

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2006-0699; FRL-]

RIN 2060-AO90

Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry; Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim Final Rule; stay.

SUMMARY: EPA is making an interim final determination to extend the stay of certain requirements in the standards of performance for equipment leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry (SOCMI) and Petroleum Refineries.

DATES: This interim final determination is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and will expire on [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2006-0699. All documents in the docket are listed in the Federal Docket Management System index at www.regulations.gov. Although listed in the index, some information is not publicly available,

e.g., Confidential Business Information (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 through www.regulations.gov or in hard copy at the Air and Radiation Docket, EPA West Building, Room 3334, 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: Ms. Karen Rackley, Coatings and Chemicals Group, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (E143-01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-0634; fax number: 919 541-0246; e-mail address: rackley.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action are synthetic organic

chemicals manufacturers and petroleum refineries. The New Source Performance Standards (NSPS) for equipment leaks of VOC in SOCFI and petroleum refineries affect the following categories of sources:

Category	NAICS Code ¹	Examples of Potentially Regulated Entities
Industry.....	324110	Petroleum refiners.
	Primarily 325110, 325192, 325193, and 325199	Synthetic organic chemical manufacturing industry (SOCFI) units, e.g., producers of benzene, toluene, or any other chemical listed in 40 CFR 60.489.

¹ North American Industrial Classification Code

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the final amendments and new standards for equipment leaks of VOC in SOCFI and petroleum refineries. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 60.480, 60.590, 60.480a, and 60.590a. If you have any questions regarding the applicability of the NSPS to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule is

available on the WWW through the Technology Transfer Network (TTN). Following signature, EPA will post a copy of the final rule on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

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 - I. National Technology Transfer and Advancement Act
 - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
 - K. Congressional Review Act

I. Background Information

On November 16, 2007, EPA promulgated amendments and established new standards of performance for equipment

leaks of VOC in the SOCOMI and Petroleum Refineries (72 FR 64860). Following the promulgation of the final amendments and new standards for these industries, EPA received a petition for reconsideration on January 15, 2008 from the American Chemistry Council (ACC), the American Petroleum Institute (API), and the National Petrochemical and Refiners Association (NPRA) ("Petitioners"). The petitioners, pursuant to CAA section 307(d)(7)(B), requested EPA reconsider four provisions in the rules: (1) the clarification of the definition of process unit in subparts VV, VVa, GGG, and GGGa; (2) the assigning of shared storage tanks to specific process units in subparts VV, VVa, GGG, and GGGa; (3) the connector monitoring requirements in subpart VVa; and (4) the definition of capital expenditure in subpart VVa. The petitioners also requested that EPA stay the effectiveness of these provisions of the rule pending resolution of their petition for reconsideration. The petition can be found in the public docket (EPA-HQ-OAR-2006-0699).

On March 4, 2008, EPA sent a letter to the petitioners, through their counsel, informing them that EPA was granting their request for reconsideration on three of the issues listed above. We indicated in the letter that no action was being taken on the issue of the clarification

of the definition of process unit at that time. Finally, the letter indicated that EPA was granting a 90-day stay of the provisions of the rules under reconsideration (see CAA section 307(d)(7)(B)), as well as the clarification of the definition of process unit, because of its interaction with the new provision regarding the allocation of shared storage vessels. The letter from EPA to the petitioners can be found in the public docket (EPA-HQ-OAR-2006-0699).

In the Final Rules section of today's Federal Register, we have published a direct final rule extending the stay until a final decision on the reconsideration has been reached. In the Proposed Rules section of today's Federal Register, we have also published a parallel proposal extending the stay until a final decision on the reconsideration has been reached. Based on today's direct final and parallel proposal extending the stay, we are taking this final action, effective for 60 days, beginning on publication, to prevent facilities from being out of compliance with provisions, at least some of which, we anticipate modifying upon reconsideration.

EPA is providing the public with an opportunity to comment on the stay extension in both the direct final rule and parallel proposal. However, we are not taking comment on this final action. We believe it is appropriate to

continue the stay that is currently in place until the direct final action becomes effective to avoid a lapse in the stay and create potential compliance problems with provisions that we believe may need to be revised.

II. What action is EPA taking?

We are making an interim final determination to extend the stay for 60 days based on our concurrent direct final action and parallel proposal. EPA has determined that a stay is necessary for the provisions under reconsideration. The 90-day stay that began on March 4, 2008 expires on June 1, 2008. At that time, facilities will be required to comply with the final rules as published (72 FR 64860) unless an extension is set in place. EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)).

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has stated in our letter to the Petitioners the reasons for granting the 90-day stay. As these reasons remain valid, we believe it is still appropriate for the stay to be in effect until we have reached a final decision on the reconsideration. Because the initial stay expires on June 1, 2008 and the

direct final action would not be effective until 60 days after publication, it is not in the public's best interest to require compliance with the rules as published during the gap between the two dates. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to extend the initial stay while the public has an opportunity to comment on the direct final action.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action results in no changes to the information collection requirements of the NSPS and will have no impact on the information collection estimate of project cost and hour burden made and approved by OMB. However, OMB has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 60, subparts WV and GGG under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., and has assigned OMB control number 2060-

0443, to the ICR for subpart VV and OMB control number 2060-0067, to the ICR for subpart GGG. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

Today's interim final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because although the rule is subject to the APA, the Agency has invoked the "good cause" exemption under 5 USC 553(b), therefore it is not subject to the notice and comment requirement.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA

generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by state, local, and tribal governments, in 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 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 action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This action imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule only extends the stay of certain provisions and does not impose any additional enforceable duty.

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."

This 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. This action will not impose direct compliance costs on State or local governments, and will not preempt State law. Thus, Executive Order 13132 does not apply to this action.

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." This 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 this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because the equipment leak NSPS for SOx and petroleum refineries are based on technology performance.

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

This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104-113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory 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) that are developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when EPA does not use available and applicable voluntary consensus standards.

EPA is not proposing to make any changes to the regulatory requirements in the final equipment leak NSPS in this action, including requirements that involve technical standards. As a result, the NTTAA discussion set forth in the November 16, 2007, final rule remains valid. The requirements of NTTAA, therefore, do not apply to this action.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental

justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

K. 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary

to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).


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List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and
procedure, Air pollution control, Incorporation by
reference, Intergovernmental relations, Reporting and
recordkeeping requirements.

MAY 15 2008

Dated:



Stephen L. Johnson,
Administrator.

For the reasons cited in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

PART 60--[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

Subpart VV--[Amended]

2. Section 60.480 is amended by adding paragraph (f) to read as follows:

§60.480 Applicability and designation of affected facility.

* * * * *

(f) Stay of standards. Owners or operators are not required to comply with the definition of "process unit" in §60.481 and the requirements in §60.482-1(g) of this subpart until [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. While the definition of "process unit" is stayed, owners or operators should use the following definition:

Process unit means components assembled to produce, as intermediate or final products, one or more of the chemicals listed in §60.489 of this part. A process unit can operate independently if supplied with sufficient feed

or raw materials and sufficient storage facilities for the product.

Subpart VVa-- [Amended]

3. Section 60.480a is amended by adding paragraph (f) to read as follows:

§60.480a Applicability and designation of affected facility.

* * * * *

(f) Stay of standards. (1) Owners or operators that start a new, reconstructed, or modified affected source prior to November 16, 2007 are not required to comply with the requirements in this paragraph until [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(i) The definition of "capital expenditure" in §60.481a of this subpart. While the definition of "capital expenditure" is stayed, owners or operators should use the definition found in §60.481 of subpart VV of this part.

(2) Owners or operators are not required to comply with the requirements in this paragraph until [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(i) The definition of "process unit" in §60.481a of this subpart. While the definition of "process unit" is stayed, owners or operators should use the following definition:

Process unit means components assembled to produce, as intermediate or final products, one or more of the chemicals listed in §60.489 of this part. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product.

(ii) The method of allocation of shared storage vessels in §60.482-1a(g) of this subpart.

(iii) The standards for connectors in gas/vapor service and in light liquid service in §60.482-11a of this subpart.