

performance for combustion devices. Since open flares could not be directly measured for emissions or firebox temperature, we felt the next best indicator of continuing compliance was to require flares to meet minimum design specifications and to monitor for the presence of a flame. Studies conducted by EPA indicate that open flares meeting the design and monitoring requirements perform at a very high level of efficiency. However, the flare design requirements and the requirement to monitor for the presence of a flame were not intended for other thermal oxidation systems since there are more direct means of monitoring proper operation and maintenance.

While it may be possible that the types of devices described by the commenters are capable of operating as efficiently as open flares, the commenters did not provide any data or other information to demonstrate that a presence-of-flame indicator installed in a thermal oxidation system would ensure compliance with emission standards. They also did not describe alternate ways of ensuring that these systems are designed and operated properly if they were allowed to use presence-of-flame indicators. For compliance to be assured, the system needs to be properly designed, source tested initially to demonstrate compliance and to establish operating parameter values, and continuously monitored to ensure proper operation and continued compliance with the emission standards. We do not, however, mandate that the owner or operator adhere to a specific set of operating parameters to ensure continuing compliance. In fact, § 63.427(a)(5) of the final rule allows the owner or operator the flexibility of monitoring any parameters that can be demonstrated to ensure compliance with the emission standards. Commenters have stated that alternative parameters (other than temperature) for enclosed flares have already been approved by States and EPA. Those alternatives are acceptable under the national emission standards, as long as they have been properly demonstrated and approved as provided under § 63.427(a)(5).

As to the impacts of maintaining a specific temperature, we do not specify any certain temperature, averaging time, or monitoring frequency. Thus, if the owner or operator chooses to monitor temperature, they would develop and demonstrate (while considering the impacts on energy and other operating costs) the most appropriate maximum and minimum temperature values, averaging times, and monitoring

frequency to indicate that the device is continuously achieving the emission standards.

Due to these considerations, we have retained the proposed definitions for “flare” and “thermal oxidation system”. Further, § 63.427(a)(5) of the final rule still allows the monitoring of alternative operating parameters for thermal oxidation systems, flares, or any other type of control device upon demonstration that the parameter demonstrates continuous compliance with the standards of performance or national emission standards.

*Comment:* Two trade organizations commented that some of their member companies have agreements with local control agencies to maintain cargo tank vapor tightness documentation off-site but not necessarily have copies instantly available at the site. These facilities utilize a centralized computer system to maintain the records for each vehicle that would load at the terminal. Prior to allowing the vehicle operator to begin loading, the system automatically compares the vehicle identification number to the test records to ensure that the cargo tank has passed its test and that the test results have not expired. The facility maintaining the vapor tightness test results is able to provide a paper version to the terminal within a matter of minutes to hours (via facsimile), depending on the volume of records requested at any given time. The commenters said that the proposed requirement for facilities to provide the records “instantly” may prohibit these companies from continuing to operate using their current systems. They provided suggested rule language for incorporation into the 1983 standards of performance and 1994 national emission standards that would account for the recordkeeping procedure used by these companies. Their suggested provision would allow owners and operators using an automated vehicle lock-out system to maintain a record system in which a copy of the test documentation could be made available to inspectors either during a visit by EPA or at some other mutually agreeable time.

*Response:* The intent of the requirement for affected facilities to maintain vapor tightness test records is to provide a means of ensuring that noncertified gasoline cargo tanks do not load (or at least are not reloaded) at the facility. The computerized automation systems in use at many facilities could provide this assurance when they have the capability of automatically locking noncertified tanks out of the loading process, and when records are properly maintained and entered into the

computerized system. Therefore, we have agreed to add this option in addition to what was proposed.

*Comment:* Commenters agreed with all of the proposed changes for railcar testing. However, two of the commenters clarified a statement in the preamble (67 FR 59437, September 20, 2002) that, “according to owners of railcars, (railcar) leases usually run from 3 to 5 years and require leak testing at the start or renewal of the lease.” They agreed that most leases range from 3 to 5 years, but pointed out that the lessee determines when the leak test will be run according to the lessee’s pre-loading procedures and/or Department of Transportation (DOT) requirements. The commenters stated that “although determined by the lessee, it is normal practice for a leak test to be performed when a lessor starts a new lease, but a leak test is traditionally not performed when a lease is renewed by the same company until it is time to conduct the test during scheduled maintenance.”

*Response:* After consideration of the information provided by the commenters, we have decided not to make any changes to the amendments as proposed. As discussed more fully at proposal, there are several factors involved in our decision to consider the DOT leak testing procedures as an acceptable alternative to Method 27. The DOT test procedures allow for no leaks during the test while Method 27 does allow some leakage. The DOT procedures require pre- and post-test inspections of the structural integrity of the cargo tank and also require a qualifying program for testing personnel. The EPA leak testing procedures do not require either of these items. Our procedures do, however, require an annual test while the DOT only requires testing once every 10 years or whenever the service equipment is reassembled on the tank. The difference in testing frequency is not a significant issue because the other factors balance the difference. Therefore, while we would prefer the lease to require that leak tests be performed and that the condition of the cargo tank be checked at the renewal of a lease as well as at the start of a new lease, DOT requirements control vapor leakage to levels equivalent to those required by the 1994 national emission standards.

### III. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulation is