordkeeping is performed and records are maintained by the owner or operator to demonstrate that the liquid level in the tank never drops below the highest point in the opening of the fill pipe.

- Amend item 1 in Table 1 to provide different controls than promulgated for two types of tanks, as follows:

- Add a capacity/throughput threshold below which small, infrequent-use gasoline storage tanks would be required to be equipped with a fixed roof and covers on all openings that are to be maintained in a closed position at all times when not in use.

- Add a definition for surge control tanks and provisions requiring that they be equipped with pressure/vacuum (PV) vents with a positive cracking pressure of no less than 0.50 inches of water and that all openings are to be maintained in a closed position at all times when not in use.

- Additionally, we are proposing to include the following clarifications:

- Correct typographical errors;
- Move the provision that indicates that certain storage tanks that are located at bulk plants are only subject to 40 CFR part 63, subpart CCCCCC from § 63.11086(b)(2) to § 63.111081;

- Clarify in § 63.11092 the presentation and wording of bulk terminal loading rack testing, monitoring, and recordkeeping provisions;

<sup>1</sup> Letters from the Alliance and API have been added to Docket No. EPA-HQ-OAR-2006-0406 and can be found at items 0175 through 0180.

○ Clarify in a new paragraph (g) in § 63.11081 that the 20,000 gallons per day throughput threshold that distinguishes a bulk gasoline plant from a bulk gasoline terminal is the maximum throughput for any day and not an average;

○ Clarify paragraph (c) in § 63.11083 by removing the word “average” in the discussion of monthly throughput;

○ Clarify in a new paragraph in § 63.11095(a)(4) the due dates for Notification of Compliance Status (NOCS) reports for storage tanks on extended compliance dates;

○ Clarify the definition of “bulk gasoline plant;”

○ Clarify the rule by adding definitions of “gasoline” and “gasoline storage tank” based on cross-referenced definitions used in other rules;

○ Correct the definition of “vapor-tight cargo tank;”

○ Clarify in Table 1, item 2(b), that internal floating roof tanks are excluded from the secondary seal requirements in 40 CFR part 63, subpart WW, as we did for 40 CFR part 60, subpart Kb;

○ Clarify, by adding rule text at § 63.11081(d) and (e), that the following activities are not affected source categories under 40 CFR part 63, subpart BBBB: the loading of aviation gasoline into storage tanks at airports (including the subsequent transfer of aviation gasoline within the airport), and the loading of gasoline into marine tank vessels at bulk facilities, as discussed at promulgation of this rule;

○ Clarify, by adding rule text at § 63.11081(h), that the loading of gasoline into cargo tanks for on-site redistribution to another storage tank is considered to be a bulk plant operation; and

○ Clarify the applicability of certain General Provisions paragraphs in Table 3.

#### *B. Proposed Amendments Applicable to 40 CFR Part 63, Subpart CCCCC*

As a result of our reconsideration of the issues raised in the petitions filed by the Alliance and API, as well as questions from other stakeholders regarding 40 CFR part 63, subpart CCCCC, we are proposing to amend certain rule provisions. The rationale for the amendments is fully presented in the next section of this preamble. We are proposing to:

• Clarify in § 63.11111(g) that the loading of aviation gasoline into storage tanks at airports (including the subsequent transfer of aviation gasoline within the airport) is not subject to this subpart.

• Clarify in a new paragraph (h) in § 63.11111 the applicability of 40 CFR

part 63, subpart CCCCC to multiple GDF at different locations within the same area source.

• Add a paragraph (i) to § 63.11111 stating that if a GDF’s monthly throughput ever exceeds an applicable monthly throughput threshold, the GDF will remain subject to those requirements even if the GDF’s monthly throughput later falls below the applicable monthly throughput threshold.

• Add a paragraph (j) to § 63.11111 stating that the dispensing of gasoline from fixed gasoline storage tanks at a GDF into portable gasoline storage tanks for the on-site delivery and subsequent dispensing of the gasoline into the fuel tank of a motor vehicle or other gasoline-fueled engine or equipment used at the area source is subject to § 63.11116 of this subpart.

• Add a paragraph (e) to § 63.11113 specifying the dates by which the performance tests required under § 63.11120 must be conducted. Section 63.11120(a) is also being revised to add a reference to this new paragraph.

• Add a paragraph (d) to § 63.11116 stating that owners or operators using portable gasoline containers that meet the requirements of 40 CFR part 59, subpart F, (the Mobile Source Air Toxics Rule) will be considered in compliance with paragraph (a)(3) of this section.

• Add to § 63.11117 a provision to allow storage tanks to have an additional option for submerged fill pipes that are further from the bottom of the tank than the distances previously specified in § 63.11117 if adequate recordkeeping is performed and records are maintained by the owner or operator to demonstrate that the liquid level in the tank never drops below the highest point in the opening of the fill pipe.

• Clarify in § 63.11124 the dates by which the NOCS must be submitted.

• Add a new paragraph (c) to § 63.11125 clarifying that cargo tank vapor tightness testing records must be kept for a period of 5 years, but adding that cargo tank owners or operators have the option of keeping only the current year’s records with the cargo tank and keeping records for the previous 4 years in the owner’s office if the records are instantly available.

• Add a definition of “vapor-tight cargo tank,” correct the definition of “gasoline cargo tank,” and clarify the location of vapor-tight testing records to clarify compliance for cargo tank owners and operators with item (vi) in Table 2 of 40 CFR part 63, subpart CCCCC.

• Add definitions for “gasoline,” “motor vehicle,” “nonroad engine,” and

“nonroad vehicle” to ensure consistency with other rules.

• Amend the current definition of “gasoline dispensing facility” in § 63.11132 to clarify our intent to include all public and private stationary facilities that dispense gasoline into the fuel tanks of on- and off-road engines, vehicles, and equipment rather than just those facilities that dispense gasoline into the fuel tanks of motor vehicles.

• Revise the definition of monthly throughput in § 63.11132 to remove the reference to a “rolling 30-day average” and to add a clarification on how monthly throughput is calculated. This revision is being proposed to clarify our intent that the monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the current day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the previous 364 days, and then dividing that sum by 12.

• Revise § 63.11111(e) and § 63.11113(c) to remove the word “average.”

• Amend Table 1 by adding a footnote to clarify the applicability of the provisions in the Table.

• Clarify in Table 1, item 2, the construction date after which storage tanks at existing GDF are “new” and required to have dual-point vapor balance system.

• Clarify in Table 2, item (vi), that vapor tightness testing documentation must be carried “with” the cargo tank, rather than “on” the cargo tank.

• Clarify the applicability of certain General Provisions paragraphs in Table 3.

### **III. Rationale for the Proposed Amendments**

#### *A. Applicability*

##### **1. Definition of Bulk Gasoline Plant**

Alliance, in their petition (issue #1), stated that the broad definition of “bulk gasoline plant” in 40 CFR part 63, subpart BBBB could be interpreted to impose duplicative and redundant requirements on facilities also subject to 40 CFR part 63, subpart CCCCC.

Alliance stated that, in the preamble to the proposed rule (71 FR 66064, 66066, November 9, 2006), EPA described bulk gasoline plants as “\* \* \* intermediate storage and distribution facilities that normally receive gasoline from bulk terminals via tank trucks or railcars. Gasoline from bulk plants is subsequently loaded into tank trucks for transport to local dispensing facilities.” They further stated that the final rule

does not reflect this description and could be interpreted to include any gasoline storage facility that receives less than 20,000 gallons of gasoline per day, including GDF regulated under subpart CCCCCC. Alliance noted that EPA revised the rule between proposal and promulgation, but stated that the revision was not clear and failed to specifically exempt facilities subject to subpart CCCCCC from the requirements of subpart BBBB. Alliance requested that such an exemption be clearly stated in subpart CCCCCC.

We agree with the Alliance that the intent of the rule was to separately regulate bulk gasoline plants and GDF. We also agree that, as written, there could be confusion with the definition of "bulk gasoline plant." The definition of "bulk gasoline plant" in 40 CFR part 63, subpart BBBB includes the phrase "gasoline storage and distribution facility." Our intent was that by including the term "distribution facility," it would be clear that the gasoline stored at these facilities was distributed to smaller dispensing facilities rather than being dispensed into vehicles and other gasoline-fueled equipment. To address the issues raised by the Alliance in their petition, we are proposing to revise the definition of "bulk gasoline plant" to include the descriptive language, as used in the preamble, to clarify that gasoline from these facilities is subsequently loaded into gasoline cargo tanks for transport to GDF. The proposed definition is as follows: "Bulk gasoline plant means any gasoline storage and distribution facility that receives gasoline by pipeline, ship or barge, or cargo tank and subsequently loads the gasoline into gasoline cargo tanks for transport to gasoline dispensing facilities, and has a gasoline throughput of less than 20,000 gallons per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State, or local law and discoverable by the Administrator and any other person." This change should adequately address any potential confusion regarding the distinction between bulk plants and GDF; thus, we are not proposing to add an exemption for bulk plants to 40 CFR part 63, subpart CCCCCC.

Alliance also mentioned that some facilities could be subject to overlapping requirements because the final rule failed to clearly exempt facilities that are subject to 40 CFR part 63, subpart CCCCCC from the requirements of 40 CFR part 63, subpart BBBB. They requested that such an exemption be added to subpart BBBB.

We agree that an operation that dispenses gasoline in a way that meets the definition of "gasoline dispensing facility" in 40 CFR part 63, subpart CCCCCC should only be subject to the requirements of subpart CCCCCC regardless of the type of facility (bulk terminal, bulk plant, or pipeline facility) at which it is located. We are proposing to add a paragraph (c) to § 63.11081 to read as follows: "Gasoline storage tanks that are located at affected sources identified in paragraphs (a)(1) to (a)(4) of this section, and that are used only for dispensing gasoline in a manner consistent with tanks located at a GDF, as defined at § 63.11132, are not subject to any of the requirements in this subpart. These tanks must comply with subpart CCCCCC of this part."

## 2. Definition of Gasoline Dispensing Facility (GDF)

Alliance, in their petition (issue #2), expressed concern that, under the current definitions in the rules, some facilities could be considered to be subject to both 40 CFR part 63, subparts BBBB and CCCCCC when they should only be subject to subpart CCCCCC. Alliance stated that the overly broad definition of "bulk gasoline plant" could subject some specialized test facilities that dispense gasoline into research and development engines, engine dynamometers, engine test stands, and other vehicle testing equipment to regulation under both subpart BBBB and CCCCCC because some of these facilities have a single gasoline storage tank that dispenses gasoline into complete motor vehicles as well as the incomplete items described above. Alliance recommended that EPA revise the definition of "gasoline dispensing facility" to specifically include facilities that dispense gasoline into motor vehicle engines, whether or not such engine is part of a complete motor vehicle.

Alliance also stated (issue #3) that both subparts could be interpreted to cover storage tanks that fuel emergency generators and fire pumps, but that it is not clear how they apply to this equipment. Alliance added that neither the proposed nor final rules provided any notice that they could potentially apply to the gasoline storage tanks that dispense gasoline into thousands of emergency generators and fire pumps at various types of industrial and other facilities across the nation. Alliance recommended that, because of the small tank size and very low throughput, the storage tanks fueling this type of equipment should not be regulated under either subpart. They suggested that the rules be revised to exclude

storage tanks attached to or solely used to fuel emergency generators and fire pumps.

API requested in their May 8, 2008 letter (issue #4) that the definition of "gasoline dispensing facility" in 40 CFR part 63, subpart CCCCCC be revised to clarify that the rule does not apply to those facilities that dispense gasoline for use within the facility or by employees of the facility. They stated that these types of GDF do not dispense gasoline for retail sale, and emissions from the gasoline storage tanks are typically addressed by State/local permits or regulations.

Several other stakeholders have questioned whether specific types of operations are considered to be GDF. One stakeholder questioned how a remote facility that has a 5,000-gallon storage tank, receives gasoline once per year, and dispenses about 300 gallons per month for use in stationary and nonroad portable engines is covered by this rule. A few stakeholders asked if the definition should include operations such as marinas that dispense gasoline into boats, storage tanks that are used to dispense gasoline into nonroad vehicles and landscaping or construction equipment, storage tanks that are brought onsite for short term use (such as in construction equipment), and gasoline dispensed for non-retail purposes.

We did not intend to exclude any GDF from this rule and specifically stated in the preamble for the final rule that we intended to cover all public and private GDF (73 FR 1916, 1925). Thus, we are proposing to clarify this in 40 CFR part 63, subpart CCCCCC. This is appropriate because all of these operations are part of the source category that was listed and the facility operations and applicable controls are the same for all types of GDF.

As discussed at promulgation, the CAA requires that EPA set Federal emission standards under CAA section 112(d) for source categories listed under CAA section 112(c)(3). The list of source categories was developed based on an emission inventory. The emission inventory for GDF is based on the total volume of gasoline consumed nationwide (including domestic production plus imports and stock changes from the previous year, minus exports), the emission factor for gasoline loading losses, and the amount of submerged and splash loading and vapor balancing in the industry. Total gasoline consumption is the total used nationwide, so the emission inventory estimated emissions for all end users of gasoline. See the August 22, 2008, Memorandum, "Review of 1990

emissions inventory supporting the listing Gasoline Distribution” (Docket No. EPA-HQ-OAR-2006-0406, item 0181).

We also believe that the types of storage tanks found at all of these facilities are the same, except that the average or typical size and throughput tend to be smaller than for the more typical GDF that refuel primarily motor vehicles. We considered both the size and throughput of GDF storage tanks in the selection of the control requirements in the current rule, so we believe the types of controls, and the control levels required, are appropriate to all of these facilities.

At proposal and promulgation, we considered all public and private facilities in our calculations and decision-making; thus, tanks at all of these facilities are already covered under the previous estimates. However, in reviewing that data for this proposal, we found that the references that presented the estimated number of private facilities described those facilities as including government agencies, commercial and industrial consumers, school systems, and companies of all sizes, but they did not include farms, nurseries, and landscaping firms. However, it appears that this omission provides little if any impact to our previous estimates since we had considered most private GDF to have monthly throughputs below 10,000 gallons, meaning they would incur no additional control costs. GDF with throughputs of 10,000 gallons per month or less must only perform the good management practices to check for and minimize evaporation of gasoline that are standard industry practices.<sup>2</sup>

We are proposing to amend the current definition of “gasoline dispensing facility” to clarify our intent to include all stationary facilities that dispense gasoline into the fuel tanks of all end users of gasoline. The prior definition was: “Gasoline dispensing facility (GDF) means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle.” The new proposed definition is: “Gasoline dispensing facility (GDF) means any stationary facility which dispenses

gasoline into the fuel tank of a motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine, including a nonroad vehicle or nonroad engine used solely for competition. These facilities include, but are not limited to, facilities that dispense gasoline into on- and off-road, street, or highway motor vehicles, lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline-fueled engines and equipment.” Thus, we agree with the Alliance that facilities that dispense gasoline into research and development engines, engine dynamometers, engine test stands, and other vehicle testing equipment do not qualify as bulk plants, but instead, qualify as GDF. We also emphasize, contrary to positions asserted by the Alliance, API, and other stakeholders, that all GDFs are covered under subpart CCCCCC, and are proposing amendments to the GDF definition to effectuate that originally expressed intent.

### 3. Tanks With Infrequent Use

API, in their May 8, 2008 letter (issue #5), stated that the current threshold for installation of floating roofs and seals is based solely on the capacity of the tank. They stated that tanks that are used on a very limited basis do not warrant the significant investment associated with compliance in return for an insignificant reduction in hazardous air pollutant (HAP) emissions. API provided the example of a utility, or maintenance tank that would only hold material for short periods of time while primary tanks are out of service. API requested that additional consideration be given to tanks for which the limited duration of use results in emissions of less than 1 ton per year of volatile organic compounds, but did not provide the basis for using that value.

API subsequently provided additional information in a letter dated August 19, 2008 (Docket No. EPA-HQ-OAR-2006-0406, item 0178), related to their concern about the control of storage tanks that are used infrequently. They stated that the tanks in question were small tanks (generally less than 40,000 gallon capacity, compared to the more typical tanks that have capacities of over 1,000,000 gallons) with few turnovers per year, and that the cost-effectiveness of installing a floating roof in tanks such as these was significantly higher than for the tanks EPA analyzed for the final rule. API provided an example of a 40,000 gallon tank with 5 turnovers per year and a throughput of 175,000 gallons per year (5 turnovers times a 35,000 gallon working capacity). They calculated a HAP cost-effectiveness of

about \$9,200 per ton for adding a floating roof to such a tank. API recommended that tanks up to 40,000 gallons capacity and with a throughput of less than 175,000 gallons per year only be required to meet the requirements specified in Table 1, item 1 (a fixed roof with all openings closed at all times when not in use).

We analyzed the information provided by API and agree that for infrequent-use and low-throughput tanks, the HAP cost effectiveness of adding a floating roof is expected to be \$9,000 per ton or more. We are therefore proposing to establish a separate subcategory for these tanks, based on size and gasoline throughput, with the control requirements in Table 1, item 1. Specifically, we are proposing to amend item 1 of Table 1 of subpart BBBBBB by adding a second subcategory that specifies the control requirements for tanks that have a capacity of less than 151 cubic meters and a throughput of less than 480 gallons per day. We are proposing that these gasoline storage tanks must be equipped with a fixed roof and that covers on all openings be maintained in a closed position at all times when not in use.

### 4. Surge Control Tanks

API requested (issue #6 in their May 8, 2008 letter, also in their August 19, 2008 letter) that EPA revisit the requirements for surge control tanks. The rule currently would require these tanks to install internal floating roof tanks that would reduce the usable capacity of the tank, which could render the tank no longer adequately capable of providing the required surge relief.

As explained by API, these are tanks used at pipeline facilities to provide a means of ensuring that the pressure in the pipeline does not exceed the level specified by the Department of Transportation (DOT). The surge control tanks are normally kept at very low levels so that gasoline can be pumped into them at any time there is a surge or excess pressure in the pipeline. In follow-up conversations with EPA, API also explained that these tanks are typically fixed roof tanks with capacities ranging from 20,000 to 200,000 gallons; they have PV vents with positive cracking settings of 0.50 inches of water; they are used two or three times per year, on average; the duration of their use is kept as short as possible so that surge capacity will always be available and the pipeline does not have to shutdown. API also explained that the use of floating roof systems in surge control tanks is risky as the loading of gasoline into the tanks is sometimes at such a high rate that the

<sup>2</sup> 40 CFR 63.11116(a). “You must not allow gasoline to be handled in a manner that would result in vapor releases to the atmosphere for extended periods of time. Measures to be taken include, but are not limited to, the following: (1) Minimize gasoline spills; (2) Clean up spills as expeditiously as practicable; (3) Cover all open gasoline containers and all gasoline storage tank fill-pipes with a gasketed seal when not in use; (4) Minimize gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators.”

floating roof can be damaged. API added that the cost-effectiveness would be very poor (nearly \$100,000/ton of HAP reduced) to install internal floating roofs because many tanks would have to be replaced with larger tanks, or additional tanks would have to be added, to make up for the loss of capacity from adding the roof.

We reviewed the applicable DOT regulations and agree that pipeline operations are required to maintain the pressure in the pipeline below an established level. It also appears that in the case of a storage tank that is sized just large enough to provide the minimum level of pressure relief, the installation of a floating roof system could reduce the working volume to an unacceptable level. This could necessitate the installation of a larger or an additional tank, resulting in a poor HAP cost-effectiveness as a consequence of complying with the internal floating roof requirement. Also, as pointed out by API, a floating roof system may not be a practical control method for surge control tanks because of the potential for damaging the roof during rapid filling of the tank. We are proposing to add an entry 3 in Table 1 in 40 CFR part 63, subpart BBBBBB, specifying that owners or operators must "Equip each surge control tank with a fixed roof that is mounted to the tank in a stationary manner and with a PV vent with a positive cracking pressure of no less than 0.50 inches of water. Maintain all openings in a closed position at all times when not in use."

We are also proposing to add a definition of a surge control tank to implement this new provision. The definition is based on the requirement in DOT regulations (49 CFR 195.406(b)) which states that "no operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit." We are proposing the following definition: "surge control tank or vessel means, for the purposes of this subpart, those tanks or vessels used only for controlling pressure in a pipeline system during surges or other variations from normal operations."

#### 5. Definition of Storage Tank

API requested (issue #6 in their May 8, 2008 letter) that the definition in new source performance standard (NSPS) 40 CFR part 60, subpart Kb for "storage tank" be included in § 63.11100. They stated that the definition of "storage tank" should be included in 40 CFR part 63, subpart BBBBBB rather than relying on the definitions in subpart Kb and 40 CFR part 63, subpart WW, because those

definitions are somewhat different. API's view is that the definition of storage tank should exclude "process tanks" as is done in the subpart Kb definition of storage tank. API suggested that incorporating the subpart Kb definition would address the concern over the applicability of the rule to surge control tanks at pipeline facilities. As discussed previously, API requested that surge control tanks be excluded from the requirement to have floating roof systems.

Our intent is that compliance with the control requirements of 40 CFR part 60, subpart Kb, and 40 CFR part 63, subpart WW constitutes compliance with the control requirements for bulk facilities under 40 CFR part 63, subpart BBBBBB. As discussed in the proposal (71 FR 66064, 66071, November 9, 2006) and final (73 FR 1916, 1926, January 10, 2008) preambles, we determined that certain seal types are appropriate. We only used the control provisions in subparts Kb and WW to specify the seal types and monitoring of those selected seal types that are referenced in this rule; the applicability requirements in subparts Kb and WW are not applicable for sources subject to subpart BBBBBB.

In reviewing and considering API's suggestions, we agree we should add a definition of gasoline storage tank. However, since gasoline distribution does not include the typical process-type tanks that are described in the 40 CFR part 60, subpart Kb definition, other than the surge control tanks mentioned by API, we do not believe it is necessary to provide an exemption for process tanks in the definition in 40 CFR part 63, subpart BBBBBB, as was done in subpart Kb. We are proposing a definition of gasoline storage tanks as follows: "Gasoline storage tank or vessel means each tank, vessel, reservoir, or container used for the storage of gasoline, but does not include: (1) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of gasoline or gasoline vapors; or (2) subsurface caverns or porous rock reservoirs." This definition is based on the definition of "storage vessel" found in subpart Kb without the exemption for "process tank."

We have, however, considered API's stated concern about the possible impacts of requiring control of tanks that are used solely as pipeline "surge control" tanks. We have included them in the analysis discussed previously on surge control tanks.

#### 6. Aviation Gasoline at Airports and Marine Tank Vessel Loading at Bulk Facilities

API (issue #3 in their petition and issue #10 in their May 8, 2008 letter) stated that, while the intended exclusion of aviation gasoline at airport facilities is clearly specified in 40 CFR part 63, subpart CCCCCC, there is no mention of this intended exclusion in 40 CFR part 63, subpart BBBBBB. They recommended that the applicability provision of § 63.11081 be revised to specifically list, and exclude from coverage, the storage and loading of aviation gasoline at airports. API also pointed out that the preamble to subpart BBBBBB stated that the loading of gasoline into marine tank vessels is not included in the gasoline distribution source category, and that subpart BBBBBB does not specifically include such an exclusion. API recommended that such an exclusion be added to § 63.11081.

Neither the loading of aviation gasoline at airports nor the loading of gasoline into marine tank vessels at bulk facilities are part of this source category and are not intended to be covered by 40 CFR part 63, subparts BBBBBB or CCCCCC. See the December 19, 2007, Memorandum, "Summary of Comments and Responses to Public Comments on November 9, 2006 Proposal for Gasoline Distribution Area Sources" (Docket No. EPA-HQ-OAR-2006-0406, item 0141). We are proposing to revise § 63.11081 to clarify that these activities are not part of the source categories covered by subparts BBBBBB and CCCCCC by adding a paragraph (d), which reads "The loading of aviation gasoline into storage tanks at airports, and the subsequent transfer of aviation gasoline within the airport, is not subject to this subpart" and a paragraph (e), which reads: "The loading of gasoline into marine tank vessels at bulk facilities is not subject to this subpart."

#### 7. Temporary/Contractor Tanks

One stakeholder stated that 40 CFR part 63, subpart CCCCCC is not clear with regard to whether a facility is required to submit preconstruction, startup, and compliance certifications for temporary tanks, such as those brought onto a site by a contractor or another third party that remain entirely under the control of that party. The stakeholder recommended that EPA clarify how the regulations for GDF would apply to such tanks and which party (the contractor/third party or the owner/operator of the facility) would be responsible for ensuring compliance

and submittal of any applicable notifications.

At this time, we are not proposing any revisions to the rule in response to the issue raised by the stakeholder, but we are requesting comment on the subject discussion below. We believe the issue raised by the stakeholder is not unique to 40 CFR part 63, subpart CCCCCC and could come up at facilities that are subject to a variety of national emission standards for hazardous air pollutants (NESHAP) regulations. Standards, including subpart CCCCCC, apply to the “owner or operator” of the affected source, and § 63.2 defines “owner or operator” as “any person who owns, leases, operates, controls, or supervises a stationary source.” It appears it is the responsibility of the owner or operator of the affected facility to ensure that all emission sources at the facility comply with the requirements of any applicable standards. It seems owners or operators could consider this responsibility when negotiating contracts with third parties and address it in the contracts for the specific work being done. Thus, the requirements in the General Provisions will likely adequately address the stakeholder’s concern.

#### 8. Coverage of Tanks Used To Fuel Vehicles and To Fill Cargo Tanks for On-Site Fuel Distribution

One stakeholder requested clarification on how the two subparts would be applied to storage tanks that are used to fuel vehicles but that may also be used to dispense gasoline into portable tanks or cargo tanks. The stakeholder presented four different scenarios as examples of the types of operations in question. Two of the examples involve facilities that dispense gasoline from storage tanks into portable tanks (one a 150-gallon tank and the other a 500-gallon tank) that are then used to fill the fuel tanks of vehicles at test facilities. The other two examples involve operations where gasoline is dispensed from storage tanks into cargo tanks (4,000 to 8,000 gallon capacity) that subsequently off-load the gasoline into another stationary gasoline storage tank located at a separate location. The stakeholder questioned how 40 CFR part 63, subpartsBBBBBB and CCCCCC would be applied to these examples and recommended that all of the example operations should be subject only to subpart CCCCCC.

We reviewed the information provided by the stakeholder and agree that additional clarification of the rules is needed. The stakeholder’s examples of facilities that dispense gasoline into portable tanks that are then used to fuel vehicles for use within the area source

are operations that we consider to be covered by 40 CFR part 63, subpart CCCCCC. Such on-site redistribution of gasoline is not expected to occur at a volume or frequency that would exceed the 10,000 gallons per month threshold; if so, these operations would only be subject to the Management Practices specified in § 63.11116. The other two examples, however, involve the loading of gasoline into a cargo tank and the subsequent unloading of the gasoline back into another storage tank. These operations appear to meet the definition of a bulk plant, so these operations would be subject to § 63.11086. If so, the loading of the cargo tank and the subsequent off-loading from the cargo tank to the storage tanks must be performed using submerged filling. Because submerged filling of storage tanks and cargo tanks is a widely used and cost-effective method of reducing emissions, we expect that most gasoline transfers, such as the examples provided by the stakeholder, already use submerged filling.

To address the questions raised by the stakeholder, we are proposing to add clarifying text to each subpart, as follows:

- Add a paragraph (h) to § 63.11081 of subpartBBBBBB to read as follows: “Storage tanks that are used to load gasoline into a cargo tank for the on-site redistribution of gasoline to another storage tank are subject to this subpart.”
- Add a paragraph (j) to § 63.11111 of subpart CCCCCC to read as follows: “The dispensing of gasoline from a fixed gasoline storage tank at a GDF into a portable gasoline tank for the on-site delivery and subsequent dispensing of the gasoline into the fuel tank of a motor vehicle or other gasoline-fueled engine or equipment used within the area source is subject to § 63.11116 of this subpart.”

#### 9. Applicability to Sources That Are Subject to and Complying With 40 CFR Part 63, Subpart VVVVVV

One stakeholder questioned whether a facility that receives and stores gasoline solely for the purpose of denaturing the ethanol that they produce would be subject to 40 CFR part 63, subpartBBBBBB. The facility stores gasoline in a 30,000 gallon storage tank, blends it with the ethanol at a concentration of less than 5-percent gasoline, and then ships the mixture out of the facility.

The National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources (40 CFR part 63, subpart VVVVVV) includes as an affected source the storage and use of gasoline as a feedstock in chemical manufacturing, as described by the

stakeholder. The control requirements in subpart VVVVVV for the loading of storage tanks are similar to the requirements found in 40 CFR part 63, subpartBBBBBB. However, because the tank size and throughput thresholds for determining the applicable control level for a given storage tank are not exactly the same in the two standards, a direct comparison of the requirements of the two standards must be on a case-by-case basis. Section 63.11500 of subpart VVVVVV specifies that if part of a facility is subject to both subpart VVVVVV and another Federal rule, the owner or operator may choose to comply only with the more stringent provisions of the two applicable subparts. For example, if the control requirements in the other rule were at least as stringent as those provided in subpart VVVVVV, but the monitoring, recordkeeping, or reporting requirement in the other rule were not as stringent or comprehensive as those in subpart VVVVVV, the source may comply with the control requirements from the other rule, but must comply with the more stringent monitoring, recordkeeping, and reporting requirements in subpart VVVVVV. We are proposing to adopt the same approach in these subparts; therefore, we are proposing to amend subpartsBBBBBB and CCCCCC to specify that if an affected source under either of these subparts is also subject to another Federal rule, like subpart VVVVVV, the owner or operator may elect to comply only with the more stringent provisions of the applicable subparts. We are proposing to add a new paragraph (i) to § 63.11081 of subpartBBBBBB and a new paragraph (k) to § 63.11111 of subpart CCCCCC, both of which would read as follows: “For any affected source subject to the provisions of this subpart and another Federal rule, you may elect to comply only with the more stringent provisions of the applicable subparts. You must consider all provisions of the rules, including monitoring, recordkeeping, and reporting. You must identify the affected source and provisions with which you will comply in your Notification of Compliance Status (NOCS) required under § 63.11093 [or § 63.11124, as applicable]. You also must demonstrate in your NOCS that each provision with which you will comply is at least as stringent as the otherwise applicable requirements in this subpart. You are responsible for making accurate determinations concerning the more stringent provisions; noncompliance with this rule is not excused if it is later determined that your determination was

in error and, as a result, you are violating this subpart. Compliance with this rule is your responsibility and the NOCS does not alter or affect that responsibility.”

### B. Throughput Thresholds

#### 1. Once Over a Throughput Threshold

Several stakeholders raised the question of whether a GDF whose gasoline throughput increases from below the 10,000 or 100,000 gallons per month thresholds to above the thresholds, making them subject to the submerged fill or vapor balancing requirements, respectively, in 40 CFR part 63, subpart CCCCCC, would still be subject to those requirements if their throughput subsequently decreases to below the relevant threshold.

Our intent is that once a facility's throughput crosses the threshold for either submerged fill or vapor balancing, the facility must continue to use the controls even if their throughput subsequently decreases to below the applicable threshold. Because neither of these control technologies requires significant ongoing operating costs, the primary control costs that the facility would incur would be for the initial installation. For submerged fill, there are no operating costs and no monitoring, recordkeeping, or reporting costs. In fact, once a facility crosses the 10,000 gallon threshold level and installs submerged fill pipes, there would be an expense involved in converting the tanks back to splash fill (i.e., the cost of removing the submerged fill pipes). Thus, there would be no operational, practical, or economic incentive to discontinue the use of the required control technology.

For vapor balance systems, there are periodic maintenance, testing, and recordkeeping and reporting costs, but these are minor components of the total costs of control. As with submerged fill, it would most likely be more trouble and expense to discontinue the use of the controls and to properly remove the equipment than to continue their use.

Another consideration is the fact that these controls will continue to achieve substantial emissions reductions even if the facility's throughput decreases below the applicable thresholds. In addition, it would be reasonable to assume that if a facility once crossed an applicable throughput threshold, it might do so again at some point in the near future. Thus, in addition to the environmental gain in requiring the continued use of controls, there is a practical economic incentive to maintaining the equipment. We also believe the same holds true for the

20,000 gallons and 250,000 gallons per day throughput thresholds for distinguishing between a bulk terminal and a bulk plant, and requiring submerged fill versus vapor processors on loading racks at bulk terminals under 40 CFR part 63, subpart BBBBBB, respectively.

Thus, we are proposing to clarify both 40 CFR part 63, subparts BBBBBB and CCCCCC to implement this intent. We are proposing to add the following provision to subpart BBBBBB, § 63.11081(f): “If your affected source's throughput ever exceeds an applicable throughput threshold in the definition of ‘bulk gasoline terminal’ or in item 1 in Table 2 to this subpart, the affected source will remain subject to the requirements for sources above the threshold even if the affected source throughput later falls below the applicable throughput threshold.” We are proposing to add the following provision to subpart CCCCCC, § 63.11111(i): “If your GDF's monthly throughput ever exceeds an applicable monthly throughput threshold in (c) or (d) of this paragraph, the GDF will remain subject to those requirements even if the GDF monthly throughput later falls below the applicable monthly throughput threshold.”

#### 2. Monthly Throughput Definition

Stakeholders requested clarification of the definition of “monthly throughput” for GDF and questioned how the throughput value is to be calculated. The stakeholders stated that the inclusion of the phrase “rolling 30-day average” is confusing because the calculated value is actually a “sum” of the daily throughput over a 30-day period rather than an “average.” Stakeholders also questioned whether the use of the word “average” in the text of paragraph (e) of § 63.11111(e) for GDF was an oversight or if it is a monthly average based on the last twelve months. Stakeholders have also stated that as an alternative to determining throughput based on the volume of gasoline “loaded” into the GDF's storage tanks, the rule should allow for monthly throughput to be based on the volume of gasoline “dispensed” by the GDF during a month. These stakeholders explained that some States require throughput to be based on the volume of gasoline dispensed and that keeping two sets of records would be burdensome for GDF in those States.

We agree with the stakeholders that we intended that the monthly throughput would be calculated by taking the total volume of gasoline loaded into all gasoline storage tanks for the last 365 days and dividing by 12 to

get the monthly throughput. Not only is this method more simple to implement and understand, this was the method used to analyze the environmental and cost-effectiveness calculations for each threshold. In preparing the rule, we inadvertently used the rule text definition for monthly throughput from State and local rules and did not adjust them for how we evaluated controls and thresholds.

The current definition provides that monthly throughput “means the total volume of gasoline that is loaded into all gasoline storage tanks during a month, as calculated on a rolling 30-day average.” We are proposing to revise the definition to remove the phrase “rolling 30-day average” in the final rule, as well as to add a clarification on how it is calculated. Also, because we consider the term “throughput” to mean literally the volume that goes through the tank, we agree with the stakeholders that it can be measured as either the volume of gasoline going into the tank or the volume of gasoline coming out of the tank. Therefore, we are proposing to add text to allow throughput to be based on the volume of gasoline dispensed by a GDF. We are proposing the definition to read as follows: “Monthly throughput means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each GDF during a month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the current day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the previous 364 days, and then dividing that sum by 12.”

In the final rule, § 63.11111(e) reads as follows: “An affected source shall, upon request by the Administrator, demonstrate that their average monthly throughput is less than the 10,000-gallon or the 100,000-gallon threshold level, as applicable.” We agree with the stakeholders that the use of the word “average” in the text of the paragraph is confusing. Because we have used an averaging method in the definition of “monthly throughput,” the word “average” is not needed in this provision; therefore, we propose to amend § 63.11111(e) to delete the word “average” from the text. We also found that § 63.11113(c) contained the same incorrect use of the word “average” and we are proposing to delete it from that section as well.

While we are taking comment on these changes, we realize that some affected sources may have used either the “per month” or “month average”

method for calculating their gasoline throughput to determine the applicable rule requirements that they subsequently reported in their Initial Notifications. We believe the use of these alternative methods was justified by the language in the final rule. (Additional discussion of the Initial Notifications is presented later in this preamble.) We are proposing that sources use the new method for calculating gasoline throughput prospectively, or in other words, beginning on the date of promulgation of the final rules. Affected sources must be in compliance with the requirements that are found to be applicable, using the final throughput definition, by January 10, 2011. Given that the current method is likely to capture fewer sources over the thresholds, due to seasonal variations, than the 30-day rolling average period, we believe there should be no need to provide more time to comply with the standards. We are therefore not proposing a change to the compliance dates in § 63.11083.

Additionally, Tables 1 and 2 to 40 CFR part 63, subpart BBBB contain throughput thresholds for determining applicable bulk terminal loading rack and storage tank emission controls (in gallons per day). Similar to the GDF thresholds discussed above, the bulk terminal thresholds were based on an environmental and cost analysis using total annual throughput for all gasoline loading racks at a bulk terminal divided by 365 days per year. We are proposing to clarify the method of calculation by adding a second sentence in item 1(ii) of Table 1, and in both items 1 and 2 of Table 2, as follows: "Gallons per day is calculated by summing the current day's throughput, plus the throughput for the previous 364 days, and then dividing that sum by 365." We are also proposing to clarify the rule text for both items 1 and 2 of Table 2 that the gasoline throughput is the total for all racks at the bulk gasoline terminal. Section 63.11083(c), which refers to Table 2, incorrectly refers to an "average" throughput, and because we are proposing to clarify the method of calculation in the text of Table 2, we are proposing to remove the word "average" in this paragraph.

Also note that bulk gasoline terminals and bulk gasoline plants are defined and partly distinguished by throughput (20,000 gallons per day). This 20,000 gallons per day throughput threshold is interpreted as a maximum for any day (no averaging) and is used as such when determining compliance with other rules as well as with this rule. We are proposing to clarify the applicability of the 20,000 gallon per day throughput

threshold by adding a paragraph (g) to § 63.11081 specifying that, for the purpose of defining a bulk gasoline plant and a bulk gasoline terminal, the 20,000 gallons per day throughput threshold is the maximum calculated design throughput for any day and is not an average.

### 3. Start of Throughput Records

Several stakeholders also questioned when facilities must start keeping records of throughput for documenting whether they are operating above or below applicable throughput thresholds in each subpart.

Existing sources that are subject to these subparts were required to submit Initial Notifications by May 9, 2008. EPA assumed that owners and operators would begin keeping throughput records immediately after the promulgation date of January 10, 2008, so that they could indicate exactly which standard was applicable to their facility in the Initial Notification. In addition to the legal requirements to complete the Initial Notification accurately, it is in the best interest of the facility to be aware as early as possible what control requirements must be met. For example, if a GDF's throughput has normally been somewhat below the 100,000 gallon threshold for vapor balancing, but shortly before the January 10, 2011 compliance date, the owner discovers that throughput has surpassed the threshold, installing the required vapor balance system by the compliance date may be difficult or impossible. Thus, EPA expected that owners and operators would begin keeping throughput records as far in advance of the compliance date as possible so that they could be in compliance with applicable controls by the compliance date. However, because the final rules do not specifically state when a facility should start keeping these throughput records, we are proposing to clarify the rules by adding such a requirement. For existing sources, we are proposing that facilities begin keeping records and calculating throughput as of January 10, 2008 (the date of promulgation of the final rules).

For new sources constructed, or for existing sources reconstructed, after November 9, 2006, we are proposing that recordkeeping must begin upon startup of the affected facility. Since the new sources will commence construction after the area source rules are proposed, (*see* CAA section 112(a)(4)), we intended that they comply with all recordkeeping requirements from their startup date based on the amount of throughput expected in their business plan for

operating the new source or the capacity of equipment installed.

### 4. Multiple Tanks at Multiple Locations at Affected Source

Stakeholders, including the Alliance in separate follow-up conversations and correspondence unrelated to their petition for reconsideration, described a situation where a plant site, such as a military base or large private company property, has multiple gasoline storage tanks in multiple locations, and questioned whether it was EPA's intent that the monthly throughput at such a facility would be the "total volume of gasoline that is loaded into all gasoline storage tanks," as specified in the definition of monthly throughput in 40 CFR part 63, subpart CCCCC. These stakeholders questioned whether subpart CCCCC applies to each area source individually or to the entire facility collectively. One stakeholder pointed out that the rule text in § 63.11111(a) states "each GDF that is located at an area source," thus inferring that you can have multiple GDF at one location.

We agree with the stakeholders that subpart CCCCC requires clarification regarding our intent for how the rule should be applied to the situation they describe. As one stakeholder pointed out, § 63.11111(a) states: "The affected source to which this subpart applies is each GDF that is located at an area source." This indicates our understanding that an area source may contain multiple GDF. Additionally, the section titles for the applicable controls based on a GDF's monthly throughput threshold state that these are "Requirements for facilities with monthly throughput" meeting or exceeding a certain threshold. We deliberately used the word "facilities" in the titles to refer to the individual gasoline dispensing "facilities" within the area source, not to an entire area source or plant site. Thus, we intended that the monthly throughput and the corresponding monthly throughput thresholds would be calculated and applied to each individual GDF located at a single location within an area source. Further, the environmental and cost analyses examined the impacts based on groupings of gasoline storage tanks at a single location, not on tanks located far apart. Thus, it is appropriate that a single area source may have multiple GDF located within its exterior boundaries and that each GDF be treated as a separate affected source. To clarify these questions in the rule, we are proposing to add a new paragraph (h) in § 63.11111 as follows: "(h) Monthly throughput is the total volume of

gasoline loaded into, or dispensed from, all the gasoline storage tanks located at a single affected GDF. If an area source has two or more GDF at separate locations within the area source, each GDF is treated as a separate affected source."

### C. Rule Clarifications

#### 1. Recordkeeping For Continuous Compliance Monitoring

API requested (issue #2 in their petition and issue #3 in the May 8, 2008 letter) that EPA delete a requirement for the automatic recording of shutdown events in the alternative monitoring provisions for control devices used on loading racks that use automated shutdown systems. API explained that automated shutdown systems are frequently relied upon at facilities which have periods during which loading occurs when there are no operating personnel present on site. API also stated that when an automatic shutdown occurs during such unmanned operations, the units are not returned to service until personnel return to the facility to restart the unit. Thus, the automated systems are used to shut down the systems in the event of a malfunction, but are not equipped to provide a "record" of the shutdown. API stated that, while it is understandable that the shutdown of the system should be automatic during unmanned activities, no environmental benefit would accrue from requiring recordkeeping to be automated. They further stated that it should be acceptable to allow that a manual record of the shutdown event be entered into the log book when an operator restarts the unit.

The intent of the provision in the rule was to ensure that a record of a shutdown of the system is generated. So long as the loading of cargo tanks at a loading rack cannot be performed while the control device is in a shutdown mode, and a record of the event is generated to document that loading has not occurred, it does not matter whether the record is generated automatically or manually. Thus, we are proposing to revise the verification sentences in § 63.11092(b)(1)(i)(B)(2)(ii) and (b)(1)(iii)(B)(2)(ii) to read as follows: "Verification shall be through visual observation or through an automated alarm or shutdown system that monitors and records system operation. A manual or electronic record of the start and end of a shutdown event may be used."

API also stated that the requirement in section 63.11092(b)(1)(iii)(B)(2)(ii) to "verify, during each day of operation of the loading rack, the proper operation of

the assist-air blower, the vapor line valve, and the emergency shutdown system" should not include the phrase "and the emergency shutdown system." They stated that the emergency shutdown system is a manually operated "switch" that is only used to shut down the loading rack and vapor processor in the case of an emergency. API also stated that, in discussions with EPA regarding the monitoring systems in use within the industry, the terms "emergency shutdown system" and "automatic shutdown system" had been inadvertently used interchangeably by API. API further stated that the automatic shutdown system is "an electronic system that may be used to monitor the components that are critical to the combustion process (i.e., presence of a pilot flame, vapor line valve, and assist-air blower)." API then stated that, because neither the emergency shutdown system nor the automatic shutdown system are components that are involved in the combustion efficiency of a thermal oxidizer, neither should be included in the daily check of critical components. API requested that the reference to the emergency shutdown system be removed from the text of the subject paragraph.

Based on discussions with API regarding the function of the emergency shutdown system versus the automatic shutdown system, we agree that the rule text should be amended. However, we believe that it is necessary that the automatic alarm or shutdown system be monitored. As API noted, the use of an automatic alarm or shutdown system is an allowed alternative to the visual monitoring of the critical components of the vapor processor system. We believe that if the automated monitoring system alternative is used, it is important to ensure that if the automatic alarm or shutdown system receives a signal that another component (such as the vapor line valve or the assist-air blower) has malfunctioned, the system will prevent any further loading of gasoline. Thus, we believe that monitoring of the automatic alarm or shutdown system is needed. In follow-up discussions with API, we discussed this need to check the automatic alarm or shutdown systems. Given these are electronic switches and less subject to failure, they would be best checked during the semi-annual preventative maintenance inspection required in the current rule (§ 63.11092(b)(1)(iii)(B)(2)(ii)). Thus, we are proposing to remove the phrase "emergency shutdown system" from the items to be checked daily under § 63.11092(b)(1)(iii)(B)(2)(ii) and add the phrase "automated alarm or shutdown

system" as part of the semi-annual inspection required under § 63.11092(b)(1)(iii)(B)(2)(iii). Also, the alternative monitoring provisions for carbon adsorption systems have similar provisions, so we are proposing a parallel change to add the phrase "automated alarm or shutdown system" as part of the semi-annual inspection required under § 63.11092(b)(1)(i)(B)(2)(iii).

#### 2. Submerged Fill Drop Tube Measurements and Alternatives

One stakeholder questioned whether the distance from the submerged fill pipe to the bottom of the tank (for determining compliance with the 6 or 12 inch submerged fill requirement) would be measured from the bottom or the top edge of a horizontal fill pipe. The stakeholder also explained that the ends of most vertical submerged fill pipes are cut on a 45-degree angle to properly distribute product; thus, the bottom and top edges of the end of the fill pipe are different distances from the bottom of the tank. Other stakeholders also mentioned that it is industry practice, and some States require, that the measurement be taken at the longest distance.

Another stakeholder asked whether an existing facility whose submerged fill pipe is more than the 12 inch maximum distance from the bottom of the tank could be considered to be in compliance with the rule if they keep records that demonstrate that the level of gasoline in the tank never dropped below the end of the fill pipe.

The primary mechanism by which submerged fill reduces emissions during the filling of a storage tank is the reduction in the formation of airborne droplets of gasoline formed by the "splashing" of the gasoline as it is pumped into the tank. As such, the entire opening of the submerged fill pipe should be below the liquid level in the tank as soon as possible when loading occurs. For either vertical or horizontal fill pipes, this would mean that the point in the opening of the pipe that is the greatest distance from the bottom of the tank is the point where the measurement should be made. Many State agency and industry personnel use this approach to measure submerged fill tubes, and we are proposing to add this requirement to § 63.11086(a) and § 63.11117(b).

However, because the goal of submerged filling is simply to reduce splashing, we are proposing to revise the applicable sections of each rule to allow existing storage tanks to have fill pipes that are further from the bottom of the tank if the owner can demonstrate

that at all times the level of the liquid in the tank is above the entire opening of the fill pipe, provided adequate recordkeeping is performed and records are maintained. We are proposing to add a new paragraph (3) to § 63.11086(a) and § 63.11117(b), which reads: “(3) Submerged fill pipes not meeting the specifications of paragraphs (1) or (2) are allowed if the owner or operator can demonstrate that the liquid level in the tank is always above the entire opening of the fill pipe. Documentation providing such demonstration must be made available for inspection by the Administrator’s delegated representative during the course of a site visit.”

### 3. Continuous Compliance Monitoring of all Vapor Processors

Stakeholders stated that the vapor processor monitoring requirements of § 63.11092(b) were unclear. One stakeholder believes that continuous compliance monitoring is required for all vapor processors; however, the rule text is inconsistent in its presentation of continuous parameter monitoring requirements. The introductory paragraph to the continuous monitoring § 63.11092(b) states that the section is applicable “For each performance test conducted under paragraph (a)(1) of this section. \* \* \*” However, within section (b), paragraph (b)(5) specifies requirements for monitoring “if you have chosen to comply with the performance testing alternatives provided under paragraph (a)(2) or paragraph (a)(3) or this section. \* \* \*” Paragraph (a)(2) allows sources that are operating in compliance with an enforceable State, local, or tribal rule or permit that requires loading racks to meet an emission limit of 80 milligrams per liter of gasoline loaded to submit a statement by a responsible official of the facility certifying the compliance status of the loading rack in lieu of the test required under paragraph (a)(1). Paragraph (a)(3) allows sources to submit test reports for tests performed within 5 years prior to January 10, 2008, in lieu of performing a new test under paragraph (a)(1). Thus, the stakeholder contends that the rule text, as structured, is unclear on whether the requirements in § 63.11092(b) apply to all vapor processors or only those that must conduct a new performance test under § 63.11092(a)(1).

Another stakeholder pointed out that the rule requires in paragraph (b) that the operator determine a monitored operating parameter value, but that in (b)(1)(iii)(B)(1) it allows for monitoring to indicate the presence of a pilot flame. The stakeholder further stated that if they choose to use presence of pilot

flame monitoring, they do not have a “monitored operating parameter,” as required by § 63.11092(b). The stakeholder then questioned whether EPA’s intent was to allow that the presence of a pilot flame be continuously confirmed as an alternative to having to meet the requirement to monitor an operating parameter. Other stakeholders have also questioned how they were to determine an “operating parameter value” if they choose to use the option of monitoring for the presence of a pilot flame.

We agree with the stakeholders that the intent was to provide that all vapor processors required in Table 2 item 1(b) for gasoline loading rack(s) at a bulk gasoline terminal with gasoline throughput of 250,000 gallons per day, or greater, must have continuous compliance monitoring under § 63.11092(b). We also agree the rule text in § 63.11092 should be clear and we are proposing clarifications to the rule text by restructuring paragraphs (b) and (b)(1) as explained below.

In the proposed rule text, revised paragraph (b) is the introductory language that requires subject facilities to monitor vapor processors. Revised paragraph (b)(1) lists the specific monitoring requirements for: Carbon adsorption systems (paragraph (b)(1)(i)); condenser systems (paragraph (b)(1)(ii)); thermal oxidation systems (paragraph (b)(1)(iii)); and alternative monitoring or control systems, other than those listed above (paragraph (b)(1)(iv)).

The second stakeholder is correct that paragraph (b)(1)(iii)(B)(1) allows monitoring to indicate the presence of a pilot flame in a thermal oxidation system as an alternative to a continuous parameter monitoring system that measures operating temperature. However, the stakeholder’s statements imply that he does not consider the presence (or absence) of a pilot flame to be an “operating parameter” for a thermal oxidizer. We believe that the presence of a pilot flame is a key operating parameter for a thermal oxidizer and it is our intent that the monitoring for the presence of a pilot flame meets the requirements for monitoring an operating parameter. In addition, it is our intent that when monitoring for the presence of a pilot flame there are two possible parameter “values” that could be returned. The first possible outcome of the monitoring is a positive parameter value to indicate that there is a pilot flame. The second possible outcome of the monitoring is a negative parameter value to indicate that there is no pilot flame. We are proposing to clarify our intent regarding the monitoring for the presence of a

pilot flame by adding a sentence to paragraph (b)(1)(iii)(B)(1) reading as follows: “The monitor shall show a positive parameter value to indicate that the pilot flame is on or a negative parameter value to indicate that the pilot flame is off.”

### 4. Secondary Rim Seal Requirements Specified Under 40 CFR Part 63, Subpart WW

API stated (issue #9 in the May 8, 2008 letter) that 40 CFR part 63, subpart BBBBBB did not adequately accomplish EPA’s stated goal of requiring that “internal floating roof tanks have a primary seal but not a secondary seal.” API pointed out that the final rule excludes the secondary seal requirements found in 40 CFR part 60, subpart Kb when that rule is chosen as the compliance option, but failed to exclude the secondary seal requirements found in 40 CFR part 63, subpart WW when that rule is the compliance option. API further stated that Table 1, item 2(d) should include the phrase “except for the secondary seal requirements for internal floating roofs under § 63.1063(a)(1)(i)(C) and (D).”

We agree with API that our intent is to exclude the secondary seal requirements found in 40 CFR part 60, subpart Kb and 40 CFR part 63, subpart WW from the requirements of 40 CFR part 63, subpart BBBBBB and that we incorrectly listed only the requirements of subpart Kb as not being required. We are proposing to revise the rule to correct this error by adding the phrase “except for the secondary seal requirements for internal floating roofs under § 63.1063(a)(1)(i)(C) and (D)” to the Table 1, item 2(d) entry.

### 5. Monitoring of Submerged Fill Loading Racks

API requested (issue #11 in the May 8, 2008 letter) that the loading rack portion of 40 CFR part 63, subpart BBBBBB be revised to clarify that the testing and monitoring provisions of § 63.11092 would not apply to facilities with throughputs below the threshold value of 250,000 gallons per day because these facilities are only required to use submerged fill. API pointed out that it is not clearly stated that the testing and monitoring requirements of § 63.11092 apply only to those facilities that are required to control loading rack emissions with a control device.

API is correct that the bulk terminal loading rack testing and monitoring provisions of § 63.11092(a) through (d) apply only to loading racks at facilities with throughputs of 250,000 gallons per day or more that are complying with the 80 milligram per liter emission limit in

item 1(b) of Table 2 to 40 CFR part 63, subpart BBBBBB. We are proposing to revise the introductory text in § 63.11092(a) to read as follows: "Each owner or operator of a bulk gasoline terminal subject to the emission standard in item 1(b) of Table 2 to this subpart must comply with the requirements in paragraphs (a) through (d) of this section."

#### 6. Initial Notifications

One stakeholder stated that because EPA is proposing changes to certain definitions and the applicability sections in 40 CFR part 63, subparts BBBBBB and CCCCCC, it is likely that some facilities may now be covered by a different subpart than the subpart for which an Initial Notification was submitted, or may no longer be subject to the revised rules. The stakeholder also stated that many facilities that previously were not subject to either subpart may now be subject to one of the subparts. The stakeholder recommended that EPA clarify how such facilities should proceed with submitting Initial Notifications and whether Initial Notifications for the original rulemaking must be resubmitted.

EPA does not believe that revisions to the Initial Notification requirements are necessary to account for the proposed changes made in this package, but we solicit comment on whether the provisions as written, including those in the General Provisions, are sufficient for accommodating all facilities who find it necessary to submit a revised Notification or a new Notification. While there may be instances where a facility submitted an Initial Notification that is no longer accurate, or did not submit an Initial Notification when one was required because the facility was unsure whether it was subject to either subpart, these facilities may now submit new or revised Notifications. Specifically, § 63.9(b)(2) states that an owner or operator of an affected source "that has an initial startup before the effective date of a relevant standard" must submit its Initial Notification "not later than 120 calendar days after the effective date of the relevant standard (or within 120 calendar days after the source becomes subject to the relevant standard)." Thus, a facility has 120 days from the effective date of the final amendments to correct a previously submitted Initial Notification or to submit an original Initial Notification. In addition, we expect that many facilities that now realize that they are subject to 40 CFR part 63, subpart CCCCCC as a result of the proposed clarifications of the GDF definition or

the calculation of monthly throughput would be GDF that have a monthly throughput of less than 10,000 gallons per month. These facilities would be subject to § 63.11116 and would not be required to submit notifications or reports. For these reasons, we are not proposing revisions to the Initial Notification requirements as they do not seem warranted.

#### 7. Notification of Compliance Status (NOCS)

API (issue #1 in their petition and issue #1 in the May 8, 2008 letter) stated that there is currently ambiguity in 40 CFR part 63, subpart BBBBBB with respect to when an initial NOCS report is due. API stated that § 63.11093(b) invokes § 63.9(h) from the General Provisions which stipulates that it applies "when an affected source becomes subject to a relevant standard." API stated that this suggests that the NOCS report is not applicable until sometime after the compliance date of the rule. Section 63.9(h)(2)(ii), however, requires notifications to be submitted within 60 days after the completion of "the relevant compliance demonstration activity specified in the relevant standard." API stated that every emission point that is subject to the rule has a relevant compliance demonstration activity, and many of the compliance demonstrations will occur prior to the compliance date of the rule. API stated that it would reduce the burden on the affected facilities as well as regulatory agencies if the documentation of these compliance demonstrations could be grouped and submitted in a single initial NOCS report. API also stated that other standards, such as 40 CFR part 63, subpart CC (Refinery MACT), have clarified the NOCS reporting requirements by specifying that an initial NOCS report is due 150 days after the compliance date specified in the rule. API also provided suggested language to be used to revise § 63.11093(b) to accomplish their recommended change.

Contrary to API's assertions, the General Provisions (GP) (40 CFR part 63, subpart A) appear adequate for instructing a facility regarding the schedule of notifications, as presented in § 63.9(h), such that repeating this GP language in subpart BBBBBB, appears unnecessary. However, we do agree with API that the compliance dates for some storage tank controls may be different than for other control equipment compliance dates. The provisions of § 63.11099(a) allow for the delegation of authority to implement and enforce this subpart to state, local,

or tribal agencies, with the exception of the items noted in § 63.11099(c). It appears that negotiating an alternative schedule for grouping the submittal of the Notification of Compliance Status with the delegated authority is not prohibited under § 63.11099(c); therefore, we propose that a source could negotiate an alternative schedule under this provision. We solicit comment on this approach.

