

From 11 p.m. to 7 a.m. the draw shall open after at least a two hour advance notice is given by calling the number posted at the bridge.

(2) From December 1 through March 31, the draw shall open on signal after at least a two hour advance notice is given by calling the number posted at the bridge.

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Dated: March 21, 2006.

David P. Pecoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 06-3245 Filed 4-5-06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2004-0019, FRL-8054-5]

RIN 2060-AK10

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final decision; and final rule, amendment.

SUMMARY: On December 14, 1994, we promulgated National Emission Standards for Gasoline Distribution

Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations). Section 112(f)(2) of the Clean Air Act directs us to assess the risk remaining (residual risk) after the application of national emission standards controls for hazardous air pollutants. Also, 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. On August 10, 2005, we proposed not to revise the national emission standards based on our residual risk assessment and technology review. This action finalizes that decision not to revise the national emission standards and amends a reference error.

DATES: This final decision and final rule amendment is effective on April 6, 2006.

ADDRESSES: We have established a docket for this action under Docket ID No. EPA-HQ-OAR-2004-0019. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information 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 through <http://www.regulations.gov>

or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, 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 Air and Radiation Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT:

General and Technical Information. Mr. Stephen Shedd, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), Environmental Protection Agency, 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, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Sector Based Assessment Group (C539-02), Environmental Protection Agency, 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			

^aNorth American Industry Classification System.
^bStandard 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.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's final decision

will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final 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.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final decision is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by June 5, 2006. Under section

307(d)(7)(B) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final decision may not be challenged separately in civil or criminal proceedings brought to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This

section also provides a mechanism for us to convene a proceeding for reconsideration, “[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.” Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

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

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 - B. Paperwork Reduction Act
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 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
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 - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act
 - J. Congressional Review Act

I. Background

A. What Is the Statutory Authority for These Actions?

Section 112 of the CAA establishes a comprehensive regulatory process to address hazardous air pollutants (HAP) from stationary sources. In implementing this process, we have identified categories of sources emitting one or more of the HAP listed in the CAA, and gasoline distribution facilities are 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 nonair health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards. We promulgated the National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) at 59 FR 64318 on December 14, 1994 (Gasoline Distribution NESHAP).

In what is referred to as the technology review, we are required under section 112(d)(6) of the CAA to review these technology-based standards no less frequently than every 8 years. Further, if we conclude that a revision is necessary, we have the authority to revise these standards, taking into account “developments in practices, processes, and control technologies.”

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, except area source categories for which we issued a generally available control technology standard, whether the NESHAP protects 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,” we must decide whether additional reductions are necessary to provide an ample margin of safety. As a part of this decision, we may consider costs, technological feasibility, uncertainties, or other relevant factors. We must determine whether more stringent standards are necessary to prevent adverse environmental effect (defined in section 112(a)(7) as “any significant and widespread adverse effect, which may reasonably be anticipated to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad

areas”), but in making this decision we must consider cost, energy, safety, and other relevant factors.

B. What Did We Propose?

We promulgated the Gasoline Distribution NESHAP in 1994. On August 10, 2005 (70 FR 46452), we proposed to take no further action to revise the Gasoline Distribution NESHAP and requested public comments on the residual risk and technology review for the Gasoline Distribution NESHAP.

II. Risk and Technology Review Final Decision

In our proposal, we presented the analysis and conclusions on residual risk and technology review, concluding that the maximum individual cancer risk for this source category already meets the level of 100 in 1 million that we generally consider acceptable, and that further control requirements would achieve minimal additional risk reduction at a very high cost. Further, the analyses showed that both the chronic noncancer and acute risks from this source category are below their respective relevant health thresholds, and that there are no adverse impacts to the environment (*i.e.*, ecological risks). 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 1994 NESHAP for the gasoline distribution source category.

In the technology review, we concluded that additional controls at existing sources would achieve, at best, minimal emission and risk reductions at a very high cost. Additionally, we did not identify any significant developments in practices, processes, or control technologies since promulgation of the original standards in 1994 which represent the best controls. Thus, we proposed no additional controls under the technology review under CAA section 112(d)(6).

We conclude in this rulemaking, as proposed, that there is not a need to revise the Gasoline Distribution NESHAP under the provisions of CAA section 112(f) or 112(d)(6).

III. Summary of Comments and Responses

The proposal provided a 60-day comment period ending October 11, 2005. We received comments from eight commenters. Commenters included one State agency, one State and local agency association, three industry trade associations, one industrial consultant, and two individual commenters. We

have considered the public comments as discussed below and did not find that the comments changed any results of our risk or technology reviews or analyses, or any of our determinations.

1. General Approach

Comment: We received comments both in favor of and objecting to the consideration of facilitywide emissions in the risk analyses; objecting to what was perceived as an implication within the proposal that we must conduct mandatory facilitywide risk determinations in future CAA section 112(f) rulemakings; and concerns with emissions from other source categories at the facility providing an overly conservative analysis not consistent with the CAA.

Response: In our ample margin of safety analysis, we calculated residual risk from facilitywide emissions of the nine HAP found in gasoline. However, we did not have sufficiently detailed information to analyze the emissions from various specific sources within a facility but outside the gasoline distribution source category. Because the facilities in this source category also frequently handle other, non-gasoline, petroleum products, we could not always associate the reported emissions to a particular source category. As a result, we could not evaluate the existing levels of control or the potential for applying additional controls at the facilities where HAP emissions from non-gasoline distribution sources contributed to the risk. Therefore, as stated in the August 2005 proposal, we did not use the residual risk calculated from facilitywide emissions in our decision to require no additional controls because we did not have the control cost and feasibility data necessary to do so.

Our position on the potential consideration of both source category-only emissions and facilitywide emissions is fully discussed in the final Coke Oven Batteries NESHAP (70 FR 19996–19998, April 15, 2005).

Comment: Comments were received objecting to the need to perform a separate technology review for the source category.

Response: As discussed in the proposal, we performed a separate technology review for the gasoline distribution source category under section 112(d)(6), but recommended no changes to the NESHAP. It is possible that future advances in control technologies for this source category could allow for further emission reductions (possibly reducing risk to below 1 in 1 million) at a reasonable cost. We continue to believe that the

technology review required under section 112(d)(6) is applicable to this source category.

2. Risk Analysis Assumptions

Comment: One commenter stated that the methodology used in the gasoline distribution risk assessment sets a poor precedent for future residual risk determinations that must be carried out for other source categories, recommending that, because there is no mechanism to revisit the section 112(f) assessments, the risk assessment be corrected to account for reasonably foreseeable changes that could result in increased risk.

Response: We disagree with the commenter's assertions that there is no mechanism to revisit risks from the source category and that the risk assessment must include consideration of foreseeable changes that may occur in the future. We have the authority to revisit (and revise, if necessary) any rulemaking if there is sufficient evidence that changes within the affected industry or significant improvements to science suggests the public is exposed to significant increases in risk as compared to the risk assessment prepared for the rulemaking (e.g., CAA section 301).

Comment: One commenter stated that the use of a number of overly conservative assumptions make the modeling results more conservative than necessary and do not accurately reflect reality. Another commenter also pointed out these same conservative assumptions and stated that "the conservative level of analysis determined that the risk was acceptable, and thus, there was no need to go further with the analysis."

Response: We agree with the second commenter. Several assumptions mentioned by the commenters as conservative are used in the risk assessment because the specific intent of that risk assessment is to perform an initial screening analysis. If this initial conservative risk assessment predicts negligible levels of risk, then no further analysis or action would be required. However, if it showed unacceptable risk, then additional data would be collected and incorporated into a refined analysis so that the results would more accurately reflect the true risks posed by the source category. Our position is that this type of screening approach is valuable because it allows us to focus resources on source categories that potentially pose unacceptable risks versus those that pose clearly negligible risks.

Other assumptions mentioned by commenters as being overly

conservative include the use of the 24 hours a day, 7 days a week, 70-year exposure duration for determining maximum individual risk (MIR) and the use of a Hazard Index threshold of 1.0. In the final Coke Oven Batteries NESHAP, we stated that we are currently working on additional revisions to refine the residual risk analysis. A more realistic assessment of population mobility is part of this effort (70 FR 20004, April 15, 2005). Our rationale for the use of both the exposure duration and the Hazard Index threshold that were used in this assessment is fully addressed in the final Coke Oven Batteries NESHAP (70 FR 19999–20000, April 15, 2005).

Comment: Two commenters recommended that the impacts be recalculated based on concentrations at the property line and beyond, rather than at the centroid of the most highly-exposed census block; because census blocks can be large geographically, the maximum point of impact can be far from the centroid and, thus, the use of the census block centroid does not take into account the maximum exposed individual who may live adjacent to the fence-line.

Response: In a national-scale assessment of lifetime inhalation exposures and health risks from a category of facilities, it is appropriate to identify exposure locations where an individual may reasonably be expected to spend a majority of his or her lifetime. Further, it is appropriate to use census block information on where people actually reside, rather than points on a fence-line, to locate the estimation of exposures and risks to individuals living near such facilities. This is the approach that we took for this analysis to predict the MIR.

