



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA-HQ-OAR-2022-0007; FRL 9344.1-01-OAR]

RIN 2060-AV63

Reference Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere (Chemiluminescence Method); Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction and correcting amendment.

SUMMARY: The Environmental Protection Agency (EPA) is correcting a final rule published in the **Federal Register** on October 12, 2023, that became effective on November 13, 2023. The final rule updated the current ozone absorption cross-section to the recommended consensus-based value of $1.1329 \times 10^{-17} \text{ cm}^2 \text{ molecule}^{-1}$ or $304.39 \text{ atm}^{-1} \text{ cm}^{-1}$. After publication, the EPA became aware of an error in the preamble text regarding the date for State, local, and Tribal monitoring agencies to complete implementation of the new ozone cross-section value, as well as a lack of clarity as to which entities the 2025 and 2026 implementation dates apply. With this action, the EPA is updating the final rule preamble and regulatory text to clarify the applicable implementation dates and the specific entities to which they apply. These corrections do not include any substantive changes to the final rule.

DATES: This final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for the final rule under Docket ID No. EPA-HQ-OAR-2022-0007. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., 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

<https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Melinda Beaver, Air Quality Assessment Division (C304-06), Environmental Protection Agency, 109 T.W. Alexander Drive, P.O. Box 12055, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541-1062; email address: beaver.melinda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

Correction to Preamble of October 12, 2023 Final Rule

In the final rule preamble, the EPA incorrectly stated that State, local, and Tribal monitoring agencies will complete cross-section implementation by January 1, 2026. The cross-section will begin implementation at the highest level of the calibration hierarchy, the Standard Reference Photometer (SRP), on January 1, 2025. Because of the time needed to fully implement the cross-section across the national traceability hierarchy for the calibration of the ozone monitoring network, the State, local, and Tribal monitoring agencies are not expected to complete implementation of the cross-section at the monitor level by January 1, 2026; instead, the EPA expects the cross-section implementation will be complete throughout the traceability hierarchy by December 31, 2026.

Also, the accompanying regulatory text in section 2.2 of appendix D to part 50 is inconsistent with the preamble language that was published in the final rule in that it does not specify to which parties the implementation dates apply. The EPA is correcting both the preamble language and regulatory text in section 2.2 of appendix D to part 50 for consistency.

Correcting Amendments to 40 CFR Part 50 Appendix D

To be consistent with the preamble correction, section 2.2 in appendix D to part 50 is also revised.

II. Rulemaking Procedures

Section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this correction final without prior proposal. In this instance, notice and opportunity for comment is unnecessary because the corrections merely conform the expected implementation dates in the regulatory text to the preamble and clarify the entities to which these dates apply. Therefore, these minor, non-substantive technical corrections do not warrant public comment.

Moreover, the EPA has determined that there is good cause for making this final rule effective less than 30 days after publication in the **Federal Register**. Section 553(d)(3) of the APA, 5 U.S.C. 553(d)(3), provides that final rules shall not become effective until 30 days after publication in the *Federal Register* “except . . . as otherwise provided by the agency for good cause found and published with the rule.” “In determining whether good cause exists, an agency should ‘balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.’” *Omnipoint Corp. v. Fed. Comm’n Comm’n*, 78 F.3d 620, 630 (D.C. Cir. 1996) (quoting *United States v. Gavrilovic*, 551 F.2d 1099, 1105 (8th Cir. 1977)). Because this rule extends the expected implementation date for specified entities from January 1, 2026, to December 31, 2026, the affected parties do not need time to adjust their behavior before the rule takes effect.

For these reasons, the Agency finds that good cause exists under APA section 553(d)(3) to make this rule effective on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

III. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined by Executive Order 12866, as amended by Executive Order 14094 and was, therefore, not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action revises the ozone absorption cross-section and revise and amend relevant references. It 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 updates the ozone absorption cross-section value for surface ozone monitoring under 40 CFR part 50, and we anticipate that there will be minimal costs associated with this change. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

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 updates a reference measurement principle and calibration procedure for the measurement of ambient ozone under 40 CFR part 50. 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 involves technical standards. The EPA used voluntary consensus standards in the preparation of this measurement principle and procedure; it is the benchmark against

which all ambient ozone monitoring methods are compared. This action is simply updating the reference measurement principle in light of updated information.

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

The EPA believes that this type of action does not concern human health or environmental conditions and, therefore, cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations and/or indigenous peoples. This regulatory action is an update to a previously promulgated analytical method and does not have any impact on human health or the environment.

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. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in the **SUPPLEMENTARY INFORMATION** section. The EPA has determined that there is good cause for making this correction final without prior proposal. In this instance, notice and opportunity for comment is unnecessary because this action implements a minor, non-substantive technical correction that conforms the regulatory text to the rule's preamble.

List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Ozone.

Joseph Goffman,
Assistant Administrator,
Office of Air and Radiation.

Accordingly, the EPA corrects FR Doc. 2023-22531 and 40 CFR part 50 as follows:

Federal Register Correction

In FR Doc. 2023-22531, at 88 FR 70595 in the **Federal Register** of October 12, 2023, on page 70597, in the first column, the second, third and fourth sentences of the last paragraph are corrected to read as follows:

“The absorption cross-section value stated in this appendix ($304.39 \text{ atm}^{-1} \text{ cm}^{-1} \pm 0.94 \text{ atm}^{-1} \text{ cm}^{-1}$) will be used in all U.S. Standard Reference Photometers (SRPs) beginning January 1, 2025. It is expected that implementation across all other ozone transfer standards and ozone monitors in the field will be completed by December 31, 2026.”

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

1. The authority citation for part 50 continues to read as follows:

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

* * * * *

2. Amend Appendix D to Part 50 by revising section 2.2 to read as follows:

Appendix D to Part 50—Reference Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere (Chemiluminescence Method)

* * * * *

2.2 The measurement system is calibrated by referencing the instrumental chemiluminescence measurements to certified O₃ standard concentrations generated in a dynamic flow system and assayed by ultraviolet (UV) photometry to be traceable to a National Institute of Standards and Technology (NIST) standard reference photometer for O₃ (see Section 4, Calibration Procedure, below) with a specified ozone absorption cross-section value. The absorption cross-section value stated in section 4.1 and section 4.5.3.10 of this appendix ($304.39 \text{ atm}^{-1} \text{ cm}^{-1} \pm 0.94 \text{ atm}^{-1} \text{ cm}^{-1}$) will begin use in all U.S. Standard Reference Photometers (SRPs) on January 1, 2025. It is

expected that implementation across all other ozone transfer standards and ozone monitors in the field will be completed by December 31, 2026.

* * * * *

[FR Doc. 2025-00946 Filed: 1/15/2025 8:45 am; Publication Date: 1/16/2025]