

(C) Staff gauger personnel refuse or otherwise fail to follow any proper order of a Customs officer or any Customs order, rule, or regulation relative to continued licensing as a Customs-accredited gauger;

(D) The gauger fails to operate in accordance with the obligations of paragraph (b) of this section;

(E) A determination is made that the gauger is no longer technically or operationally proficient at performing the approved methods of measurement for Customs purposes;

(F) The gauger fails to remit to Customs, the Accounts Services Division, within the 30 day billing period the associated charges assessed for the approval and the balance of the fixed approval fee;

(G) The gauger fails to maintain its bond; or

(H) The gauger fails to remit to Customs, the Accounts Services Division, within the 30 day billing period the fixed reapproval fee.

(iii) *Assessment of monetary penalties.* The assessment of a monetary penalty under this section, may be in lieu of, or in addition to, a suspension or revocation of accreditation under this section. The monetary penalty may not exceed \$100,000 per violation and shall be assessed and mitigated pursuant to published guidelines. Any monetary penalty under this section can be in addition to the recovery of any loss of revenue or liquidated damages assessed under the gauger's Customs bond.

(2) *Notice.* When a decision to suspend, revoke, and/or to assess a monetary penalty is contemplated, Customs shall immediately notify the gauger in writing of the proposed action. The notice of proposed action shall contain a description of the grounds for the proposed revocation, suspension, and/or assessment of a monetary penalty action, and advise the gauger of the procedures for filing appeals.

(3) *Appeal procedures.* A Customs-approved gauger receiving a notice of suspension or revocation of approval, and/or of assessment of a monetary penalty, and wishing to appeal the decision, shall follow the appeal procedures set forth in paragraph (e)(3) of this section. An appeal to the Director may contain an acceptance of responsibility and may also provide extenuating circumstances and/or rebuttal evidence. Further, the appeal may ask for a meeting with the Director or his designee to discuss proposed actions. Should the gauger fail to file an appeal within the required time period, the Director shall take actions to implement the proposed suspension or

revocation and/or to collect the monetary penalty assessed in the notice.

(4) *Publication.* All final notices of suspension or revocation of a commercial gauger's approval, and/or assessment of a monetary penalty will be published in the **Federal Register** and Customs Bulletin, giving the effective date, duration, and scope of each action.

4. In § 151.14, the first sentence is amended by removing the words "'sediment and water' characteristic as set out in § 151.13(a)(2)" and adding, in its place, the words "analysis method for crude petroleum contained in ASTM D96 or other approved analysis method".

Approved: May 6, 1998.

Samuel H. Banks,

Acting Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-6106-3]

RIN 2060-A100

National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes revisions to the "National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries," which was issued as a final rule on August 18, 1995. This rule is commonly known as the Petroleum Refineries national emission standards for hazardous air pollutants (NESHAP). This action proposes to revise the date by which the Implementation Plan for emissions averaging is to be submitted. This action also proposes an exemption for specific hydrogen plant vent streams from the miscellaneous process vent requirements. Because the revisions do not alter the intended applicability, stringency, or schedule of the NESHAP, the EPA does not anticipate receiving adverse comments. Consequently, the revisions are also being issued as a direct final rule in the final rules section of this **Federal Register**. If no relevant adverse comments are timely received, no further action will be taken with

respect to this proposal and the direct final rule will become final on the date provided in that action.

DATES: Comments. Comments must be received on or before July 9, 1998.

Additionally, a hearing will be convened if requests to speak are received by June 24, 1998. If a hearing is held, it will take place on July 1, 1998 beginning at 10:00 a.m. and the record on the hearing will remain open for 30 days after the hearing to provide an opportunity for submission of rebuttal and supplementary information.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-93-48 (see docket section below), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Electronic Submittal of Comments

Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A-93-48. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

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 or at an alternate site nearby. 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, NC 27711, telephone (919) 541-5671.

Docket. Docket No. A-93-48, containing the supporting information for the original NESHAP and this action, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (MC-6102), 401 M Street SW, Washington, DC 20460, or by calling (202) 260-7548. The docket is located at the above address in Room M-1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James Durham, Waste and Chemical

Processes Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5672.

SUPPLEMENTARY INFORMATION: On August 18, 1995, EPA promulgated the "National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries" (the "Petroleum Refineries NESHAP"). The NESHAP regulates hazardous air pollutants (HAP) emitted from new and existing refineries that are major sources of HAP emissions. The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry	Petroleum Refineries (Standard Industrial Classification Code 2911).

