

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
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Section 115.539	Counties and Compliance Schedules.	11/15/06	07/17/08 [Insert FR page number where document begins].	*
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[FR Doc. E8-15729 Filed 7-16-08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[EPA-HQ-OAR-2003-0138; FRL-8693-9]

RIN 2060-AO99

National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; partial withdrawal of direct final rule; amendments.

SUMMARY: EPA published proposed and direct final rule amendments on April 23, 2008, of the national emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline), which EPA promulgated on February 3, 2004, and amended on July 28, 2006. Because adverse comments were received on two of the April 23, 2008, proposed and direct final rule amendments, EPA is withdrawing the two corresponding regulatory amendments in the direct final rule before they become effective on July 22, 2008. The other regulatory amendments discussed in the direct final rule, for which we did not receive any adverse comments, will become effective on July 22, 2008, as we stated in that notice. In addition, in this action EPA is promulgating final rule amendments regarding the provisions that were commented upon and withdrawn, and responds to the adverse comments we received. Additionally we are correcting typographical errors that we have identified in other sections of the rule

text that were not addressed in the April 23, 2008, notices.

DATES: As of July 17, 2008, EPA withdraws the direct final rule revision for 40 CFR 63.2358(b)(1) and (c)(1), and Table 10 to Subpart EEEE of Part 63 entries 4, and 6., published on April 23, 2008 (73 FR 21825). The final rule amendments in this action are effective on July 17, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2003-0138. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information 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.

FOR FURTHER INFORMATION CONTACT:
General and Technical Information:

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Compliance Branch (2223A), EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, *telephone:* (202) 564-7042, *facsimile number:* (202) 564-0050, *e-mail address:* mia.marcia@epa.gov.

SUPPLEMENTARY INFORMATION:

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

- I. General Information
- II. Background
- III. What action is EPA taking?
- IV. Withdrawal of Two Direct Final Rule Amendments
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 - 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
 - K. Congressional Review Act

I. General Information*A. Does this action apply to me?*

Categories and entities potentially regulated by this action include:

Category	NAICS* code	Examples of regulated entities
Industry	325211, 325192, 325188, 32411, 49311, 49319, 48611, 42269, 42271	Operations at major sources that transfer organic liquids into or out of the plant site, including: liquid storage terminals, crude oil pipeline stations, petroleum refineries, chemical manufacturing facilities, and other manufacturing facilities with collocated OLD operations.

Category	NAICS* code	Examples of regulated entities
Federal Government	Federal agency facilities that operate any of the types of entities listed under the "industry" category in this table.

* North American Industry Classification System/Considered to be the primary industrial codes for the plant sites with OLD operations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this final rule. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR part 63, subpart EEEE. If you have any questions regarding the applicability of this final rule 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.

B. Where can I get a copy of this document?

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

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by September 15, 2008. Under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that “[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.” This section also provides a mechanism for us to convene a proceeding for reconsideration, “[i]f the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of

central relevance to the outcome of the rule.” Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the persons(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

II. Background

On February 3, 2004 (69 FR 5063), EPA promulgated the National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) (OLD NESHAP) (40 CFR part 63, subpart EEEE) pursuant to section 112 of the CAA. In response to several petitions for administrative reconsideration of the OLD NESHAP and several petitions for judicial review filed with the United States Court of Appeals for the District of Columbia Circuit, and pursuant to a settlement agreement between some of the parties to the litigation, EPA proposed amendments to subpart EEEE on November 14, 2005 (70 FR 69210). On July 28, 2006 (71 FR 42898), EPA promulgated amendments to subpart EEEE based on consideration of the comments received on the proposed amendments.

On April 23, 2008 (79 FR 21825 and 21889, respectively), we published a direct final rule and parallel proposed amendments to clarify combustion control device compliance requirements, certain storage tank control compliance dates, and vapor balance system monitoring requirements. In addition, we corrected several rule text format, grammatical, and typographical errors.

III. What action is EPA taking?

In summary, under this action, we are withdrawing two of the amendments we proposed through direct final action on April 23, 2008. Also, under this action, we are promulgating final amendments to respond to the adverse comments we received regarding the regulatory provisions addressed by those comments. Additionally, we are correcting typographical errors found in

the rule text, which were not discussed in the April 23, 2008, direct final rule and proposed amendments but have subsequently been identified.

IV. Withdrawal of Two Direct Final Rule Amendments

In the April 23, 2008, direct final rule we said that if we received adverse comments, we would publish a timely withdraw in the **Federal Register** informing the public that this rule, or the relevant section of this rule, will not take effect. We also stated that the provisions that are not withdrawn would become effective on July 22, 2008, notwithstanding adverse comment on any other provision, unless we determined that it would not be appropriate to promulgate those provisions due to their possibly being affected by the adverse comments (73 FR at 21825–26). We have determined that the comments we received affect only the specific regulatory amendments that were addressed by those comments, and not the other provisions in the direct final amendments. Accordingly, we are withdrawing only the amendments on which we received adverse comments.

