

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2007-0011; FL-]

RIN 2060-AN72

**Standards of Performance for Petroleum Refineries for Which
Construction, Reconstruction, or Modification Commenced After
May 14, 2007**

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 petroleum refineries.

DATES: This interim final determination is effective on December 26, 2008, and will expire on February 24, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2007-0011. 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: Mr. Robert B. Lucas, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541-0884; fax number: (919) 541-0246; e-mail address: lucas.bob@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS Code ¹	Examples of Regulated Entities
Industry....	32411	Petroleum refiners.
Federal government...		Not affected.
State/local/tribal government...		Not affected.

¹ North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the standards for petroleum refineries. To determine whether your facility is regulated by this action, you

should examine the applicability criteria in 40 CFR 60.100a. If you have any questions regarding the applicability of the new source performance standards (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

Standards of performance for petroleum refineries were promulgated on June 24, 2008, that included: (1) final amendments to the existing petroleum refineries NSPS in 40 CFR part 60, subpart J; and (2) a new petroleum refineries NSPS in 40 CFR part 60, subpart Ja (73 FR 35838). The preamble to that rule contained an incorrect effective date and contained an error in the Congressional Review Act (CRA) statement in the Statutory and Executive Order Reviews section. To address that error, the effective date of 40 CFR part 60, subpart Ja was stayed for 60 days until September 26, 2008. The amendments in 40 CFR part 60, subpart J were not affected and remained effective from June 24, 2008.

On June 13, 2008, the American Petroleum Institute (API), the National Petrochemical and Refiners Association (NPRA), and the Western States Petroleum Association (WSPA) (collectively referred to as "Industry Petitioners") requested an administrative stay under Clean Air Act section 307(d)(7)(B) of certain provisions of 40 CFR part 60, subpart Ja (Docket Item No. EPA-HQ-OAR-2007-0011-245). On July 25, 2008, the Industry Petitioners sought reconsideration of the provisions of 40 CFR

part 60, subpart Ja for which they had previously requested a stay (Docket Item No. EPA-HQ-OAR-2007-0011-267). Specifically, Industry Petitioners requested that EPA reconsider the following provisions in subpart Ja: (1) the newly promulgated definition of "modification" for flares (40 CFR 60.100a(c)); (2) the definition of "flare" (40 CFR 60.101a); (3) the fuel gas combustion device sulfur limits as they relate to flares (40 CFR 60.102a(g)(1)); (4) the flow limit for flares (40 CFR 60.102a(g)(3)); (5) the total reduced sulfur and flow monitoring requirements for flares (40 CFR 60.107a(d) and (e)); and (6) the nitrogen oxide (NO_x) limit for process heaters (40 CFR 60.102a(g)(2)). Subsequently, on August 21, 2008, Industry Petitioners identified additional issues for reconsideration (Docket Item No. EPA-HQ-OAR-2007-0011-246). Industry Petitioners identified a number of issues with the standards for fluid catalytic cracking units (FCCU), fluid coking units (FCU), fuel gas combustion devices, sulfur recovery plants, and delayed coking units. The issues ranged from disagreeing with the best demonstrated technology analyses for FCCU/FCU and delayed coking units to requests for clarification of requirements regarding averaging times for various limits, to identifying inconsistencies in compliance methods, to simple typographical errors. A total of 82 items were identified in this submittal.

On August 25, 2008, HOVENSA, LLC (HOVENSA) filed a petition for reconsideration of the following provisions of 40 CFR part 60, subpart Ja: (1) the NO_x limit for process heaters (40 CFR 60.102a(g)(2)); (2) the flaring requirements, including the definitions of "flare" and "modification" (40 CFR 60.100a(c), 60.101a, 60.102a(g) through (i), 60.103a(a) and (b)); and (3) the depressurization work practice standard for delayed coking units (40 CFR 60.103a(c)) (Docket Item No. EPA-HQ-OAR-2007-0011-247). The petition also requested that EPA stay the effectiveness of these provisions during the reconsideration process.

EPA received a third petition for reconsideration on August 25, 2008, from the Environmental Integrity Project, Sierra Club, and Natural Resources Defense Council (Environmental Petitioners) requesting that EPA reconsider several aspects of 40 CFR part 60, subpart Ja (Docket Item No. EPA-HQ-OAR-2007-0011-243). The petition identified the following issues for reconsideration: (1) EPA's decision not to promulgate standards for carbon dioxide and methane emissions from refineries; (2) the flaring requirements (40 CFR 60.100a(c), 60.101a, 60.102a(g) through (i), 60.103a(a) and (b)); (3) the NO_x limit for FCCU (40 CFR 60.102a(b)(2)); and (4) the particulate matter limit for FCCU (40 CFR 60.102a(b)(1)). Unlike the other Petitioners,

Environmental Petitioners did not seek a stay of these provisions during reconsideration.

On September 26, 2008, EPA issued a **Federal Register** notice (73 FR 55751) granting reconsideration of the following issues: (1) the newly promulgated definition of "modification" for flares; (2) the definition of "flare;" (3) the fuel gas combustion device sulfur limits as they apply to flares; (4) the flow limit for flares; (5) the total reduced sulfur and flow monitoring requirements for flares; and (6) the NO_x limit for process heaters. EPA also granted Industry Petitioners' and HOVENSA's request for a 90-day stay for those same provisions under reconsideration.

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 December 26, 2008, 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 September 26, 2008, expires on December 25, 2008. At that time, facilities will be required to comply with the final rules as published (73 FR 35838) 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 the reconsideration and stay notice (73 FR 55751) 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 December 25, 2008 and the direct final action would not be effective until February 24, 2009, 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 previously submitted to OMB. However, the information collection requirements contained in the existing regulation (40 CFR part 60, subpart Ja) under the provisions of the Paperwork

Reduction Act, 44 U.S.C. 3501, et seq., have been sent to OMB for approval under EPA ICR number 2263.02. 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 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 U.S.C. 553(b), therefore, it is not subject to the notice and comment requirement.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 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. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action 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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). 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 NSPS for 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 of 1995 (NTTAA) (Public Law No. 104-113; 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when EPA decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

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 December 26, 2008. EPA will submit a report containing this rule and other required information to the

United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

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

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.

§60.100a [AMENDED]

2. In §60.100a, paragraph (c) is stayed from December 26, 2008, until February 24, 2009.

§60.101a [AMENDED]

3. The definition of "flare" in §60.101a is stayed from December 26, 2008, until February 24, 2009.

§60.102a [AMENDED]

4. In §60.102a, paragraph (g) is stayed from December 26, 2008, until February 24, 2009.

§60.107a [AMENDED]

5. In §60.107a, paragraphs (d) and (e) are stayed from December 26, 2008, until February 24, 2009.