

**ENVIRONMENTAL PROTECTION AGENCY**

40 CFR Part 75

[FRL-5040-3]

Acid Rain Program: Continuous Emissions Monitoring

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

**ACTION:** Direct final rule.

**SUMMARY:** Title IV of the Clean Air Act (the Act), as amended November 15, 1990, requires the Environmental Protection Agency (EPA or Agency) to establish an Acid Rain Program to reduce the adverse effects of acidic deposition. On January 11, 1993, the Agency promulgated final rules implementing the program, including the General Provision and Permit rule and the Continuous Emission Monitoring (CEM) rule [58 FR 3590-3766]. Technical corrections were published on June 23, 1993 [58 FR 34126] and July 30, 1993 [58 FR 40746-40752]. This notice of direct final rulemaking contains an extension to the certification compliance deadline for NO<sub>x</sub> and CO emissions monitoring of gas-fired units and oil-fired units affected under Title IV. EPA believes that this compliance deadline extension will give the regulated community more time to meet their obligations under Title IV and will allow more thorough Agency review of certification application submissions, resulting in the likelihood of higher quality data. EPA believes this deadline extension is non-controversial and therefore is

publishing this notice of direct final rulemaking.

**DATES:** If no adverse comments are received by September 19 , 1994, the effective date of these revisions will be October 17, 1994. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Any written comments on these rule revisions must be identified with the document control number "A-94-16" and must be submitted in duplicate to: EPA Air Docket (6102) , Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Sharon Saile, CEM Section Chief, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. (202) 233-9180.

**SUPPLEMENTARY INFORMATION:**

In the Proposed Rules Section of this Federal Register, EPA is proposing to revise the Continuous Emission Monitoring provisions. The Agency views these revisions as noncontroversial and anticipates no adverse comments. However, if EPA does receive adverse comments, EPA will publish a notice in the Federal Register withdrawing the direct final rule. All public comments received will be treated as comments on the proposed rule as noticed in the Proposed Rules Section of this Federal Register and will be addressed in a subsequent final rulemaking notice. The EPA will not institute a second comment

period on the notice in the Proposed Rules Section of the Federal Register or on any subsequent final rule addressing withdrawn portions of this final rule. Any parties interested in commenting on these revisions to Part 75 should do so at this time.

## **I. Acid Rain Program Background**

On January 11, 1993, EPA promulgated the "core" regulations that implemented the major provisions of Title IV of the Clean Air Act Amendments of 1990 (CAAA or the Act), including the Continuous Emission Monitoring (CEM) Regulation at 40 CFR Part 75 authorized under section 412 and 821 of the Act. The CEM rule specifies how each affected utility unit must install a system to continuously monitor the emissions and to collect, record, and report emissions data to ensure that the mandated reductions in SO<sub>2</sub> and NO<sub>x</sub> emissions are achieved, that opacity and CO<sub>2</sub> emissions are measured, and that SO emissions are accurately measured so that the allowance system functions in an orderly manner.

Since the CEM rule was promulgated, the operation of Phase I utility units have essentially completed the first stage of implementation of the rule, having submitted monitoring plans, conducted certification testing, submitted certification applications, and submitted their first quarterly reports. In addition, many Phase II utility units have also begun

implementation. As a result of issues arising during implementation of part 75, EPA is revising part 75 to extend the monitoring certification deadline for certain classes of units for some pollutants.

## **II. Changes to Part 75--Certification Deadlines for Gas-fired and Oil-fired Units**

Affected units under title IV of the Clean Air Act Amendments are required to install and operate continuous emission monitoring systems or alternative monitoring systems approved by the Administrator. Part 75 specifies that all monitoring systems must be tested and approved through a certification process. In the January 11, 1993 final rule, EPA specified that required monitoring systems for units with emission limitations beginning January 1, 1995 (Phase I units) must be installed, operated, certified, and maintained by November 15, 1993 [40 CFR §74.4(a)(1)]. Similarly, units with emission limitations beginning January 1, 2000 (Phase II units) must be installed, operated, certified, and maintained by January 1, 1995 [40 CFR §75.4(a)(3)].

During the process of implementing part 75, the Agency learned that many utilities with Phase II units were having difficulty planning and performing certification testing early. Many utilities found the testing procedures in Appendix E sufficiently confusing that they were delaying testing for gas-

fired and oil-fired peaking units. In other cases, software vendors were still assisting their Phase I unit clients and did not focus on the problems of Phase II units, causing further delays. In addition, both utilities and stack emission testing firms expressed concern that there might be a shortage of stack testers because of the large number of units all requiring stack testing at the same time. There will be a total of approximately 1000 oil-fired and gas-fired units submitting certification applications in Phase II, compared to 5 oil-fired units in Phase I and 1300 Phase II coal-fired units compared to 263 coal-fired units in Phase I. If review of all these applications were done at the same time, the review might be severely limited because of the resources required and the short time period for review.

As a result of these concerns, the Agency is postponing the certification deadline for two categories of monitoring: NO<sub>x</sub> and CO<sub>2</sub> monitoring of gas-fired and oil-fired Phase II units. Although these units must monitor NO<sub>x</sub> and CO<sub>2</sub> emissions [40 CFR §75.10], they do not have NO<sub>x</sub> emission limitations under Title IV of the Act. Gas-fired and oil-fired units are being monitored for NO<sub>x</sub> and CO<sub>2</sub> to provide quality-assured NO<sub>x</sub> and CO<sub>2</sub> emissions data for informational purposes. This data will also allow the Agency to assess progress toward the NO<sub>x</sub> emission reduction goals of the Act. Furthermore, the Act requires EPA

to establish a public database of CO<sub>2</sub> emissions data. EPA believes that delaying the certification of NO<sub>x</sub> and CO<sub>2</sub> CEMS and Appendix E and G monitoring for these units still meets these purposes, and helps to ensure higher quality NO<sub>x</sub> and CO<sub>2</sub> emission data than might be obtained if the January 1, 1995 deadline were still required because a phased schedule for certification submissions will allow more thorough and complete review of the submissions for each time period. The revised deadline does not apply to coal-fired units or to monitoring of SO<sub>2</sub>, opacity, or heat input for gas-fired and oil-fired units.

EPA believes that it is reasonable for utilities to begin to monitor the NO<sub>x</sub> emissions in ozone nonattainment areas and the ozone transport region of the northeast U.S. earlier than in other areas. An accurate account of NO<sub>x</sub> emissions is environmentally significant in such areas because NO<sub>x</sub> helps ozone to form (see docket item "Title IV Affected Utility Plants in Nonattainment Areas or in OTR"). As a result, EPA is extending the certification deadline for NO<sub>x</sub> monitoring of gas-fired and oil-fired units in ozone nonattainment areas and ozone transport regions by six months only, until July 1, 1995. Other gas-fired and oil-fired units that are not in these environmentally critical areas may postpone their certification testing until one year after the original deadline, until January 1, 1996. By instituting this phased-in approach, two purposes are

accomplished--certification applications will receive thorough review and NO<sub>x</sub> information will be available first for the areas with the greatest need for that information.

EPA has also included a delayed certification deadline for CO<sub>2</sub> monitoring from oil-fired units and gas-fired units in today's revision to part 75. A CO<sub>2</sub> monitor may be used both as a CO<sub>2</sub> diluent monitor in a NO<sub>x</sub> continuous emission monitoring system and as a CO<sub>2</sub> continuous emission monitoring system. If the NO<sub>x</sub> monitoring deadline were extended but the CO<sub>2</sub> monitoring deadline were not extended, then the owner or operator of a gas-fired unit or an oil-fired unit would still be required to install the CO<sub>2</sub> monitor and stack test it before its certification as part of the NO<sub>x</sub> monitoring system. In effect, an owner or operator would need to go through stack testing and certification twice for the same CO<sub>2</sub> monitor. In order to make the NO<sub>x</sub> monitoring certification deadline extension more useful and to avoid unnecessary duplication of testing and certification activities, EPA is also extending the certification deadline for CO<sub>2</sub> monitoring.

Gas-fired and oil-fired peaking units may choose to use the procedures in Appendices E and G of part 75 to estimate NO<sub>x</sub> and CO<sub>2</sub> emissions using means other than continuous emission monitoring. Appendix E requires a utility to develop a correlation between unit load and NO<sub>x</sub> emission rate. Appendix

G allows any utility, not just peaking units, to estimate CO<sub>2</sub> mass emissions from a unit using fuel sampling and analysis and fuel usage data. Both of these methods require the development of software that is different from that already developed and implemented for use under Phase I of the program. In contrast, software programmers have already developed software for units with continuous emission monitoring systems and for units using Appendix D of part 75 for determination of SO<sub>2</sub> emissions from oil-fired or gas-fired units. In order to allow software programmers more time to develop software to implement Appendices E and G of part 75, EPA is extending the certification deadline for NO<sub>x</sub> monitoring and CO<sub>2</sub> monitoring from these methods, as well as for CEMS.

EPA is not extending the certification deadlines for coal-fired units. Phase I utilities overwhelmingly were able to meet the statutory deadline for monitoring with CEMS--95% of Phase I units completed testing by the deadline of November 15, 1993. There are no class-wide issues delaying implementation for coal-fired units using CEMS. Therefore, EPA expects that all Phase II coal-fired units will meet the certification deadline of 1/1/95. Furthermore, coal-fired units have emission limitations for SO<sub>2</sub> and NO<sub>x</sub> under the Acid Rain Program. Coal-fired units emit large amounts of SO<sub>2</sub> and NO<sub>x</sub>.

EPA also is not extending the certification deadlines for

SO<sub>2</sub> and opacity monitoring for gas-fired units and oil-fired units. Gas-fired and oil-fired units have SO<sub>2</sub> emission reduction obligations under title IV of the Act. Oil-fired units, in particular, have significant SO<sub>2</sub> emissions. Many of these units have the opportunity to implement Appendix D of part 75 (an optional SO<sub>2</sub> emissions estimation protocol using fuel sampling and analysis), thereby avoiding stack testing for CEMS. Some Phase I units were oil-fired units using Appendix D. The Agency has issued guidance to the regulated community that allows them to implement Appendix D. Furthermore, software has already been developed to implement Appendix D requirements. Opacity monitors do not require the services of special stack testers or new software. Extending the deadline for SO<sub>2</sub> and opacity monitoring for gas-fired units and oil-fired units will not reduce competition for stack testers or require development of software that has not been developed for Phase I units. Because of these reasons, EPA expects gas-fired units and oil-fired units to meet the January 1, 1995 certification deadline for SO<sub>2</sub> and opacity monitoring.

### **III. Impact Analyses**

#### *A. Paperwork Reduction Act*

EPA has determined that this final rule contains no information requirements as specified by the Paperwork Reduction Act 44 U.S.C. 3501 et seq.

## *B. Executive Order Requirements*

### Executive Order 12866

Under Executive Order 12866, [58 Federal Register 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

*C. Regulatory Flexibility Act*

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies on August 4, 1994 that this rule revision will not have a significant economic impact on a substantial number of small entities.

EPA performed an analysis of the effects upon small utilities of the Acid Rain Core Rules (58 FR 3649, January 11, 1993), including permitting, allowances, and continuous emission monitoring. The earlier document concluded that significant costs would occur to small utilities as a result of statutory requirements. For example, based upon a worst case for model utilities, total regulatory costs could represent as much as 6 to

7 percent of the average value of electricity produced in the year 2000. About one-third of the 105 small utilities currently affected could face impacts of up to this magnitude.

Today's revisions to part 75 have either no impact or a beneficial impact on small entities by extending the time for complying with the Acid Rain Program monitoring requirements for approximately 800 small utility units. EPA expects today's revision to part 75 to maintain the same cost of compliance as under the promulgated rule of January 11, 1993.

#### **IV. Supporting Information**

##### **List of Subjects in 40 CFR Part 75**

Environmental protection, Air pollution control, Carbon dioxide, Continuous emission monitors, Electric utilities, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: August 4, 1994

**Carol M. Browner**

*Administrator, U. S. Environmental Protection Agency.*

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

##### **PART 75-CONTINUOUS EMISSION MONITORING**

1. The authority citation for part 75 continues to read as

follows:

Authority: 42 U.S.C. 7651k and note.

Subpart A-General [Amended]

2. Section 75.4 is amended by revising paragraph (a)(3) to read as follows:

§75.4 Compliance dates.

(a) \* \* \*

(3) For either a Phase II unit, other than a gas-fired unit or an oil-fired unit, or a substitution or compensating unit that is not a substitution or compensating unit under paragraph (a)(2) of this section: January 1, 1995.

\* \* \* \* \*

3. Section 75.4 is amended by adding paragraph (a)(4) to read as follows:

(a) \* \* \*

(4) For a gas-fired Phase II unit or an oil-fired Phase II unit, January 1, 1995, except that certification tests for continuous emission monitoring systems for NO<sub>x</sub> and CO or excepted monitoring systems for NO<sub>x</sub> under appendix E or CO estimation under Appendix G of this part shall be completed as follows:

(i) For an oil-fired Phase II unit or a gas-fired Phase II unit located in an ozone nonattainment area or the ozone transport region, not later than July 1, 1995; or

(ii) For an oil- fired Phase II unit or a gas-fired Phase II unit not located in an ozone nonattainment area or the ozone transport region, not later than January 1, 1996.

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**ENVIRONMENTAL PROTECTION AGENCY**

40 CFR Part 75

[FRL-5040-2]

Acid Rain Program: Continuous Emissions Monitoring

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to revise the Continuous Emissions Monitoring (CEM) provisions of the Acid Rain Program for the purpose of making the implementation of the program more efficient. In the final rules Section of this Federal Register, EPA is revising the CEM provisions as a direct final rule without prior proposal because the Agency views these provisions as noncontroversial and anticipates no adverse comments. A detailed rationale for the revisions is set forth in preamble to the direct final rule. If no adverse comments are received, the effective date of the revisions will be October 17, 1994. EPA believes that these revisions are noncontroversial because they provide a limited extension to some affected utilities to meet the requirements of the CEM rule. The extension is beneficial to both the industry and to EPA in allowing the prioritization of limited resources for assuring the smooth implementation of the Acid Rain Program.

However, if EPA does receive adverse comments, EPA will publish a document in the Federal Register withdrawing the

direct final rule. All public comments received will be treated as comments on this proposed rule and will be addressed in a subsequent final rulemaking notice. The EPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

**DATES:** Comments on this proposed rule must be received on or before September 17, 1994.

**ADDRESSES:** Any written comments on these rule revisions must be identified with the document control number "A-94-16" and must be submitted in duplicate to: EPA Air Docket (6102), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Sharon Saile, CEM Section Chief, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. (202) 233-9180.

**SUPPLEMENTARY INFORMATION:** For additional information, see the direct final rule published in the final rules Section of this Federal Register.

Dated: August 4, 1994

**Carol M. Browner**

*Administrator, U. S. Environmental Protection Agency.*

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