

§ 60.107a [AMENDED]

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

[FR Doc. E8-29976 Filed 12-19-08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 60**

[EPA-HQ-OAR-2007-0011; FRL-8753-8]

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: Direct final rule; stay.

SUMMARY: EPA is taking direct final action on the new standards of performance for petroleum refineries. On June 24, 2008, EPA promulgated new standards for petroleum refineries. Following that action, the Administrator received three petitions for reconsideration. In response to the petitions, EPA granted a stay of certain provisions in the 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 February 24, 2009, without further notice, unless EPA receives adverse comment by January 21, 2009 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-2007-0011, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* a-and-r-Docket@epa.gov.

- *Fax:* (202) 566-9744.

- *Mail:* U.S. Postal Service, send comments to: Air and Radiation Docket (2822T), Docket ID No. EPA-HQ-OAR-2007-0011, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

- *Hand Delivery:* In person or by Courier, deliver comments to: Air and Radiation Docket (2822T), EPA West

Building, Room 3334, 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-2007-0011. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://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 <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site 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 <http://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 <http://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.

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: 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:

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?
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 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
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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 direct final rule include:

Category	NAICS ¹ code	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.

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

Submitting CBI. Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404-02), Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, Attention Docket ID No. EPA-HQ-OAR-2007-0011. 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 NSPS for petroleum refineries (40 CFR part 60, subpart Ja) is Docket ID No. EPA-HQ-OAR-2007-0011.

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

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 (CAA) 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.

VI. What action is EPA taking?

This action extends the stay of the provisions under reconsideration. As noted above, EPA granted a 90-day stay of these provisions under CAA section 307(d)(7)(B) on September 26, 2008. That stay expires on December 25, 2008. We are extending the stay until we have reached a final decision on all of the issues for which reconsideration was granted. 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 first five provisions listed above because the final approach to regulating flare emissions was first introduced in the final rule and represented significant changes from the proposal. Facilities had no chance to comment on these new requirements in the final rule. Accordingly, we have reason to believe that certain facilities may be out of compliance with requirements for which they had no notice or time to come into compliance. Moreover, a stay is appropriate because in reconsidering these requirements both the affected universe and the substantive requirements could change. It should be noted that as a consequence of staying the fuel gas combustion device sulfur limits as

they apply to flares, we are staying the requirement for all fuel gas combustion devices. * * * Although this is not a preferred outcome, it is unavoidable due to the structure of the rule and is an unintended consequence of this action.

We are staying the sixth provision listed above because information provided by Industry Petitioners and HOVENSA has led the Agency to question whether the emission limits in the final rule are achievable and represent best demonstrated technology. The information provided has convinced us that certain facilities may suffer undue hardship in attempting compliance with this limit. Granting a stay of this requirement while we reconsider this limit is, therefore, necessary to prevent any possible harm that may occur.

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 previously submitted to the Office of Management and Budget (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

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 petroleum refinery 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 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

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 or 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 solely 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 (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 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, with explanations when EPA does not 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. 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**. 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 on February 24, 2009.

List of Subjects in 40 CFR Part 60

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

Dated: December 12, 2008.

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 February 24, 2009, until further notice.

§ 60.101a [AMENDED]

■ 3. The definition of “flare” in § 60.101a is stayed from February 24, 2009, until further notice.

§ 60.102a [AMENDED]

■ 4. In § 60.102a, paragraph (g) is stayed from February 24, 2009, until further notice.

§ 60.107a [AMENDED]

■ 5. In § 60.107a, paragraphs (d) and (e) are stayed from February 24, 2009, until further notice.

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