Before the comment period for the April 23, 2008, direct final rule and parallel proposal ended on June 9, 2008, we received one comment letter from industry objecting to how we presented the amended rule text for compliance dates for storage tanks in § 63.2358(b)(1) and (c)(1), and the pressure relief device compliance provisions in items 4. and 6. of Table 10 to Subpart EEEE of Part 63—Continuous Compliance with Work Practice Standards. Therefore, we are withdrawing those amendments. However, the amendments to regulatory provisions in the direct final rule for which we did not receive adverse comment will become effective on July 22, 2008. Also, as discussed below we are addressing the adverse comments received on the direct final rule and amending the corresponding provisions that were reflected in the direct final rule; these amendments are effective as of today. As stated in the parallel proposal, we will not institute a second comment period on this action.

V. Rationale for These Final Rule Amendments

A. Storage Tank Compliance Date

As discussed in the April 23, 2008, direct final rule, we had intended that existing source storage tanks with floating roofs must comply with the rim seal requirements at the next degassing and cleaning activity or within 10 years after February 3, 2004 (by February 3, 2014), whichever occurs first, instead of requiring compliance within 3 years, as was required for other sources of emissions. However, the rule text of § 63.2358(c)(1) for work practice standards in Table 4 incorrectly provided that all existing source storage tanks (floating and fixed roof) must comply no later than 10 years after February 3, 2004. Therefore, in the April 23, 2008, direct final rule and parallel proposal, we would have amended the rule to implement our intent that the allowance for “not later than 10 years after February 3, 2004” apply to floating roof storage tanks only. Additionally, in the April 23, 2008, direct final rule and parallel proposal we would have given fixed roof tanks 3 years (by April 25, 2011) to comply with the work practice standards since they need time to plan and install control equipment.

We received a comment in which the commenter agreed with EPA’s intent to clarify the initial compliance date for existing source storage tanks; however, the commenter said that the proposed language in § 63.2358(b)(1) and (c)(1) does not clearly capture those requirements. The commenter also provided suggested rule text changes.

We have considered the commenter’s suggested revisions and agree with the commenter that the revision to § 63.2358(b)(1) in the April 23, 2008, direct final rule did not adequately accomplish our intent in revising the rule. Therefore, with some modifications, we have incorporated the commenter’s approach for clarifying the initial compliance demonstration dates. We also agree with the suggestion to clarify the rule by providing separate paragraphs (i) and (ii) under § 63.2358(c)(1) to address floating roof storage tanks separately from storage tanks without floating roofs.

In addition, we have decided that the requirements would be more clearly stated if we split the initial compliance dates for emission limits in Table 2, as specified in § 63.2358(b)(1), into two separate paragraphs. The commenter thought that the existing rule text was correct instead of the proposed text, but we believe neither the proposed nor existing rule text is correct. As currently worded, section (b)(1) requires the

initial compliance demonstration for storage tanks and transfer racks at existing affected sources complying with the emission limitations listed in Table 2 to be conducted within 180 days after February 5, 2007. We do not wish to change this initial compliance demonstration date for transfer racks or for storage tanks that are complying with the 95 percent emission reduction requirement of Table 2, item a.i. However, we are changing the initial compliance demonstration date for storage tanks that are complying with the other requirements of Table 2 that are cross-referenced to the work practice standards in Table 4. We are adding paragraph (b)(1)(i) to clearly specify that storage tanks with an existing internal or external floating roof, complying with the rim seal requirements (item 1.a.ii. in Table 2 and item 1.a. in Table 4) must conduct the initial compliance demonstration the next time the storage tank is emptied and degassed, but not later than February 3, 2014. We are adding paragraph (b)(1)(ii) to specify that storage tanks complying with the other work practice standards (item 1.a.ii. or 6.a.ii in Table 2 and items 1.b., 1.c., or 2. in Table 4) must comply within 180 days after April 25, 2011.

B. Monitoring of Storage Tank Pressure Relief Devices

In the April 23, 2008, direct final rule and parallel proposal, we intended to clarify how to monitor pressure relief devices for transfer racks and storage tanks under the vapor balancing and equipment leak provisions (§ 63.2346(a)(4)(v) and in Table 10 to Subpart EEEE of Part 63—Continuous Compliance with Work Practice Standards, respectively). We received a comment stating that in the April 23, 2008, amendments the revised Table 10, item 4.b.i. incorrectly specifies that transfer rack vapor balance systems use the pressure relief device specification in § 63.2346(a)(4)(v). The commenter stated that this quarterly pressure relief device specification only applies to pressure relief devices associated with storage tanks using the vapor balancing option and that adding this clarification for transfer racks to item 4.b.i. creates another requirement that was not initially specified.

As discussed in the preamble to the April 23, 2008, direct final rule, our intent in revising Table 10 was to respond to questions concerning the relationship between the vapor balance system monitoring requirements for pressure relief devices in the rule text (§ 63.2346(a)(4)(v)) and those in Table 10 (item 6.b.i.). Given that both Table 10 and the rule text of § 63.2346 contained

requirements for the monitoring of vapor balance systems, we made parallel clarifications to the storage tank and loading rack provisions. The commenter correctly points out, however, that the pressure relief requirements of § 63.2346(a)(4)(v) apply only to storage tanks and not to transfer racks. Upon review of the existing cross-referenced requirement for transfer racks, we found that Table 10 (item 4.b.i.) already requires that the owner or operator implement monitoring requirements under either 40 CFR 63 subparts TT, UU, or H, similar to those already in this rule for storage tanks. Given the similar requirements, there is no need to add the transfer rack vapor balance provisions for pressure relief devices. Thus, in this final action we are not including amendments for monitoring pressure relief devices for transfer racks in item 4 of Table 10.

The commenter also pointed out that the last sentence added to the monitoring requirements for storage tank vapor balance systems (item 6.b.i. of Table 10) incorrectly includes requirements for loading of a transport vehicle and filling of a container, instead of a storage tank. We agree and have now reworded the sentence only to include storage tanks as follows: “If no loading of a storage tank occurs during a quarter, then monitoring of the vapor balancing system is not required.” Thus, with that modification, we are finalizing the amendments to pressure relief devices and monitoring of vapor balance systems for storage tanks (item 6.b.i. in Table 10) discussed in the direct final rule.

C. Typographical Errors

When analyzing the two adverse comments, we found a typographical error in § 63.2346(a)(4)(v) that incorrectly refers to § 63.2346(a)(4)(iv)(A) through (C), instead of § 63.2346(a)(4)(v)(A) through (C). Additionally, a state agency representative pointed out a second typographical error in § 63.2390(e)(2), (3), and (3)(ii) that incorrectly refers to § 63.2348(a)(4)(v), (a)(4)(vi)(B), and (a)(4)(vi)(B), respectively, instead of § 63.2346(a)(4)(v), (a)(4)(vi)(B), and (a)(4)(vi)(B). All the typographical errors were found in existing rule text that was not addressed in the notices published on April 23, 2008. We are making those corrections in this final rule.

These corrections to typographical errors do not affect the substance of the rule, nor do they change the rights or obligations of any party. Rather, this action merely corrects certain technical errors in the references in the rule. Thus, it is proper to issue these

corrections to the rule without notice and comment. Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this action final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections, are noncontroversial, and do not substantively change the agency actions taken in today's final rule. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

VI. 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 final amendments clarify, but do not add requirements increasing the collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 63, subpart EEEE under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060-0539. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

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 APA or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, a 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 this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. These final rule amendments will not impose any new requirements on small entities, since we are clarifying rule text.

D. Unfunded Mandates Reform Act

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

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. These final rule amendments clarify certain provisions and correct typographical errors in the rule text for a rule EPA determined not to include a Federal mandate that may result in an estimated cost of \$100 million or more (69 FR 5061, February 3, 2004). These clarifications do not change the level or cost of the standard. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. These final rule amendments clarify certain provisions and correct typographical errors in the rule text, thus, should not affect small governments.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It 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. The amendments 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 this final rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by

tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. The amendments 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 this rule.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory 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 No. 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 technical standards. Therefore, EPA did not consider the use of any VCS.

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 this final rule 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 final rule amendments do not relax the control measures on sources regulated by the rule and, therefore, will not cause emissions increases from these sources.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing the final rule amendments and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). These final rule amendments will be effective on July 17, 2008.

List of Subjects in 40 CFR Part 63

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

Dated: July 10, 2008.

Stephen L. Johnson,
Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

Subpart EEEE—[Amended]

■ 2. The amendments to § 63.2358(b)(1) and (c)(1), and to entries 4. and 6. of TABLE 10 TO SUBPART EEEE OF PART 63—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS published on April 23, 2008 (73 FR 21825) are withdrawn as of July 17, 2008.

§ 63.2346 [Amended]

■ 3. Section 63.2346 is amended in paragraph (a)(4)(v) introductory text by removing the citation "(a)(4)(iv)(A) through (C)" and adding in its place the citation "(a)(4)(v)(A) through (C)".

■ 4. Section 63.2358 is amended by revising paragraphs (b)(1) and (c)(1) to read as follows:

§ 63.2358 By what date must I conduct performance tests and other initial compliance demonstrations?

* * * * *

(b)(1) For storage tanks and transfer racks at existing affected sources complying with the emission limitations listed in Table 2 to this subpart, you must demonstrate initial compliance with the emission limitations within 180 days after February 5, 2007, except as provided in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) For storage tanks with an existing internal or external floating roof, complying with item 1.a.ii. in Table 2 to this subpart and item 1.a. in Table 4 to this subpart, you must conduct your initial compliance demonstration the next time the storage tank is emptied and degassed, but not later than February 3, 2014.

(ii) For storage tanks complying with item 1.a.ii. or 6.a.ii in Table 2 of this subpart and item 1.b., 1.c., or 2. in Table 4 of this subpart, you must comply within 180 days after April 25, 2011.

* * * * *

(c)(1) For storage tanks at existing affected sources complying with the work practice standard in Table 4 to this subpart, you must conduct your initial compliance demonstration as specified

in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(i) For storage tanks with an existing internal or external floating roof, complying with item 1.a. in Table 4 of this subpart, you must conduct your initial compliance demonstration the next time the storage tank is emptied and degassed, but not later than February 3, 2014.

(ii) For other storage tanks not specified in paragraph (c)(1)(i) of this

section, you must comply within 180 days after April 25, 2011.

* * * * *

§ 63.2390 [Amended]

- 5. Section 63.2390 is amended as follows:
- a. In paragraph (e)(2) by removing the citation “§ 63.2348(a)(4)(v)” and adding in its place the citation “§ 63.2346(a)(4)(v)”.

- b. In paragraph (e)(3) by removing the citation “§ 63.2348(a)(4)(vi)(B)” and adding in its place the citation “§ 63.2346(a)(4)(vi)(B)”.

- c. In paragraph (e)(3)(ii) by removing the citation “§ 63.2348(a)(4)(vi)(B)” and adding in its place the citation “§ 63.2346(a)(4)(vi)(B)”.

- 6. Table 10 to Subpart EEEE of Part 63 is amended by revising entry 6. to read as follows:

TABLE 10 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS

For each . . .	For the following standard . . .	You must demonstrate continuous compliance by . . .
6. Storage tank at an existing, reconstructed, or new affected source meeting any of the tank capacity and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6.	<ul style="list-style-type: none"> a. Route emissions to a fuel gas system or back to the process. b. Install and, during the filling of the storage tank with organic liquids, operate a vapor balancing system. 	<ul style="list-style-type: none"> i. Continuing to meet the requirements specified in § 63.984(b). i. Except for pressure relief devices, monitoring each potential source of vapor leakage in the system, including, but not limited to pumps, valves, and sampling connections, quarterly during the loading of a storage tank using the methods and procedures described in the rule requirements selected for the work practice standard for equipment leak components as specified in Table 4 to this subpart, item 4. An instrument reading of 500 ppmv defines a leak. Repair of leaks is performed according to the repair requirements specified in your selected equipment leak standards. For pressure relief devices, comply with § 63.2346(a)(4)(v). If no loading of a storage tank occurs during a quarter, then monitoring of the vapor balancing system is not required.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 1008

Office of Inspector General; Medicare and State Health Care Programs: Fraud and Abuse; Issuance of Advisory Opinions by the OIG

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: OIG is adopting in final form, without change, an interim final rule published on March 26, 2008 (73 FR 15937). We received no comments to the interim final rule. The interim final rule revised the process for advisory opinion

requestors to submit payments for advisory opinion costs.

DATES: Effective Date: This final rule is effective as of July 17, 2008.

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SUPPLEMENTARY INFORMATION:

I. Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-101, specifically required the Department of Health and Human Services (Department) to provide a formal guidance process to requesting individuals and entities regarding the application of the anti-kickback statute, the safe harbor provisions, and other OIG health care fraud and abuse sanctions. OIG published an interim final rule (62 FR 7350; February 19, 1997) establishing a new part 1008 in 42 CFR chapter V addressing various procedural issues

and aspects of the advisory opinion process. In response to public comments received on the interim final regulations, we published a final rule (63 FR 38311; July 16, 1998) revising and clarifying various aspects of the earlier rulemaking. The rulemaking established procedures for requesting an advisory opinion. Specifically, the rule provided information to the public regarding costs associated with preparing an opinion and procedures for submitting an initial deposit and final payment to OIG for such costs.

II. Interim Final Rule With Comment Period and Final Rule

On March 26, 2008, OIG published an interim final rule amending 42 CFR chapter V, subchapter B (73 FR 15937). The comment period ended on April 25, 2008 and no comments were received. Accordingly, OIG is adopting the interim final rule as a final rule with no modifications.