List of Subjects in 40 CFR Part 63

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

Dated: October 18, 2005.

Stephen L. Johnson,

Administrator.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0161, FRL–7987–6]

RIN 2060–AK23

National Emission Standards for Magnetic Tape Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action; request for public comment.

SUMMARY: On December 15, 1994, we promulgated national emission standards for hazardous air pollutants (HAP) from magnetic tape manufacturing operations (59 FR 64580). The national emission standards limit and control HAP that are known or suspected to cause cancer or have other serious health or environmental effect.

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 and to promulgate more stringent standards, if necessary, to protect public health with an ample margin of safety and to prevent adverse environmental effect. Also, section 112(d)(6) of the CAA requires EPA to review and revise the national emission standards, as necessary, taking into account developments in practices, processes, and control technologies. Based on our findings from the residual risk and technology review, we are proposing no further action at this time to revise the national emission standards. Today's proposed action requests public comments on the residual risk and technology review for the national emission standards.

DATES: *Comments.* Comments must be received on or before December 8, 2005.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by November 14, 2005, a public hearing will be held approximately 30 days following publication of this notice in the **Federal Register.**

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0161, 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/edkpub/index.jsp.* 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 and dail.lynn@epa.gov.*
- Fax: (202) 566–1741 and (919) 541–5689.
- Mail: U.S. Postal Service, send comments to: EPA Docket Center (6102T), Attention Docket Number OAR–2003–0161, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: In person or by courier, deliver comments to: EPA Docket Center (6102T), Attention Docket ID Number OAR–2003–0161, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

We request that you also send a separate copy of each comment to the contact person for the proposed action listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. OAR–2003–0161. 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/edkpub/index.jsp,* 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. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, U.S. EPA (C404–02), Attention Docket ID No. OAR–2003–0161, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. The EPA EDOCKET and the Federal regulations.gov Web sites 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 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edkpub/index.jsp.* 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 EPA Docket Center, Docket ID Number OAR–2003–0161, EPA West Building, Room B–102, 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 EPA Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For questions about the proposed action, contact Mr. H. Lynn Dail, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Coatings and Consumer Products Group (C539–03), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2363, fax number (919) 541–5689, e-mail address: *dail.lynn@epa.gov.* For questions on the residual risk analysis, contact Ms. Maria Pimentel, 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) 541–5280, fax number (919) 541–0840, e-mail address: *pimentel.maria@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The regulated categories and entities affected by the national emission standards include:

Category	NAICS [a] code	Examples of regulated entities
Industry	334613, 322222, 325992 ...	Operations at major sources that are engaged in the surface coating of magnetic tape.
Federal Government	.....	Not affected.
State, local, tribal government	.....	Not affected.

[a] 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 affected by the magnetic tape national emission standards. To determine whether your facility would be affected by the magnetic tape national emission standards, you should examine the applicability criteria in 40 CFR part 63.701(a) of subpart EE (national emission standards for magnetic tape manufacturing operations). If you have any questions regarding the applicability of the magnetic tape national emission standards to a particular entity, contact Mr. Lynn Dail, listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed action will also be available on the Worldwide Web through the Technology Transfer Network (TTN). Following signature, a copy of the proposed action 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.

Related Information. We have prepared two summary documents covering the development of, and the rationale for, this proposal and the residual risk analysis. These reports are entitled: ''Hazardous Air Pollutant Emissions from Magnetic Tape Manufacturing Operations—Background Information for Technology and Residual Risk Review'' and ''Residual Risk Assessment for the Magnetic Tape Manufacturing Source Category.'' Both documents are available in Docket ID No. OAR–2003–0161. See the ''Docket'' section above for docket information.

Public Hearing. If a public hearing is held, it will begin at 10 a.m. and will be held at EPA's campus 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 should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division, EPA (C539–03), Research Triangle Park, NC 27711, telephone (919) 541–7946.

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

I. Background

A. What is the statutory authority for this action?

Section 112 of the Clean Air Act (CAA) establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, after EPA has identified categories of sources emitting one or more of the HAP listed in the CAA, section 112(d) calls for 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 standards 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.

For area sources, CAA Section 112(d)(5) provides that in lieu of MACT, the Administrator may elect to promulgate standards or requirements which provide for the use of generally available control technologies or management practices and such standards are commonly referred to as generally available control technology (GACT) standards.

EPA is then 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 second stage in standard-setting is described in section 112(f) of the CAA. This provision requires, first, that EPA prepare a Report to Congress discussing (among other things) methods of calculating risk posed (or potentially posed) by sources after implementation of the MACT standards, 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. The EPA prepared and submitted this report (''Residual Risk Report to Congress,'' EPA–453/R–99–001) in March 1999. The Congress did not act on any of the recommendations in the report, triggering the second stage of the standard-setting process, the residual risk phase.

Section 112(f)(2) requires us to determine for each section 112(d) source category whether the MACT standards protect public health with an ample margin of safety. If the MACT standards 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) as necessary to 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 did the magnetic tape national emission standards accomplish?

On December 15, 1994, we promulgated the national emission standards for magnetic tape manufacturing operations (59 FR 64580) and required existing sources to comply with the national emission standards by December 15, 1996.

The Magnetic Tape national emission standards cover HAP emissions from surface coatings used in the manufacture of magnetic and optical recording media used in audio, video, computer and magnetic stripe tape and disks. The emission units regulated by the Magnetic Tape national emission standards are storage tanks, mix preparation equipment, coating operations, waste handling devices, condenser vents in solvent recovery, particulate transfer operations, wash sinks for cleaning removable parts, equipment for flushing fixed lines, and wastewater treatment operations. The Magnetic Tape national emission standards regulates only those sources located at major sources. During the development of the national emission standards, we identified 25 existing magnetic recording media and magnetic stripe facilities, of which 14 were considered major and, therefore, subject to the national emission standards. Currently, there are only six magnetic tape manufacturing facilities remaining in the United States, all of which are major.

In general, the current national emission standards require an overall HAP control efficiency of at least 95 percent for emissions from each solvent storage tank, piece of mix preparation equipment, coating operation, waste handling device, or condenser vent in solvent recovery. If an incinerator is used to control these emissions points, an outlet HAP concentration of no greater than 20 parts per million by volume by compound may be met, instead of achieving 95 percent control, as long as the efficiency of the capture system is 100 percent. If a coating with a HAP content no greater than 0.18 kilograms per liter (1.5 pounds per gallon) of coatings solids is used, that coating operation does not require further control.

Several solvent and particulate HAP are used in the magnetic tape manufacturing industry. Currently, the HAP solvents used to the greatest extent are methyl ethyl ketone (MEK) and toluene, and the particulate HAP are cobalt and cobalt compounds, used at one facility. One individual facility uses 0.4 pound per year (lb/yr) of acrylonitrile and another facility uses 7 lbs/yr of lead. At the time of promulgation of the national emission standards, however, the solvent HAP in use included MEK, toluene, methyl isobutyl ketone, toluene diisocyanate, ethylene glycol, methanol, xylenes, ethyl benzene, and acetaldehyde; and the particulate HAP included chromium, cobalt, and their respective compounds. Several of these HAP are no longer used in the industry. The HAP, MEK and toluene, are used at all facilities; however, HAP such as n-hexane, methanol, methyl isobutyl ketone, xylenes, triethylamine, phenol, styrene, hydrogen cloride, ethyl acrylate and ethyl benzene are selectively used at individual facilities according to their coating formulation. At the time of promulgation of the Magnetic Tape national emission standards, we estimated that these HAP emissions, including MEK and toluene, would be reduced by 2,080 Mg/yr (2,300 tpy) from a baseline of 4,060 Mg/yr (4,470 tpy).

C. What are the conclusions of the residual risk assessment?

Source Category Characterization

As required by section 112(f)(2) of the CAA, we prepared a risk assessment to determine the residual risk posed by magnetic tape manufacturing operations after implementation of the national emission standards. We compiled a list of the six magnetic tape manufacturing facilities still in operation in the United States based on inventory information we gathered from a number of manufacturing facilities and State environmental program offices (e.g., whether these facilities were still operating and manufacturing magnetic tape).

Emissions Data

The major HAP emitted by the magnetic tape manufacturing source category are MEK and toluene, which comprise 97 percent of all emissions in the source category. Other HAP such as n-hexane, methanol, methyl isobutyl ketone, xylenes, triethylamine, phenol, styrene, hydrogen chloride, ethyl acrylate, and ethyl benzene are used at individual facilities in very small amounts. The six magnetic tape manufacturing facilities have HAP emissions ranging from 3.9 to 214 Mg/yr (4.3 to 236 tpy). The total annual HAP emissions, nationally, are estimated to be 468 Mg/yr (516 tpy).

The primary sources of emissions and parameter data for the residual risk assessment were the 1999 National Emissions Inventory, 2000 Toxics Release Inventory, State offices, and the facilities involved. The emissions and parameter data used for the residual risk assessment have been placed in the docket. Using these data, we modeled exposure concentrations surrounding the six facilities, calculated the risk of possible chronic cancer and noncancer health effects, evaluated whether acute exposures might exceed relevant health thresholds, and investigated human health multipathway and ecological risks.

While the emissions data used in the residual risk assessment represent actual levels of emissions for the base year, we believe these levels are not substantially different from the maximum emission levels allowed under the current national emission standards. Therefore, the results of the risk assessment represent our approximation of the maximum risks which would be allowed under compliance with the national emission standards.

Results

Consistent with the tiered modeling approach described in the Residual Risk Report to Congress, the risk assessment for this source category started with a simple assessment which used conservative assumptions in lieu of site-specific data. The results demonstrated negligible risks for potential chronic cancer, chronic noncancer, and acute noncancer health endpoints. Also, no significant human health multipathway or ecological risks were identified. Had the resulting risks been determined to be non-negligible, a more refined analysis with site-specific data would have been necessary. The assessment is described in detail in the memorandum ''Residual Risk Assessment for the Magnetic Tape Manufacturing Source Category'' and the addendum memorandum, available in the docket. The assessment was peer reviewed by EPA scientists and revised, and the peer review comments have also been placed in the docket. Brief summaries of the results follow.

Cancer. One of the six facilities within the magnetic tape manufacturing source category was quantitatively

assessed for potential cancer risks due to the acrylonitrile emissions from the facility. Acrylonitrile is classified as a probable human carcinogen by EPA. The other five facilities did not emit any amount of known, probable, or possible carcinogens. The estimated maximum lifetime (i.e., 70-year) individual cancer risk associated with the facility was 1-in-100 million, or 0.01-in-a million. This is significantly less than the statutory trigger of 1-in-a million in section 112(f)(2) of the CAA.

Chronic noncancer. The maximum chronic noncancer hazard indices (HI) were calculated for the emissions of all the noncarcinogens with published health threshold values for all six of the existing facilities. The maximum target organ-specific HI calculated for any of the facilities was 0.3, the major portion of the risk stemming from predicted exposures to cobalt. Cobalt is a respiratory toxicant when inhaled, but the chronic inhalation of air concentrations below 0.1 microgram per cubic meter ($\mu g/m^3$) is considered to be without risk of adverse health effects, as stated in the Agency for Toxic Substances and Disease Registry's Toxicological Profile. Since all noncancer exposures were well below a target organ-specific HI of 1, we do not believe that chronic exposures from these facilities pose a public health concern.

Acute. All maximum predicted 1-hour exposure concentrations for the pollutants emitted by the six magnetic tape manufacturing facilities were below all appropriate acute dose-response values. Therefore, we do not believe that acute exposures from these facilities pose any potential for a public health concern.

Human health multipathway and ecological. Some persistent and bioaccumulative (PB) HAP may pose human health risks via exposure pathways other than inhalation and can also pose ecological risks by entering the wildlife food chain. Based on emissions data obtained for the magnetic tape manufacturing source category, lead is the only PB HAP reported as emitted by magnetic tape sources. Lead is a neurotoxicant when ingested or inhaled above acceptable concentration levels. Therefore, we investigated lead for potential human health impact via noninhalation pathways (*e.g.*, ingestion).

Lead was reported as emitted by one of the six facilities in the magnetic tape manufacturing source category. Although lead is not typically emitted from magnetic tape manufacturing processes, we nonetheless included those emissions in our analysis in an attempt to capture the worst-case impact for the facility.

The maximum annual average air concentration of lead associated with this facility was estimated at 0.00032 $\mu g/m^3$. The maximum soil concentration of lead due to deposition over a 30-year time period at a census block centroid was estimated at 4.6 milligrams per gram. All of the predicted blood lead levels associated with the one facility were estimated at concentrations ranging from 2.5 to 4.2 micrograms per deciliter ($\mu g/dL$) for the various age groups evaluated. The reference value which represents a level of concern for children as specified by EPA and the Centers for Disease Control and Prevention is 10 $\mu g/dL$. Thus, no significant human health multipathway risks are expected.

We also consider the potential for adverse environmental effect as part of the assessment. Regarding the inhalation exposure to pathway for terrestrial mammals, we conclude that human toxicity values for the inhalation pathway are generally protective of terrestrial mammals. Therefore, because the maximum predicted cancer risks and noncancer hazards to humans from inhalation exposure are extremely low, we expect there to be no significant or widespread adverse effect to terrestrial mammals from inhalation exposure to HAP emitted from facilities in this source category. Further, to ensure that the potential for adverse effect to wildlife (including birds) resulting from noninhalation exposure is low, we carried out a screening-level multipathway assessment of the potential for adverse ecological effect due to the deposition of lead. The predicted soil lead concentrations from the one facility that emits lead are low compared to the screening value for lead in soil; therefore, we do not expect any unacceptable risks to ecological receptors. Since our results showed no screening-level ecological effect, we do not believe that there is any potential for an adverse 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 is not necessary.

Assessment Conclusions

Since our assessment shows that the Magnetic Tape national emission standards pose maximum lifetime excess cancer significantly less than 1-in-1 million, and since noncancer health risks and ecological risks were found to be insignificant for this source category, EPA is not obligated to adopt standards under section 112(f) of the CAA.

EPA recognizes that there may be circumstances where it would be appropriate to delist a source category even after MACT standards has been implemented. For example, an industry may have changed sufficiently in the years since the category was listed and the MACT standards issued, such that even in the absence of the MACT standards, emissions from the category would be sufficiently low to meet the criteria of section 112(c)(9). However, in the present case we have not developed data to support such an approach. We request comment on this approach. We also request comment (with supporting data) on whether this industry has changed such that it would be appropriate to delist the source category or a distinct subcategory.

D. What are the conclusions of the technology review?

Section 112(d)(6) of the CAA requires EPA to review and revise, as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under section 112 no less often than every 8 years. We reviewed available information about the industry, talked with industry representatives, and contacted several facilities in the industry to investigate available emission control technologies and the potential for additional emission reductions. We did not identify any additional control technologies beyond those that are already in widespread use within the source category (e.g., carbon adsorbers, condensers). The only developments identified involve improvements in the performance of existing technologies or increased frequency of inspections and testing, which would achieve only small incremental emission reductions, as indicated in the previous section. The only major technical advances we discovered were the development of two new technologies (optical recording media and solid state recording (SSR) media), which may eventually supplant magnetic tape. However, optical recording media and SSR media are not considered magnetic tape and would not be covered under the Magnetic Tape national emission standards. These new technologies, along with industry consolidation and competition from foreign producers, which have lower production costs (primarily labor costs) than domestic producers, have been identified as the primary reasons for the overall decline of this industry sector. Therefore, our investigation did not identify any significant developments in

practices, processes, or control technologies in the magnetic tape manufacturing industry since promulgation of the original standards in 1994.

In light of today's low-risk finding under section 112(f) (i.e., that, given compliance with the existing MACT standards, every source in the category poses excess lifetime individual cancer risks less than 1-in-a-million and no significant noncancer or ecological risks), the Agency seeks comment on the notion that, barring any unforeseeable circumstances which might substantially change this source category or its emissions, we would have no obligations to conduct future technology reviews under CAA section 112(d)(6).

II. Proposed Action

Because the existing national emission standards continues to represent the best controls that can be implemented nationally, we believe that no further revisions to the standards are needed under section 112(d)(6) of the CAA.

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 regulatory action 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 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.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. 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 information collection burden. It will not change the burden estimates from those previously developed and approved for the existing national emission standards. However, OMB has previously approved the information collection requirements contained in the existing regulation (59 FR 64580, December 15, 1994) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and have assigned OMB control number 2060–0326, ICR No. 1678.05. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division, EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *Auby.Susan@epa.gov*, 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 in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

For purposes of assessing the impact of today's proposed action on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 500 to 1,000 employees, depending on the size definition for the affected NAICS code (as defined by Small Business Administration size standards); (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 impact of today's proposed action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed action will not impose any requirements on small entities. We are proposing no further action at this time to revise the national emission standards. Today's proposed action requests public comments on the residual risk and technology review.

We continue to be interested in the potential impact of the proposed action on small entities and welcome comments on issues related to such impact.

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 effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires 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 the proposed action does 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 to the private sector in any 1 year. The rule imposes no enforceable duty on State, local, or tribal governments, or the private sector. Thus, today's proposed action is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the proposed action contains no regulatory requirements that might significantly or uniquely affect small governments, because it contains no requirements that apply to such governments or impose obligations upon them.

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'' are 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 action does not have federalism implications. It will not have substantial direct effect 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, Executive Order 13132 does not apply to the proposed action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on the proposed action from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The proposed action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effect 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 action.

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, EPA must evaluate the environmental health or safety effect of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The proposed action is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211, Actions Concerning Regulations 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 and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, sec. 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. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

The proposed action does not involve technical standards. Therefore, EPA is not considering the use of any VCS. The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable VCS and to explain why such standards should be used in the proposed action.

List of Subjects in 40 CFR Part 63

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

Dated: October 18, 2005.

Stephen L. Johnson,

Administrator.

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