

from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7671q.

Dated: October 24, 1995.

Chuck Clarke,

Regional Administrator.

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#### 40 CFR Part 63

[FRL-5325-6]

RIN 2060-AD93

#### National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage 1)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed amendments.

**SUMMARY:** Today's action provided in this document proposes to amend the rule, "National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)" (the "Gasoline Distribution NESHAP"), promulgated on December 14, 1994. The proposal would amend the initial compliance date for the equipment leak provisions applicable to existing sources from no later than December 14, 1995 to no later than December 15, 1997, and would amend the date by which an existing facility must provide an initial notification to December 16, 1996 or 1 year after a facility becomes subject to the Gasoline Distribution NESHAP, whichever is later. These modifications are being proposed because the compliance date for these provisions is approaching and the EPA believes that, under current circumstances, additional time will allow sources a better opportunity to establish major or area source status without foregoing quantifiable emissions reductions. The EPA is requesting comments for the next 30 days only on the proposed changes discussed in this document.

**DATES:** *Comments.* Comments must be received on or before December 7, 1995 unless a hearing is requested by November 17, 1995. If a hearing is requested, written comments must be received by December 22, 1995.

**Public Hearing.** Anyone requesting a public hearing must contact the EPA no later than November 21, 1995. If a hearing is held, it will take place on November 21, 1995, beginning at 9:00 a.m.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket (6102), Attention Docket Number A-92-38 (see docket section below), room M1500, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

**Public Hearing.** If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. JoLynn Collins, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541-5671.

**Docket.** Docket No. A-92-38, Categories VI Reconsideration and VII Amendments, contains information considered by the EPA in developing this proposal document and is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, including all non-Government holidays, at the EPA's Air and Radiation Docket and Information Center, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460; telephone (202) 260-7548. A reasonable fee may be charged for copying. This docket also contains information considered by the EPA in proposing and promulgating the Gasoline Distribution NESHAP.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Shedd at telephone number (919) 541-5397 or at facsimile number (919) 541-3470, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On December 14, 1994 (59 FR 64303), the EPA promulgated the "National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)" (the "Gasoline Distribution NESHAP"). The Gasoline Distribution NESHAP regulates all hazardous air pollutants (HAP) emitted from new and existing bulk gasoline terminals and pipeline breakout stations that are major sources of HAP emissions or are located at sites that are major sources of HAP

emissions. Among the promulgated requirements for existing sources under this rule are the requirements that sources institute an equipment leak prevention program and provide an initial notification of regulatory status no later than December 14, 1995 (40 CFR §§ 63.424(e) and 63.428(a)).

Whether a bulk gasoline terminal or pipeline breakout station is a major source or at a site that is a major source is determined by a site's "potential to emit considering controls" (Act 112(a), 42 U.S.C. 7412(a)). In the Gasoline Distribution NESHAP, the EPA promulgated two mechanisms for determining major source status that are specific to this rule: first, the NESHAP included screening equations for determining potential emissions from terminals and breakout stations based on the HAP content of gasoline, gasoline throughput, and emission rates from equipment used to handle gasoline; and second, the NESHAP allowed for case-by-case review or "emissions inventory" of a site's emissions (40 CFR § 63.420). The equations could be used only by bulk terminals and pipeline breakout stations that were at sites that had no other sources of HAP. Other sources would be able to establish potential to emit either by an emissions inventory or by using other means (outside the rule) that are generally available to sources under Subpart A of part 63, the General Provisions, and related guidance.

When the EPA promulgated the Gasoline Distribution NESHAP, the EPA anticipated that about 75 percent of all gasoline bulk terminals and pipeline breakout stations would be able to establish area source status. However, the EPA recognizes that several developments since promulgation of the rule have affected the number of sources that will establish area source status.

First, through a petition for reconsideration filed by the American Petroleum Institute (API), the EPA has learned that virtually all bulk terminals and pipeline breakout stations have HAP containing fluids such as distillates (e.g., diesel fuel and heating fuel oil) that are handled in equipment outside of the source category. According to API, this limits the utility of the emissions screening equation as a method for establishing potential to emit.

Second, the EPA has issued two guidance memoranda on options for and timing of establishing potential to emit limits. See memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, and Robert I. Van Heuvelen, Director, Office of Regulatory Enforcement, "Options for Limiting the Potential to Emit (PTE) of

a Stationary Source under Section 112 and Title V of the Clean Air Act (Act)" (January 25, 1995); and memorandum from John S. Seitz, "Potential to Emit for MACT Standards—Guidance on Timing Issues" (May 16, 1995). These memoranda are available in the docket (see ADDRESSES section). The first memorandum identified a number of ways States and sources could establish federally enforceable limits for potential to emit. In addition, the memorandum created a 2-year transition period (until January 1997) under which sources could be treated as area sources if (1) the source actually emits less than 50 percent of the major source threshold and keeps adequate records, or (2) the source emits between 50 and 100 percent of the major source threshold, and is limited to this level by State limitations that are enforceable as a practical matter.

