

The EPA Administrator, Gina McCarthy, signed the following notice on 11/8/2016, and EPA is submitting it for publication in the Federal Register (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDSys website (<http://gpo.gov/fdsys/search/home.action>) and on Regulations.gov (<http://www.regulations.gov>) in Docket No. EPA-HQ-OAR-2014-0492. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2014-0492; FRL-XXXX-XX-OAR]

RIN 2060-AR97

Clarification of Requirements for Method 303 Certification Training

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing revisions to better define the requirements associated with conducting Method 303 training courses. Method 303 is an air pollution test method used to determine the presence of visible emissions (VE) from coke ovens. This action adds language that clarifies the criteria used by the EPA to determine the competency of Method 303 training providers, but does not change the requirements for conducting the test method. These revisions will help entities interested in conducting the required training courses by clearly defining the requirements necessary to do so.

DATES: The final rule is effective on [insert date 30 days after publication in the *Federal Register*].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2014-0492. All documents in the docket are listed on the <http://www.regulations.gov> Web site. 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 electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Garnett, 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) 541-1158; fax number: (919) 541-0516; email address: garnett.kim@epa.gov.

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I. General Information

A. Does this action apply to me?

This action applies to you if you are a potential provider of Method 303 training services, someone seeking training to conduct Method 303, or a facility subject to Method 303.

B. What action is the agency taking?

This final action adds language that further clarifies the criteria used by the EPA to determine the competency of Method 303 training providers, but does not change the requirements for conducting the test method.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by **[Insert date 60 days from date of publication in the Federal Register]**. Under section 307(d)(7)(B) of the CAA, only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

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II. Background

On October 27, 1993, we published Method 303 for determining VE from coke ovens (58 FR 57898). Method 303 is applicable for the determination of VE from the following by-product coke oven battery sources: charging systems during charging; doors, topside port lids and offtake systems on operating coke ovens; and collecting mains. Method 303 is also applicable to qualifying observers for visually determining the presence of VE from by-product coke ovens. The EPA received inquiries from state/local agencies seeking the specifics of the procedures used to qualify observers. The EPA proposed these clarifications on February 25, 2016 (81 FR 9407). We received two public comments.

III. Changes Included in the Final Method 303 Clarification

Method 303 section 10.1 (40 CFR part 63, appendix B) presently states that *"The Method 303 course shall be conducted by or under the sanction of the EPA and shall consist of classroom instruction, field observation, and a proficiency test..."* We are amending this language by removing the statement indicating that these courses be conducted by or under the sanction of the EPA. Instead, Administrator-approved training providers will be allowed to conduct Method 303 training and certification. We are, therefore, revising Method 303 to define the administrative and recordkeeping requirements that must be followed by Method 303 training providers. This action: (1) defines

Administrator approval of Method 303 training providers, clarifies the minimum training course requirements, and details the

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recordkeeping requirements that the training provider must follow in order to attain Administrator approval (section 10.1); (2) adds language to clarify that VE readers must demonstrate a perfect score on the recertification exam (section 10.1.2); (3) updates and expands the criteria used to determine who is qualified to participate on the proficiency test panel (section 10.1.3); (4) adds criteria for training certificates, submittal of this information, and recordkeeping (sections 10.1.4 - 10.1.6); and (5) defines conditions for suspension of the training provider's approval by the Administrator (section 10.1.7). There are no changes to the requirements for conducting the test method.

IV. Comments and Responses

A. Technology Improvement

One commenter suggested that the EPA should require the inspector to utilize digital imagery to document the visible emission observation. This comment is beyond the scope of the present action. This action does not involve the merits of Method 303, but rather training requirements in order for observers to be qualified to conduct Method 303 testing. No change to the rule was made in response to this comment.

B. Training Requirements

One commenter stated that the quality of third-party Method 9 lectures is simply not good enough to ensure that any level of training is achieved, and seems to suggest that the Method 9 lecture is the only training involved. While attending the lecture portion of

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Method 9 is a prerequisite to receiving Method 303 certification, this requirement is to ensure individuals have a basic understanding of opacity measurement. It is not the sole training requirement. For example, the trainee must successfully complete the Method 303 training course, satisfy the field observation requirement, and demonstrate adequate performance and sufficient knowledge of Method 303 (see section 10.1). A trainee must also verify completion of at least 12 hours of field observation prior to attending the Method 303 certification course (see section 10.1.1). There are numerous other requirements as well. Therefore, the EPA believes an approved Method 303 training course will be comprehensive enough to assure that individuals who receive certification to determine VE from coke oven battery sources are proficient regardless of any perceived inadequacy of Method 9 lectures. No change to the rule was made in response to this comment.

