

Dated: April 4, 2008.

**P.M. Gugg,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector San Francisco.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

[EPA-HQ-OAR-2003-0138, FRL-8557-1]

**RIN 2060-AO99**

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

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on the national emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline), which EPA promulgated on February 3, 2004, and amended on July 28, 2006. In this action, EPA is clarifying combustion control device compliance requirements, certain storage tank control compliance dates, and vapor balance system monitoring requirements. In addition, EPA is correcting typographical errors found in the July 28, 2006, final rule amendments.

**DATES:** This direct final rule is effective on July 22, 2008, without further notice, unless EPA receives adverse comment by June 9, 2008. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule, or the relevant section of this rule, will not take effect.

**Public Hearing:** If anyone contacts EPA requesting to speak at a public hearing concerning this rulemaking by May 5, 2008, we will hold a public hearing on May 8, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2003-0138, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax: (202) 566-9744.*

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

- *Hand Delivery:* In person or by courier, deliver your comments to: Air

and Radiation Docket, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies. We request that a separate copy also be sent to the contact persons listed below (see **FOR FURTHER INFORMATION CONTACT**).

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2003-0138. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed either in the <http://www.regulations.gov> index or in the legacy docket, Docket No. A-98-13. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

[www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

**Public Hearing:** If you are interested in attending the public hearing, contact Ms. Janet Eck at (919) 541-7946 to verify that a hearing will be held. If a public hearing is held, it will be held at 10 a.m. at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby. If no one contacts EPA requesting to speak at a public hearing concerning this rule by May 5, 2008 this hearing will be cancelled without further notice.

**FOR FURTHER INFORMATION CONTACT:**  
**General and Technical Information:** **MR. STEPHEN SHEDD, OFFICE OF AIR QUALITY PLANNING AND STANDARDS, SECTOR POLICIES AND PROGRAMS DIVISION, COATINGS AND CHEMICALS GROUP (E143-01), EPA, RESEARCH TRIANGLE PARK, NC 27711, TELEPHONE: (919) 541-5397, FACSIMILE NUMBER: (919) 685-3195,**

**E-MAIL ADDRESS:** *shedd.steve@epa.gov.*

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

**SUPPLEMENTARY INFORMATION:**

EPA is publishing this rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comment because the changes being implemented clarify the application of the rule, make the rule consistent with other regulations with no loss in its effectiveness in achieving emission reductions, and correct typographical and format errors. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule for these revisions if adverse comments are received on this direct final rule. If we receive adverse comment on a distinct section of this rule, we will publish a timely withdrawal in the **Federal Register** informing the public that some or all of the amendments in this rule will not take effect. The provisions that are not withdrawn will become effective on the date set out above, notwithstanding adverse comment on

any other provision, unless we determine that it would not be appropriate to promulgate those provisions due to their being affected by the provisions for which we receive any adverse comments. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about

commenting on this rule, see the **ADDRESSES** section of this document.  
*Submitting CBI.*

Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific

information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Categories and entities potentially regulated by this action include:

| Category                 | NAICS* code   | Examples of regulated entities   |
|--------------------------|---|--|
| Industry .....           | 325211,<br>325192,<br>325188,<br>32411,<br>49311,<br>49319,<br>48611,<br>42269,<br>42271. | Operations at major sources that transfer organic liquids into or out of the plant site, including: liquid storage terminals, crude oil pipeline stations, petroleum refineries, chemical manufacturing facilities, and other manufacturing facilities with collocated OLD operations. |
| Federal Government ..... |   | Federal agency facilities that operate any of the types of entities listed under the "industry" category in this table.  |

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

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this final rule. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR part 63, subpart EEEE. If you have any questions regarding the applicability of this final rule to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13.

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

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

- I. Background
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- III. Rationale for These Final Rule Amendments
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  - B. Compliance Date and Initial Demonstration of Compliance for Storage Tanks Using Vapor Balancing or Routing

- Emissions Back to a Process or a Fuel Gas System
- C. Monitoring of Vapor Balancing System Components With the Potential To Leak
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  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
  - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  - K. Congressional Review Act

## I. Background

On February 3, 2004 (69 FR 5063), EPA promulgated the National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) (OLD NESHAP) (40 CFR part 63, subpart EEEE) pursuant to section 112 of the Clean Air Act (CAA). In response to several petitions for administrative reconsideration of the OLD NESHAP and several petitions for judicial review filed with the United

States Court of Appeals for the District of Columbia Circuit, and pursuant to a settlement agreement between some of the parties to the litigation, EPA proposed amendments to subpart EEEE on November 14, 2005 (70 CFR 69210). EPA received comments from four entities. On July 28, 2006 (71 FR 42898), EPA promulgated amendments to subpart EEEE based on consideration of the comments received on the proposed amendments.