We agree with API that once the initial NOCS report is required for the facility, and another storage tank comes into compliance due to an extended compliance date past the initial NOCS due date, then they can consolidate the NOCS report with the next semi-annual compliance report under section 63.11095(a). We are proposing to add to § 63.11095(a) as follows: "(4) For storage vessels complying with § 63.11087(b) after January 10, 2011, the storage vessel's notice of compliance status information can be included in the next semi-annual compliance report in lieu of filing a separate Notification of Compliance Status report under § 63.11093."

Another stakeholder stated that the schedule for submitting the NOCS report specified in 40 CFR part 63, subpart CCCCCC, § 63.11124(a)(2) and (b)(2), conflicts with the schedule specified in the Table 3 subpart CCCCCC entry for § 63.9(h)(1)–(6). The stakeholder stated that § 63.11124, paragraphs (a)(2) and (b)(2), requires the submittal of the NOCS report "by the compliance date specified in § 63.11113." However, Table 3 indicates that the NOCS should be submitted according to the schedule specified in § 63.9(h)(1)–(6), which states that the NOCS is due "on the 60th day following the completion of the relevant compliance demonstration activity." The stakeholder further stated that the language in § 63.11124 could be interpreted to require submittal of the NOCS on the date of startup for new sources. The stakeholder recommended that § 63.11124 be revised to reference only § 63.9 with regard to when the NOCS is due.

It was not our intent to require submittal of the NOCS on a schedule that deviated from the timeframe specified in section 63.9(h) of the General Provisions. We agree with the stakeholder that there is a contradiction between the requirements of § 63.11124 and the Table 3 reference to § 63.9(h). We are proposing to revise the language in § 63.11124(a)(2) and (b)(2) to be consistent with the 60-day timeframe specified in section 63.9(h). In each paragraph, the revised text would read as follows: "You must submit a

Notification of Compliance Status to the applicable EPA Regional Office and the delegated State authority, as specified in § 63.13, in accordance with the schedule specified in § 63.9(h).”

#### 8. Storage Tank Inspections

API stated (issue #2 in the May 8, 2008 letter) that the requirements for inspections of storage tanks were not exactly the same for 40 CFR part 60, subpart Kb and 40 CFR part 63, subpart WW, the two alternatives for compliance with 40 CFR part 63, subpart BBBBBB. API explained that both subparts Kb and WW specify up-close inspections of an internal floating roof tank prior to the initial filling of the tank and then each time the tank is emptied and degassed, but at least once every 10 years. The corresponding requirement for an external floating roof tank also specifies an up-close inspection each time the tank is emptied and degassed, but it does not include the requirement for an up-close inspection prior to the initial fill. API also stated that subpart Kb does not apply the 10-year frequency requirement to the up-close inspection of an external floating roof tank. API stated that we should recognize those differences and alert compliance inspectors. API presented three different scenarios for when the first up-close inspection would be required for existing storage tanks. API then requested confirmation that the inspection requirements presented for the three scenarios is correct.

API is correct that inspection of storage tank seals could occur at different times and require different levels of inspection, depending on the standard selected. API is also correct that, because of differences in the compliance status of existing storage tanks, there are different scenarios for when the initial and subsequent inspections must occur. Given all the possible scenarios, API's use of terms not matching rule language, and the complexity of seal types and monitoring, we cannot respond specifically to the three general scenarios presented by API, but we believe the rule text is clear, so we are not proposing changes. In discussions with API, another major concern is the recognition that while some of these inspections may have occurred voluntarily prior to the effective or compliance date of the rule, they may not have proper documentation to adequately determine if the proper inspection was performed, so some tanks may need to be inspected again. We agree that if adequate documentation is not available for those

voluntary inspections, then those inspections cannot be used to satisfy the requirements for an initial inspection and to set the date for the next scheduled inspection. In those cases, the initial inspection must be conducted according to the requirements of the standard selected by the owner or operator.

#### 9. General Provisions Applicability

Several stakeholders, including API in their petition (issue #4) and their May 8, 2008 letter (issue #7), stated that the General Provision citations in Table 3 of 40 CFR part 63, subpart BBBBBB were not consistent in whether a SSM plan is required. They pointed out that the SSM requirements in § 63.6(e), (f), and (h) were listed as not applying to subpart BBBBBB while some reporting and recordkeeping associated with SSM plans under § 63.8(c) and § 63.10(b) were listed as applying.

The stakeholders are correct that the rules are inconsistent in the applicability of an SSM plan and the associated recordkeeping and reporting. It was our intent that a SSM plan not be required under these subparts; therefore, SSM-related recordkeeping and reporting were mistakenly required. We are proposing to revise Table 3 to correct this error by changing the entry in the “Applies to subpart BBBBBB” column from “yes” to “no” for the § 63.8(c) and § 63.10(b) rows.

API also stated (issue #8 in the May 8, 2008 letter) that there were corrections needed to two entries in Table 3 to 40 CFR part 63, subpart BBBBBB, Applicability of General Provisions. They stated that the entry for § 63.7(e)(3) is currently listed as a “yes” when it should be a “no.” API also stated that the entry for § 63.9(h)(1)–(6) should be revised to read as follows: “Yes, for the initial performance test (if required), however, there are no opacity standards. Notification of Compliance Status reports are otherwise due as specified in § 63.11093(b).”

We evaluated API's requests and have decided to propose the following revisions to Table 3 to 40 CFR part 63, subpart BBBBBB. For entry 63.7(e)(3), we agree with API that the requirement to conduct three 1-hour test runs is not applicable to testing conducted on the control devices specified in § 63.11092(a). We are proposing to revise the entry for § 63.7(e)(3) to read “yes, except for testing conducted under § 63.11092(a).”

In regard to the timing of the NOCS reports, we are proposing to revise the text of § 63.11095(a)(4) to clarify that once the initial NOCS report is required

for a facility, if another storage tank subsequently comes into compliance due to an extended compliance date past the initial NOCS date, then the storage tank's notice of compliance information can be included with the next semi-annual compliance report under § 63.11095(a), in lieu of filing a separate NOCS report. Therefore, we are proposing to revise the Table 3 entry for § 63.9(h)(1)–(6) to read “yes, except as specified in § 63.11095(a)(4).”

One stakeholder stated that, under § 63.11116(b), owners or operators of GDF with throughput of less than 10,000 gallons per month are not required to submit notifications or reports. The stakeholder then stated that Table 3 indicates that § 63.5 (Preconstruction review and notification requirements) does apply to affected sources. The stakeholder recommended that the Table 3 entry for § 63.5 be revised to state that the requirement to submit preconstruction notifications only applies to affected sources that are subject to § 63.11117.

The stakeholder is correct that the requirements of § 63.5 do not apply to facilities that are only subject to § 63.11116. The only control requirements that these facilities are subject to are the Management Practices specified in § 63.11116; therefore, the submittal of notifications is not necessary. Facilities that are subject to the control requirements of § 63.11117 and § 63.11118, however, are required to submit the applicable notifications. To clarify the notification requirements, we are proposing to amend the Table 3 entry for § 63.5 to state that the requirements only apply to facilities subject to § 63.11117 and § 63.11118.

One stakeholder noted that the Table 3 entries for § 63.10(e)(3)(i)–(iii) and § 63.10(e)(3)(iv)–(v) refer to a § 63.11130(K) that does not exist in the final rule. The stakeholder questioned what EPA's intent was for the applicability of these General Provision sections.

The stakeholder is correct that the Table 3 entries related to excess emissions reports contain an erroneous reference. 40 CFR part 63, subpart CCCCCC does not have any requirement for excess emissions reports, so we are proposing to change the Table 3 (fourth column) entries to “No.”

Additionally, we are proposing to amend Table 3 in both subparts BBBBBB and CCCCCC and indicate that we are not incorporating § 63.7(e)(1) into the rules by changing the “Yes” in both Tables (fourth column) to a “No.” Instead, we propose to include the following language regarding conducting performance tests directly

into the subparts as new paragraphs (g) to § 63.11092 of subpart BBBB, and (c) to § 63.11120 of subpart CCCCCC: “Conduct of performance tests. Performance tests conducted for this subpart shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of the affected source. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.”

#### 10. Compliance Testing For GDF

One stakeholder questioned whether Bay Area ST-30, a test method for static pressure testing of a vapor balance system, could be accepted as an alternative to the California Air Resources Board (CARB) 201.3 procedure required by 40 CFR part 63, subpart CCCCCC. The stakeholder explained that Bay Area ST-30 was listed in Stage II vehicle refueling guidance issued by EPA in the early 1990s as a recommended static pressure test method and has been incorporated into several State and local rules requiring Stage II vapor balance systems. The stakeholder pointed out that if Bay Area ST-30 is not an acceptable alternative to CARB 201.3, many facilities would be required to do two different tests to satisfy the State or local and the subpart CCCCCC requirements. The stakeholder also pointed out that Bay Area ST-30 measures the pressure drop from an initial system pressure of 10 inches of water rather than the initial 2 inches of water specified in CARB 201.3.

We have analyzed the requirements of Bay Area ST-30 and found that the original 1983 version of Bay Area ST-30 did not include procedures for testing the integrity of PV valves installed on the storage tanks. Because PV valves are a potential leak source, ST-30 cannot be compared directly to CARB 201.3, which does measure the integrity of PV valve. Therefore, we believe that because the 1983 version of Bay Area ST-30 is not testing all potential storage tank leak sources, it is not an acceptable alternative for the CARB 201.3 testing required by 40 CFR part 63, subpart CCCCCC. We request comment on our analysis.

On December 21, 1994 the Bay Area Air Quality Management District amended ST-30 to include the PV valve and the PV valve connections as components of the system during testing, and CARB subsequently issued a letter of equivalency stating that

amended ST-30 was equivalent to CARB 201.3. Therefore, if amended ST-30 is required by regulatory agencies, we are proposing that the testing will be considered to meet the requirements of 40 CFR part 63, subpart CCCCCC. (If facilities have to do separate tests to meet the State and Federal requirements, the ST-30 test should be done first, followed by the CARB 201.3 test. This will ensure that the PV vent and connections will be tested after they are re-installed following the ST-30 test.)

One stakeholder said that 40 CFR part 63, subpart CCCCCC is unclear regarding the performance testing requirements of § 63.11120 (the compliance demonstration for vapor balance systems at GDF with a gasoline throughput of 100,000 gallons or more). The stakeholder questioned whether existing vapor balance systems are required to conduct the specified periodic performance testing and, if so, by what date it must be completed.

Periodic testing is required under § 63.11120(a) as follows: “Each owner or operator, at the time of installation of a vapor balance system required under § 63.11118(b)(1), and every 3 years thereafter, must comply with the requirements in paragraphs (a)(1) and (2) of this section.” Paragraphs (a)(1) and (2) specify the test procedures to follow.

The rule text for periodic testing only mentions one of the two management practice options for vapor balance systems. The first and main option is compliance under section 63.11118(b)(1). The vapor balance system must meet the management practices specified in Table 1 to this subpart.<sup>3</sup> As specified in the rule text in § 63.11120(a), owners or operators using this option must demonstrate compliance using the periodic testing procedures specified in § 63.11120(a).

The second option (compliance under § 63.11118(b)(2)) does not require the periodic testing in § 63.11120(a), but periodic testing may be required under State, local, or tribal rule or permits. The second vapor balance compliance option is provided since there are many vapor balance systems that were installed prior to this rule under State, local, or tribal rules or permits. As a way to compare the performance of

these systems and ensure continued compliance, these systems must meet certain criteria. This second option is only for vapor balance systems in compliance prior to January 10, 2008. The vapor balance system is considered compliant with 40 CFR part 63, subpart CCCCCC if it is required to comply, and complies, with either a 90-percent reduction in emissions, or uses management practices at least as stringent as those in Table 1 under enforceable State, local, or tribal rule or permit. Owners or operators of vapor balance systems installed prior to January 10, 2008, that choose and comply with the compliance option under § 63.11118(b)(2) are not required by subpart CCCCCC to conduct the testing specified in § 63.11120(a) because § 63.11120(a) states that it is only a requirement for sources complying with § 63.11118(b)(1). However, since they are required to be in compliance with an enforceable State, local, or tribal rule or permit, they may have other or similar periodic testing specified by the State, local, or tribal rule or permit to perform and remain in compliance with both rules.

The dates by which owners or operators of affected GDF must comply with 40 CFR part 63, subpart CCCCCC are specified in § 63.11113. As stated in the General Provisions under § 63.7(a)(2), an affected source must perform tests within 180 days of its compliance date; thus, new sources must test within 180 days after startup and existing sources must conduct all performance tests within 180 days after the compliance date. While the General Provisions are referenced, the rule text in subpart CCCCCC does not provide this text directly. Also, the rule text for § 63.11120(a) specifies that the test must be performed “at the time of installation.” Because the installation of a vapor balance system typically involves excavation work, we believe that any new vapor balance system installed to comply with subpart CCCCCC should be tested at the time it is installed rather than after the storage tanks have been recovered and returned to normal service. We agree with the stakeholder that the dates by which the periodic tests required for systems installed for existing installations, as well as new systems for vapor balance systems under § 63.11118(b)(1), are not explicitly stated in the rule. Therefore, we are proposing to add a new paragraph (e) to § 63.11113 to provide the dates discussed above for periodic testing. We are also proposing to add a reference to the dates specified in this new paragraph (e) to the testing and

<sup>3</sup> As an alternative to Table 1 management practices, there is a provision (section 63.11120(b)) that allows use of alternative management practices that are demonstrated to be equivalent to those in Table 1 by testing the vapor balance system to determine if it achieves 95-percent emissions reduction using specific test procedures. This provision also requires using the periodic tests in section 63.11120(b), see section 63.11120(b)(3).

monitoring provisions in § 63.11120, paragraph (a).

Additionally, we are proposing to clarify the requirements for the annual certification testing of cargo tanks by adding a new paragraph (c) to § 63.11120. In the January 10, 2008 final rule, Table 2 item (vi) requires that cargo tanks meet the specifications of EPA Method 27, but does not specifically state what the maximum allowable pressure and vacuum changes are. Proposed paragraph (c) would clarify that the maximum allowable pressure and vacuum change, as measured by EPA Method 27, for all affected gasoline cargo tanks is 3 inches of water, or less, in 5 minutes.

#### 11. Definition of Gasoline

A number of stakeholders have asked what the definition of gasoline is for this rule. Additionally, they have asked if E85, E10, denatured ethanol, and transmix are considered gasoline and how they are handled under this rule.

The definition of gasoline is the same as the definition developed for the NSPS in 40 CFR part 60, subpart XX, Bulk Gasoline Terminals, and used in many State Implementation Plans for Ozone Attainment, as well as 40 CFR part 63, subpart R, the major source NESHAP for gasoline distribution. Gasoline is defined in § 60.501 as follows: "Gasoline means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals or greater which is used as a fuel for internal combustion engines." Even though the NSPS is cross-referenced in the definitions of 40 CFR part 63, subparts BBBBBB and CCCCCC, for clarity we are proposing to add the definition to these subparts as well.

Both E85 and E10 are petroleum distillate/alcohol blends of 85- or 10-percent ethanol, respectively, with gasoline. Ethanol has a Reid vapor pressure of about 2 pounds per square inch (psi), but when mixed with gasoline at the highest percentage of ethanol (E85), the vapor pressure of the blend is 6 to 12 psi for the different volatility classes of gasoline. Thus, the vapor pressure of E85 and E10 is over the lower limit in the definition of gasoline of 4 psi (27.6 kilopascals is about 4 psi) and considered gasoline under the definition used. Gasoline storage tanks containing E10 and E85 at bulk facilities and GDF would be subject to applicable controls.

The ethanol used in fuel blends is denatured ("poisoned" to prevent human consumption) at the ethanol plant and can contain up to 5-percent hydrocarbons (gasoline or gasoline-like

additives) before blending. As discussed earlier, emissions at ethanol plants are already subject to and controlled under 40 CFR part 63, subpart VVVVVV. Thus, the applicable question becomes how emissions downstream of the ethanol plant are addressed. Based on limited information, denatured ethanol mixed with normal gasoline appears to have a vapor pressure of about 4 psi or less. Thus, it is unclear if the mixture meets our vapor pressure threshold for the various blends and volatility of gasoline. We are requesting information during the comment period as to the vapor pressure of denatured ethanol over the full normal range of amount of ethanol mixed with the range of gasoline volatilities used for denaturing ethanol. Secondly, given that the storage of denatured ethanol to mix with additional gasoline normally occurs at gasoline bulk terminals, we believe these storage emissions should be addressed and controlled whether the liquid meets or does not meet the current definition of gasoline criteria of at or above 4 psi. Thus, we are proposing that any gasoline mixture with alcohol be considered gasoline and be controlled under the current control requirements in subpart BBBBBB and CCCCCC. We are asking for comment on including any mixture, on whether this level of control is appropriate, and if not, we are requesting data on what level of control of those emissions is appropriate.

Another stakeholder asked if transmix (the combined product mix at the interface between different products conveyed in the pipeline) is considered a regulated gasoline under this standard. This issue was discussed in the December 19, 2007, Memorandum, "Summary of Comments and Responses to Public Comments on November 9, 2006 Proposal for Gasoline Distribution Area Sources" (Docket No. EPA-HQ-OAR-2006-0406, item 0141) and in the preamble to the final major source NESHAP (59 FR 64303 (December 14, 1994)). We must set standards for all the gasoline operations. The transmix contains various concentrations of gasoline and other products to the degree that it would not be feasible to specify in advance the percentage and concentration of gasoline in the mixture; thus, as discussed in the responses to comment for both standards, it should be stored and considered gasoline for the purposes of these regulations. Additionally, industry has indicated that many of the tanks that store transmix may have low throughputs and that they are often smaller tanks, thereby many are in the lesser control

option of installing a fixed roof and maintaining all openings in a closed position at all times when not in use (see item 1 in Table 2 of 40 CFR part 63, subpart BBBBBB).

#### 12. Table 1 Requirements for "New" Storage Tanks

Item 2 in Table 1 to 40 CFR part 63, subpart CCCCCC currently specifies that dual-point vapor balance systems be used "For new or reconstructed GDF, or new storage tank(s) at an existing affected facility subject to § 63.11118." As a result of questions regarding the construction date that establishes when a tank is considered new, we are proposing to amend the text of item 2 to read as follows: "A new or reconstructed GDF, or any storage tank(s) constructed after November 9, 2006, at an existing affected facility subject to § 63.11118." Under § 63.11112(b), an affected source constructed after November 9, 2006, is considered to be a new source (a new GDF), and we intended that the same date apply for newly constructed storage tanks at existing facilities. The proposed text would clarify that our intent was for the term "new storage tank(s)" to refer to storage tanks constructed after the publication date of the proposed rule.

#### 13. Requirements for Gasoline Containers

One stakeholder stated that some plastic gasoline containers that do not have gaskets may, nevertheless, meet the stringent emission reduction requirements established in the 2007 Mobile Source Air Toxics rulemaking (72 FR 8428) and should be allowed as an acceptable alternative to the requirements of § 63.11116(a)(3), which requires that gasoline containers be covered with a gasketed seal. The stakeholder recommended that EPA allow facilities to comply with § 63.11116(a)(3) by using gasoline containers that meet the evaporative emission standards of 40 CFR part 59, subpart F, sections 59.600–59.699.

We reviewed the requirements of §§ 59.600–59.699 and agree with the stakeholder that the 0.3 grams per gallon per day emission standard found in § 59.611(a) can only be met through the use of tight-fitting closures. We are proposing to add a paragraph (d) to § 63.11116 that reads as follows: "Portable gasoline containers that meet the requirements of 40 CFR part 59, subpart F, are considered acceptable for compliance with § 63.11116(a)(3)."

#### 14. Cargo Tank Testing and Documentation

Stakeholders have raised several questions regarding the GDF rule requirement that only “vapor-tight gasoline cargo tanks” may be used to fill storage tanks at GDF with 100,000 gallons or more per month throughput. The GDF rule provision provides the inspector at vapor balanced GDF an opportunity to check the cargo tank unloading at these facilities to make sure the cargo tank has been tested for vapor tightness. Cargo tank vapor tightness is important to ensure that vapors are properly vapor balanced. Table 2 to 40 CFR part 63, subpart CCCCCC states that if you own or operate a gasoline cargo tank, you must meet the following requirement: “(vi) The filling of storage tanks at GDF shall be limited to unloading by vapor-tight gasoline cargo tanks. Documentation that the cargo tank has met the specifications of EPA Method 27 shall be carried on the cargo tank.” In review of the questions raised by the stakeholders, we found that this provision of the rule related to the testing of vapor-tight gasoline cargo tanks needs clarification on several points.

First, 40 CFR part 63, subpart CCCCCC does not include a definition of “vapor-tight gasoline cargo tank.” We intended to use the same vapor-tight testing requirements as those in the standards for bulk facilities (40 CFR part 63, subpart BBBBBB) promulgated at the same time as the GDF rule. Subpart BBBBBB contains a definition of “vapor-tight gasoline cargo tank” in that subpart. We found, however, that the definition in subpart BBBBBB incorrectly referenced, as part of the definition, the definition of “vapor-tight gasoline tank truck” found in 40 CFR 60.501 (the NSPS for Bulk Gasoline Terminals). The subpart BBBBBB definition should have specified the test requirements in § 63.11092(f) of subpart BBBBBB,<sup>4</sup> since it provides the test method and parameters for vapor tight gasoline cargo tanks for subpart BBBBBB, and they are different than

<sup>4</sup> 40 CFR 63.11092(f). “The annual certification test for gasoline cargo tanks shall consist of the test methods specified in paragraphs (f)(1) or (f)(2) of this section. (1) EPA Method 27, Appendix A–8, 40 CFR part 60. Conduct the test using a time period (t) for the pressure and vacuum tests of 5 minutes. The initial pressure (Pi) for the pressure test shall be 460 millimeters (mm) of water (18 inches of water), gauge. The initial vacuum (Vi) for the vacuum test shall be 150 mm of water (6 inches of water), gauge. The maximum allowable pressure and vacuum changes ( $\Delta p$ ,  $\Delta v$ ) for all affected gasoline cargo tanks is 3 inches of water, or less, in 5 minutes. (2) Railcar bubble leak test procedures. \* \* \*

those specified in the Bulk Gasoline Terminal NSPS. Therefore, we are proposing to revise the definition of “vapor-tight gasoline cargo tank” in subpart BBBBBB to correct the reference to the appropriate vapor tightness test requirements. We are also proposing to include the same definition in 40 CFR part 63, subpart CCCCCC to add clarity. The proposed definition would read as follows: “vapor-tight gasoline cargo tank means a gasoline cargo tank which has demonstrated within the 12 preceding months that it meets the annual certification test requirements in § 63.11092(f).” Additionally, it appears that the subpart CCCCCC definition of “gasoline cargo tank” requires clarification not only to reference “loading” gasoline, but to reference “unloading” as well, since the definition also applies to unloading gasoline at GDF. In today’s amendments we are proposing a revision of the definition of “vapor-tight gasoline cargo tank” in subpart BBBBBB, an insertion of the definition of “vapor-tight gasoline cargo tank” into subpart CCCCCC, and a revision of the definition of “gasoline cargo tank” in subpart CCCCCC as described above.

The second question that has been raised relates to the statement in Table 2 to 40 CFR part 63, subpart CCCCCC that “Documentation that the cargo tank has met the specifications of EPA Method 27 shall be carried on the cargo tank.” Stakeholders have pointed out that it is impractical to require that documentation be “on” the cargo tank because most cargo tanks are not equipped for the weatherproof storage of paper documents. It was our intent that the documentation of vapor tightness testing would be carried in the cab of the truck rather than actually “on the cargo tank.” In today’s amendments, we are proposing to amend the wording of the phrase to state that documentation shall be carried “with the cargo tank.”

Another question that has been raised relates to the length of time that cargo tank owners or operators must retain testing documentation with the cargo tank. We specified in Table 3 to 40 CFR part 63, subpart CCCCCC that § 63.10(b)(1), the general recordkeeping requirements in the General Provisions, is applicable and requires all records to be readily available and be kept for 5 years. We still believe that 5 years of records is necessary and appropriate. However, we believe, in this case, that records for only the current year need to be available with the cargo tank since the inspector is checking on current compliance. The other 4 years of records can be kept at the cargo tank owner’s office as long as the records are readily

available. In § 63.11094(c), we specified that records kept at remote locations must be instantly available (e.g., via e-mail or facsimile) for inspection by the Administrator’s delegated representative during the course of a site visit or within a mutually agreeable time frame. The record must be an exact duplicate image of the original paper record with certifying signatures. In subpart CCCCCC, we are proposing to clarify the rule text by adding § 63.11125(c), which contains the following requirements: (1) Cargo tank owners or operators must keep documentation of vapor tightness testing for 5 years, but documentation of only the most recent test must be carried with the cargo tank; (2) if the owner or operator of the cargo tank chooses to keep only the current documentation with the cargo tank, documentation for the previous 4 years must be kept at the owner’s or operator’s office; (3) such office records must be instantly available (e.g., via e-mail or facsimile) to the Administrator’s delegated representative during the course of a site visit or within a mutually agreeable time frame; and (4) such records must be an exact duplicate image of the original paper record with certifying signatures.

Also, note that we are working with DOT to resolve questions related to allowing certain new DOT testing requirements<sup>5</sup> as an alternative to vapor-tight testing and documentation in this subpart. Currently we are working with DOT to discuss and resolve questions related to whether the required records of testing have the equivalent content, availability, and retention time requirements. DOT is currently considering revising their standards to make the test documentation equal to this 40 CFR part 63, subpart CCCCCC, and 40 CFR part 63, subparts R and BBBBBB for terminals, and the new source terminal standards under 40 CFR part 60, subpart XX.<sup>6</sup> That effort has not progressed to

<sup>5</sup> On April 18, 2003, (68 FR 19258) a final DOT rule (49 CFR 180.407(h)(2) and 180.415(b)(3)(vii)) was issued specifying a new DOT uniform marking for cargo tanks using and passing the Method 27 test. The uniform cargo tank marking is “K–EPA27” and includes the date (month and year) that the cargo tank passed the Method 27 test.

<sup>6</sup> The DOT testing limit requirements for a “K–EPA27” marking are at least equivalent to Method 27 testing under Reasonably Available Control Technology guidance, NSPS (40 CFR 60, subpart XX) and air toxics rules (40 CFR part 63, subparts R, BBBBBB, and CCCCCC). The DOT rules would be equivalent to contents of the test documentation for all the above subparts if test location and cargo tank owner’s address were added to the DOT documentation requirements. The DOT requirements for owner or operator retention of test documentation would be equivalent for the proposed requirements for subpart CCCCCC if test documentation is kept for 1 year with cargo tank and immediately available for 4 previous years at

the degree that we can propose additional changes or alternatives to subpart CCCCCC in today's proposed amendments. Once DOT has finalized the changes to their cargo tank testing standards we will consider those changes and whether any changes are needed in our standards.

#### IV. Statutory and Executive Order Reviews

##### A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the Executive Order.

##### B. Paperwork Reduction Act

This action does not impose any new information collection burden. The proposed amendments clarify, but do not add requirements increasing the collection burden. The information collection requirements contained in the existing regulations at 40 CFR part 63, subparts BBBBBB and CCCCCC were sent to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* OMB approved Information Collection Request (ICR) 2237.02—NESHAP for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities (40 CFR part 63, subparts BBBBBB and CCCCCC) (Final Rule) and assigned OMB control number 2060-0620. This ICR was approved by OMB without change. The OMB control numbers for EPA regulations in 40 CFR are listed in 40 CFR part 9. We are proposing to amend 40 CFR part 9 to add the OMB control number for these rules.

##### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (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

the owner or operator's office. Under subparts XX, R, and BBBBBB, the terminal checks the current documentation and keeps the documentation for 5 years. The DOT requirement is currently for 1-year retention at the owner's address. Reasonably Available Control Technology requirements for record retention and location vary by State and local rules and permits.

organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (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; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of these proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed amendments will not impose any new requirement on small entities that are not currently required by the final rules (i.e., minimizing gasoline spills and evaporation). We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

##### D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. These proposed amendments clarify certain provisions and correct typographical errors in the rule text for a rule EPA previously determined did not include a Federal mandate that may result in an estimated cost of \$100 million or more (69 FR 5061, February 3, 2004). Thus, the proposed amendments are not subject to the requirements of sections 202 or 205 of UMRA.

The proposed amendments are also not subject to the requirements of section 203 of UMRA because they contain no regulatory requirements that might significantly or uniquely affect small governments. The proposed amendments clarify certain provisions and correct typographical errors in the rule text; thus, they should not affect small governments.

##### E. Executive Order 13132: Federalism

These proposed amendments do not have federalism implications. They will 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. They provide clarification and correct typographical errors. These changes do not modify existing or create new responsibilities among EPA Regional Offices, States, or local enforcement agencies. Thus, Executive Order 13132 does not apply to these proposed amendments.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

##### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

These proposed amendments do not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). 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. Thus, Executive Order 13175 does not apply to these proposed amendments.

Nonetheless, EPA specifically solicits additional comment on this proposed action from tribal officials.

##### G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

These proposed amendments are not subject to Executive Order 13211 (66 FR 18355, May 22, 2001) because they are not a "significant energy action" under Executive Order 12866.

##### I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or

otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve any new technical standards that were not already included in the final rules. Therefore, EPA did not consider the use of any other VCS in these proposed amendments.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that these proposed amendments will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. These proposed amendments do not relax the control measures on sources regulated by the rule and will not cause emissions increases from these sources.

List of Subjects in 40 CFR Part 63

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

Dated: December 7, 2009.

Lisa P. Jackson, Administrator.

For the reasons set out in the preamble, parts 9 and 63 of title 40, chapter I, of the Code of Federal Regulations are proposed to be amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135, et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671;

21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251, et seq., 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857, et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. The table in § 9.1 is amended by adding the following entries in numerical order under the undesignated center heading “National Emission Standards for Hazardous Air Pollutants for Source Categories” to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

Table with 5 columns: asterisks, 40 CFR citation, asterisks, OMB control No., asterisks. Row 1: National Emission Standards for Hazardous Air Pollutants for Source Categories. Row 2: 63.11080–63.11100 ..... 2060–0620. Row 3: 63.11110–63.11132 ..... 2060–0620.

3 The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

PART 63—[AMENDED]

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

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

Subpart BBBB—[Amended]

4. Section 63.11081 is amended by adding paragraphs (c) through (j) to read as follows:

§ 63.11081 Am I subject to the requirements in this subpart?

(c) Gasoline storage tanks that are located at affected sources identified in paragraphs (a)(1) through (a)(4) of this section, and that are used only for dispensing gasoline in a manner consistent with tanks located at a gasoline dispensing facility as defined in § 63.11132, are not subject to any of the requirements in this subpart. These tanks must comply with subpart CCCCC of this part.

(d) The loading of aviation gasoline into storage tanks at airports, and the subsequent transfer of aviation gasoline within the airport, is not subject to this subpart.

(e) The loading of gasoline into marine tank vessels at bulk facilities is not subject to this subpart.

(f) If your affected source’s throughput ever exceeds an applicable throughput threshold in the definition of “bulk gasoline terminal” or in item 1 in Table 2 to this subpart, the affected source will remain subject to the requirements for sources above the threshold even if the affected source throughput later falls below the applicable throughput threshold.

(g) For the purpose of determining gasoline throughput, as used in the definition of bulk gasoline plant and bulk gasoline terminal, the 20,000 gallons per day threshold throughput is the maximum calculated design throughput for any day and is not an average.

(h) Storage tanks that are used to load gasoline into a cargo tank for the on-site redistribution of gasoline to another storage tank are subject to this subpart.

(i) For any affected source subject to the provisions of this subpart and another Federal rule, you may elect to comply only with the more stringent provisions of the applicable subparts. You must consider all provisions of the rules, including monitoring, recordkeeping, and reporting. You must identify the affected source and provisions with which you will comply in your Notification of Compliance Status (NOCS) required under § 63.11093. You also must demonstrate in your NOCS that each provision with which you will comply is at least as stringent as the otherwise applicable requirements in this subpart. You are responsible for making accurate determinations concerning the more stringent provisions; noncompliance with this rule is not excused if it is later determined that your determination was in error and, as a result, you are violating this subpart. Compliance with this rule is your responsibility and the NOCS does not alter or affect that responsibility.

(j) For new or reconstructed affected sources, as specified in § 63.11082(b) and (c), recordkeeping to document applicable throughput must begin upon startup of the affected source. For existing sources, as specified in § 63.11082(d), recordkeeping to document applicable throughput must begin on January 10, 2008. Records required under this paragraph shall be kept for a period of 5 years.

5. Section 63.11083 is amended by revising paragraph (c) to read as follows:

§ 63.11083 When do I have to comply with this subpart?

\* \* \* \* \*

(c) If you have an existing affected source that becomes subject to the control requirements in this subpart because of an increase in the daily throughput, as specified in option 1 of Table 2 to this subpart, you must comply with the standards in this subpart no later than 3 years after the affected source becomes subject to the control requirements in this subpart.

6. Section 63.11086 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 63.11086 What requirements must I meet if my facility is a bulk gasoline plant?**

\* \* \* \* \*

(a) Except as specified in paragraph (b) of this section, you must only load gasoline into storage tanks and cargo tanks at your facility by utilizing submerged filling, as defined in § 63.11100, and as specified in paragraphs (a)(1), (a)(2), or (a)(3) of this section. The applicable distances in paragraphs (a)(1) and (2) of this section shall be measured from the point in the opening of the submerged fill pipe that is the greatest distance from the bottom of the storage tank.

(1) Submerged fill pipes installed on or before November 9, 2006, must be no more than 12 inches from the bottom of the tank.

(2) Submerged fill pipes installed after November 9, 2006, must be no more than 6 inches from the bottom of the tank.

(3) Submerged fill pipes not meeting the specifications of paragraphs (a)(1) or (2) of this section are allowed if the owner or operator can demonstrate that the liquid level in the tank is always above the entire opening of the fill pipe. Documentation providing such demonstration must be made available for inspection by the Administrator's delegated representative during the course of a site visit.

(b) Gasoline storage tanks with a capacity of less than 250 gallons are not required to comply with the control requirements in paragraph (a) of this section, but must comply only with the requirements in paragraph (d) of this section.

\* \* \* \* \*

7. Section 63.11092 is amended as follows:

- a. By revising paragraph (a) introductory text;
- b. By revising paragraph (b) introductory text;
- c. By revising paragraph (b)(1) introductory text;
- d. By revising paragraph (b)(1)(i)(B)(2)(ii);
- e. By revising paragraph (b)(1)(i)(B)(2)(iii);

f. By revising paragraph (b)(1)(iii)(B)(1);

g. By revising paragraph (b)(1)(iii)(B)(2)(ii);

h. By revising paragraph (b)(1)(iii)(B)(2)(iii); and

i. By adding a new paragraph (g) to read as follows:

**§ 63.11092 What testing and monitoring requirements must I meet?**

(a) Each owner or operator of a bulk gasoline terminal subject to the emission standard in item 1(b) of Table 2 to this subpart must comply with the requirements in paragraphs (a) through (d) of this section.

\* \* \* \* \*

(b) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall install, calibrate, certify, operate, and maintain, according to the manufacturer's specifications, a continuous monitoring system (CMS) while gasoline vapors are displaced to the vapor processor systems, as specified in paragraphs (b)(1) through (5) of this section.

(1) For each performance test conducted under paragraph (a)(1) of this section, the owner or operator shall determine a monitored operating parameter value for the vapor processing system using the procedures specified in paragraphs (b)(1)(i) through (iv) of this section. During the performance test, continuously record the operating parameter as specified under paragraphs (b)(1)(i) through (iv) of this section.

\* \* \* \* \*

- (i) \* \* \*
- (B) \* \* \*
- (2) \* \* \*

(ii) The owner or operator shall verify, during each day of operation of the loading rack, the proper valve sequencing, cycle time, gasoline flow, purge air flow, and operating temperatures. Verification shall be through visual observation or through an automated alarm or shutdown system that monitors system operation. A manual or electronic record of the start and end of a shutdown event may be used.

(iii) The owner or operator shall perform semi-annual preventive maintenance inspections of the carbon adsorption system, including the automated alarm or shutdown system for those units so equipped, according to the recommendations of the manufacturer of the system.

\* \* \* \* \*

- (iii) \* \* \*
- (B) \* \* \*

(1) The presence of a thermal oxidation system pilot flame shall be

monitored using a heat-sensing device, such as an ultraviolet beam sensor or a thermocouple, installed in proximity of the pilot light to indicate the presence of a flame. The monitor shall show a positive parameter value to indicate that the pilot flame is on, or a negative parameter value to indicate that the pilot flame is off.

\* \* \* \* \*

(2) \* \* \*

(ii) The owner or operator shall verify, during each day of operation of the loading rack, the proper operation of the assist-air blower and the vapor line valve. Verification shall be through visual observation or through an automated alarm or shutdown system that monitors system operation. A manual or electronic record of the start and end of a shutdown event may be used.

(iii) The owner or operator shall perform semi-annual preventive maintenance inspections of the thermal oxidation system, including the automated alarm or shutdown system for those units so equipped, according to the recommendations of the manufacturer of the system.

\* \* \* \* \*

(g) *Conduct of performance tests.* Performance tests conducted for this subpart shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of the affected source. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

8. Section 63.11095 is amended by adding a new paragraph (a)(4) to read as follows:

**§ 63.11095 What are my reporting requirements?**

(a) \* \* \*

(4) For storage vessels complying with § 63.11087(b) after January 10, 2011, the storage vessel's Notice of Compliance Status information can be included in the next semi-annual compliance report in lieu of filing a separate Notification of Compliance Status report under § 63.11093.

\* \* \* \* \*

9. Section 63.11100 is amended by:

- a. Adding, in alphabetical order, new definitions of "gasoline," "gasoline storage tank or vessel," and "surge control tank or vessel"; and
- b. Revising the definitions of "bulk gasoline plant" and "vapor-tight gasoline cargo tank" to read as follows:

**§ 63.11100 What definitions apply to this subpart?**

\* \* \* \* \*

*Bulk gasoline plant* means any gasoline storage and distribution facility that receives gasoline by pipeline, ship or barge, or cargo tank and subsequently loads the gasoline into gasoline cargo tanks for transport to gasoline dispensing facilities, and has a gasoline throughput of less than 20,000 gallons per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State, or local

law and discoverable by the Administrator and any other person.

\* \* \* \* \*

*Gasoline* means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals or greater which is used as a fuel for internal combustion engines.

\* \* \* \* \*

*Gasoline storage tank or vessel* means each tank, vessel, reservoir, or container used for the storage of gasoline, but does not include:

- (1) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of gasoline or gasoline vapors; or

(2) Subsurface caverns or porous rock reservoirs.

\* \* \* \* \*

*Surge control tank or vessel* means, for the purposes of this subpart, those tanks or vessels used only for controlling pressure in a pipeline system during surges or other variations from normal operations.

\* \* \* \* \*

*Vapor-tight gasoline cargo tank* means a gasoline cargo tank which has demonstrated within the 12 preceding months that it meets the annual certification test requirements in § 63.11092(f).

10. Table 1 to Subpart BBBBBB of Part 63 is revised to read as follows:

**TABLE 1 TO SUBPART BBBBBB OF PART 63—APPLICABILITY CRITERIA, EMISSION LIMITS, AND MANAGEMENT PRACTICES FOR STORAGE TANKS**

If you own or operate . . .	Then you must . . .
1. A gasoline storage tank meeting either of the following conditions: (i) a capacity of less than 75 cubic meters (m <sup>3</sup> ); or (ii) a capacity of less than 151 m <sup>3</sup> and a gasoline throughput of 480 gallons per day or less. Gallons per day is calculated by summing the current day's throughput, plus the throughput for the previous 364 days, and then dividing that sum by 365.	Equip each gasoline storage tank with a fixed roof that is mounted to the storage tank in a stationary manner, and maintain all openings in a closed position at all times when not in use.
2. A gasoline storage tank with a capacity of greater than or equal to 75 m <sup>3</sup> and not meeting any of the criteria specified in item 1. of this Table.	Do the following: (a) Reduce emissions of total organic HAP or TOC by 95 weight-percent with a closed vent system and control device as specified in § 60.112b(a)(3) of this chapter; or (b) Equip each internal floating roof gasoline storage tank according to the requirements in § 60.112b(a)(1) of this chapter, except for the secondary seal requirements under § 60.112b(a)(1)(ii)(B), § 60.112b(a)(1)(iv) through (ix), and § 63.1063(a)(1)(i)(C) and (D) of this chapter; and (c) Equip each external floating roof gasoline storage tank according to the requirements in § 60.112b(a)(2) of this chapter, except that the requirements of § 60.112b(a)(2)(ii) of this chapter shall only be required if such storage tank does not currently meet the requirements of § 60.112b(a)(2)(i) of this chapter; or (d) Equip and operate each internal and external floating roof gasoline storage tank according to the applicable requirements in § 63.1063(a)(1) and (b), and equip each external floating roof gasoline storage tank according to the requirements of § 63.1063(a)(2) if such storage tank does not currently meet the requirements of § 63.1063(a)(1).
3. A surge control tank .....	Equip each surge control tank with a fixed roof that is mounted to the tank in a stationary manner and with a pressure/vacuum vent with a positive cracking pressure of no less than 0.50 inches of water. Maintain all openings in a closed position at all times when not in use.

11. Table 2 to Subpart BBBBBB of Part 63 is revised to read as follows:

**TABLE 2 TO SUBPART BBBBBB OF PART 63—APPLICABILITY CRITERIA, EMISSION LIMITS, AND MANAGEMENT PRACTICES FOR LOADING RACKS**

If you own or operate . . .	Then you must . . .
1. A bulk gasoline terminal loading rack(s) with a gasoline throughput (total of all racks) of 250,000 gallons per day, or greater. Gallons per day is calculated by summing the current day's throughput, plus the throughput for the previous 364 days, and then dividing that sum by 365.	(a) Equip your loading rack(s) with a vapor collection system designed to collect the TOC vapors displaced from cargo tanks during product loading; and (b) Reduce emissions of TOC to less than or equal to 80 mg/l of gasoline loaded into gasoline cargo tanks at the loading rack; and (c) Design and operate the vapor collection system to prevent any TOC vapors collected at one loading rack from passing to another loading rack; and (d) Limit the loading of gasoline into gasoline cargo tanks that are vapor tight using the procedures specified in § 60.502(e) through (j) of this chapter. For the purposes of this section, the term "tank truck" as used in § 60.502(e) through (j) of this chapter means "cargo tank" as defined in § 63.11100.

TABLE 2 TO SUBPART BBBBBB OF PART 63—APPLICABILITY CRITERIA, EMISSION LIMITS, AND MANAGEMENT PRACTICES FOR LOADING RACKS—Continued

If you own or operate . . .	Then you must . . .
2. A bulk gasoline terminal loading rack(s) with a gasoline throughput (total of all racks) of less than 250,000 gallons per day. Gallons per day is calculated by summing the current day's throughput, plus the throughput for the previous 364 days, and then dividing that sum by 365.	(a) Use submerged filling with a submerged fill pipe that is no more than 6 inches from the bottom of the cargo tank. (b) Make records available within 24 hours of a request by the Administrator to document your gasoline throughput.

12. Table 3 to Subpart BBBBBB of Part 63 is amended by revising the entries for §§ 63.7(e)(1), 63.7(e)(3), 63.8(c)(1), 63.9(h), and 63.10(b)(2) to read as follows:

TABLE 3 TO SUBPART BBBBBB OF PART 63—APPLICABILITY OF GENERAL PROVISIONS

Citation	Subject	Brief description	Applies to subpart BBBBBB
63.7(e)(1) .....	Conditions for Conducting Performance Tests.	Performance test must be conducted under representative conditions.	No, § 63.11092(g) specifies conditions for conducting performance tests.
§ 63.7(e)(3) .....	Test Run Duration .....	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes, except for testing conducted under § 63.11092(a).
§ 63.8(c)(1)(i)–(iii).	Operation and maintenance of continuous monitoring systems.	Must maintain and operate each CMS as specified in § 63.6(e)(1); must keep parts for routine repairs readily available; must develop a written startup, shutdown, and malfunction plan for CMS as specified in § 63.6(e)(3).	No.
§ 63.9(h)(1)–(6)	Notification of Compliance Status.	Contents due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes, except as specified in § 63.11095(a)(4); also, there are no opacity standards.
§ 63.10(b)(2)(i)–(iv).	Records Related to SSM .....	Occurrence of each for operations (process equipment); occurrence of each malfunction of air pollution control equipment; maintenance on air pollution control equipment; actions during SSM.	No.
§ 63.10(d)(5) ....	SSM Reports .....	Contents and submission .....	No.

**Subpart CCCCCC—[Amended]**

13. Section 63.11111 is amended as follows:

- a. By revising paragraph (e);
- b. By revising paragraph (g); and
- c. By adding new paragraphs (h) through (k) to read as follows:

**§ 63.11111 Am I subject to the requirements in this subpart?**

(e) An affected source shall, upon request by the Administrator, demonstrate that their monthly throughput is less than the 10,000-gallon or the 100,000-gallon threshold level, as applicable. For new or

reconstructed affected sources, as specified in § 63.11112(b) and (c), recordkeeping to document monthly throughput must begin upon startup of the affected source. For existing sources, as specified in § 63.11112(d), recordkeeping to document monthly throughput must begin on January 10, 2008. Records required under this paragraph shall be kept for a period of 5 years.

(g) The loading of aviation gasoline into storage tanks at airports, and the subsequent transfer of aviation gasoline within the airport, is not subject to this subpart.

(h) Monthly throughput is the total volume of gasoline loaded into, or dispensed from, all the gasoline storage tanks located at a single affected GDF. If an area source has two or more GDF at separate locations within the area source, each GDF is treated as a separate affected source.

(i) If your affected source's throughput ever exceeds an applicable throughput threshold, the affected source will remain subject to the requirements for sources above the threshold even if the affected source throughput later falls below the applicable throughput threshold.

(j) The dispensing of gasoline from a fixed gasoline storage tank at a GDF into a portable gasoline tank for the on-site delivery and subsequent dispensing of the gasoline into the fuel tank of a motor vehicle or other gasoline-fueled engine or equipment used at the area source is subject to § 63.11116 of this subpart.

(k) For any affected source subject to the provisions of this subpart and another Federal rule, you may elect to comply only with the more stringent provisions of the applicable subparts. You must consider all provisions of the rules, including monitoring, recordkeeping, and reporting. You must identify the affected source and provisions with which you will comply in your Notification of Compliance Status (NOCS) required under § 63.11124. You also must demonstrate in your NOCS that each provision with which you will comply is at least as stringent as the otherwise applicable requirements in this subpart. You are responsible for making accurate determinations concerning the more stringent provisions, and noncompliance with this rule is not excused if it is later determined that your determination was in error and, as a result, you are violating this subpart. Compliance with this rule is your responsibility and the NOCS does not alter or affect that responsibility.

14. Section 63.11113 is amended by revising paragraph (c) and adding a new paragraph (e) to read as follows:

**§ 63.11113 When do I have to comply with this subpart?**

\* \* \* \* \*

(c) If you have an existing affected source that becomes subject to the control requirements in this subpart because of an increase in the monthly throughput, as specified in § 63.11111(c) or (d), you must comply with the standards in this subpart no later than 3 years after the affected source becomes subject to the control requirements in this subpart.

\* \* \* \* \*

(e) The initial compliance demonstration test required under § 63.11120(a)(1) and (2) must be conducted as specified in paragraphs (e)(1) and (2) of this section.

(1) If you have a new or reconstructed affected source, you must conduct the initial compliance test upon installation of the complete vapor balance system.

(2) If you have an existing affected source, you must conduct the initial compliance test as specified in paragraphs (e)(2)(i) or (e)(2)(ii) of this section.

(i) For vapor balance systems installed on or before December 15, 2009, you

must test no later than 180 days after the applicable compliance date specified in paragraphs (b) or (c) of this section.

(ii) For vapor balance systems installed after December 15, 2009, you must test upon installation of the complete vapor balance system.

15. Section 63.11116 is amended by adding a new paragraph (d) to read as follows:

**§ 63.11116 Requirements for facilities with monthly throughput of less than 10,000 gallons of gasoline.**

\* \* \* \* \*

(d) Portable gasoline containers that meet the requirements of 40 CFR part 59, subpart F, are considered acceptable for compliance with paragraph (a)(3) of this section.

16. Section 63.11117 is amended by revising paragraph (b) to read as follows:

**§ 63.11117 Requirements for facilities with monthly throughput of 10,000 gallons of gasoline or more.**

\* \* \* \* \*

(b) Except as specified in paragraph (c) of this section, you must only load gasoline into storage tanks at your facility by utilizing submerged filling, as defined in § 63.11132, and as specified in paragraphs (b)(1), (b)(2), or (b)(3) of this section. The applicable distances in paragraphs (b)(1) and (2) shall be measured from the point in the opening of the submerged fill pipe that is the greatest distance from the bottom of the storage tank.

(1) Submerged fill pipes installed on or before November 9, 2006, must be no more than 12 inches from the bottom of the tank.

(2) Submerged fill pipes installed after November 9, 2006, must be no more than 6 inches from the bottom of the tank.

(3) Submerged fill pipes not meeting the specifications of paragraphs (b)(1) or (2) of this section are allowed if the owner or operator can demonstrate that the liquid level in the tank is always above the entire opening of the fill pipe. Documentation providing such demonstration must be made available for inspection by the Administrator's delegated representative during the course of a site visit.

\* \* \* \* \*

17. Section 63.11120 is amended by revising paragraph (a) introductory text and by adding a new paragraph (c) to read as follows:

**§ 63.11120 What testing and monitoring requirements must I meet?**

(a) Each owner or operator, at the time of installation, as specified in § 63.11113(e), of a vapor balance system required under § 63.11118(b)(1), and

every 3 years thereafter, must comply with the requirements in paragraphs (a)(1) and (2) of this section.

\* \* \* \* \*

(c) Conduct of performance tests. Performance tests conducted for this subpart shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of the affected source. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

18. Section 63.11124 is amended by revising the first sentence in paragraph (a)(2) and the first sentence in (b)(2) to read as follows:

**§ 63.11124 What notifications must I submit and when?**

(a) \* \* \*

(2) You must submit a Notification of Compliance Status to the applicable EPA Regional Office and the delegated State authority, as specified in § 63.13, in accordance with the schedule specified in § 63.9(h), unless you meet the requirements in paragraph (a)(3) of this section. \* \* \*

\* \* \* \* \*

(b) \* \* \*

(2) You must submit a Notification of Compliance Status to the applicable EPA Regional Office and the delegated State authority, as specified in § 63.13, in accordance with the schedule specified in § 63.9(h). \* \* \*

\* \* \* \* \*

19. Section 63.11125 is amended by adding a new paragraph (c) to read as follows:

**§ 63.11125 What are my recordkeeping requirements?**

\* \* \* \* \*

(c) Each owner or operator of a gasoline cargo tank subject to the management practices in Table 2 to this subpart must keep records documenting vapor tightness testing for a period of 5 years. Documentation must include each of the items specified in § 63.11094(b)(i) through (viii). Records of vapor tightness testing must be retained as specified in either paragraph (c)(1) or paragraph (c)(2) of this section.

(1) The owner or operator must keep all vapor tightness testing records with the cargo tank.

(2) As an alternative to keeping all records with the cargo tank, the owner or operator may comply with the requirements of paragraphs (c)(2)(i) and (ii) of this section.

(i) The owner or operator may keep records of only the most recent vapor tightness test with the cargo tank and keep records for the previous 4 years at their office or another central location.

(ii) Vapor tightness testing records that are kept at a location other than with the cargo tank must be instantly available (e.g., via e-mail or facsimile) to the Administrator's delegated representative during the course of a site visit or within a mutually agreeable time frame. Such records must be an exact duplicate image of the original paper copy record with certifying signatures.

20. Section 63.11132 is amended as follows:

a. By adding, in alphabetical order, the definitions of "gasoline," "motor vehicle," "nonroad engine," "nonroad vehicle," and "vapor-tight gasoline cargo tank"; and

b. By revising, in alphabetical order, the definitions of "gasoline cargo tank," "gasoline dispensing facility," and "monthly throughput" to read as follows:

**§ 63.11132 What definitions apply to this subpart?**

\* \* \* \* \*

*Gasoline* means any petroleum distillate or petroleum distillate/alcohol

blend having a Reid vapor pressure of 27.6 kilopascals or greater which is used as a fuel for internal combustion engines.

*Gasoline cargo tank* means a delivery tank truck or railcar which is loading or unloading gasoline or which has loaded or unloaded gasoline on the immediately previous load.

*Gasoline dispensing facility (GDF)* means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine, including a nonroad vehicle or nonroad engine used solely for competition. These facilities include, but are not limited to, facilities that dispense gasoline into on- and off-road, street, or highway motor vehicles, lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline-fueled engines and equipment.

*Monthly throughput* means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each GDF during a month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the

current day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the previous 364 days, and then dividing that sum by 12.

*Motor vehicle* means any self-propelled vehicle designed for transporting persons or property on a street or highway.

*Nonroad engine* means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 of this title or section 7521 of this title.

*Nonroad vehicle* means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

\* \* \* \* \*

*Vapor-tight gasoline cargo tank* means a gasoline cargo tank which has demonstrated within the 12 preceding months that it meets the annual certification test requirements in § 63.11092(f) of this part.

21. Table 1 to Subpart CCCCCC of Part 63 is amended by adding a footnote 1 to the heading, and by revising entry 2. to read as follows:

**TABLE 1 TO SUBPART CCCCCC OF PART 63—APPLICABILITY CRITERIA AND MANAGEMENT PRACTICES FOR GASOLINE DISPENSING FACILITIES WITH MONTHLY THROUGHPUT OF 100,000 GALLONS OF GASOLINE OR MORE <sup>1</sup>**

If you own or operate . . .	Then you must . . .
* * * * *	
2. A new or reconstructed GDF, or any storage tank(s) constructed after November 9, 2006, at an existing affected facility subject to § 63.11118.	Equip your gasoline storage tanks with a dual-point vapor balance system, as defined in § 63.11132, and comply with the requirements of item 1 in this Table.

<sup>1</sup> The management practices specified in this Table are not applicable if you are complying with the requirements in § 63.11118(b)(2), except that if you are complying with the requirements in § 63.11118(b)(2)(i)(B), you must operate using management practices at least as stringent as those listed in this Table.

22. Table 2 to Subpart CCCCCC of Part 63 is amended by revising entry (vi) to read as follows:

TABLE 2 TO SUBPART CCCCCC OF PART 63—APPLICABILITY CRITERIA AND MANAGEMENT PRACTICES FOR GASOLINE CARGO TANKS UNLOADING AT GASOLINE DISPENSING FACILITIES WITH MONTHLY THROUGHPUT OF 100,000 GALLONS OF GASOLINE OR MORE

If you own or operate . . .	Then you must . . .
*	*
*	*
*	*
	(vi) The filling of storage tanks at GDF shall be limited to unloading from vapor-tight gasoline cargo tanks. Documentation that the cargo tank has met the specifications of EPA Method 27 shall be carried with the cargo tank, as specified in §63.11125(c).

23. Table 3 to Subpart CCCCCC of Part 63 is amended by revising the entries for §§ 63.5, 63.7(e)(1), 63.8(c)(1), 63.10(d)(5), 63.10(e)(3)(i)–(iii), and 63.10(e)(3)(iv)–(v) to read as follows:

TABLE 3 TO SUBPART CCCCCC OF PART 63—APPLICABILITY OF GENERAL PROVISIONS

Citation	Subject	Brief description	Applies to subpart CCCCCC
*	*	*	*
§ 63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes, except that these notifications are not required for facilities subject to §63.11116.
*	*	*	*
63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance test must be conducted under representative conditions.	No, §63.11120(c) specifies conditions for conducting performance tests.
*	*	*	*
§ 63.8(c)(1)(i)–(iii)	Operation and maintenance of continuous monitoring systems.	Must maintain and operate each CMS as specified in §63.6(e)(1); must keep parts for routine repairs readily available; must develop a written startup, shutdown, and malfunction plan for CMS as specified in §63.6(e)(3).	No.
*	*	*	*
§ 63.10(d)(5)	SSM Reports	Contents and submission	No.
*	*	*	*
§ 63.10(e)(3)(i)–(iii)	Reports	Schedule for reporting excess emissions	No.
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports	Requirement to revert to quarterly submission if there is an excess emissions and parameter monitor exceedances (now defined as deviations); provision to request semiannual reporting after compliance for 1 year; submit report by 30th day following end of quarter or calendar half; if there has not been an exceedance or excess emissions (now defined as deviations), report contents in a statement that there have been no deviations; must submit report containing all of the information in §§63.8(c)(7)–(8) and 63.10(c)(5)–(13).	No.
*	*	*	*