



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2010-0873; FRL-9630-8]

RIN 2060-AH23

Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to establish quality assurance and quality control (QA/QC) procedures for continuous opacity monitoring systems (COMS) used to demonstrate continuous compliance with opacity standards as specified in federally enforceable regulations. This action is necessary because we do not currently have QA/QC procedures for COMS. This action would require COMS used to demonstrate continuous compliance to meet these procedures (referred to as Procedure 3).

DATES: Written comments must be received by [Insert date 30 days from date of publication in the Federal Register]. If the EPA receives adverse comment, 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-2010-0873 by mail to U.S. Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave., NW,

Washington, DC 20460. Please include a total of two copies.

Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this Federal Register.

FOR FUTHER INFORMATION CONTACT: Ms. Lula H. Melton, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (Mail Code: E143-02), Research Triangle Park, NC 27711; telephone number: (919) 541-2910; fax number: (919) 541-0516; e-mail address: melton.lula@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is the EPA issuing this proposed rule?

This document proposes to add QA/QC procedures for COMS used to demonstrate continuous compliance with opacity standards as specified in federally enforceable regulations. The quality assurance requirements will be added as Procedure 3 to Appendix F of 40 CFR part 60. We have published a direct final rule adding QA/QC procedures for COMS used for compliance determination with opacity standards in federally enforceable standards to the quality assurance requirements in Appendix F of 40 CFR Part 60 in the "Rules and Regulations" section of this Federal Register because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule, and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the ADDRESSES section of this document.

II. Does this action apply to me?

Procedure 3 applies to a COMS used to demonstrate continuous compliance with opacity standards as specified in federally enforceable regulations.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory 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 Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). These quality assurance

procedures do not add information collection requirements beyond those currently required under the applicable regulations.

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 Procedure 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 accessing the impacts of this rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (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 which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. This action establishes QA/QC procedures for COMS used to demonstrate continuous compliance with opacity standards as specified in

federally enforceable regulations and does not impose additional regulatory requirements on sources. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule does not contain a federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Rules establishing quality assurance requirements impose no costs independent from national emission standards which require their use, and such costs are fully reflected in the regulatory impact assessment for those emission standards. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule 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 simply establishes QA/QC procedures for COMS used to demonstrate continuous compliance with opacity standards as specified in federally enforceable regulations.

E. Executive Order 13132: Federalism

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

establishes QA/QC procedures for COMS used to demonstrate continuous compliance with opacity standards as specified in federally enforceable regulations. 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). This action establishes QA/QC procedures for COMS used to demonstrate continuous compliance with opacity standards as specified in federally enforceable regulations. It does not add any emission limits and does not affect pollutant emissions or air quality. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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 No. 104-113, 12(d) (15 U.S.C. 272 note) directs the 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 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.

The EPA has determined that this proposed 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. This rule does not relax the control measures on sources regulated by the rule and, therefore, will not cause emissions increases from these sources.

**Quality Assurance Requirements for Continuous Opacity Monitoring
Systems at Stationary Sources**

List of Subjects in 40 CFR Part 60

Air pollution control, Environmental protection, Continuous opacity monitoring.

Dated: February 6, 2012.

Lisa P. Jackson,
Administrator.

[FR Doc. 2012-3378 Filed 02/13/2012 at 8:45 am; Publication Date:
02/14/2012]