This document is scheduled to be published in the Federal Register on 08/14/2017 and available online at **https://federalregister.gov/d/2017-17123**, and on **FDsys.gov**

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2016-0382; FRL-9966-25-OAR]

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: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing revisions to Procedure 2 that were proposed in the **Federal Register** on November 21, 2016. Procedure 2 includes quality assurance/quality control (QA/QC) procedures for particulate matter (PM) continuous emission monitoring systems (CEMS) used for compliance determination at stationary sources. The QA procedures specify the minimum requirements necessary for the control and assessment of the quality of PM CEMS data submitted to the EPA and other regulatory authorities. This action establishes consistent requirements for ensuring and assessing the quality of PM data measured by CEMS that meet initial acceptance requirements in Performance Specification (PS) 11 of appendix B to part 60.

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

ADDRESSES: *Docket*: The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2016-0382. All documents in the docket are listed at *https://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 EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue, NW, Washington, DC 20004. 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 EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Garnett, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (Mail Code: E143-02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27709; telephone number: (919) 541-1158; fax number: (919) 541-0516; email address: *garnett.kim@epa.gov*.

SUPPLEMENTARY INFORMATION:

The information in this document is organized as follows:

I. General Information
  A. Does this action apply to me?
  B. Where can I get a copy of this document and other related information?
  C. Judicial Review
II. Background
III. Final Revisions to Procedure 2
IV. Summary of Major Comments and Responses
V. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  B. Paperwork Reduction Act (PRA)
  C. Regulatory Flexibility Act (RFA)
  D. Unfunded Mandates Reform Act (UMRA)
  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 (NTTAA)
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act (CRA)

I. General Information

A. *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 Code of Federal Regulations. 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.

B. *Where can I get a copy of this document and other related information*?

In addition to being available in the docket, an electronic copy of this action is available on the Internet through the EPA's Technology Transfer Network (TTN) Web site, a forum for information and technology exchange in various areas of air quality management, measurement standards and implementation, etc. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the promulgation and key technical documents on the TTN at *http://www.epa.gov/ttn/emc/promulgated.html*.

C. *Judicial Review*

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by **[insert date 60 days after 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 established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements. Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which 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 convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the EPA 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 to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, William Jefferson Clinton Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Avenue, 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.

II. Background

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 a requirement for

conducting the annual Relative Correlation Audit (RCA) or Relative Response Audit (RRA) QA/QC test procedures, in which 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 and, as a result, the facilities are now unable to meet the criteria needed to pass the annual Procedure 2 QA/QC tests. The EPA proposed to modify this language in Procedure 2 through a direct final rule (81 FR 83160; November 21, 2016) and a parallel proposed rule (81 FR 83189; November 21, 2016). In the direct final rule, the EPA stated that if the agency received any significant and relevant adverse comments to the direct final rule, it would withdraw the direct final rule and address all public comments in a subsequent final rule based on the proposed rule. The EPA stated it would not institute a second comment period on the proposed rule (81 FR 83161, November 21, 2016). The EPA received one significant and relevant adverse comment and, therefore, published a withdrawal of the direct final rule (81 FR 10711; February 15, 2017). With this action, the EPA is responding to the adverse comment and finalizing revisions to Procedure 2.

III. Final Revisions to Procedure 2

This action finalizes the changes to Procedure 2 that were proposed on November 21, 2016 (81 FR 83189), and responds to the adverse comment received in response to that proposal by addressing conflicting language in sections 10.4(5) and 10.4(6).

IV. Summary of Major Comments and Responses

A commenter stated that the revisions to Procedure 2, as proposed by the EPA on November 21, 2016, do not achieve the intended result. As the commenter points out, sections 10.4(5) and 10.4(6) still contain language which requires that a portion of the data points from the RRA and RCA "*must lie within the PM CEMS output range used to develop your correlation curve*." The commenter suggested that language in sections 10.4(5)(ii) and 10.4(6)(ii) be removed. The EPA agrees with the commenter and removed the language in sections 10.4(5)(ii) and 10.4(6)(ii). In addition, the language allowing the extension of the correlation curve to accommodate points that are lower than the original curve has been moved to make it clear that it is needed only when determining if the RRA and RCA meet the $\pm$ 25 percent criteria originally contained in sections 10.4(5)(iii) and 10.4(6)(iii).

V. 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 provides performance criteria and QA/QC test procedures for assessing the acceptability of PM CEMS performance and data quality. These criteria and QA/QC test procedures do not add information collection requirements beyond those currently required under the applicable regulation.

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.

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 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 action will help to ensure that emission control devices are operated properly and maintained as needed, thereby helping to ensure compliance with emission standards, which would benefit all affected populations.

K. *Congressional Review Act (CRA)*

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

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Continuous emission monitoring systems, Particulate matter, Performance specifications, Test methods and procedures.

_____

Dated: August 7, 2017.

_____

E. Scott Pruitt,
Administrator.

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

PART 60— STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

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, in section 10.4, paragraphs (5) and (6) are revised to read as follows:

Appendix F to Part 60—Quality Assurance Procedures

* * * * *

PROCEDURE 2—QUALITY ASSURANCE REQUIREMENTS FOR PARTICULATE MATTER CONTINUOUS EMISSION MONITORING SYSTEMS AT STATIONARY SOURCES

* * * * *

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) and (ii) of this section. If your PM CEMS fails to meet these RCA criteria, it is out of control.

(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.

(ii) 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. 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 this criterion.

(6) What are the criteria to pass a RRA? To pass a RRA, you must meet the criteria specified in paragraphs (6)(i) and (ii) of this section. If your PM CEMS fails to meet these RRA criteria, it is out of control.

(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) 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)(ii) of this section.

* * * * *

[FR Doc. 2017-17123 Filed: 8/11/2017 8:45 am; Publication Date: 8/14/2017]