



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 60**

**[EPA-HQ-OAR-2013-0696; FRL-9968-02-OAR]**

**RIN 2060-AS86**

### **Technical Amendments to Procedure 6**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing minor technical amendments to Procedure 6 that were proposed in the **Federal Register** on May 19, 2016.

Procedure 6 includes quality assurance (QA) procedures for hydrogen chloride (HCl) 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 CEMS data submitted to the EPA. This action establishes consistent requirements for ensuring and assessing the quality of HCl data measured by CEMS that meet initial acceptance requirements in Performance Specification (PS) 18 of appendix B to part 60.

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

**ADDRESSES:** The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2013-0696. 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](http://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:** Mr. Raymond Merrill, 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) 541-5225; fax number: (919) 541-0516; email address: [merrill.raymond@epa.gov](mailto:merrill.raymond@epa.gov).

**SUPPLEMENTARY INFORMATION:**

The information in this preamble is organized as follows:

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  - 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 major entities that would potentially be affected by Procedure 6 for gaseous HCl CEMS are those entities that are required to install a new HCl CEMS, relocate an existing HCl CEMS, or replace an existing HCl CEMS under any applicable subpart of 40 CFR parts 60, 61, or 63 that were initially accepted following requirements in PS 18 of appendix B in part 60. Table 1 of this preamble lists the current federal rules by subpart and the corresponding source categories to which Procedure 6 potentially would apply.

**TABLE 1. SOURCE CATEGORIES THAT WOULD POTENTIALLY BE SUBJECT TO PROCEDURE 6**

Subpart(s)	Source Category
<b>40 CFR part 63</b>	
Subpart LLL	Portland Cement Manufacturing Industry
Subpart UUUUU	Coal- and Oil-fired Electric Utility Steam Generating Units

The requirements of Procedure 6 may also apply to stationary sources located in a state, district, reservation, or territory that adopts Procedure 6 in its implementation plan.

Table 2 lists the corresponding North American Industry Classification (NAICS) codes for the source categories listed in Table 1 of this preamble.

**TABLE 2. NAICS FOR POTENTIALLY REGULATED ENTITIES**

Industry	NAICS Codes
Fossil Fuel-Fired Electric Utility Steam Generating Units	221112

	921150 <sup>a</sup>
Portland Cement Manufacturing Plants	327310

<sup>a</sup> Industry in Indian Country

Tables 1 and 2 are not intended to be exhaustive, but rather they provide a guide for readers regarding entities potentially affected by this action. If you have any questions regarding the potential applicability of Procedure 6 to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

**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 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 us 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.

## **II. Background**

On July 7, 2015, the EPA published Procedure 6, which is a companion to PS 18. Procedure 6 specifies the minimum QA requirements necessary for control and assessment of the quality of CEMS data submitted to the EPA used for HCl emissions compliance determination at stationary sources (80 FR 38628). Performance Specification 18 and Procedure 6 are applicable to the evaluation of HCl continuous monitoring instruments for Portland cement facilities, electric generating units and industrial, commercial, and institutional boilers and process heaters. After publication of Procedure 6, certain minor inconsistencies with treatment of data above span and how to calculate the error of CEMS accuracy using dynamic spiking were identified. The EPA proposed to correct the minor inconsistencies in PS 18 and Procedure 6 through a direct

final action titled, “Technical Amendments to Performance Specification 18 and Procedure 6.” 81 FR 31515 (May 19, 2016). One substantive comment was received regarding changes to Procedure 6. The EPA finalized PS 18 and withdrew Procedure 6 (81 FR 52348). With this action, the EPA is responding to that comment and finalizing corrections to Procedure 6.

### **III. Final Revisions to Procedure 6**

This action finalizes changes to Procedure 6 that were proposed on May 19, 2016 (81 FR 31577), and responds to the substantive comment received in response to that proposal by:

- (1) Clarifying that the QA for data above span is subject to the specific requirements in applicable rules or permits, which supersede the general requirements in Procedure 6 (section 4.1.5);
- (2) Clarifying the time that triggers conducting an above span CEMS response check (section 4.1.5.1);
- (3) Correcting the incomplete reference to equations used to calculate dynamic spiking error (section 5.2.4.2).

### **IV. Summary of Major Comments and Responses**

A commenter stated that one of the revisions to Procedure 6, as proposed by EPA on May 19, 2016, appeared to significantly change the applicability of certain QA requirements, contending that to do so would be inconsistent with the EPA’s justification for the QA procedure originally promulgated in the 2015 final rule (80 FR 38628; July 7, 2015). The EPA agrees with the commenter that the obligation to follow the procedure for treatment of data above span should remain as originally promulgated: as existing only where required by an applicable regulation. The EPA’s intent was not to enlarge the applicability of Procedure 6 for treatment of data above span, but simply to make clear that (to the extent this procedure even applies) it is

furthermore superseded if alternate terms are specified in another applicable rule or permit. Thus, for example, where an applicable rule or permit accommodates a concentration level between 50 and 150 percent of the highest hourly concentration, during the period of measurements above span, that would be an acceptable implementation of Procedure 6, notwithstanding the default specification of section 4.1.5.1.1 that concentrations must be between 75 percent and 125 percent of the highest hourly concentration. The EPA has revised its proposed change to section 4.1.5 accordingly. It remains the case that the procedure under section 4.1.5 is not required unless separately mandated by an applicable regulation. The EPA also notes that with this amendment to section 4.1.5, the proposed amendment to section 4.1.5.3 (specifically noting that section 4.1.5.3 would not apply if “otherwise specified in an applicable rule or permit”) is superfluous. The caveat previously proposed specifically for section 4.1.5.3 should apply to *all* of section 4.1.5.

## **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 test procedures for assessing the acceptability of HCl CEMS performance and data quality. These criteria and QA 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. This action provides facilities with an alternative to PS 15 and Fourier transform infrared spectroscopy for measuring HCl, which are currently required in several rules.

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. This action provides performance criteria and QA test procedures for assessing the acceptability of HCl CEMS performance and data 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 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 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 technical correction to a previously promulgated regulatory action and does not have any impact on human health or the environment. Documentation for this decision is provided in the **Summary of Major Comments and Responses** section of this preamble.

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, Hydrogen chloride, Performance specifications, Test methods and procedures.

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Dated: September 13, 2017.

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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. Amend appendix F to part 60 under “Procedure 6” by revising sections “4.1.5”, “4.1.5.1” and “5.2.4.2” to read as follows:

**Appendix F to Part 60—Quality Assurance Procedures**

\* \* \* \* \*

PROCEDURE 6. QUALITY ASSURANCE REQUIREMENTS FOR GASEOUS HYDROGEN  
CHLORIDE (HCL) CONTINUOUS EMISSION MONITORING SYSTEMS USED FOR COMPLIANCE  
DETERMINATION AT STATIONARY SOURCES

\* \* \* \* \*

4.1.5 Additional Quality Assurance for Data above Span. This procedure must be used when required by an applicable regulation and may be used when significant data above span are being collected. Furthermore, the terms of this procedure do not apply to the extent that alternate terms are otherwise specified in an applicable rule or permit.

4.1.5.1 Any time the average measured concentration of HCl exceeds 150 percent of the span value for two consecutive one-hour averages, conduct the following ‘above span’ CEMS response check.

\* \* \* \* \*

5.2.4.2 Calculate results as described in section 6.4. To determine CEMS accuracy, you must calculate the dynamic spiking error (DSE) for each of the two upscale audit gases using

Equation A5 in appendix A to PS-18 and Equation 6-3 in section 6.4 of Procedure 6 in appendix B to this part.

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[FR Doc. 2017-20172 Filed: 9/20/2017 8:45 am; Publication Date: 9/21/2017]