Census blocks are the finest resolution available for the nationwide population data set (as developed by the United States Census Bureau); each is typically comprised of approximately 40 people or about 10 households. In our risk assessments, we use the geographic centroid of each census block containing at least one person to represent the location where all the people in that census block live. The census block centroid with the highest estimated exposure then becomes the location of maximum exposure, and the entire population of that census block experiences the MIR. In some cases, since actual residence locations may be closer to or farther from facility emission points, this may result in an overestimate or underestimate of the actual chronic risks. However, given the relatively small dimensions of census blocks in densely-populated areas and

the relatively large number of sources being assessed for any given source category, these uncertainties are small and do not bias our estimates of MIR for a source category.

Comment: Two commenters recommended that the risk assessment be based on potential emissions rather than on only actual reported emissions, stating that facility emissions could increase over time and that determining risk based on actual emissions does not address the potential risk to the public. One commenter stated that major source HAP thresholds are based on maximum potential to emit and that air agencies issue permits based on potential emissions, further stating that limiting the scope of the risk evaluation to actual emissions is inconsistent with the CAA section 112 rules.

Response: Our position on the use of both allowable and actual emissions is fully discussed in the final Coke Oven Batteries NESHAP (70 FR 19998–19999, April 15, 2005). We used reported emissions (from the National Emissions Inventory database) for the gasoline distribution risk analysis. The reported emissions are a mix of actual, allowable, and potential emissions, but we do not have the necessary information to distinguish between the types of data reported. While we generally recognize that most facilities overcomply with the MACT requirements (thus, actual emissions are lower than allowable), we do not have data to determine the degree of overcompliance that facilities are achieving or reporting. However, the possible inclusion of actual emissions in our analysis is not significant enough to change the results even if we could more accurately account for it. For example, if the modeled emissions doubled because of our use of some reported actual emissions, the regulatory decision would be the same as proposed.

Comment: One commenter recommended that the effects of building downwash be included in the risk assessment. The commenter stated that downwind concentrations from a point source vary and that the concentrations are skewed highest close to a source when it is affected by building downwash.

Response: While the effects of building downwash are not specifically accounted for in the model (Human Exposure Model—Screen) used, these effects generally occur only very close to the buildings or structures from which emissions emanate, and in most cases, only occur on the property of the facility. Further, for this source category, emissions are from low-level structures (*i.e.*, storage tanks and tank

truck loading racks), and this minimizes the impacts of downwash. In determining the MIR for this source category, we note that the locations of the census block centroids where the risks are maximum are well beyond the zone of influence of any building downwash effects.

Comment: One commenter stated that the cost-effectiveness analysis should have been performed in terms of dollars per cancer incidence reduced (rather than dollars per ton of emissions reduced) because it takes into account toxicity and exposure.

Response: Our residual risk decisions are based on the approach in the 1989 benzene decision framework.¹ In that decision, we stated that the level of the MIR, distribution of risk in exposed population, incidence, science policy assumptions, and uncertainties associated with risk measures, and weight of evidence that a pollutant is harmful to health are all important factors which may be considered in the acceptability judgment (first step). In the second step, we again consider all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.

For the Gasoline Distribution NESHAP ample margin of safety analysis, we developed cost data for a hypothetical model terminal to apply additional controls because we do not have data on the actual control levels being achieved at real terminals. Thus, we do not have data on the actual emission reductions that could be achieved or on the control costs that real terminals would incur. We examined the hypothetical emission reductions (at best, a 30 percent reduction) that could be achieved through the application of additional controls and the estimated costs of these additional controls.

We found the 30 percent reduction would reduce the highest calculated MIR cancer risk from this source category from about 5 in 1 million to about 3 in 1 million. Given these relatively low risk reductions and lack

of data concerning actual controls at real terminals, we did not further consider incidence or change in distribution of risks. The costs and emission reductions of these additional controls were compared to the controls required by the MACT standards and we found the additional costs to be very high compared to the emission reduction of the MACT standards and considering the limited risk reduction these controls would achieve. Thus, our model terminal analysis led us to conclude in our ample margin of safety decision that “additional control requirements would achieve minimal risk reduction at a very high cost” (70 FR 46456, August 10, 2005). Thus, while we did not calculate cost effectiveness, we did account for toxicity, exposure, and control costs in our decision, as the commenter recommended.

3. Conclusions

Comment: One commenter does not believe the current standards for gas distribution facilities protect children and recommended that we consult a children’s environmental health toxicologist due to recent research on the risks posed by these facilities.

