

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-2016-0382. 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 60

[EPA-HQ-OAR-2016-0382; FRL-XXXX-X]

RIN 2060-AT15

**Revisions to Procedure 2 - Quality Assurance Requirements for
Particulate Matter Continuous Emission Monitoring Systems at
Stationary Sources**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to update Procedure 2, sections 10.4(5) and (6), in 40 Code of Federal Regulations (CFR) part 60, Appendix F of the New Source Performance Standards (NSPS). Procedure 2, sections 10.4(5) and (6), provide the ongoing quality assurance/quality control (QA/QC) procedures for assessing the acceptability of particulate matter (PM) continuous emissions monitoring systems (CEMS). Section 10.4(5) explains the criteria for passing an annual response correlation audit (RCA) and section 10.4(6) explains the criteria for passing an annual relative response audit (RRA). Procedure 2, sections 10.4(5) and (6), currently contain a requirement that the annual QA/QC test results for affected facilities must fall within the same response range that was used to develop the existing PM CEMS

correlation curve. As a result, some facilities are unable to meet the criteria for passing their annual QA/QC test because their emissions are now lower than the range previously set during their correlation testing. We are modifying Procedure 2, sections 10.4(5) and (6), to allow facilities to extend their PM CEMS correlation regression line to the lowest PM CEMS response obtained during the annual RCA or RRA, when these PM CEMS responses are less than the lowest response used to develop the existing correlation curve. This change will ensure that facilities that have reduced their emissions since completing their correlation testing will no longer be penalized because their lower emissions fall outside their initial response range. This action also corrects a typographical error in the introduction to Paragraph (6) of section 10.4 in Procedure 2.

DATES: This rule is effective on [Insert date 90 days from date of publication in the Federal Register] without further notice, unless the EPA receives adverse comment 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-2016-0382, to the *Federal eRulemaking Portal*:

<http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public

docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (e.g., on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Questions concerning this direct final rule should be addressed to Ms. Kimberly Garnett, U.S.

Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (E143-02), Research Triangle Park, NC 27711; telephone number: (919) 541-1158; fax number: (919) 541-0516; email address: garnett.kim@epa.gov.

SUPPLEMENTARY INFORMATION: The information in this SUPPLEMENTARY INFORMATION section of this preamble is organized as follows:

- I. General Information
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 - B. Does this action apply to me?
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- B. Paperwork Reduction Act (PRA)
- C. Regulatory Flexibility Act (RFA)
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- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
- 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 (CRA)
- L. Determination Under Section 307(d)

I. General Information

A. Why is the EPA using a direct final rule?

The EPA is publishing this rule without a prior proposed rule because we view this as a non-controversial action and anticipate no adverse comment. This action modifies Procedure 2, sections 10.4(5) and (6), to allow facilities that have reduced their PM emissions since their PM CEMS correlation curve was developed to extend their correlation regression line to the point corresponding to the lowest PM CEMS response obtained during an annual RCA or RRA. This extended correlation regression line will then be used to determine if results of this RCA or RRA meet the criteria specified in section 10.4, paragraphs (5) and (6) of Procedure 2, respectively. This change will ensure that facilities that have reduced their emissions since completing their correlation testing will no longer be penalized because their lower emissions fall outside their initial response

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range. This action also corrects a typographical error in the introduction to section 10.4, paragraph (6) of Procedure 2. In the "Proposed Rules" section of this Federal Register publication, we are publishing a separate proposed rule to modify Procedure 2. If the EPA receives any significant and relevant adverse comments, we will publish a timely withdrawal in the Federal Register informing the public that this direct final rule will not take effect. In that case, we would address all public comments in any subsequent final rule based on the proposed rule. We will not institute a second comment period on the proposed rule. Any parties interested in commenting must do so at this time. For further information about commenting on the proposed rule, see the **ADDRESSES** section of this direct final rule.

B. Does this action apply to me?

The entities potentially affected by this rule include any facility that is required to install and operate a PM CEMS under any provision of title 40 of the CFR. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

C. Where can I obtain a copy of this action?

In addition to being available in the docket, an electronic copy of this rule will also be available online at <http://www3.epa.gov/ttn/emc/new.html>.

D. Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Clean Air Act section 307(d)(7)(B) further provides that “[o]nly an objection to a rule or procedure that was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.” This section also provides a mechanism for the EPA to reconsider the rule “[i]f the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.” Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, EPA WJC, 1200 Pennsylvania Ave., NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this direct final rule, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial

review, nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of this action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2) of the CAA).

Rather than file an immediate petition for judicial review of this direct final rule, parties with objections are encouraged to file comments in response to the parallel notice of proposed rulemaking published in the "Proposed Rules" section of today's Federal Register to allow the EPA to withdraw this direct final rule and address the comment(s) in the final rulemaking.

II. This Final Action

On January 12, 2004, the EPA promulgated Procedure 2 - Quality Assurance Requirements for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources (69 FR 1786). Procedure 2, sections 10.4 (5) and (6), contain the requirement that when conducting the annual RCA or RRA QA/QC test procedures, a specified amount of the required number of PM CEMS response values, or data points, must lie within the PM CEMS response range used to develop the PM CEMS correlation curve. In other words, when conducting the annual QA/QC tests, the PM CEMS response values should not be higher or lower than the values used to develop the correlation curve for that PM CEMS. Recently, as PM emission limits have been reduced and facilities have installed more robust PM emission control devices, a number of facilities have found that their PM emissions are lower

than their PM CEMS correlation curve. As a result, the facilities are now unable to meet the criteria for a passing the annual Procedure 2 QA/QC tests.

In order to rectify this situation, we are modifying Procedure 2, sections 10.4 (5) and (6), to allow facilities to extend their correlation regression line to the lowest PM CEMS response obtained during a RCA or RRA. When a RCA or RRA is performed, if any of the PM CEMS response values are lower than the response range of the existing correlation curve, the facility will take the existing correlation regression line and extend it to the lowest PM CEMS response value found during the annual RCA or RRA. The extension of the existing regression line will be accomplished by using the lowest PM CEMS response value, or x-value, found during the RCA or RRA, solving the regression line equation for the corresponding y-value and then extending the regression line to this new lowest point. This extended correlation regression line will then be used to determine if the RCA or RRA data meet the criteria specified for a RCA or a RRA, in section 10.4(5) and (6), respectively.

This action also corrects a typographical error in the introduction to section 10.4, paragraph (6) of Procedure 2. Paragraph (6) which originally read, "To pass an RRA, you must meet the criteria specified in paragraphs (6)(i) and (ii)...", is being corrected to read: "To pass an RRA, you must meet the criteria specified in paragraphs (6)(i) through (iii)..." Without this revision, paragraph (6)(iii) would remain unused in Procedure 2. This

typographical correction is necessary to fulfill the intent of Procedure 2, section 10.4(6), when promulgated. See 69 FR 1786.

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 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 does not contain any information collection activities.

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. There are no small entities in the regulated industry for which Procedure 2 applies.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate 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. Procedure 2 is applicable to facility owners and operators who are responsible for one or more PM CEMS used for monitoring emissions. 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.

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I. National Technology Transfer and Advancement Act

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 regulatory action is a procedural change and does not have any impact on human health or the environment.

K. Congressional Review Act

This action is subject to the CRA, and the EPA will submit a rule report to each House of 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).

L. Determination Under Section 307(d)

Pursuant to CAA section 307(d)(1)(V), the Administrator determines that this action is subject to provisions of section 307(d). Section 307(d) establishes procedural requirements specific to rulemaking under the CAA. Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to "such other actions as the Administrator may determine."

**Revisions to Procedure 2 - Quality Assurance Requirements for
Particulate Matter Continuous Emission Monitoring Systems at
Stationary Sources**

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure,
Air pollution control, Continuous emission monitoring systems,
Particulate matter, Procedures.

Dated:

Gina McCarthy,
Administrator.

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

Appendix F to Part 60 - Procedure 2 - Quality Assurance Requirements for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources - [AMENDED]

PART 60 - [AMENDED]

1. The authority citation for Part 60 continues to read as follows:

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

2. In Appendix F, Procedure 2, sections 10.4(5) and (6), are revised to read as follows:

10.4 * * *

(5) What are the criteria for passing a RCA? To pass a RCA, you must meet the criteria specified in paragraphs (5)(i) through (iii) of this section. If your PM CEMS fails to meet these RCA criteria, it is out of control, with the following exception: If any of the PM CEMS response values resulting from your RCA are lower than the lowest PM CEMS response value of your existing correlation curve, you may extend your correlation regression line to the point corresponding to the lowest PM CEMS response value obtained during the RCA. This extended correlation regression line must then be used to determine if the RCA data meets the criteria specified in paragraphs (5)(i) through (iii) of this section.

(i) For all 12 data points, the PM CEMS response value can be no greater than the greatest PM CEMS response value used to develop your correlation curve.

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(ii) For 9 of the 12 data points, the PM CEMS response value must lie within the PM CEMS output range used to develop your correlation curve.

(iii) At least 75 percent of a minimum number of 12 sets of PM CEMS and reference method measurements must fall within a specified area on a graph of the correlation regression line. The specified area on the graph of the correlation regression line is defined by two lines parallel to the correlation regression line, offset at a distance of ± 25 percent of the numerical emission limit value from the correlation regression line.

(6) What are the criteria to pass a RRA? To pass a RRA, you must meet the criteria specified in paragraphs (6)(i) through (iii) of this section. If your PM CEMS fails to meet these RRA criteria, it is out of control, with the following exception: if any of the PM CEMS response values resulting from your RRA are lower than the lowest PM CEMS response value of your existing correlation curve, you may extend your correlation regression line to the point corresponding to the lowest PM CEMS response value obtained during the RRA; this extended correlation regression line must then be used to determine if the RRA data meets the criteria specified in paragraphs (6)(i) through (iii) of this section.

(i) For all three data points, the PM CEMS response value can be no greater than the greatest PM CEMS response value used to develop your correlation curve.

(ii) For two of the three data points, the PM CEMS response value

must lie within the PM CEMS output range used to develop your correlation curve.

(iii) At least two of the three sets of PM CEMS and reference method measurements must fall within the same specified area on a graph of the correlation regression line as required for the RCA and described in paragraph (5)(iii) of this section.

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