

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 53 and 58****[EPA-HQ-OAR-2004-0018; FRL-]****RIN 2060-A006****Ambient Air Monitoring Regulations: Correcting and Other
Amendments****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The EPA is proposing to correct and clarify parts of a recent final rule published on October 17, 2006, that amended the ambient air monitoring requirements for criteria pollutants. The proposed changes include several instances where the wording in the preamble and regulatory text were not completely consistent, several regulatory text passages that contained some imprecise language, two instances of regulatory text omission, an outdated address reference, and numerous publication errors in tables and equations. EPA is also proposing to allow EPA Regional Administrators to approve departures from the minimum number of PM₁₀ monitors otherwise specified in the rule. In the "Rules and Regulations" section of this Federal Register, we are taking direct final action on the amendments because we view the amendments as non-

controversial and anticipate no adverse comments. If we receive no adverse comments, we will take no further action on this proposed rule.

DATES: Written comments must be received by [insert date 30 days from date of publication in the Federal Register].

ADDRESSES: Please see the related direct final rule, which is located in the "Rules and Regulations" section of this Federal Register, for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis Weinstock, Air Quality Assessment Division (C304-06), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-3661; fax number: (919) 541-1903; e-mail address: weinstock.lewis@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is EPA Issuing This Proposed Rule?

This document proposes to take action on Ambient Air Monitoring Regulations: Correcting and Other Amendments. We have published a direct final rule identical to this proposal to correct and clarify parts of a recent final rule published on October 17, 2006, that amended the ambient air monitoring requirements for criteria pollutants. We view this as a non-controversial action and

anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If EPA receives relevant adverse comment on one or more of the amendments included in this proposal, we will publish a timely withdrawal in the Federal Register informing the public which amendment or amendments we are withdrawing. The provisions that are not withdrawn will become effective as set out in the DATES section of the direct final rule. We will address these public comments in a subsequent final rule based on this proposal. We will not institute a second comment period on this action. Any persons interested in commenting must do so at this time.

The regulatory text for the proposal is identical to that for the direct final rule published in the "Rules and Regulations" section of this Federal Register. For further supplementary information, the detailed rationale for the proposal and the regulatory revisions, see the direct final rule published in a separate part of this Federal Register.

II. Does This Action Apply to Me?

Categories and entities potentially regulated by this action include:

Category	NAICS code ¹	Examples of regulated entities
Industry	334513 541380	Manufacturer, supplier, distributor, or vendor of ambient air monitoring instruments; analytical laboratories or other monitoring organizations that elect to submit an application for a reference or equivalent method determination under 40 CFR part 53.
Federal Government	924110	Federal agencies (that conduct ambient air monitoring similar to that conducted by States under 40 CFR part 58 and that wish EPA to use their monitoring data in the same manner as State data) or that elect to submit an application for a reference or equivalent method determination under 40 CFR part 53.
State/territorial/ local/tribal government	924110	State, territorial, and local, air quality management programs that are responsible for ambient air monitoring under 40 CFR part 58 or that elect to submit an application for a reference or equivalent method determination under 40 CFR part 53 or for an approved regional method approved under 40 CFR part 58 appendix C. The proposal also may affect Tribes that conduct ambient air monitoring similar to that conducted by States and that wish EPA to use their monitoring data in the same manner as State monitoring data.

¹ North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility or Federal, State, local, tribal, or territorial agency is regulated by this action, you should carefully examine the requirements for reference or equivalent method determinations in 40 CFR part 53, subpart A (General Provisions) and the applicability criteria in 40 CFR 51.1 of EPA's requirements for State implementation plans. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it may raise novel legal policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and

Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection, as it only corrects printing errors, provides clarifications, and provides new flexibility for PM₁₀ monitoring on a case-by-case basis. However, the OMB has previously approved the information collection requirements contained in the existing regulations for 40 CFR part 53 and 40 CFR part 58 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2060-0084, EPA ICR number 0940.20. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, DC 20460 or by calling (202) 566-1672. This action does not impose any new information collection burden beyond the already-approved ICR.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review

instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

This proposed rule will not impose any requirements on small entities. None of the corrections and clarifications creates additional regulatory requirements on affected entities compared to those that were promulgated in the final rule that was published in the Federal Register on October 17, 2006. The proposed rule changes only correct printing errors, provide clarifications, and provides new flexibility for PM₁₀ monitoring on a case-by-case basis.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995

(UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under

section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year, because the changes being made are merely clarifications and corrections. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. None of the proposed changes creates additional regulatory requirements on affected entities compared to those that were promulgated in the final rule that was published in the Federal Register on October 17, 2006. The proposed changes only correct printing errors, provide

clarifications, and provide some new flexibility for PM₁₀ monitoring on a case-by-case basis. Therefore, this proposed rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

This proposed rule does not have federalism implications because 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, as specified in Executive Order 13132. This is because the proposed changes being made only correct printing errors, provide clarifications, and provide some new flexibility for PM₁₀ monitoring on a case-by-case basis.

Thus, Executive Order 13132 does not apply to this proposed rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. The EPA consulted with tribal officials early in the process of developing the October 17, 2006, rule to permit them to have meaningful and timely input into its development. Although tribal governments may elect to conduct ambient air monitoring, none of the proposed changes in today's rule apply directly to tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62FR19885, April 23, 1997) applies to any rule that: (1) is determined

to be "economically significant" as defined under EO 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This proposed rule is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by

identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule 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. The rule merely proposed to amend the October 17, 2006, final monitoring rule (71 FR 61236) by correcting printing errors, providing clarifications, and providing some new flexibility for PM₁₀ monitoring on a case-by-case basis.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. No significant change in the use of energy is expected because the total number of monitors for ambient air quality

measurements will not increase above present levels.

Further, we have concluded that this rule is not likely to have any adverse energy effects.

J. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards, other than to make corrections and clarifications. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Parts 53 and 58

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated:

Stephen L. Johnson,
Administrator.