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

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[EPA–HQ–OAR–2006–0406, FRL–9253–7]

RIN 2060–AP16

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: This action promulgates amendments to the National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities, which EPA promulgated on January 10, 2008, and amended on March 7, 2008. In this action, EPA is finalizing amendments and clarifications to certain definitions and applicability provisions of the final rules in response to some of the issues raised in the petitions for reconsideration. In addition, several other compliance-related questions posed by various individual stakeholders and State and local agency representatives are addressed in this action. We are also denying reconsideration on one issue raised in a petition for reconsideration received by the Agency on the final rules.

DATES: These final rules are effective on January 24, 2011. The incorporation by reference of certain publications listed in the rule is approved by the Director of the **Federal Register** as of January 24, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0406. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, 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. The Air and Radiation Docket and Information Center's Web site is: *http://wwwlepa.gov/oar/docket.html.* The electronic mail (e-mail) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the Fax number is (202) 566–9744.

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

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

* North American Industry Classification System.

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

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

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I. General Information

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

In addition to being available in the docket, an electronic copy of these final amendments will also be available on the Worldwide Web (WWW) through the EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this action 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 at EPA's Web site provides information

and technology exchange in various areas of air pollution control.

B. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of these final rules is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by March 25, 2011. Under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

II. Background Information

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

A. Petitions for Reconsideration and Judicial Review

1. The Alliance Petition

The Alliance's petition for reconsideration identified three issues for reconsideration (*see* the preamble to the proposed rule for a discussion of these issues (74 FR 66471)). The first two issues were regarding the definition of "Bulk Gasoline Plant." We granted reconsideration of these two issues in the proposed rule (74 FR 66471). We are taking final action with regard to those issues in today's notice.

The Alliance raised a third issue in its petition for reconsideration, which questioned the inclusion of gasoline storage tanks used to fuel emergency generators and fire pumps as being subject to 40 CFR part 63, subpart BBBBBB or 40 CFR part 63, subpart CCCCCC. The Alliance stated in both its petition for reconsideration and in its comments submitted on the proposed amendments that gasoline storage tanks that fuel fire pumps and emergency generators should not be covered by subparts BBBBBB or CCCCCC. They stated that many of these pieces of equipment are fueled by gasoline storage tanks holding less than 250 gallons. The Alliance acknowledged that other gasoline storage tanks fueling this equipment are above this 250-gallon level, but it asserts that the gasoline storage tanks still have very low monthly throughput. The Alliance also stated that most emergency generator and fire pump gasoline storage tanks will have zero gallons per day throughput and are likely to be filled only once or twice per year after routine maintenance and testing. The Alliance further stated that regulating this equipment under subparts BBBBBB or CCCCCC could potentially cover thousands of emergency generator and fire pump gasoline storage tanks nationwide at various types of facilities that may not otherwise have air permitting requirements. Thus, in its petition for reconsideration, the Alliance suggested that EPA entirely exempt these gasoline storage tanks from regulation under either subpart BBBBBB or subpart CCCCCC.

After considering this matter, we deny reconsideration of the third issue in the Alliance's petition for reconsideration. Under CAA section 307(b)(7)(B), the Administrator must initiate reconsideration proceedings with respect to provisions that are of central relevance to the rule at issue if the petitioner shows that it was impracticable to raise an objection to a rule within the public comment period or that the grounds for the objection arose after the public comment period but within the period for filing petitions for judicial review. The Alliance attempted neither demonstration in its petition for reconsideration; instead, it merely asserted that "neither the proposal nor the final rule provided any notice" that these tanks could be subject to the rules (*see* Docket No. EPA–HQ–OAR–2006–0406, item 0152.1). Such assertion is not sufficient under CAA section 307(d)(7)(B) for requiring EPA to reconsider this issue. The provision that the Alliance alleges provoked this third issue, the originally promulgated definition of "bulk gasoline plant," was included in the original proposal published on November 9, 2006 (*see* 40 CFR 63.11100, 73 FR 1916, 1940). The Alliance had ample time during the 60-day public comment period to raise its concern that this definition of "bulk gasoline plant" "could be read to cover gasoline storage tanks that fuel emergency generators and fire pumps." (*See* Docket No. EPA–HQ–OAR–2006–0406, item 0152.1.) However, the Alliance did not raise this concern in its January 8, 2007 comments that it submitted on that proposal (*see* Docket No. EPA–HQ–OAR–2006–0406, item 0094.1) and has not provided any other explanation in its petition for reconsideration regarding why doing so was "impracticable." Additionally, the Alliance has not provided any argument regarding why its concern "arose after the public comment period but within the period for filing petitions for judicial review." Finally, the Alliance has offered no explanation as to why its particular issue with this particular provision is of "central relevance to the rule." Since the Alliance has not demonstrated how its request meets the requirements of CAA section 307(d)(7)(B), EPA is denying reconsideration of this issue in its petition for reconsideration.[1]

Furthermore, we disagree with the Alliance that gasoline storage tanks that

[1] While EPA did grant reconsideration on the Alliance's other issues in its petition for reconsideration which also involved the definition of "bulk gasoline plant", EPA did so for completely independent reasons unrelated to this third issue. *See* 74 FR 66470, 66471.

fuel emergency generators and fire pumps should not be regulated as part of the Gasoline Distribution area source category. This alleged issue is essentially just a request from the Alliance that EPA exempt from regulation gasoline storage tanks fueling emergency generators and fuel pumps. However, as we stated in the preamble to the proposed amendments (74 FR 66474), the CAA requires that EPA set Federal emission standards under CAA section 112(d) for source categories listed under CAA section 112(c)(3). The list of source categories was developed based on an emission inventory. The emission inventory for GDF is based on the total volume of gasoline consumed nationwide (including domestic production, plus imports and stock changes from the previous year, minus exports), the emission factor for gasoline loading losses, and the amount of submerged and splash loading and vapor balancing in the industry. Total gasoline consumption is the total used nationwide, so the emission inventory includes emissions estimates for all end users of gasoline, which includes gasoline used in these emergency generators and fire pumps. *See* 74 FR 66470, 66474. Additionally, the types of gasoline storage tanks identified by the Alliance are essentially the same as those found at other GDF, except that the average or typical size and gasoline throughput tend to be smaller than for the gasoline storage tanks at a more typical GDF that refuel primarily motor vehicles. We considered both the size and throughput of gasoline storage tanks at GDF in the selection of the control requirements in the current rule, so the types of controls, and the control levels required, are appropriate for even the smallest gasoline storage tanks.

2. The API Petition

The API Petition for Reconsideration identified four issues regarding clarifications that they suggested should be made to the final rules. We granted reconsideration of all four issues and addressed them in the preamble and the rule text revisions that were included in the proposed amendments. Additional discussion of the final amendments to the rules as a result of our reconsideration of the issues in the API petition, and our rationale for the amendments, is presented in section IV of this preamble.

B. Other Stakeholder Issues

In addition to the petitions discussed above, the Alliance, API, and several other stakeholders (affected facilities and State and local government agencies) contacted EPA with questions or issues related to the implementation of the final rules. We are finalizing the proposed changes to the rules resulting from these issues as described in section IV of this preamble.

The amendments being promulgated address both the petitions for reconsideration and the additional questions from other stakeholders. Our responses to the stakeholder questions do not substantially change the level of the standards but clarify some of the requirements. These clarifications do not change the impacts of the rules. Thus, the estimates of environmental, cost, and information collection impacts are not substantially different than estimated at promulgation of these rules, and no changes have been made to the estimates presented in the final rules.

III. Summary of Changes Since Proposal

This section presents a brief summary of the significant changes that have been made in the final rule as a result of our consideration of the public comments on the proposed rule. Each of the items listed below is discussed in detail in section IV of this preamble.

1. In the final rule, we have added a provision to paragraph (g) in 40 CFR 63.11081 clarifying that "An enforceable State, local, or Tribal permit limitation on throughput, established prior to the applicable compliance date, may be used in lieu of the 20,000 gallons per day design capacity throughput threshold, to determine whether the facility is a bulk gasoline plant or a bulk terminal."

2. In the final rule, we have clarified in 40 CFR 63.11092(b)(1)(iii)(B)(*1*), that the purpose of a heat sensing device used to monitor a thermal oxidizer is to "send," rather than to "display" (as stated in the proposal), either a positive or a negative parameter value as a signal to indicate the presence or absence, respectively, of the pilot flame. We also clarified that the analyzer for conducting monthly measurements of the carbon outlet volatile organic compound (VOC) concentration (from a carbon bed) can be permanently mounted (*i.e.,* it need not be portable as was previously stated in the rule at 40 CFR 63.11092(b)(1)(i)(B)(1)(iii)).

3. We have added text to 40 CFR 63.11092(f) specifying that facilities that are subject to subpart XX of 40 CFR part 60 may elect, after notification to the subpart XX delegated authority, to comply with the annual certification test for gasoline cargo tanks as specified in paragraphs (f)(1) and (f)(2) of this section.

4. We have revised the proposed amendments to entry 2 of Table 1 to 40 CFR part 63, subpart BBBBBB, to correctly specify that the secondary seal requirements from 40 CFR part 60, subpart Kb (40 CFR 60.112b(a)(1)(ii)(B) and (a)(1)(iv) through (ix)) or 40 CFR part 63, subpart WW (40 CFR 63.1063(a)(1)(i)(C) and (D)) do not apply to internal floating roof tanks that are subject only to subpart BBBBBB.

5. In 40 CFR part 63, subpart BBBBBB, the following revisions have been made to the definitions in 40 CFR 63.11100:

- We have revised the proposed definition of "gasoline storage tank" to add an item (3) that specifically excludes sumps, including butane blending sample recovery tanks (SRT), and oil/water separators, from the definition of gasoline storage tank.
- We have also added a fourth item in the definition of "gasoline storage tank" excluding "tanks or vessels permanently attached to mobile sources such as trucks, railcars, barges, or ships."
- We have amended the definition of "pipeline pumping station" to read: "a facility along a pipeline containing pumps to maintain the desired pressure and flow of product through the pipeline and not containing gasoline storage tanks other than surge control tanks."

6. We have added a new paragraph (f) to 40 CFR 63.11113 of 40 CFR part 63, subpart CCCCCC, stating that the compliance date for existing GDF that only load gasoline into fuel tanks other than those in motor vehicles, as defined in 40 CFR 63.11132, is January 24, 2014. Also, we have added text to paragraph (e) of 40 CFR 63.11111 in the final rule stating that the date of the start of recordkeeping for these existing GDF is the date of publication of these final amendments. For new sources constructed, or for existing sources reconstructed, after the date of publication of these final amendments, recordkeeping must begin upon startup of the affected facility.

7. We have revised 40 CFR 63.11120 to include a new paragraph (d) that adds a cross-reference to the vapor tightness testing requirements found in 40 CFR 63.11092(f). The vapor tightness testing was not previously listed in 40 CFR 63.11120.

8. We have added rule text in 40 CFR 63.11124(a)(1) stating that GDF that are now subject to the rule because they only load gasoline into fuel tanks other than those in motor vehicles, as defined in 40 CFR 63.11132, must submit Initial Notifications within 120 days of publication of these final amendments.

9. We have revised 40 CFR 63.11124(a)(2) and (b)(2) to include a requirement that facilities must state in their Notification of Compliance Status (NOCS) report whether the facilities' gasoline throughput is determined based on the volume of gasoline loaded into all gasoline storage tanks, or on the volume of gasoline dispensed from all gasoline storage tanks. We have also specifically included the 60-day time frame for the submittal of the NOCS in 40 CFR 63.11124(a)(2).

10. We have corrected a typographical error in proposed 40 CFR 63.11125(c). The citation included in the paragraph should be to "§ 63.11094(b)(2)(i) through (viii)" rather than to "§ 63.11094(b)(i) through (viii)" as it appeared in the reconsideration proposal.

11. In 40 CFR part 63, subpart CCCCCC, we have added the CAA definition of motor vehicles to the definitions found in 40 CFR 63.11132.

IV. Summary of Comments and Responses

Amendments to the gasoline distribution area source rules were proposed on December 15, 2009 (74 FR 66470). The 60-day public comment period ended on February 16, 2010, and we received 17 comment letters. Comments were received from industry representatives, trade associations, State and local air pollution control agencies, and private citizens. The final rule amendments reflect our consideration of the significant comments received on the proposed action. This section presents a summary of the significant comments received and our responses to those comments.

A. Applicability

1. Definition of Bulk Gasoline Plant

We proposed revising the definition of "bulk gasoline plant" in subpart BBBBBB to clarify that gasoline from these facilities is subsequently loaded into gasoline cargo tanks for transport to GDF. The proposed definition is as follows: "Bulk gasoline plant means any gasoline storage and distribution facility that receives gasoline by pipeline, ship or barge, or cargo tank and subsequently loads the gasoline into gasoline cargo tanks for transport to gasoline dispensing facilities, and has a gasoline throughput of less than 20,000 gallons per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State, or local law and discoverable by the Administrator and any other person."

We received no comments specifically addressing the proposed revision to the definition of "bulk gasoline plants" and are finalizing the definition as proposed.

2. Definition of Gasoline Dispensing Facility

We proposed amending the definition of "gasoline dispensing facility" in 40 CFR part 63, subpart CCCCCC to clarify our intent to include all stationary facilities that dispense gasoline into the fuel tanks of all end users of gasoline. The proposed definition is: "Gasoline dispensing facility (GDF) means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine, including a nonroad vehicle or nonroad engine used solely for competition. These facilities include, but are not limited to, facilities that dispense gasoline into on- and off-road, street, or highway motor vehicles, lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline-fueled engines and equipment."

Comment: One commenter recommends that, if EPA finalizes the proposed definition of GDF, EPA extend the compliance date for facilities that may now become affected facilities under 40 CFR part 63, subpart CCCCCC. The commenter suggested that since EPA will likely not issue the final amendments until just prior to the January 10, 2011, compliance date, many affected sources may be unaware that they are subject to subpart CCCCCC. The commenter requests that EPA consider extending the compliance date for GDF that exceed the 10,000 gallons per month (gpm) throughput level purely because they dispense gasoline to end users other than motor vehicles. The commenter asserted that these facilities may not be able to install the necessary control equipment prior to the January 10, 2011, deadline, and should be provided additional time to comply with the submerged fill requirements.

The commenter stated that the proposed new definition of GDF greatly expands the affected source category beyond the "fuel tank of a motor vehicle" category in the current rule. The commenter stated that while many of the additional affected sources may fall under the 10,000 gpm throughput level, these facilities would still become affected facilities under the national emission standards for hazardous air pollutants (NESHAP). The commenter stated that State agencies accepting delegation of these NESHAP must be able to sufficiently implement and enforce the standards for all affected facilities, not just facilities required to control emissions. The commenter noted that, in addition to applying good management practices, small GDF must also be able to produce records to prove the facility is under 10,000 gpm throughput. The commenter asserted that it is not reasonable to believe that the majority of these small GDF will keep these gasoline throughput records, nor that EPA or the delegated State agencies will be able to assure compliance with the recordkeeping requirements. Further, the commenter suggested that some facilities may exceed the 10,000 gpm throughput threshold levels when considering fueling nonroad vehicles or nonroad engines.

A second commenter stated many of the same concerns as the previous commenter and also stated that, without any objective research, the Agency concluded that the newly-affected sources would all have throughputs less than 10,000 gpm and therefore be subject to only 40 CFR 63.11116. The commenter stated that some of their facilities would not fit into this presumed scenario; as a result, they would be given only a few months to install submerged fill pipes on all its storage tanks.

The commenter also stated that EPA ignores the coincident impacts of a source being regulated under the NESHAP. For example, the commenter stated that they are covered by a New Jersey Department of Environmental Protection (NJDEP) General Air Permit. The commenter explained that the NJDEP General Air Permit excludes coverage for any source that is covered under 40 CFR part 63. As a result, the commenter said that they will have to apply for, pay the fees for, and obtain an individual permit. The commenter asserted that this will also work against the NJDEP's focus on General Air Permits, which ensures environmental protection while freeing staff resources for more worthwhile tasks. The commenter stated that the rule should be revised to read as follows:

"(c) If you have an existing affected source that becomes subject to the control requirements in this subpart after January 10, 2008, you must comply with the standards in this subpart no later than 3 years after the affected source becomes subject to the control requirements in this subpart."

Response: We continue to believe that the preamble to the January 10, 2008, final rule was clear that, as discussed in the proposal, all facilities that dispense gasoline, both public and private, were subject to the rule. However, we acknowledged that our intent may have been misinterpreted by some readers

because the January 10, 2008, final rule definition of GDF only referenced the dispensing of gasoline into the fuel tank of a "motor vehicle." CAA section 216(2) defines the term motor vehicle as "any self-propelled vehicle designed for transporting persons or property on a street or highway." The combination of these two definitions results in a definition of GDF that is more limited than what we intended when promulgating the final rule. Thus, we agree with the commenters that some facilities that are subject to 40 CFR part 63, subpart CCCCCC because they dispense gasoline to end users other than those defined in the January 10, 2008, final rule, or specifically defined in the CAA as motor vehicles, may not have considered themselves subject to the rule prior to the clarification of the definition of GDF. This segment of the GDF population includes those that dispense gasoline into the fuel tank of a nonroad vehicle, or nonroad engine, including a nonroad vehicle or nonroad engine used solely for competition. It would also include facilities dispensing gasoline into lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline-fueled engines and equipment.

We recognize that the source category was more narrowly defined in the final rule than we intended, so we are finalizing the proposed amendments to the definition of "gasoline dispensing facility" to correctly define the source category. Because the sources described above were only clearly informed that 40 CFR part 63, subpart CCCCCC was applicable to them as of the December 15, 2009, proposal date, we agree that these newly covered sources should be allowed additional time in which to comply with the revised final rule.

In the final rule, we have added the CAA definition of "motor vehicles" in 40 CFR 63.11132, and have also added a new paragraph (f) to 40 CFR 63.11113 indicating the compliance dates for new and existing GDF that only load gasoline into fuel tanks other than those in motor vehicles, as defined in 40 CFR 63.11132. For existing GDF that are subject to the control requirements in this subpart only because they load gasoline into fuel tanks other than those in motor vehicles, as defined in § 63.11132, the compliance date is January 24, 2014. For new or reconstructed GDF that are subject to the control requirements in this subpart only because they load gasoline into fuel tanks other than those in motor vehicles, as defined in 40 CFR 63.11132, the compliance date is either the date of publication of these final rules or the date of startup of the affected GDF (*see* 40 CFR 63.11132(f)(2)), whichever is later.

Comment: One commenter suggested that, to clarify that a single site may contain multiple GDF, the following sentence be added at the end of the proposed definition of GDF: "Each separate gasoline dispensing activity and associated gasoline storage tank or tanks shall be considered an individual GDF for the purposes of this rule."

Response: Section 63.11111(h) of 40 CFR part 63, subpart CCCCCC, as proposed, included the following sentence: "If an area source has two or more GDF at separate locations within the area source, each GDF is treated as a separate affected source." We believe that this statement is appropriate to resolve the commenter's concern, that it is more specific, and that it is more appropriate in the applicability section rather than in the definition of a GDF. We are, therefore, not incorporating this change into the definition of GDF as requested by the commenter.

3. Tanks With Infrequent Use

We proposed to amend item 1 of Table 1 of 40 CFR part 63, subpart BBBBBB by adding a subcategory that specifies the control requirements for tanks that have a capacity of less than 151 cubic meters and a throughput of less than 480 gallons per day (gpd). We did not receive comments on this proposed amendment and have included it in the final rule.

4. Surge Control Tanks

We proposed to add a definition of "surge control tanks" and to amend Table 1 of 40 CFR part 63, subpart BBBBBB by adding an entry 3 that specifies control requirements for these tanks. We did not receive comments on this proposed amendment and have included it in the final rule.

5. Definition of Gasoline Storage Tank

We proposed to amend 40 CFR part 63, subpart BBBBBB to include the following definition of "gasoline storage tank": "Gasoline storage tank or vessel means each tank, vessel, reservoir, or container used for the storage of gasoline, but does not include: (1) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of gasoline or gasoline vapors; or (2) subsurface caverns or porous rock reservoirs." This definition is based on the definition of "storage vessel" found in 40 CFR part 60, subpart Kb without the exemption for "process tank."

Comment: Commenters object to the proposed definition of "gasoline storage tank" and believe that it has potentially unintended implications. The commenters provided extensive comments in support of their position that the definition of "gasoline storage tank" should be exactly the same as is found in 40 CFR part 60, subpart Kb, *i.e.,* that the definition should specifically exclude process tanks. The commenters stated that subpart Kb and other EPA regulations have distinguished between vessels that serve a storage function and vessels that serve a process function. The commenters stated that, by removing the process tank exclusion, the rule may inadvertently bring underground sumps and oil/water separators into the rule. The commenters further stated that these vessels are not "storage" tanks. The commenters explained that sumps that collect drained material such that it can be pumped to storage or otherwise re-injected into the system, serve a process rather than a storage function. The commenters stated that a typical sump has a capacity of approximately 1,200 gallons, and is used to collect liquid from thermal relief valves, sample collection activities, and maintenance activities. The commenters further stated that most sumps are equipped with a pump that starts automatically as liquids accumulate, and that the liquids are either pumped back into the pipeline or to a larger transmix tank and are not stored long-term in the sump. The commenters stated that there is no way to install floating roofs on these vessels, and installation of a pressure/vacuum (p/v) vent on these vessels could result in back pressure in the system which could cause vapors to go back into the loading system. The commenter also stated that one particular type of sump, a butane SRT, should not be considered a storage tank. The commenter explained that, for terminals with butane blending, a SRT is part of the apparatus required by the applicable American Society for Testing and Materials (ASTM) test method for the routine automatic product sampling performed for the butane blending process. The commenter stated that these small tanks (250- or 500-gallons capacity) collect used samples of gasoline. The commenter also stated that a floating roof would not be feasible in such small tanks, and closing the tank with a pressure vent would interfere with the ASTM test method for which the tank is installed. The commenter further stated that the ASTM test method requires the analysis to be performed at atmospheric pressure, and, thus, the SRT is equipped with an open vent in order to prevent back pressure

in the analyzer. The commenter concluded by saying that a SRT is not used for gasoline "storage," but rather, it collects material, for sampling purposes, within the butane blending process before the material is automatically transferred back into the system.

One commenter also provided supporting data regarding the cost and emission reduction potential of installing p/v vents on sumps and underground vessels. The commenter stated that the cost of installing a p/v vent on an average sized sump would be approximately $15,000, the hazardous air pollutant (HAP) reductions would only be about 6 pounds per year, and the cost-effectiveness, even if the p/v vent eliminated breathing losses entirely, would be over $1 million per ton of HAP controlled.

The commenters requested that, if EPA will not maintain the process tank exemption, EPA add an exclusion under the "gasoline storage tank" definition for sumps, including butane blending SRT, and oil/water separators. The commenters also stated that if EPA will not return the process tank exclusion to the "gasoline storage tank" definition, EPA should specify a separate compliance period for process tanks (such as flow-through sumps that accumulate gasoline) and allow 3 years from the date of publication of the final amendments.

Response: Prior to receiving these comments, we were not aware of the issue related to sumps, including butane blending SRT, and oil/water separators. After reviewing these comments, we agree that these particular types of tanks should not be considered "gasoline storage tanks" for the purposes of these rules. Based on the information provided by the commenters, we concluded that these types of tanks are not "gasoline storage tanks" and not part of the gasoline distribution source category because the liquids that are collected and stored in them do not meet the definition of "gasoline." In addition, information provided by the commenters indicates that emissions from these types of tanks are low because they are located underground and it is not cost-effective to enclose and control emissions by installing p/v vent valves. We agree that sumps, including butane blending SRT, and oil/water separators are likely not cost-effective to control based on the information provided by the commenters. In the final rule, we have revised the definition of "gasoline storage tank" to add an item (3) that specifically excludes sumps, including butane blending SRT, and oil/water separators from the definition of "gasoline storage tank." Since we have excluded these tanks from the definition of "gasoline storage tank," they are not subject to control requirements under these rules.

As provided for under these rules, whether any other types of tanks used at bulk facilities or GDF are subject to the requirements of these rules depends on whether those tanks meet the definition of "gasoline storage tank" in the rules (*see* 40 CFR 63.11100 of subpart BBBBBB and 63.11132 of subpart CCCCCC). For the gasoline distribution area source category, the distinction between a "process tank" and any other type of tank is not relevant for deciding whether the rules are applicable. Instead, if a tank used at a bulk facility or a GDF meets the definition of "gasoline storage tank," it will be subject to the applicable requirements in the rule. If that tank does not qualify as a "gasoline storage tank," it will not be regulated under these rules. Stakeholders that have questions about the applicability of these rules to particular tanks at their facilities may seek assistance from the applicable EPA Regional Office or the delegated State or local authorities (*see* 40 CFR 63.11099 and 63.11131, as applicable). Additionally, EPA will consider providing specific exclusions for specific tanks in the "gasoline storage tank" definition as is being done today if such action seems appropriate.

Comment: The commenters also stated that the proposed definition of "gasoline storage tank" fails to distinguish between gasoline storage tanks located at the terminal and the tank trucks that are loaded at the terminal. They pointed out that 40 CFR part 60, subpart Kb makes this distinction by exempting "Vessels permanently attached to mobile vehicles such as trucks, railcars, barges, or ships." The commenters stated that a similar clarification should be made in 40 CFR part 63, subpart BBBBBB.

Response: We considered the commenter's position and agree that mobile tanks such as tank trucks that are loaded at the terminal were not intended to be included in the "gasoline storage tank" definition as proposed. Such mobile tanks serve a different purpose than stationary gasoline storage tanks, and the applicable emission control technologies are also different. We did not anticipate that there would be any confusion caused by the lack of a specific exclusion for mobile tanks from the definition of gasoline storage tanks. We are, however, adding a fourth item in the definition of "gasoline storage tank" excluding "tanks or vessels permanently attached to mobile sources such as trucks, railcars, barges, or ships."

Comment: Commenters stated that an unintended consequence of the "gasoline storage tank" definition, as proposed, is that it could be misconstrued in a manner that would result in pipeline pumping stations being deemed pipeline breakout stations. The commenters stated that if a surge control tank or an underground sump at a pipeline pumping station were construed as being a storage vessel, then this facility would be rendered a pipeline breakout station under the present definition of a pipeline pumping station. They pointed out that in the preamble for the final rule, EPA concluded that it is not necessary for pipeline pumping stations to submit semi-annual reports for periods in which no deviation occurred. The commenters further stated that pipeline breakout stations, however, must submit semi-annual reports regardless of whether any deviations occurred. The commenters stated that misclassification of pipeline pumping stations as pipeline breakout stations would impose a significant burden on these facilities to submit reports that EPA has already concluded are unnecessary. The commenters request that the rule be clarified to avoid a misclassification of pipeline pumping stations as pipeline breakout stations.

Response: We agree with the commenters that the definition of "pipeline pumping stations" needs to be clarified. It is not our intent that the presence of surge control tanks or sump tanks result in a pipeline pumping station being required to submit semi-annual reports for periods in which no deviation occurs, as required for a pipeline breakout station. However, as discussed earlier, we have excluded sump tanks from the definition of a "gasoline storage tank," so that is not an issue with the definition of "pipeline pumping station."

Additionally, as stated earlier, we did not receive adverse comments on our proposed control requirements for surge control tanks in Table 1 of 40 CFR part 63, subpart BBBBBB by adding an entry 3 (not item 2, as the commenter stated) that applies to pipeline breakout stations and pipeline pumping stations (*see* title of § 63.11087). Thus, we are amending the definition of "pipeline pumping station" in this final rule to mean "a facility along a pipeline containing pumps to maintain the desired pressure and flow of product through the pipeline and not containing gasoline storage tanks other than surge control tanks."

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

We proposed to specifically exclude the loading of aviation gasoline into storage tanks at airports and the loading of gasoline into marine tank vessels at bulk facilities from 40 CFR part 63, subpart BBBBBB and 40 CFR part 63, subpart CCCCCC. We did not receive comments on this proposed exclusion and have included it in the final rules.

7. Temporary/Contractor Tanks

We did not propose changes to the rule to address a question of how 40 CFR part 63, subpart CCCCCC applies to temporary or contractor gasoline storage tanks. We asked for comment on the following rationale for not making any changes: "It appears it is the responsibility of the owner or operator of the affected facility to ensure that all emission sources at the facility comply with the requirements of any applicable standards. It seems owners or operators could consider this responsibility when negotiating contracts with third parties and address it in the contracts for the specific work being done. Thus, the requirements in the General Provisions will likely adequately address the stakeholder's concern."

Comment: One commenter expressed concern with the approach EPA has taken regarding temporary/contractor gasoline storage tanks. The commenter's concern is that the approach could create very burdensome paperwork demands for temporary gasoline storage tanks due to the initial notifications and other potential requirements, such as recordkeeping and compliance certifications, under 40 CFR part 63, subpart CCCCCC. The commenter also asked whether a facility would be required to submit a notification to EPA when the temporary gasoline storage tank is removed from the facility. The commenter suggested that EPA clarify that any applicable recordkeeping requirements for temporary or contractor gasoline storage tanks be terminated when the gasoline storage tank is removed from the site.

Response: We have not made any changes in the final rule as a result of these comments. A gasoline storage tank temporarily located at a facility should be treated the same as any other gasoline storage tank at the facility in that routine notifications to the delegated permitting agency would be needed when the gasoline storage tank becomes subject to the standard or is removed from the facility. We do not consider these notifications to be overly burdensome, especially considering that only gasoline storage tanks with gasoline throughput of 10,000 gallons or more per month would be required to submit them. Also, as with any other emission source at a facility, once the temporary or contractor gasoline storage tank is removed from the facility, the owner's or operator's obligation to keep records regarding that gasoline storage tank would also end. The commenter did not address directly our proposed position that the owner or operator of a facility is ultimately responsible for ensuring that all emission sources at the facility comply with the requirements of any applicable standards. Nor did any other commenters submit comments opposed to our stated position.

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

We proposed adding text to each subpart to clarify how the two subparts would be applied to gasoline storage tanks that are used to fuel vehicles, but that may also be used to dispense gasoline into portable tanks or cargo tanks, as follows:

- Add a paragraph (h) to 40 CFR 63.11081 of subpart BBBBBB to read as follows: "Storage tanks that are used to load gasoline into a cargo tank for the on-site redistribution of gasoline to another storage tank are subject to this subpart."
- Add a paragraph (j) to 40 CFR 63.11111 of subpart CCCCCC to read as follows: "The dispensing of gasoline from a fixed gasoline storage tank at a GDF into a portable gasoline tank for the on-site delivery and subsequent dispensing of the gasoline into the fuel tank of a motor vehicle or other gasoline-fueled engine or equipment used within the area source is subject to § 63.11116 of this subpart."

Comment: One commenter noted that the proposed definition of GDF requires that the facility be stationary. The commenter stated that the paragraph (j) added to 40 CFR 63.11111 of subpart CCCCCC, however, contradicts this definition and appears to impose requirements on portable gasoline tanks used for subsequent dispensing. The commenter asked that EPA clarify that portable gasoline tanks are not subject to the requirements in 40 CFR 63.11116 based on the proposed language in 40 CFR 63.11111(j). The commenter stated that the requirements should only apply to the gasoline dispensing from the fixed gasoline storage tank at the GDF.

Response: While we agree with the commenter that a GDF is a stationary source, there are certain steps that take place at the GDF that involve mobile equipment. For example, the off-loading of gasoline from the gasoline cargo tank into the GDF's fixed storage tanks is subject to requirements under subpart CCCCCC. In the final rule we are requiring that the management practices required under 40 CFR 63.11116 must be met during all steps in the gasoline distribution process. In other words, the intermediate operations (*see* 40 CFR 63.11111(j)) of loading a portable gasoline tank at a GDF, delivering the gasoline via the portable gasoline tank, and dispensing the gasoline from the portable gasoline tank into gasoline-fueled engines or pieces of equipment (the end-use fuel tank) at the GDF, are all part of the gasoline distribution process. These intermediate operations are subject to the 40 CFR 63.11116 management practices (minimize spills and evaporation). There are no notifications or reporting required under 40 CFR 63.11116; thus, the only requirement applicable to these intermediate operations is to utilize the management practices.

Comment: One commenter requested that EPA clarify that gasoline loaded into portable gasoline tanks does not need to be included in the monthly throughput calculation, assuming you are calculating the monthly throughput by considering the gasoline loaded into (rather than dispensed from) all fixed gasoline storage tanks at the GDF. The commenter explained that, with this clarification, monthly throughput calculated using the gasoline loaded into the fixed gasoline storage tank and the portable gasoline storage tank would not be double-counted.

Response: As discussed in the proposal preamble (74 FR 66478), monthly gasoline throughput may be measured as either the volume of gasoline going into the gasoline storage tanks at a GDF or, alternatively, the volume of gasoline coming out of the gasoline storage tanks. In most instances, we expect that measurement of the volume of gasoline going into the gasoline storage tanks is most appropriate because gasoline storage tank loadings tend to be done much less often, and involve much greater quantities at one time, whereas the dispensing of the gasoline usually occurs in frequent, but low volumes. The commenter is correct that gasoline loaded into portable gasoline tanks does not need to be included in the monthly throughput calculation if you are calculating the monthly throughput by considering the gasoline loaded into (rather than dispensed from) all fixed gasoline storage tanks at the GDF. However, in cases where a facility is measuring throughput based on the volume pumped out of the GDF, the

loading of a portable tank from the GDF's fixed gasoline storage tank would count as throughput, but the subsequent off-loading from the portable tank would not. Regardless of which measurement alternative a facility chooses to use, however, the gasoline throughput to be used in determining the applicable control requirements for any GDF is the volume measured for the fixed gasoline storage tanks at the entire GDF.

Comment: One commenter stated that new paragraph (j) of 40 CFR 63.11111 requires additional explanation. The commenter stated that it is unclear what requirements apply to a fixed gasoline storage tank that dispenses gasoline into both portable gasoline tanks (for further distribution at the area source) and directly into the fuel tanks of the end users of gasoline such that it has a total monthly throughput that equals or exceeds 10,000 gallons. The commenter asked: "[I]f the transfer to a portable source is only subject to 40 CFR 63.11116, is the transfer to fuel tanks of end users based upon the monthly throughput to those end users or to the entire throughput from the GDF?"

Response: As explained in the previous response, monthly throughput is determined either by accounting for all gasoline going into or coming out of the fixed gasoline storage tanks at the GDF. The monthly throughput for the fixed gasoline storage tanks at a GDF determines the applicable control requirements for those fixed gasoline storage tanks. For GDF that choose to measure monthly throughput based on the total amount of gasoline dispensed from the fixed gasoline storage tanks at the GDF, it does not matter whether the gasoline is pumped into portable tanks or into the fuel tanks of the end users of the gasoline. The amount dispensed in both situations would be included in calculating the monthly throughout for that GDF. In the commenter's example, if a fixed gasoline storage tank dispenses gasoline into both portable gasoline tanks (for further distribution at the area source) and directly into the fuel tanks of the end users of gasoline, such that the GDF has a total monthly throughput that equals or exceeds 10,000 gallons, the fixed gasoline storage tank would be subject to either the submerged fill requirements of 40 CFR 63.11117 or the vapor balance requirements of 40 CFR 63.11118, depending on the total monthly throughput of the GDF.

As a result of questions by this and other commenters regarding the applicability of standards to the loading of portable gasoline tanks, we have clarified the proposed text of 40 CFR 63.11111(j) to state clearly that the only standards applicable to the portable gasoline tanks involved in the gasoline redistribution operations at the area source are the management practices in 40 CFR 63.11116.

Comment: One commenter does not agree with the proposed revision to 40 CFR 63.11081(h) for facilities that primarily operate as GDF, but infrequently may need to redistribute small amounts of gasoline between different gasoline storage tanks located within the same site. The commenter stated that GDF that incidentally and infrequently redistribute gasoline on-site should only be regulated as GDF under 40 CFR part 63, subpart CCCCCC.

Response: Our intent for proposing the revision to 40 CFR 63.11081(h) was to ensure that facilities that use a larger central gasoline storage tank to act as a feeder tank for smaller gasoline storage tanks that are located on the same site were subject to the standards for bulk gasoline plants. We specified in the new paragraph 40 CFR 63.11081(h) that the provision applied to gasoline storage tanks that load gasoline into a cargo tank. To minimize emissions, the loading of a gasoline cargo tank should only be performed using submerged filling. Thus, we disagree with the commenter that a facility that loads gasoline into a cargo tank for redistribution on-site should be regulated as a GDF, even if such an operation only occurs infrequently. Also, the commenter did not explain why such activities occur, how frequently they occur, what type of vessel is used for the redistribution, or what volumes of gasoline are typical of these activities. We continue to believe that the addition of new paragraph 40 CFR 63.11081(h) provides more clarity to the rules. However, we acknowledge that it is possible that no matter how the final rules are worded, there may be situations where the applicability of the rules will need to be resolved on a case-by-case basis with the delegated permitting authority.

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

We proposed amending 40 CFR part 63, subpart BBBBBB and 40 CFR part 63, subpart CCCCCC to specify that, if an affected source under either of these subparts is also subject to another Federal rule like 40 CFR part 63, subpart VVVVVV, the owner or operator may elect to comply only with the more stringent provisions of the applicable subparts.

Comment: One commenter stated that gasoline used as a feedstock at a chemical manufacturing facility is appropriately regulated under 40 CFR part 63, subpart VVVVVV, and should be exempted from 40 CFR part 63, subpart BBBBBB, and from 40 CFR part 63, subpart CCCCCC. The commenter stated that, by requiring facilities to make a case-by-case comparison of each condition in different Federal standards, the proposed amendments will only serve to make the regulations more difficult for affected facilities to comply with, and for State agencies to implement and enforce.

Another commenter stated that it is its understanding that a given NESHAP is a set of requirements that work in unison to create a system to ensure sources are properly identified, controlled, and monitored to ensure sufficient environmental protections. The commenter stated that the system will fail to be cohesive when individual components of separate NESHAP are combined. The commenter claims that this approach is haphazard and dissociative. The commenter believes that this case-by-case comparison method of addressing duplicative emission standards is without precedent, serves only to create confusion, and is almost guaranteed to lead to conflict over which part of different rules are the most stringent. The commenter claims that this is a unique approach to duplicative rules. The commenter stated that, under the maximum achievable control technology standards (MACT) rules, a source is explicitly exempt from duplicate standards if the source is already covered. The commenter further stated that the same should be applied to the area source NESHAP. The commenter requested that EPA specify the hierarchy of NESHAP applicability for a given classification of sources so that one, and only one, NESHAP standard applies to a source or process within a source.

Response: We disagree with the commenter's assertions regarding the proposed provisions. Each source has an obligation to comply with all applicable Federal requirements. However, to the extent that a source is subject to multiple requirements, that source may elect, under either 40 CFR 63.11081(i) or 40 CFR 63.11111(k), to comply only with the more stringent provisions in the applicable subparts. These elective provisions do not relieve a source of its legal obligation to be in compliance with all applicable requirements, but the provisions do allow a facility to identify and comply with only one set of requirements (*i.e.,* the most stringent requirements in the overlapping rules). The provisions themselves are optional; those facilities that find them too

complex or burdensome may choose not to use them and instead comply with all applicable subparts. Therefore, we are finalizing 40 CFR 63.11081(i) of subpart BBBBBB, and 40 CFR 63.11111(i) of subpart CCCCCC, as proposed.

B. Throughput Thresholds

1. Once Over a Throughput Threshold

We proposed adding provisions to 40 CFR part 63, subpart BBBBBB and 40 CFR part 63, subpart CCCCCC, clarifying our intent that once an affected source's throughput exceeds an applicable throughput threshold in either subpart, the affected source will remain subject to the requirements for sources above the threshold, even if the affected source's throughput later falls below the applicable throughput threshold.

Comment: One commenter stated that, based on EPA's current definition for "bulk gasoline terminal," gasoline throughput may be limited by compliance with an enforceable condition under State law. The commenter further stated that many existing bulk gasoline plants have actual throughputs far below the 20,000 gpd threshold, but may not have taken a permit limit or other enforceable condition prior to January 10, 2008, to limit throughput. The commenter noted that State agencies should have the discretion, prior to the January 10, 2011, compliance date, to issue permits or regulations limiting the throughput of affected sources that can demonstrate that actual throughput never exceeded 20,000 gpd. The commenter stated that this is consistent with what EPA has allowed for other NESHAP. The commenter recommends that EPA modify proposed paragraph 40 CFR 63.11081(f) by adding the italicized text, as follows: (f) If your affected source's throughput ever exceeds an applicable throughput threshold in the definition of "bulk gasoline terminal," or in item 1 in Table 2 to this subpart *on or after the applicable compliance date,* the affected source will remain subject to the requirements for sources above the threshold, even if the affected source throughput later falls below the applicable throughput threshold.

Response: We considered the commenter's recommendation and agree that it is reasonable to allow bulk gasoline distribution facilities to establish enforceable permit limitations on throughput prior to the applicable compliance date. Such throughput limitations would allow a facility whose design capacity is above the 20,000 gpd bulk terminal threshold, but whose actual throughput is always below the threshold, to be subject to the bulk gasoline plant standards rather than the bulk gasoline terminal standards. In the final rule, we have added a provision to paragraph (g) in 40 CFR 63.11081 clarifying that "An enforceable State, local, or Tribal permit limitation on throughput, established prior to the applicable compliance date, may be used in lieu of the 20,000 gpd design capacity throughput threshold to determine whether the facility is a bulk gasoline plant or a bulk gasoline terminal."

Comment: Commenters do not support the "once in/always in" (OIAI) provisions. The commenters disagree that the ongoing compliance costs for a GDF with a monthly throughput that exceeds, and subsequently falls below, 100,000 gallons, are "minor components of the total cost of control." Commenters stated that the rules would require that sources continue to comply with the vapor balance testing and reporting requirements, and subsequently the associated maintenance and recordkeeping, rather than just the submerged fill and work practice standards set forth in 40 CFR 63.11117 and 40 CFR 63.11116, respectively. The commenters also stated that EPA ignores the fact that the costs of compliance are often greater for the administrative burden than for the physical requirements. Therefore, according to the commenters, if EPA reduced the rule requirements coincident with gasoline use reductions, it would lower compliance costs while maintaining the environmental benefit.

One of the commenters noted that the OIAI requirement does not encourage a site to reduce its gasoline usage which would be a win-win situation for all environmental impacts. The commenter believes that EPA's 1995 OIAI policy applies to major sources subject to MACT standards, and would not apply to this area source regulation.

Several of the commenters suggested that, if a GDF can demonstrate that its monthly throughput has dropped below a throughput threshold and maintained that level for a set period of time (commenters suggested 1 year to 3 years), the GDF should be allowed to begin complying with the requirements for the lesser throughput threshold. One commenter recommended that, if a facility's GDF falls below the 100,000 gpm threshold, it should have the option to determine how and when it will maintain and test its vapor balance system rather than following the prescriptive rules. One commenter stated that EPA should allow GDF to "drop out" of NESHAP requirements once applicable throughput thresholds are no longer being met, and that EPA could limit the drop-out option to those GDF that do not exceed a throughput threshold more than a fixed number of times within a set period. The commenter stated that once a GDF exceeds the applicable throughput threshold more than the minimum allowable occurrences, the NESHAP regulations could then become permanent as EPA is proposing to do after only a single occurrence.

One commenter also states that, as with GDF, if EPA allows actual throughput volumes to determine the 20,000 gpd threshold for bulk gasoline plants as they recommend, additional language is needed to prevent permanent regulation of a facility if it exceeds the threshold due to a one-time event. The commenter stated that EPA should allow these facilities to exceed the 20,000 gpd threshold on a minimum number of days over a defined period of time before imposing permanent regulatory jurisdiction over the facility.

Response: Several commenters provide additional justifications as to why they disagree with our intent to require a GDF to continue to comply with the vapor balance requirements of the rule, even when its gasoline throughput decreases below the applicable threshold. Some commenters have referenced EPA's 1995 OIAI policy as part of their justification for changing this proposed requirement and indicated that it should not apply in this rule. We agree that the OIAI policy does not apply to area sources; therefore, it is not relevant to this rule. The OIAI policy is intended to address situations where a major source becomes an area source, which is not the case in question.[2] Thus, the OIAI policy is not relied upon for the applicable provisions in these rules.

Another commenter indicated that the OIAI policy "does not encourage reduction of gasoline usage which would be a win-win situation for all environmental impacts." First, as stated above, the OIAI policy does not apply here. Second, we disagree with the commenter's position regarding this provision's impact on gasoline usage since gasoline throughput is a function of consumer demand, and we have already considered seasonal fluctuations in the applicable definitions. In other words, we do not agree that requiring a GDF to maintain a particular level of control is what will determine the gasoline throughput at that particular GDF; instead, it is the consumer

[2] Specifically, the policy provides that major sources can become area sources up until the first substantive compliance date of the major source MACT standard.

demand for gasoline from that GDF that will dictate its gasoline throughput. Additionally, a GDF has the option of establishing an enforceable gasoline throughput limit in its applicable permit if that GDF wants to maintain a certain maximum level of gasoline throughput below the threshold level such that the GDF is subject to less stringent control requirements in the rule.

Several additional commenters raised concerns with the compliance costs of complying with the more stringent requirements, *i.e.,* vapor balance system rather than submerged fill. However, as stated in the proposed amendments (74 FR 66478), "neither of these control technologies requires significant ongoing operating costs[; rather,] the primary control costs that the facility would incur would be for the initial installation [of the equipment]." The ongoing operating costs (*e.g.,* inspection and maintenance of controls plus monitoring, recordkeeping, and reporting costs) associated with running either a submerged fill system or a vapor balance system are reasonable for GDF based on the low costs for these items. For vapor balance systems, these costs include inspection and maintenance of the system (about $180 per year [3]), the periodic pressure testing (estimated to cost about $700 and is required once every three years, or about $230 per year) and other monitoring, reporting, and recordkeeping requirements (about $575 per year). For submerged fill systems these costs would be similar (inspection and maintenance costs are estimated to be about $100 per year, plus similar monitoring, reporting, and recordkeeping costs of about $340) except that there is no vapor pressure required. In other words, the annualized costs of running the vapor balance system are estimated to be only $310 ($80 plus $230) per year higher than the costs of running a submerged fill system. Therefore, we disagree that the costs of complying with the vapor balance system requirements should be a reason for allowing facilities that cross the applicable threshold level to instead continue complying with the submerged fill requirements. Instead, as we stated previously (74 FR 66478), "it would most likely be more trouble and expense to discontinue the use of [either of] the controls and to properly remove the equipment than to continue their use." Also, "it would be reasonable to assume that if a facility once crossed an applicable throughput threshold, it might do so again at some point in the near future. Thus, in addition to the environmental gain in requiring the continued use of controls, there is a practical economic incentive to maintaining the equipment." (74 FR 66478) Finally, as also stated in the proposed amendments, requiring vapor balance systems to remain operational at GDF "will continue to achieve substantial emissions reductions, even if the facility's throughput decreases below the applicable thresholds." (74 FR 66478)

Based on the above, we have decided against allowing a facility to drop controls when gasoline throughput falls below an applicable threshold as it will not result in a significant reduction in compliance costs and it will not have an overall benefit to the environment. We are therefore finalizing these provisions as proposed.

2. Monthly Throughput Definition

We proposed revising the definition of monthly throughput in 40 CFR part 63, subpart CCCCCC, to remove the phrase "rolling 30-day average" in the final rule, as well as adding a clarification on how it is calculated. We also proposed adding text to allow throughput to be based on the volume of gasoline dispensed by a GDF.

Comment: Commenters believe that the definition of "monthly throughput" and the requirement in 40 CFR 63.11111(e) to demonstrate/document throughput, when taken in conjunction with the proposed amendments to the definition of GDF, will impose additional and unnecessary recordkeeping requirements for facilities. One of the commenters stated that the requirement that affected sources calculate their throughput every day will be a large new administrative burden on newly-covered sources with absolutely no environmental benefit. The commenter stated that EPA's proposal will require them to dedicate resources to calculate gasoline throughput for each day of the year, and claims this is an unreasonable administrative burden, and that EPA should revise the proposal to read as follows: "Monthly throughput means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each GDF during a calendar month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the current month, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the previous 11 months, and then dividing that sum by 12."

One commenter further stated that determining throughput categories based on calendar year data would be much easier, and in the worst case, would result in a delay in determining the applicability of a particular requirement to a given facility of 1 year. The commenter stated that, given that facilities whose throughput increases to a level that requires greater controls are given 3 years to comply, a modest delay in how soon this throughput increase is detected does not seem that significant.

One commenter suggested the calculation be simplified by allowing a facility to use the calendar year annual throughput divided by 12 to calculate monthly throughput. This commenter believes this would simplify the calculation significantly for these facilities and will maintain the benefit of eliminating seasonal variations. The commenter stated that many GDF that submit calendar year annual throughputs to the county, obtain those numbers directly from their suppliers based on annual gasoline purchased for the calendar year.

Response: We continue to believe that the proposed procedure for calculating throughput at a GDF is appropriate and have finalized that procedure in the final rule. As we stated in the preamble to the proposal (74 CFR 66478), this was the method used to analyze the environmental and cost-effectiveness calculations for the throughput thresholds. We believe that this procedure is the best way to avoid the impacts of seasonal variations in throughput calculations because it is based on data that cover an entire year. For example, facilities that have a significant spike in throughput in the summer months are able to lower that spike by including the throughput during fall and winter in the calculation. In other situations, throughput may peak in the fall and winter months, and be low in the summer.

As one commenter pointed out, basing the calculation on the calendar year period would result in facilities determining their throughput and the applicable control requirement, only once per year. We do not consider this to be appropriate nor that it represents our intent that facilities achieve continuous compliance with the standards.

The throughput calculation procedure is simple and will not require facilities to expend significant extra resources. It seems reasonable to expect that nearly all GDF facilities already keep a record of each cargo tank delivery of gasoline

[3] "Gasoline Distribution Area Source Control Cost Estimates" October 3, 2006, prepared for the November 9, 2009 proposed rule. Docket item EPA–HQ–OAR–2006–0406–0063.

to the facility. For those days when no deliveries are made, the facility would merely enter a "zero" in their records. In addition, the rule does not require that the actual calculation of throughput be performed every day. For example, a facility that receives a delivery of gasoline once per week could update the running volume of gasoline delivered, and perform the throughput calculation only on those days when a delivery is made. For each intervening day when no deliveries are received, the calculated monthly throughput would always be equal to or less than that calculated on the day of the last delivery. For the reasons described above, we have concluded that the procedure for calculating monthly throughput is appropriate.

Comment: One commenter stated that the definition of "monthly throughput" in 40 CFR 63.11132 gives a choice for calculating monthly throughput as either the total volume of gasoline that is loaded into all gasoline storage tanks, or the total volume of gasoline that is dispensed from all gasoline storage tanks. The commenter stated that clarification is needed that, if one method is chosen over the other, the source must then stay with that choice of calculating monthly throughput for the duration of existence of the GDF for clarity, simplicity, and enforcement purposes, or recommended that one of the choices be taken out of the rule.

Response: We agree with the commenter that facilities subject to 40 CFR part 63, subpart CCCCCC should be required to document whether they have chosen to calculate monthly throughput based on gasoline volume loaded into all storage tanks or gasoline volume dispensed from all storage tanks. We have revised 40 CFR 63.11124(a)(2) and (b)(2) to include a requirement that facilities must state in their NOCS report the basis they will use to calculate monthly throughput. The second sentence in each of these paragraphs now reads: "The NOCS must be signed by a responsible official who must certify its accuracy, must indicate whether the source has complied with the requirements of this subpart, and must indicate whether the facilities' monthly throughput is calculated based on the volume of gasoline loaded into all storage tanks or on the volume of gasoline dispensed from all storage tanks."

Comment: One commenter recommends that EPA add a sentence to the proposed new definition for "monthly throughput" in 40 CFR part 63, subpart CCCCCC, stating that the Administrator may allow GDF with less than 10,000 gpm throughput to use alternative methods for calculating their monthly throughput.

Response: We have not made any changes to the definition based on this comment. The commenter did not offer any recommendations regarding alternative methods that could be used or any reasons why alternative methods would be beneficial. We believe that by offering facilities the choice of calculating throughput based on the volume of gasoline delivered to the facility, or on the volume of gasoline dispensed from the facility, we have provided sufficient flexibility. Also, requiring all affected facilities to use one of these two approaches for calculating their throughput will simplify the implementation and enforcement of the rule.

Comment: One commenter fully supports the proposed method of calculating monthly throughput for GDF and believes that it is a more equitable method to determine GDF monthly threshold throughputs. However, with regard to daily throughput calculations for bulk gasoline plants, the commenter noted that EPA is proposing new language in 40 CFR 63.11081 that specifically prohibits averaging to determine actual throughput thresholds. Instead, according to the commenter, the NESHAP require the 20,000 gpd threshold to be based on the maximum calculated design throughput for any single day. The commenter believes, as with GDF, the maximum daily throughput for bulk gasoline plants should be based on actual daily throughputs averaged over a 365-day period. The commenter stated that determining the 20,000 gpd threshold based on maximum calculated design throughput is too broad of a standard to be a reliable determinant for applicability of the NESHAP requirements. The commenter further stated that maximum daily design throughputs can range significantly depending on factors that have nothing to do with actual throughput, or even the size of the tank. The commenter urges the EPA to adopt language that allows the 20,000 gpd throughput calculation for bulk gasoline plants to be based on the actual daily throughput averaged over 365 days. The commenter stated that this language is essential because the actual daily throughput at bulk gasoline plants is far less than the 20,000 gpd threshold under the rule. The commenter is concerned that calculation of throughput based on maximum daily design capacity rather than actual throughput could bump bulk plants up to "gasoline terminal" status under the rule, a regulatory change that would impose a much heavier compliance burden. The commenter believes that permanently regulating small bulk gasoline plants that otherwise have small daily gasoline throughput as if they were a large "gasoline terminal," based solely on maximum design capacity, and not actual throughput, serves no regulatory purpose. The commenter urges EPA to adopt language that would base threshold calculations on actual throughputs averaged over 365 days. The commenter also recommends that EPA allow these facilities to exceed the 20,000 gpd threshold on a minimum number of days over a defined period of time before imposing permanent regulatory jurisdiction over the facility.

Response: The threshold for distinguishing whether a distribution facility is a bulk gasoline plant or a bulk gasoline terminal for the purpose of these rules is the same as the threshold in 40 CFR part 63, subpart R (the major source Gasoline Distribution NESHAP), and 40 CFR part 60, subpart XX (the New Source Performance Standards (NSPS) for Bulk Gasoline Terminals). These rules were published as final rules on December 14, 1994, and August 18, 1983, respectively. Therefore, we have been using this methodology since August of 1983, and are concerned that changes made at this point would be confusing to many stakeholders. In addition, we do not want to create a situation where some facilities could fall between the definition of a bulk terminal and the definition of a bulk plant (*i.e.,* a gap in coverage). Thus, we disagree with the commenter that the definition should now be changed to use a different method for calculating throughput. It is also important to note that the definition of a bulk gasoline plant provides that facilities may limit their throughput by compliance with an enforceable condition under Federal, State, or local law. Thus, a facility whose maximum calculated design throughput is above the 20,000 gpd threshold may still be considered a bulk gasoline plant if the actual throughput is limited to less than 20,000 gpd by an enforceable condition of a permit.

3. Start of Throughput Records

We proposed in both 40 CFR part 63, subpart BBBBBB and 40 CFR part 63, subpart CCCCCC that existing sources begin keeping records and calculating throughput as of January 10, 2008 (the date of promulgation of the final rules). For new sources constructed, or for existing sources reconstructed after November 9, 2006, we proposed that recordkeeping must begin upon startup of the affected facility.

Comment: Commenters stated their concerns with the EPA's proposed dates for compliance with recordkeeping requirements. One of the commenters stated that EPA has proposed to clarify (in 40 CFR 63.11111(e)) that recordkeeping of monthly throughput should have begun when the original rule was adopted (January 10, 2008), but that this will not be possible for sites that become newly subject to the rule as a result of this rulemaking. The commenters recommended adding the following language to 40 CFR 63.11111(e): "If an existing source becomes subject to this subpart after January 10, 2008, recordkeeping must begin on the date that it becomes subject to this subpart."

One of the commenters stated that they support the proposed clarification on how to calculate the monthly throughput, but noted that requiring throughput records back to January 10, 2008, could cause a GDF that has not been tracking monthly throughput since January 10, 2008, to be out of compliance. The commenter stated that the compliance date for existing sources for 40 CFR part 63, subpart CCCCCC is January 10, 2011, and, while they agree with EPA's logic that "it is in the best interest of the facility to be aware as early as possible what control requirements must be met," there are many GDF facilities with a monthly throughput significantly less than 10,000 gallons for which control is not required. The commenter stated that these facilities should not be considered out of compliance if throughput records were not retained beginning on January 10, 2008. The commenter proposes that documentation of the monthly throughput for existing sources begins on January 10, 2010. The commenter stated that, based on the proposed definition of monthly throughput, using a start date of January 10, 2010, would provide sufficient data to determine which threshold applies.

Response: As discussed in an earlier response, we agree with the commenters that some facilities that are subject to 40 CFR part 63, subpart CCCCCC, because they dispense gasoline to end users other than motor vehicles, may not have considered themselves subject to the rule prior to the clarification of the definition of GDF. In the final rule (40 CFR 63.11113(f)), we have clarified the compliance dates for GDF that only load gasoline into fuel tanks other than those in motor vehicles, as defined in 40 CFR 63.11132. Thus we are also adding text to paragraph (e) of 40 CFR 63.11111 in the final rule stating that the date of the start of recordkeeping for those existing GDF is January 24, 2011. For those new sources constructed, or for existing sources reconstructed, after January 24, 2011, recordkeeping must begin upon startup of the affected facility.

As to the second comment on changing the start of recordkeeping for existing sources from the date of the final rule (January 10, 2008) to one year prior to the final compliance date of January 10, 2011, we continue to believe that it is reasonable to expect facilities to begin keeping throughput records as soon as they become subject to the rules, and that records for 3 years of operation are better than records for only 1 year. Thus, owners or operators of all existing affected sources that did not begin keeping records as of January 10, 2008, because they did not consider themselves subject to the rules, should begin keeping records as of the date of these final revisions to the rules (January 24, 2011). All other existing sources should keep records of throughput as of January 10, 2008. As mentioned above, new sources must begin keeping throughout records upon start-up. We have clarified these requirements in the final rule at 40 CFR 63.11111(e).

4. Multiple Tanks at Multiple Locations at Affected Sources

We proposed to add a new paragraph (h) in 40 CFR 63.11111 of 40 CFR part 63, subpart CCCCCC to clarify that a single area source may have multiple GDF. We received no comments on the proposed new paragraph and have incorporated it into the final rule.

C. Rule Clarifications

1. Recordkeeping for Continuous Compliance Monitoring

The final rule language for alternative monitoring of control devices, in 40 CFR 63.11092(b)(1)(i)(B)(*2*)(*ii*) and (b)(1)(iii)(B)(*2*)(*ii*) of subpart BBBBBB, inadvertently included the emergency shutdown system among the equipment to be checked on a daily basis. The proposed amendments clarified that the emergency shutdown system, which is not part of the emissions control system, is not subject to the rule, but that the system is to be checked semi-annually. We received no comments on this amendment and have finalized the amendment, as proposed.

We also proposed revising the verification sentences in 40 CFR 63.11092(b)(1)(i)(B)(*2*)(*ii*) and (b)(1)(iii)(B)(*2*)(*ii*) of 40 CFR part 63, subpart BBBBBB to read as follows: "Verification shall be through visual observation, or through an automated alarm or shutdown system that monitors and records system operation. A manual or electronic record of the start and end of a shutdown event may be used."

Comment: Commenters supported EPA's clarification that records of shutdown events may be either manual or electronic. The commenters stated, however, that detailed requirements for the record of a shutdown event are specified in 40 CFR 63.11092(b)(1)(i)(B)(2)(v) and (b)(1)(iii)(B)(2)(v), and, thus, the phrase "start and end of a" is unnecessary and potentially confusing. The commenters request that this phrase be deleted such that the sentence reads as follows: "A manual or electronic record of the shutdown event may be used."

Response: In previous comments on this paragraph, the commenters suggested that either manual or electronic records of shutdown events should be allowed. We agreed with the commenter that the intent of the provision was to generate a record of such events, not to specify the exact form in which the record was generated. Thus, the revision that we proposed would allow for the manual recording of a shutdown event as an alternative to an electronic record. We disagree with the commenter, however, that the record of a shutdown event should not include both the time that the event began and the time that the unit was restarted after the event ended. It is important that the beginning and ending times, and, thus, the duration of such an event, be recorded. We consider the requirements in the paragraph to be clear and reasonable, and to meet the commenter's original desire that manual records be allowed. We have finalized the text of this paragraph as proposed.

2. Submerged Fill Drop Tube Measurements and Alternatives

One stakeholder questioned how to measure the distance of the fill pipe from the bottom of the gasoline storage tank when the end of the fill pipe is cut at a 45 degree angle. In the preamble to the proposed rule, we explained that the measurement of the distance of the fill pipe from the bottom of the gasoline storage tank should be made at the point in the opening of the pipe that is the greatest distance from the bottom of the gasoline storage tank. We did not receive any comments on this approach.

We proposed, in both subparts, to allow existing gasoline storage tanks to have fill pipes that are further from the bottom of the gasoline storage tank than specified in 40 CFR 63.11086(a) and 40 CFR 63.11117(b) if the owner can demonstrate that at all times the level of the liquid in the gasoline storage tank is above the entire opening of the fill pipe,

provided adequate recordkeeping is performed, and records are maintained.

Comment: Commenters expressed concerns related to the proposed amendment to 40 CFR 63.11086. The commenters stated that it is not clear what kinds of records will be required, and it will be difficult for field inspectors to ensure compliance. One of the commenters questioned whether daily delivery and dispensing records would be sufficient, or if an instantaneous accounting of gasoline storage tank level would be required. One commenter stated that it would require a great deal of work for an inspector to determine that the level had actually NEVER fallen below the acceptable level between inspections, and, in reality, the records would probably never be checked. The commenter believes that the effort of reviewing the proper records would be much more complicated than installing the properly cut fill pipe.

One commenter stated that, to ensure compliance, inspectors would have to review daily gasoline storage tank level data for months or years. The commenter further stated that, given the lack of specificity in the proposal as to how the necessary records must be kept by the facility, there could be significant recordkeeping differences, and extremely large data review would be required to determine compliance. The commenter then stated that to have to review months of this type of data could be quite time-consuming for the inspector. The commenter stated that most State regulations that have been in place for years just specify a depth for the drop tube, such as the 6-inch or 12-inch length, and this has not presented significant difficulty for tank owner compliance. Two of the commenters recommended that EPA modify the regulations to require a specific length for the drop tube.

Response: The proposed amendment to 40 CFR 63.11086 provides an alternative to meeting the applicable 6- or 12-inch requirement for submerged fill pipes, and should not be chosen by the owner or operator if they cannot maintain proper documentation because it is, or becomes, too burdensome. We proposed, and have finalized, this alternative for owners or operators in cases where they "can demonstrate that the liquid level in the gasoline storage tank is always above the entire opening of the fill pipe." We also specified that "documentation providing such demonstration must be made available for inspection by the Administrator's delegated representative during the course of a site visit." We did not specify how the owner or operator should make such a demonstration, but merely provided them the alternative to do so. Thus, it is the responsibility of the owner or operator to document to the inspector's satisfaction that the liquid level in the gasoline storage tank prior to each loading is sufficient to cover the fill pipe. Basically, the owner or operator will have the dimensions of the gasoline storage tank and the depth of the drop tube, and, from that information, can calculate the amount of gasoline that must remain in the tank to always keep the end of the fill pipe submerged. Thus, the owner or operator must keep records of those calculations and of the amount of gasoline that is always maintained in the gasoline storage tank prior to refilling the gasoline storage tank.

Comment: One commenter asked if "portable" fill tubes are forbidden by the rule. The commenter stated that they have some facilities with smaller gasoline storage tanks (typically <2,000 gallons), particularly aboveground gasoline storage tanks, that use portable fill tubes when filling the gasoline storage tanks, as allowed by their local regulations for GDF, and asks that this be addressed in the rule.

The same commenter also stated that they have facilities that have fill tube diffusers installed at the bottom of the fill tubes which prevent the measurement of tube depth from the bottom of the gasoline storage tank. The commenter questioned how they should verify on-going compliance of these facilities with the depth requirements. The commenter recommended the rule specifically state how on-going compliance with the depth requirement is verified.

Response: The rule does not specify that fill pipes must be permanently installed. Therefore, the types of portable fill pipes mentioned by the commenter are not forbidden by the rule. With regard to the commenter's question about fill pipes that have diffusers installed, we can only recommend that the inspector work with the owner or operator of the gasoline storage tank to obtain sufficient information on the design of the diffuser so that the actual measurement of the fill pipe can be adjusted to account for the diffuser. The commenter, a county enforcement agency representative, did not state how they currently account for the diffusers when performing inspections of facilities within the county.

3. Continuous Compliance Monitoring of All Vapor Processors

We proposed clarifications that the intent in 40 CFR part 63, subpart BBBBBB was to provide that all vapor processors required in Table 2 item 1(b) for gasoline loading rack(s) at a bulk gasoline terminal with gasoline throughput of 250,000 gpd, or greater, must have continuous compliance monitoring under 40 CFR 63.11092(b). We proposed to clarify 40 CFR 63.11092 by restructuring paragraphs (b) and (b)(1) as follows: (1) Revised 40 CFR 63.11092(b) becomes the introductory language that requires all affected facilities to monitor vapor processors; and (2) revised paragraph 40 CFR 63.11092(b)(1) lists the specific monitoring requirements for: (a) Carbon adsorption systems (40 CFR 63.11092(b)(1)(i)); (b) condenser systems (40 CFR 63.11092(b)(1)(ii)); and (c) thermal oxidation systems (40 CFR 63.11092(b)(1)(iii)). Section 63.11092(b)(1)(iv) remains the same and contains the alternative monitoring provisions.

We also proposed clarifying our intent regarding the monitoring for the presence of a pilot flame by adding a sentence to 40 CFR 63.11092(b)(1)(iii)(B)(*1*), which reads as follows: "The monitor shall show a positive parameter value to indicate that the pilot flame is on, or a negative parameter value to indicate that the pilot flame is off."

Comment: Commenters stated that, under the proposed amendments, EPA would require a continuous monitoring system (CMS) for any performance test option chosen under 40 CFR 63.11092(a). The commenters stated that this would extend CMS requirements to a population of control devices that had not been previously understood to be subject to those requirements. The commenters noted that the original rule promulgated in January 2008, stated that a CMS was only required for performance tests under 40 CFR 63.11092(a)(1), and excluded those addressed under 40 CFR 63.11092(a)(2) and (a)(3). The commenters stated that in EPA's proposed rule, 40 CFR 63.11092(b) and (b)(1) have been rewritten from the original rule, and the result is that CMS would now be required for all facilities covered under 40 CFR 63.11092(b)(1) through (5). The commenter expressed concern that this new language could be interpreted as requiring the installation of an add-on monitoring device where one was not previously understood to be needed. The commenter stated that this could result in a significant investment of resources.

Additionally, the commenters stated that, as contained in 40 CFR 63.11092(b)(4) and (b)(5), the proposed rule adds an 'Administrator Approval'

step that had not previously been required for sources employing 40 CFR 63.11092(a)(2) or 40 CFR 63.11092(a)(3) in lieu of 40 CFR 63.11092(a)(1). The commenters stated that this change would add an approval step to a population of control devices that were not previously deemed subject to this requirement, and that the time remaining prior to the compliance date for the rule is insufficient to develop, gain approval of, and implement a CMS plan.

Finally, the commenters stated that, given that this change in guidance has the effect of extending the CMS requirement to a population of control devices that were previously understood to not be subject to this requirement, and the fact that there had not been fair notice of this change, EPA should extend the compliance period for implementing CMS at facilities that, in lieu of conducting a new initial performance test, utilize the provisions of 40 CFR 63.11092(a)(2) or 40 CFR 63.11092(a)(3). The commenters stated that EPA should allow 3 years from the date of publication of the final amendments for implementation of CMS for these facilities.

Response: The General Provisions defines CMS as "a comprehensive term that may include, but is not limited to, continuous emission monitoring systems, continuous opacity monitoring systems, continuous parameter monitoring systems, or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by the regulation." Thus, a CMS is not necessarily an add-on emissions monitor, but may be any type of manual or automatic monitoring that shows that the pollution controls are operating properly on a continuous basis. For example, a heat-sensing device installed in proximity to the pilot light of a flare to indicate the presence of a flame would be a CMS because it would show whether or not the flare was operational.[4]

As stated in the preamble to the proposed amendments (74 FR 66481), it was our intent that all vapor processors required under item 1(b) of Table 2 to 40 CFR part 63, subpart BBBBBB for gasoline loading rack(s) at a bulk gasoline terminal with gasoline throughput of 250,000 gpd, or greater, must have continuous compliance monitoring under 40 CFR 63.11092(b). The January 10, 2008, final rule did not exempt anyone from the continuous monitoring requirements. Thus, it is not clear how the commenters came to their conclusion that some facilities did not have to comply with the continuous monitoring requirements. However, given that there was confusion, and given that the commenters are trade organizations that represent the majority of bulk gasoline terminals, we agreed that clarifications were needed. We proposed such clarifications and are finalizing them in this rulemaking.

The commenter also mentioned Administrator approval as a new requirement. As explained above, it has always been our intent that vapor processors must have continuous monitoring and must comply with all of the associated requirements. The approval of the CMS monitoring plan by the Administrator (or the delegated authority) is not a new requirement but was always a part of the process of implementing the continuous monitoring provisions. In other words, the requirement for obtaining Administrator approval was included in the final rule and was not newly proposed in the proposed amendments (73 FR 1936–1938).

CAA section 112(i)(3)(B) provides that EPA, or the delegated State or local authority, may grant an existing source a 1-year extension for compliance with an emission standard if such time is needed to install controls for meeting the standard. However, because the continuous monitoring requirements that we have clarified in these amendments are not emission standards, we are not extending the compliance date for these continuous monitoring requirements.

Comment: Commenters support EPA's clarification that monitoring the pilot flame on a thermal oxidation system meets the requirements for a CMS, with the presence of the pilot flame constituting the monitored operating parameter. The commenters request, however, a clarification in the rule language. The commenters stated that the requirement is for the monitoring system to "automatically prevent gasoline loading operations from beginning at any time that the pilot flame is absent." Thus, according to the commenters, the requirement is for the heat-sensing device to send a signal (or refrain from sending a signal) to allow loading to commence, rather than to visually display the parameter value (*i.e.,* on or off). The commenters recommended that this clarification might be achieved by the following edits to the rule language: 40 CFR 63.11092(b)(1)(iii)(B)(1), "The presence of a thermal oxidation system pilot flame shall be monitored using a heat-sensing device, such as an ultraviolet beam sensor or a thermocouple, installed in proximity of the pilot light to indicate the presence of a flame. The heat-sensing device shall send a positive parameter value to indicate that the pilot flame is on, or a negative parameter value to indicate that the pilot flame is off."

Response: We considered the clarification recommended by the commenters and agree that the purpose of the heat sensing device is to send either a positive or a negative parameter value as a signal to indicate the presence or absence of the pilot flame. Thus, it is the action of sending the appropriate signal to the loading system that is significant, not the actual "displaying" of the positive or negative parameter value. In the final rule, we have incorporated the clarification into 40 CFR 63.11092(b)(1)(iii)(B)(*1*), as recommended by the commenters.

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

We proposed clarifying in item 2(d) in Table 1 to 40 CFR part 63, subpart BBBBBB, that the same rim seal requirements are intended regardless of whether the owner/operator opts to comply with 40 CFR part 60, subpart Kb, or 40 CFR part 63, subpart WW. In either case, the secondary seal requirements are meant to not apply to internal floating-roof tanks that are subject only to 40 CFR part 63, subpart BBBBBB.

Comment: Commenters stated that they appreciate EPA's intended clarification, but stated that EPA's attempt to make the necessary corrections in Table 1 failed to properly do so. The commenters provided edits to the proposed Table 1 revisions that they claim will clearly specify that the secondary seal requirements from 40 CFR part 60, subpart Kb (40 CFR 60.112b(a)(1)(ii)(B) and (a)(1)(iv) through (ix)), or 40 CFR part 63, subpart WW (40 CFR 63.1063(a)(1)(i)(C) and (D)) do not apply to internal floating roof tanks that are subject only to 40 CFR part 63, subpart BBBBBB.

Response: We reviewed the commenter's recommended edits to the proposed Table 1 revisions and agree that the edits are appropriate. In the proposal, we inadvertently referred to the secondary seal requirements from 40 CFR part 63, subpart WW in the same Table 1 entry as the requirements from 40 CFR part 60, subpart Kb. Our intent was to discuss subpart Kb and subpart WW in separate Table 1 entries. Thus,

[4] It is our understanding that all control devices include process monitors such as these to assist the owner/operator in the proper operation of the device. Thus, these CMS are not likely to be significantly different than what would be used in the absence of these standards.

we have revised the text of items 2.(b) and 2.(d) in Table 1 to 40 CFR part 63, subpart BBBBBB to read as follows:

"(b) Equip each internal floating roof gasoline storage tank according to the requirements in § 60.112b(a)(1) of this chapter, except for the secondary seal requirements under § 60.112b(a)(1)(ii)(B) and the requirements in § 60.112b(a)(1)(iv) through (ix) of this chapter;"

"(d) Equip and operate each internal and external floating roof gasoline storage tank according to the applicable requirements in § 63.1063(a)(1) and (b), except for the secondary seal requirements under § 63.1063(a)(1)(i)(C) and (D), and equip each external floating roof gasoline storage tank according to the requirements of § 63.1063(a)(2) if such storage tank does not currently meet the requirements of § 63.1063(a)(1)."

5. Monitoring of Submerged Fill Loading Racks

We proposed a clarification that the testing and monitoring provisions of 40 CFR 63.11092 in subpart BBBBBB do not apply to bulk gasoline terminals with throughputs below the threshold value of 250,000 gpd. We received no comments related to the proposed clarification and have incorporated it into the final rule.

6. Initial Notifications

We did not propose revisions to the Initial Notification requirements, but we did solicit comment on whether the provisions, as written, including those in the General Provisions, are sufficient for accommodating all facilities who find it necessary to submit a revised Notification or a new Notification as a result of amendments to the rule.

Comment: One commenter restated that EPA should clarify how newly-subject sites should proceed with submitting Initial Notifications. The commenter stated that, in the preamble, EPA states that newly-subject sites would have 120 days after the source becomes subject to the relevant standard to submit the Initial Notification in accordance with 40 CFR 63.9(b)(2). The commenter stated that 40 CFR 63.11124(a)(1) does not reference 40 CFR 63.9(b)(2), however, and that confuses the subject. They suggested edits to 40 CFR 63.11124(a)(1) that would revise the first sentence to read: "You must submit an Initial Notification that you are subject to this subpart by May 9, 2008, or within 120 calendar days after you become subject to § 63.11117, whichever is later, unless you meet the requirements in paragraph (a)(3) of this section."

Response: We agree with the commenter that those GDF that would be considered "newly-subject" affected sources as a result of revisions to the subparts should have adequate time to submit new or revised Initial Notifications. We have included in the final rule provisions that specify that sources that have become affected sources as a result of the revisions to the subpart have 120 days in which to submit the Initial Notification.

For GDF, in the final rule we have clarified the compliance dates for GDF that only load gasoline into fuel tanks other than those in motor vehicles, as defined in 40 CFR 63.11132. We have also added rule text in 40 CFR 63.11124 [5] stating that GDF that only load gasoline into fuel tanks other than those in motor vehicles, as defined in 40 CFR 63.11132, must submit Initial Notifications [6] by May 24, 2011. Those sources include GDF that dispense gasoline into portable tanks or to end users other than motor vehicles, as defined in 40 CFR 63.11132, and that may not have considered themselves subject to the rule prior to the clarification of the definition of GDF.

7. Notification of Compliance Status (NOCS)

In the January 10, 2008, final rule (40 CFR part 63, subpart CCCCCC), 40 CFR 63.11124(a)(2) and (b)(2) stated that the NOCS be submitted by the compliance date specified in 40 CFR 63.11113. However, Table 3 indicates that the NOCS should be submitted according to the schedule specified in 40 CFR 63.9(h), which states that the NOCS is due 60 days following the compliance demonstration. Stakeholders pointed out this inconsistency, and we proposed revising the rule text in 40 CFR 63.11124(a)(2) and (b)(2) to be consistent with the 60-day time frame specified in 40 CFR 63.9(h) for submittal of the NOCS for GDF. In each paragraph, the revised text would read as follows: "You must submit a Notification of Compliance Status to the applicable EPA Regional Office and the delegated State authority, as specified in § 63.13, in accordance with the schedule specified in § 63.9(h)."

Comment: One commenter stated that, because there are no initial performance tests or compliance demonstrations for owners and operators subject to the control requirements in 40 CFR 63.11117 (submerged fill), it is unclear when the NOCS is due for these sources. The commenter stated that if it is EPA's intent for sources subject to the control requirements in 40 CFR 63.11117 to submit their NOCS within 60 days of the compliance date, this should be expressly stated in the rule.

Response: We agree with the recommendation made by the commenter, and have included the 60-day timeframe for the submittal of the NOCS in 40 CFR 63.11124(a)(2), which now reads: "You must submit a Notification of Compliance Status to the applicable EPA Regional office and the delegated State authority, as specified in § 63.13, within 60 days of the applicable compliance date specified in § 63.11113, unless you meet the requirements in paragraph (a)(3) of this section."

8. Storage Tank Inspections

We received several questions from stakeholders regarding the specific requirements for gasoline storage tank inspections under 40 CFR part 63, subpart BBBBBB. However, we proposed to leave the gasoline storage tank inspection requirements unchanged from the January 10, 2008, final rule. We received no comments related to this proposal, and have not revised the gasoline storage tank inspection requirements.

9. General Provisions Applicability

We proposed to revise certain entries in Table 3 to 40 CFR part 63, subpart BBBBBB, and Table 3 to 40 CFR part 63, subpart CCCCCC, to eliminate requirements related to startup, shutdown, and malfunction (SSM) plans, which are not required under these subparts. We proposed that in the "applicability" column in Table 3 for each subpart, the entries for 40 CFR 63.7(e)(1), 63.8(c), and 63.10(b)(2)(i) through (iv) be changed from "yes" to "no." Since proposal, we have identified certain other provisions listed in Table 3 to each subpart that are related to the now vacated SSM provisions (*Sierra*

[5] 40 CFR 63.11124(a)(1) applies to GDF with monthly throughput of 10,000 gallons of gasoline or more, and 40 CFR 63.11124(b)(1) applies to GDF with monthly throughput of 100,000 gallons of gasoline or more. As specified in 40 CFR 63.11116(b), GDF with monthly throughput of less than 10,000 gallons of gasoline are not required to submit notifications or reports, but must have records available within 24 hours of a request by the Administrator to document gasoline throughput.

[6] These notifications must include the following information: The name and address of the owner or operator; the address (*i.e.,* physical location) of the affected source; an identification of the relevant standard, or other requirement, that is the basis of the notification, and the source's compliance date; a brief description of the nature, size, design, and method of operation of the source and an identification of the types of emission points within the affected source subject to the relevant standard and types of hazardous air pollutants emitted; and a statement of whether the affected source is a major source or an area source. Notifications must be submitted to the Administrator, the appropriate Regional office, and the State, as specified in 40 CFR 63.9.

Club v. *EPA,* 551 F 1019 (DC Cir., 2008), cert. denied, 130 S. Ct. 1735 (U.S. 2010)), and that warrant revision. Specifically, in the final rule, we have revised Table 3 to subpart BBBBBB to specify that the following provisions do not apply: 40 CFR 63.6(e)(1)(i) and (ii), 63.7(e)(1), 63.8(c)(1)(i) and (iii), 63.10(b)(2)(i), (ii), (iv) and (v). We have revised Table 3 to subpart CCCCCC to specify that the following provisions do not apply: 40 CFR 63.6(e)(1)(i) and (ii), 63.7(e)(1), 63.8(c)(1)(i) and (iii), 63.10(b)(2)(i), (ii), (iv) and (v). We also added language to both subparts BBBBBB and CCCCCC specifying that owners or operators have a general duty to minimize emissions and provisions for recordkeeping and reporting of periods of malfunctions of process equipment, or air pollution control and monitoring equipment.

As stated earlier, in the proposed amendments we proposed to change the "yes" to a "no" in the "applicability" column of Table 3 in both subparts BBBBBB and CCCCCC for the following provisions: 40 CFR 63.8(c)(1)(ii) and 63.10(b)(2)(iii). We proposed these changes because we received comments from stakeholders that these provisions relate to SSM plans, which are not required under these rules. After further reviewing these provisions, we found that these particular provisions are not SSM-related; rather, these provisions address CMS equipment and maintenance of air pollution control and monitoring equipment, respectively. Therefore, for subpart BBBBBB, we are not making the proposed changes but instead will finalize Table 3 in subpart BBBBBB to indicate a "yes" for the applicability of these provisions. Subpart CCCCCC does not have any CMS requirements, so we will finalize the "no" for 63.8(c)(1)(ii) and a "yes" for 63.10(b)(2)(iii) for the applicability of these provisions in Table 3 to subpart CCCCCC.

We also proposed amending the entry for 40 CFR 63.5 (submittal of construction/reconstruction notifications) in Table 3 to 40 CFR part 63, subpart CCCCCC to state that the requirements of 40 CFR 63.5 do not apply to facilities that are only subject to 40 CFR 63.11116. The only control requirements that these facilities are subject to are the Management Practices specified in 40 CFR 63.11116; therefore, the submittal of notifications is not necessary. We did not receive any comments on this proposed amendment, and are finalizing the amendment as proposed.

Comment: One commenter supports most of the revisions that EPA proposed relative to the General Provision requirements. The commenter suggested, however, that EPA revise Table 3 to clarify the Agency's intent that facilities with gasoline throughput less than 10,000 gallons are not required to submit any notifications or reports. The commenter stated that, as written, Table 3 appears to require such facilities to submit some notifications (such as compliance certifications under 40 CFR 63.9(h)). The commenter suggested that EPA include a statement in Table 3 that the requirements of 40 CFR part 63, subpart A do not apply to facilities only subject to 40 CFR 63.11116.

Response: We disagree with the commenter's suggestion that Table 3 be revised to specifically note each requirement that does not apply to GDF that are subject only to the management practices in 40 CFR 63.11116. We have, however, revised the text in 40 CFR 63.11116(b) to state that "you are not required to submit notifications or reports as specified in § 63.11125, § 63.11126, or subpart A of this part." This text appears sufficient to exclude applicable sources from the General Provision requirements to submit notifications or reports.

10. Compliance Testing for GDF

In the December 15, 2009, proposal, we presented the results of our analysis of whether *Bay Area Air Quality Management District Source Test Procedure ST–30,* a test method for static pressure testing of a vapor balance system, could be accepted as an alternative to the *California Air Resources Board (CARB) 201.3* procedure required under 40 CFR 63.11120(a)(2) of 40 CFR part 63, subpart CCCCCC. We found that the original version of Bay Area ST–30 did not include procedures for testing the integrity of p/v valves installed on the gasoline storage tanks, and, therefore, would not be an acceptable alternative to CARB 201.3. However, we also found that the Bay Area Air Quality Management District amended Bay Area ST–30 on December 21, 1994, to add the p/v valve and p/v valve connections as components of the system during the testing, and that CARB subsequently issued a letter of equivalency stating that Bay Area ST–30 was equivalent to CARB 201.3. We proposed that Bay Area ST–30, as amended on December 21, 1994, be considered to meet the requirements of subpart CCCCCC.

We did not receive any comments regarding our analysis of Bay Area ST–30, or our proposal that it be allowed as an alternative to CARB 201.3. Therefore, in the final rule, we have incorporated Bay Area ST–30 by reference as an allowable alternative test method, and have revised the text of 40 CFR part 63, subpart CCCCCC accordingly.

Comment: Commenters believe that all sources should be subject to testing requirements under 40 CFR part 63, subpart CCCCCC to ensure the equipment is functioning properly, and meeting compliance and manufacturer specifications to insure equitable treatment. One commenter notes that 40 CFR 63.11120 states: "The second option (compliance under § 63.11118(b)(2)) does not require the periodic testing in § 63.11120(a), but periodic testing may be required under State, local, or Tribal rule or permits." The commenter believes this is a problem as many GDF located in rural areas most likely not affected by existing State rules will be subject to expensive testing requirements, while those regulated in the urban areas and having the most impact on sensitive populations may not be subject to testing requirements, depending upon State, local, or Tribal rule. The commenter stated that they feel the time period for all sources to eventually become subject to testing requirements as "new" will produce an inequity among the industry that may not make regulatory nor economic sense. The other commenter stated that it is the older systems that are more prone to leakage because they lack many of the leak prevention features, such as adaptors, that will not leak when loosened or over-tightened, as required for the newer systems, yet they may never be tested. The commenter stated that if periodic testing is needed for newer systems to verify the effectiveness of the vapor recovery system, then it most surely is also needed for the older systems. The commenter noted that the components that most often leak vapors from storage systems, such as the vapor adaptors, spill containment manhole drain valves, and p/v vent valves, are readily accessible from grade, and do not require excavation to be repaired or replaced. The commenter stated that keeping older systems vapor tight should be no more of a chore than keeping the newer systems vapor tight.

Response: We did not propose any change to the periodic testing requirements for GDF in the December 15, 2009, proposal, nor have we made any change in the final rule. Many facilities that are complying with State, local, or Tribal rules or permits, and have chosen to comply with the compliance option under 40 CFR 63.11118(b)(2), will be required under the State, local, or Tribal rule or permit to perform some combination of periodic inspection and testing of the

vapor balance systems. We do not want to interfere with, or create unnecessary duplication of, the operation of these State, local, or Tribal programs. Additionally, over time, all will perform this testing because reconstructed GDF or new GDF starting up on or after January 10, 2008, will be subject to the periodic testing under this rule.

Comment: We proposed adding a new paragraph (e) to 40 CFR 63.11113 in 40 CFR part 63, subpart CCCCCC to specify that new sources (installed after November 9, 2006) must test within 180 days after startup, and existing sources must conduct all performance tests within 180 days after the compliance date (if installed on or before December 15, 2009), or upon installation of the complete system (if installed after December 15, 2009). We proposed this new paragraph because the dates by which periodic tests should be conducted were not explicitly stated in the January 10, 2008, final rule. One commenter believes that setting the compliance date for existing facilities based on the December 15, 2009, date of EPA's proposed amendments adds an additional level of confusion and complexity for affected GDF, and for delegated State agencies implementing and enforcing these regulations. The commenter believes the performance testing deadline for existing facilities should be consistent with the NESHAP General Provisions, and with other NESHAP regulations. The commenter recommends that EPA revise the proposed amendments for 40 CFR 63.11113(e)(2) to the following:

"(2) For an existing affected source, the initial compliance test must be conducted no later than 180 days after the applicable compliance date specified in paragraphs (b) or (c) of this section."

Response: The January 10, 2008, final rule and the December 15, 2009, proposed amendments contain a requirement that facilities must test their vapor balance systems "at the time of installation." As explained in the preamble to the proposal (74 FR 66484, third column), the best time to perform the initial test of these systems is when they are being installed. We recognize, however, that many facilities already have vapor balance systems installed, and that not all of these systems may have been tested at the time of installation. We proposed that these systems must conduct their initial tests within 180 days after the compliance date because we had failed to specify a date in the final rule text, and because 180 days after the compliance date is consistent with 40 CFR 63.7(a)(2) in the General Provisions that was referenced as applicable in the final rule. We believe the commenter missed the point that the rule requires new sources and existing sources that have to install a new vapor balance system to test that system at the time of installation. We continue to believe that is appropriate.

11. Gasoline, Denatured Ethanol, and Transmix

Several commenters submitted comments regarding the relationship between the proposed definition of gasoline and the proposal that emissions from the storage of denatured ethanol and transmix be subject to the standards.

Comments Related to the Definition of Gasoline

We proposed adding the definition of gasoline to these subparts even though the NSPS is cross-referenced in the definitions of 40 CFR part 63, subparts BBBBBB and 40 CFR part 63, subpart CCCCCC. The proposed definition is as follows: "Gasoline means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals or greater, which is used as a fuel for internal combustion engines." We received no negative comments on incorporation of this definition, so the final rules include this definition.

Comments Related to Denatured Ethanol

We stated in the preamble the following (74 FR 66485): "[W]e are proposing that any gasoline mixture with alcohol should be considered gasoline, and be controlled under the current control requirements in subpart BBBBBB and CCCCCC. We are asking for comment on including any mixture, on whether this level of control is appropriate, and if not, we are requesting data on what level of control of those emissions is appropriate." We proposed that such mixtures should be controlled the same as gasoline and asked for comment.

Comment: Commenters stated that denatured ethanol does not meet the definition of gasoline, and that it is not appropriate to regulate denatured ethanol under any NESHAP because it contains only a *de minimis* concentration of HAP. The commenters stated that non-gasoline sources in the petroleum liquids distribution system have been previously evaluated by EPA in the Organic Liquids Distribution (Non-Gasoline) source category, for which EPA determined that an area source rule was not warranted. The commenters stated that this source category was limited to gasoline distribution (not ethanol or transmix). The commenters stated that the item in the affected source was "gasoline storage tanks," but, through what EPA is proposing, it has effectively become "tanks storing or processing gasoline or any mixture that contains any amount of gasoline." The commenters pointed out that on page A–27 of EPA's document, *Documentation for Developing the Initial Source Category List-Final Report,* EPA–450/3–91–030, July 1992, EPA clearly defines the Gasoline Distribution source category. They further stated that EPA has not provided adequate notice and comment (including a cost- effectiveness demonstration) justifying the expansion of this source category. The commenters also stated that EPA repeatedly dismisses the third criterion of the "gasoline" definition. The commenters stated that, specifically, ethanol is not a "fuel for internal combustion engines." The commenters further stated that ethanol (even when denatured) cannot be directly consumed in an internal combustion engine without true gasoline to facilitate its combustion, and that these emission sources were not included among the emission sources for which the determination of a need for a gasoline distribution area source rule were based, nor were they included in the evaluation of control measures for this rule. The commenters stated that the inclusion of denatured ethanol in the definition of gasoline will create significant regulatory burdens with little to no benefit for reducing the release of HAP to the environment. One commenter also provided data supporting their claim that the proposed control of denatured ethanol tanks is not cost-effective.

The commenters further stated that if EPA does extend the applicability of this rule to tanks storing denatured ethanol, then the required control measure should be the same as specified in the proposed item 3 to Table 1 for surge control tanks, in that the requirements of Table 1, item 2 would not be warranted for the *de minimis* level of HAP involved. The commenters also stated that EPA should specify a separate compliance period for tanks that would become subject to the rule solely by virtue of storing denatured ethanol—allowing 3 years from the date of publication of the final amendments.

One commenter stated that if EPA intended to propose an alternative definition for "gasoline," EPA should have included the alternative definition in the proposed rule amendments rather than simply mentioning its proposal in the preamble. The commenter believes that EPA should allow stakeholders a clear opportunity to comment on the

specific definition or definitions that EPA is proposing. Second, the commenter believes that it is important to ensure consistency among standards regulating gasoline (NSPS, major source NESHAP, and area source NESHAP) and to make certain that only the affected source categories are regulated under 40 CFR part 63, subpart BBBBBB and 40 CFR part 63, subpart CCCCCC.

Response: As discussed above, we have finalized the definition of gasoline as proposed. Our intention was not to change the definition of gasoline, but instead to incorporate the established definition into these standards instead of simply referring to the definition in other standards.

Commenters provided many reasons to support their position that emissions from the storage of denatured ethanol should not be regulated under 40 CFR part 63, subpart BBBBBB or 40 CFR part 63, subpart CCCCCC. We considered the comments, and agree that it is not appropriate to include the storage of denatured ethanol in this source category. Denatured ethanol does not meet the definition of "gasoline" because it typically does not have "a Reid vapor pressure of 27.6 kilopascals or greater" and it is not "used as a fuel for internal combustion engines." Thus, tanks storing denatured ethanol are not "gasoline storage tanks," and, therefore, not subject to subpart BBBBBB or subpart CCCCCC. In addition, we determined that the potential environmental benefit (HAP reduction) is minimal, and that the installation of storage tank controls (floating roofs) on a tank storing denatured ethanol containing 5-percent gasoline is not cost-effective.[7] For these reasons, we concluded that tanks storing denatured ethanol should not be included in the Gasoline Distribution source category; therefore, the final rule does not include the storage of denatured ethanol as an affected source.

Comments Related to the Handling of Gasoline-Ethanol Blends

Comment: One commenter expressed concern related to E85. The commenter thinks that specifically including E85 and other gasoline-ethanol blends is very good and important. The commenter suggested that it be required, or at least recommended, that all facilities that convert old tanks and Stage I systems for E85, or new tanks and Stage I systems follow the guidelines in the July 2006, *Handbook for Handling, Storing, and Dispensing E85,* put out by the United States Department of Energy. The commenter stated that there can be significant problems if the proper materials are not used, and if tanks that have been used for other petroleum products are not properly cleaned and proper components are not used. The commenter noted that CARB has approved a number of Stage I systems for E85, including an E85 p/v vent valve, and vapor and fill adaptors.

Response: We agree with the commenter that blends of gasoline and ethanol that are used as a fuel, and meet the definition of gasoline should be subject to regulation when they are stored at gasoline distribution facilities. We also agree that owners or operators should follow appropriate procedures, and use appropriate materials when storing and handling these blends. The purpose of these standards, however, is to require the source category to reduce HAP emissions to the applicable level. The emission standards are based on consideration of the level of HAP emissions from the affected sources and the most appropriate control technologies that are available to reduce the emissions. These standards are not intended to provide specific guidance or requirements on handling, storing, or dispensing procedures that are unrelated to HAP emission reductions. Thus, we are not requiring handbook guidance in the final rule.

Comments Related to Transmix

We proposed in the preamble that because transmix contains various concentrations of gasoline and other products, to the degree that it would not be feasible to specify in advance the percentage and concentration of gasoline in the mixture, it should be stored and considered gasoline for the purposes of these regulations.

Comment: Commenters provided comments on how the definition of gasoline related to transmix. Their comments were essentially the same as those submitted on the topic of denatured ethanol related to the definition of gasoline. Additionally, the commenters referred to the December 19, 2007, memorandum, *Summary of Comments and Responses to Public Comments on November 9, 2006 Proposal for Gasoline Distribution Area Sources,* Stephen A. Shedd to Kent C. Hustvedt (December 2007 EPA Memo), in which EPA stated: "The determination of whether transmix would or would not meet the definition of gasoline would depend on the ratio of the individual products included in the mixture. According to industry sources (ILTA), transmix typically contains between 35- and 65-percent gasoline and has a vapor pressure of about 2.5. Thus, transmix would not typically meet the gasoline definition's vapor pressure criteria. However, because of the potential variability of the mixture, we cannot be sure that all transmix will be excluded by the vapor pressure criteria of the definition." The commenters stated that, given this guidance, owners/operators of gasoline distribution facilities believed, in good faith, that transmix tanks would be subject to the rule only if the vapor pressure of the mixture stored in the transmix tank exceeded the criterion specified in the definition of gasoline, which is a Reid vapor pressure of 27.6 kilopascals (4 pounds per square inch). The commenters also asserted that, in stating that they could not be sure that all transmix would be excluded, EPA implicitly acknowledged that most transmix would be excluded. The commenters noted that the preamble to the proposed amendments stipulates that all transmix should be considered gasoline for purposes of the rule. One commenter stated that facilities should be allowed to test the transmix to determine applicability to this rule.

The commenters also stated that, given that this change in guidance has the effect of extending the applicability of the rule to a population of transmix tanks that were previously understood to not be subject to the rule, the fact that there had not been fair notice of this change, and the resulting requirement for many of these tanks to be equipped with internal floating roofs, EPA should specify a separate compliance period for transmix tanks—allowing 3 years from the date of publication of the final amendments.

Response: As in the case of denatured ethanol discussed above, we received numerous comments regarding the question of whether transmix should be included in the Gasoline Distribution Area Source category and should be subject to these standards. After considering these comments, we concluded that, while transmix does contain gasoline, the mixture itself does not meet all of the criteria specified in the final definition of "gasoline," which is the focus of the source category. Transmix is a mixture of gasoline and other petroleum distillates that typically contain between 35- and 65-percent gasoline, and, with the higher concentrations of gasoline, may have a vapor pressure above the 27.6 kilopascal threshold in the definition of "gasoline." However, transmix is not "used as a fuel for internal combustion engines;" therefore, transmix does not meet the

[7] We determined that the HAP cost-effectiveness of adding a floating roof to a typical tank storing denatured ethanol would be about $700,000 per ton.

definition of "gasoline." For these reasons, we concluded that tanks storing transmix should not be included in the gasoline distribution area source category; therefore, the final rule does not include the tanks storing transmix as an affected source.

12. Table 1 Requirements for "New" Storage Tanks

We proposed rule text in 40 CFR part 63, subpart CCCCCC to clarify that "new" GDF storage tanks were those constructed after the November 9, 2006, publication of the proposed rule. We received no comments related to the proposed clarification and have incorporated it into the final rule.

13. Requirements for Gasoline Containers

We proposed to add paragraph (d) to 40 CFR 63.11116 in 40 CFR part 63, subpart CCCCCC stating that "Portable gasoline containers that meet the requirements of 40 CFR part 59, subpart F, are considered acceptable for compliance with paragraph (a)(3) of this section." We received no comments related to the proposed clarification, and have incorporated it into the final rule.

14. Cargo Tank Testing and Documentation

We proposed revising the definition of "vapor-tight gasoline cargo tank" in 40 CFR part 63, subpart BBBBBB (and including the same definition in 40 CFR part 63, subpart CCCCCC) to change the reference to the vapor tightness test requirements from those found in 40 CFR 60.501 (40 CFR part 60, subpart XX) to those found in 40 CFR 63.11092(f). The proposed definition reads as follows: "vapor-tight gasoline cargo tank means a gasoline cargo tank which has demonstrated within the 12 preceding months that it meets the annual certification test requirements in § 63.11092(f)."

Comment: One commenter stated that the most obvious and reasonable place to look for the testing requirements for vapor tightness testing of cargo tanks at GDF would be in 40 CFR 63.11120. The commenter pointed out that 40 CFR 63.11120, which addresses all other testing and monitoring requirements, fails to include anything about the vapor tightness testing for cargo tanks. The commenter stated that, for clarity, the vapor tightness testing requirements for cargo tanks should be added to 40 CFR 63.11120. The commenter also pointed out a typographical error in proposed 40 CFR 63.11125(c). The commenter stated that the citation included in the paragraph should be to "§ 63.11094(b)(2)(i) through (viii)" rather than to "§ 63.11094(b)(i) through (viii)" as it appears in the proposal.

Response: We agree with the commenter that it is reasonable to expect that the vapor tightness testing requirements for cargo tanks at GDF would be included in 40 CFR 63.11120, "What testing and monitoring requirements must I meet?" We have revised 40 CFR 63.11120 to include a new paragraph (d) that cross-references the vapor tightness testing requirements found in 40 CFR 63.11092(f).

We also agree with the commenter that proposed 40 CFR 63.11125(c) contains a typographical error. The citation included in the paragraph should be to "§ 63.11094(b)(2)(i) through (viii)" rather than to "§ 63.11094(b)(i) through (viii)" as it appears in the proposal. We have corrected this error in the final rule.

Comment: Commenters requested clarification of the requirements for vapor tightness testing of gasoline cargo tanks. The commenters stated that the annual vapor tightness test specified in 40 CFR part 63, subpart BBBBBB is nominally the same as that specified in 40 CFR part 60, subpart XX. They further stated that each of these rules is understood to require pressurizing the tank to 18 inches of water column, and each rule requires that the pressure drop in 5 minutes shall not exceed 3 inches of water column. However, the commenters stated that in subpart XX, the 18-inch water column pressure is approximated as 450 millimeter (mm) of water, but in subpart BBBBBB it is approximated as 460 mm of water. The commenters further stated that subpart XX specifies the limit on pressure drop as 75 mm of water, whereas subpart BBBBBB specifies 3 inches of water. The commenters stated that the preamble to the proposed amendments characterize the subpart BBBBBB vapor tightness test requirements as being different than the requirements specified in subpart XX, and the proposed amendments change the cited requirements in the definition of a vapor-tight gasoline cargo tank from those in 40 CFR 60.501 to those in 40 CFR 63.11092(f). The commenters stated that many facilities, however, will be subject to both regulations and there is no apparent benefit to testing a gasoline cargo tank twice for essentially the same criteria. The commenters request that EPA stipulate in subpart BBBBBB that compliance with the annual vapor tightness testing specified in subpart BBBBBB satisfies the annual vapor tightness testing requirement of subpart XX.

Response: We considered the commenter's recommendation and agree that there is no reason to have two sets of testing criteria that use nearly the same pressure test. However, 40 CFR part 63, subpart BBBBBB (at 40 CFR 63.11092(f)) also requires a test under vacuum, while 40 CFR part 60, subpart XX does not. We also agree that there would be no benefit to requiring that a cargo tank be tested twice to satisfy the testing requirements in subpart XX and subpart BBBBBB (these requirements are also referenced in 40 CFR part 63, subpart CCCCCC). We have added text to 40 CFR 63.11092(f) specifying that "facilities that are subject to subpart XX of 40 CFR part 60 may elect, after notification to the subpart XX delegated authority, to comply with paragraphs (f)(1) and (f)(2) of this section."

D. Comments Addressing Other Provisions That Were Not Proposed To Be Amended

Comment: Commenters request that the language of item 1(c) in Table 2 to 40 CFR part 63, subpart BBBBBB be edited to clarify the intent. A similar provision in the Marine Tank Vessel Loading MACT rule specifies that the vapor collection system shall be designed to "prevent HAP vapors collected at one loading berth from passing through another loading berth to the atmosphere." Commenters assert that similar clarity could be brought to this rule by editing this item to read as follows: "Design and operate the vapor collection system to prevent any TOC vapors collected at one loading rack or lane from passing through another loading rack or lane to the atmosphere."

Response: We have revised item 1(c) in Table 2 to 40 CFR part 63, subpart BBBBBB, as recommended by the commenter.

Comment: One commenter requested clarification that the analyzer for conducting monthly measurements of the carbon outlet VOC concentration (from a carbon bed) can be permanently mounted (*i.e.,* it need not be portable, as stated in the rule at 40 CFR 63.11092(b)(1)(i)(B)(1)(iii)). The commenter stated that the subject sentence in the final rule currently reads: "Measurements shall be made using a portable analyzer, in accordance with 40 CFR part 60, Appendix A–7, EPA Method 21 for open-ended lines." The commenter suggested that the phrase "or a permanently mounted analyzer" be inserted into the current rule language.

Response: We agree with the commenter that it is not necessary that the analyzer be portable and have made

the recommended revision in the final rule.

V. 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 that increase the collection burden. The information collection requirements contained in the existing regulations at 40 CFR part 63, subpart BBBBBB and 40 CFR part 63, subpart CCCCCC were sent to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* OMB approved Information Collection Request (ICR) 2237.02—NESHAP for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities (40 CFR part 63, subpart BBBBBB and 40 CFR part 63, subpart CCCCCC) (Final Rule) and assigned OMB control number 2060–0620. This ICR was approved by OMB without change. The OMB control numbers for EPA regulations in 40 CFR are listed in 40 CFR part 9. We are amending 40 CFR part 9 to add the OMB control numbers for these rules.

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of these final amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The final amendments do not impose any new requirement on small entities that are not currently required by the final rules (*i.e.*, minimizing gasoline spills and evaporation).

D. Unfunded Mandates Reform Act (UMRA)

These final 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 amendments clarify certain provisions and correct typographical errors in the rule text for a rule EPA previously determined did not include a Federal mandate that may result in an estimated cost of $100 million or more (69 FR 5061, February 3, 2004). Thus, the final amendments are not subject to the requirements of sections 202 or 205 of UMRA.

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

E. Executive Order 13132: Federalism

These final 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 amendments.

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

These final amendments do not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). They will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. Thus, Executive Order 13175 does not apply to these final 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 amendments are not subject to Executive Order 13211 (66 FR 18355, May 22, 2001) because they are not a significant energy action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The final amendments involve technical standards. In the final rule promulgated on January 10, 2008 (73 FR 1916), we considered NTTAA. Since then, an additional standard was presented by stakeholders. The EPA has decided to use that additional standard, as discussed in section IV.C.10 of this preamble, entitled "Bay Area Air Quality Management District Source Test Procedure ST–30—Static Pressure Integrity Test, Underground Storage Tanks," adopted November 30, 1983, and amended December 21, 1994. The test method will be incorporated by reference (*see* 40 CFR 63.14). This method is available at *http://www.arb.ca.gov/DRDB/BA/CURHTML/*

ST/st30.pdf, or from the Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, California 94109.

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 amendments will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they do not affect the level of protection provided to human health or the environment. These final amendments do not relax the control measures on sources regulated by the rule and 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 these final 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 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 amendments will be effective on January 24, 2011.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 63

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

Dated: January 10, 2011.

Lisa P. Jackson,

Administrator.

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

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135, *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251, *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857, *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

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

§ 9.1 OMB approvals under the Paperwork Reduction Act

* * * * *

40 CFR citation	OMB control No.
* * * * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories [3]	
* * * * * * *	
63.11080–63.11100	2060–0620
63.11110–63.11132	2060–0620
* * * * * * *	

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

* * * * *

PART 63—[AMENDED]

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

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

■ 4. Section 63.14 is amended by adding new paragraph (o) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(o) The following material is available from the Bay Area Air Quality Management District (BAAQMD), 939 Ellis Street, San Francisco, California 94109, and is also available at the following Web site: *http://www.arb.ca.gov/DRDB/BA/CURHTML/ST/st30.pdf.*

(1) "BAAQMD Source Test Procedure ST–30—Static Pressure Integrity Test, Underground Storage Tanks," adopted November 30, 1983, and amended December 21, 1994, IBR approved for § 63.11120(a)(2)(iii).

(2) [Reserved]

Subpart BBBBBB—[AMENDED]

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

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

* * * * *

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

(d) The loading of aviation gasoline into storage tanks at airports, and the subsequent transfer of aviation gasoline

within the airport, is not subject to this subpart.

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

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

(g) For the purpose of determining gasoline throughput, as used in the definition of bulk gasoline plant and bulk gasoline terminal, the 20,000 gallons per day threshold throughput is the maximum calculated design throughout for any day, and is not an average. An enforceable State, local, or Tribal permit limitation on throughput, established prior to the applicable compliance date, may be used in lieu of the 20,000 gallons per day design capacity throughput threshold to determine whether the facility is a bulk gasoline plant or a bulk gasoline terminal.

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

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

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

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

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

* * * * *

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

■ 7. A new § 63.11085 is added following the **Emission Limitations and Management Practices** heading to read as follows:

§ 63.11085 What are my general duties to minimize emissions?

Each owner or operator of an affected source under this subpart must comply with the requirements of paragraphs (a) and (b) of this section.

(a) You must, at all times, operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(b) You must keep applicable records and submit reports as specified in § 63.11094(g) and § 63.11095(d).

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

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

* * * * *

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

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

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

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

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

* * * * *

■ 9. Section 63.11092 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Revising paragraph (b) introductory text;

■ c. Revising paragraph (b)(1) introductory text;

■ d. Revising paragraph (b)(1)(i)(B)(*1*)(*iii*);

■ e. Revising paragraph (b)(1)(i)(B)(*2*)(*ii*);

■ f. Revising paragraph (b)(1)(i)(B)(*2*)(*iii*);

■ g. Revising paragraph (b)(1)(iii)(B)(*1*);

■ h. Revising paragraph (b)(1)(iii)(B)(*2*)(*ii*);

■ i. Revising paragraph (b)(1)(iii)(B)(*2*)(*iii*);

■ j. Revising paragraph (f) introductory text; and

■ k. Adding a new paragraph (g) to read as follows:

§ 63.11092 What testing and monitoring requirements must I meet?

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

* * * * *

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

systems, as specified in paragraphs (b)(1) through (5) of this section. For each facility conducting a performance test under paragraph (a)(1) of this section, and for each facility utilizing the provisions of paragraphs (a)(2) or (a)(3) of this section, the CMS must be installed by January 10, 2011.

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

(i) * * *

(B) * * *

(*1*) * * *

(*iii*) Conduct monthly measurements of the carbon bed outlet volatile organic compounds (VOC) concentration over the last 5 minutes of an adsorption cycle for each carbon bed, documenting the highest measured VOC concentration. Measurements shall be made using a portable analyzer, or a permanently mounted analyzer, in accordance with 40 CFR part 60, Appendix A–7, EPA Method 21 for open-ended lines.

(*2*) * * *

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

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

* * * * *

(iii) * * *

(B) * * *

(*1*) The presence of a thermal oxidation system pilot flame shall be monitored using a heat-sensing device, such as an ultraviolet beam sensor or a thermocouple, installed in proximity of the pilot light, to indicate the presence of a flame. The heat-sensing device shall send a positive parameter value to indicate that the pilot flame is on, or a negative parameter value to indicate that the pilot flame is off.

* * * * *

(*2*) * * *

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

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

* * * * *

(f) The annual certification test for gasoline cargo tanks shall consist of the test methods specified in paragraphs (f)(1) or (f)(2) of this section. Affected facilities that are subject to subpart XX of 40 CFR part 60 may elect, after notification to the subpart XX delegated authority, to comply with paragraphs (f)(1) and (2) of this section.

* * * * *

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

■ 10. Section 63.11094 is amended by adding a new paragraph (g) to read as follows:

§ 63.11094 What are my recordkeeping requirements?

* * * * *

(g) Each owner or operator of an affected source under this subpart shall keep records as specified in paragraphs (g)(1) and (2) of this section.

(1) Records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control and monitoring equipment.

(2) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.11085(a), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

■ 11. Section 63.11095 is amended by adding a new paragraph (a)(4) and a new paragraph (d) to read as follows:

§ 63.11095 What are my reporting requirements?

(a) * * *

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

* * * * *

(d) Each owner or operator of an affected source under this subpart shall submit a semiannual report including the number, duration, and a brief description of each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.11085(a), including actions taken to correct a malfunction. The report may be submitted as a part of the semiannual compliance report, if one is required. Owners or operators of affected bulk plants and pipeline pumping stations are not required to submit reports for periods during which no malfunctions occurred.

■ 12. Section 63.11100 is amended by:

■ a. Adding, in alphabetical order, new definitions of "gasoline," "gasoline storage tank or vessel," and "surge control tank or vessel"; and

■ b. Revising the definitions of "bulk gasoline plant," "pipeline pumping station," and "vapor-tight gasoline cargo tank" to read as follows:

§ 63.11100 What definitions apply to this subpart?

* * * * *

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

law, and discoverable by the Administrator and any other person.

* * * * *

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

* * * * *

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

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

(2) Subsurface caverns or porous rock reservoirs;

(3) Oil/water separators and sumps, including butane blending sample recovery tanks, used to collect drained material such that it can be pumped to storage or back into a process; or

(4) Tanks or vessels permanently attached to mobile sources such as trucks, railcars, barges, or ships.

* * * * *

Pipeline pumping station means a facility along a pipeline containing pumps to maintain the desired pressure and flow of product through the pipeline, and not containing gasoline storage tanks other than surge control tanks.

* * * * *

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

* * * * *

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

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

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

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

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

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

If you own or operate . . .	Then you must . . .
1. A bulk gasoline terminal loading rack(s) with a gasoline throughput (total of all racks) of 250,000 gallons per day, or greater. Gallons per day is calculated by summing the current day's throughput, plus the throughput for the previous 364 days, and then dividing that sum by 365.	(a) Equip your loading rack(s) with a vapor collection system designed to collect the TOC vapors displaced from cargo tanks during product loading; and (b) Reduce emissions of TOC to less than or equal to 80 mg/l of gasoline loaded into gasoline cargo tanks at the loading rack; and (c) Design and operate the vapor collection system to prevent any TOC vapors collected at one loading rack or lane from passing through another loading rack or lane to the atmosphere; and (d) Limit the loading of gasoline into gasoline cargo tanks that are vapor tight using the procedures specified in § 60.502(e) through (j) of this chapter. For the purposes of this section, the term "tank truck" as used in § 60.502(e) through (j) of this chapter means "cargo tank" as defined in § 63.11100.
2. A bulk gasoline terminal loading rack(s) with a gasoline throughput (total of all racks) of less than 250,000 gallons per day. Gallons per day is calculated by summing the current day's throughput, plus the throughput for the previous 364 days, and then dividing that sum by 365.	(a) Use submerged filling with a submerged fill pipe that is no more than 6 inches from the bottom of the cargo tank; and (b) Make records available within 24 hours of a request by the Administrator to document your gasoline throughput.

■ 15. Table 3 to Subpart BBBBBB of Part 63 is amended by:
■ a. Removing entry 63.6(e)(1);
■ b. Adding entries 63.6(e)(1)(i) and 63.6(e)(1)(ii);
■ c. Revising entry 63.7(e)(1);
■ d. Revising entry 63.7(e)(3);
■ e. Removing entry 63.8(c)(1)(i)–(iii);
■ f. Adding entries 63.8(c)(1)(i), (c)(1)(ii) and 63.8(c)(1)(iii);
■ g. Revising entry 63.9(h)(1)-(6);
■ h. Removing entry 63.10(b)(2)(i)–(iv);
■ i. Adding entries 63.10(b)(2)(i), 63.10(b)(2)(ii), 63.10(b)(2)(iii), 63.10(b)(2)(iv), and 63.10(b)(2)(v); and
■ j. Revising entry 63.10(d)(5) to read as follows:

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

Citation	Subject	Brief description	Applies to subpart BBBBBB
*	*	*	*
63.6(e)(1)(i)	General duty to minimize emissions.	Operate to minimize emissions at all times; information Administrator will use to determine if operation and maintenance requirements were met.	No. *See* § 63.11085 for general duty requirement.
63.6(e)(1)(ii)	Requirement to correct malfunctions as soon as possible.	Owner or operator must correct malfunctions as soon as possible.	No.
*	*	*	*
63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance test must be conducted under representative conditions.	No, § 63.11092(g) specifies conditions for conducting performance tests.
*	*	*	*
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes, except for testing conducted under § 63.11092(a).
*	*	*	*
§ 63.8(c)(1)(i)	Operation and Maintenance of CMS.	Must maintain and operate each CMS as specified in § 63.6(e)(1).	No.
§ 63.8(c)(1)(ii)	Operation and Maintenance of CMS.	Must keep parts for routine repairs readily available.	Yes.
§ 63.8(c)(1)(iii)	Operation and Maintenance of CMS.	Requirement to develop SSM Plan for CMS	No.
*	*	*	*
§ 63.9(h)(1)–(6)	Notification of Compliance Status.	Contents due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes, except as specified in § 63.11095(a)(4); also, there are no opacity standards.
*	*	*	*
§ 63.10(b)(2)(i)	Records related to SSM	Recordkeeping of occurrence and duration of startups and shutdowns.	No.

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

Citation	Subject	Brief description	Applies to subpart BBBBBB
§ 63.10(b)(2)(ii)	Records related to SSM	Recordkeeping of malfunctions	No. *See* § 63.11094(g) for recordkeeping of (1) occurrence and duration and (2) actions taken during malfunction.
§ 63.10(b)(2)(iii)	Maintenance records	Recordkeeping of maintenance on air pollution control and monitoring equipment.	Yes.
§ 63.10(b)(2)(iv)	Records Related to SSM	Actions taken to minimize emissions during SSM.	No.
§ 63.10(b)(2)(v)	Records Related to SSM	Actions taken to minimize emissions during SSM.	No.
*	*	*	*
§ 63.10(d)(5)	SSM Reports	Contents and submission	No. *See* § 63.11095(d) for malfunction reporting requirements.
*	*	*	*

Subpart CCCCCC—[AMENDED]

■ 16. Section 63.11111 is amended by:

■ a. Revising paragraph (e);

■ b. Revising paragraph (g); and

■ c. Adding new paragraphs (h) through (k) to read as follows:

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

* * * * *

(e) An affected source shall, upon request by the Administrator, demonstrate that their monthly throughput is less than the 10,000-gallon or the 100,000-gallon threshold level, as applicable. For new or reconstructed affected sources, as specified in § 63.11112(b) and (c), recordkeeping to document monthly throughput must begin upon startup of the affected source. For existing sources, as specified in § 63.11112(d), recordkeeping to document monthly throughput must begin on January 10, 2008. For existing sources that are subject to this subpart only because they load gasoline into fuel tanks other than those in motor vehicles, as defined in § 63.11132, recordkeeping to document monthly throughput must begin on January 24, 2011. Records required under this paragraph shall be kept for a period of 5 years.

* * * * *

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

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

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

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

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

■ 17. Section 63.11113 is amended by revising paragraph (c) and adding new paragraphs (e) and (f) to read as follows:

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

* * * * *

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

* * * * *

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

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

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

(i) For vapor balance systems installed on or before December 15, 2009, you must test no later than 180 days after the applicable compliance date specified in paragraphs (b) or (c) of this section.

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

(f) If your GDF is subject to the control requirements in this subpart only because it loads gasoline into fuel tanks other than those in motor vehicles, as defined in § 63.11132, you must comply with the standards in this subpart as specified in paragraphs (f)(1) or (f)(2) of this section.

(1) If your GDF is an existing facility, you must comply by January 24, 2014.

(2) If your GDF is a new or reconstructed facility, you must comply

by the dates specified in paragraphs (f)(2)(i) and (ii) of this section.

(i) If you start up your GDF after December 15, 2009, but before January 24, 2011, you must comply no later than January 24, 2011.

(ii) If you start up your GDF after January 24, 2011, you must comply upon startup of your GDF.

■ 18. A new § 63.11115 is added following the **Emission Limitations and Management Practices** heading to read as follows:

§ 63.11115 What are my general duties to minimize emissions?

Each owner or operator of an affected source under this subpart must comply with the requirements of paragraphs (a) and (b) of this section.

(a) You must, at all times, operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(b) You must keep applicable records and submit reports as specified in § 63.11125(d) and § 63.11126(b).

■ 19. Section 63.11116 is amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

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

* * * * *

(b) You are not required to submit notifications or reports as specified in § 63.11125, § 63.11126, or subpart A of this part, but you must have records available within 24 hours of a request by the Administrator to document your gasoline throughput.

* * * * *

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

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

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

* * * * *

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

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

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

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

* * * * *

■ 21. Section 63.11120 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Revising paragraph (a)(2) introductory text;

■ c. Adding paragraph (a)(2)(iii);

■ d. Adding paragraph (c); and

■ e. Adding paragraph (d) to read as follows:

§ 63.11120 What testing and monitoring requirements must I meet?

(a) Each owner or operator, at the time of installation, as specified in § 63.11113(e), of a vapor balance system required under § 63.11118(b)(1), and every 3 years thereafter, must comply with the requirements in paragraphs (a)(1) and (2) of this section.

* * * * *

(2) You must demonstrate compliance with the static pressure performance requirement specified in item 1(h) of Table 1 to this subpart for your vapor balance system by conducting a static pressure test on your gasoline storage tanks using the test methods identified in paragraphs (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this section.

* * * * *

(iii) Bay Area Air Quality Management District Source Test Procedure ST–30—Static Pressure Integrity Test—Underground Storage Tanks, adopted November 30, 1983, and amended December 21, 1994 (incorporated by reference, *see* § 63.14).

* * * * *

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

(d) Owners and operators of gasoline cargo tanks subject to the provisions of Table 2 to this subpart must conduct annual certification testing according to the vapor tightness testing requirements found in § 63.11092(f).

■ 22. Section 63.11124 is amended by:

■ a. Revising paragraph (a)(1) introductory text;

■ b. Revising the first two sentences in paragraph (a)(2);

■ c. Revising paragraph (b)(1) introductory text; and

■ d. Revising the first two sentences in paragraph (b)(2) to read as follows:

§ 63.11124 What notifications must I submit and when?

(a) * * *

(1) You must submit an Initial Notification that you are subject to this subpart by May 9, 2008, or at the time you become subject to the control requirements in § 63.11117, unless you meet the requirements in paragraph (a)(3) of this section. If your affected source is subject to the control requirements in § 63.11117 only because it loads gasoline into fuel tanks other than those in motor vehicles, as defined in § 63.11132, you must submit the Initial Notification by May 24, 2011. The Initial Notification must contain the information specified in paragraphs (a)(1)(i) through (iii) of this section. The notification must be submitted to the applicable EPA Regional Office and delegated State authority as specified in § 63.13.

* * * * *

(2) You must submit a Notification of Compliance Status to the applicable EPA Regional Office and the delegated State authority, as specified in § 63.13, within 60 days of the applicable compliance date specified in § 63.11113, unless you meet the requirements in paragraph (a)(3) of this section. The Notification of Compliance Status must be signed by a responsible official who must certify its accuracy, must indicate whether the source has complied with the requirements of this subpart, and must indicate whether the facilities' monthly throughput is calculated based on the volume of gasoline loaded into

all storage tanks or on the volume of gasoline dispensed from all storage tanks.* * *

* * * * *

(b) * * *

(1) You must submit an Initial Notification that you are subject to this subpart by May 9, 2008, or at the time you become subject to the control requirements in § 63.11118. If your affected source is subject to the control requirements in § 63.11118 only because it loads gasoline into fuel tanks other than those in motor vehicles, as defined in § 63.11132, you must submit the Initial Notification by May 24, 2011. The Initial Notification must contain the information specified in paragraphs (b)(1)(i) through (iii) of this section. The notification must be submitted to the applicable EPA Regional Office and delegated State authority as specified in § 63.13.

* * * * *

(2) You must submit a Notification of Compliance Status to the applicable EPA Regional Office and the delegated State authority, as specified in § 63.13, in accordance with the schedule specified in § 63.9(h). The Notification of Compliance Status must be signed by a responsible official who must certify its accuracy, must indicate whether the source has complied with the requirements of this subpart, and must indicate whether the facility's throughput is determined based on the volume of gasoline loaded into all storage tanks or on the volume of gasoline dispensed from all storage tanks. * * *

* * * * *

■ 23. Section 63.11125 is amended by adding a new paragraph (c) and a new paragraph (d) to read as follows:

§ 63.11125 What are my recordkeeping requirements?

* * * * *

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

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

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

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

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

(d) Each owner or operator of an affected source under this subpart shall keep records as specified in paragraphs (d)(1) and (2) of this section.

(1) Records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control and monitoring equipment.

(2) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.11115(a), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

■ 24. Section 63.11126 is revised to read as follows:

§ 63.11126 What are my reporting requirements?

(a) Each owner or operator subject to the management practices in § 63.11118 shall report to the Administrator the results of all volumetric efficiency tests required under § 63.11120(b). Reports submitted under this paragraph must be submitted within 180 days of the completion of the performance testing.

(b) Each owner or operator of an affected source under this subpart shall report, by March 15 of each year, the number, duration, and a brief description of each type of malfunction which occurred during the previous calendar year and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.11115(a), including actions taken to correct a malfunction. No report is necessary for a calendar year in which no malfunctions occurred.

■ 25. Section 63.11132 is amended as follows:

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

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

§ 63.11132 What definitions apply to this subpart?

* * * * *

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

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

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

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

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

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

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

* * * * *

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

■ 26. Table 1 to subpart CCCCCC of part 63 is amended by adding a footnote 1, and by revising entry 2 to read as follows:

TABLE 1 TO SUBPART CCCCCC OF PART 63—APPLICABILITY CRITERIA AND MANAGEMENT PRACTICES FOR GASOLINE DISPENSING FACILITIES WITH MONTHLY THROUGHPUT OF 100,000 GALLONS OF GASOLINE OR MORE [1]

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

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

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

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

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

■ 28. Table 3 to Subpart CCCCCC of Part 63 is amended by:

■ a. Revising entry 63.5;

■ b. Removing entry 63.6(e)(1);

■ c. Adding entries 63.6(e)(1)(i) and 63.6(e)(1)(ii);

■ d. Revising entry 63.7(e)(1);

■ e. Revising entry 63.8(c)(1)(i)–(iii);

■ f. Revising entry 63.8(c)(2)–(8);

■ g. Removing entry 63.10(b)(2)(i)–(iv);

■ h. Adding entries 63.10(b)(2)(i), 63.10(b)(2)(ii), 63.10(b)(2)(iii), 63.10(b)(2)(iv), and 63.10(b)(2)(v);

■ i. Revising entry 63.10(d)(5);

■ j. Revising entry 63.10(e)(3)(i)–(iii); and

■ k. Revising entry 63.10(e)(3)(iv)–(v) to read as follows:

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

Citation	Subject	Brief description	Applies to subpart CCCCCC
* * *	* * *	* * *	*
§ 63.5	Construction/Reconstruction.	Applicability; applications; approvals	Yes, except that these notifications are not required for facilities subject to § 63.11116.
* * *	* * *	* * *	*
63.6(e)(1)(i)	General duty to minimize emissions.	Operate to minimize emissions at all times; information Administrator will use to determine if operation and maintenance requirements were met.	No. *See* § 63.11115 for general duty requirement.
63.6(e)(1)(ii)	Requirement to correct malfunctions ASAP.	Owner or operator must correct malfunctions as soon as possible.	No.
* * *	* * *	* * *	*
63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance test must be conducted under representative conditions.	No, § 63.11120(c) specifies conditions for conducting performance tests.

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

Citation	Subject	Brief description	Applies to subpart CCCCCC
*	* *	* * *	*
§ 63.8(c)(1)(i)–(iii)	Operation and Maintenance of Continuous Monitoring Systems (CMS).	Must maintain and operate each CMS as specified in § 63.6(e)(1); must keep parts for routine repairs readily available; must develop a written SSM plan for CMS, as specified in § 63.6(e)(3).	No.
§ 63.8(c)(2)–(8)	CMS Requirements	Must install to get representative emission or parameter measurements; must verify operational status before or at performance test.	No.
*	* *	* * *	*
§ 63.10(b)(2)(i)	Records related to SSM	Recordkeeping of occurrence and duration of startups and shutdowns.	No.
§ 63.10(b)(2)(ii)	Records related to SSM	Recordkeeping of malfunctions	No. *See* § 63.11125(d) for recordkeeping of (1) occurrence and duration and (2) actions taken during malfunction.
§ 63.10(b)(2)(iii)	Maintenance records	Recordkeeping of maintenance on air pollution control and monitoring equipment.	Yes.
§ 63.10(b)(2)(iv)	Records Related to SSM	Actions taken to minimize emissions during SSM	No.
§ 63.10(b)(2)(v)	Records Related to SSM	Actions taken to minimize emissions during SSM	No.
*	* *	* * *	*
§ 63.10(d)(5)	SSM Reports	Contents and submission	No. *See* § 63.11126(b) for malfunction reporting requirements.
*	* *	* * *	*
§ 63.10(e)(3)(i)–(iii)	Reports	Schedule for reporting excess emissions	No.
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports	Requirement to revert to quarterly submission if there is an excess emissions and parameter monitor exceedances (now defined as deviations); provision to request semiannual reporting after compliance for 1 year; submit report by 30th day following end of quarter or calendar half; if there has not been an exceedance or excess emissions (now defined as deviations), report contents in a statement that there have been no deviations; must submit report containing all of the information in §§ 63.8(c)(7)–(8) and 63.10(c)(5)–(13).	No.
*	* *	* * *	*

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