

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

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

RIN 2060-A090

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: Direct Final Rule; stay.

SUMMARY: EPA is taking direct final action on the standards of performance for equipment leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry (SOCMI) and Petroleum Refineries. On November 16, 2007, EPA promulgated amendments and established new standards for these industries. Following that action, the Administrator received a petition for reconsideration. In response to the petition, EPA granted a stay of certain provisions in the final amendments and new standards. In this action, EPA is extending the stay of the requirements under reconsideration until a final decision is reached on these issues.

DATES: This rule is effective on [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER] without

further notice, unless EPA receives adverse comment by [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER] or receives a request for a public hearing. If EPA receives adverse comment or a hearing request, we will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0699, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- E-mail: a-and-r-docket@epa.gov.
- Fax: (202) 566-1741.
- Mail: U.S. Postal Service, send comments to:
Air and Radiation Docket (6102T), Docket No. EPA-HQ-OAR-2006-0699, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW, Washington, DC 20460.

- Hand Delivery: In person or by Courier, deliver comments to: Air and Radiation Docket (6102T), EPA West Building, Room B-102, 1301 Constitution Ave., NW, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0699. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part

of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: 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, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air and Radiation Docket, EPA West Building, Room B-102, 1301 Constitution Ave., NW, Washington, DC. The Public Reading

Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

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

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:

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

- I. Why is EPA using a direct final rule?
- II. Does this action apply to me?
- III. What should I consider as I prepare my comments for EPA?
- IV. How do I obtain a copy of this document and other related information?
- V. Background Information
- VI. What action is EPA taking?
- VII. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- 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. Why is EPA using a direct final rule?

EPA is publishing the action without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the "Proposed Rules" section of today's Federal Register, we are publishing a separate document that will serve as the proposed rule to extend the stay if adverse comments are received on this direct final action. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that this direct final rule will not take effect. We would address all

public comments in any subsequent final rule based on the proposed rule.

II. Does this action apply to me?

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 SOCOMI 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 (SOCMI) 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 SOCOMI 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.

III. What should I consider as I prepare my comments for EPA?

Submitting CBI. Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

IV. How do I obtain a copy of this document and other related information?

Docket. The docket number for this action and the final SOCOMI and petroleum refineries equipment leak NSPS (40 CFR part 60, subparts VV, VVa, GGG, and GGGa) is Docket ID No. EPA-HQ-OAR-2006-0699.

Worldwide Web (WWW). In addition to being available in the docket, electronic copies of the final amendments and this action are available on the WWW through the Technology Transfer Network Web site (TTN Web). Following signature, EPA posted a copy of this notice 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.

V. Background Information

On November 16, 2007, EPA promulgated amendments and established new standards of performance for equipment leaks of VOC in the SOCFI 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).

VI. What action is EPA taking?

Today's action extends the stay of the provisions under reconsideration and the stay of the clarification of the definition of process unit. As noted above, EPA

granted a 90-day stay of these provisions under CAA section 307(d)(7)(B) on March 4, 2008. That stay expires on June 1, 2008. We are extending the stay until we have reached a final decision on all of the issues raised in the petition for reconsideration. While the Agency does not generally grant stays pending reconsideration, we believe that the unique compliance issues created by our final rule warrant a limited stay pending reconsideration. As we explained in granting the initial stay:

We are staying the rule as it relates to the method of allocating shared storage vessels and the requirements for connector monitoring because these were first introduced in the final rule (indeed, with respect to connector monitoring, we explicitly stated in the proposal that we did not intend to address them in this rulemaking). Accordingly, certain facilities may be out of compliance with requirements for which they had no notice or time to come into compliance. We are also staying the new definition for capital expenditure in 40 CFR part 60, subpart VVa, as it relates to projects at sources occurring prior to November 16, 2007. This new definition is different than the definition in the proposed 40 CFR part 60, subpart VV, and the resulting capital expenditure value may make sources that undertook changes between the proposal and final action into affected sources even though they would not have been under the previous definition and even though they had no notice of the change. While new source performance standards are generally applicable to units modified or reconstructed after the date of the proposal, we intend to seek comment on the appropriateness of such application here.

As these reasons remain valid, we have decided to extend the limited stay for the remainder of our reconsideration process.

VII. 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 VV 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

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 Procedures 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 the equipment leak NSPS on small entities, small entity is defined as:

- (1) a small business according to Small Business Administration size standards by the North American Industry Classification System (NAICS) category of the owning entity;
- (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 that is independently owned and operated and is not dominant in its field. For the SOCFI, a small business ranges from less than 500 employees to less than 1,000 employees, depending on the NAICS code. For petroleum

refiners, a small business has no more than 1,500 employees.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action will not impose any requirements on any entities because it does not impose any additional regulatory requirements.

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 SOCOMI 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. 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. 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). This rule will be effective [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

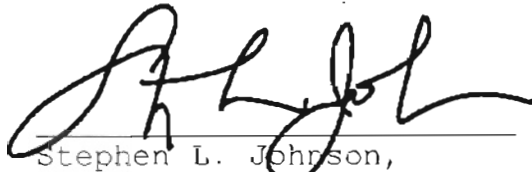
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List of Subjects in 40 CFR Part 60

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

MAY 15 2008

Dated: _____

A handwritten signature in black ink, appearing to read 'S. L. Johnson', written over a horizontal line.

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 EPA takes final action to require compliance and publishes a document 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 EPA takes final action to require compliance and publishes a document 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 EPA takes final action to require compliance and publishes a document 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.