6560-50-P

Environmental Protection Agency

40 CFR Part 60

[FRL-]

RIN 2060-AG21

Withdrawal of Amendment to 40 CFR § 60.13(g)

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: We, the EPA, are proposing to withdraw an amendment to 40 CFR § 60.13(g) published as part of a final rule entitled “Amendments for Testing and Monitoring Provisions” on October 17, 2000 (65 FR 61744). We are proposing to withdraw this provision because it inadvertently established substantive new requirements for facilities that are subject to the New Source Performance Standards requiring the installation of continuous opacity monitors on effluent streams, although the amendments were explicitly intended to be minor in nature and not substantive. We do not consider this amendment controversial and expect no adverse comments, so we are also publishing it as a direct final rule without prior proposal in the Final Rules section of this Federal Register Publication. We have set forth a

detailed rationale for this proposal in the direct final rule. We will consider any adverse comments about today's direct final rule to also be adverse comments about this proposal. We will take no further action unless, within the time allowed (see DATES), we receive adverse comments about the proposal or direct final rule, or we receive a request for a public hearing on the proposal. If we receive no adverse comments, we contemplate no further action on this proposal. We will not institute a second comment period on this action. People interested in commenting on the direct final rule should do so at this time.

DATES: Comments. We will accept comments regarding the proposed amendment on or before [Insert date 30 days from the date of publication of this Federal Register]. We will arrange a public hearing concerning the accompanying proposed rule if we receive a request for one by [Insert date 15 days from the date of publication of this Federal Register]. If someone requests a hearing it will be held on

[Insert date 45 days (or the first business day after 45 days) from the date of publication of this Federal Register] beginning at 10 a.m. For more information

about submittal of comments and requesting a public hearing, see the SUPPLEMENTARY INFORMATION section in this preamble.

ADDRESSES: Comments. Interested parties having comments on this action may submit these comments in writing (original and two copies, if possible) to Docket No. A-97-12 at the following address: Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M Street, SW., Room 1500, Washington, DC 20460.

We request that a separate copy of the comments also be sent to the contact person listed in the following paragraph of this preamble. If someone requests a hearing, the hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, NC.

FOR FURTHER INFORMATION CONTACT: Foston Curtis, Environmental Protection Agency, Office Air Quality Planning and Standards, at 919/541-1063, e-mail: curtis.foston@epa.gov, facsimile 919/541-1039.

SUPPLEMENTARY INFORMATION:

Docket. A docket containing supporting information used in developing this proposed rule amendment is available for public inspection and copying at our docket office

located at the above address in Room M-1500, Waterside Mall (ground floor). You are encouraged to phone in advance to review docket materials or schedule an appointment by phoning the Air Docket Office at (202) 260-7548. Refer to Docket No. A-97-12. The Docket Office may charge a reasonable fee for copying docket materials.

Outline. The information in this preamble is organized as follows:

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I. BACKGROUND:

On October 17, 2000 (65 FR 61744), we published a notice of final rulemaking to adopt a number of changes to the test methods listed in 40 CFR Parts 60, 61, and 63. As the preamble to the final rule explained, these changes were largely intended to be minor, nonsubstantive revisions and represented, in effect, a “housekeeping” effort to correct typographical and technical errors, and eliminate obsolete or no longer applicable material. In addition, we promulgated Performance Specification 15, which contains criteria for certifying continuous emission monitoring systems (CEMS) that use fourier transform infrared spectroscopy, and we changed the outline of the test methods and CEMS performance specifications already listed in Parts 60, 61, and 63 to fit a new format recommended by the Environmental Monitoring Management Council. The editorial changes and technical corrections were intended to update the rules and help maintain their original intent.

The amendment made to § 60.13(g) which is affected

by today's action applies to facilities that are subject to New Source Performance Standards (NSPS) and are required to install continuous opacity monitors on effluent streams. Specifically, the amendment provides that when the effluents from two or more affected facilities subject to the same opacity standard are combined into a single stack, and if opacity is monitored on each stream, a combiner system comprised of opacity and flow monitoring systems must be installed. In this case, gas flow rates from the individual streams must be known to correct the measured opacity to the exit stack dimensions and therefore must be measured. By contrast, preamended § 60.13(g) only implied, but did not explicitly require, that flow measurements from the individual streams were necessary. The intent of the amendment was to explicitly require such flow measurements and to identify what we perceived to be the most commonly used method of doing that (namely, the use of flow monitors). However, during the public comment period, some members of the utility industry objected to our specifying flow monitors as the only option and suggested that other indicators of flow rate they had traditionally employed (e.g. unit load, fan motor ampere

readings, damper settings, etc.) should continue to be allowed. Because we did not anticipate the industry having to make substantive changes from its current practices to implement the amendments, we promulgated the amended § 60.13(g) without fully responding to the industry's comments in the preamble to the final rule. After further consideration, we have concluded that the amendment constitutes a substantive change in the original rule since it requires applicable subject facilities to install flow monitors instead of allowing them to continue to use flow indicator methods. Moreover, we did not raise the question of adequacy of such methods in the previous rulemaking and no commenter has presented information indicating that they do not provide adequate measurements of flow rates for the purposes of the NSPS monitoring requirements. This withdrawal of the amendment will reinstate the old § 60.13(g) provision which allowed subject facilities to use flow measuring techniques besides flow monitors.

II. Authority

The statutory authority for this action is 42 U.S.C. §§ 7401, 7411, 7413, 7414, 7416, 7601, and 7602.**]**

III. Administrative Requirements

A. Executive Order 12866: “Significant Regulatory Action Determination”

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is “significant” and therefore subject to Office of Management and Budget (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 in 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 entitlement, grants, user fees, or loan programs of 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.

Because this rule merely proposes to withdraw an amendment to, and reinstate the prior provisions of 40 CFR § 60.13(g), we have determined that this action is not a “significant regulatory action” under the terms of Executive Order 12866 and is therefore not subject to OMB review. Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, in consideration of the very limited and remedial scope of this amendment, we consider 30 days to be sufficient in providing a meaningful public comment period, if requested, for this rulemaking.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) requires us to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions. We have determined that withdrawing the 40 CFR § 60.13(g) amendment will not have a significant

impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not necessary in connection with this action.

C. Paperwork Reduction Act

Because this action does not include or create any information collection activities subject to the Paperwork Reduction Act, the Paperwork Reduction Act, 44 U.S.C. §§ 3501, et seq., does not apply.

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, we 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 we promulgate a rule for which a written statement is needed, section 205 of the UMRA requires us 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 us 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 of why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. That 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 regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This action contains no regulatory requirements that might significantly or uniquely affect small governments. This action 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. Thus, today's action is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Docket

The docket includes an organized and complete file of all the information upon which we relied in taking this direct final action. The docketing system is intended to allow you to identify and locate documents readily so that you can participate effectively in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, except for certain interagency documents, will serve as the record for judicial review. (See CAA section 307(d)(7)(A).)

F. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us 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."

Under Section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law, unless we consult with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implications. The rule 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.

Today's action does not create a mandate on State, local or tribal governments. This action does not impose any new or additional enforceable duties on these entities. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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

Executive Order 13045 applies to any rule that the EPA determines (1) is economically significant as defined under E.O. 12866, and (2) that the environmental health or safety risk addressed by the rule has 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. This withdrawal action is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined by E.O. 12866, and the action does not address an environmental health

or safety risk that would have a disproportionate effect on children.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, we may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If we comply by consulting, Executive Order 13084 requires us to provide to the Office of Management and Budget, in a separate identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian tribal governments “to provide meaningful and timely input in

the development of regulatory policies on matters that significantly or uniquely affect their communities." This action will not significantly or uniquely affect the communities of Indian tribal governments. This action will not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

I. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. §§ 801 *et seq.*, added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective _____ [date of FR publication]

J. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104-113 (March 7, 1996), we are required to use voluntary consensus standards in our regulatory and procurement 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, business practices, etc.) which are adopted by voluntary consensus standard bodies. Where we do not use available and potentially applicable voluntary consensus standards, the NTTAA requires us to provide Congress, through OMB, an explanation of the reasons for not using such standards. This action does not involve technical standards. The purpose of today's action is to withdraw portions of a rule, reinstating previous provisions, and not to impose new substantive requirements or to adopt new technical standards. Consequently, the requirements of NTTAA do not apply.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Continuous emission

monitors, Incorporation by reference.

_____
Date

_____
Christine Todd Whitman,
Administrator.

For the reasons stated in the preamble, The Environmental Protection Agency proposes to amend title 40, chapter I of the Code of Federal Regulations 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, 7411, 7413, 7414, 7416, 7601, and 7602.

§ 60.13 - [Amended]

2. Amend § 60.13(g) by revising to read as follows:

§ 60.13 Monitoring requirements.

* * * * *

(g) When the effluents from a single affected facility or two or more affected facilities subject to the same emission standards are combined before being released to the atmosphere, the owner or operator may install applicable continuous monitoring systems on each effluent or

on the combined effluent. When the affected facilities are not subject to the same emission standards, separate continuous monitoring systems shall be installed on each

effluent. When the effluent from one affected facility is released to the atmosphere through more than one point, the

owner or operator shall install an applicable continuous monitoring system on each separate effluent unless the installation of fewer systems is approved by the Administrator. When more than one continuous monitoring system is used to measure the emissions from one affected facility (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required from each continuous monitoring system.

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