One commenter expressed concerns over the possible use of ad hoc panel members, stating these panel members may have inconsistent interpretations of Method 303 and different inspection practices at the plants. The EPA agrees with the comment regarding the make-up of the certification panel, and is amending the Method 303 rule language in section 10.1.3 to specify that the composition of the panel will be approved by the Administrator as part of the training course approval process. During this approval process, the experience of each panel member will be reviewed in order to ensure consistency.

V. Statutory and Executive Order Reviews

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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 and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action better defines the requirements associated with conducting Method 303 training courses and does not impose additional regulatory requirements on sources.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action better defines the requirements associated with conducting Method 303 training courses and does not impose additional regulatory requirements on sources.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more for as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector.

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.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. This action clarifies the criteria used by the EPA to determine the competency of training providers, but does not change the requirements for conducting the test method. 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 Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866. This document is a prepublication version, signed by EPA Administrator, Gina McCarthy on 11/8/2016. We have taken steps to ensure the accuracy of this version, but it is not the official version.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action would make corrections and updates to an existing protocol for assessing the precision and accuracy of alternative test methods to ensure they are comparable to the methods otherwise required; thus, it does not modify or affect the impacts to human health or the environment of any standards for which it may be used.

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. 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 the *Federal Register*].

Clarification of Requirements for Method 303 Certification Training

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Test methods.

Dated:

Gina McCarthy,
Administrator.

For the reasons stated in the preamble, the EPA is amending title 40, chapter I of the Code of Federal Regulations as follows:

Part 63 - [AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. In Appendix A, amend Method 303:

a. In section 5.0 by revising paragraph 5.2; and

b. In section 10.0 by:

i. Revising paragraphs 10.1, 10.1.1, 10.1.2, and

10.1.3;

ii. Adding paragraphs 10.1.4, 10.1.5, 10.1.6, and

10.1.7; and

iii. Revising paragraph 10.2.

The revisions and additions read as follows.

Appendix A to Part 63 - Test Methods

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METHOD 303-DETERMINATION OF VISIBLE EMISSIONS FROM BY-PRODUCT COKE OVEN

BATTERIES

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5.0 Safety.

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5.2 Safety Training. Because coke oven batteries have hazardous environments, the training materials and the field training (section 10.0) shall cover the precautions required to address health and safety hazards.

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10.0 Calibration and Standardization.

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10.1 Certification Procedures. This method requires only the determination of whether VE occur and does not require the determination of opacity levels; therefore, observer certification according to Method 9 in appendix A to part 60 of this chapter is not required to obtain certification under this method. However, in order to receive Method 303 observer certification, the first-time observer (trainee) shall have attended the lecture portion of the Method 9 certification course. In addition, the trainee shall successfully complete the Method 303 training course, satisfy the field observation requirement, and demonstrate adequate performance and sufficient knowledge of Method 303. The Method 303 training provider and course shall be approved by the Administrator and shall consist of classroom instruction, field training, and a proficiency test. In order to apply for approval as a Method 303 training provider, an applicant must submit their credentials and the details of their Method 303 training course to Group Leader, Measurement Technology Group (E143-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. Those details should include, at a minimum:

- (a) A detailed list of the provider's credentials.
- (b) An outline of the classroom and the field portions of the class.

(c) Copies of the written training and lecture materials, to include:

(1) The classroom audio-visual presentation(s).

(2) A classroom course manual with instructional text, practice questions and problems for each of the elements of the Method 303 inspection (*i.e.*, charging, doors, lids and oftakes, and collecting mains). A copy of Method 303 and any related guidance documents should be included as appendices.

(3) A copy of the Method 303 demonstration video, if not using the one available at:

<http://www3.epa.gov/ttn/emc/methods/method303trainingvideo.mp4>.

(4) Multiple-choice certification tests, with questions sufficient to demonstrate knowledge of the method, as follows: one (1) initial certification test and three (3) third-year recertification tests (the questions on any one recertification test must be at least 25 percent different from those on the other recertification tests).

(5) A field certification checklist and inspection forms for each of the elements of the Method 303 inspection (*i.e.*, charging, doors, lids and oftakes, and collecting mains).

(6) The criteria used to determine proficiency.

(7) The panel members to be utilized (see Section 10.1.3) along with their qualifications.

(8) An example certificate of successful course completion.

10.1.1 A trainee must verify completion of at least 12 hours of

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field observation prior to attending the Method 303 certification course. Trainees shall observe the operation of a coke oven battery as it pertains to Method 303, including topside operations, and shall also practice conducting Method 303 or similar methods. During the field observations, trainees unfamiliar with coke battery operations shall receive instruction from an experienced coke oven observer who is familiar with Method 303 or similar methods and with the operation of coke batteries.

10.1.2 The classroom instruction shall familiarize the trainees with Method 303 through lecture, written training materials, and a Method 303 demonstration video. Successful completion of the classroom portion of the Method 303 training course shall be demonstrated by a perfect score on the initial certification test. Those attending the course for third-year recertification must complete one of the recertification tests selected at random.

10.1.3 All trainees must demonstrate proficiency in the application of Method 303 to a panel of three certified Method 303 observers, including an ability to differentiate coke oven emissions from condensing water vapor and smoldering coal. The composition of the panel must be approved by the Administrator as part of the training course approval process. The panel members will be EPA, state or local agency personnel, or industry contractors listed in 59 FR 11960 (March 15, 1994) or qualified as part of the training provider approval process of section 10.1 of this method.

Each panel member shall have at least 120 days experience in
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reading visible emissions from coke ovens. The visible emissions inspections that will satisfy the experience requirement must be inspections of coke oven battery fugitive emissions from the emission points subject to emission standards under subpart L of this part (*i.e.*, coke oven doors, topside port lids, offtake system(s), and charging operations), using either Method 303 or predecessor state or local test methods. A "day's experience" for a particular inspection is a day on which one complete inspection was performed for that emission point under Method 303 or a predecessor state or local method. A "day's experience" does not mean 8 or 10 hours performing inspections, or any particular time expressed in minutes or hours that may have been spent performing them. Thus, it would be possible for an individual to qualify as a Method 303 panel member for some emission points, but not others (*e.g.*, an individual might satisfy the experience requirement for coke oven doors, but not topside port lids). Until November 15, 1994, the EPA may waive the certification requirement (but not the experience requirement) for panel members. The composition of the panel shall be approved by the EPA.

The panel shall observe the trainee in a series of training runs and a series of certification runs. There shall be a minimum of 1 training run for doors, topside port lids, and offtake systems, and a minimum of 5 training runs (*i.e.*, 5 charges) for charging. During training runs, the panel can advise the trainee on proper procedures. There shall be a minimum of 3 certification runs for doors, topside port lids, and offtake systems, and a minimum of 15 certification

runs for charging (*i.e.*, 15 charges). The certification runs shall be unassisted. Following the certification test runs, the panel shall approve or disapprove certification based on the trainee's performance during the certification runs. To obtain certification, the trainee shall demonstrate, to the satisfaction of the panel, a high degree of proficiency in performing Method 303. To aid in evaluating the trainee's performance, a checklist, approved by the EPA, will be used by the panel members.

10.1.4 Those successfully completing the initial certification or third-year recertification requirements shall receive a certificate showing certification as a Method 303 observer and the beginning and ending dates of the certification period.

10.1.5 The training provider will submit to the EPA or its designee the following information for each trainee successfully completing initial certification or third-year recertification training: name, employer, address, telephone, cell and/or fax numbers, email address, beginning and ending dates of certification, and whether training was for 3-year certification or 1-year recertification. This information must be submitted within 30 days of the course completion.

10.1.6 The training provider will maintain the following records, to be made available to EPA or its designee on request (within 30 days of a request):

(a) A file for each Method 303 observer containing the signed certification checklists, certification forms and test results for

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their initial certification, and any subsequent third-year recertifications. Initial certification records must also include documentation showing successful completion of the training prerequisites. Testing results from any interim recertifications must also be included, along with any relevant communications.

(b) A searchable master electronic database of all persons for whom initial certification, third-year recertification or interim recertification. Information contained therein must include: the observer's name, employer, address, telephone, cell and fax numbers and email address, along with the beginning and ending dates for each successfully completed initial, third-year and interim recertification.

10.1.7 Failure by the training provider to submit example training course materials and/or requested training records to the Administrator may result in suspension of the approval of the provider and course.

10.2 Observer Certification/Recertification. The coke oven observer certification is valid for 1 year. The observer shall recertify annually by reviewing the training material, viewing the training video and answering all of the questions on the recertification test correctly. Every 3 years, an observer shall be required to pass the proficiency test in section 10.1.3 in order to be certified. The years between proficiency tests are referred to as interim years.

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