The second memorandum addressed timing issues related to the applicability of NESHAP that affect only major sources. Major sources can reduce their potential emissions by obtaining federally enforceable limitations on their potential to emit, and as a result can achieve area source status. Before the memorandum was released, it was not clear whether there was a deadline for achieving area source status, and whether a source that reduced its potential emissions after the deadline could avoid being subject to the standard. The memorandum explained that, in the absence of rulemaking, the best reading of section 112 would require area source status to be achieved by the first substantive compliance date of a NESHAP. Additionally, the memorandum explained that unless area source status is achieved by this deadline, it will be permanently treated as a major source for purposes of that NESHAP.

Applying these two guidances to the Gasoline Distribution NESHAP would mean that, in order to avoid being permanently treated as a major source subject to the NESHAP, gasoline distribution facilities would need to achieve area source status before December 15, 1995, the compliance date for the equipment leaks provision. Industry reports there are a number of sources emitting less than the major source threshold that do not have what the EPA believes are practicably enforceable limitations on their potential to emit. Under the transition policy discussed above, sources emitting more than 50 percent of major source threshold and lacking practicably enforceable limits, are currently treated as major sources. The mechanisms for establishing practicably enforceable

limitations on "throughput" (the amount of gasoline, distillate, and other HAP emitting liquids handled at the terminal or breakout station) generally exist. Those mechanisms, however, require time to process to put into place for sources. Given the proximity of the date of the May 16 policy guidance to the December 15, 1995 deadline, the EPA believes that some sources emitting more than 50 percent of the major source threshold may not have a reasonable time period to establish practical limitations on their potential to emit.

## II. Summary of and Rationale for the Amendments

Because the developments since promulgation of the Gasoline Distribution NESHAP have led the EPA to believe that fewer sources will be able to achieve area source status than had been anticipated, the EPA has considered ways to modify policy or rule provisions so that the applicability of the NESHAP will reflect the EPA's intent at the time of promulgation. After considering revising one or both of the guidances as they would apply to this source category, and after considering the amendment of the emissions screening equation, the EPA believes the most appropriate way to allow sources a better opportunity to establish major or area source status without foregoing quantifiable emission reductions would be to defer the compliance date for the equipment leak provisions for existing sources until December 15, 1997. Furthermore, for the reasons discussed below, the EPA proposes amending the initial notification provisions so that notice is not required until December 16, 1996.

Deferral of the existing source compliance dates for equipment leak programs and initial notifications is consistent with the deadlines for compliance under the Act section 112(i), which requires existing major sources to be in compliance with a rule within 3 years of promulgation. The deferral of the equipment leak provisions will give facilities significant additional time to obtain appropriate limits on potential to emit hazardous air pollutants. The deferral of the initial notification for existing sources will give cargo truck operators more accurate notice of the regulatory status of the terminals that they use and provide adequate lead time for any necessary truck vapor tightness testing to be performed during normal testing schedules. Additionally, the notices will provide Federal, State, and local air pollution control agencies an opportunity to plan for the

implementation of this rule prior to the first compliance date for existing sources. The initial notifications will be considered non-binding in the case of sources that are major sources on December 16, 1996, but become area sources prior to December 15, 1997. Sources that cannot limit their potential to emit before December 15, 1997, must comply with the requirements for major sources under the Gasoline Distribution NESHAP by that date.

Emissions of HAP associated with equipment leaks at bulk terminals and pipeline breakout stations were estimated to be less than 2 percent of baseline HAP emissions for the source category. An industry survey indicated that 80 percent of bulk terminals were already performing some type of periodic visual leak detection program; therefore, deferring the compliance date of the Gasoline Distribution NESHAP provisions on leak detection would not forego significant emission reductions.

Deferring the compliance date for the equipment leak provisions for existing sources is preferable to the other available options. The other options are: (1) to deem the January 25 or May 16 guidance memoranda inapplicable to the Gasoline Distribution NESHAP; (2) to adopt a temporary certification scheme similar to that adopted for the Hazardous Organic NESHAP (HON); and (3) to modify the emission screening equations based on data currently before the EPA. While the guidances do not have the legal status of a rule, the EPA continues to believe that the analysis expressed in the timing guidance is the best reading of the Act section 112. Addressing the timing issues by allowing a site to temporarily be a major source and then subsequently an area source would mean that many sources would be temporarily subject to the equipment leak provisions. Not only would this pose difficulties in assuring compliance but it would also produce little, if any, emission reduction benefits.

If the EPA were to allow an owner or operator of a source to make a temporary certification that the source is not at a major source, in a manner similar to the HON amendments promulgated on April 10, 1995 (60 FR 18020), then potentially hundreds of temporary certifications would be required. Unlike the source category subject to the HON, which is estimated to have 20 to 40 eligible plant sites, air pollution control agencies would have little practical opportunity for oversight of these numerous temporary certifications. Therefore, because of the temporary nature of the HON certifications and the vast difference in

the numbers of potential certifications, the EPA is not proposing to condition an extension of the compliance date on the filing of a certification that actual emissions are below major source levels.

At this time, the EPA does not have sufficient analyzed data and information to propose modification to the emission screening equation in the rule. The EPA is considering data submitted by the API as part of its petition for reconsideration (available in the docket) and may propose modification of the equation and request comment at a later date. The EPA is not requesting comments at this time on the petition for reconsideration or potential changes to the emission screening equation.

### III. Administrative Requirements

#### A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 2060-0325) may be obtained from Ms. Sandy Farmer, Information Policy Branch, Environmental Protection Agency, 401 M St., S.W. (mail code 2136), Washington, D.C. 20460, or by calling (202) 260-2740.

Today's proposed changes to the Gasoline Distribution NESHAP have no impact on the information collection burden estimates made previously. No additional certifications or filings are proposed. Therefore, the ICR has not been revised.

#### B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The criteria set forth in section 1 of the Order for determining whether a regulation is a significant rule are as follows:

(1) Is likely to have an annual effect on the economy of \$100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government communities;

(2) Is likely to create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

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

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

The Gasoline Distribution NESHAP promulgated on December 14, 1994, was treated as a "significant regulatory action" within the meaning of the Executive Order. An estimate of the cost and benefits of the NESHAP was prepared at proposal as part of the Background Information Document (BID) and was updated in the BID for the final rule to reflect comments and changes to the final rule. The amendments proposed today would have no impact on the estimates in the BID. The EPA's earlier estimates of costs and emission reductions were based on the Gasoline Distribution NESHAP affecting only major sources and did not quantify the emissions reductions associated with the visual equipment leak detection program; in any event, these emission reductions are small relative to the total reduction for the source category.

Pursuant to the terms of Executive Order 12866, it has been determined that this action is a "non-significant regulatory action" within the meaning of the Executive Order. As such, this action was not submitted to OMB for review.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires the EPA to consider potential impacts of regulations on small business entities. The Act specifically requires the preparation of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. When the EPA promulgated the Gasoline Distribution NESHAP, it analyzed the potential impacts on small businesses, discussed the results of this analysis in the Federal Register, and concluded that the promulgated regulation would not result in financial impacts that significantly or differentially stress affected small companies. Because today's proposal imposes no additional impacts, a Regulatory Flexibility Analysis has not been prepared.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.

#### D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule

that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under section 205, the EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

#### List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Petroleum bulk stations and terminals, Reporting and recordkeeping requirements.

Dated: November 1, 1995.

Carol M. Browner,  
Administrator.

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

#### **PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES**

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

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

2. Section 63.424 is amended by revising paragraph (e) to read as follows:

#### **§ 63.424 Standards: Equipment leaks.**

\* \* \* \* \*

(e) Initial compliance with the requirements in paragraphs (a) through (d) of this section shall be achieved by existing sources as expeditiously as practicable, but no later than December 15, 1997. For new sources, initial compliance shall be achieved upon startup.

\* \* \* \* \*

3. Section 63.428 is amended by revising paragraphs (a) and the first sentence of paragraph (f)(1) to read as follows:

#### **§ 63.428 Reporting and recordkeeping.**

(a) The initial notifications required for existing affected sources under

§ 63.9(b)(2) shall be submitted by 1 year after an affected source becomes subject to the provisions of this subpart or by December 16, 1996, whichever is later. Affected sources that are major sources on December 16, 1996 and plan to be area sources by December 15, 1997 shall include in this notification a brief, non-binding description of and schedule for

the action(s) that are planned to achieve area source status.

\* \* \* \* \*

(f) \* \* \*

(1) In the case of an existing source or a new source that has an initial startup date before the effective date, the report shall be submitted with the notification of compliance status required under

§ 63.9(h), unless an extension of compliance is granted under § 63.6(i).

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4. Table 1 to subpart R is amended by revising the entry "63.9(b)(2)" to read as follows:

\* \* \* \* \*

TABLE 1 TO SUBPART R.—GENERAL PROVISIONS APPLICABILITY TO SUBPART R

Reference	Applies to subpart R	Comment
* * * * *	* * * * *	* * * * *
63.9(b)(2) .....	Yes .....	Subpart R allows addition time for existing sources to submit initial notification. § 63.428(a) specifies submittal by 1-year after being subject to rule or December 16, 1997, whichever is later.
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