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.640. If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

If no relevant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule, and the direct final rule in the final rules section of this **Federal Register** will automatically go into effect on the date specified in that rule. If relevant adverse comments are received, a timely document will be published withdrawing the direct final rule. Public comment received will be addressed in a subsequent final rule based on this proposed rule. Because the EPA will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule provisions, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

Administrative Requirements

A. Executive Order 12866 Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of

the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or land 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.

Because today's action does not alter the stringency or schedule of the Petroleum Refineries NESHAP or the ability of regulating authorities to ensure compliance with the NESHAP, this rule was classified "non-significant" under Executive Order 12866 and, therefore was not reviewed by the Office of Management and Budget.

B. 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) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* A copy of this Information Collection Request (ICR) document (OMB Control Number 2060-0340) may be obtained from the Information Policy Branch (PY-223Y); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260-2740. The ICR is currently in the reinstatement process.

Today's proposed changes to the NESHAP have no impact on the information collection burden estimates. The changes regarding emissions averaging consist of a revision to the date by which an Implementation Plan is to be submitted. Because the industry and the EPA were not aware of the hydrogen plant vent streams that may meet the current Group 1 miscellaneous process vent provisions, information collection activities associated with these vents were not included in the burden estimate. Today's revisions do not increase or decrease the information collection burden on the regulated community or the EPA. Consequently, the ICR has not been revised.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant negative impact on a substantial number of small entities because it does not add any requirements to the Petroleum Refineries NESHAP. This rule revises a submittal date for a report and provides an exemption for specific vent streams.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one 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.

At the time of promulgation, EPA determined that the Petroleum Refineries NESHAP 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. This determination is not altered by today's action, the purpose of which is to revise the date by which a report is due and provide an exemption for specific vent streams. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 12875

To reduce the burden of Federal regulations on States and small governments, the President issued Executive Order 12875 entitled "Enhancing the Intergovernmental Partnership" on October 26, 1993. Executive Order 12875 prohibits the EPA, to the extent feasible and permitted by law, from promulgating any regulation that is not required by statute and that creates a mandate upon a State, local or tribal government unless: (i) The Federal Government provides the funds necessary to pay the direct costs incurred by the State, local or tribal government in complying with the mandate; or, (ii) EPA provides to the Office of Management and Budget a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of those entities concerns, any written communications submitted to EPA by such units of government and the EPA's position supporting the need to issue the regulation. Executive Order 12875 further requires the EPA to develop an effective process to permit elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." This rule does not create a mandate upon State, local or tribal governments.

F. Applicability of Executive Order 13045

Executive Order 13045 applies to any rule that EPA determines (1) "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of

the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

This proposed rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Petroleum refineries, Reporting and recordkeeping requirements, Storage vessels.

Dated: May 28, 1998.

Carol M. Browner,
Administrator.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Lesser Prairie-Chicken as Threatened and Designate Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list the lesser prairie-chicken (*Tympanuchus pallidicinctus*) under the Endangered Species Act of 1973 as amended. After review of all available scientific and commercial information, the Service finds that listing this species is warranted but precluded by other higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. The lesser prairie-chicken is added to the Service's candidate species list.

DATES: The finding announced in this document was made on June 1, 1998.

ADDRESSES: Data, information, comments, or questions concerning this petition should be sent to the Field Supervisor, U. S. Fish and Wildlife Service, 222 S. Houston, Suite A, Tulsa,

Oklahoma, 74127. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jerry Brabander, Field Supervisor, Oklahoma Ecological Services Field Office (see **ADDRESSES** section) (telephone 918/581-7458 ext. 224, facsimile 918/581-7467).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information, the Service make a finding within 12 months of the receipt of the petition on whether the petitioned action is: (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Information contained in this notice is a summary of the information in the 12-month finding, which is the Service's decision document. When a petition to list a species is found to be warranted but precluded, the species is designated a candidate species. A candidate species is a taxon for which the Service has on file sufficient information to support issuance of a proposed listing rule. Section 4(b)(3)(C) requires that a petition for which the requested action is found to be warranted but precluded be treated as though it has been resubmitted on the date of such finding; a subsequent finding is to be made on such a petition within 12 months of the initial or previous finding. Notices of such 12-month findings are to be published promptly in the **Federal Register**.

On October 6, 1995, the Service received a petition, dated October 5, 1995, from the Biodiversity Legal Foundation, Boulder, Colorado and Marie E. Morrissey (petitioners). The petitioners requested that the Service list the lesser prairie-chicken as threatened throughout its known historic range in the United States, and that critical habitat be designated as soon as needs of the species are sufficiently well known. However, from October 1995 through April 1996, funding for the Service's listing program was severely reduced or eliminated and the Service was unable to act on the petition.

The Service made a 90-day finding that the petition presented substantial information indicating that the