

Final Rule. We did not receive any public comments on the proposed changes to this rule. However, subsequent internal review revealed inconsistencies in the proposed delegation provisions compared to the original rule. Because this rule has been implemented in its current form for many years and is working well, we do not want to change the role of the regulatory authority in implementing the rule. Therefore, we have revised the delegation provisions in this final rule to ensure that they are consistent with the intent of the original rule.

12. Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators

Proposed Rule. We added the "Implementation and enforcement" section for the delegation provisions in a new section, § 63.1050. This section indicates that delegation of authority to approve alternatives cannot be given to S/L/Ts for the requirements in §§ 63.1040 and 63.1042 through 63.1044. These sections contain the applicability provisions, the emissions standards for separators with fixed and floating roofs, and those vented to a control device. This subpart also requires provisions of subpart DD to be followed. In the implementation and enforcement language, we have clarified that delegation of those requirements will occur according to the delegation provisions of subpart DD.

Public Comments. We received one comment regarding the proposed changes to this subpart. The commenter requested that EPA delegate to S/L/Ts the authority to approve alternatives to § 63.1043(b)(3), the requirement for each opening in a floating roof be equipped with a closure device that when secured, there are no visible cracks, holes, gaps, or other open spaces in the roof or closure device. The commenter added that S/L/Ts "should be allowed to approve alternative using hydrocarbon analyzer or gap measurement technique."

Final Rule. We disagree with the comment that S/L/Ts should be delegated the authority to approve alternatives to § 63.1043(b)(3), the requirement for each opening in a floating roof be equipped with a closure device that when secured, there are no visible cracks, holes, gaps, or other open spaces in the roof or closure device and, thus, have not delegated this requirement to S/L/Ts. This requirement is a work practice standard which, as described above, may not be delegated to S/L/Ts. This is also a case where we do not think there is flexibility in the standard to allow different

implementation methods. This is because it is not clear that a gap measurement technique or use of a hydrocarbon analyzer or other leak detection technique is equivalent to the requirement to ensure there are no visible cracks, etc. For example, a gap measurement technique may imply that some degree of crack or gap would be acceptable which is counter to our interpretation of this requirement and, therefore, we would not consider this technique to be more stringent. Similarly, without a comparison of leaks expected to occur under a "no visible crack" requirement to the leak detection limits of individual equipment and a leak detection schedule, we cannot determine whether the substituted method would be at least equivalent to the current requirement.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

These rule changes will not have an annual effect on the economy of \$100 million or more, and therefore are not considered economically significant. In addition, we have determined that this rule is not a "significant regulatory action" because it does not contain novel policy issues.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the

provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Today's rulemaking contains changes to rules that already have approved information collection requirements and valid OMB control numbers as required by the Paperwork Reduction Act. The changes in today's rulemaking are clarifications to the relationship between EPA and the S/L/Ts that have chosen to implement and enforce the rules. Therefore, there is no change in the burden that the rules impose on sources or S/L/Ts.

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

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of today's final rule on small entities, we certify that this action will not have a significant economic impact