Response: The commenter did not provide or reference a particular research study. Our most recent assessment activity on cancer effects due to early-life exposure is reflected in the “Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens” (EPA/630/R-03/003F, March 2005). The Supplemental Guidance addresses a number of issues pertaining to cancer risks associated with early-life exposures generally, but provides specific guidance on potency adjustments only for carcinogens that have been determined to cause cancer through a mutagenic mode of action. While some recent articles have suggested an association between gasoline vapors and childhood leukemia, the carcinogenic HAP commonly found in gasoline (benzene and naphthalene) have not yet been determined by us to act through a mutagenic mode of action. If we determine in the future that these pollutants do cause cancer by a mutagenic mode of action, and assuming early life exposure, the approximately 60 percent increase in estimated lifetime cancer risk would still result in a risk well below the generally considered acceptable level of 100 in 1 million. In addition, regarding effects other than cancer, EPA Reference Concentration values are designed to be protective of sensitive populations, including children.

¹ Our decisions regarding residual risk in the gasoline distribution and other source categories follows the two-step framework established in the Benzene NESHAP (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). In the Benzene NESHAP, we interpreted and applied the two-step test drawn from the D.C. Circuit Court’s Vinyl Chloride opinion.

IV. Correction to the December 19, 2003 Final Rule

On August 18, 1983, we promulgated Standards of Performance for Bulk Gasoline Terminals (48 FR 37590) and on December 14, 1994, we promulgated National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) (59 FR 64318). On December 19, 2003, we promulgated final rule amendments in the **Federal Register** (68 FR 70960) for the 1983 standards of performance and 1994 national emission standards. An error was subsequently discovered in a cross-reference in the final rule amendments. Under 40 CFR 63.428, Reporting and Recordkeeping, paragraph (b)(1) refers to 40 CFR 63.425(k). The correct reference is to 40 CFR 63.425(i). Today's final amendment corrects the reference error.

This correction does not affect the substance of the above-noted regulatory action, nor does it change the rights or obligations of any party. Thus, it is proper to issue this notice of final rule corrections without notice and comment. Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's action final without prior proposal and opportunity for comment because the change to the rule is a minor correction, is noncontroversial, and does not substantively change the agency actions taken in the final rule. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the 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 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 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. We have 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 new information collection burden. However, 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.

We have established a public docket for this action, which includes the ICR, under Docket ID number EPA-HQ-OAR-2004-0019, which can be found in <http://www.regulations.gov>. Today's final 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 rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final decision on small entities, we have concluded that this action will not have a significant economic impact on a substantial number of small entities. We are taking no further action at this time to revise the national emission standards. Thus, the final decision will not impose any requirements on small entities. Today's final decision on the residual risk assessment and technology review for the national emission standards imposes no additional burden on facilities impacted by the national emission standards.

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 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 us 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 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 regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that today's final 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. Thus, today's final decision is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, today's final 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 final 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 final decision 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, the requirements of the Executive Order do not apply to today's final 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 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." "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 final 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 final 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, we 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 final decision is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because, as explained earlier, the Agency does not have reason to believe the environmental health or safety risk addressed by this action present a disproportionate risk to children.

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

Today's final decision is not an economically 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 final 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, 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. VCS 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 final decision does not involve technical standards. Therefore, the requirements of the NTTAA are not applicable.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this final decision and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final decision in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This

action is not a "major rule" as defined by 5 U.S.C. 804(2). The final decision becomes effective on April 6, 2006.

List of Subjects in 40 CFR Part 63

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

Dated: March 31, 2006.

Stephen L. Johnson,
Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart R—[Amended]

■ 2. Section 63.428 is amended by revising paragraph (b)(1) to read as follows:

§ 63.428 Reporting and recordkeeping.

* * * * *

(b) * * *

(1) Annual certification testing performed under § 63.425(e) and railcar bubble leak testing performed under § 63.425(i); and

* * * * *

[FR Doc. 06-3315 Filed 4-5-06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039-6089-30; I.D. 032906C]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area

totaling approximately 1,248 nm² (4,281 km²), east of Chatham, MA, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours April 8, 2006, through 2400 hours April 22, 2006.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT:

Diane Borggaard, NMFS/Northeast Region, 978-281-9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301-713-2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at <http://www.nero.noaa.gov/whaletrp/>.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in

areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15-day period and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm² (139 km²)) such that right whale density is equal to or greater than 0.04 right whales per nm² (1.85 km²). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On March 24, 2006, an aerial survey reported a sighting of fifteen right whales in the proximity 41° 34'N. lat. and 69° 33'W. long. This position lies east of Chatham, MA. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and