## II. Summary of These Final Rule Amendments

Under these final rule amendments, the following changes or clarifications are being promulgated.

- Removing the requirement that owners and operators must obtain prior approval from the Administrator to use total organic compounds (TOC) as a surrogate for hazardous air pollutants (HAP) when demonstrating compliance with the percent emission reduction requirements for combustion devices.

- Clarifying that demonstration of initial compliance for storage tanks that elect to comply with either the vapor balancing work practice requirement or the routing of emissions to a fuel gas system or back to a process work practice requirement must be made by April 25, 2011, and not 10 years after February 3, 2004. We retain the requirement that compliance must occur prior to the specified date or the first degassing, whichever occurs earlier.

- Clarifying that the continuous compliance requirements for the

monitoring of a transfer rack system using vapor balancing is for all points in the system that may leak and that monitoring is not required in any quarter in which loading does not occur.

These final rule amendments also correct several format, grammatical, and typographical errors which occur in Table 2 (item 9.b.ii), Table 5 (item 1.b), Table 6 (item 1), Table 7 (item 1.a.i, item 1.c.i, and item 2.a.i), and § 63.2343(d).

### **III. Rationale for These Final Rule Amendments**

#### *A. Use of TOC as a Surrogate for HAP When Demonstrating Compliance With Percent Emission Reduction*

Section 63.2354(b) of the NESHAP specifies that you must comply with various requirements of 40 CFR part 63, subpart SS for performance testing provisions, including § 63.997(e). Additionally, § 63.2346(f) specifies that if you elect to demonstrate compliance with the percent reduction requirements using TOC rather than organic HAP, you must first demonstrate, subject to approval of the Administrator, that TOC is an appropriate surrogate for organic HAP. This requirement was intended to address circumstances under which a device such as a condenser could achieve substantively different results from one compound to another. Under these conditions, an inlet and outlet percent control determination for TOC might not be equivalent to a similar determination for each or total HAP. Since promulgation, we have received questions on whether the requirement to first demonstrate that TOC is an appropriate surrogate for organic HAP is necessary for a combustion device. When organic compounds are controlled by combustion processes, the organic compounds emitted at the outlet of the device are not the same as those entering the inlet to the device and are typically unknown. Further, unlike non-combustion devices, combustion devices achieve a greater uniformity of destruction across all organic HAP compounds. Therefore, we have determined that the requirement to first demonstrate that TOC is an appropriate surrogate for organic HAP is unwarranted for combustion devices and have modified paragraph (f) of 40 CFR 63.2346 to make this requirement applicable only to non-combustion devices.

#### *B. Compliance Date and Initial Demonstration of Compliance for Storage Tanks Using Vapor Balancing or Routing Emissions Back to a Process or a Fuel Gas System*

Section 63.2342 identifies when an owner or operator must comply with the requirements of subpart EEEE, while § 63.2358 identifies the dates by which an owner or operator must demonstrate initial compliance. As discussed below, there is an inconsistency in these two sections of the rule as they apply to storage tanks for which vapor balancing or routing of emissions to a fuel gas system or back to a process are used to comply with the rule.

Paragraph (b)(1) of § 63.2342 states that owners or operators of existing affected sources must be in compliance with the emission limitations, operating limits, and work practice standards for existing sources by February 5, 2007, except as specified in § 63.2342(b)(2). Paragraph (b)(2) states that “floating roof 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.”

With regards to demonstrating initial compliance, paragraph (c)(1) of § 63.2358 states that “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.” The work practice standards in Table 4 for storage tanks at existing facilities are:

- Comply with the requirements of 40 CFR part 63, subpart WW (control level 2), which addressed the use of floating roofs;
- Comply with the requirements of § 63.984 for routing emissions to a fuel gas system or back to a process; and
- Comply with the requirements of § 63.2346(a)(4) for vapor balancing emissions to the transport vehicle from which the storage tank is filled.

As stated in the July 28, 2006, **Federal Register** in response to a public comment (71 FR 42899), the technical basis for allowing demonstration of initial compliance up to 10 years after February 3, 2004, applies only to storage tanks with floating roofs and not to storage tanks with fixed roofs. EPA, in

both the February 3, 2004 rulemaking promulgating 40 CFR part 63, subpart EEEE, and in the July 28, 2006 rulemaking promulgating amendments to 40 CFR part 63, subpart EEEE, inadvertently failed to revise § 63.2358 to reflect its intent to apply the “up to 10 years” compliance provision to only the “floating roof” work practice standard.

As the current regulation stands, owners and operators seeking to comply with the work practice standards for storage tanks would have “up to 10 years” to demonstrate initial compliance if they elect to comply by routing the emissions to a fuel gas system or back to a process or by using a vapor balancing system. This was never EPA’s intent for these two types of work practice standards. EPA points out that these same types of work practice standards are allowed for transfer racks, and the rule is unambiguous that demonstration of initial compliance is required within 180 days after the compliance date of February 3, 2007.

To correct this oversight, EPA is clarifying that the “up to 10-year” demonstration of initial compliance date applies only when a floating roof is used to comply with 40 CFR part 63, subpart EEEE, and inserting the actual date “February 3, 2014” into the rule text. In addition, the intended compliance date has past (180 days after the compliance date of February 3, 2007) to demonstrate initial compliance if they elect to route storage tank emissions to a fuel system or back to a process or to use vapor balancing. Because facilities will need time to plan and install equipment and affected sources had up to 3 years to comply with the original rule, we are specifying the compliance date for routing storage tank emissions to a fuel gas system or back to a process or to use vapor balancing to be 3 years from this notice. However, we retain and still require compliance by “the next time the storage tank is emptied and degassed, but not later than” 3 years from this notice.

#### *C. Monitoring of Vapor Balancing System Components With the Potential To Leak*

Table 10 to 40 CFR part 63, subpart EEEE addresses continuous compliance requirements, in part, for vapor balancing systems when used for transfer racks and storage tanks. EPA has received a question concerning the relationship between the continuous compliance requirements for vapor balancing systems and those for equipment leak components.

For vapor balancing systems, there are two places in 40 CFR part 63, subpart EEEE that identify compliance requirements—Table 10 and § 63.2346(a)(4)(v). As found in item 4.b.i to Table 10, the continuous compliance requirement for a transfer rack using a vapor balancing system reads:

“Monitoring each potential source of vapor leakage in the system quarterly during the loading of a transport vehicle or the filling of a container 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 subpart EEEE, item 4. An instrument reading of 500 ppmv defines a leak. Repair of leaks is performed according to the repair requirements specified in your selected equipment leak standards.”

Paragraph (a)(4)(v) of § 63.2346 identifies leak detection and repair (LDAR) requirements for pressure relief devices used in vapor balancing systems. The current rule language is, at best, ambiguous as to the relationship of this paragraph and the language in Table 10.

For equipment leak components, which are defined in 40 CFR part 63, subpart EEEE as pumps, valves, and sampling connections, the owner or operator selects one of three 40 CFR part 63 subparts, as specified in item 4 of Table 4. These three subparts identify LDAR provisions that are to be applied to pumps, valves, and sampling connections.

To clarify the intended relationship between these various provisions, the phrase “each potential source of vapor leakage” is intended to apply to any and all equipment in the vapor balancing system that may leak, including, but not limited to pumps, valves, and sampling connections. For all such equipment, the owner or operator is to apply the applicable provisions found in the equipment leak standard selected by the owner or operator to comply with the equipment leak components. This could mean that an owner or operator may be applying LDAR requirements found in the selected 40 CFR part 63 subpart for components other than a pump, valve, or sampling connection. If the vapor balancing system has a pressure relief valve, however, the owner or operator would comply with the LDAR provisions for pressure relief valves found in § 63.2346(a)(4)(v). For equipment leak components (as defined in 40 CFR part 63, subpart EEEE) that are not part of a vapor balancing system, continuous compliance is demonstrated as specified in item 5 to Table 10.

