and in accordance with section 110(l) of the Act, 42 U.S.C. section 7410(l), these revisions will not interfere with attainment, reasonable further progress or any other applicable requirement of the Clean Air Act.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: August 2, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05–15830 Filed 8–9–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2004–0019, FRL–7950–9]

RIN 2060–AK10

National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed decision; request for public comment.

SUMMARY: On December 14, 1994, we promulgated National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) (59 FR 64318). The national emission standards limit and control hazardous air pollutants (HAP) that are known or suspected to cause cancer or have other serious health or environmental effects.

Section 112(f)(2) of the Clean Air Act (CAA) directs EPA to assess the risk remaining (residual risk) after the application of national emission standards controls. Also, CAA section 112(d)(6) requires us to review and revise the national emission standards as necessary by taking into account developments in practices, processes, and control technologies. The proposal announces a decision and requests public comments on the residual risk assessment and technology review for the national emission standards. We are proposing no further action at this time to revise the national emission standards.

DATES: *Comments.* Submit comments on or before October 11, 2005.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by August 30, 2005, a public hearing will be held on September 7, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0019, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov*.
- Fax: (202) 566–1741.
- Mail: Air Docket, EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: EPA, 1301 Constitution Ave., NW., Room B102, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2004–0019. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal

regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Public Hearing. If a public hearing is held, it will begin at 10 a.m. and will be held at the EPA facility complex in Research Triangle Park, North Carolina, or at an alternate facility nearby. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held must contact Mr. Stephen Shedd, listed in the **FOR FURTHER INFORMATION CONTACT** section at least 2 days in advance of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed action.

FOR FURTHER INFORMATION CONTACT: For additional information on this proposed decision, review the reports listed in the **SUPPLEMENTARY INFORMATION** section.

General and technical information. Mr. Stephen Shedd, U.S. EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Waste and Chemical Processes Group (C439–03), Research Triangle Park, North Carolina 27711, telephone (919) 541–5397, facsimile number (919) 685–3195, electronic mail (e-mail) address: *shedd.steve@epa.gov.*

Residual risk assessment information. Mr. Ted Palma, U.S. EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Risk and Exposure Assessment Group (C404–01), Research Triangle Park, North Carolina 27711, telephone (919) 541–5470, facsimile number (919) 541–0840, electronic mail (e-mail) address: *palma.ted@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated entities. The regulated categories and entities affected by the national emission standards include:

Category	NAICS [a]	(SIC [b])	Examples of regulated entities
Industry	324110 493190 486910 424710	(2911) (4226) (4613) (5171)	Operations at major sources that transfer and store gasoline, including petroleum refineries, pipeline breakout stations, and bulk terminals.
Federal/State/local/tribal governments	.....	.....	

[a] North American Industry Classification System.
[b] Standard Industrial Classification.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the national emission standards. To determine whether your facility would be affected by the national emission standards, you should examine the applicability criteria in 40 CFR 63.420. If you have any questions regarding the applicability of the national emission standards to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13.

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

Reports for Public Comment. We have prepared two summary documents covering the development of, and the rationale for, the proposed decision and the residual risk analyses. These documents are entitled: ''Technology Review and Residual Risk Data Development for the Gasoline Distribution NESHAP,'' and ''Residual Risk Assessment for the Gasoline Distribution (Stage I) Source Category.'' Both documents are available in Docket ID Number OAR–2004–0019. See the preceding *Docket* section for docket information and availability.

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

I. Background
A. What is the statutory authority for these actions?
B. What is our approach for developing residual risk standards?
C. What are the current standards?
II. Analyses and Results
A. Residual risk review
B. Technology review
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act

I. Background

A. What is the statutory authority for these actions?

Section 112 of the CAA establishes a comprehensive regulatory process to address emissions of HAP from stationary sources. In implementing this process, EPA has identified categories of sources emitting one or more of the HAP listed in the CAA, and gasoline distribution facilities were identified as one such source category. Section 112(d) requires us to promulgate national technology-based emission standards for sources within those categories that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year (known as ''major sources''), as well as for certain ''area sources'' emitting less than those amounts. These technology-based national emission standards for hazardous air pollutants (NESHAP) must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards. EPA completed the NESHAP for gasoline distribution in 1994 (59 FR 64318).

In what is referred to as the ''technology review,'' the EPA is required to review these technology-based standards and to revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years.

The ''residual risk'' review is described in section 112(f) of the CAA. Section 112(f)(2) requires us to determine for each section 112(d) source category whether the NESHAP protect public health with an ample margin of safety. If the NESHAP for HAP ''classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million,'' EPA must promulgate residual risk standards for the source category (or subcategory) which provide an ample margin of safety. EPA must also adopt more stringent standards to prevent an adverse environmental effect (defined in section 112(a)(7) as ''any significant and widespread adverse effect * * * to wildlife, aquatic life, or natural resources * * *.''), but must consider cost, energy, safety, and other relevant factors in doing so.

B. What is our approach for developing residual risk standards?

Following an initial determination that the risk to the individual most exposed to emissions from sources in the category exceeds a 1-in-1 million lifetime excess individual cancer risk, our approach to developing residual risk standards is based on a two-step determination of acceptable risk and ample margin of safety.

The terms ''individual most exposed,'' ''acceptable level,'' and ''ample margin of safety'' are not specifically defined in the CAA. However, section 112(f)(2)(B) retains EPA's interpretation of the terms ''acceptable level'' and ''ample margin of safety'' provided in our 1989 rulemaking (54 FR 38044, September 14, 1989), ''National Emission Standards for Hazardous Air Pollutants (NESHAP): Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants,'' (Benzene NESHAP). We read CAA section 112(f)(2)(B) as essentially directing EPA to use the interpretation set out in that notice [1] or to utilize approaches affording at least the same level of protection.[2] The EPA likewise notified Congress in its ''Residual Risk Report to Congress'' that EPA intended to use the Benzene NESHAP approach in making section 112(f) residual risk determinations.[3]

In the Benzene NESHAP (54FR 38044–45), we stated as an overall objective:

> [I]n protecting public health with an ample margin of safety, we strive to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million; and (2) limiting to no higher than approximately 1-in-10 thousand [*i.e.*, 100 in a million] the estimated risk that a person living near a facility would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

As explained more fully in our Residual Risk Report to Congress, these goals are not ''rigid line[s] for acceptability,'' but rather broad objectives to be weighed ''with a series of other health measures and factors.'' [4]

Our decisions regarding residual risk in the gasoline distribution source category followed the two-step framework established in the Benzene NESHAP and applied in the April 15, 2005 (70 FR 19992) National Emission Standards for Coke Oven Batteries; Final Rule (Coke Oven Batteries NESHAP) analysis. In the Benzene NESHAP, EPA interpreted and applied the two-step test drawn from the D.C. Circuit Court's Vinyl Chloride opinion. The first step involves determining which risks are ''acceptable.'' In the second step, EPA must decide whether additional reductions are necessary to provide ''an ample margin of safety'' (54 FR 38049). As part of this second decision, EPA may consider costs, technological feasibility, uncertainties, or other relevant factors.

Further clarifying how the two steps would be conducted, EPA emphasized the distinction between facilitywide emissions and source category emissions in the Coke Oven Batteries NESHAP. In the first step (''acceptable risk'') and the second step (''ample margin of safety''), HAP emissions from the source category are considered. In the second step, facilitywide emissions may be considered, as discussed in the next paragraph. For the first step, ''* * * EPA has concluded that, in its assessment of 'acceptable risk' for purposes of section 112(f), the agency will only consider the risk from emissions from that source category. This was the approach in the Benzene NESHAP, wherein EPA limited consideration of acceptability of risk to the specific sources under consideration * * * rather than to the accumulation of these and other sources of benzene emissions that may occur at an entire facility.'' (70 FR 19997)

Again following the framework used in the Benzene NESHAP, in the second step of our decision making, we consider setting standards at a level which may be equal to or lower than the acceptable risk level and which protect public health with an ample margin of safety. In making this determination, we considered the estimate of health risk and other health information along with

[1] This reading is confirmed by the Legislative History to section 112(f); see, *e.g.*, ''A Legislative History of the Clean Air Act Amendments of 1990,'' vol. 1, page 877 (Senate Debate on Conference Report).

[2] Legislative History, vol. 1, p. 877, stating, ''[T]he managers intend that the Administrator shall interpret this requirement [to establish standards reflecting an ample margin of safety] in a manner no less protective of the most exposed individual than the policy set forth in the Administrator's benzene regulations * * *.''

[3] ''Residual Risk Report to Congress'' at page ES–11, EPA–453/R–99–001 (March 1999). EPA prepared this Report to Congress in accordance with CAA section 112(f)(1). The Report discusses (among other things) methods of calculating risk posed (or potentially posed) by sources after implementation of the NESHAP, the public health significance of those risks, the means and costs of controlling them, actual health effects to persons in proximity to emitting sources, and recommendations as to legislation regarding such remaining risk.

[4] *Id.* at B–4.

additional factors relating to the appropriate level of control, including costs and economic impacts of controls, technological feasibility, uncertainties, and other relevant factors. As stated in the Coke Oven Batteries NESHAP, ''EPA believes one of the 'other relevant factors' that may be considered in this second step is co-location of other emission sources that augment the identified risks from the source category'' (70 FR 19998). In examining facilities with gasoline distribution sources, we did evaluate facilitywide emissions, but they were not considered in this ''ample margin of safety'' determination.

C. What are the current standards?

The National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) (Gasoline Distribution NESHAP) were promulgated on December 14, 1994 (59 FR 64318).

The Gasoline Distribution NESHAP cover HAP emissions resulting from gasoline liquid storage and transfer operations at facilities with bulk gasoline terminals and pipeline breakout stations. The gasoline emission sources regulated by the Gasoline Distribution NESHAP are storage tanks, loading racks, tank truck vapor leakage, and equipment leaks.

The Gasoline Distribution NESHAP regulates only those sources located at major sources. During the development of the NESHAP, we estimated that there were approximately 1,290 facilities nationwide (1,020 terminals and 270 pipeline stations), of which about 260 (240 terminals and 20 pipeline stations) would be considered major and, therefore, subject to the NESHAP.

Usually, these gasoline operations are located at facilities with other types of HAP-emitting sources (*e.g.*, terminals, refineries, chemical plants, pipeline facilities). These other collocated sources are regulated under separate NESHAP (*e.g.*, Refinery NESHAP, 40 CFR part 63, subpart CC), and today's proposed decision does not purport to satisfy the statutory review requirements for these other sources under CAA section 112(f) or 112(d)(6).

The HAP content of the gasoline vapors that escape to the atmosphere from gasoline distribution sources is generally from 5 to 16 percent by weight and is dependent on the type of gasoline used (normal or gasoline oxygenated with methyl tert butyl ether).

We estimated that the NESHAP would reduce emissions of nine key air toxics, including benzene and toluene, that are found in gasoline vapor by 2,300 tons annually. We also estimated that the NESHAP would reduce emissions of volatile organic compounds (VOC) by over 38,000 tons annually and result in energy savings of 10 million gallons of gasoline per year from collecting or preventing gasoline evaporation.

II. Analyses and Results

A. Residual Risk Review

As required by CAA section 112(f)(2), we have prepared a risk assessment to determine the residual risk posed by gasoline distribution sources after implementation of the Gasoline Distribution NESHAP. As with the NESHAP, we focused on nine HAP typically found in gasoline vapor (referred to here as ''gasoline HAP'') and collected data on the emissions of these. Based on information collected from EPA's Regional Offices and from industry associations, we compiled a list of 102 facilities covered by the Gasoline Distribution NESHAP.[5] Using our National Emissions Inventory (NEI) database, we were able to collect detailed emissions data for 69 of these facilities. Even though we do not have emissions information for every facility in the category, it is unlikely that the risk would be significantly higher for the other facilities in the category because the facilities we assessed are believed to be a representative subset of this industry.

Because the gasoline HAP are VOC, the inhalation pathway was expected to be the primary route of exposure for humans, and the assessment of human health risk via inhalation was the focus of this analysis. Using the collected information, we estimated emissions, modeled exposure concentrations surrounding these facilities, calculated the risk of possible chronic cancer and noncancer health effects, and evaluated whether acute exposures might exceed relevant health thresholds.

We considered risks attributable to the gasoline distribution source category in the ''acceptable risk'' and ''ample margin of safety'' determinations. However, HAP emissions reported in the available inventory databases are generally based on total, facilitywide emissions, and some of the HAP emissions reported for these facilities are from emission sources that are not in the gasoline distribution source category. We estimate that the contribution from gasoline distribution sources at the modeled facilities ranges from as low as 10 percent up to 100 percent of the total facilitywide emissions of the nine gasoline HAP.

The modeled facility with the highest calculated maximum individual lifetime risk (MIR) attributable to gasoline distribution sources was co-located at a petroleum refinery and the MIR was estimated to be about 5-in-1 million. The MIR attributable to gasoline distribution sources at each of the other modeled facilities was estimated to be less than 3-in-1 million.

Even when facilitywide emissions are included, only 20 percent of the facilities modeled pose greater than 1-in-1 million cancer risk. Of those, only four are facilities where it was determined that all of the reported emissions came from gasoline distribution sources, and the facilitywide MIR values for these four facilities were all less than 2-in-1 million.

The highest calculated MIR was 26-in-1 million at one facility (the petroleum refinery mentioned earlier) when we included all of the facility's reported emissions of the examined HAP without limiting the analysis to the gasoline distribution source category.

Estimated annual cancer incidence was also calculated, based on predicted individual cancer risk and the number of people reported to reside in the U.S. census blocks within the modeled area around each facility (*i.e.*, out to 50 kilometers). When examining emissions from the entire facility, without regard to source category, we found that for the 13 facilities for which estimated maximum individual cancer risk is greater than 1-in-1 million for the whole facility, the summed estimated cancer incidence is 0.003 cases per year. Across all 69 facilities, the total estimated incidence is 0.004 cases per year. Incidence attributable to gasoline distribution sources would be about 20 percent of those cases per year. Note that values presented here are estimated incremental rates based on modeled concentrations and 2000 U.S. Census data, and they should not be interpreted as actual cancer incidence rates derived from observations of disease occurrence over time (such as cancer incidence rates that may be reported based on epidemiological studies).

When examining noncancer impacts, we found that the highest calculated chronic noncancer hazard index was 0.2 for one of the facilities modeled, and that no other facilities included in the assessment had a chronic noncancer

[5] This is a smaller number of facilities than we originally predicted would be covered by the NESHAP. During the development of the NESHAP, we used model facility analyses to estimate that as many as 260 facilities would be subject to the NESHAP. The lower number compiled for our risk analysis may be the result of facilities reducing emissions and accepting permit limits or otherwise demonstrating that their emissions remain below applicability cutoffs.

hazard index greater than 0.2. This means that the total lifetime exposures to the HAP emitted by these facilities only exceeded 20 percent of the noncancer reference concentration at one facility.

Finally, we found that acute exposures, which were calculated by assuming the maximum hourly emissions rate would be twice the average rate of emissions, did not exceed the relevant health thresholds for acute effects for these HAP, even when total facility emissions were estimated rather than just emissions from within the gasoline distribution source category.

All of this analysis can be found in our ''Technology Review and Residual Risk Data Development for the Gasoline Distribution NESHAP'' and ''Residual Risk Assessment for the Gasoline Distribution (Stage I) Source Category.'' See ''Reports for Public Comment'' in the **SUPPLEMENTARY INFORMATION** section above for information on obtaining these reports.

In the Benzene NESHAP, we explained, ''The EPA will generally presume that if the risk to that individual [the MIR] is no higher than approximately 1 in 10 thousand, that risk level is considered acceptable and EPA then considers the other health and risk factors to complete an overall judgment on acceptability.'' Based on the risk estimates calculated for the gasoline distribution source category emissions at these 69 facilities, we have concluded that the residual risk for this source category is acceptable.

Because our conservative risk estimates suggest risks exceeding 1-in-1 million after the application of MACT, we considered the feasibility and costs of additional controls to reduce emissions and associated risks. We considered options for adding controls, increasing inspections, and tightening standards for each of the emissions points in the gasoline distribution source category. We collected information on whether new methods of controlling emissions existed and whether other States or local air agencies had adopted more stringent requirements. We identified options for each emission point and evaluated the costs and emission reduction benefits of these options. This analysis can be found in our ''Technology Review and Residual Risk Data Development for the Gasoline Distribution NESHAP.''

Because the data for the facilities analyzed in our risk assessment were not sufficient to analyze the existing level of control and the potential for emission reductions, we examined the potential maximum impacts for a model bulk gasoline terminal with HAP emissions just from the gasoline distribution source category. We estimated that the maximum HAP reduction that could be expected from the model terminal was about 0.8 tons per year (about a 30 percent reduction). This emission reduction would reduce the source category's highest calculated MIR cancer risk from the nine HAP from a MIR of 5-in-1 million to about 3-in-1 million.

We estimated that achieving these reductions would involve a capital cost of about $700,000 and a total annualized cost of about $265,000. For comparison, the impacts for an average facility complying with the current NESHAP are estimated to be HAP reduction of nearly 9 tons per year, a capital cost of about $450,000, and a total annualized cost of about $60,000. We request comments specifically addressing the adequacy of the model terminal analysis of potential emission reductions and costs, and comparing emissions from the model terminal to terminals analyzed in this risk analysis.[6]

The maximum individual cancer risk for this source category is already below the level we presumptively consider acceptable, and additional control requirements would achieve minimal risk reduction at a very high cost. Further, the analysis has shown that both the noncancer and acute risks from this source category are below their relevant health thresholds. As a result, we concluded that no additional control should be required because an ample margin of safety (considering cost, technical feasibility, and other factors) has been achieved by the NESHAP for the gasoline distribution source category. In this conclusion, we did not consider facilitywide risk. Although we believe we can consider facilitywide risk as a relevant factor in determining an ample margin of safety, we do not have cost, technical feasibility and other data to analyze emission sources at the facility that are outside the gasoline distribution source category.

We are also required to consider adverse impacts to the environment (*e.g.*, ecological risks) as a part of a residual risk assessment. As previously noted, because gasoline HAP are VOC, the inhalation pathway was expected to be the primary route of exposure. Regarding the inhalation exposure pathway for terrestrial mammals, we contend that human toxicity values for the inhalation pathway are generally protective of terrestrial mammals. Because the maximum cancer and noncancer hazards to humans from inhalation exposure are relatively low, we expect there to be no significant and widespread adverse effect to terrestrial mammals from inhalation exposure to HAP emitted from the gasoline distribution source category. To ensure that the potential for adverse effect to wildlife (including birds) resulting from emissions of HAP for this source category is low, we have carried out a screening-level assessment of ecological effect via inhalation toxicity. No such adverse effect was identified. Since our results showed no screening-level ecological effect, we do not believe that there is an effect on threatened or endangered species or on their critical habitat within the meaning of 50 CFR 402.14(a). Because of these results, EPA concluded that a consultation with the Fish and Wildlife Service was not necessary. Thus, we have concluded that the level of risk resulting from the limits in the NESHAP is acceptable for this source category, and that changes to the NESHAP are not required to satisfy section 112(f) of the CAA.

B. Technology Review

In addition to the requirements in CAA section 112(f)(2) to review the residual risk, section 112(d)(6) requires us to review and revise as necessary (taking into account developments in practices, processes, and control technologies) emission standards promulgated under section 112(d) no less often than every 8 years.

As described above, we investigated emission control levels and the potential for additional emission reductions from existing affected facilities within the gasoline distribution source category. Additional controls would achieve at best, minimal emission and risk reductions at a very high cost. We also did not identify any significant developments in practices, processes, or control technologies since promulgation of the original standards in 1994.

For new affected facilities, we found that the best controlled storage tanks use the new source performance standards seal types already required by the NESHAP. We also found the NESHAP's 10 milligrams standard for tank truck

[6] The model gasoline bulk terminal operating parameters were based on information gathered during the development of the NESHAP. Based on the gasoline throughput, number and size of gasoline storage tanks, and number of loading racks, the model terminal has an annual emission rate (after implementation of NESHAP controls) of about 2.5 tons of HAP when handling only normal gasoline. According to the NEI database, several of the actual facilities that were analyzed for residual risk emit HAP at a much higher rate. We determined that the percentage of HAP emission reductions (and the estimated costs per ton of HAP emissions reduced) for additional controls on the model terminal would also be representative of larger facilities.

and rail car loading to be the best control in practice. We also concluded that the NESHAP requirement for monthly inspections for equipment leaks is the best control level in practice.

In the assessment of leak standards for tank trucks at new facilities, we found that California uses the same annual test method as the NESHAP, but the California regulations allow a maximum pressure change of a half inch over the five minute test for all tank trucks in California compared to the one inch allowed by the NESHAP. We concluded that the change to a lower allowable leakage rate is impractical for a national program. From our model facility assessment discussed earlier, these controls achieve small HAP reductions and have a poor HAP cost effectiveness. Adjusting the standards for existing sources could not be justified under section 112(d)(6). As a result, any revised limits in the NESHAP under section 112(d)(6) would only apply to affected new sources, and existing sources would still be subject to the current limits. We also concluded that potentially having different leak testing requirements at facilities within the same geographical area would be hard to implement because it would require tank truck owners and operators to track and understand which terminals have the different requirements. Thus, because there are expected to be very few, if any, affected new sources across the U.S. in the next 5 to 10 years, a revised testing requirement would not apply at most terminals. The annual pressure testing requirement of the NESHAP is also considered to be the best control nationally. We concluded that the new source standard for leakage rates should be kept the same as that for existing sources and that no further revisions to the Gasoline Distribution NESHAP are needed. Because the NESHAP continue to represent the best controls that can be implemented nationally, we are proposing to not revise the Gasoline Distribution NESHAP under CAA section 112(d)(6).

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 ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

It has been determined that today's proposed decision is a ''significant regulatory action'' under the terms of Executive Order 12866. Therefore, today's proposed decision was submitted to OMB for review. However, today's proposed decision will result in no additional cost impacts beyond those estimated for the current national emission standards. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements for the national emissions standards under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0325, EPA ICR number 1659. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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

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

EPA has established a public docket for this action, which includes the ICR, under Docket ID number OAR–2004–0019, which can be found in *http://www.epa.gov/edocket.* Today's proposed decision will not change the burden estimates from those developed and approved in 1994 for the national emission standards.

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of today's proposed decision on small entities, I certify that the decision will not have a significant economic impact on a substantial number of small entities. The proposed decision will not impose any requirements on small entities. Today's proposal announces a decision and requests public comments on the residual risk assessment and technology review for the national

emission standards and imposes no additional burden on facilities impacted by the national emission standards. We are proposing no further action at this time to revise the national emission standards. We continue to be interested in the potential impacts of the proposed decision on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

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

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

The EPA has determined that today's proposed decision does not contain a Federal mandate that may result in expenditures of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector in any 1 year. Therefore, today's proposed decision is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, today's proposed decision does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed decision is not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

Today's proposed decision does 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. Thus, the requirements of the Executive Order do not apply to today's proposed decision.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's proposed decision does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to today's proposed decision.

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

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

Today's proposed decision is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risk addressed by this action present a disproportionate risk to children. The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assessed results of early life exposure to gasoline distribution facility emissions.

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

Today's proposed decision is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that today's proposed decision is not likely to have any adverse energy impacts.

I. National Technology Transfer Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with

explanations when the agency does not use available and applicable VCS.

Today's proposed decision does not involve technical standards. Therefore, the requirements of the NTTAA are not applicable.

List of Subjects for 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 4, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–15825 Filed 8–9–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 420

[Docket Number OW–2002–0027; FRL–7950–8]

RIN 2040–AE78

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Iron and Steel Manufacturing Point Source Category

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend certain provisions of the regulations establishing effluent limitations guidelines, pretreatment standards and new source performance standards for the Iron and Steel Manufacturing Point Source Category. Prior to 2002, regulations applicable to the Iron and Steel Manufacturing Point Source Category had authorized the establishment of limitations applicable to the total mass of a pollutant discharged from more than one outfall. The effect of such a ''water bubble'' was to allow a greater or lesser quantity of a particular pollutant to be discharged from any single outfall so long as the total quantity discharged from the combined outfalls did not exceed the allowed total mass limitation. In 2002, EPA revised the water bubble to prohibit establishment of alternative oil and grease effluent limitations. Based on consideration of new information and analysis, EPA proposes to reinstate the provision authorizing alternative oil and grease limitations with one exception. Today's notice also proposes to correct errors in the effective date of new source performance standards.

DATES: Comments must be received by September 9, 2005. Comments postmarked after this date may not be considered.

ADDRESSES: Submit your comments, data and information for this proposed rule identified by Docket ID No. OW–2002–0027, by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA'S electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *OW–Docket@epa.gov.*

D. Mail: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OW–2002–0027. Please include a total of 3 copies.

E. Hand Delivery: Water Docket, EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC, 20460. Attention Docket ID No. OW–2002–0027. Please include a total of 3 copies. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments, data and information to Docket ID No. OW–2002–0027. EPA's policy is that all comments, data and information received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the material includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 88102). For additional instructions on obtaining access to comments, go to Section I.C. of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Water Docket, EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC, 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Elwood H. Forsht, Engineering and Analysis Division, Office of Water, Mail code 4303T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 202–566–1025; fax number 202–566–1053; and e-mail address: *forsht.elwood@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially regulated by this action include facilities of the following types that discharge pollutants directly or indirectly to waters of the U.S.: