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 in 40 CFR Part 63

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

Dated: October 18, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–21187 Filed 10–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2004–0004, FRL–7987–4]

RIN 2060–AK16

National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action; request for public comment.

SUMMARY: On September 8, 1994, we promulgated national emission standards for hazardous air pollutants (NESHAP) from industrial process cooling towers (59 FR 46350). The NESHAP eliminated the use of chromium-based water treatment chemicals that are known or suspected to cause cancer or have a 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 the NESHAP and promulgate additional standards if warranted to provide an ample margin of safety to protect public health or prevent an adverse environmental effect. Also, section 112(d)(6) of the CAA requires EPA to review and revise the NESHAP as necessary at least every 8 years, taking into account developments in practices, processes, and control technologies. Based on our findings from the residual risk review and technology review, we are proposing no further action at this time to revise the NESHAP. This proposed action requests public comments on the residual risk review and technology review for the NESHAP.

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 8, 2005, a public hearing will be held approximately 20 days following publication of this action in the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0004, 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* and *mulrine.phil@epa.gov.*
- Fax: (202) 566–1741 and (919) 541–5450.
- Mail: U.S. Postal Service, send comments to: EPA Docket Center (6102T), Attention Docket Number OAR–2004–0004, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: In person or by courier, deliver comments to: EPA Docket Center (6102T), Attention Docket ID Number OAR–2004–0004, 1301 Constitution Avenue, NW., Room B–102, 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 a separate copy of each public comment also be sent to the contact person for the proposed action listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. OAR–2004–0004. 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 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/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 EPA Docket Center, Docket ID Number OAR–2004–0004, EPA West Building, 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 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. Phil Mulrine, U.S. EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Metals Group (C439–02), Research Triangle Park, North Carolina

27711, telephone (919) 541–5289, fax number (919) 541–5450, e-mail address: *mulrine.phil@epa.gov.* For questions on the residual risk analysis, contact Mr. Scott Jenkins, 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) 541–1167, fax number (919) 541–0840, e-mail address: *jenkins.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. The regulated categories and entities affected by the NESHAP include:

Category	NAICS code [a]	SIC code [b]	Examples of regulated entities
Industry	324110	(2911)	Industrial process cooling towers located at major sources, including petroleum refineries, chemical manufacturing plants, primary metals processing plants, glass manufacturing plants, tobacco products manufacturing plants, rubber products manufacturing plants, and textile finishing plants.
	325181	(2812)	
	325120	(2813)	
	325131	(2816)	
	325188	(2819)	
	325191	(2861)	
	325311	(2873)	
	325312	(2874)	
	325314	(2875)	
	325320	(2879)	
	325520	(2891)	
	325920	(2892)	
	325910	(2893)	
	325182	(2895)	
	325998	(2899)	
	331111	(3312)	
	331411	(3331)	
	331419	(3339)	
	327211	(3211)	
	327213	(3221)	
	327212	(3229)	
	312221	(2111)	
	312229	(2121)	
	312229	(2131)	
	326211	(3011)	
	313311	(2261)	
	313311	(2262)	
	313312	(2269)	
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 NESHAP. To determine whether your facility would be affected by the NESHAP, you should examine the applicability criteria in 40 CFR part 63.400(a) of subpart Q (NESHAP for Industrial Process Cooling Towers). If you have any questions regarding the applicability of the NESHAP to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR part 63.13 of subpart A (General Provisions). *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.

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. Barbara Miles, Risk and Exposure Group, Emission Standards Division, U.S. EPA (C404–01), Research Triangle Park, NC 27711, telephone (919) 541–5648. *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 CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (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. 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 Industrial Process Cooling Tower NESHAP Accomplish?

On September 8, 1994, we promulgated the NESHAP for industrial process cooling towers (IPCT) (59 FR 46350) and required existing sources to comply with the NESHAP by March 8, 1996.

Cooling towers are devices that are used to remove heat from a cooling fluid, typically water, by contacting the fluid with ambient air. The IPCT source category includes cooling towers that are used to remove heat that is produced as an input or output of chemical or industrial processes. The IPCT source category also includes cooling towers that cool industrial processes in combination with heating, ventilation, and air conditioning (HVAC) systems. The IPCT NESHAP applies specifically to IPCT that use chromium-based water treatment chemicals and are located at major sources of HAP emissions. Standards to control chromium emissions from cooling towers that cool HVAC systems exclusively (comfort cooling towers) were promulgated under section 6 of the Toxic Substances Control Act (TSCA)(55 FR 222 January 3, 1990).

The primary industries that use IPCT include petroleum refineries, chemical manufacturing plants, primary metals processing plants, glass manufacturing plants, rubber products manufacturing plants, tobacco products manufacturing plants, and textile manufacturing plants. When the IPCT NESHAP were promulgated, we estimated that there were approximately 6,945 IPCT located at these plants nationwide and that approximately 260 of these IPCT used chromium-based water treatment chemicals. We estimated that the IPCT NESHAP would reduce emissions of chromium compounds from these facilities by 22.7 megagrams per year (Mg/yr) (25 tons per year (tpy)) by prohibiting the use of chromium-based water treatment chemicals in IPCT. In addition, we estimated that the NESHAP would prevent emissions of 1.6 Mg/yr (1.8 tpy) of chromium compounds from the 870 new IPCT projected by the 5th year of the standards (1998).

When the NESHAP were promulgated, we had no information that indicated that HAP other than chromium compounds were emitted from IPCT. Consequently, we did not address emissions of other HAP in the IPCT NESHAP.

C. What Are the Conclusions of the Residual Risk Review? 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 IPCT after implementation of the NESHAP. To evaluate the residual risk for the IPCT source category, we identified the HAP emitted from IPCT and, as a discretionary matter in this instance, estimated worst-case emission rates for each of those HAP. These worst-case emission rates were used, along with facility parameters representing an actual facility, to perform the risk assessment.

Emissions Data

Because the IPCT NESHAP prohibits the use of chromium-based water treatment chemicals in IPCT, we believe that chromium compound emissions from IPCT have been eliminated by the NESHAP. In assessing the residual risk for the source category, however, we have also considered emissions of other HAP from IPCT.

In the absence of process leaks or malfunctions, the chemical species that are emitted from IPCT consist of the naturally-occurring constituents of the cooling water and any substances that are added to the cooling water. To determine what other HAP may be emitted from IPCT, we first contacted suppliers of cooling water treatment chemicals for information on cooling water additives that either contain HAP or form HAP, which could be emitted from IPCT. Then, we conducted a literature search for information on emissions from cooling towers.

The majority of IPCT are designed to recirculate the cooling water through the system to minimize the costs associated with wastewater disposal and permitting. As the water is recirculated, cooling water is lost through evaporation and emissions, which is referred to as drift. Because of these losses, the concentrations of the dissolved and suspended chemical constituents of the cooling water steadily increase, and water treatment chemicals must be added to the cooling water to ensure continued operation of the system. These chemicals generally serve to inhibit corrosion, control scaling and fouling, limit the growth of microorganisms, and control the pH of the cooling water.

To determine which of these water treatment chemicals may contain or

form HAP and subsequently be emitted from IPCT, we contacted seven companies that supply chemicals for industrial cooling water system treatment. These companies include the largest suppliers of cooling water treatment chemicals; combined, the seven companies account for the major share of the cooling water treatment chemical market.

We also conducted a literature search of trade journals, conference proceedings, EPA publications, and other documents for information on emissions from IPCT. The results of the search were placed in the public docket for this proposed action. The information collected from the water treatment chemical suppliers and through the literature search indicated that some biocides used to treat industrial cooling water either contain HAP or form HAP that can be emitted from IPCT. These HAP include chlorine, chloroform, methanol, and ethylene thiourea. However, chlorine emissions occur only under acidic conditions (i.e., pH of 3.0 or less). Because IPCT water treatment programs all operate under alkaline conditions, with the pH of the cooling water maintained in the range of 7.5 to 9.0, chlorine emissions from IPCT are unlikely under normal operating conditions.

Industrial process cooling towers typically use one and not all of the three listed HAP at any given time. Therefore, IPCT emit no more than one of the three listed HAP. We estimated worst-case emission rates for chloroform, methanol, and ethylene thiourea based on the range of concentrations of these constituents in cooling water and the model plants developed for the IPCT NESHAP.[1] We used these emission rates to model exposure concentrations surrounding those sources, calculated the risk of possible chronic cancer and noncancer health effects, evaluated whether acute exposures might exceed relevant health thresholds, and investigated human health multi-pathway and ecological risks.

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 multi-pathway 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 Industrial Process Cooling Source Category'' available in the docket. Brief summaries of the results follow.

Cancer. Both ethylene thiourea and chloroform are classified as probable human carcinogens by EPA. The estimated maximum lifetime (i.e., 70-year) individual cancer risk due to the combined emissions of these two HAP from industrial process cooling towers was 4×10^{-7}, or 0.4-in-a-million. This is less than the statutory trigger of 1-in-a-million in section 112(f)(2) of the CAA.

Chronic Noncancer. Chronic inhalation exposure to chloroform, ethylene thiourea, and methanol have been associated with a variety of noncancer health effects including depression of the central nervous system, hepatitis, jaundice, thyroid effects, birth defects, blurred vision, headache, dizziness, and nausea. Our risk assessment demonstrated that exposure to these HAP due to emissions from IPCT is unlikely to cause adverse chronic noncancer health effects. The maximum calculated hazard index (HI) is 0.002, even when emissions of all three HAP are assumed to come from the same cooling towers, which is an unlikely event. This HI is well below a HI of 1, which is the minimum level of potential concern.

Acute. Acute inhalation exposure to chloroform and/or methanol has been associated with a variety of adverse health effects including blurred vision, headache, dizziness, nausea, and depression of the central nervous system. Our risk assessment demonstrated that acute exposure to these HAP due to worst-case emissions from IPCT is unlikely to cause adverse health effects. The maximum acute hazard quotient (HQ) for any of the HAP evaluated with any of the relevant acute dose-response values considered is 0.07. This is well below a HQ of 1, which is the minimum level of potential concern.

Human Health Multipathway and Ecological. None of the HAP considered in this risk assessment are believed to persist in the environment or to bioaccumulate. Therefore, risks to human health, resulting from multipathway exposure to HAP emitted by IPCT, are not believed to be significant.

We are also required to consider adverse environmental effect as a part of a residual risk assessment. As we stated previously, none of the chemicals considered in this risk assessment are believed to persist in the environment or to bioaccumulate. Therefore, we have no evidence that suggests adverse environmental effect indicating a need for further controls. Regarding the inhalation exposure pathway for terrestrial mammals, we have concluded that the human toxicity values for the inhalation pathway are generally protective of terrestrial mammals. The maximum cancer and noncancer hazards to humans from inhalation exposure are very low, and we expect there to be no significant and widespread adverse effect to terrestrial mammals from inhalation exposure to HAP emitted from facilities in this source category. Therefore, an adverse environmental effect is not a concern for emissions from cooling towers. Since our analysis shows no significant ecological effect, we also do not believe that there is any potential for 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 has concluded that a consultation with the Fish and Wildlife Service is not necessary.

Assessment

Since our assessment shows that the IPCT NESHAP poses maximum lifetime excess cancer significantly less than one in a 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 or subcategory after MACT standards have been promulgated. For example, an industry may have changed sufficiently in the years since the category was listed and the MACT standards promulgated, such that even in the absence of the MACT standards, emissions from the category would be sufficiently low to meet the delisting criteria of CAA section 112(c)(9). In the case of IPCT, EPA promulgated MACT standards prohibiting the use of chromium-based water treatment chemicals. Currently, none of the sources in this category are using chromium-based water treatment chemicals. EPA's analysis suggests that the risks associated with other HAP are well below levels of concern. As a result, changes with this category, i.e., the use of nonchromium-based water treatment chemicals, may allow EPA to determine that the section 112(c)(9) criteria have been met in the absence of

[1] We ask for comment on what approach might be appropriate when no pre-existing NESHAP level of emissions exists.

the MACT standards. In the present case, we have not developed data to support this conclusion. We request comment on EPA's ability to delist a category or subcategory under section 112(c)(9) after promulgation of section 112(d) MACT standards. We also request comment (and supporting data) on whether this industry has changed such that it would be appropriate for EPA to delist the source category or a distinct subcategory. We also solicit comment on the possibility of subcategorizing source categories for purposes of satisfying section 112(f)(2).

D. What Are the Conclusions of the Technology Review?

Section 112(d)(6) of the CAA requires that the Administrator review and revise ''the emission standards promulgated under this section'' as necessary. In this instance, the emission standards imposed an absolute prohibition on the use of chromium-based water treatment chemicals in IPCT. As the emission standards imposed for this particular source are already at the most stringent, no more stringent standards could be imposed. Nor has EPA received any evidence which would justify a downward revision of the standards. In the residual risk analysis discussed above, EPA has considered risks for HAP emissions that are not currently subject to an emission standards but are attributable to the source category or subcategory. The text of section 112(d)(6) suggests that the technology review is not so extensive. EPA has tentatively concluded that the section 112(d)(6) review should be limited to the ''emission standards'' already issued under section 112(d). As the MACT emission standards for IPCT are the most stringent possible, the Agency has concluded that no further controls are necessary.[2]

In light of today's low-risk finding under CAA 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).

[2] We reviewed available information and talked with industry representatives to investigate available emission control technologies and the potential for additional emission reductions for any nonchromium HAP emitted from IPCT. Our investigation did not identify any significant developments in practices, processes, or control technologies.

II. Proposed Action

We believe that no further revisions to the standards are needed and are proposing not to revise the standards under section 112(d)(6) or 112(f)(2) 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. 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 NESHAP. OMB has previously approved the information collection requirements contained in the existing regulation (59 FR 46350, September 8, 1994) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* However, this information collection request has been discontinued because the information requested in the original regulation is no longer needed.

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 impacts 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; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's 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 continue to be interested in the potential impacts of the proposed action

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 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.

EPA has determined that this 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. 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 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, 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 this 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 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 action.

G. Executive Order 13045: Protection of Children From Environmental Health and 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 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 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 significant 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 Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted 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 voluntary consensus standards. EPA welcomes comments on this aspect of the proposed action 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.

[FR Doc. 05–21188 Filed 10–21–05; 8:45 am]

BILLING CODE 6560–50–P

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),