To clarify these relationships, EPA is revising item 4.b.i in Table 10 or 40 CFR part 63, subpart EEEE to read as follows:

“Except for pressure relief devices, monitoring each potential source of vapor leakage in the system, including, but not limited to pumps, valves, and sampling connections, quarterly during the loading of a transport vehicle or the filling of a container using the methods and procedures described in the rule requirements selected for the work practice standard for equipment leak components as specified in Table 4 to this subpart, item 4. An instrument reading of 500 ppmv defines a leak. Repair of leaks is performed according to the repair requirements specified in your selected equipment leak standards. For pressure relief devices, comply with § 63.2346(a)(4)(v). If no loading of a transport vehicle or filling of a container occurs during a quarter, then monitoring of the vapor balancing system is not required.”

Finally, item 6.b.i to Table 10 of 40 CFR part 63, subpart EEEE addresses the same vapor balancing system monitoring requirements, but for storage tanks. EPA is making the same changes as in item 4.b.i to Table 10. EPA is also making one additional change. As the rule currently reads, item 6.b.i refers to “monitoring each potential source of vapor leakage in the system quarterly during the loading of a transport vehicle or the filling of a container.” This item should be referring to the loading of a storage tank and not the loading of a transport vehicle or the filling or a container. Therefore, EPA is also correcting this incorrect reference.

#### *D. Format, Grammatical, and Typographical Errors*

1. In Table 2, item 9.b.ii or 40 CFR part 63, subpart EEEE should have been placed on a separate line rather than on the same line as the end of item 9.b.i. For clarity, item 9.b.ii has been reformatted so that it starts on its own line.

2. In Table 5 of 40 CFR part 63, subpart EEEE, the first two columns associated with item b. were incorrectly placed under the headings “According to \* \* \*” and “Using \* \* \*”. They should have been placed under the headings, respectively, “You must conduct \* \* \*” and “According to \* \* \*”.

3. In Table 6, item 1 of 40 CFR part 63, subpart EEEE, the first column cross-references items 1 through 6 in Table 2. The sentence, therefore, should refer to “meeting *any* set of tank capacity and liquid organic HAP vapor pressure criteria” rather to “meeting *either* set.”

4. In Table 6 of 40 CFR part 63, subpart EEEE, the second column of item 1 states, in part, “or as an option for combustion devices to an exhaust concentration of ≤20 ppmv.” The word “nonflare” was inadvertently omitted from this sentence. This sentence is revised to read, in part, “or as an option for nonflare combustion devices to an exhaust concentration of ≤20 ppmv.” This makes the sentence consistent with the other items in Table 6.

5. In Table 7 of 40 CFR part 63, subpart EEEE, three typographical errors are being corrected from the July 28, 2006, FR notice. In item 1.a.i, “perform” was misspelled as “perofrm.”. In item 1.c.i, the cross-reference was incorrectly identified as § 3.2346(a)(4); the correct cross-reference is § 63.2346(a)(4). In item 2.a.i, “primary” was misspelled as “priamry.”

6. Section 63.2343(d) currently reads: “If one or more of the events identified in paragraphs (d)(1) through (4) of this section occur since the filing of the Notification of Compliance Status or the last Compliance report, you must submit a subsequent Compliance report as specified in paragraphs (b)(3) and (c)(3) of this section.” The cross-references to paragraphs (b)(3) and (c)(3) are incorrect. The correct cross-references are paragraphs (b)(2) and (c)(2). The direct final rule makes this correction.

#### **IV. Statutory and Executive Order Reviews**

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

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

##### *B. Paperwork Reduction Act*

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

##### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare

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

For purposes of assessing the impacts of today's final rule amendments on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The final rule amendments will not impose any new requirements on small entities, and, therefore, will have no significant adverse economic impact on subject small entities. The Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish

any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that these final rule amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. These final rule amendments clarify certain provisions and correct typographical errors in the rule text for a rule EPA determined not to include a Federal mandate that may result in an estimated cost of \$100 million or more (69 FR 5061, February 3, 2004). These clarifications do not change the level or cost of the standard, except, in some cases, reduce the cost of testing for combustion control devices at some facilities using that option. Thus, these final rule amendments are not subject to the requirements of section 202 and 205 of the UMRA. EPA has determined that these final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments. These final rule amendments clarify certain provisions and correct typographical errors in the rule text, thus, should not affect small governments.

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

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

These final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. They provide clarification and correct typographical errors. These changes do not modify existing or create new responsibilities among EPA Regional Offices, States, or local enforcement agencies. Thus, Executive Order 13132 does not apply to these final rule amendments.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." These final rule amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to these final rule amendments.

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

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

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

These final rule amendments are not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

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

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note)

directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

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

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

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

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing the final rule amendments and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). These final rule amendments will be effective on July 22, 2008.

**List of Subjects in 40 CFR Part 63**

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

Dated: April 16, 2008.

**Stephen L. Johnson,**  
*Administrator.*

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

**PART 63—[AMENDED]**

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

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

**Subpart EEEE—[Amended]**

- 2. Section 63.2343 is amended by revising paragraph (d) introductory text to read as follows:

**§ 63.2343 What are my requirements for emission sources not requiring control?**

- \* \* \* \* \*
- (d) If one or more of the events identified in paragraphs (d)(1) through (4) of this section occur since the filing of the Notification of Compliance Status or the last Compliance report, you must submit a subsequent Compliance report as specified in paragraphs (b)(2) and (c)(2) of this section.
- \* \* \* \* \*

- 3. Section 63.2346 is amended by revising paragraph (f) to read as follows:

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

\* \* \* \* \*

(f) For noncombustion devices, 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 the 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.

\* \* \* \* \*

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

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

\* \* \* \* \*

(b)(1) For storage tanks and transfer racks at existing affected sources complying with the emission limitations listed in Table 2 to this subpart or with the work practice standards in items 1.b or 1.c in Table 4 to this subpart, you must demonstrate initial compliance with the emission limitations the next time the storage tank is emptied and degassed, but not later than April 25, 2011.

\* \* \* \* \*

(c)(1) For storage tanks at existing affected sources complying with the work practice standard in item 1.a in Table 4 to this subpart, you must conduct your initial compliance demonstration the next time the storage tank is emptied and degassed, but not later than February 3, 2014.

\* \* \* \* \*

- 5. Table 2 to Subpart EEEE of Part 63 is amended by revising entry 9. to read as follows:

\* \* \* \* \*

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

| If you own or operate . . .  | And if . . .   | Then you must . . .  |
|--|--|--|
| *  | *  | *  |
| 9. A transfer rack at a new facility where the total actual annual facility-level organic liquid loading volume through transfer racks is less than 800,000 gallons. | a. The total Table 1 organic HAP content of the organic liquid being loaded through one or more of the transfer rack's arms is at least 25 percent by weight and is being loaded into a transport vehicle. | i. See the requirements in items 7.a.i and 7.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 . . .   |
|-----------------------------|--|---|
|                             | b. One or more of the transfer rack's arms is filling a container with a capacity equal to or greater than 55 gallons. | i. For all such loading arms at the rack during the loading of organic liquids, 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; OR<br>ii. During the loading of organic liquids, comply with the work practice standards specified in item 3.a of Table 4 to this subpart. |
| *                           | *  | *   |
| *                           | *  | *   |
| *                           | *  | *   |

■ 6. Table 5 to Subpart EEEE of Part 63 is amended by revising entry 1. to read 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 10. | 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-1 of 40 CFR part 60, as appropriate.<br><br>(2) EPA Method 2, 2A, 2C, 2D, or 2F in appendix A-1 of 40 CFR part 60, or EPA Method 2G in appendix A-2 of 40 CFR part 60, as appropriate.<br><br>(3) EPA Method 3 or 3B in appendix A-2 of 40 CFR part 60, as appropriate.<br><br>(4) EPA Method 4 in appendix A-3 of 40 CFR part 60. | (A) Sampling port locations and the required number of traverse points.<br><br>(A) Stack gas velocity and volumetric flow rate.<br><br>(A) Concentration of CO <sub>2</sub> and O <sub>2</sub> and dry molecular weight of the stack gas.<br><br>(A) Moisture content of the stack gas. | (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<br><br>(ii) the outlet sampling site must be located at each control device prior to any releases to the atmosphere.<br><br>See the requirements in items 1.a.i.(1)(A)(i) and (ii) of this table.<br><br>See the requirements in items 1.a.i.(1)(A)(i) and (ii) of this table.<br><br>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 in appendix A–6 of 40 CFR part 60, or EPA Method 25 or 25A in appendix A–7 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 in appendix A–7 of 40 CFR part 60 must be the single organic HAP representing the largest percent by volume of emissions; AND<br>(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 for storage tanks or 98 weight-percent for transfer racks, or, as an option for nonflare combustion devices, to 20 ppmv exhaust concentration.   |

■ 7. Table 6 to Subpart EEEE of Part 63 is amended by revising entry 1. to read 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 any 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 nonflare 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 for nonflare combustion devices to an exhaust concentration ≤20 ppmv. |
| *  | *   | *   |

- 8. Table 7 to Subpart EEEE of Part 63 is amended by revising entries 1. and 2. to read as follows:

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.<br><br>b. Route emissions to a fuel gas system or back to a process.<br><br>c. Install and, during the filling of the storage tank with organic liquids, operate a vapor balancing system. | 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.<br><br>i. You meet the requirements in § 63.984(b) and submit the statement of connection required by § 63.984(c).<br><br>i. You meet the requirements in § 63.2346(a)(4).<br><br>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.<br><br>i. See item 1.b.i of this table.<br><br>i. See item 1.c.i of this table. |
| 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.<br><br>b. Route emissions to a fuel gas system or back to a process.<br><br>c. Install and, during the filling of the storage tank with organic liquids, operate a vapor balancing system. |  |

- 9. Table 10 to Subpart EEEE of Part 63 is amended by revising entries 4. and 6. to read as follows:

\* \* \* \* \*

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

| For each . . .   | For the following standard . . .   | You must demonstrate continuous compliance by . . .  |
|--|--|--|
| 4. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source. | a. Ensure that organic liquids are loaded into transport vehicles in accordance with the requirements in Table 4 to this subpart, items 5 or 6, as applicable. | i. Ensuring that organic liquids are loaded into transport vehicles in accordance with the requirements in Table 4 to this subpart, items 5 or 6, as applicable. |

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 . . .  |
|---|--|--|
|   | b. Install and, during the loading of organic liquids, operate a vapor balancing system.   | i. Except for pressure relief devices, monitoring each potential source of vapor leakage in the system, including, but not limited to pumps, valves, and sampling connections, quarterly during the loading of a transport vehicle or the filling of a container using the methods and procedures described in the rule requirements selected for the work practice standard for equipment leak components as specified in Table 4 to this subpart, item 4. An instrument reading of 500 ppmv defines a leak. Repair of leaks is performed according to the repair requirements specified in your selected equipment leak standards. For pressure relief devices, comply with § 63.2346(a)(4)(v). If no loading of a transport vehicle or filling of a container occurs during a quarter, then monitoring of the vapor balancing system is not required.<br>i. Continuing to meet the requirements specified in § 63.984(b).   |
| *   | *  | *  |
| 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. | c. Route emissions to a fuel gas system or back to a process.<br><br>a. Route emissions to a fuel gas system or back to the process.<br><br>b. Install and, during the filling of the storage tank with organic liquids, operate a vapor balancing system. | a. Route emissions to a fuel gas system or back to the process.<br><br>i. Continuing to meet the requirements specified in § 63.984(b).<br><br>i. Except for pressure relief devices, monitoring each potential source of vapor leakage in the system, including, but not limited to pumps, valves, and sampling connections, quarterly during the loading of a storage tank using the methods and procedures described in the rule requirements selected for the work practice standard for equipment leak components as specified in Table 4 to this subpart, item 4. An instrument reading of 500 ppmv defines a leak. Repair of leaks is performed according to the repair requirements specified in your selected equipment leak standards. For pressure relief devices, comply with § 63.2346(a)(4)(v). If no loading of a transport vehicle or filling of a container occurs during a quarter, then monitoring of the vapor balancing system is not required. |

[FR Doc. E8-8810 Filed 4-22-08; 8:45 am]

**BILLING CODE 6560-50-P****ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180****[EPA-HQ-OPP-2007-0872; FRL-8360-4]****Cyazofamid; Pesticide Tolerances****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.**SUMMARY:** This regulation establishes a tolerance for combined residues of cyazofamid and its metabolite CCIM in or on carrot, roots. Interregional

Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective April 23, 2008. Objections and requests for hearings must be received on or before June 23, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0872. To access the electronic docket, go to <http://www.regulations.gov>, select “Advanced Search,” then “Docket Search.” Insert

the docket ID number where indicated and select the “Submit” button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP