is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 5, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 26, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(152) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(152) On December 19, 2001, Indiana submitted revised Particulate Matter (PM) control requirements. A March 17, 2003 letter from Indiana clarified what portions of the original submission the State was seeking revisions for. EPA is approving revisions for certain natural gas combustion sources in Indiana and various cleanup revisions to Indiana's PM rules. One revision eliminates PM emissions limits on specified natural gas combustion sources and replaces the limits with a requirement that such sources may only burn natural gas. The submission also contains many cleanup provisions such as eliminating limits for sources which have shut down and updating names of sources.

(i) Incorporation by reference.

(A) Indiana Administrative Code (IAC) Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Nonattainment Area Limitations, IAC 6–1–1.5: Definitions; IAC 6–1–2: Particulate emission limitations; fuel combustion steam generators, asphalt concrete plant, grain elevators, foundries, mineral aggregate operations; modification by commissioner; IAC 6–1–3: Non-attainment area particulate limitations; compliance determination; IAC 6–1–4: Compliance schedules; IAC 6–1–5: Control strategies; IAC 6–1–6: State Implementation Plan revisions; IAC 6–1–8.1: Dearborn County particulate matter emissions limitations; IAC 6–1–9: Dubois County; IAC 6–1–10.1: Lake County PM_{10} emission requirements, Subsections (a) through (k); IAC 6–1–11.1: Lake County fugitive particulate matter control requirements; IAC 6–1–12: Marion County; IAC 6–1–13: Vigo County; IAC 6–1–14: Wayne County; IAC 6–1–15: Howard County; IAC 6–1–16: Vanderburgh County; IAC 6–1–17: Clark County; and, IAC 6–1–18: St. Joseph County. Adopted by the Indiana Air Pollution Control Board August 1, 2001. Filed with the Secretary of State November 8, 2001. Published in the *Indiana Register*, Volume 25, Number 3, December 1, 2001 at 709. State effective December 8, 2001.

(B) Indiana Administrative Code (IAC) Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Non-attainment Area Limitations, 6–1–1: Applicability. Adopted by the Indiana Air Pollution Control Board August 1, 2001. Filed with the Secretary of State November 8, 2001. Published in the *Indiana Register*, Volume 25, Number 3, December 1, 2001 at 709. State effective, December 8, 2001. Amended by Errata filed with the Secretary of State January 10, 2002. Published in the *Indiana Register*, Volume 25, Number 5, February 1, 2002 at 1644. State effective, February 24, 2002. And amended by Errata filed with the Secretary of State October 2, 2002. Published in the *Indiana Register*, Volume 26, Number 2, November 1, 2002 at 383. State effective, November 16, 2002.

[FR Doc. 04–1820 Filed 2–2–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0138, FRL–7551–6]

RIN 2060–AE79

National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing organic liquids distribution (OLD) (non-gasoline) operations, which are carried out at storage terminals, refineries, crude oil pipeline stations, and various manufacturing facilities. These NESHAP implement section 112(d) of the Clean Air Act (CAA) by requiring all OLD operations at plant sites that are major sources to meet hazardous air pollutant (HAP) emissions standards reflecting the application of the maximum achievable control technology (MACT).

The EPA estimates that approximately 5,300 megagrams per year (Mg/yr) (5,900 tons per year (tpy)) of HAP are emitted from facilities in this source category. Although a large number of organic HAP are emitted nationwide from these operations, benzene, ethylbenzene, toluene, vinyl chloride, and xylenes are among the most prevalent. These HAP have been shown to have a variety of carcinogenic and noncancer adverse health effects.

The EPA estimates that the final standards will result in the reduction of HAP emissions from major sources with OLD operations by 60 percent. The emissions reductions achieved by the final standards, when combined with the emissions reductions achieved by other similar standards, will provide improved protection to the public and achieve a primary goal of the CAA.

DATES: This rule is effective February 3, 2004. The incorporation by reference of certain publications listed in today's final rule is approved by the Director of the Federal Register as of February 3, 2004.

ADDRESSES: *Docket.* Docket Nos. A–98–13 and OAR–2003–0138 are located at the U.S. EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For further information concerning applicability and rule determinations,

contact the appropriate State or local agency representative. If no State or local representative is available, contact the EPA Regional Office staff listed in 40 CFR 63.13. For information concerning the analyses performed in developing the NESHAP, contact Martha Smith, U.S. EPA, Emission Standards Division, Waste and Chemical Processes Group, C439–03, Research Triangle Park, North Carolina 27711, (919) 541–2421, *smith.martha@epa.gov.*

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

Category	NAICS* code	SIC* code	Examples of regulated entities
Industry	325211, 325192, 325188, 32411, 49311, 49319, 48611, 42269, 42271.	2821, 2865, 2869, 2911, 4226, 4612, 5169, 5171.	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.
Federal Government			Federal agency facilities that operate any of the types of entities listed under the ''industry'' category in this table.

*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 action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.2334 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. We have established an official public docket for this action under Docket ID Nos. A–98–13 and OAR–2003–0138. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final rule. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. The telephone number for the Air Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled *Docket.*

WorldWide Web (WWW). In addition to being available in the docket, an electronic copy of today's final NESHAP will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the NESHAP will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the final NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by April 5, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceeding brought to enforce these requirements.

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

I. Introduction

A. What Is the Purpose of NESHAP?

The purpose of the final NESHAP is to protect the public health and the environment by reducing emissions of HAP from operations that distribute organic liquids.

B. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Organic liquids distribution (non-gasoline) (major sources only) was included on the initial list of source categories published on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit 10 tpy or more of any one HAP or 25 tpy or more of any combination of HAP.

Section 112 (d)(2) of the CAA requires NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP. This concept appears in section 112(d)(3) of the CAA. For new sources, the MACT floor cannot be less stringent than the HAP emissions control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average HAP emissions limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or by the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the HAP emissions reductions, any nonair quality health and environmental impacts, and energy requirements, under CAA section 112(d)(2).

The NESHAP for organic liquids distribution were proposed on April 2, 2002 (67 FR 15674). This action announces EPA's final decisions on the NESHAP.

C. What Processes and Operations Are Included in the OLD (Non-gasoline) Source Category?

The OLD (non-gasoline) source category involves the distribution of organic liquids into, out of, or within a plant site. The distribution activities include the storage of organic liquids in storage tanks not subject to other 40 CFR part 63 standards and transfers into or out of the tanks from or to cargo tanks, containers, and pipelines. Organic liquids are those non-crude oil liquids that contain at least 5 percent by weight of any combination of the 98 HAP listed in Table 1 to subpart EEEE of part 63, and have a total liquid vapor pressure of 0.7 kilopascals (0.1 pound per square inch absolute (psia)) or greater, and all crude oils downstream of the first point of custody transfer. For the purposes of the OLD NESHAP, organic liquids do not include gasoline, fuels that are consumed or dispensed on the plant site, kerosene (No. 1 distillate oil), diesel (No. 2 distillate oil), asphalt, and heavier distillate oils and fuel oils, hazardous waste, wastewater, or ballast water. Emission sources controlled by the OLD NESHAP are storage tanks, transfer operations, transport vehicles while being loaded, and equipment leak components (valves, pumps, and sampling connections) that have the potential to leak.

The types of organic liquids and emission sources covered by the OLD NESHAP are frequently found at many types of facilities that are already subject to other NESHAP. If an emission source is in organic liquid distribution service and is already subject to an existing 40 CFR part 63 NESHAP, then that emission source is not subject to the OLD NESHAP.

II. Summary of the Final OLD NESHAP

A. What Source Categories and Subcategories Are Affected by the Final OLD NESHAP?

Today's final rule applies to the OLD source category. We did not develop any subcategories. However, OLD operations that do not meet the specified applicability criteria for relevant emission limitations and work practice standards contained in the final rule are not required to apply emission reduction measures:

B. What Are the Primary Sources of HAP Emissions and What Are the Emissions?

The primary sources of HAP emissions from the OLD source category are the loss of HAP during the filling of storage tanks with organic liquids, storage of organic liquid in storage tanks, vapor displacement during the loading of organic liquids into transport vehicles and containers, and vapor leakage from transport vehicles at transfer racks during loadings of these vehicles. The HAP emissions are also the result of leaks from equipment such as valves, pumps, and sampling connection systems. Total baseline HAP emissions from the OLD source category are approximately 5,900 tpy.

C. What Is the Affected Source?

We have defined the affected source broadly to be the collection of activities and equipment used to distribute organic liquids into, out of, or within a major source plant site. This affected source is termed the ''organic liquids distribution (OLD) operation.'' Four types of emission sources are included in the affected source: storage tanks storing organic liquids; transfer racks at which organic liquids are loaded into or unloaded out of transport vehicles and/or containers; the transport vehicles themselves while they are loading or unloading organic liquids at transfer racks; and equipment leak components in organic liquids service that are associated with pipelines and with storage tanks and transfer racks storing, loading, or unloading organic liquids.

Applicability of the final standards is not restricted to any specific industries, but to each OLD operation that meets the applicability criteria of the final rule. The final standards do not apply to any emission source that is subject to another 40 CFR part 63 rule.

The liquids regulated by the final rule consist of non-crude oil organic liquids that contain at least 5 percent by weight of any combination of the organic HAP compounds listed in Table 1 to subpart EEEE of part 63 and have a total liquid vapor pressure of 0.1 psia or greater, plus all crude oils downstream of the first point of custody transfer. Gasoline is specifically excluded from coverage by the final rule as are fuels consumed or dispensed on the plant site as well as kerosene (No. 1 distillate oil), diesel (No. 2 distillate oil), asphalt, and heavier distillate oils and fuel oils.

Regulatory overlaps are specifically addressed in the final rule. Many of the

facilities potentially affected by the final OLD NESHAP contain activities and equipment (*i.e.*, certain storage tanks, transfer racks, and equipment components) that are already subject to other Federal air standards (such as 40 CFR part 60, subpart Kb, for storage tanks, or subpart GGG or FFFF of 40 CFR part 63). The final rule clarifies that emission sources subject to other 40 CFR part 63 NESHAP are not subject to the OLD NESHAP. The final rule also clarifies that sources subject to other non-MACT rules must comply with the requirements of the OLD NESHAP as well as the other rules.

D. What Are the HAP Emission Limits, Operating Limits, and Other Standards?

We are promulgating the requirements of the final NESHAP in the form of HAP emission limits (*i.e.*, percent reduction or exhaust concentration), operating limits, and work practice standards. The work practice standards are a combination of design, equipment, and operational standards.

The final NESHAP contain emission standards for storage tanks, transfer racks, transport vehicles, and equipment components at existing and new OLD operations.

The standards for storage tanks apply to tanks storing organic liquids and meeting the tank capacity and liquid HAP vapor pressure applicability criteria given in Table 2 to subpart EEEE of part 63. You have three options for control. First, you may install a closed vent system and control device with at least 95 percent control efficiency for the organic HAP listed in Table 1 to subpart EEEE of part 63. You may also choose to demonstrate that the measurement of total organic compounds (TOC) is an appropriate surrogate for organic HAP. As an alternative option to the 95 percent standard, combustion devices may meet an exhaust concentration limit of 20 parts per million by volume (ppmv) of organic HAP or TOC. Second, you may capture and route emissions to a fuel gas system or back into a process. Third, you may meet a work practice standard by using a compliant internal or external floating roof in the affected storage tank. The tank size and liquid vapor pressure applicability criteria defining tanks subject to emission reduction requirements are different for tanks at existing or new affected sources.

The owner or operator will have to install a continuous monitoring system (CMS) and establish operating limits for each control device used to control storage tanks. The CMS may be of a type to measure either organic concentration in the gas stream or an operating parameter (such as fire box temperature) of the control device. A site-specific monitoring plan must be developed and submitted by the owner or operator for each emission source.

The emission limit for transfer racks is a closed vent system and control device achieving a control efficiency of at least 98 percent for the organic HAP listed in Table 1 to subpart EEEE of part 63. You may also utilize a vapor balancing system to achieve the required control efficiency. You may also choose to demonstrate that the measurement of TOC is an appropriate surrogate for organic HAP. As an alternative option to the 98 percent standard, combustion devices may meet an exhaust concentration limit of 20 ppmv of organic HAP or TOC. Only transfer racks meeting the specified applicability criteria in the final rule are required to implement emission reduction measures. The same emission limit applies to affected transfer racks at both existing and new affected sources.

The same requirements for installing a CMS and establishing operating limits for the control device applicable to storage tanks also apply to the control systems installed on transfer racks.

A work practice standard applies to pumps, valves, and sampling connection systems. These equipment leak components in organic liquids service must be included in a leak detection and repair (LDAR) program which requires the use of a detection instrument. The term ''in organic liquid service'' is defined in the final rule to mean an equipment leak component that contains or contacts organic liquids having 5 percent by weight or greater of the organic HAP listed in Table 1 to subpart EEEE of part 63. Owners and operators have the option of applying the provisions from 40 CFR part 63, subpart TT, subpart UU, or subpart H for their LDAR program. The LDAR standard applies to equipment leak components at both existing and new affected sources.

A work practice standard applies to transport vehicles (cargo tanks and tank cars) loading at affected transfer racks. Each of these vehicles must have current vapor tightness certification indicating that it has been properly tested for vapor tightness. If the vehicle is equipped with vapor collection equipment, the vehicle must be tested using EPA Method 27 on an annual basis. For vehicles not so equipped, the Department of Transportation (DOT) leak tightness standards apply, and current certification indicating that these standards have been met must be retained by the owner or operator for each vehicle that loads at affected transfer racks whether the source owns the vehicle or not. The owner or operator is not required to test transport vehicles he or she does not own, but must take adequate steps to ensure that uncertified vehicles are not loaded at affected racks. These work practice standards are the same for both existing and new affected sources.

E. When Must I Comply With the OLD NESHAP?

We are requiring that all existing affected sources comply by February 5, 2007, except for floating roof storage tanks that do not initially meet the equipment standard for storage tanks in the final rule. These tanks must be in compliance following their next degassing and cleaning, or by February 3, 2014, whichever is sooner. If the first degassing and cleaning activity occurs during the 3 years following February 3, 2004, the compliance date is February 5, 2007. Existing area sources that increase their HAP emissions or their potential to emit such that they become major sources of HAP, and thus affected sources, must be in compliance within 3 years after the date they become major sources.

Any affected source that commenced construction after April 2, 2002, at a site where there were no existing OLD operations, is a new affected source. Any affected source that commenced reconstruction after April 2, 2002, at a site that was an existing OLD source, is a reconstructed source. Emissions sources at new and reconstructed affected sources that are now in operation must be in compliance on February 3, 2004, with certain exceptions. These exceptions are due to the fact that the final rule applies to some affected sources and emission sources that would not have been covered by the proposed rule, and that in some cases the final emission standards are more stringent than were proposed. In cases where an emission source at a now-operating new or reconstructed affected source would not have been required to be controlled under the proposed rule but is required to be controlled under the final rule, the emission source must be in compliance by February 5, 2007. Where an emission source at such a new or reconstructed affected source would have been subject to a less stringent control requirement under the proposed rule than applies under the final rule, the emission source must be in compliance with the final rule's requirement by February 5, 2007, and in the interim must comply with the less stringent control requirement as proposed.

New or reconstructed sources that commence construction or reconstruction after February 3, 2004 must comply upon startup.

F. What Are the Testing and Initial Compliance Requirements?

To determine the applicability of the final standards to individual operations, each OLD operation must evaluate whether any of their distributed liquids contain less than 5 percent HAP by weight and, thus, do not meet the definition of an organic liquid under the final rule. The specified test method for this is EPA Method 311 of 40 CFR part 63, appendix A, or other methods approved by the Administrator. An owner or operator may use other means (such as voluntary consensus standard methods, material safety data sheets (MSDS), or certified product data sheets) for determining the HAP content. However, if the results of an analysis by EPA Method 311 (or other approved test method) are different from the HAP content determined by another means, the EPA Method 311 (or other approved test method) results will govern compliance determinations.

Control devices used to comply with the final standards are subject to a performance test to demonstrate initial compliance with the emission limits, except that a design evaluation, conducted according to 40 CFR part 63 subpart SS, may be used for nonflare control devices.

The test methods applicable to control devices include EPA Methods 18, 25, and 25A of 40 CFR part 60, appendix A, and EPA Method 316 of 40 CFR part 63, appendix A, depending on the constituents of the gas stream being controlled and the format of the standard (organic HAP or TOC) the facility selects for its compliance demonstration. Floating roof tanks are subject to visual and seal gap inspections to determine initial compliance with the tank work practice standards. For the LDAR program for equipment components, EPA Method 21 of 40 CFR part 60, appendix A, is applicable.

Initial compliance with the emission limits for storage tanks and transfer racks consists of demonstrating that the control device achieves the required 95 or 98 percent control efficiency for organic HAP (or TOC, if used as a documented surrogate) or 20 ppmv exhaust concentration for combustion devices. The required percentage control efficiency must be applied to the Table 1 to subpart EEEE of part 63 HAP concentration found at the inlet to the control device.

Work practice standards apply to storage tanks, transfer racks, transport vehicles, and equipment components. You must perform a visual inspection before filling internal floating roof tanks. You must also conduct a measurement of seal gaps for external floating roof tanks within 90 days after filling. For transfer racks, you must ensure that vapor balancing systems or equipment for routing emissions to a fuel gas system or back to a process are properly designed and operated. For transport vehicles, you must perform vapor tightness testing for vehicles that you own and maintain documentation for all affected vehicles certifying that they are vapor-tight. Finally, for the equipment LDAR program, you must identify which 40 CFR part 63 subpart you are complying with and keep a record identifying the selected subpart.

G. What Are the Continuous Compliance Requirements?

If you use a control device, we are requiring that you monitor and record the operating parameters established during the initial performance test and calculate operating parameter values averaged on a daily basis. Continuous compliance is demonstrated if you collect CMS data as specified and maintain the operating limits established during the design evaluation or performance test.

If you are subject to work practice standards, we are requiring that you demonstrate continuous compliance by performing the required work practices and by keeping the records required to show that you are in compliance. For storage tanks, you must continue to perform the applicable inspections and seal gap measurement to ensure that the floating roofs continue to provide the proper control. For transport vehicles, you must continue performing the required vapor tightness testing on vehicles that you own and take steps to ensure that all transport vehicles loading at the OLD operation have the required certification. For equipment components, you must perform the required monitoring, keep the required records, and file the required reports consistent with the LDAR program you selected for the equipment components in the affected source.

H. What Are the Notification, Reporting, and Recordkeeping Requirements?

The notifications, records, and reports required by the final rule are generally consistent with the requirements of the General Provisions of subpart A of 40 CFR part 63. Two basic types of reports are required: notifications (such as the Initial Notification and the Notification of Compliance Status) and semiannual compliance, or periodic, reports. The Initial Notification apprises the permitting authority of applicability for existing sources or of construction for new sources.

The Notification of Compliance Status must be submitted within 60 days after the compliance demonstration activity has been completed. This report contains the results of the initial performance test, as well as all calculations and analyses used to show that the affected source has achieved and will continue to achieve compliance.

You are required to describe in your semiannual compliance reports any deviations of monitored parameters from reference values; failures to comply with the startup, shutdown, and malfunction (SSM) plan for control devices; and results of LDAR monitoring and storage tank inspections. These reports are also used to notify the permitting authority of any changes in CMS, processes, or controls since the last reporting period.

You are required to keep a copy of each notification and report, along with supporting documentation, for 5 years. Of these 5 years, the 2 most recent years must be kept on-site. The final rule allows electronic recordkeeping; however, you must be able to access all required records in a timely manner. You must keep records related to SSM, records of performance tests, and records for each continuous monitoring system. If you must comply with work practice standards, you also need to keep records for 5 years (the 2 most recent years must be kept on-site) certifying that you are in compliance with the work practices.

III. Summary of Environmental, Energy, and Economic Impacts

A. What Facilities Are Affected by the Final OLD NESHAP?

Facilities affected by the final OLD NESHAP are those facilities that carry out organic liquid distribution activities. Most of these facilities can be grouped under three general categories: stand-alone (usually for-hire) storage terminals; OLD operations collocated with a petroleum refinery, a chemical manufacturing plant site, or other manufacturing plant site; and crude oil pipeline pumping or breakout stations (containing crude oil tankage).

We estimate that in 1997, the baseline year for the final standards, there were approximately 279 collocated OLD operations, 86 stand-alone storage terminals, and 16 crude oil pipeline stations, for a total of approximately 381

existing major source plant sites with OLD operations.

B. What Are the Air Quality Impacts?

The 1997 baseline HAP emissions from OLD operations are approximately 5,900 tpy. The final OLD NESHAP will reduce HAP from existing major sources by 3,500 tpy, a reduction of 60 percent. Such emission reductions are likely to reduce the risk of adverse effects of HAP.

Although the final OLD NESHAP do not specifically require the control of volatile organic compounds (VOC), the organic HAP emission control technologies upon which the standards are based will also significantly reduce VOC emissions from the source category. We estimate that the final OLD NESHAP will reduce nationwide VOC emissions emitted by the source category by approximately 9,900 tpy, or 70 percent, from baseline. This will have the effect of reducing adverse ozone-related health and welfare impacts.

The final OLD NESHAP will result in small increases in other air pollution emissions from combustion devices that will be installed in the next 5 years to comply with today's final rule. These increases result both from the combustion device directly and from the electrical generating plants used to generate the electricity necessary to operate the add-on controls and associated air handling equipment.

C. What Are the Water Quality Impacts?

We estimate that the final OLD NESHAP will not significantly impact water quality. The final standards do not contain requirements related to water discharges, wastewater collection, or spill containment, and no additional organic liquids are expected to enter these areas as a result of the OLD NESHAP. A few facilities may select a scrubber (depending on the specific emissions they are controlling) to control emissions from transfer racks or fixed-roof storage tanks. The impact on water quality from the use of scrubbers is not expected to be significant.

D. What Are the Solid and Hazardous Waste Impacts?

We project that there will be no significant solid or hazardous waste impact. Flares, thermal oxidizers, scrubbers, and condensers do not generate solid waste as a by-product of their operation. When adsorption systems are used, the spent activated carbon or other adsorbent that cannot be further regenerated may be disposed of in a landfill, which would contribute a small amount of solid waste.

E. What Are the Energy Impacts?

The control devices used for transfer rack and storage tank control use electric motor-driven blowers, dampers, or pumps, depending on the type of system, in addition to electronic control and monitoring systems. The installation of these devices would have a small negative energy impact. To the extent that some of the controlled organic liquids are non-gasoline fuels, the applied control measures would keep these liquids in the distribution system and thus have a positive impact on this form of energy.

F. What Are the Cost Impacts?

We have estimated the industrywide capital costs for HAP emissions control equipment to be $49.3 million for the 381 existing sources. The capital costs include the costs to purchase and install the control equipment.

We have estimated the industrywide annual costs of the final rule are $25.1 million per year for the 381 existing sources. Annual costs include fixed annual costs, such as reporting, recordkeeping and capital amortization, and variable annual costs such as natural gas. The estimated average cost of the final rule is $7,100 per ton of HAP emissions reductions for existing sources.

G. What Are the Economic Impacts?

The increases in price for petroleum and chemical products affected by the final OLD rule are less than 0.003 percent, and the price increase for distribution service covered by the final rule is 0.1 percent. Reductions in output for petroleum and chemical products are also less than 0.003 percent, and the output reduction of distribution services is less than 0.002 percent.

None of the facilities affected are expected to close as a result of incurring costs associated with the final rule. Therefore, it is likely that there is no adverse impact expected to occur for the industries affected by the final rule, such as chemical manufacturing, petroleum refineries, pipeline operators, and petroleum bulk terminal operators.

IV. Summary of Rule Differences From Proposal

A. Rule Applicability

We made several clarifications to our intent as to the composition of the OLD source category and the affected source and the overall applicability of various requirements of the final rule. We have removed the facilitywide 7.29 million gallon throughput cutoff. We found, after reanalyzing our database, that we could not support such a cutoff, since our data reanalysis indicated that MACT floor levels of control applied to facilities below the proposed facility throughput cutoff. For the final rule, we have adopted a set of applicability criteria to be applied to each type of emission source to determine whether emission reductions are required for each specific emission source. These applicability criteria were developed from our MACT floor analysis of our database.

We have written the definition of the term ''organic liquid'' to include any non-crude oil liquid that contains at least 5 percent by weight of any combination of the HAP listed in Table 1 to subpart EEEE of part 63 and also has a total liquid vapor pressure of at least 0.1 psia, plus all crude oil downstream of the first point of custody transfer. This reflects our reanalysis of our database, which revealed that MACT floor levels of control apply to liquids with these HAP concentrations and vapor pressures. The definition also reflects our decision to eliminate the ''black oil'' exemption as proposed because we identified MACT floor controls for storage of crude oil.

In response to several comments, we clarified that the OLD final rule will not regulate any emission sources that are part of another 40 CFR part 63 MACT rule's affected source, whether those sources are actually controlled or not. We also included a new section in the final rule on how owners and operators should treat regulatory overlaps (*i.e.*, two Federal rules with applicability to the same emission source).

The final rule also corrects several of the proposed citations to 40 CFR part 63, subparts PP, SS, TT, UU, and WW and adds new ones to make the use of the referenced provisions easier for regulated sources to understand.

B. Compliance Demonstrations

The proposed rule was unclear as to how a source could use a design evaluation as an alternative to a performance test when demonstrating initial compliance for a control device. The final rule clarifies that the design evaluation (per 40 CFR part 63 subpart SS) may only be applied to nonflare control devices. Flares are subject to specific design criteria contained in the General Provisions (40 CFR 63.11(b)).

We have changed the principal test method to be used for analyzing the organic HAP content of liquids from EPA Method 18 of 40 CFR part 60, appendix A, to EPA Method 311 of 40 CFR part 63, appendix A. The EPA Method 18 is not an appropriate method for liquid analysis of the type that will be performed under the OLD NESHAP.

Method 18 is appropriate for determining the HAP content in air streams, not the HAP content in liquids. We are now specifying EPA Method 311 of appendix A of 40 CFR part 63, which is titled ''Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph.'' Sources may also use alternative analytical methods with EPA's approval, or rely on supplier information, MSDS, and similar analyses that do not require the source to perform any testing. If an MSDS, or similar documentation, presents the HAP content of components of a liquid as a range, then you must use the upper end of the range of values in determining the total HAP content of the liquid. If the results of an analysis by EPA Method 311 are different from the HAP content determined by another means, the EPA Method 311 results will govern compliance determinations.

The final rule allows up to 180 days after the compliance date to conduct the initial performance tests, rather than having to conduct them by the compliance date, and, thus, makes the final rule consistent with the amended General Provisions and other MACT rules.

C. Emission Limitations and Work Practice Standards

At proposal, we specified liquid vapor pressure cutoffs to determine applicability of the storage tank control requirements in terms of the annual average true vapor pressure of the stored liquid. This format was compatible with the liquid property data in our OLD database as we had received the data from industry. For the final rule, we have determined, in response to comments and after our re-analysis of our database, that the vapor pressure basis should be consistent with other NESHAP that also specify storage tank vapor pressure cutoff levels. Therefore, we have written the basis for the applicability criteria in the final OLD NESHAP to be the annual average true vapor pressure of the total organic HAP in the stored liquid.

We have also increased the time period over which an owner or operator may achieve compliance with the work practice standards for floating roof storage tanks. For any floating roof tanks that do not currently meet the equipment requirements specified in 40 CFR part 63 subpart WW, full compliance may be achieved within 10 years after the effective date of the final OLD NESHAP, or at the next degassing or cleaning of the tank, whichever occurs first. If the first degassing and cleaning activity occurs during the 3 years following the effective date of the final OLD NESHAP, the compliance date is 3 years from the effective date of the final OLD NESHAP. Fixed-roof tanks are still required to achieve compliance within 3 years after the effective date of the final OLD NESHAP.

At proposal, the emission limit and applicability throughput cutoff for transfer racks was based on each rack loading position. In re-analyzing the database since proposal, we have determined that the information for transfer racks could not be verified on the basis of individual rack loading position. We have written the final rule based on the entire transfer rack to be consistent with many other MACT rules.

In response to requests by commenters and after re-analyzing our database, we added 40 CFR part 63 subpart H as one of the LDAR programs that may be used to comply with the work practice standard for equipment. We also clarified that only equipment leak components associated with the affected source need to be included in a source's LDAR program.

D. Monitoring, Recordkeeping, and Reporting

The proposed rule contained detailed procedures for performing monitoring and for carrying out quality assurance checks on the monitors. The final rule incorporates the monitoring provisions of 40 CFR part 63, subpart SS, and requires owners and operators to submit their own monitoring plan for approval by the applicable title V permitting authority. In accordance with subpart SS, the final rule allows the use of organic monitors in addition to monitors that measure an operating parameter of the control device (such as temperature). This will provide more flexibility in the way a source determines operating limits and monitors operation of control systems. In response to several comments, the averaging time for the monitored data is daily, which is consistent with 40 CFR part 63 subpart SS.

Following proposal, we reviewed the proposed requirements to file reports and keep records and determined that these requirements could be streamlined by reorganizing the pertinent rule sections and deleting certain records and reports that were duplicative or unnecessary for ensuring that sources were maintaining compliance with the standards. We also responded to comments requesting flexibility in the way a source generates and submits reports by allowing a source to combine the reports required by different MACT rules or to send the periodic reports required under the final OLD NESHAP along with those required by title V of the CAA. We have incorporated provisions to allow these forms of combined reporting, as well as an allowance for multiple Notifications of Compliance Status for the same affected source to be submitted together. We have included specific references to the periodic reporting requirements in 40 CFR part 63, subparts SS, TT, UU, and WW, which had been inadvertently omitted from the proposal.

V. Summary of Responses to Major Comments

A. Rule Applicability

Comment: Several commenters stated that the Agency should revise the definition of ''OLD operation'' to be the combination or group of emission units used to transfer organic liquids into or out of a plant site in order to provide a clear definition of the OLD source category. Two of the commenters stated that EPA's definition of ''OLD operation'' is inconsistent with its source category listing. The proposed definition captures facilities that receive organic liquids but do not serve as distribution points, and from which such liquids are not obtained for further use and processing. These commenters urged EPA to limit the source category so that facilities and activities that do not serve as distribution points, or are merely managing organic liquids without distribution, are not captured in the final rule. Other commenters urged EPA to clarify that the final rule will not apply to end-users of organic liquid products, but rather only to manufacturers and distributors of those organic liquid products in the SIC/NAICS codes listed at proposal.

Response: The commenter's suggested definition for ''OLD operation'' is more appropriate for the affected source definition to clearly establish the limits of the affected source, but is not appropriate for describing the source category as a whole.

Further, we disagree with the commenters that our definition of OLD operation and, thus, the OLD source category is inconsistent with the source category listing by including facilities that receive organic liquids without further distributing them to end users. We consider the distribution network to include both outgoing and incoming transfers and storage of organic liquids, whether offsite or onsite. Thus, while the types of facilities identified by the commenters may never distribute the liquids offsite, the activities, equipment, and emissions that occur at such receiving and end-use facilities are part

of the overall organic liquid distribution network.

The final rule is clear that the source category includes OLD operations that are collocated with other (such as manufacturing) activities at major source plant sites. Since the source category includes distribution operations in many industrial categories, we have not included any reference to SIC or NAICS codes in the final rule.

Comment: One commenter noted that the Technical Support Document (TSD) indicates that ''tanks and other liquid handling equipment involved solely in activities within the plant site would not be considered to be OLD emission sources * * *,'' but the provisions of the proposed rule and the definition of ''OLD operation'' do not support this position.

Similarly, commenters recommended that the affected source not include dedicated equipment used to transfer and store organic liquids between on-site process units.

Response: Our intent for the final rule is to reduce HAP emissions from the storage and transfer of organic liquids within a distribution network. It is our judgment that the distribution network ends only when the organic liquids reach a final destination where they are consumed or are introduced into an operation included in another source category. Therefore, the OLD network includes the transfer and storage of organic liquids involving any equipment identified in the affected source for OLD and that are not subject to another MACT rule. Further, in our judgement, there is no practical difference in the types of equipment in use and the types of available emission controls are identical for both inter- and intra-plant site transfers.

Based on these considerations, it is our intent that equipment used to store or transfer organic liquids that occur ''within'' a plant site are considered part of the OLD distribution network and part of the OLD affected source unless such equipment is subject to another MACT standard. Therefore, we have not excluded from the final rule ''tanks and other liquid handling equipment involved solely in activities within the plant site,'' and we have written the definition of OLD operation to include transfers and storage of organic liquids ''into, out of, or within a plant site.'' Thus, if an emission source meets the relevant HAP content, vapor pressure, and capacity or throughput criteria, the emission reduction requirements of the final rule apply to that emission source even if it transfers or stores organic liquids wholly within a plant site.

Comment: Several commenters requested that EPA clarify the relationship between applicability and affected source. These commenters felt that restricting the affected source to only those emission points that are subject to controls could result in a very narrow definition of the affected source. It could also result in triggering the MACT new source requirements by the addition of a relatively small component to an OLD operation, if the rest of the OLD operation were exempt from controls. This does not appear to be EPA's intent, but rather an inadvertent consequence of the manner in which the proposed rule addresses emission points that are exempt from controls.

Another commenter stated that EPA's proposed affected source definition is unlawful because EPA chose a broad definition that allows equipment to be replaced without the replacement becoming a new source.

Response: We agree with the commenters that the proposed rule did not contain a clear definition of the affected source, primarily because of confusion that occurred as the result of the two different definitions of ''affected source'' that were inadvertently created in the proposed rule.

While the intent of proposed § 63.2338(b)(2) was to provide additional detail to supplement the definition in § 63.2338(b)(1), we understand the confusion that this created by appearing to present a different and conflicting affected source definition. In the final rule, we have defined ''affected source'' as ''* * * the collection of activities and equipment used to distribute organic liquids into, out of, or within a facility that is a major source of HAP.''

We also agree with the commenters that the affected source should include all of the pertinent emission sources without regard to the applicability criteria that cause certain equipment to be subject to different requirements of the final rule. Therefore, the final rule, in § 63.2338(b), presents a description of the affected source in which all of the pertinent emission sources are listed, without regard to their control requirements under the final rule. We have also written § 63.2338(b)(1) to define the affected source as ''the collection of activities and equipment.'' This clarifies our intention to have a broad interpretation of affected source.

We acknowledge that a broad definition in many circumstances allows individual emission points (such as a single storage tank, pump, etc.) to be replaced without the new source standards being applied to that new piece of equipment. Using a broad definition of affected source is, however, within our discretion in selecting the best approach for the standards for a particular source category. The term ''affected source'' refers to the collection of processes, activities, or equipment to which a MACT standard applies. In other MACT rules, we have adopted either a broader or narrower definition of affected source for given categories depending on the nature of particular MACT requirements and the strategies available for meeting them. A broader definition permits emission reduction requirements to apply to a larger group of processes, activities, and equipment. This approach encourages owners or operators to develop and utilize more innovative and economically efficient control strategies. Using a narrower definition of affected source frequently leads to difficulties for facilities in managing differing requirements for individual pieces of equipment without achieving substantive emission reduction.

For the purpose of determining MACT, however, we chose to utilize the approach of examining the emission sources individually. In our industry survey, we requested data for each emission source rather than from the entire OLD operation. By evaluating the data on an emission source basis, we were able to establish MACT floors for each type of emission source without having to consider how each facility controlled emissions on a facilitywide basis. For example, we established MACT floors for storage tanks based on facilities with the best controlled storage tanks, even if those facilities did not utilize the best controlled transfer racks.

Our selected approach for the final OLD NESHAP is consistent with the 40 CFR part 63 General Provisions, as amended (67 FR 16582, April 5, 2002), which adopt a broader definition of affected source such that future MACT standards will generally adopt a definition of affected source which consists of all existing HAP-emitting equipment and activities that are at a single contiguous site and are within a specific category or subcategory.

Comment: Several commenters recommended that compounding, blending, and packaging operations be included in the affected source, but with no control requirements. According to the commenters, this would result in a more accurate investment basis for OLD operations at a site, would clarify which MACT affected source these operations are associated with, and would avoid the potential for future regulatory overlap.

One commenter supported the inclusion of small containers (pails, drums, portable tanks, and isotainers) as part of the OLD affected source but urged that small containers be excluded from controls in the final rule.

Response: We have written the definition of affected source in the final rule to include storage tanks and transfer racks used to store or transfer organic liquids regardless of the particular operation or activity such tanks and transfer racks were supporting, including such operations and activities as packaging, blending, and compounding.

We have not defined the affected source to single out the operations identified by the commenter because the changes that were made to the definition provide the necessary clarity. The final rule makes it clear that equipment used in operations such as these would be part of the affected source if they meet the general criteria of storing or transferring organic liquids and they are not subject to another MACT rule. Equipment meeting the affected source criteria in § 63.2338 of the final rule are to be included as emission sources in the initial Notifications and Reports required under §§ 63.2382 and 63.2386 of the final rule.

Finally, we have included containers in the definition of affected source. This is consistent with how we have re-defined the affected source to include equipment even if control is not required under the final rule. The re-analysis of our data after reviewing the public comments resulted in a finding that the floor level of control for existing container filling operations is no emission reduction. We did, however, identify a MACT floor level of control for new source container filling. As discussed in more detail later in this preamble, we have determined that there are no feasible or cost-effective beyond-the-floor alternatives for the filling of containers at existing sources. Therefore, the final rule includes control requirements only for container filling operations that are new sources.

Comment: A number of commenters stated that the inclusion of cargo tanks as part of the affected source is inappropriate. These commenters pointed out that third parties typically provide cargo tanks and they are not generally under the common control of the OLD facilities. The commenters also stated that, if the OLD operation owner purchases either new cargo tanks or a fleet of existing cargo tanks, they should not be included in the reconstruction cost evaluation and potentially trigger new source MACT requirements at the OLD operation.

Response: As discussed in the proposal preamble and the TSD, and in previous rulemakings including the Gasoline Distribution MACT NESHAP (40 CFR part 63, subpart R), cargo tanks (consisting of tank trucks and tank cars, and renamed as ''transport vehicles'' in the final rule) can be a significant source of emissions while being loaded at transfer racks. Transport vehicles (whether owned/leased by the facility or operated by other firms) must be included in the affected source to ensure that MACT control will extend to these sources. As the final rule makes clear in Table 4 to subpart EEEE of part 63, the owner or operator must have vapor tightness documentation for each transport vehicle loading at an affected transfer rack. Third parties in many cases will be responsible for getting periodic testing (EPA Method 27 or DOT test) performed and for providing the certification papers to the facilities.

The acquisition of additional transport vehicles, whether by the source owner or by third parties, would not be included in the reconstruction cost evaluation and would not trigger any different control requirements for the liquid transfer operation. The items that define the affected source are the stationary infrastructure of the facility; that is, the combination of tanks, transfer racks, and equipment leak components. The primary mission of transport vehicles is transporting the liquids on roadways. Thus, they are not part of the stationary infrastructure of the facility. The objective of the ''reconstruction'' provisions of the CAA is to prevent an existing source from avoiding more stringent new source standards by perpetually rebuilding existing equipment rather than installing new equipment. The purchase of transport vehicles should have no impact on the triggering of more stringent standards for the storage tanks or transfer racks at an affected source. Also, at an OLD operation, facilitywide emission rates are impacted by the size, throughput capacity, and number of storage tanks and transfer racks. From the standpoint of overall emissions, it makes no difference if one vehicle is loaded ten times or if ten identical vehicles are loaded once. Therefore, the number of individual transport vehicles or the acquisition of additional transport vehicles should not be included as part of the infrastructure of the facility that is considered in determining ''reconstruction'' cost. The acquisition of additional containers by an owner or operator of an OLD facility would also not be considered in the determination of ''reconstruction'' costs.

Comment: Three commenters stated that EPA needed to clarify that only pipelines with equipment leak components (*i.e.*, pumps, valves, or sampling connection systems) associated with a storage tank or transfer rack included in the affected source will be subject to the LDAR requirements. Commenters requested that a pipeline that transfers organic liquids directly to or from a process unit that does not pass through a transfer rack or storage vessel subject to the rule is not to be included in the affected source or in the calculation of throughput used in applicability determinations.

Commenters also stated that the exclusions from the OLD rule should include pipeline equipment leak components used to directly transfer organic liquids across plant site boundaries into or out of storage tanks not subject to another MACT standard or process equipment that are not storage tanks, and unloading facilities and pipeline equipment used to transfer organic liquids from ships, barges, tank trucks, or tank cars into a storage tank covered by other MACT standards or process equipment that are not storage tanks.

Response: Pipelines themselves are not and never were part of the affected source definition. Only equipment leak components that are part of a pipeline were considered part of the affected source at proposal. We know of no reason as to why equipment leak components associated with a pipeline that transfers organic liquids should not be part of the affected source for the final rule, regardless of whether the organic liquid being transferred is deposited in a storage tank subject to the final rule or to another MACT standard. If the pipeline's equipment leak components are subject to another MACT standard, then they are not subject to the final OLD NESHAP. If the pipeline's equipment leak components are not subject to another MACT standard and the pipeline is in organic liquids service, then the equipment leak components are subject to the requirements of the final OLD NESHAP.

Finally, the final rule does not include a facility-level throughput calculation to determine whether or not a facility is subject to the final rule. Therefore, there is no longer a need to clarify the relationship of pipelines to the throughput applicability determination.

Comment: We received a large number of comments concerning the proposed applicability criteria of 7.29 million gallons per year, which would

have excluded facilities from the OLD rule if their facility throughput was less than 7.29 million gallons of organic liquids. Several commenters supported the cutoff and requested clarification on the procedures for determining throughput. Other commenters questioned the appropriateness of excluding from control those facilities that are in the source category and have emission sources that could be controlled by the final OLD rule.

Response: We proposed a facility-level throughput cutoff believing it was a useful criterion to identify smaller facilities at which controls would not be required based on our understanding that such facilities were not typically required to be controlled under other rules. We re-analyzed the database to determine if MACT floors existed for facilities with throughputs less than 7.29 million gallons of organic liquids, and determined that MACT floors exist for facilities with throughputs of less than 7.29 million gallons. Therefore, we can not support the proposed 7.29 million gallon cutoff.

However, as a result of our re-analysis of the database, we determined that throughput cutoffs for certain emission points were justified. The throughput cutoffs are now a part of the applicability criteria used to determine which transfer racks are subject to control.

Comment: Several commenters requested clarification of the relationship between the OLD rule and other existing rules and future rules.

Response: We agree with the commenters that the final OLD NESHAP must be explicit in describing the specific applicability of other 40 CFR part 63 NESHAP for sources that potentially may be drawn into more than one subpart. Section 63.2338(c)(1) of the final rule states that storage tanks, transfer racks, and equipment leak components that are part of an affected source under another 40 CFR part 63 NESHAP are excluded from the definition of affected source, even in cases where the other rule does not require a reduction in emissions from the emission source.

Comment: Several commenters stated that EPA needs to address overlap between the OLD NESHAP and other non-40 CFR part 63 existing rules, such as the Storage Tank New Source Performance Standard (40 CFR part 60, subpart Kb), the Benzene Storage Tank and Benzene Transfer Operations NESHAP (40 CFR part 61, subparts Y and BB, respectively), and Resource Conservation and Recovery Act (RCRA) regulations.

Response: We have written 40 CFR 63.2396 to address the overlap between the final OLD NESHAP and those rules cited by the commenters. If meeting the requirements of another rule does not result in an owner or operator fully meeting the requirements of the OLD NESHAP, then the owner or operator must modify the compliance methods to come into full compliance with the OLD NESHAP while remaining in compliance with the other rule.

Comment: One commenter, whose facility is subject to 40 CFR part 63, subpart Y (Marine Loading), pointed out that 40 CFR part 63, subpart SS, § 63.983(b) and (c), imposes an initial leak detection standard for closed vent systems that is more stringent than the detection standard contained in subpart Y; § 63.983(c)(1)(v) specifies only the use of methane for calibration of the instrument used to conduct the initial EPA Method 21 sweeps in subpart SS, while subpart Y is more flexible; subpart Y and subpart SS conflict on the response required if a leak is found; and, for closed vent systems that contain bypass lines, subpart Y contains an exemption on closure requirements for maintenance vents, but subpart SS does not allow that exemption. The commenter stated that this is appropriate for subpart Y due to the ''batch'' nature of tank vessel loading, and that it would be inappropriate to impose the subpart SS requirement on part of their facility.

Response: If an OLD emission source is required to be controlled under the final OLD NESHAP and that emission source is already controlled in a ''shared'' control device, then the owner or operator is required to be in compliance with both NESHAP or the NESHAP that impose the more stringent emission standard and/or work practices.

If an OLD emission source is in OLD operation part of the year and ''in service'' for another NESHAP for the rest of the year, then that OLD emission source is required to be in compliance with the final OLD NESHAP when that emission source is in OLD operation, even if the requirements between the two NESHAP rules are different. The owner or operator still has the option to permanently comply with whichever NESHAP provides the most stringent emission standard and/or work practices.

Comment: One commenter noted several conflicts between 40 CFR part 63, subparts SS and Y, and the proposed OLD NESHAP; specifically, performance tests on incinerators using specified test methods and conflicting language regarding the temperature monitoring location. The commenter claimed that the proposed control device evaluation in 40 CFR 63.2362(g) that would be submitted according to the requirements of 40 CFR 63.985(b)(1)(i) is an unnecessarily burdensome requirement for a facility that has source test data less than 5 years old showing that the control device more than adequately controls emissions. For such facilities, the commenter requested that existing data be allowed to be used in lieu of a design evaluation.

Response: We have written the performance test and design evaluation requirements in § 63.2362 of the final rule and Table 5 to subpart EEEE of part 63 to more clearly specify the use of the 40 CFR part 63, subpart SS, procedures and also to clarify that prior test results may be used, in many cases, to demonstrate compliance with the final OLD NESHAP. The final rule also allows owners or operators the flexibility of applying for approval to use alternative test methods.

Comment: Two commenters recommended that EPA clarify the OLD boundary by incorporating the concept of ''intervening storage tanks,'' which has been used in several other MACT standards such as the Hazardous Organic NESHAP (HON) and the Polymers and Resins rules. Under this concept, if a bulk tank in a centralized tank farm area has received organic liquids from outside the plant site and feeds that material to another storage tank at the process unit (an ''intervening storage tank''), the bulk tank is assigned to the organic liquid distribution operation and the intervening storage tank to the process unit.

Response: We have evaluated the comment concerning the concept of ''intervening storage tanks'' and have determined that such a concept is neither appropriate nor needed for the final OLD NESHAP. The ''intervening storage tank'' concept is specifically to help facilities identify which storage tanks are part of the affected source of a particular MACT source category. The intent of the final OLD NESHAP is to supplement other NESHAP and apply to all remaining unregulated storage tanks that are in OLD operation. To incorporate similar ''intervening storage tank'' language in the final OLD rule is at best unnecessary and at worst could lead to excluding tanks that should be covered by the final OLD NESHAP.

Comment: Several commenters recommended that EPA clarify that the emission limitations and work practice standards identified in § 63.2346 apply whenever an emission source is in OLD operation, but not when the emission

source is not in OLD operation. Commenters pointed out that the proposal stated that affected facilities must be in compliance with the emission limitations at all times except for periods of startup, shutdown, or malfunction. They felt that periods of ''non-operation of the affected source'' should be included on this list.

Commenters recommended that § 63.2374(c) be clarified such that for demonstrating continuous compliance data averages should only include data collected when vapors from OLD operations are being routed to the control device.

Response: It was our intent in the proposed rule that the emission limitations and work practice standards apply only when an emission source is transferring or storing an organic liquid or when an equipment leak component is in organic liquids service. Because there are no emissions from storage tanks or transfer racks during periods of ''non-operation of the affected source,'' there is no need for the emission limitations to apply during these times. In addition to periods when the entire affected source is not in operation, there may be periods when any one of the emissions sources within the affected source is not in operation or is not in OLD operation. During these periods, the emission limitations for all other emission sources would still apply, but the emission limitations would not apply to the emission source not in OLD operation. This intention has been clarified in § 63.2350 of the final rule.

We agree with the comment that only data collected during times when emissions are being routed to the control device should be used in demonstrating continuous compliance and have written § 63.2374(c) of the final rule to the effect that data are not to be used when collected during ''periods when emissions from organic liquids are not routed to the control device.''

Comment: One commenter felt that the proposed rule should be modified to allow pilot flames to be turned off during flare shutdowns and when all the sources serviced by the flare are shut down.

A second commenter thought EPA should reconsider the continuous compliance requirements for thermal incinerators that utilize ''bladder tanks,'' which collect emissions in a bladder until a sufficient quantity is collected to use the incinerator, so that the oxidizer does not have to be operated continuously. The commenter suggested changing the rule language to require sites to maintain the average fire box temperature only during times that vapors are introduced to the control device.

Response: The requirement to continuously maintain a flare pilot flame is part of the 40 CFR part 63 General Provisions, which state that a pilot flame is required for an open flare during periods when emissions may be vented to the flare. If the flare is shutdown (out of service), there is no need to require a pilot flame because no emissions will be vented to the flare. Where the emissions sources serviced by the flare are shutdown, we agree that operating a pilot flame during such periods would be nonproductive because there are no emissions to be vented to the flare. We have written Table 9 to subpart EEEE of part 63 to allow an owner or operator not to maintain the pilot flame when all emission sources serviced by the flare are shutdown (out of service). However, we are requiring in the final rule that owners and operators make a demonstration to the permitting authority that it will not experience a deviation and to keep records of each time the pilot flame is extinguished and relit.

We also agree with the commenter that it is unnecessary to maintain the average fire box temperature in thermal incinerators during periods when emissions are not vented to the incinerator. Therefore, we have written Table 9 to subpart EEEE of part 63 to clarify that the average fire box temperature in thermal incinerators need only be maintained while emissions are being vented to the control device. The final rule requires the owner or operator to monitor both this temperature and the time periods when vapors are flowing to the device. We also note that an owner or operator may have to increase the firebox temperature some time before emissions are vented back into the incinerator in order to comply with the average fire box temperature requirement.

Comment: We received several comments concerning the definition of ''organic liquid'' that affects the applicability of the proposed standards. One commenter asserted that the exemption of most organic liquids containing less than 5 percent HAP by weight is in violation of the requirements of the CAA. Another commenter claimed that the 5 percent HAP cutoff is legally permissible on ''*de minimis*'' grounds.

Two commenters recommended that EPA revise its definition of ''organic liquid'' to exclude liquids that are not predominantly organic in order to exclude from regulation those liquids that contain very small amounts of organic material such as predominantly aqueous or inorganic liquids. The commenters felt that these liquids should not be included in the final OLD NESHAP because they do not emit significant amounts of organics to the environment and controlling them will not provide the intended emission reductions.

Finally, several commenters added that EPA should provide a list of common materials within the petroleum industry that will not be regulated, such as kerosene (No. 1 distillate oil), diesel (No. 2 distillate oil), asphalt, and heavier distillate oils and fuel oils.

Response: The EPA disagrees that the proposed exemption of organic liquids containing less than 5 percent HAP-by-weight can be justified by *de minimis* principles. The EPA's *de minimis* authority exists to help avoid excessive regulation of tiny amounts of pollutants, where regulation would yield a result contrary to a primary legislative goal. It is unavailable ''where the regulatory function does provide benefits, in the sense of furthering the regulatory objectives, but the agency concludes that the acknowledged benefits are exceeded by the costs.'' *EDF* v. *EPA,* 82 F.3d 451, 466 (D.C. Cir. 1996); *Public Citizen* v. *Young,* 831 F.2d 1108, 1112–13 (D.C. Cir. 1987); *Alabama Power* v. *EPA,* 636 F.2d 323, 360–61 & n.89 (D.C. Cir. 1979). Accordingly, a *de minimis* exemption to section 112(d)(3) is unavailable, because it would frustrate a primary legislative goal by carving out tons of HAP emissions from regulation. The EPA's rejection of the *de minimis* concept has already been affirmed by the U.S. Court of Appeals for the District of Columbia Circuit, in *National Lime Ass'n* v. *EPA,* 233 F.3d 625, 640 (D.C. Cir. 2000) (''*NLA*''), in which the court rejected the petitioner's claim that in light of both the high costs and low quantities of HAP at issue in that case, EPA should read a *de minimis* exception into the requirement that it regulate all HAP emitted by major sources. In that case, the Court found that ''EPA reasonably rejected this argument on the ground that the statute 'does not provide for exceptions from emissions standards based on *de minimis* principles where a MACT floor exists.' '' *NLA* at 640.

Contrary to the commenter's request, EPA sees no reason to revisit this fundamental issue, and rejects the assertion that both EPA and the court decided this issue incorrectly in *NLA.* Section 112 of the CAA is replete with careful definitions of volume-or effect-based limitation on regulation, indicating that Congress has already defined what amounts of HAP

emissions are too small to warrant MACT standards. The requirement to adopt MACT emission limitations, for example, applies without exception to ''each category or subcategory of major sources * * * of [HAP].'' CAA section 112(d)(1). For sources below the major source threshold, however, EPA has discretion to require ''generally available control technologies or management practices.'' CAA section 112(d)(5). Congress has thus itself defined volumetrically which sources' emissions are small enough not to warrant mandatory MACT standards.

Congress likewise defined several MACT exceptions applicable where emissions have *de minimis* health effects. Section 112(d)(4) of the CAA allows EPA to establish standards less stringent than MACT for HAP with an established health threshold, so long as it sets a standard below the health threshold with ''an ample margin of safety.'' Section 112(b)(3)(C) of the CAA directs EPA to de-list HAP—precluding section 112(d) MACT standards—if EPA determines that ''there is adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the [sic] human health or adverse environmental effects.'' Section 112(c)(9)(B)(i) of the CAA lets EPA delete source categories from the category list—the consequence again being no MACT control—if it determines that, for emissions of carcinogenic HAP, ''no source in the category * * * emits such [HAP] in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutant from the source.'' For noncarcinogens, EPA may delete source categories if it determines that ''emissions from no source in the category or subcategory * * * exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source.'' CAA section 112(c)(9)(B)(ii). Moreover, in defining which source modifications trigger additional regulatory standards, CAA section 112(g)(1)(A) mentions a ''greater than *de minimis* increase in actual emission of a [HAP].'' This shows that Congress knew how to use the *de minimis* concept when it considered such was appropriate in section 112, and the fact that it did not use it in section 112(d)(3) supports EPA's—and the D.C. Circuit's—conclusion that it is unavailable to support an exception to a MACT floor.

The EPA does not find persuasive the commenter's reliance on *CMA* v. *EPA,* 217 F.3d 861, 866 (D.C. Cir. 2000) for the proposition that the overall purpose of section 112 is protecting human health and the environment, and that, therefore, as long as this general purpose is met, EPA may fashion *de minimis* exceptions from MACT. First, this position appears to assume that the issue is to be drawn on a clean slate, while in fact the same court has affirmed EPA's view that section 112(d)(3) provides no discretion to use a *de minimis* rationale to avoid MACT, and the *CMA* case was not faced with it. Second, the commenter appears to give prominence to an over-arching statutory goal over the specific language of the statutory provisions themselves, in assessing whether those provisions are ''extraordinarily rigid'' regarding EPA's otherwise-inherent *de minimis* authority; the logical extension of such an approach would be to find that no single provision in the CAA could restrict EPA's *de minimis* authority, in light of the CAA's over-arching purpose ''to promote the public health and welfare.'' CAA section 101(b)(1). Third, the commenter does not present any statutory arguments to overcome those that EPA presented to the court—and which the court affirmed—in *NLA,* beyond noting that CAA section 112(d)(8) is even more extraordinarily rigid in requiring regulation of coke ovens than is otherwise the case for MACT standards. Finally, EPA is unable to discern the basis for the commenter's suggestion that EPA has in fact ''been relying on'' *de minimis* authority in the MACT program ''for years,'' and is not aware of any instance in which EPA has explicitly created such an exception from an identified MACT floor. Therefore, and for the additional reasons discussed below, EPA does not believe it is appropriate or necessary to revisit the Agency's and the D.C. Circuit's prior conclusions regarding the availability of the *de minimis* principle in the final OLD NESHAP.

However, for the final rule, we are promulgating a 5 percent HAP by weight threshold for non-crude oil liquids in the definition of an organic liquid. No such cutoff is being adopted for crude oil. There are several reasons why we believe such a cutoff is appropriate for the final OLD NESHAP, which EPA believes support the use of a non-crude oil 5 percent cutoff without having to rely upon a legally unavailable *de minimis* theory. During the planning and development of the proposed rule, we intended to reduce HAP emissions from the distribution of organic liquid products that were either pure HAP liquids, mixtures of HAP and non-HAP liquids, or crude oils. As stated, our intent was to focus on products (including crude oil, which is a naturally occurring product) ''intended for further use or processing.'' Therefore, we focused our data gathering efforts on five 2-digit Standard Industrial Classification (SIC) codes that we believed represented the vast majority of the facilities nationwide engaged in the distribution of what we considered to be organic liquid products.

We surveyed facilities in these five 2-digit SIC codes asking broad questions about the liquids that they distributed that contained organic HAP. In evaluating and analyzing the data, we discovered that the types of liquids containing organic HAP, including some non-product liquids and liquids with very low organic HAP contents, were more diverse than we had expected. In addition, the types of facilities engaged in distribution of such liquids, were greater than we had assumed in developing the proposed rule, as was the degree to which unforseen facility types were distributing and controlling emissions from such liquids.

As stated above, such low HAP content non-crude oil liquids were not initially anticipated to be covered by the OLD rule, and may in many cases be the result of impurities or contaminants and not the result of an intended formulation of a product. These types of non-crude oil liquids (those with small HAP contents) can be found at many facilities outside the five 2-digit SIC that we targeted. At this point, based on the data collected for the OLD rule, we cannot ascertain the representativeness of our data for those industries in other 2-digit SIC codes that we did not survey. Nor can we ascertain how many additional emission sources (controlled or uncontrolled) might need to be added to the database to adequately assess the MACT floor for these facilities and non-crude oil liquids and make final, enforceable regulatory decisions. We believe that our current data are insufficient for this purpose and do not provide enough information about the emissions, emission controls in use, or potential to reduce emissions to complete the MACT floor analyses that we believe are appropriate to address the unexpected non-crude oil liquids and facility types that we did not foresee as being subject to the OLD rule when we developed the proposal. As a result, we do not have sufficient data to develop regulatory requirements,

including those regarding emissions control and reduction, and monitoring, recordkeeping and reporting, for low HAP-content non-crude oil liquids. We also do not currently have the flexibility in our schedule to allow us to gather the necessary additional data to assess requirements for these low HAP-content non-crude oil liquids prior to the consent decree date for promulgation of the final OLD rule. Section 112(d)(3)(A) and (B) of the CAA directs EPA to base existing source MACT floor determinations on ''emissions information'' which EPA ''has'' or ''could reasonably obtain.'' Rather than adopt requirements for low-HAP non-crude oil liquids based on insufficient data, EPA is proceeding with the final OLD NESHAP as initially envisioned and supported.

We are also concerned that if we were to lower or eliminate the 5 percent HAP content cutoff level for non-crude oil liquids, the final OLD NESHAP would have previously unforeseen impacts on a significant number of Department of Defense (DoD) facilities, at a time when the Federal government as a whole is re-assessing the extent to which it is appropriate to subject DoD facilities to regulatory requirements. There was a consensus among representatives of the DoD that the OLD rule as proposed (a 5 percent HAP content cutoff) would not impact the storage and distribution of many types of fuels and other liquids in use at military installations. However, if non-crude oil liquids with less than 5 percent HAP were included in the definition of organic liquids as written in the final OLD rule, many DoD facilities would be subject to the final rule and impacted in ways that DoD representatives have informed EPA may seriously compromise the military function. The potential impacts of facilities such as these becoming subject to the final OLD rule were not considered at proposal. No information was provided by commenters, including DoD or others, during the public comment period that would be useful in quantifying the potential impacts of lowering or eliminating the cutoff for these facilities. In light of the sensitivity of this issue, EPA believes it would be inappropriate to proceed with the final rule in a form that might cause unforeseen and as-yet un-analyzed impacts on DoD facilities.

After evaluating the issues discussed above, we have concluded that the most appropriate approach for the final OLD NESHAP, and the one that is most consistent with the CAA's directives, is to adopt a definition of organic liquid that includes a HAP content cutoff level for non-crude oil liquids. We have also concluded that the proposed level of 5 percent is a reasonable separation between our intended scope of products and those non-crude oil liquids that contain low amounts of HAP, often as impurities and contaminants.

For vapor pressure, we have only a small amount of data for non-crude oil liquids with true vapor pressures less than 0.1 psia. The data we do have are not representative of the universe of such low vapor pressure non-crude oil liquids and are not sufficient to enable us to support a MACT floor or emission standard requiring controls. We conclude that for a non-crude oil organic liquid to be subject to the final OLD rule, the organic liquid must have a total vapor pressure of at least 0.1 psia and must also contain at least 5 percent HAP by weight.

With regard to the comments about excluding organic liquids that are not predominantly HAP and including primarily aqueous or inorganic liquids, we investigated the HAP emission potential for solutions of HAP in organic liquids, inorganic liquids, and water (or mostly water). Based on consideration of the volatilization properties of organic compounds in various types of liquid media, we cannot support the suggestion for limiting the scope of the organic liquid definition. More detail on our analysis of this issue can be found in a memorandum in the docket.

Lastly, we have included a list of exempt liquids in the definition because the liquids are well defined and would exhibit such low vapor pressure that they would not exceed the 0.1 psia vapor pressure threshold.

Comment: One commenter requested that EPA clarify that the evaluation of crude oil as an organic liquid is only applicable after custody transfer.

Several commenters felt that ''black oil'' should be redefined based on whether it has the potential for flash emissions rather than in terms of the gas-to-oil ratio (GOR) and API gravity because petroleum transporters, petroleum marketers, and major petroleum product testing laboratories do not commonly use the gas-to-oil ratio. One commenter suggested that, for OLD MACT applicability, ''black oil'' should be determined solely on the basis of API gravity. This commenter also noted that for the purpose of ''black oil'' determination, the point of entry to the distribution system should be defined as the point of entry to the affected facility. Two other commenters felt that the determination should be made at a point that is representative of the combined crude oil stream.

One commenter provided data on crude oils handled throughout the country, including the Alaskan oil pipeline and the Valdez Marine Terminal (VMT). These data indicated that the API gravities for all of these crude oils average less than 40 degrees. For example, the blended North Slope crude oil loaded at the VMT ranges from 23 degrees to about 28 degrees, with most of it averaging 26 degrees API. The commenter concluded that if the OLD NESHAP are finalized with an exemption for crude oils having an API gravity less than 40 degrees, the effect will be to exclude virtually all crude oil from the final OLD rule.

Response: We have clarified in the final rule that only crude oil after the first point of custody transfer is subject to the final rule.

As discussed in the proposal preamble, the exclusion of black oil from the definition of crude oil (and hence from the family of regulated ''organic liquids'') was based on a similar exemption in the Oil and Gas Production NESHAP, 40 CFR part 63, subpart HH. Based on the comments received and additional data (*e.g.*, typical API gravities of crude oil distributed), we have discovered that most crude oil being distributed at OLD facilities would have been excluded from the final rule, even though our impacts analyses assumed most crude oil was subject to control. Moreover, in the reevaluation of our data, we determined that there are emission reduction floors for crude oil. Furthermore, the emission potential of crude oil is the same as for other organic liquids with similar HAP and HAP contents, and the total HAP emissions can actually be much larger due to the significant volumes of crude oil being distributed.

We have revised the definition of organic liquid to include all crude oil (after the first point of custody transfer) and have deleted the ''black oil'' exemption, the exclusion for heavier crude oils (*i.e.*, those with an API gravity less than 40 degrees), and the parameter ''gas-to-oil-ratio'' as a measure of applicability for crude oil. Under the final rule, crude oil will be subject to the same storage tank capacity and HAP vapor pressure criteria used to determine control requirements for other organic liquids.

Comment: We received comments stating that EPA Method 18 is not an appropriate method for determining the organic composition of liquid streams, and that only the analytical requirements of EPA Method 18 should be made applicable in the final rule.

The commenters stated that testing should not be required if a material is already known to be a regulated organic

liquid through process knowledge, an approach EPA has used in other rules, or if the material transferred is a commercial product with established specifications and is accompanied by an MSDS based on prior analysis.

Response: After reviewing the EPA's analytical test methods, we are in agreement with these commenters that EPA Method 18 is not an appropriate method for liquid analysis of the type that will be performed under the final OLD NESHAP. The EPA Method 18 is appropriate for determining the HAP content in air streams, not the HAP content in liquids. We are now specifying EPA Method 311 of appendix A of 40 CFR part 63, which is titled ''Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph.''

The final rule includes provisions that allow the owner or operator of an affected OLD operation to use a variety of information available to them to determine whether a given liquid meets the HAP content criteria in the definition of ''organic liquids.'' Information such as product data sheets or MSDS, as well as knowledge of commonly accepted formulations for certain products, may be used to designate materials as above or below the HAP content criteria.

While the owner or operator will not be required to test each liquid, EPA may require a test using EPA Method 311 (or an approved alternative) to confirm the reported content of organic HAP (from Table 1 to subpart EEEE of part 63) in the liquid. In the event of any inconsistency between information provided by the owner or operator and the values obtained using the test methods, the results obtained through the use of an approved test method (*e.g.*, EPA Method 311) will govern compliance determinations.

Comment: One commenter felt there is an issue of the reliability of determining vapor pressures at 0.1 psia and lower. Since true vapor pressure is uncertain for low volatility stocks (such as distillate oils), EPA should allow the use of a surrogate property. The commenter suggested allowing the use of a flash point of 100°F as a surrogate for the 0.1 psia vapor pressure cutoff.

Response: We agree that measured values of liquid vapor pressure become increasingly uncertain as the vapor pressure decreases. In order to avoid the difficulties of these measurements for liquids with very low volatilities, and also to be consistent with other rules such as the HON, we have changed the basis for determining the vapor pressure of an organic liquid. Under the final rule, the vapor pressure may be determined by using the specified test methods or by using a calculated value based on knowledge of the organic HAP content of the liquid. As vapor pressure may now be a calculated value, it is not necessary to use a surrogate approach. Also, we have included a list of exempt liquids in the definition of organic liquids because the liquids exempted are well defined and would exhibit such low vapor pressure that they would not exceed the 0.1 psia vapor pressure threshold. Therefore, the final rule does not incorporate the flash point approach.

Comment: Two commenters stated that the storage tank capacity and vapor pressure criteria need to be reevaluated. The commenters noted that the proposed cutoffs in Table 2 to subpart EEEE of part 63 for applicability of storage tank controls are the same as those in the HON, and stated that the HON criteria should not set a precedent for any other source category. The commenters pointed out that other MACT rules that have followed the statutory procedure for MACT floor determination, such as the Refinery MACT, have concluded that the values for these criteria should be much higher. One commenter stated that the storage tank capacity and vapor pressure applicability criteria should, in fact, be consistent with 40 CFR part 63, subpart CC (Refinery MACT I). According to the commenter, these differences lead to confusion about applicability for facilities that must comply with several MACT rules.

Response: Applicability criteria are established based on the MACT floor and beyond-the-floor determinations and are made independently for each source category. This determination depends on the data available for each category. Since the data reflect different tank sizes and liquids stored, the applicability criteria may, and do, vary from one rule to the next. Therefore, it is not necessary or appropriate that the OLD applicability criteria be the same as for the Refinery MACT. Further, based on the re-analysis of the database, the applicability criteria for the final OLD rule have been written to better reflect our OLD database and no longer matches the HON applicability criteria.

One commenter was concerned about the potential confusion differences in applicability criteria may create for facilities that must meet several MACT rules. There should be no confusion at such facilities. The OLD NESHAP will not conflict with other storage tank applicability requirements, as storage tanks that are already subject to an existing 40 CFR part 63 subpart rule will continue to be subject to that subpart. The fact that an owner or operator must comply with different NESHAP for different storage tanks simply means that the owner or operator will have to implement an accurate and more exact accounting of which NESHAP apply to which tanks. This needs to be done only once, provided storage tanks do not change source categories.

Comment: Several commenters stated that the final OLD NESHAP should include a vapor pressure threshold for transfer rack control. The commenters suggested that a 1.5 psia threshold (*i.e.*, no control for a rack if all transferred liquids are below the threshold), which was used in the HON and in the Marine Tank Vessel Loading NESHAP, be adopted. These commenters did not believe that cost-effective controls could be implemented for these low vapor pressure materials because of the low level of emissions. They also felt that mandating controls for these low volatility liquids could result in greater emissions from the control device than from the loading activities.

Response: In response to these comments, we re-examined the OLD database to determine the relationship between the current level of transfer rack control and the organic HAP vapor pressures. We determined that MACT floors consisting of the use of a control device existed for transfer racks handling liquids with vapor pressures greater than 0.1 psia at both new and existing sources. Since the MACT floor for loading activities down to this level is a closed vent and control system, we did not include a vapor pressure criterion for transfer racks in the final rule. We note, however, that transfer racks transferring non-crude oil liquids with total vapor pressures less than 0.1 psia (*i.e.*, liquids that are not ''organic liquids'' for purposes of the OLD NESHAP) are not subject to the final OLD rule.

Comment: One commenter suggested that EPA's proposed exemption from control for the following emission sources: (a) storage tanks below 10,000 gallon capacity, (b) transfer racks with annual throughput less than 3.12 million gallons, and (c) pumps and valves in organic liquids service for less than 300 hours per year is unlawful because it allows unregulated HAP emissions.

Response: Based on a reevaluation of our database, we have revised the emission source criteria approach for storage tanks and transfer racks in the final rule. We are, however, retaining the 300 hour per year requirement for pumps and valves. Each of these items is discussed below.

Storage tanks below 10,000 gallons capacity. At proposal, we proposed to exclude from control new tanks with capacities of less than 10,000 gallons and existing tanks with capacities of less than 20,000 gallons. This exclusion was based on other MACT rules with storage tank standards that exclude such tanks from control. We have revised the database to include only those tanks likely to be subject to the final OLD rule and re-calculated MACT floors based on the remaining tanks in the database. We retained the basic analysis methodology of examining tanks by capacity and vapor pressure ranges, using common capacity and vapor pressure ranges (*i.e.*, those frequently found in other rules) and by examining the cumulative level of control across these ranges.

Based on the revised analysis, the only MACT floors requiring emission reduction that were identified for existing tanks with less than 10,000 gallons capacity were for those tanks with capacities between 5,000 and 10,000 gallons capacities that are included in the 5,000 to 50,000 gallons capacity range containing non-crude oil liquids with a HAP partial vapor pressure equal to or greater than 4.0 psia or crude oil.

For new sources, a MACT floor requiring emission reduction was identified for tanks with 5,000 to 10,000 gallons capacities containing non-crude oil liquids with a HAP partial vapor pressure equal to or greater than 4.0 psia or crude oil. A MACT floor was also identified for tanks with capacities of 10,000 gallons or more and containing non-crude oil liquids with a HAP partial vapor pressure equal to or greater than 0.1 psia or crude oil. We have used these findings to determine the applicability criteria (tank capacity and HAP partial vapor pressure) to determine which tanks will be subject to control.

For those tanks for which the MACT floor was found to be ''no emission reduction,'' we conducted a beyond-the-floor analysis, and we have determined that there are no feasible or cost effective beyond-the-floor alternatives for these storage tanks. Therefore, the final rule does not include control requirements for tanks for which the MACT floor was determined to be ''no emission reduction.''

In conclusion, the final rule is driven by the data for the OLD source category and includes capacity and vapor pressure criteria based on those data to determine which OLD storage tanks are required to be controlled and those that are not required to be controlled. Requiring no additional emission reduction from certain tanks is justified by the available data, meets the mandates of the CAA, and is not unlawful.

Transfer rack loading positions below 3.12 million gallons per year. As for storage tanks, we proposed to exclude relatively smaller transfer rack positions from control based on the requirements of other 40 CFR part 63 subparts (*e.g.*, subparts SS and YY define a low throughput transfer rack as one that transfers less than a total of 11.8 million liters/yr (3.12 million gallons per year) of liquid containing regulated HAP). This throughput is equivalent to about 9,000 gallons per day, or the filling of approximately one tank truck.

Based on a re-analysis of the data (as described for storage tanks above), we determined that this applicability criterion is not appropriate for the OLD source category. Our data re-assessment indicates that there are emission reduction MACT floors for existing and new transfer racks above and below the 3.12 million gallons per year threshold. Therefore, the final rule does not adopt the 3.12 million gallons per year exemption for transfer racks.

Equipment in organic liquids service less than 300 hours per year. The stringency of a LDAR program is based on a number of factors. These factors include the definition of ''in organic HAP service'' (*e.g.*, 5 percent HAP, 10 percent HAP), the leak definition (*e.g.*, 500 ppmv, 10,000 ppmv), the frequency of monitoring (*e.g.*, monthly, quarterly, annually), and exemptions for monitoring requirements (*e.g.*, difficult to monitor components, in service less than 300 hours per year). The smaller the values associated with the definition of ''in organic HAP service'' and the leak definition, and the more frequent the monitoring, the more effective the LDAR program (better emission reduction). The more exemptions, the less effective the LDAR program.

In examining the LDAR programs in place at OLD facilities, we evaluated the overall effectiveness of the programs, including each of the aforementioned items. In general, the majority of the LDAR programs in place at OLD facilities use a 10 percent HAP in organic HAP service definition and do not contain a 300-hour per year in service exemption because the LDAR programs tend to be State or local rules or older New Source Performance Standard-type rules. The proposed rule allowed an affected source to comply with either of two NESHAP (40 CFR part 63, subpart TT or UU) for equipment leaks. While both of these NESHAP contain an exemption for components in service less than 300 hours per year, they have an ''in organic HAP service'' definition of 5 percent (not 10 percent). When compared to a 10 percent ''in organic HAP service'' definition without a 300-hour per year exemption, a LDAR program with a 5 percent ''in organic HAP service'' definition with a 300-hour per year exemption is more effective in reducing emissions (*i.e.*, is more stringent). This occurs, in part, because there are more components caught by lowering the ''in organic HAP service'' definition than are ''lost'' due to the 300-hour per year in service exemption and, in part, because there are less emissions associated with components operating only 300 hours per year than from components in the 5 to 10 percent organic HAP range.

The 300-hour per year in service exemption has been provided in previous rules primarily to address equipment that has only occasional use in HAP service. Examples of such equipment are pumps and compressors used only during startup and shutdown of a process unit. Equipment in use less than 300 hours per year would be difficult to monitor within a regularly scheduled LDAR program, and very little emission reduction would be realized by including them.

The analysis of equipment LDAR programs in place within the OLD industry indicated that the 300-hour service exemption with monthly instrument-based inspections results in a level of control at least as stringent as the MACT floor level of control. Our investigation of the available control approaches for controlling equipment leaks did not identify any control approaches that would be beyond-the-floor level and also cost effective.

Therefore, for the reasons stated above, we are not removing the 300 hours per year exemption from the LDAR programs specified in the final rule.

Comment: One commenter stated that the CAA requires EPA to promulgate standards for all emission points at all major sources, and that exemptions based on capacity, throughput, and hours of service violate that requirement. The commenter noted that EPA attempts to justify the exemptions by arguing that the exempted facilities do not have a volume of emissions that warrants control, but the Agency does not claim that these emissions are *de minimis*.

Response: The EPA disagrees with the commenter's suggestion that every emission point at an affected source must be required to reduce emissions. Section 112(a) of the CAA does not state, or imply, that all emission points must be subjected to control

requirements in standards promulgated under section 112. Section 112(d)(1) allows the Administrator to distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards. We interpret this provision for the final OLD rule, as we have for previous NESHAP, as allowing emission limitations to be established for subcategories of sources based on size or volume of materials processed at the affected source. Under the discretion allowed by the CAA to consider sizes of sources, we made the determination that certain small-capacity and low-use operations can be analyzed separately for purposes of identifying the MACT floor and determining whether beyond-the-floor requirements are reasonable. With regard to whether emissions from certain groups of sources are ''*de minimis*,'' the commenter did not elaborate on its interpretation of this term or how it might apply in discussing the OLD applicability criteria for emission limitations.

Comment: One commenter stated that the EPA has no discretion to exempt certain OLD emission sources such as container filling, wastewater collection, and semi-aqueous waste. Several other commenters stated that the final rule should explicitly state that wastewater operations, including the treatment, storage, transfer, or discharge of wastewater, are exempt from the final OLD NESHAP. Some commenters were concerned that the rule as proposed would regulate hazardous waste transfer and conveyance systems that are collocated at manufacturing facilities that are major sources for HAP and requested that EPA allow such sites to utilize alternate LDAR programs established under 40 CFR part 265, subpart BB, and 40 CFR part 63, subpart GGG.

Response: As previously discussed, the proposed rule would reduce HAP emissions from the distribution of organic liquid products that were either pure HAP liquids, mixtures of HAP and non-HAP liquids, or crude oils, focusing on products (including crude oil, which is a naturally occurring product) intended for further use or processing. The handling of wastewater and semi-aqueous waste is not part of the distribution of organic liquid products. The definition of ''organic liquid'' in the final rule excludes hazardous waste, wastewater, and ballast water. In addition, the final rule clearly states that emission sources that are part of the affected source under another 40 CFR part 63 rule (such as oil and natural gas production) are not included in the affected source for the final OLD rule.

However, based on a review of data on container filling operations, we have determined that the only MACT floor for either existing or new sources is a new source floor for container filling operations. We identified one container filling operation that controls emissions by performing the operation in a total enclosure that is vented to a thermal oxidizer. This level of control meets the level 3 control for container filling found in 40 CFR part 63, subpart PP, the National Emission Standards for Containers. We have not, however, identified any technology that would achieve cost-effective beyond-the-floor control for new source container filling operations. The final rule requires owners or operators of new container filling operations to comply with the level 3 control requirements found in § 63.924 of subpart PP.

B. Emission Limitations and Work Practice Standards

Comment: A commenter claimed that EPA set the floor for new storage tanks the same as the floor for existing tanks without demonstrating that the floors reflect the best performing source, and claimed that EPA set the floor for existing transfer racks as the use of a control device with 95 percent control efficiency based on a ''cursory analysis.''

The commenter states that EPA's proposed emission standards do not reflect the maximum achievable degree of reduction in emissions, and that EPA failed to adequately consider beyond-the-floor standards for each of the three regulated emission sources.

Response: As a clarification, the averaging process (for either the arithmetic average or the median) is applied to the top 12 percent of sources and not to the whole data set. This approach, consisting of more than one possible way of determining floors, is a practical necessity when working with the results of an averaging process. In examining our database and evaluating it based on comments, we have used the median source of the top performing 12 percent of existing sources where there are at least 30 sources, or the median source of the top performing five sources where there are fewer than 30 sources to determine MACT floors for the final OLD rule. Our methodology for determining MACT floors for existing sources is reasonable and conforms to the legal requirements of the CAA.

In developing the proposal and performing the MACT floor analysis for storage tanks, we evaluated each of the three primary types of tanks used for storage of organic liquids. These tank types are characterized by their basic construction and are referred to as fixed roof, internal floating roof, and external floating roof tanks. The selection of which type to use in a given situation is based on factors including capacity, types of liquids to be stored, climate, throughput, and cost. The emission control approach utilized for storage tanks differs depending on the tank type. The most common emission control approach for organic liquids storage tanks is floating roof technology, installed as either an internal or external floating roof. Floating roofs with properly designed seals and gaskets have been determined to perform at the highest level of emission control in use for storage tanks. External floating roof tanks achieve a somewhat lower control efficiency, because the vapor space above the floating roof is open to the atmosphere. However, the application of floating roof technology is the best demonstrated technology for this type of tank construction. For these reasons the Agency has developed storage tank equipment standards that specify in detail the design features that must be incorporated into a compliant floating roof design.

The emission reductions that can be achieved by add-on control devices on fixed roof tanks are equivalent to the reductions that can be achieved by floating roof technology. As with floating roof technology, the performance of the various types of add-on controls are somewhat variable depending on operational factors such as the types of liquids being stored and the tank filling rate. Properly designed and operated add-on control systems have been demonstrated to achieve emission reductions of 95 percent or greater from fixed roof storage tanks.

We developed MACT floor levels of control for the range of tank capacities and HAP vapor pressure of liquids stored based on the OLD storage tank database. The MACT floor level of control that was determined from the database is the use of properly designed floating roof technology or an add-on control device achieving a 95 percent reduction in HAP emissions. The MACT floor for storage tanks at new sources is not the same as the floor for tanks at existing sources. The new source storage tank floor is more stringent because the control requirements extend to tanks storing liquids with lower vapor pressures (*i.e.*, more tanks will undergo control than at existing sources). New storage tanks in the 10,000 to 50,000 gallons capacity range will be subject to control under the final OLD rule at HAP vapor pressures as low as 0.1 psia (versus 4.0 psia for existing tanks in this same capacity range).

Based on our review of the types of control devices in use (primarily incinerators, adsorbers, and scrubbers) and the range of control efficiencies reported (approximately 20 percent to over 99 percent), we proposed that 95 percent was the most appropriate control efficiency for transfer operations. We selected this value based on the known capabilities of these control devices and on regulatory limits specified in other rules.

Following proposal, we re-analyzed our OLD database and determined that the MACT floor for transfer racks at existing and new sources is a control efficiency of 98 percent, based on the best performing sources. The 98 percent level of control has been shown to be achievable by well-designed and operated combustion devices. The choice of control options is not limited to combustion devices, however, as vapor balancing systems also achieve the required 98 percent control level where they are technically feasible.

In evaluating beyond-the-floor alternatives, we examined the ability to switch products, the ability to switch fuels, the potential for improved performance of add-on controls at already controlled sources, and the use of add-on control devices to reduce emissions from sources for which we determined the floors were ''no additional emission reductions.''

The emission sources subject to the OLD rule are storage tanks, transfer racks, and equipment leak components (pumps, valves, and sampling connections). The liquids that are stored in storage tanks are those liquids required by a facility or its customers. It is not feasible for a facility to switch to a lower vapor pressure liquid when its customer requires a specific liquid. Therefore, product switching is not a feasible beyond-the-floor alternative for storage tanks. For the same basic reason, product switching is not a feasible beyond-the-floor alternative for transfer racks. Finally, equipment leak components can only leak what is in the process stream that they contact. Those process streams come from OLD storage tanks and transfer racks. As product switching is not feasible for tanks and racks, it is not feasible for equipment leaks.

With regards to fuel switching, the emissions that occur from tanks, racks, and equipment leak components have no fuel sources associated with them. The emissions occur as the result of displaced vapors when loading, breathing losses, and leaks. There are no fuel sources to ''switch.'' Therefore, fuel switching is not feasible.

The use of add-on control devices, including vapor balancing, however, represents a feasible beyond-the-floor alternative for storage tanks and transfer racks. Our analyses of beyond-the-floor alternatives for those emission sources for which we determined the floors are ''no emission reduction,'' showed cost-effectiveness values greater than $10,000 per ton for storage tanks and greater than $50,000 per ton for transfer racks. We have determined that these values are not reasonable. Further, because add-on controls were determined to be ''not cost effective,'' we did not evaluate the associated impacts of add-on controls for energy and other non-air quality environmental impacts. We note here that we have included in the final rule the option for transfer racks of using a vapor balancing system where technically feasible. These systems have demonstrated control efficiencies of 98 percent or greater (*i.e.*, floor levels of control).

Our investigation of the available control approaches for controlling equipment leaks did not identify any control approaches that would be beyond-the-floor level and also cost effective. We are, therefore, promulgating equipment leak standards based on the floor level of control determined from the OLD database.

Comment: Commenters stated that the proposed rule text did not indicate whether the entire CAA section 112 HAP list or the proposed OLD Table 1 to subpart EEEE of part 63 HAP list is the appropriate chemical list to use for the various determinations and performance demonstrations, even though the proposal preamble notes that organic HAP listed on Table 1 to subpart EEEE of part 63 (and all crude oil except black oil) are the ''regulated liquids.'' One commenter noted that the proposal did not include emission standards for 24 of the 93 organic HAP that EPA claims are emitted from OLD operations, based on the Agency's claim that the HAP for which standards were not set are lower in volatility and have lower potential to be emitted.

Response: We have written Table 1 to subpart EEEE of part 63 to include all of the organic HAP identified as being present in OLD liquids. The control devices and work practice standards in the final OLD rule affect all of the HAP in an OLD liquid, even those that have lower emission potential due to their low vapor pressure. By including all of the known organic HAP in Table 1 to subpart EEEE of part 63, there is no longer any inconsistency between the HAP emitted by OLD operations, the HAP used to determine whether control is required, and the HAP used to demonstrate compliance. Therefore, while the initial determination of whether an entire facility meets the criteria for being a major source is based on all the HAP listed in the CAA, compliance with the final OLD rule is based only on the 98 HAP found in Table 1 to subpart EEEE of part 63.

Comment: One commenter pointed out that EPA has proposed allowing sources to meet a standard for TOC emissions rather than meeting any standard for HAP, stating that the Agency cannot credibly claim that TOC is a valid surrogate for all HAP that OLD facilities emit. In addition, the TOC option would result in control of even fewer HAP. For these reasons, the commenter believes this provision of the proposal is unlawful.

Response: The primary format for the emission limits in the final OLD rule is a control efficiency standard for organic HAP. At proposal, we offered the option of complying with the percent reduction standards using a TOC format. The use of ''surrogate'' pollutants is an accepted practice in environmental regulation, because it is often reasonable to infer similar behavior among members of a class of pollutants that share a common attribute. *Dithiocarbamate Task Force* v. *EPA,* 98 F.3d 1394, 1399 (D.C. Cir. 1996); *NRDC* v. *EPA,* 822 F.2d 104, 125 (D.C. Cir. 1987). Significant regulatory cost and time can be saved by relying on that relationship; monitoring, sampling, and recordkeeping can be reduced when a surrogate pollutant, rather than numerous individual pollutants, are tracked. Specifically, EPA's use of a surrogate pollutant in the MACT program has been upheld as reasonable in judicial review, where the court held that if control of the surrogate pollutant is the means by which sources achieve reductions in multiple HAP, EPA may require surrogate control without quantifying the reduction in HAP thus achieved. *NLA* v. *EPA,* 233 F.3d 625, 639 (D.C. Cir. 2000). After evaluating the comments, we have retained the optional TOC measurement format, but have added a requirement for a demonstration by the owner or operator that the HAP emission reduction achieved is at least as stringent as the TOC emission reduction for their affected sources. To make this demonstration, the owner or operator will have to show that the ratio of captured organic HAP-to-TOC is at least 1-to-1, such that it can thereafter be assured that capture of TOC will result in capture of organic HAP to at least as stringent a level as required. After the initial demonstration to establish the relationship between HAP and TOC emission reductions, use of the TOC

format will be an acceptable alternative emission limit.

For the 20 ppmv outlet concentration standard, the use of TOC is an acceptable option without an equivalency determination. Because measured TOC in a gas stream includes all HAP, and may include some organic compounds that are not HAP, the concentration of HAP at the outlet of a control device will always be less than the measured TOC value. Thus, the limitation of TOC to a maximum concentration of 20 ppmv will always result in HAP emissions of 20 ppmv, or less.

We initially selected the TOC format as a possible alternative for the standards to provide flexibility for source owners and operators, while still requiring the MACT level of emission control to be achieved. The requirements of the final OLD rule will accomplish both objectives by allowing the use of a demonstrated surrogate, in appropriate cases. The approach adopted in the final rule will ensure that in all cases where the TOC surrogate is used, the correlation between the surrogate and organic HAP will have been demonstrated, and that control of the surrogate will achieve emission reductions of organic HAP at least as stringent as under the organic HAP limit.

Comment: Several commenters stated that the proposed rule fails to provide for the use of a number of proven emission reduction options and focuses primarily on closed vent systems and control devices. The commenters stated that EPA must allow the option of vapor balancing for storage tank and transfer rack emission reduction. Further, emission reduction options such as cooling the liquid in a storage tank to reduce vapor pressure, maintaining an inert gas blanket, or routing emissions to a fuel gas system or to a process should be specifically stated to be acceptable alternatives for compliance with the proposed rule.

Response: We have considered these comments and reviewed the provisions of the HON and other MACT rules that allow the alternative of vapor balancing, and we have added vapor balancing to the final rule as an alternative control approach for transfer racks (*i.e.*, to control HAP vapors displaced during the loading of transport vehicles). Vapor balancing is a highly efficient (98 percent or greater) means of reducing the emissions of vapors displaced during the loading of transport vehicles. Vapor balancing to a fixed roof tank with an add-on control device may be a viable option for facilities that utilize this type of tank. However, vapor balancing is not technically feasible in all cases.

We recognize that, for the variety of liquids and equipment configurations that exist at OLD operations in many different industries, there may be numerous control approaches that would reduce HAP emissions to a degree equivalent to an end-of-pipe control system. Cooling a liquid may reduce its actual vapor pressure below the threshold for control in a storage tank, in which case the storage tank control requirements would not apply. The final rule addresses the routing of emissions to a fuel gas system or a process in §§ 63.2346(a) and (b) and 63.2378(d). We have not added the use of an inert gas blanket as an approved control measure because we have no evidence (and the commenters did not provide any) that this approach inherently provides the level of control required by the final standards. However, § 63.2346(g) of the final rule provides for requests for approval to use any other alternative approach. We have added a reference to § 63.177 of the HON to provide a more structured method for receiving approval of approaches that are not specifically listed in the final rule.

Comment: One commenter requested that the availability of the floating roof option be limited to those storage tanks storing stock with an annual average true vapor pressure of less than 11.1 psia. Proposed Table 4 allows compliance with 40 CFR part 63, subpart WW (floating roof control), as an alternative compliance measure for storage tanks, but without this vapor pressure restriction. Other EPA rules require controls on tanks storing stocks with vapor pressure greater than 11.1 psia (if the tank is in the capacity category that is subject to controls), but they do not allow the use of floating roofs as a control option for these higher volatility stocks. Several commenters also recommended that the storage tank definition should exclude pressure vessels designed to operate in excess of 204.9 kilopascals (29.7 psia) and without emissions to the atmosphere.

Response: We have written the final OLD rule to limit the application of floating roof technology to storage tanks containing organic liquids with an organic HAP annual average true vapor pressure less than 76.6 kilopascals (11.1 psia). For affected tanks with liquids ≥11.1 psia, only a closed-vent system and control device may be used. The OLD storage tank definition has also been written to exclude from OLD coverage pressure vessels designed to operate in excess of 204.9 kilopascals (29.7 psia) and without emissions to the atmosphere.

Comment: One commenter noted that EPA proposed to regulate equipment leaks through work practice standards, and EPA has not determined that it is not feasible to prescribe or enforce an emission standard. In fact, EPA notes in the TSD that leakless equipment, such as seal-less pumps, can ''eliminate emissions entirely.''

Response: We have previously determined in the development of rules such as the HON that emission standards (in the format of a numerical emission limit) are not feasible for equipment leaks. Under section 112 of the Act, national emission standards must, whenever possible, take the format of a numerical emission standard. Typically, an emission standard is written in terms of an allowable emission rate (mass per unit of time), performance level (*e.g.*, 90 percent control), or an allowable concentration. These types of standards require the direct measurement of emissions to determine compliance. For some source types, emission standards cannot be prescribed because it is not feasible to measure emissions. Section 112(h)(2) of the CAA recognizes this situation by defining two conditions under which it is not feasible to establish an emission standard. These conditions are: (1) If the pollutants cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant; or (2) if the application of measurement methodology is not practicable due to technological and economic limitations. If an emission standard cannot be established, EPA may instead establish a design, equipment, work practice, or operational standard or combination thereof.

For equipment leak sources, such as pumps and valves, EPA has previously determined that it is not feasible to prescribe or enforce emission standards. Except for those items of equipment for which standards can be set at a specific concentration, the only method of measuring emissions is total enclosure of individual items of equipment, collection of emissions for a specified time period, and measurement of the emissions. This procedure, known as bagging, is a time-consuming and prohibitively expensive technique considering the great number of individual items of equipment in a typical process unit. Moreover, this procedure would not be useful for routine monitoring and identification of leaking equipment for repair.

While we did not include this rationale in the OLD proposal, emission

standards in the form of numerical emission limits are not feasible for components subject to the OLD equipment leak regulations, and we have included the rationale in the final rule for establishing the equipment leak standards under CAA section 112(h).

The use of leakless equipment, as discussed in the TSD, may not be compatible with many of the liquids transferred at OLD sources. For example, seal-less pumps use the pumped liquid for lubrication and cooling, and some transferred liquids may not be adequate in this capacity. Also, this equipment can develop leaks after a period of time, which would require an LDAR program similar to the program in place for traditional equipment. For OLD operations, we have not developed enough experience and do not have data to indicate that equipment emissions at these operations justify this extreme type of reduction approach. The LDAR program represented in the final rule is being used successfully throughout industry to maintain low leakage rates from equipment.

Comment: Several commenters believe that EPA should not require instrument LDAR to control equipment leaks at OLD facilities. They said that instrument scanning for equipment leaks is impractical and not cost-effective, and they recommended that the OLD MACT rule specify a sensory (sight, sound, smell) leak detection and repair program similar to that in the Gasoline Distribution MACT rule, 40 CFR part 63, subpart R. One of the commenters felt that many OLD sources are already subject to regular Coast Guard inspection as well as EPA's SPCC plan requirements. The gains from additional LDAR requirements on the same piping must be quite limited but would come with a substantial burden.

Another commenter noted that the preamble states that the Agency found that an instrument-based LDAR program similar to the HON represents the MACT floor, but the OLD MACT rule generally applies to facilities similar to bulk gasoline terminals. Consequently, Table 4 Item 3 should state: ''You must comply with the requirement of subpart R of this part.''

Response: In our MACT analysis, we determined that the MACT floor for existing sources is an instrument-based LDAR program. We further determined that this is the best system of emission reduction available, so we selected it as MACT for existing and new sources. Therefore, allowing a sensory program would not represent MACT because such programs have not been demonstrated to the Administrator's satisfaction to be equivalent to equipment-based programs for OLD operations. We specifically requested data to show that sensory programs would achieve the MACT level of control. In the development of 40 CFR part 63, subpart R, industry provided such data for gasoline and the final rule allows sensory programs. The Agency has received no data to support the claim that sensory programs would achieve equivalent control for OLD operations. Therefore, we have not written the equipment leak standards in the final rule as requested by the commenters. The final rule provides flexibility by allowing LDAR programs that are consistent with the provisions of 40 CFR part 63, subpart TT, UU, or H.

C. Testing, Compliance Requirements, and Monitoring

Comment: One commenter felt that proposed Table 5 to subpart EEEE of part 63 needs to be revised to allow for design evaluations in lieu of performance testing for non-flare control devices controlling emissions from storage tanks, as 40 CFR part 63, subpart SS specifies. In proposed § 63.2362, there is no language explaining specifically when a design evaluation may be done in lieu of a performance test. In addition, it appears that you must conduct a performance test to demonstrate compliance with emission limits in Table 2 to subpart EEEE of part 63 for both storage tanks and transfer racks. The commenter provided suggested revised language to clarify § 63.2362 through references to applicable provisions of subpart SS.

A second commenter noted that the text of proposed § 63.2354(a) pertaining to ''other initial compliance demonstrations'' was imprecise and confusing, since there is nothing other than performance testing requirements in 40 CFR 63.7(a)(2).

One commenter noted that a source that qualifies as an existing source may already be obligated to perform initial performance tests as a condition of a new source review construction permit. In the event of overlapping requirements to perform initial performance tests, there should be coordination of the schedule by which the testing is to be performed.

Two other commenters noted that proposed § 63.2358 would require performance testing of a control device used to comply with the OLD rule even if it is the same control device already tested and in use for compliance with another 40 CFR part 63 NESHAP standard. They felt that a facility that has already conducted performance testing to comply with a more stringent NESHAP should be able to use those test results in place of a new performance test.

Response: We have written § 63.2354 of the final rule and Table 5 to subpart EEEE of part 63 to clarify that design evaluations may be used in lieu of performance testing for demonstrating initial compliance for nonflare control devices. The requirements in 40 CFR 63.985(b)(1) were developed to ensure that design evaluations include adequate documentation to demonstrate that the control device being used achieves the required control efficiency. By specifically listing this alternative to performance testing in the final OLD rule, we have provided additional flexibility to owners or operators and increased uniformity among the other MACT rules that affect them.

We have also written the language in § 63.2370 of the final rule to clarify that the initial compliance demonstrations referred to in that section are those initial compliance requirements contained in Tables 6 and 7 to subpart EEEE of part 63. We have clarified that the General Provisions in § 63.7(a)(2) impose a schedule for the performance testing, while design evaluations are to be submitted in the Notification of Compliance Status per § 63.985(b)(1) of 40 CFR part 63, subpart SS.

Under 40 CFR 63.7(h), the owner or operator of an affected facility may request a waiver of the performance test requirements. Individual performance tests may be waived if, in the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis. The provisions allowing for submission of a request for a waiver of the performance test, accompanied by supporting information such as a documented performance test previously conducted on the device, should avoid the situation of overlapping tests.

Comment: One commenter stated that EPA has failed to mandate adequate continuous monitoring requirements and that, at a minimum, EPA must establish requirements that provide a reasonable assurance of compliance. As an example, EPA did not propose the use of continuous emission monitoring systems (CEMS), but rejected them on cost grounds without indicating why the costs are too high. Another commenter noted that 40 CFR part 63, subpart SS (§ 63.990(c)), allows for use of organic monitoring device CEMS as an alternative to the continuous parameter monitoring systems (CPMS) for which operating limits are to be established. The final OLD rule should include the same allowance.

Response: Section 112 of the CAA does not require EPA to impose a CEMS requirement in MACT standards. Instead, EPA has substantial discretion in exercising its technical expertise to devise a monitoring system that assures compliance with applicable requirements. *NLA* v. *EPA,* 233 F.3d 625, 635 (D.C. Cir. 2000); *Marsh* v. *Oregon Natural Resources Council,* 490 U.S. 360, 377 (1989). Particularly, the D.C. Circuit has already ruled that parameter monitoring requirements provide the necessary assurance of continuous compliance with applicable requirements and enhance the enforceability of emission standards, as required by the CAA. *NRDC* v. *EPA,* 194 F.3d 130, 134–37 (D.C. Cir. 1999). The commenters should note that the proposal included a requirement (in § 63.2366(a)) to install, operate, and maintain a CPMS on each control device installed under the final OLD rule. These CPMS continuously measure an operating parameter of the control device that influences emissions (such as temperature inside a thermal incinerator, vacuum achieved during the desorption cycle of a carbon adsorption system, etc.). They have been widely prescribed in several other MACT rules and are specified under the monitoring requirements of 40 CFR part 63, subpart SS. We consider properly selected CPMS to provide a reasonable assurance of compliance with the applicable requirements established in the final OLD rule. Deviations from the established values (operating limits) for these parameters must be reported by the facility in their periodic reports to EPA.

Because CPMS are judged to provide a reasonable assurance of compliance and are generally less expensive to install and operate, a requirement to use CEMS is not necessary. While we are not requiring the use of CEMS in the final OLD rule, facilities may request to utilize CEMS as an alternative monitoring method under § 63.8 of the General Provisions.

In addition, we have added an option for the use of organic monitoring devices (one type of CEMS) to Table 9 to subpart EEEE of part 63. In accordance with the 40 CFR part 63, subpart SS, requirements in § 63.990(c), an organic monitoring device may be used (as an alternative to CPMS) where absorbers (scrubbers), condensers, and carbon adsorbers are used to meet a weight percent emission reduction or a ppmv outlet concentration requirement. Organic monitors provide a reasonable assurance of compliance by quantifying exhausted total organic compounds (pollutants), which in turn provides an indication of the proper operation of the control device. A properly operating control device will continue to achieve the required control levels for organic HAP specified in the final OLD rule.

The alternative of installing and operating either CPMS or CEMS, in conjunction with effectively managed control devices, will provide a reasonable assurance of compliance with the final OLD rule's requirements.

Comment: Several commenters asserted that EPA has proposed installation, operation, and maintenance requirements for continuous parameter monitoring systems in § 63.2366 of the final rule that are wasteful, unnecessary, and in some cases infeasible and will have environmentally negative impacts. Due to the significant problems associated with the proposed continuous parameter monitoring system requirements, EPA should withdraw these requirements from the OLD final rule and use the existing subpart SS requirements for continuous monitoring systems.

Response: We have decided not to include the performance specifications for CPMS in the final OLD rule as they were proposed. We have clarified in the final rule that owners and operators must comply with the continuous monitoring provisions of subpart SS. Since owners and operators subject to the final OLD rule are required to comply with the requirements of subpart SS, they are already required to follow written performance specifications. We have concluded that the requirements in subpart SS are adequate to ensure that CPMS are properly operated and provide reasonable assurance of continuing compliance with the standards.

In a separate action, we are currently developing performance specifications for CPMS that we intend to propose to be followed by owners and operators of all sources subject to standards under 40 CFR part 63. We decided it would be premature to promulgate performance specifications for the final OLD rule when the performance specifications that would ultimately be promulgated in the General Provisions of 40 CFR part 63 may be significantly different as a result of possible public comments received on that rulemaking.

Comment: One commenter stated that a minimum or maximum parameter monitoring limit should be established based on the parameter values measured during the performance test and supplemented by engineering assessments and/or manufacturer's recommendations. Nowhere in the proposal preamble, 40 CFR part 63, subpart EEEE, or any of the referenced standards is there any indication of how operating limits are established. The final OLD rule should allow the facility to establish the operating limits necessary to achieve the requirements of Table 2 to subpart EEEE of part 63. This would be consistent with the HON. In addition, the conditions for conducting performance tests should be consistent between Table 12 to subpart EEEE of part 63 (§ 63.7(e)(1)) and § 63.997(e)(1) of 40 CFR part 63, subpart SS, to avoid confusion.

Response: We have included in the final OLD rule a requirement for the owner or operator to develop and submit a monitoring plan according to the requirements in § 63.985(c) of 40 CFR part 63, subpart SS. The monitoring plan must specify the parameters that an owner or operator proposes to monitor and the range of acceptable values for each parameter. The final OLD rule specifies parameters that must be monitored unless the owner or operator chooses to request permission to monitor an alternative parameter. The final OLD rule does not, however, provide specific ranges of acceptable values for the monitored parameters. Owners or operators must establish monitored parameter limits based on performance testing or design evaluation information. Thus, the owner or operator now has the flexibility to establish monitoring parameter limits that are most appropriate for assuring that their particular equipment complies with the emission limitations.

Comment: Two commenters stated that, in Tables 3 and 9 to subpart EEEE of part 63, compliance with the operating limits should be based on a daily average value instead of an hourly average. They claim that using an hourly average as the basis for compliance with the operating limit is a very stringent requirement and is in direct conflict with numerous 40 CFR part 63 standards. They also claim that the use of daily averages instead of hourly averages supports every legitimate need of EPA's Enforcement Office, while still making compliance with the final OLD rule possible.

Response: We have evaluated the changes recommended by the commenters and have modified Tables 3 and 9 to require that daily average values of recorded parameters be used to determine compliance. Daily average values have been considered by EPA in other MACT rules to be sufficient to demonstrate compliance for the types of control devices in use within this industry. We concluded, after further evaluation, that an hourly average may not be sufficient to account for normal, short-term fluctuations of operating

parameter values. Also, the parameter monitoring limits are normally established during performance testing that covers a span of three, 1-hour runs. This testing period helps ensure that short-term variations in operating conditions (temperature, flow rate, concentration, etc.) do not inappropriately bias the overall average. It is consistent with EPA policy developed in other MACT rules and with good engineering judgement to allow daily average values to be used to determine compliance. It should also be noted that in cases where an emission source operates for a total of less than 24 hours at a time, the average recorded values must comply over the total operating period.

Comment: One commenter stated that the non-applicability of the emission limits during periods of SSM is unclear and needs to be addressed, and recommended that specific language in § 63.2378, patterned on 40 CFR §§ 63.102–103 or 63.480(j) regarding operation during SSM, be included in the final OLD rule.

Response: We have written the language in § 63.2378 to clarify the applicability of the emission limitations during periods of SSM. While the emission limitations still apply during periods of SSM, deviations from the emission limitations during these periods are not automatically considered to be violations if the owner or operator demonstrates that they have followed the requirements of their SSM plan. Paragraphs (b)(2) of § 63.2378 require that control devices be operated during periods of SSM if possible without damaging the devices and paragraphs (b)(3) require that appropriate measures be taken to minimize emissions during periods of SSM. The final OLD rule does require, in § 63.2386(d), that deviations from the emission limitation that occur during periods of SSM be reported in the semiannual compliance report.

Comment: The same commenter stated that proposed § 63.2378(d) is unnecessary and confusing and should be deleted, stating that SSM requirements are adequately addressed in the recently amended General Provisions and no argument has been made to justify deviating from those provisions.

Response: As discussed in the previous response pertaining to SSM requirements, we have clarified in the final rule that deviations occurring during periods of SSM must be reported in the semiannual compliance report even though they are not automatically considered to be violations of the emission limitation. The result is more consistency between the final OLD rule and other recently promulgated rules and also provides the EPA with information necessary to decide on a case by case basis if further documentation should be requested from a facility.

Comment: Several commenters felt that EPA should allow storage tanks with nonconforming seals to upgrade the seals up until the next time the tank is out of service, but no more than 10 years after rule promulgation. For an existing affected source, the proposed OLD rule would have required compliance with the emission limitations and work practice standards for existing sources no later than 3 years after the effective date of the final rule. Other MACT rules with storage tank provisions recognize that a 3-year compliance schedule would typically result in an increase in emissions because the emissions associated with emptying and degassing the tanks for performing the required alterations can be greater than the emission reductions that those alterations would achieve.

Response: In response to these comments, we reviewed the allowances made in other MACT rules regulating storage tanks, and also the Generic MACT standards for storage vessels, 40 CFR part 63, subpart WW, which are an allowable alternative (in Table 4 of the proposed rule) to the 95 percent emission limit.

The Gasoline Distribution MACT rule (40 CFR part 63, subpart R) allows a 3-year compliance period for upgrading external floating deck rim seals and for applying controls (gaskets, etc.) to deck fittings. However, if only the fitting controls are needed for a particular external floating roof tank to achieve compliance, the facility may wait until the next scheduled degassing and cleaning of the tank (or up to 10 years) to install the fitting controls. Subpart WW of 40 CFR 63.1063(a)(2)(ix) is similar to the Gasoline Distribution rule in that fitting controls may be installed up to 10 years after promulgation.

The Petroleum Refinery MACT rule (40 CFR part 63, subpart CC) allows up to 10 years to achieve compliance for existing floating roof storage tanks, but gives fixed-roof tanks only 3 years to comply due to the much greater emission reduction achieved for fixed-roof tanks.

Analysis of the emissions created by a tank degassing and cleaning event were performed under both the Gasoline Distribution and Refinery rules. We agree that for OLD storage tanks, the net cumulative emissions from performing a special cleaning and degassing to bring a floating roof tank into compliance would be greater than from allowing an OLD operation to wait until a scheduled cleaning event to make these modifications. Therefore, the final OLD rule includes a provision to allow a facility up to 10 years to convert the rim seals or deck fittings on existing floating roof tanks. However, the analysis for the Refinery rule showed that the emissions from degassing and cleaning fixed-roof tanks can be balanced within 1 year by the reductions achieved by applying the subpart WW controls (specific floating roofs and seals) or a 95 percent efficient control device. Therefore, existing fixed-roof tanks are required in the final rule to achieve compliance within 3 years after the effective date.

The final OLD rule is written to be consistent with the overall CAA goal of reducing HAP emissions. In a situation such as the control of this type of storage tanks, strictly adhering to the 3-year compliance timeframe to implement the MACT floor level of control actually results in increased emissions. Thus, if our goal is to reduce HAP emissions, we are faced with a choice of allowing facilities more time to comply with the MACT level of control or not require that they comply at all. The approach taken achieves more HAP emission reductions than would be achieved by not requiring facilities to meet the MACT level of control.

D. Notifications, Reports, and Records

Comment: One commenter stated that the provisions of proposed § 63.2386(c)(4) and (d) (information to be included in semiannual Compliance reports) are too broad and EPA has not indicated why such broad applicability is needed and what useful purpose repeated submittal of information will serve.

Similarly, another commenter requested that EPA revise § 63.2386(d) concerning the first Compliance report because the records requested in § 63.2386(d)(1), (4), and (5) will literally require the submission of reams of paper with each Compliance report.

Response: We have reviewed the proposed requirements related to the content of the initial notification of compliance status (NOCS) and subsequent compliance reports. We agree that, to the extent that the initial NOCS includes the information necessary to understand the OLD activities at the site, this information need not be reported again in subsequent compliance reports unless there are substantive changes affecting applicability or organic HAP emissions. Therefore, we have streamlined the referenced paragraphs to eliminate

duplicated information (but also to require the initial Compliance report to contain any updated or final facility information that was not reported in the NOCS).

Comment: One commenter stated that language added April 5, 2002, to 40 CFR 63.10(d)(5)(i) of the General Provisions concerning reporting the number, duration, and a brief description of each SSM is unnecessarily burdensome for OLD-type operations, where there are many individual components, any of which can be undergoing SSM activities independent of the other components. The commenter suggested that the approach used in the HON offers reasonable relief and that it be used. Specifically, the commenter recommended that requirements for recordkeeping and reporting be for ''startups, shutdowns, and malfunctions during which excess emissions occur.''

Two other commenters expressed concern with the immediate SSM reporting requirement in Table 11 to subpart EEEE of part 63, item 2. They stated that this requirement should be made consistent with the HON, which allows these events to be reported in the next semiannual Compliance report.

Response: The amount of information required in the amended General Provisions for the SSM reports does not represent an undue burden for OLD operations. We believe that the additional information required under the amended General Provisions is useful to the EPA in gaining an understanding of the frequency, duration, and types of SSM activities at an affected source. Because sources are required to minimize emissions to the extent which is consistent with safety and good air pollution control practices during periods of SSM, gaining an understanding of the overall operation of an affected source is important. Therefore, we have retained the requirement in § 63.2386(c)(5), which references the General Provisions. We have also retained the requirement in Table 11 to subpart EEEE of part 63, item 2, which specifies that an immediate SSM report must be submitted if the owner or operator takes an action that is not consistent with their SSM plan. We concluded that a failure to follow an approved SSM plan should not go unreported for a period of time that could be almost 6 months. In those cases where the owner or operator follows their SSM plan, reporting in the next scheduled compliance report is allowed under Table 11 to subpart EEEE of part 63.

Comment: Two commenters expressed concern with proposed § 63.2378(b), which implies that if the operator starts up or shuts down a control device and it does not meet the 1-hour average temperature because it only ran for 15 minutes of a given hour, then the operator has to report that they did not meet the required temperature even though the temperature during the actual loading operation may have met the requirements. One of the commenters stated that this results in much more recordkeeping and reporting than the HON, Polymers & Resins MACT rules, or 40 CFR part 63, subpart SS, for no environmental or compliance benefits.

Response: We have written the language in § 63.2378 to clarify the applicability of the emission limitations during periods of SSM. While the emission limitations still apply during periods of SSM, deviations from the emission limitations during these periods are not automatically considered to be violations if the owner or operator demonstrates that they have followed the requirements of their approved SSM plan. Paragraphs (b)(2) require that control devices be operated during periods of SSM if possible without damaging the devices and paragraph (b)(3) require that appropriate measures be taken to minimize emissions during periods of SSM. The final OLD rule does require, in § 63.2386(d), that deviations from the emission limitations that occur during periods of SSM be reported in the semiannual compliance report, even though they are not automatically considered to be violations of the emission limitations. It should be noted that the averaging period has been written as daily averages of monitored parameters and, also, that monitoring is only required during periods of operation of the emission source. In the commenters example of a source operating for only 15 minutes, if the monitored parameter meets the operating limitation during that period of operation, it would not be considered a deviation.

E. Definitions

Comment: Several commenters felt that EPA should revise the definition of annual average true vapor pressure in proposed § 63.2406, as there is no good reason to require annual recalculation of the average ambient temperature. The referenced method for determining true vapor pressure (API 2517) uses the normal average annual temperature. This is published by the National Climatic Data Center as a cumulative average over many years, and thus may be considered a constant for a given location.

Commenters stated that the temperature basis used for vapor pressure determination should be related to the actual facility emission potential and consistent with the regulatory basis. Two of the commenters stated that the vapor pressure determination for storage tank applicability should be based on the annual average temperature of the stored organic liquid.

Response: We agree that the average annual temperature for a given location is not likely to vary from year to year to the extent that, if all other factors are unchanged, it will have a noticeable effect on emissions. Thus, annual recalculation of this temperature is unnecessary and we have written the definition in the final OLD rule to reflect this. As suggested by one of the commenters, we have also added the term ''actual annual average temperature'' to clarify that the actual liquid temperature should be used in determinations of vapor pressure.

We have also written the definition of ''annual average true vapor pressure'' so that it is based on the actual annual average temperature of the liquid, and annual recalculation of the vapor pressure value is not needed.

Comment: One commenter suggested that in the definition of black oil, EPA should delete the word ''hydrocarbon'' and the parentheses around ''petroleum'' to ensure clarity of intent. It is possible for a chemical plant to bring onto or ship out from a plant an oily, black hydrocarbon liquid that could meet the other criteria of this definition. The commenter believes that EPA intends that black oil be a technical term related only to petroleum liquids.

Response: We have deleted the term ''black oil'' from the final rule. All crude oil will now be subject to the requirements under the final OLD rule.

Comment: One commenter recommended that EPA use the proposed § 63.2334(b) definition of ''organic liquid'' in § 63.2406 (Definitions) to specifically exclude ''black oil'' and gasoline. Another commenter recommended that EPA revise the organic liquid definition to make clear the intent that the HAP content cutoff (5 percent by weight) applies to liquids other than crude oil.

Response: We have written the definition of ''organic liquid'' to clarify the intended meaning of this term in the final OLD rule and have removed the description of organic liquids from § 63.2334(b). We have included a 5 percent cutoff level for defining non-crude oil liquids as ''organic liquids.''

Comment: Many commenters suggested changes to the definition of

storage tank. One commenter stated that EPA should clarify that the rule only applies to stationary tanks. The proposed definition stated that the term means a stationary unit, and then cited several examples of non-stationary units. If these examples were to be interpreted as constituting the only non-stationary units that are not subject to the rule, then other portable tanks and containers could be improperly construed as being subject to the rule. Several commenters recommended that the storage tank definition should exclude pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere. Three commenters recommended that the storage tank definition be changed to clearly include blending tanks in the affected source and that, therefore, storage tanks and transport vessels used for ''incidental mixing and blending'' are a part of the OLD affected source. The commenters maintained that it must be clear that the OLD rule does not exclude from the affected source those storage tanks that have the ability to practice ''incidental blending and mixing to maintain product specifications.''

A final commenter recommended that vessels permanently attached to motor vehicles such as trucks, tank cars, barges, or ships be excluded from this definition (per the definition in the HON).

Response: We are in agreement with the commenters concerning the types of tanks intended to be covered by the term ''storage tank.'' We have written the definition to make it more consistent with other rules (such as the HON and the Miscellaneous Organic NESHAP) and to reflect suggestions of the commenters.

Comment: Two commenters suggested that the definition of transfer rack be amended by deleting the ''physically separate'' criterion because the 11.8 million liter (3.12 million gallon) throughput cutoff in the OLD rule is based on each transfer rack loading position and not the transfer rack as a whole. The last sentence in the transfer rack definition was also included in the HON subparts F and G definitions for loading rack, in §§ 63.101 and 63.111. Under the HON, this sentence was important to enable one to distinguish between the terms ''transfer rack'' and ''loading rack'' when making the Group 1/Group 2 determination. This Group status was based on throughput of the entire transfer rack and not each transfer rack loading position.

Response: We are retaining the definition as proposed for ''transfer rack,'' including the ''physically separate'' criterion, because we have written the description of the transfer rack emission source subject to emission standards from each loading position to the entire transfer rack, consistent with other air emission control regulations for volatile organic and petroleum liquid transfer operations. In the data reassessment we performed after proposal, we also found that the reported transfer rack data were sufficient to develop a MACT floor level of control for transfer racks but not for individual loading positions.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulation is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, it has been determined that today's final rule is not a ''significant regulatory action'' because it will not have an annual effect on the economy of $100 million or more and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (ICR No. 1963.02) The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The final rule will require maintenance inspections of the control devices but will not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden to affected sources for this collection (averaged over the first 3 years after the effective date of the promulgated rule) is estimated to be 137,170 labor-hours per year, with a total annual cost of $7.5 million per year. These estimates include a one-time performance test and report (with repeat tests where needed), one-time submission of an SSMP with semiannual reports for any event when the procedures in the plan were not followed, semiannual compliance reports, maintenance inspections, notifications, and recordkeeping.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the

approved information collection requirements contained in the final rule.

C. Regulatory Flexibility Analysis

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

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,500 employees, or a maximum of $5 million to $18.5 million in revenues, depending on the size definition for the affected North American Industry Classification System (NAICS) code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. It should be noted that companies in 42 NAICS codes are affected by the final rule, and the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration (SBA) size standards (13 CFR 121). For more information on size standards for particular industries, please refer to the economic impact analysis in the docket.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that six small firms in the industries affected by the final rule may be affected. Out of the six affected small firms, none are estimated to have compliance costs that exceed one percent of their revenues.

In addition, the final rule is likely to increase profits at the many small firms not adversely affected by the final rule due to the very slight increase in market prices. The median compliance cost to sales estimates for the affected small and large firms is virtually identical (0.02 percent compared to less than 0.01 percent for the large firms) and no small firms are expected to close in response to incurring the compliance costs associated with the final rule.

Although the final rule will not have a significant economic impact on a substantial number of small entities, the final rule includes provisions that will minimize the impact on small entities in several ways. We chose to set the control requirements at the MACT floor control level and not at a control level more stringent. The transfer rack cutoff, based on facilitywide throughput, and tank size cutoffs in the final rule will reduce the effects on small businesses. We have identified a list of 98 HAP from the list of 188 in the CAA to be considered for regulation. Regulated liquids are non-crude oil organic liquids that contain at least 5 percent by weight of the 98 HAP listed in Table 1 to subpart EEEE of part 63 and a vapor pressure of at least 0.1 psia, and all crude oil after the first point of custody transfer after the production field. In addition, we worked with various trade associations during the development of the rulemaking. These actions have reduced the economic impact on small entities from the final rule.

D. Unfunded Mandates Reform Act

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

The EPA has determined that today's final rule does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the UMRA do not apply to this action.

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.''

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

The 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. Furthermore, the final OLD NESHAP do not require these governments to take on any new responsibilities. Therefore, the requirements of section 6 of Executive Order 13132 does not apply to the 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 6, 2000), requires EPA to develop an accountable process to

ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

The final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No affected plant sites are known to be owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to the final rule.

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

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost; therefore, the results of any such analysis would have no impact on the stringency decision.

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

The final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001). The rule is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, and use of energy. The reduction in petroleum product output, which includes reductions in fuel production, is estimated at only 0.006 percent, or about 311 barrels per day (about 15,500 metric tons per year). The reduction in coal, natural gas, and electricity output is expected to be negligible. The increase in price of petroleum products is estimated to be only 0.001 percent nationwide. While energy distribution services such as pipeline operations will be directly affected by the final rule, energy distribution costs are expected to increase by only 0.1 percent. We estimate that there will be a slight increase of only 0.001 percent of net imports (imports — exports), and no other adverse outcomes are expected to occur with regard to energy supplies. Given the minimal impacts on energy supply, distribution, and use as a whole nationally, all of which are under the threshold screening criteria for compliance with this Executive Order established by the Office of Management and Budget, no significant adverse energy effects are expected to occur.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The EPA cites the following standards in the final rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3B, 4, 18, 21, 25, 25A, 27, 311, 316 (formaldehyde). Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 21, 27, 311, and 316. The search and review results have been documented and are placed in the docket (docket numbers A–98–13 and OAR–2003–0138) for the final rule.

Three voluntary consensus standards were identified as appropriate to the final rule. The voluntary consensus standard ASTM D6420–99, ''Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS),'' is appropriate in the cases described below for inclusion in the final rule in addition to EPA Method 18 codified at 40 CFR part 60, Appendix A, for measurement of organic HAP or total organic compounds. Therefore, the standard ASTM D6420–99 is cited in today's final rule.

Similar to EPA's performance-based Method 18, ASTM D6420–99 is also a performance-based method for measurement of gaseous organic compounds. However, ASTM D6420–99 was written to support the specific use of highly portable and automated GC/MS. While offering advantages over the traditional EPA Method 18, the ASTM method does allow some less stringent criteria for accepting GC/MS results than required by EPA Method 18. Therefore, ASTM D6420–99 is a suitable alternative to EPA Method 18 only where: the target compound(s) are those listed in Section 1.1 of ASTM D6420–99; and the target concentration is between 150 ppbv and 100 ppmv.

For target compound(s) not listed in Section 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the regulation specifies that the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble. For target compound(s) not listed in Section 1.1 of ASTM D6420–99, and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply.

As a result, EPA included ASTM D6420–99 in the final rule, and EPA Method 18 as a gas chromatography (GC) option in addition to ASTM D6420–99. This will allow the continued use of GC configurations other than GC/MS.

Two additional voluntary consensus standards, ASTM D2879–83 ''Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope,'' and API Publication 2517 ''Evaporative Loss from External Floating-Roof Tanks, Third Edition, February 1989,'' were already incorporated by reference in 40 CFR

§ 63.14 and are also being cited in the final rule for measurement of vapor pressure.

Five voluntary consensus standards: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94 are incorporated by reference in EPA Method 311.

The search for emissions measurement procedures identified nine other voluntary consensus standards. The EPA determined that seven of these nine standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the final rule were impractical alternatives to EPA test methods for the purposes of the final rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for this determination for the seven methods are discussed in the docket.

Two of the nine voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the final rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); and ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2.

Section 63.2362 and Table 5 to subpart EEEE of part 63 list the EPA testing methods included in the regulation. Under § 63.7(f) and § 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. § 801 *et seq.*, as added by the SBREFA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. § 804(2). The final rule will be effective on February 3, 2004.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: August 25, 2003.

Marianne Lamont Horinko,

Acting Administrator.

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

PART 63—[AMENDED]

Subpart A—[Amended]

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

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

■ 2. Section 63.14 is amended by revising paragraphs (b)(8) and (c)(1) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) * * *

(8) ASTM D2879–83, 96, Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved for § 63.111 and § 63.2406.

(c) * * *

(1) API Publication 2517, Evaporative Loss from External Floating-Roof Tanks, Third Edition, February 1989, IBR approved for § 63.111 and § 63.2406.

* * * * *

■ 3. Part 63 is amended by adding a new subpart EEEE to read as follows:

Subpart EEEE—National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)

Sec.

What This Subpart Covers

§ 63.2330 What is the purpose of this subpart?

This subpart establishes national emission limitations, operating limits, and work practice standards for organic hazardous air pollutants (HAP) emitted from organic liquids distribution (OLD) (non-gasoline) operations at major sources of HAP emissions. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations, operating limits, and work practice standards.

§ 63.2334 Am I subject to this subpart?

(a) Except as provided for in paragraphs (b) and (c) of this section, you are subject to this subpart if you own or operate an OLD operation that is located at, or is part of, a major source of HAP emissions. An OLD operation may occupy an entire plant site or be collocated with other industrial (*e.g.*, manufacturing) operations at the same plant site.

(b) Organic liquid distribution operations located at research and development facilities, consistent with section 112(c)(7) of the Clean Air Act (CAA), are not subject to this subpart.

(c) Organic liquid distribution operations do not include the activities and equipment, including product loading racks, used to process, store, or transfer organic liquids at facilities listed in paragraph (c) (1) and (2) of this section.

(1) Oil and natural gas production field facilities, as the term ''facility'' is defined in § 63.761 of subpart HH.

(2) Natural gas transmission and storage facilities, as the term ''facility'' is defined in § 63.1271 of subpart HHH.

§ 63.2338 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing OLD operation affected source.

(b) Except as provided in paragraph (c) of this section, the affected source is the collection of activities and equipment used to distribute organic liquids into, out of, or within a facility that is a major source of HAP. The affected source is composed of:

(1) All storage tanks storing organic liquids.

(2) All transfer racks at which organic liquids are loaded into or unloaded out of transport vehicles and/or containers.

(3) All equipment leak components in organic liquids service that are associated with pipelines, except as provided in paragraph (c)(2) of this section, and with storage tanks and transfer racks storing, loading, or unloading organic liquids.

(4) All transport vehicles while they are loading or unloading organic liquids at transfer racks.

(c) The equipment listed in paragraphs (c)(1) through (4) of this section and used in the identified operations is excluded from the affected source.

(1) Storage tanks, transfer racks, and equipment leak components that are part of an affected source under another 40 CFR part 63 national emission standards for hazardous air pollutants regulation (NESHAP).

(2) Equipment leak components associated with pipelines that transfer organic liquids directly to or from storage tanks subject to another 40 CFR part 63 NESHAP or to or from non-tank process unit components (*e.g.*, process reactors).

(3) Non-permanent storage tanks, transfer racks, and equipment leak components used in special situation distribution loading and unloading operations (such as maintenance or upset liquids management).

(4) Storage tanks, transfer racks, and equipment leak components used to conduct maintenance activities, such as stormwater management, liquid removal from tanks for inspections and maintenance, or changeovers to a different liquid stored in a storage tank.

(d) An affected source is a new affected source if you commenced construction of the affected source after April 2, 2002, and you meet the applicability criteria in § 63.2334 at the time you commenced operation.

(e) An affected source is reconstructed if you meet the criteria for reconstruction as defined in § 63.2.

(f) An affected source is existing if it is not new or reconstructed.

§ 63.2342 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to the schedule identified in paragraph (a)(1) or (2) of this section, as applicable.

(1)(i) Except as provided in paragraph (a)(1)(ii) of this section, if you startup your new affected source on or before February 3, 2004 or if you reconstruct your affected source on or before February 3, 2004, you must comply with the emission limitations, operating limits, and work practice standards for new and reconstructed sources in this subpart no later than February 3, 2004.

(ii) For any emission source listed in paragraph § 63.2338(b) at an affected source that commenced construction or reconstruction after April 2, 2002, but before February 3, 2004, that is required to be controlled based on the applicability criteria in this subpart, but:

(A) Would not have been required to be controlled based on the applicability criteria as proposed for this subpart, you must comply with the emission limitations, operating limits, and work practice standards for each such emission source based on the schedule found in paragraph (b) of this section or at startup, whichever is later; or

(B) Would have been subject to a less stringent degree of control requirement as proposed for this subpart, you must comply with the emission limitations, operating limits, and work practice standards in this subpart for each such emission source based on the schedule found in paragraph (b) of this section or at startup, whichever is later, and if you start up your affected new or reconstructed source before February 5, 2007, you must comply with the emission limitations, operating limits, and work practice standards for each such emission source as proposed for this subpart, until you are required to comply with the emission limitations, operating limits, and work practice standards in this subpart for each such emission source based on the schedule found in paragraph (b) of this section.

(2) If you commence construction of or reconstruct your affected source after February 3, 2004, you must comply with the emission limitations, operating limits, and work practice standards for new and reconstructed sources in this subpart upon startup of your affected source.

(b)(1) If you have an existing affected source, you must comply with the emission limitations, operating limits, and work practice standards for existing affected sources no later than February 5, 2007, except as provided in paragraph (b)(2) of this section.

(2) Floating roof storage tanks at existing affected sources must be in compliance with the work practice standards in Table 4 to this subpart, item 1, at all times after the next degassing and cleaning activity or within 10 years after February 3, 2004, whichever occurs first. If the first degassing and cleaning activity occurs during the 3 years following February 3, 2004, the compliance date is February 5, 2007.

(c) If you have an area source that does not commence reconstruction but increases its emissions or its potential to

emit such that it becomes a major source of HAP emissions and an existing affected source subject to this subpart, you must be in compliance by 3 years after the area source becomes a major source.

(d) You must meet the notification requirements in § 63.2382(a) according to the schedules in § 63.2382(a) and (b)(1) through (3) and in subpart A of this part. Some of these notifications must be submitted before the compliance dates for the emission limitations, operating limits, and work practice standards in this subpart.

Emission Limitations, Operating Limits, and Work Practice Standards

§ 63.2346 What emission limitations, operating limits, and work practice standards must I meet?

(a) *Storage tanks.* For each storage tank storing organic liquids that meets the tank capacity and liquid vapor pressure criteria for control in Table 2 to this subpart, items 1 through 5, you must comply with paragraph (a)(1), (2), or (3) of this section. For each storage tank storing organic liquids that meets the tank capacity and liquid vapor pressure criteria for control in Table 2 to this subpart, item 6, you must comply with paragraph (a)(1) of this section.

(1) Meet the emission limits specified in Table 2 to this subpart and comply with the applicable requirements specified in 40 CFR part 63, subpart SS, for meeting emission limits, except substitute the term ''storage tank'' at each occurrence of the term ''storage vessel'' in subpart SS.

(2) Route emissions to fuel gas systems or back into the process as specified in 40 CFR part 63, subpart SS.

(3) Comply with 40 CFR part 63, subpart WW (control level 2).

(b) *Transfer racks.* For each transfer rack that meets the facility-level organic liquid loading volume and transfer rack organic HAP content criteria for control in Table 2 to this subpart, items 7 through 9, you must comply with paragraph (b)(1), (2), or (3) of this section.

(1) Meet the emission limits specified in Table 2 to this subpart and comply with the applicable requirements for transfer racks specified in 40 CFR part 63, subpart SS, for meeting emission limits.

(2) Route emissions to fuel gas systems or back into the process as specified in 40 CFR part 63, subpart SS.

(3) Use a vapor balancing system that routes organic HAP vapors displaced from the loading of organic liquids into transport vehicles to the appropriate storage tank.

(c) *Equipment leak components.* For each pump, valve, and sampling connection that operates in organic liquids service for at least 300 hours per year, you must comply with the applicable requirements under 40 CFR part 63, subpart TT (control level 1), subpart UU (control level 2), or subpart H. Pumps, valves, and sampling connectors that are insulated to provide protection against persistent sub-freezing temperatures are subject to the ''difficult to monitor'' provisions in the applicable subpart selected by the owner or operator. This paragraph only applies if the affected source has at least one storage tank or transfer rack that meets the applicability criteria for control in Table 2 to this subpart.

(d) *Transport vehicles.* For each transport vehicle equipped with vapor collection equipment, you must comply with paragraph (d)(1) of this section. For each transport vehicle without vapor collection equipment, you must comply with paragraph (d)(2) of this section.

(1) Follow the steps in 40 CFR 60.502(e) to ensure that organic liquids are loaded only into vapor-tight transport vehicles and comply with the provisions in 40 CFR 60.502(f) through (i), except substitute the term ''transport vehicle'' at each occurrence of the term ''tank truck'' or ''gasoline tank truck'' in those paragraphs.

(2) Ensure that organic liquids are loaded only into transport vehicles that have a current certification in accordance with the U.S. Department of Transportation (DOT) pressure test requirements in 49 CFR part 180 for cargo tanks or 49 CFR 173.31 for tank cars.

(e) *Operating limits.* For each high throughput transfer rack, you must meet each operating limit in Table 3 to this subpart for each control device used to comply with the provisions of this subpart whenever emissions from organic liquids are routed to the control device. For each storage tank and low throughput transfer rack, you must comply with the requirements for monitored parameters as specified in subpart SS of this part for storage vessels and low throughput transfer racks, respectively. Alternatively, you may comply with the operating limits in Table 3 to this subpart.

(f) If you elect to demonstrate compliance with a percent reduction requirement in Table 2 to this subpart using total organic compounds (TOC) rather than organic HAP, you must first demonstrate, subject to approval of the Administrator, that TOC is an appropriate surrogate for organic HAP in your case; that is, for your storage tank(s) and/or transfer rack(s), the percent destruction of organic HAP is equal to or higher than the percent destruction of TOC. This demonstration must be conducted prior to or during the initial compliance test.

(g) As provided in § 63.6(g), you may request approval from the Administrator to use an alternative to the emission limitations, operating limits, and work practice standards in this section. You must follow the procedures in § 63.177(b) through (e) in applying for permission to use such an alternative. If you apply for permission to use an alternative to the emission limitations, operating limits, and work practice standards in this section, you must submit the information described in § 63.6(g)(2).

(h) Emission sources that are part of the affected source as specified in § 63.2338, but which are not subject to the provisions of paragraphs (a) through (d) of this section, are only subject to the requirements specified in § 63.2386(d).

(i) Opening of a safety device is allowed at any time that it is required to avoid unsafe operating conditions.

(j) If you elect to comply with this subpart by combining emissions from different emission sources subject to this subpart in a single control device, then you must comply with the provisions specified in § 63.982(f).

General Compliance Requirements

§ 63.2350 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations, operating limits, and work practice standards in this subpart at all times when the equipment identified in § 63.2338(b)(1) through (4) is in OLD operation.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written startup, shutdown, and malfunction (SSM) plan according to the provisions in § 63.6(e)(3).

Testing and Initial Compliance Requirements

§ 63.2354 What performance tests, design evaluations, and performance evaluations must I conduct?

(a)(1) For each performance test that you conduct, you must use the procedures specified in subpart SS of this part and the provisions specified in paragraph (b) of this section.

(2) For each design evaluation you conduct, you must use the procedures specified in subpart SS of this part.

(3) For each performance evaluation of each continuous monitoring system (CMS) you conduct, you must follow the requirements in § 63.8(e).

(b)(1) For nonflare control devices, you must conduct each performance test according to the requirements in § 63.7(e)(1), and either § 63.988(b), § 63.990(b), or § 63.995(b), using the procedures specified in § 63.997(e).

(2) You must conduct three separate test runs for each performance test on a nonflare control device as specified in §§ 63.7(e)(3) and 63.997(e)(1)(v). Each test run must last at least 1 hour, except as provided in § 63.997(e)(1)(v)(A) and (B).

(3)(i) In addition to EPA Method 25 or 25A of 40 CFR part 60, appendix A, to determine compliance with the organic HAP or TOC emission limit, you may use EPA Method 18 of 40 CFR part 60, appendix A. If you use EPA Method 18 to measure compliance with the percentage efficiency limit, you must first determine which organic HAP are present in the inlet gas stream (*i.e.,* uncontrolled emissions) using knowledge of the organic liquids or the screening procedure described in EPA Method 18. In conducting the performance test, you must analyze samples collected as specified in EPA Method 18, simultaneously at the inlet and outlet of the control device. Quantify the emissions for the same organic HAP identified as present in the inlet gas stream for both the inlet and outlet gas streams of the control device.

(ii) If you use EPA Method 18 of 40 CFR part 60, appendix A, to measure compliance with the emission concentration limit, you must first determine which organic HAP are present in the inlet gas stream using knowledge of the organic liquids or the screening procedure described in EPA Method 18. In conducting the performance test, analyze samples collected as specified in EPA Method 18 at the outlet of the control device. Quantify the control device outlet emission concentration for the same organic HAP identified as present in the inlet or uncontrolled gas stream.

(4) If a principal component of the uncontrolled or inlet gas stream to the control device is formaldehyde, you may use EPA Method 316 of appendix A of this part instead of EPA Method 18 of 40 CFR part 60, appendix A, for measuring the formaldehyde. If formaldehyde is the predominant organic HAP in the inlet gas stream, you may use EPA Method 316 alone to measure formaldehyde either at the inlet and outlet of the control device using the formaldehyde control efficiency as a surrogate for total organic HAP or TOC efficiency, or at the outlet of a combustion device for determining compliance with the emission concentration limit.

(5) You may not conduct performance tests during periods of SSM, as specified in § 63.7(e)(1).

(c) To determine the HAP content of the organic liquid, you may use EPA Method 311 of 40 CFR part 63, appendix A, or other method approved by the Administrator. In addition, you may use other means, such as voluntary consensus standards, material safety data sheets (MSDS), or certified product data sheets, to determine the HAP content of the organic liquid. If the method you select to determine the HAP content provides HAP content ranges, you must use the upper end of each HAP content range in determining the total HAP content of the organic liquid. The EPA may require you to test the HAP content of an organic liquid using EPA Method 311 or other method approved by the Administrator. If the results of the EPA Method 311 (or any other approved method) are different from the HAP content determined by another means, the EPA Method 311 (or approved method) results will govern.

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

(a) You must conduct initial performance tests and design evaluations according to the schedule in § 63.7(a)(2), or by the compliance date specified in any applicable State or Federal new source review construction permit to which the affected source is already subject, whichever is earlier.

(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.

(2) For storage tanks and transfer racks at reconstructed or new affected sources complying with the emission limitations listed in Table 2 to this subpart, you must conduct your initial compliance demonstration with the emission limitations within 180 days after the initial startup date for the affected source or February 3, 2004, whichever is later.

(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 the next time the storage tank is emptied and degassed, but not later than 10 years after February 3, 2004.

(2) For transfer racks and equipment leak components at existing affected sources complying with the work practice standards in Table 4 to this subpart, you must conduct your initial compliance demonstration within 180 days after February 5, 2007.

(d) For storage tanks, transfer racks, and equipment leak components at reconstructed or new affected sources complying with the work practice standards in Table 4 to this subpart, you must conduct your initial compliance demonstration within 180 days after the initial startup date for the affected source.

§ 63.2362 When must I conduct subsequent performance tests?

(a) For nonflare control devices, you must conduct subsequent performance testing required in Table 5 to this subpart, item 1, at any time the EPA requests you to in accordance with section 114 of the CAA.

(b)(1) For each transport vehicle that you own that is equipped with vapor collection equipment and loads organic liquids at an affected transfer rack, you must perform the vapor tightness testing required in Table 5 to this subpart, item 2, on that transport vehicle at least once per year.

(2) For transport vehicles that you own that do not have vapor collection equipment, you must maintain current certification in accordance with the U.S. DOT pressure test requirements in 49 CFR part 180 for cargo tanks or 49 CFR 173.31 for tank cars.

§ 63.2366 What are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain a CMS on each control device required in order to comply with this subpart. If you use a continuous parameter monitoring system (CPMS) (as defined in § 63.981), you must comply with the applicable requirements for CPMS in subpart SS of this part for the control device being used. If you use a continuous emissions monitoring system (CEMS), you must comply with the requirements in § 63.8.

(b) For nonflare control devices controlling storage tanks and low throughput transfer racks, you must submit a monitoring plan according to the requirements in subpart SS of this part for monitoring plans.

§ 63.2370 How do I demonstrate initial compliance with the emission limitations, operating limits, and work practice standards?

(a) You must demonstrate initial compliance with each emission limitation and work practice standard

that applies to you as specified in Tables 6 and 7 to this subpart.

(b) You demonstrate initial compliance with the operating limits requirements specified in § 63.2346(e) by establishing the operating limits during the initial performance test or design evaluation.

(c) You must submit the results of the initial compliance demonstration in the Notification of Compliance Status according to the requirements in § 63.2382(b).

Continuous Compliance Requirements

§ 63.2374 When do I monitor and collect data to demonstrate continuous compliance and how do I use the collected data?

(a) You must monitor and collect data according to subpart SS of this part and paragraphs (b) and (c) of this section.

(b) When using a control device to comply with this subpart, you must monitor continuously or collect data at all required intervals at all times that the emission source and control device are in OLD operation, except for CMS malfunctions (including any malfunction preventing the CMS from operating properly), associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments).

(c) Do not use data recorded during CMS malfunctions, associated repairs, required quality assurance or control activities, or periods when emissions from organic liquids are not routed to the control device in data averages and calculations used to report emission or operating levels. Do not use such data in fulfilling a minimum data availability requirement, if applicable. You must use all of the data collected during all other periods, including periods of SSM, in assessing the operation of the control device.

§ 63.2378 How do I demonstrate continuous compliance with the emission limitations, operating limits, and work practice standards?

(a) You must demonstrate continuous compliance with each emission limitation, operating limit, and work practice standard in Tables 2 through 4 to this subpart that applies to you according to the methods specified in subpart SS of this part and in Tables 8 through 10 to this subpart, as applicable.

(b) You must follow the requirements in § 63.6(e)(1) and (3) during periods of startup, shutdown, malfunction, or nonoperation of the affected source or any part thereof. In addition, the provisions of paragraphs (b)(1) through (3) of this section apply.

(1) The emission limitations in this subpart apply at all times except during periods of nonoperation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. The emission limitations of this subpart apply during periods of SSM, except as provided in paragraphs (b)(2) and (3) of this section. During periods of SSM, the owner or operator must follow the applicable provisions of the SSM plan required by § 63.2350(c). However, if a SSM, or period of nonoperation of one portion of the affected source does not affect the ability of a particular emission source to comply with the emission limitations to which it is subject, then that emission source is still required to comply with the applicable emission limitations of this subpart during the startup, shutdown, malfunction, or period of nonoperation.

(2) The owner or operator must not shut down control devices or monitoring systems that are required or utilized for achieving compliance with this subpart during periods of SSM while emissions are being routed to such items of equipment if the shutdown would contravene requirements of this subpart applicable to such items of equipment. This paragraph (b)(2) does not apply if the item of equipment is malfunctioning. This paragraph (b)(2) also does not apply if the owner or operator shuts down the compliance equipment (other than monitoring systems) to avoid damage due to a contemporaneous SSM of the affected source or portion thereof. If the owner or operator has reason to believe that monitoring equipment would be damaged due to a contemporaneous SSM of the affected source of portion thereof, the owner or operator must provide documentation supporting such a claim in the next Compliance report required in Table 11 to this subpart, item 1. Once approved by the Administrator, the provision for ceasing to collect, during a SSM, monitoring data that would otherwise be required by the provisions of this subpart must be incorporated into the SSM plan.

(3) During SSM, you must implement, to the extent reasonably available, measures to prevent or minimize excess emissions. For purposes of this paragraph (b)(3), the term ''excess emissions'' means emissions greater than those allowed by the emission limits that apply during normal operational periods. The measures to be taken must be identified in the SSM plan, and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the affected source. Back-up control devices are not required, but may be used if available.

(c) Periods of planned routine maintenance of a control device used to control storage tanks or transfer racks, during which the control device does not meet the emission limits in Table 2 to this subpart, must not exceed 240 hours per year.

(d) If you elect to route emissions from storage tanks or transfer racks to a fuel gas system or to a process, as allowed by § 63.982(d), to comply with the emission limits in Table 2 to this subpart, the total aggregate amount of time during which the emissions bypass the fuel gas system or process during the calendar year without being routed to a control device, for all reasons (except SSM or product changeovers of flexible operation units and periods when a storage tank has been emptied and degassed), must not exceed 240 hours.

Notifications, Reports, and Records

§ 63.2382 What notifications must I submit and when and what information should be submitted?

(a) You must submit each notification in subpart SS of this part, Table 12 to this subpart, and paragraphs (b) through (d) of this section that applies to you. You must submit these notifications according to the schedule in Table 12 to this subpart and as specified in paragraphs (b) through (d) of this section.

(b)(1) *Initial Notification.* If you startup your affected source before February 3, 2004, you must submit the Initial Notification no later than 120 calendar days after February 3, 2004.

(2) If you startup your new or reconstructed affected source on or after February 3, 2004, you must submit the Initial Notification no later than 120 days after initial startup.

(c) If you are required to conduct a performance test, you must submit the Notification of Intent to conduct the test at least 60 calendar days before it is initially scheduled to begin as required in § 63.7(b)(1).

(d)(1) *Notification of Compliance Status.* If you are required to conduct a performance test, design evaluation, or other initial compliance demonstration as specified in Table 5, 6, or 7 to this subpart, you must submit a Notification of Compliance Status.

(2) The Notification of Compliance Status must include the information required in § 63.999(b) and in paragraphs (d)(2)(i) through (viii) of this section.

(i) The results of any applicability determinations, emission calculations, or analyses used to identify and quantify organic HAP emissions from the affected source.

(ii) The results of emissions profiles, performance tests, engineering analyses, design evaluations, flare compliance assessments, inspections and repairs, and calculations used to demonstrate initial compliance according to Tables 6 and 7 to this subpart. For performance tests, results must include descriptions of sampling and analysis procedures and quality assurance procedures.

(iii) Descriptions of monitoring devices, monitoring frequencies, and the operating limits established during the initial compliance demonstrations, including data and calculations to support the levels you establish.

(iv) Listing of all operating scenarios.

(v) Descriptions of worst-case operating and/or testing conditions for the control device(s).

(vi) Identification of emission sources subject to overlapping requirements described in § 63.2396 and the authority under which you will comply.

(vii) The applicable information specified in § 63.1039(a)(1) through (3) for all pumps and valves subject to the work practice standards for equipment leak components in Table 4 to this subpart, item 3.

(viii) If you are complying with the vapor balancing work practice standard for transfer racks according to Table 4 to this subpart, item 2.a, include a statement to that effect, and a statement that the pressure vent settings on the affected storage tanks are greater than or equal to 2.5 pounds per square inch gauge (psig).

§ 63.2386 What reports must I submit and when and what information is to be submitted in each?

(a) You must submit each report in subpart SS of this part, Table 11 to this subpart, Table 12 to this subpart, and in paragraphs (c) through (e) of this section that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report according to Table 11 to this subpart and by the dates shown in paragraphs (b)(1) through (3) of this section, by the dates shown in subpart SS of this part, and by the dates shown in Table 12 to this subpart, whichever are applicable.

(1)(i) The first Compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.2342 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your affected source in § 63.2342.

(ii) The first Compliance report must be postmarked no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.2342.

(2)(i) Each subsequent Compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(ii) Each subsequent Compliance report must be postmarked no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(3) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 71.6(a)(3)(iii)(A), you may submit the first and subsequent Compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) *First Compliance report.* The first Compliance report must contain the information specified in paragraphs (c)(1) through (10) of this section.

(1) Company name and address.

(2) Statement by a responsible official, including the official's name, title, and signature, certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate, and complete.

(3) Date of report and beginning and ending dates of the reporting period.

(4) Any changes to the information listed in § 63.2382(d)(1) that have occurred since the submittal of the Notification of Compliance Status.

(5) If you had a SSM during the reporting period and you took actions consistent with your SSM plan, the Compliance report must include the information described in § 63.10(d)(5)(i).

(6) If there are no deviations from any emission limitation or operating limit that applies to you and there are no deviations from the requirements for work practice standards, a statement that there were no deviations from the emission limitations, operating limits, or work practice standards during the reporting period.

(7) If there were no periods during which the CMS was out of control as specified in § 63.8(c)(7), a statement that there were no periods during which the CMS was out of control during the reporting period.

(8) For closed vent systems and control devices used to control emissions, the information specified in paragraphs (c)(8)(i) and (ii) of this section for those planned routine maintenance activities that would require the control device to not meet the applicable emission limit.

(i) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next 6 months. This description must include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

(ii) A description of the planned routine maintenance that was performed for the control device during the previous 6 months. This description must include the type of maintenance performed and the total number of hours during those 6 months that the control device did not meet the applicable emission limit due to planned routine maintenance.

(9) A listing of all emission sources that are part of the affected source but are not subject to any of the emission limitations, operating limits, or work practice standards of this subpart.

(10) A listing of all transport vehicles into which organic liquids were loaded at affected transfer racks during the previous 6 months for which vapor tightness documentation as required in § 63.2390(d) was not on file at the facility.

(d) *Subsequent Compliance reports.* Subsequent Compliance reports must contain the information in paragraphs (c)(1) through (10) of this section and, where applicable, the information in paragraphs (d)(1) through (3) of this section.

(1) For each deviation from an emission limitation occurring at an affected source where you are using a CMS to comply with an emission limitation in this subpart, you must include in the Compliance report the applicable information in paragraphs (d)(1)(i) through (xii) of this section. This includes periods of SSM.

(i) The date and time that each malfunction started and stopped.

(ii) The dates and times that each CMS was inoperative, except for zero (low-level) and high-level checks.

(iii) For each CMS that was out of control, the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of SSM, or during another period.

(v) A summary of the total duration of the deviations during the reporting period, and the total duration as a percentage of the total emission source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of CMS downtime during the reporting period, and the total duration of CMS downtime as a percentage of the total emission source operating time during that reporting period.

(viii) An identification of each organic HAP that was potentially emitted during each deviation based on the known organic HAP contained in the liquid(s).

(ix) A brief description of the emission source(s) at which the CMS deviation(s) occurred.

(x) A brief description of each CMS that was out of control during the period.

(xi) The date of the latest certification or audit for each CMS.

(xii) A brief description of any changes in CMS, processes, or controls since the last reporting period.

(2) Include in the Compliance report the information in paragraphs (d)(2)(i) through (iii) of this section, as applicable.

(i) For each storage tank and transfer rack subject to control requirements, include periods of planned routine maintenance during which the control device did not comply with the applicable emission limits in Table 2 to this subpart.

(ii) For each storage tank controlled with a floating roof, include a copy of the inspection record (required in § 63.1065(b)) when inspection failures occur.

(iii) If you elect to use an extension for a floating roof inspection in accordance with § 63.1063(c)(2)(iv)(B) or (e)(2), include the documentation required by those paragraphs.

(3) Include in the Compliance report each new operating scenario which has occurred since the time period covered by the last Compliance report. For each new operating scenario, you must provide verification that the established operating conditions for any associated control device have not been exceeded and that any required calculations and engineering analyses have been performed.

(e) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 71.6(a)(3)(iii)(A). If an affected source submits a Compliance report pursuant to Table 11 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 71.6(a)(3)(iii)(A), and the Compliance report includes all required information concerning deviations from any emission limitation in this subpart, we will consider submission of the Compliance report as satisfying any obligation to report the same deviations in the semiannual monitoring report. However, submission of a Compliance report will not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the applicable title V permitting authority.

§ 63.2390 What records must I keep?

(a) You must keep all records identified in subpart SS of this part and in Table 12 to this subpart that are applicable, including records related to notifications and reports, SSM, performance tests, CMS, and performance evaluation plans.

(b) You must keep the records required to show continuous compliance, as required in subpart SS of this part and in Tables 8 through 10 to this subpart, with each emission limitation, operating limit, and work practice standard that applies to you.

(c) For each transport vehicle into which organic liquids are loaded at an affected transfer rack, you must keep the applicable records in paragraphs (c)(1) and (2) of this section.

(1) For transport vehicles equipped with vapor collection equipment, the documentation described in 40 CFR 60.505(b), except that the test title is: Transport Vehicle Pressure Test-EPA Reference Method 27.

(2) For transport vehicles without vapor collection equipment, current certification in accordance with the U.S. DOT pressure test requirements in 49 CFR part 180 for cargo tanks or 49 CFR 173.31 for tank cars.

(3) You must keep records of the actual annual facility-level organic liquid loading volume through transfer racks out of the facility to document the applicability of the emission limitations in Table 2, items 7 through 10, to this subpart.

§ 63.2394 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious inspection and review according to § 63.10(b)(1). In addition, on-site records may be stored in electronic form at a separate location from the site provided they can be accessed and printed at the site within 1 hour after a request by the applicable title V permitting authority.

(b) As specified in § 63.10(b)(1), you must keep your files of all information (including all reports and notifications) for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records off site for the remaining 3 years.

Other Requirements and Information

§ 63.2396 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

(a) *Compliance with other regulations for storage tanks.*

(1)(i) After the compliance dates specified in § 63.2342, if you have a storage tank that is subject to 40 CFR part 60, subpart Kb, not as the result of another 40 CFR part 63 subpart, and that storage tank is in OLD operation, you must meet all of the requirements of this subpart for that storage tank when the storage tank is in OLD operation.

(ii) If you have a storage tank that is in compliance with 40 CFR part 60, subpart Kb, as the result of complying with another 40 CFR part 63 subpart, that storage tank is not subject to this subpart.

(2) After the compliance dates specified in § 63.2342, if you have a storage tank that is subject to 40 CFR part 61, subpart Y, and that storage tank is in OLD operation, you must meet all of the requirements of this subpart for that storage tank when the storage tank is in OLD operation.

(b) *Compliance with other regulations for transfer racks.* After the compliance dates specified in § 63.2342, if you have a transfer rack that is subject to 40 CFR part 61, subpart BB, and that transfer rack is in OLD operation, you must meet the all of the requirements of this subpart for that transfer rack when the transfer rack is in OLD operation.

(c) *Compliance with other regulations for equipment leak components.*

(1) After the compliance dates specified in § 63.2342, if you have pumps, valves, or sampling connections that are subject to a 40 CFR part 60 subpart, and those pumps, valves, and sampling connections are in OLD operation and in organic liquids service,

as defined in this subpart, you must comply with the provisions of each subpart for those equipment leak components.

(2) After the compliance dates specified in § 63.2342, if you have pumps, valves, or sampling connections subject to 40 CFR part 63, subpart GGG, and those pumps, valves, and sampling connections are in OLD operation and in organic liquids service, as defined in this subpart, you may elect to comply with the provisions of this subpart for all such equipment leak components. You must identify in the Notification of Compliance Status required by § 63.2382(b) the provisions with which you will comply.

(d) [*Reserved*]

(e) *Overlap with other regulations for monitoring, recordkeeping, or reporting with respect to control devices.* After the compliance dates specified in § 63.2342, if any control device subject to this subpart is also subject to monitoring, recordkeeping, and reporting requirements of another 40 CFR part 63 subpart, the owner or operator must be in compliance with the monitoring, recordkeeping, and reporting requirements of this subpart EEEE. If complying with the monitoring, recordkeeping, and reporting requirements of the other subpart satisfies the monitoring, recordkeeping, and reporting requirements of this subpart, the owner or operator may elect to continue to comply with the monitoring, recordkeeping, and reporting requirements of the other subpart. In such instances, the owner or operator will be deemed to be in compliance with the monitoring, recordkeeping, and reporting requirements of this subpart. The owner or operator must identify the other subpart being complied with in the Notification of Compliance Status required by § 63.2382(b).

§ 63.2398 What parts of the General Provisions apply to me?

Table 12 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.2402 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. Environmental Protection Agency (U.S. EPA) or a delegated authority such as your State, local, or eligible tribal agency. If the EPA Administrator has delegated authority to your State, local, or eligible tribal agency, then that agency, as well as the EPA, has the authority to implement and enforce this subpart. You should contact your EPA Regional Office (see list in § 63.13) to find out if this subpart is delegated to your State, local, or eligible tribal agency.

(b) In delegating implementation and enforcement authority for this subpart to a State, local, or eligible tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (4) of this section are retained by the EPA Administrator and are not delegated to the State, local, or eligible tribal agency.

(1) Approval of alternatives to the nonopacity emission limitations, operating limits, and work practice standards in § 63.2346(a) through (c) under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.2406 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in § 63.2, and in this section. If the same term is defined in another subpart and in this section, it will have the meaning given in this section for purposes of this subpart.

Actual annual average temperature, for organic liquids, means the temperature determined using the following methods:

(1) For heated or cooled storage tanks, use the calculated annual average temperature of the stored organic liquid as determined from a design analysis of the storage tank.

(2) For ambient temperature storage tanks:

(i) Use the annual average of the local (nearest) normal daily mean temperatures reported by the National Climatic Data Center; or

(ii) Use any other method that the EPA approves.

Annual average true vapor pressure means the equilibrium partial pressure exerted by the total organic HAP in the stored or transferred organic liquid. For the purpose of determining if a liquid meets the definition of an organic liquid, the vapor pressure is determined using standard conditions of 77 degrees F and 29.92 inches of mercury. For the purpose of determining whether an organic liquid meets the applicability criteria in Table 2, items 1 through 6, to this subpart, use the actual annual average temperature as defined in this subpart. The vapor pressure value in either of these cases is determined:

(1) In accordance with methods described in American Petroleum Institute Publication 2517, Evaporative Loss from External Floating-Roof Tanks (incorporated by reference, see § 63.14);

(2) Using standard reference texts;

(3) By the American Society for Testing and Materials Method D2879–83, 96 (incorporated by reference, see § 63.14); or

(4) Using any other method that the EPA approves.

Cargo tank means a liquid-carrying tank permanently attached and forming an integral part of a motor vehicle or truck trailer. This term also refers to the entire cargo tank motor vehicle or trailer. For the purpose of this subpart, vacuum trucks used exclusively for maintenance or spill response are not considered cargo tanks.

Closed vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow-inducing devices that transport gas or vapors from an emission point to a control device. This system does not include the vapor collection system that is part of some transport vehicles or the loading arm or hose that is used for vapor return. For transfer racks, the closed vent system begins at, and includes, the first block valve on the downstream side of the loading arm or hose used to convey displaced vapors.

Combustion device means an individual unit of equipment, such as a flare, oxidizer, catalytic oxidizer, process heater, or boiler, used for the combustion of organic emissions.

Container means a portable unit in which a material can be stored, transported, treated, disposed of, or otherwise handled. Examples of containers include, but are not limited to, drums and portable cargo containers known as ''portable tanks'' or ''totes.''

Control device means any combustion device, recovery device, recapture device, or any combination of these devices used to comply with this subpart. Such equipment or devices include, but are not limited to, absorbers, adsorbers, condensers, and combustion devices. Primary condensers, steam strippers, and fuel gas systems are not considered control devices.

Crude oil means any of the naturally occurring liquids commonly referred to as crude oil, regardless of specific physical properties. Only those crude oils downstream of the first point of custody transfer after the production field are considered crude oils in this subpart.

Custody transfer means the transfer of hydrocarbon liquids after processing and/or treatment in the producing operations, or from storage tanks or

automatic transfer facilities to pipelines or any other forms of transportation.

Design evaluation means a procedure for evaluating control devices that complies with the requirements in § 63.985(b)(1)(i).

Deviation means any instance in which an affected source subject to this subpart, or portion thereof, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart, and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during SSM.

Emission limitation means an emission limit, opacity limit, operating limit, or visible emission limit.

Equipment leak component means each pump, valve, and sampling connection system used in organic liquids service at an OLD operation. Valve types include control, globe, gate, plug, and ball. Relief and check valves are excluded.

Gasoline means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals (4.0 pounds per square inch absolute (psia)) or greater which is used as a fuel for internal combustion engines. Aviation gasoline is included in this definition.

In organic liquids service means that an equipment leak component contains or contacts organic liquids having 5 percent by weight or greater of the organic HAP listed in Table 1 to this subpart.

On-site or *on site* means, with respect to records required to be maintained by this subpart or required by another subpart referenced by this subpart, that records are stored at a location within a major source which encompasses the affected source. On-site includes, but is not limited to, storage at the affected source to which the records pertain, storage in central files elsewhere at the major source, or electronically available at the site.

Organic liquid means:

(1) Any non-crude oil liquid or liquid mixture that contains 5 percent by weight or greater of the organic HAP listed in Table 1 to this subpart, as determined using the procedures specified in § 63.2354(c).

(2) Any crude oils downstream of the first point of custody transfer.

(3) Organic liquids for purposes of this subpart do not include the following liquids:

(i) Gasoline (including aviation gasoline), kerosene (No. 1 distillate oil), diesel (No. 2 distillate oil), asphalt, and heavier distillate oils and fuel oils;

(ii) Any fuel consumed or dispensed on the plant site directly to users (such as fuels for fleet refueling or for refueling marine vessels that support the operation of the plant);

(iii) Hazardous waste;

(iv) Wastewater;

(v) Ballast water: or

(vi) Any non-crude oil liquid with an annual average true vapor pressure less than 0.7 kilopascals (0.1 psia).

Organic liquids distribution (OLD) operation means the combination of activities and equipment used to store or transfer organic liquids into, out of, or within a plant site regardless of the specific activity being performed. Activities include, but are not limited to, storage, transfer, blending, compounding, and packaging.

Permitting authority means one of the following:

(1) The State Air Pollution Control Agency, local agency, or other agency authorized by the EPA Administrator to carry out a permit program under 40 CFR part 70; or

(2) The EPA Administrator, in the case of EPA-implemented permit programs under title V of the CAA (42 U.S.C. 7661) and 40 CFR part 71.

Plant site means all contiguous or adjoining surface property that is under common control, including surface properties that are separated only by a road or other public right-of-way. Common control includes surface properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination.

Research and development facility means laboratory and pilot plant operations whose primary purpose is to conduct research and development into new processes and products, where the operations are under the close supervision of technically trained personnel, and which are not engaged in the manufacture of products for commercial sale, except in a *de minimis* manner.

Responsible official means responsible official as defined in 40 CFR 70.2 and 40 CFR 71.2, as applicable.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device that functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event.

Shutdown means the cessation of operation of an OLD affected source, or portion thereof, required or used to comply with this subpart, or the emptying and degassing of a storage tank. Shutdown as defined here includes, but is not limited to, events that result from periodic maintenance, replacement of equipment, or repair.

Startup means the setting in operation of an OLD affected source, or portion thereof, for any purpose. Startup also includes the placing in operation of any individual piece of equipment required or used to comply with this subpart including, but not limited to, control devices and monitors.

Storage tank means a stationary unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, or reinforced plastic) that provide structural support and is designed to hold a bulk quantity of liquid. Storage tanks do not include:

(1) Units permanently attached to conveyances such as trucks, trailers, rail cars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Bottoms receiver tanks;

(4) Surge control vessels;

(5) Vessels storing wastewater; or

(6) Reactor vessels associated with a manufacturing process unit.

Tank car means a car designed to carry liquid freight by rail, and including a permanently attached tank.

Transfer rack means a single system used to load organic liquids into transport vehicles. It includes all loading arms, pumps, meters, shutoff valves, relief valves, and other piping and equipment necessary for the transfer operation. Transfer equipment and operations that are physically separate (*i.e.*, do not share common piping, valves, and other equipment) are considered to be separate transfer racks.

Transport vehicle means a cargo tank or tank car.

Vapor balancing system means a piping system that collects organic HAP vapors displaced from transport vehicles during loading and routes the collected vapors to the storage tank from which the liquid being loaded originated or compresses the vapors for feeding into a chemical manufacturing process unit.

Vapor collection system means any equipment located at the source (*i.e.*, at the OLD operation) that is not open to

the atmosphere; that is composed of piping, connections, and, if necessary, flow-inducing devices; and that is used for containing and conveying vapors displaced during the loading of transport vehicles to a control device or for vapor balancing. This does not include any of the vapor collection equipment that is installed on the transport vehicle.

Vapor-tight transport vehicle means a transport vehicle that has been demonstrated to be vapor-tight. To be considered vapor-tight, a transport vehicle equipped with vapor collection equipment must undergo a pressure change of no more than 250 pascals (1 inch of water) within 5 minutes after it is pressurized to 4,500 pascals (18 inches of water). This capability must be demonstrated annually using the procedures specified in EPA Method 27 of 40 CFR part 60, appendix A. For all other transport vehicles, vapor tightness is demonstrated by performing the U.S. DOT pressure test procedures for tank cars and cargo tanks.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the CAA.

Tables to Subpart EEEE of Part 63

You must use the organic HAP information listed in the following table to determine which of the liquids handled at your facility meet the HAP content criteria in the definition of Organic Liquid in § 63.2406.

TABLE 1 TO SUBPART EEEE OF PART 63.—ORGANIC HAZARDOUS AIR POLLUTANTS

Compound name	CAS No.[1]
2,4-D salts and esters	94–75–7
Acetaldehyde	75–07–0
Acetonitrile	75–05–8
Acetophenone	98–86–2
Acrolein	107–02–8
Acrylamide	79–06–1
Acrylic acid	79–10–7
Acrylonitrile	107–13–1
Allyl chloride	107–05–1
Aniline	62–53–3
Benzene	71–43–2
Biphenyl	92–52–4
Butadiene (1,3-)	106–99–0
Carbon tetrachloride	56–23–5
Chloroacetic acid	79–11–8
Chlorobenzene	108–90–7
2-Chloro-1,3-butadiene (Chloroprene)	126–99–8
Chloroform	67–66–3
m-Cresol	108–39–4
o-Cresol	95–48–7
p-Cresol	106–44–5
Cresols/cresylic acid	1319–77–3
Cumene	98–82–8
Dibenzofurans	132–64–9
Dibutylphthalate	84–74–2
Dichloroethane (1,2-) (Ethylene dichloride) (EDC)	107–06–2
Dichloropropene (1,3-)	542–75–6
Diethanolamine	111–42–2
Diethyl aniline (N,N-)	121–69–7
Diethylene glycol monobutyl ether	112–34–5
Diethylene glycol monomethyl ether	111–77–3
Diethyl sulfate	64–67–5
Dimethyl formamide	68–12–2
Dimethylhydrazine (1,1-)	57–14–7
Dioxane (1,4-) (1,4-Diethyleneoxide)	123–91–1
Epichlorohydrin (1-Chloro-2,3-epoxypropane)	106–89–8
Epoxybutane (1,2-)	106–88–7
Ethyl acrylate	140–88–5
Ethylbenzene	100–41–4
Ethyl chloride (Chloroethane)	75–00–3
Ethylene dibromide (Dibromomethane)	106–93–4
Ethylene glycol	107–21–1
Ethylene glycol dimethyl ether	110–71–4
Ethylene glycol monomethyl ether	109–86–4
Ethylene glycol monomethyl ether acetate	110–49–6
Ethylene glycol monophenyl ether	122–99–6
Ethylene oxide	75–21–8
Ethylidene dichloride (1,1-Dichloroethane)	75–34–3
Formaldehyde	50–00–0
Hexachloroethane	67–72–1
Hexane	110–54–3
Hydroquinone	123–31–9
Isophorone	78–59–1
Maleic anhydride	108–31–6
Methanol	67–56–1
Methyl chloride (Chloromethane)	74–87–3

TABLE 1 TO SUBPART EEEE OF PART 63.—ORGANIC HAZARDOUS AIR POLLUTANTS—Continued

Compound name	CAS No.[1]
Methylene chloride (Dichloromethane)	75–09–2
Methylenedianiline (4,4'-)	101–77–9
Methylene diphenyl diisocyanate	101–68–8
Methyl ethyl ketone (2-Butanone) (MEK)	78–93–3
Methyl hydrazine	60–34–4
Methyl isobutyl ketone (Hexone) (MIBK)	108–10–1
Methyl methacrylate	80–62–6
Methyl tert-butyl ether (MTBE)	1634–04–4
Naphthalene	91–20–3
Nitrobenzene	98–95–3
Phenol	108–9–52
Phthalic anhydride	85–44–9
Polycyclic organic matter	50–32–8
Propionaldehyde	123–38–6
Propylene dichloride (1,2-Dichloropropane)	78–87–5
Propylene oxide	75–56–9
Quinoline	91–22–5
Styrene	100–42–5
Styrene oxide	96–09–3
Tetrachloroethane (1,1,2,2-)	79–34–5
Tetrachloroethylene (Perchloroethylene)	127–18–4
Toluene	108–88–3
Toluene diisocyanate (2,4-)	584–84–9
o-Toluidine	95–53–4
Trichlorobenzene (1,2,4-)	120–82–1
Trichloroethane (1,1,1-) (Methyl chloroform)	71–55–6
Trichloroethane (1,1,2-) (Vinyl trichloride)	79–00–5
Trichloroethylene	79–01–6
Triethylamine	121–44–8
Trimethylpentane (2,2,4-)	540–84–1
Vinyl acetate	108–05–4
Vinyl chloride (Chloroethylene)	75–01–4
Vinylidene chloride (1,1-Dichloroethylene)	75–35–4
Xylene (m-)	108–38–3
Xylene (o-)	95–47–6
Xylene (p-)	106–42–3
Xylenes (isomers and mixtures)	1330–20–7

[1] CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.

As stated in § 63.2346, you must comply with the emission limits for the organic liquids distribution emission sources as follows:

TABLE 2 TO SUBPART EEEE OF PART 63.—EMISSION LIMITS

If you own or operate . . .	And if . . .	Then you must . . .
1. A storage tank at an existing affected source with a capacity ≥18.9 cubic meters (5,000 gallons) and <189.3 cubic meters (50,000 gallons).	a. The stored organic liquid is not crude oil and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥27.6 kilopascals (4.0 psia) and <76.6 kilopascals (11.1 psia).	i. Reduce emissions of organic HAP (or, upon approval, TOC) by 95 weight-percent or, as an option, to an exhaust concentration less than or equal to 20 parts per million by volume, on a dry basis corrected to 3% oxygen for combustion devices using supplemental combustion air, by venting emissions through a closed vent system to any combination of control devices meeting the applicable requirements of 40 CFR part 63, subpart SS; OR ii. Comply with the work practice standards specified in Table 4 to this subpart, item 1.a, for tanks storing the liquids described in that table.
	b. The stored organic liquid is crude oil.	i. See the requirement in item 1.a.i or 1.a.ii of this table.
2. A storage tank at an existing affected source with a capacity ≥189.3 cubic meters (50,000 gallons).	a. The stored organic liquid is not crude oil and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is <76.6 kilopascals (11.1 psia).	i. See the requirement in item 1.a.i or 1.a.ii of this table.
	b. The stored organic liquid is crude oil.	i. See the requirement in item 1.a.i or 1.a.ii of this table.

TABLE 2 TO SUBPART EEEE OF PART 63.—EMISSION LIMITS—Continued

If you own or operate . . .	And if . . .	Then you must . . .
3. A storage tank at a reconstructed or new affected source with a capacity ≥18.9 cubic meters (5,000 gallons) and <37.9 cubic meters (10,000 gallons).	a. The stored organic liquid is not crude oil and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥27.6 kilopascals (4.0 psia) and <76.6 kilopascals (11.1 psia).	i. See the requirement in item 1.a.i or 1.a.ii of this table.
	b. The stored organic liquid is crude oil.	i. See the requirement in item 1.a.i or 1.a.ii of this table.
4. A storage tank at a reconstructed or new affected source with a capacity ≥37.9 cubic meters (10,000 gallons) and <189.3 cubic meters (50,000 gallons).	a. The stored organic liquid is not crude oil and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥0.7 kilopascals (0.1 psia) and <76.6 kilopascals (11.1 psia).	i. See the requirement in item 1.a.i or 1.a.ii of this table.
	b. The stored organic liquid is crude oil.	i. See the requirement in item 1.a.i or 1.a.ii of this table.
5. A storage tank at a reconstructed or new affected source with a capacity ≥189.3 cubic meters (50,000 gallons).	a. The stored organic liquid is not crude oil and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is <76.6 kilopascals (11.1 psia).	i. See the requirement in item 1.a.i or 1.a.ii of this table.
	b. The stored organic liquid is crude oil.	i. See the requirement in item 1.a.i or 1.a.ii of this table.
6. A storage tank at an existing, reconstructed, or new affected source meeting the capacity criteria specified in Table 2, items 1 through 5 of this subpart.	a. The stored organic liquid is not crude oil and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥76.6 kilopascals (11.1 psia).	i. Reduce emissions of organic HAP (or, upon approval, TOC) by 95 weight-percent or, as an option, to an exhaust concentration less than or equal to 20 parts per million by volume, on a dry basis corrected to 3% oxygen for combustion devices using supplemental combustion air, by venting emissions through a closed vent system to any combination of control devices meeting the applicable requirements of 40 CFR part 63, subpart SS.
7. A transfer rack at an existing facility where the total actual annual facility-level organic liquid loading volume through transfer racks out of the facility is between 800,000 gallons and less than 10 million gallons.	a. The organic HAP content of the organic liquid through the transfer rack is at least 98% by weight.	i. Reduce emissions of organic HAP (or, upon approval, TOC) from the loading of organic liquids by venting emissions through a closed vent system to any combination of control devices achieving 98 weight-percent HAP reduction, or as an option to an exhaust concentration less than or equal to 20 parts per million by volume, on a dry basis corrected to 3% oxygen for combustion devices using supplemental combustion air; AND ii. Vent emissions through a closed vent system to any combination of control devices meeting the applicable requirements of 40 CFR part 63, subpart SS, AND iii. Comply with the work practice standards specified in Table 4 to this subpart, item 2.
8. A transfer rack at an existing facility where the total actual annual facility-level organic liquid loading volume through transfer racks out of the facility is ≥10 million gallons.		i. See the requirements in items 7.a.i through 7.a.iii of this table.
9. A transfer rack at a new facility where the total actual annual facility-level organic liquid loading volume through transfer racks out of the facility is less than 800,000 gallons.	a. The organic HAP content of the organic liquid through the transfer rack is at least 25% by weight and the transfer rack is used for transferring organic liquids into transport vehicles.	i. See the requirements in items 7.a.i through 7.a.iii of this table.
	b. The transfer rack is used for the filling of containers with a capacity equal to or greater than 55 gallons.	i. Comply with the provisions of §§ 63.924 through 63.927 of 40 CFR part 63, Subpart PP—National Emission Standards for Containers, Container Level 3 controls.
10. A transfer rack at a new facility where the total actual annual facility-level organic liquid loading volume through transfer racks out of the facility is equal to or greater than 800,000 gallons.	a. The transfer rack is used for transferring organic liquids into transport vehicles.	i. See the requirements in items 7.a.i through 7.a.iii of this table.
	b. The transfer rack is used for the filling of containers with a capacity equal to or greater than 55 gallons.	i. Comply with the provisions of §§ 63.924 through 63.927 of 40 CFR part 63, Subpart PP—National Emission Standards for Containers, Container Level 3 controls.

As stated in § 63.2346(e), you must comply with the operating limits for existing, reconstructed, or new affected sources as follows:

TABLE 3 TO SUBPART EEEE OF PART 63.—OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS

For each existing, each reconstructed, and each new affected source using . . .	You must . . .
1. A thermal oxidizer to comply with an emission limit in Table 2 to this subpart.	Maintain the daily average fire box or combustion zone temperature greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.
2. A catalytic oxidizer to comply with an emission limit in Table 2 to this subpart.	a. Replace the existing catalyst bed before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND b. Maintain the daily average temperature at the inlet of the catalyst bed greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND c. Maintain the daily average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.
3. An absorber to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the absorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Maintain the daily average scrubbing liquid temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND c. Maintain the difference between the specific gravities of the saturated and fresh scrubbing fluids greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.
4. A condenser to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds at the condenser exit less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Maintain the daily average condenser exit temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.
5. An adsorption system with adsorbent regeneration to comply with an emission limit in Table 2 to this subpart	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Maintain the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND c. Before the adsorption cycle commences, achieve and maintain the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND d. Achieve a pressure reduction during each adsorption bed regeneration cycle greater than or equal to the pressure reduction established during the design evaluation or performance test that demonstrated compliance with the emission limit.
6. An adsorption system without adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Replace the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND c. Maintain the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.
7. A flare to comply with an emission limit in Table 2 to this subpart.	a. Comply with the equipment and operating requirements in § 63.987(a); AND b. Conduct an initial flare compliance assessment in accordance with § 63.987(b); AND c. Install and operate monitoring equipment as specified in § 63.987(c).
8. Another type of control device to comply with an emission limit in Table 2 to this subpart.	Submit a monitoring plan as specified in §§ 63.995(c) and 63.2366(c), and monitor the control device in accordance with that plan.

As stated in § 63.2346, you may elect to comply with one of the work practice standards for existing, reconstructed, or new affected sources in the following table. If you elect to do so, . . .

TABLE 4 TO SUBPART EEEE OF PART 63.—WORK PRACTICE STANDARDS

For each . . .	You must . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5.	a. Comply with the requirements of 40 CFR part 63, subpart WW (control level 2), if you elect to meet 40 CFR part 63, subpart WW (control level 2), requirements as an alternative to the emission limit in Table 2 to this subpart, items 1 through 5; OR b. Comply with the requirements of § 63.984 in 40 CFR part 63, subpart SS, for routing emissions to a fuel gas system or back to the process.
2. Transfer rack at an existing, reconstructed, or new affected source meeting the facility-level organic liquid loading volume and transfer rack HAP content for organic liquids specified in Table 2 to this subpart, items 7 through 9.	a. If the option of a vapor balancing system is selected, install and operate a system that meets the requirements in Table 7 to this subpart, item 3.b; OR b. Comply with the requirements of § 63.984 in 40 CFR part 63, subpart SS, for routing emissions to a fuel gas system or back to the process.
3. Pump, valve, and sampling connection that operates in organic liquids service at least 300 hours per year at an existing, reconstructed, or new affected source.	Comply with the requirements for pumps, valves, and sampling connections in 40 CFR part 63, subpart TT (control level 1), subpart UU (control level 2), or subpart H.
4. Transport vehicles equipped with vapor collection equipment,	Follow the steps in 40 CFR 60.502(e) to ensure that organic liquids are loaded only into vapor-tight transport vehicles, and comply with the provisions in 40 CFR § 60.502(f), (g), (h), and (i), except substitute the term transport vehicle at each occurrence of tank truck or gasoline tank truck in those paragraphs.
5. Transport vehicles without vapor collection equipment,	Ensure that organic liquids are loaded only into transport vehicles that have a current certification in accordance with the U.S. DOT pressure test requirements in 49 CFR 180 (cargo tanks) or 49 CFR 173.31 (tank cars).

As stated in §§ 63.2354(a) and 63.2362, you must comply with the requirements for performance tests and design evaluations for existing, reconstructed, or new affected sources as follows:

TABLE 5 TO SUBPART EEEE OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS AND DESIGN EVALUATIONS

For . . .	You must conduct . . .	According to . . .	Using . . .	To determine . . .	According to the following requirements . . .
1. Each existing, each reconstructed, and each new affected source using a nonflare control device to comply with an emission limit in Table 2 to this subpart, items 1 through 9.	a. A performance test to determine the organic HAP (or, upon approval, TOC) control efficiency of each nonflare control device, OR the exhaust concentration of each combustion device; OR	i. § 63.985(b)(1)(ii), § 63.988(b), § 63.990(b), or § 63.995(b).	(1) EPA Method 1 or 1A in appendix A of 40 CFR part 60, as appropriate.	(A) Sampling port locations and the required number of traverse points.	(i) Sampling sites must be located at the inlet and outlet of each control device if complying with the control efficiency requirement or at the outlet of the control device if complying with the exhaust concentration requirement; AND (ii) The outlet sampling site must be located at each control device prior to any releases to the atmosphere.
			(2) EPA Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A of 40 CFR part 60, as appropriate.	(A) Stack gas velocity and volumetric flow rate.	See the requirements in items 1.a.i.(1)(A) (i) and (ii) of this table.
			(3) EPA Method 3 or 3B in appendix A of 40 CFR part 60, as appropriate.	(A) Concentration of CO_2 and O_2 and dry molecular weight of the stack gas.	See the requirements in items 1.a.i.(1)(A) (i) and (ii) of this table.
			(4) EPA Method 4 in appendix A of 40 CFR part 60.	(A) Moisture content of the stack gas.	See the requirements in items 1.a.i.(1)(A) (i) and (ii) of this table.

TABLE 5 TO SUBPART EEEE OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS AND DESIGN EVALUATIONS—Continued

For . . .	You must conduct . . .	According to . . .	Using . . .	To determine . . .	According to the following requirements . . .
			(5) EPA Method 18, 25, or 25A in appendix A of 40 CFR part 60, as appropriate, or EPA Method 316 in appendix A of 40 CFR part 63 for measuring formaldehyde.	(A) Total organic HAP (or, upon approval, TOC), or formaldehyde emissions.	(i) The organic HAP used for the calibration gas for EPA Method 25A must be the single organic HAP representing the largest percent by volume of emissions; AND (ii) During the performance test, you must establish the operating parameter limits within which total organic HAP (or, upon approval, TOC) emissions are reduced by the required weight-percent or, as an option for nonflare combustion devices, to 20 ppmv exhaust concentration.
	b. A design evaluation (for nonflare control devices) to determine the organic HAP (or, upon approval, TOC) control efficiency of each nonflare control device, or the exhaust concentration of each combustion control device.	§ 63.985(b)(1)(i).			During a design evaluation, you must establish the operating parameter limits within which total organic HAP, (or, upon approval, TOC) emissions are reduced by at least 95 weight-percent or as an option to 20 ppmv exhaust concentration.
2. Each transport vehicle that you own or operate that is equipped with vapor collection equipment and loads organic liquids at an affected transfer rack at an existing, reconstructed, or new affected source.	A performance test to determine the vapor tightness of the tank and then repair as needed until it passes the test.		EPA Method 27 in appendix A of 40 CFR part 60.	vapor tightness.	The pressure change in the tank must be no more than 250 pascals (1 inch of water) in 5 minutes after it is pressurized to 4,500 pascals (18 inches of water).

As stated in §§ 63.2370(a) and 63.2382(b), you must show initial compliance with the emission limits for existing, reconstructed, or new affected sources as follows:

TABLE 6 TO SUBPART EEEE OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS

For each . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting either set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6	Reduce total organic HAP (or, upon approval, TOC) emissions by at least 95 weight-percent, or as an option for combustion devices to an exhaust concentration of ≤20 ppmv.	Total organic HAP (or, upon approval, TOC) emissions, based on the results of the performance testing or design evaluation specified in Table 5 to this subpart, item 1.a or 1.b, respectively, are reduced by at least 95 weight-percent or as an option to an exhaust concentration ≤20 ppmv.
2. Transfer rack at an existing, reconstructed, or new affected source meeting the facility-level organic liquid loading volume and transfer rack HAP content for organic liquids criteria specified in Table 2 to this subpart, items 7 through 9.	Reduce total organic HAP (or, upon approval, TOC) emissions by at least 98 weight-percent, or as an option for combustion devices to an exhaust concentration of ≤20 ppmv.	Total organic HAP (or, upon approval, TOC) emissions, based on the results of the performance testing or design evaluation specified in Table 5 to this subpart, item 1.a or 1.b, respectively, are reduced by at least 98 weight-percent or as an option for combustion devices to an exhaust concentration of ≤20 ppmv.

TABLE 7 TO SUBPART EEEE OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS

For each . . .	If you . . .	You have demonstrated initial compliance if . . .
1. Storage tank at an existing affected source meeting either set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 or 2.	a. Install a floating roof or equivalent control that meets the requirements in Table 4 to this subpart, item 1.a.	i. After emptying and degassing, you visually inspect each internal floating roof before the refilling of the storage tank and perform seal gap inspections of the primary and secondary rim seals of each external floating roof within 90 days after the refilling of the storage tank.
	b. Route emissions to a fuel gas system or back to the process.	i. You meet the requirements in §63.984(b) and submit the statement of connection required by §63.984(c).
2. Storage tank at a reconstructed or new affected source meeting any set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 3 through 5.	a. Install a floating roof or equivalent control that meets the requirements in Table 4 to this subpart, item 1.a.	i. You visually inspect each internal floating roof before the initial filling of the storage tank, and perform seal gap inspections of the primary and secondary rim seals of each external floating roof within 90 days after the initial filling of the storage tank.
	b. Route emissions to a fuel gas system or back to the process.	i. See item 1.b.i of this table.
3. Transfer rack at an existing, reconstructed, or new affected source that meets the facility-level organic liquid loading volume and transfer rack HAP content for organic liquids criteria specified in Table 2 to this subpart, items 7 through 9.	a. Load organic liquids only into transport vehicles having current vapor tightness certification as described in Table 4 to this subpart, item 4.a and item 5.a.	i. You comply with the provisions specified in Table 4 to this subpart, item 4.a and item 5.a, as applicable.
	b. Install and operate a vapor balancing system.	i. You design and operate the vapor balancing system to route organic HAP vapors displaced from loading of organic liquids into transport vehicles to the appropriate storage tank or process unit.
4. Equipment leak component, as defined in §63.2406, that operates in organic liquids service ≥ 300 hours per year at an existing, reconstructed, or new affected source.	a. Carry out a leak detection and repair program or equivalent control according to one of the subparts listed in Table 4 to this subpart, item 3.a.	i. You specify which one of the control programs listed in Table 4 to this subpart you have selected, OR ii. Provide written specifications for your equivalent control approach.

As stated in §§63.2378(a) and (b) and 63.2390(b), you must show continuous compliance with the emission limits for existing, reconstructed, or new affected sources according to the following table:

TABLE 8 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS

For each . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6.	a. Reduce total organic HAP (or, upon approval, TOC) emissions from the closed vent system and control device by 95 weight-percent or greater, or as an option to 20 ppmv or less of total organic HAP (or, upon approval, TOC) in the exhaust of combustion devices.	i. Performing CMS monitoring and collecting data according to §§63.2366, 63.2374, and 63.2378; AND ii. Maintaining the operating limits established during the design evaluation or performance test.
2. Transfer rack at an existing, reconstructed, or new affected source that meets the facility-level organic liquid loading volume and transfer rack HAP content for organic liquids criteria specified in Table 2, to this supbart items 7 through 9.	Reduce total organic HAP (or, upon approval, TOC) emissions from the closed vent system and control device by 98 weight-percent or greater, or as an option to 20 ppmv or less of organic HAP (or, upon approval, TOC) in the exhaust of combustion devices.	See the compliance demonstration in items 1.a.i and ii of this table.

As stated in §63.2378(a) and (b) and 63.2390(b), you must show continuous compliance with the operating limits for existing, reconstructed, or new affected sources according to the following table:

TABLE 9 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS

For each existing, reconstructed, and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
1. A thermal oxidizer to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average fire box or combustion zone, as applicable, temperature greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring and recording fire box or combustion zone, as applicable, temperature every 15 minutes and maintaining the daily average fire box temperature greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
2. A catalytic oxidizer to comply with an emission limit in Table 2 to this subpart.	a. Replace the existing catalyst bed before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Replacing the existing catalyst bed before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
	b. Maintain the daily average temperature at the inlet of the catalyst bed greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring and recording the temperature at the inlet of the catalyst bed at least every 15 minutes and maintaining the daily average temperature at the inlet of the catalyst bed greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
	c. Maintain the daily average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring and recording the temperature at the outlet of the catalyst bed every 15 minutes and maintaining the daily average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
3. An absorber to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the absorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR	Continuously monitoring the organic concentration in the absorber exhaust and maintaining the daily average concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit.
	b. Maintain the daily average scrubbing liquid temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND	Continuously monitoring the scrubbing liquid temperature and maintaining the daily average temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
	c. Maintain the difference between the specific gravities of the saturated and fresh scrubbing fluids greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.	Maintaining the difference between the specific gravities greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.

TABLE 9 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS—Continued

For each existing, reconstructed, and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
4. A condenser to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds at the exit of the condenser less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR	Continuously monitoring the organic concentration at the condenser exit and maintaining the daily average concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit.
	b. Maintain the daily average condenser exit temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring and recording the temperature at the exit of the condenser at least every 15 minutes and maintaining the daily average temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
		ii. Keeping the applicable records required in § 63.998.
5. An adsorption system with adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring the daily average organic concentration in the adsorber exhaust and maintaining the concentration less than or equal to the reference concentration; AND
		ii. Keeping the applicable records required in § 63.998.
	b. Maintain the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND	Maintaining the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
	c. Before the adsorption cycle commences, achieve and maintain the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test AND	Maintaining the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit AND
	achieve greater than or equal to the pressure reduction during the adsorption bed regeneration cycle established during the design evaluation or performance test that demonstrated compliance with the emission limit.	Achieving greater than or equal to the pressure reduction during the regeneration cycle established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
		ii. Keeping the applicable records required in § 63.998.
6. An adsorption system without adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR Continuously monitoring the organic concentration in the adsorber exhaust and maintaining the concentration less than or equal to the reference concentration.	
	b. Replace the existing adsorbent in each segment of the bed before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND	i. Replacing the existing adsorbent in each segment of the bed before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
		ii. Keeping the applicable records required in § 63.998.

TABLE 9 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS—Continued

For each existing, reconstructed, and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
	c. Maintain the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Maintaining the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
7. A flare to comply with an emission limit in Table 2 to this subpart.	a. Maintain a pilot flame in the flare at all times that vapors may be vented to the flare (§ 63.11(b)(5)).	i. Continuously operating a device that detects the presence of the pilot flame; AND ii. Keeping the applicable records required in § 63.998.
	b. Maintain a flare flame at all times that vapors are being vented to the flare (§ 63.11(b)(5)).	i. Maintaining a flare flame at all times that vapors are being vented to the flare; AND ii. Keeping the applicable records required in § 63.998.
	c. Operate the flare with no visible emissions, except for up to 5 minutes in any 2 consecutive hours (§ 63.11(b)(4)).	i. Operating the flare with no visible emissions exceeding the amount allowed; AND ii. Keeping the applicable records required in § 63.998.
	d. Operate the flare with an exit velocity that is within the applicable limits in § 63.11(b)(6), (7), and (8).	i. Operating the flare within the applicable exit velocity limits; AND ii. Keeping the applicable records required in § 63.998.
	e. Operate the flare with a net heating value of the gas being combusted greater than the applicable minimum value in § 63.11(b)(6)(ii).	i. Operating the flare with the gas net heating value within the applicable limit; AND ii. Keeping the applicable records required in § 63.998.
8. Another type of control device to comply with an emission limit in Table 2 to this subpart.	Submit a monitoring plan as specified in §§ 63.995(c) and 63.2366(c), and monitor the control device in accordance with that plan.	Submitting a monitoring plan and monitoring the control device according to that plan.

As stated in §§ 63.2378(a) and (b) and 63.2386(c)(6), you must show continuous compliance with the work practice standards for existing, reconstructed, or new affected sources according to the following table:

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 . . .
1. Internal floating roof (IFR) storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5.	a. Install a floating roof designed and operated according to the applicable specifications in § 63.1063(a) and (b).	i. Visually inspecting the floating roof deck, deck fittings, and rim seals of each IFR: once per year, and each time the storage tank is completely emptied and degassed, or every 10 years, whichever occurs first (§ 63.1063(c)(1), (d), and (e)); AND ii. Keeping the tank records required in § 63.1065.
2. External floating roof (EFR) storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5.	a. See the standard in item 1.a of this table.	i. Visually inspecting the floating roof deck, deck fittings, and rim seals of each EFR each time the storage tank is completely emptied and degassed, or every 10 years, whichever occurs first (§ 63.1063(c)(2), (d), and (e)); AND ii. Performing seal gap measurements on the secondary seal of each EFR at least once every year, and on the primary seal of each EFR at least every 5 years (§ 63.1063(c)(2), (d), and (e)); AND iii. Keeping the tank records required in $63.1065.
3. IFR or EFR tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5.	a. Repair the conditions causing storage tank inspection failures (§ 63.1063(e)).	i. Repairing conditions causing inspection failures: before refilling the storage tank with organic liquid, or within 45 days (or up to 105 days with extensions) for a tank containing organic liquid; AND ii. Keeping the tank records required in § 63.1065(b).

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

For each . . .	For the following standard . . .	You must demonstrate continuous compliance by . . .
4. Transfer rack at an existing, reconstructed, or new affected source that meets the facility-level organic liquid loading volume and transfer rack HAP content for organic liquids criteria specified in Table 2 to this subpart, items 7 through 9.	a. Ensure that organic liquids are loaded into transport vehicles in accordance with the requirements in Table 4 to this subpart, items 2.a, 2.b, and 2.c.	i. Ensuring that organic liquids are loaded into transport vehicles in accordance with the requirements in Table 4 to this subpart, items 2.a, 2.b, and 2.c.
	b. Install and operate a vapor balancing system.	i. Monitoring each potential source of vapor leakage in the system quarterly during the loading of a transport vehicle 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 3. 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.
5. Equipment leak component, as defined in § 63.2406, that operates in organic liquids service at least 300 hours per year.	a. Comply with the requirements of 40 CFR part 63, subpart TT, UU, or H.	i. Carrying out a leak detection and repair program in accordance with one of the subparts listed in item 5.a of this table.
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.	a. Route emissions to a fuel gas system or back to the process.	i. Continuing to meet the requirements specified in § 63.984(b).

As stated in § 63.2386(a), (b), and (f), you must submit compliance reports and startup, shutdown, and malfunction reports according to the following table:

TABLE 11 TO SUBPART EEEE OF PART 63.—REQUIREMENTS FOR REPORTS

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
1. Compliance report, or Periodic Report.	a. The information specified in § 63.2386(c), (d), and (e). If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your SSM plan, the report must also include the information in § 63.10(d)(5)(i).	Semiannually, and it must be postmarked by January 31 or July 31, in accordance with § 63.2386(b).
	b. The information required by 40 CFR part 63, subpart TT, UU, or H, as applicable, for pumps, valves, and sampling connections.	See the submission requirement in item 1.a of this table.
	c. The information required by § 63.999(c).	See the submission requirement in item 1.a of this table.
	d. The information specified in § 63.1066(b) including: notification of inspection, inspection results, requests for alternate devices, and requests for extensions, as applicable.	See the submission requirement in item 1.a of this table.
2. Immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period, and you took an action that was not consistent with your SSM plan.	a. The information required in § 63.10(d)(5)(ii).	i. By FAX or telephone within 2 working days after starting actions inconsistent with the plan; AND ii. By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority (§ 63.10(d)(5)(ii)).

As stated in §§ 63.2382 and 63.2398, you must comply with the applicable General Provisions requirements as follows:

TABLE 12 TO SUBPART EEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.1	Applicability	Initial applicability determination; Applicability after standard established; Permit requirements; Extensions, Notifications.	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes.
§ 63.4	Prohibited Activities and Circumvention.	Prohibited activities; Circumvention, Severability	Yes.

TABLE 12 TO SUBPART EEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE—Continued

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.5	Construction/Reconstruction	Applicability; Applications; Approvals	Yes.
§ 63.6(a)	Compliance with Standards/ O&M Applicability.	GP apply unless compliance extension; GP apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved].		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Comply according to date in this subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3)–(4)	[Reserved].		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in this subpart or by equivalent time period (*e.g.*, 3 years).	Yes.
§ 63.6(d)	[Reserved].		
§ 63.6(e)(1)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; and operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(2)	[Reserved].		
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction (SSM) Plan.	Requirement for SSM plan; content of SSM plan; actions during SSM.	Yes; however, the 2-day reporting requirement in paragraph § 63.6(e)(3)(iv) does not apply.
§ 63.6(f)(1)	Compliance Except During SSM.	You must comply with emission standards at all times except during SSM.	Yes.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes.
§ 63.6(h)(1)	Compliance with Opacity/ Visible Emission (VE) Standards.	You must comply with opacity/VE standards at all times except during SSM.	No.
§ 63.6(h)(2)(i)	Determining Compliance with Opacity/VE Standards.	If standard does not state test method, use EPA Method 9 for opacity in appendix A of part 60 of this chapter and EPA Method 22 for VE in appendix A of part 60 of this chapter.	No.
§ 63.6(h)(2)(ii)	[Reserved].		
§ 63.6(h)(2)(iii)	Using Previous Tests to Demonstrate Compliance with Opacity/VE Standards.	Criteria for when previous opacity/VE testing can be used to show compliance with this subpart.	No.
§ 63.6(h)(3)	[Reserved].		
§ 63.6(h)(4)	Notification of Opacity/VE Observation Date.	Must notify Administrator of anticipated date of observation.	No.
§ 63.6(h)(5)(i), (iii)–(v)	Conducting Opacity/VE Observations.	Dates and schedule for conducting opacity/VE observations.	No.
§ 63.6(h)(5)(ii)	Opacity Test Duration and Averaging Times.	Must have at least 3 hours of observation with thirty 6-minute averages.	No.
§ 63.6(h)(6)	Records of Conditions During Opacity/VE Observations.	Must keep records available and allow Administrator to inspect.	No.
§ 63.6(h)(7)(i)	Report Continuous Opacity Monitoring System (COMS) Monitoring Data from Performance Test.	Must submit COMS data with other performance test data.	No.
§ 63.6(h)(7)(ii)	Using COMS Instead of EPA Method 9.	Can submit COMS data instead of EPA Method 9 results even if rule requires EPA Method 9 in appendix A of part 60 of this chapter, but must notify Administrator before performance test.	No.
§ 63.6(h)(7)(iii)	Averaging Time for COMS During Performance Test.	To determine compliance, must reduce COMS data to 6-minute averages.	No.

TABLE 12 TO SUBPART EEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE—Continued

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.6(h)(7)(iv)	COMS Requirements	Owner/operator must demonstrate that COMS performance evaluations are conducted according to § 63.8(e); COMS are properly maintained and operated according to § 63.8(c) and data quality as § 63.8(d).	No.
§ 63.6(h)(7)(v)	Determining Compliance with Opacity/VE Standards.	COMS is probable but not conclusive evidence of compliance with opacity standards, even if EPA Method 9 observation shows otherwise. Requirements for COMS to be probable evidence-proper maintenance, meeting Performance Specification 1 in appendix B of part 60 of this chapter, and data have not been altered.	No.
§ 63.6(h)(8)	Determining Compliance with Opacity/VE Standards.	Administrator will use all COMS, EPA Method 9 (in appendix A of part 60 of this chapter), and EPA Method 22 (in appendix A of part 60 of this chapter) results, as well as information about operation and maintenance to determine compliance.	Yes.
§ 63.6(h)(9)	Adjusted Opacity Standard	Procedures for Administrator to adjust an opacity standard.	Yes.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt any source from requirement to comply with this subpart.	Yes.
§ 63.7(a)(2)	Performance Test Dates	Dates for conducting initial performance testing; must conduct 180 days after compliance date.	Yes.
§ 63.7(a)(3)	Section 114 Authority	Adminsitrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test.	Must notify Administrator 60 days before the test	Yes.
§ 63.7(b)(2)	Notification of Rescheduling	If you have to reschedule performance test, must notify Administrator of rescheduled date as soon as practicable and without delay.	Yes.
§ 63.7(c)	Quality Assurance (QA)/ Test Plan.	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM.	Yes.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to this subpart and EPA test methods unless Administrator approves alternative.	Yes.
§ 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; however, for transfer racks per §§ 63.987(b)(3)(i)(A)–(B) and 63.997(e)(1)(v)(A)–(B) provide exceptions to the requirement for test runs to be at least 1 hour each.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an intermediate or major change, or alternative to a test method.	Yes.
§ 63.7(g)	Performance Test Data Analysis.	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the notification of compliance status; keep data for 5 years.	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring of Flares	Monitoring requirements for flares in § 63.11	Yes; however, monitoring requirements in § 63.987(c) also apply.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.

TABLE 12 TO SUBPART EEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE—Continued

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each affected source or after combined with another affected source before it is released to the atmosphere provided the monitoring is sufficient to demonstrate compliance with the standard; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)–(iii)	Routine and Predictable SSM.	Follow the SSM plan for routine repairs; keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan.	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation.	Must install to get representative emission or parameter measurements; must verify operational status before or at performance test.	Yes.
§ 63.8(c)(4)	CMS Requirements	CMS must be operating except during breakdown, out-of control, repair, maintenance, and high-level calibration drifts; COMS must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period; CEMS must have a minimum of one cycle of operation for each successive 15-minute period.	Yes; however, COMS are not applicable.
§ 63.8(c)(5)	COMS Minimum Procedures.	COMS minimum procedures	No.
§ 63.8(c)(6)–(8)	CMS Requirements	Zero and high level calibration check requirements. Out-of-control periods.	Yes.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control, including calibration, etc.; must keep quality control plan on record for 5 years; keep old versions for 5 years after revisions.	Yes.
§ 63.8(e)	CMS Performance Evaluation.	Notification, performance evaluation test plan, reports	Yes.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method.	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	Yes.
§ 63.8(g)	Data Reduction	COMS 6-minute averages calculated over at least 36 evenly spaced data points; CEMS 1 hour averages computed over at least 4 equally spaced data points; data that cannot be used in average.	Yes; however, COMS are not applicable.
§ 63.9(a)	Notification Requirements	Applicability and State delegation	Yes.
§ 63.9(b)(1)–(2), (4)–(5)	Initial Notifications	Submit notification within 120 days after effective date; notification of intent to construct/reconstruct, notification of commencement of construction/reconstruction, notification of startup; contents of each.	Yes.
§ 63.9(c)	Request for Compliance Extension.	Can request if cannot comply by date or if installed best available control technology or lowest achievable emission rate (BACT/LAER).	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Sources.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test.	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test.	Notify Administrator 30 days prior	No.
§ 63.9(g)	Additional Notifications When Using CMS.	Notification of performance evaluation; notification about use of COMS data; notification that exceeded criterion for relative accuracy alternative.	Yes; however, there are no opacity standards.
§ 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; however, there are no opacity standards.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information.	Must submit within 15 days after the change	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension; when to submit to Federal vs. State authority; procedures for owners of more than one source.	Yes.

TABLE 12 TO SUBPART EEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE—Continued

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.10(b)(1)	Recordkeeping/Reporting	General requirements; keep all records readily available; keep for 5 years.	Yes.
§ 63.10(b)(2)(i)–(iv)	Records Related to Startup, Shutdown, and Malfunction.	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.	Yes.
§ 63.10(b)(2)(vi)–(xi)	CMS Records	Malfunctions, inoperative, out-of-control periods	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test	Yes.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting initial notification and notification of compliance status.	Yes.
§ 63.10(b)(3)	Records	Applicability determinations	Yes.
§ 63.10(c)	Records	Additional records for CMS	Yes.
§ 63.10(d)(1)	General Reporting Requirements.	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	What to report and when	Yes.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	SSM Reports	Contents and submission	Yes.
§ 63.10(e)(1)–(2)	Additional CMS Reports	Must report results for each CEMS on a unit; written copy of CMS performance evaluation; 2–3 copies of COMS performance evaluation.	Yes; however, COMS are not applicable.
§ 63.10(e)(3)(i)–(iii)	Reports	Schedule for reporting excess emissions and parameter monitor exceedance (now defined as deviations).	Yes; however, note that the title of the report is the compliance report; deviations include excess emissions and parameter exceedances.
§ 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).	Yes.
§ 63.10(e)(3)(vi)–(viii)	Excess Emissions Report and Summary Report.	Requirements for reporting excess emissions for CMS (now called deviations); requires all of the information in §§ 63.10(c)(5)–(13) and 63.8(c)(7)–(8).	Yes.
§ 63.10(e)(4)	Reporting COMS Data	Must submit COMS data with performance test data	No.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.	Procedures for Administrator to waive	Yes.
§ 63.11(b)	Flares	Requirements for flares	Yes; § 63.987 requirements apply, and the section references § 63.11(b).
§ 63.12	Delegation	State authority to enforce standards	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference	Yes.
§ 63.15	Availability of Information	Public and confidential information	Yes.

[FR Doc. 04–2227 Filed 2–2–04; 8:45 am]
BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804 and 1852

Conformance with Federal Acquisition Circular 2001–16

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule revises the NASA FAR Supplement (NFS) by removing NASA specific coverage of Central Contractor Registration (CCR) which is no longer necessary as a result of CCR requirements established in the Federal Acquisition Regulation (FAR) by Federal Acquisition Circular (FAC) 2001–16.

EFFECTIVE DATE: February 3, 2004.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358–1645; e-mail: *Celeste.M.Dalton@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Item I of FAC 2001–16 revised the FAR to require registration of contractors in the Central Contractor Registration (CCR) database prior to award of any contract, basic agreement, basic ordering agreement, or blanket purchase agreement. As a result, NASA's specific coverage of CCR is no longer required. This final rule removes Subpart 1804.74—Central Contractor Registration and its associated clause at 1852.204–74.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS Parts 1804 and 1852 in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1804 and 1852

Government Procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR parts 1804 and 1852 are amended as follows:

■ 1. The authority citation for 48 CFR parts 1804 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

■ 2. Remove Subpart 1804.74.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Remove section 1852.204–74.

[FR Doc. 04–2072 Filed 2–2–04; 8:45 am]
BILLING CODE 7510–01–U