B to this part. Follow the reporting provisions of §§ 75.60 through 75.67.

77. Appendix J to part 75 is removed and reserved.

[FR Doc. 98–11749 Filed 5–20–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 75

[FRL–6007–7]

RIN 2060–AH64

Acid Rain Program: Determinations under EPA Study of Bias Test and Relative Accuracy and Availability Analysis

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed determinations and proposed rulemakings.

SUMMARY: Title IV of the Clean Air Act Amendments of 1990 (the Act) authorizes EPA to establish a program to reduce the adverse effects of acidic deposition. The Act requires electric utilities affected by the Acid Rain Program to install continuous emission monitoring systems (CEMS) to measure emissions of sulfur dioxide (SO_2), nitrogen oxides (NO_X), and carbon dioxide (CO_2). On January 11, 1993, Continuous Emission Monitoring regulations were published. They established procedures and requirements for installing, certifying, operating, and quality assuring CEMS at Acid Rain affected utility units. In response to comments and litigation from representatives of the electric utility industry and environmental advocacy groups, provisions were incorporated in the CEMS regulations requiring EPA to conduct studies, reach determinations, and, if necessary, initiate rulemakings on the appropriateness of retaining or revising three elements in the CEMS regulations: the bias test, relative accuracy test, and the availability trigger conditions of the Missing Data Substitution Procedure. This Notice of Proposed Rulemaking presents EPA's proposed determinations and consequent proposed rule revisions.

DATES: *Comments.* Comments on the proposed determinations and rule revisions must be received on or before July 6, 1998.

Public Hearing. Anyone requiring a public hearing must contact EPA no later than June 1, 1998. If a hearing is held, it will take place June 5, 1998, beginning at 10:00 a.m.

ADDRESSES: *Comments.* All written comment must be identified with the appropriate docket number (Docket No. A–97–56) and must be submitted in duplicate to EPA Air Docket Section (6102), Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW, Washington, D.C. 20460.

Public Hearing. If a public hearing is requested, it will be held at the Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, in the Education Center Auditorium. Refer to the Acid Rain homepage at www.epa.gov/acidrain for more information or to determine if a public hearing has been requested and will be held.

Docket. Docket No. A–97–56, containing supporting information used to develop the proposed determinations and rule revisions is available for public inspection and copying from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays, at EPA's Air Docket Section at the above address.

FOR FURTHER INFORMATION CONTACT: Elliot Lieberman at (202) 564 9136, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460; or the Acid Rain Hotline at (202) 564 9620. Electronic copies of this notice and technical support documents can be accessed through the Acid Rain Division website at http://www.epa.gov/acidrain.

SUPPLEMENTARY INFORMATION:

I. EPA Studies Under 40 CFR 75.7

A. Background

To ensure a consistent level of precision and accuracy in the emission measurements obtained across the Acid Rain Program, Part 75 of the Acid Rain regulations requires a series of performance tests to be conducted on each CEMS both at initial certification and periodically thereafter. Among the required performance tests is the relative accuracy test audit (RATA) in which a minimum of nine simultaneous measurements are taken from a unit's installed CEMS and an EPA approved reference method. The paired RATA data are then subjected to two statistical tests: The relative accuracy test, which establishes the degree of accuracy of the CEMS relative to the reference method; and the bias test, which uses a t-statistic to determine if the CEMS measurements are consistently lower than the reference method measurements. *See* 40 CFR Part 75, Appendix A and B.

As stated in the preamble of the January 1993 regulations, EPA found that ''both statistical theory and field test results show that the bias test is a sound and effective statistical procedure for detecting consistent measurement error in the long-term operation of a CEMS'' (58 FR 3590, 3627 (1993)). However, at the time of promulgation of the Acid Rain regulations, although utilities had extensive experience with the relative accuracy test, they had virtually no previous experience with the bias test. This unfamiliarity led to several concerns with the bias test. Thus, the January 1993 regulations committed EPA to conduct field studies to determine ''whether there are statistically significant variances'' in the EPA-approved reference methods that utilities use to test the performance of the CEMS installed under the Acid Rain Program and ''whether the bias test should be adjusted to compensate for statistical variances in the reference method'' (58 FR 3628).

In particular, EPA was required to:

1. Investigate whether there are statistically significant variances in the EPA reference methods (Issue #1);

2. Distinguish between the variability in reference monitor readings attributable to measurement error and the variability due to the choice of reference monitor among those certified by the Agency (Issue #2);

3. Investigate possible differences in bias test failure rates by emission levels (Issue #3); and

4. Assess whether any adjustments are necessary to properly determine measurement bias (Issue #4).

The regulations called for the completion of a study addressing these issues by October 31, 1993. In response, EPA conducted two studies. The first was a collaborative field study, involving four independent reference method test teams, at Big Rivers Electric Corporation's Green Generating Station, Unit 2, in Sebree, Kentucky. This location was specifically selected for testing because its relatively low range of SO_2 emission concentrations (from 56 ppm to 231 ppm) would allow EPA to examine bias test failure rates at SO_2 emission levels different from those prevailing in previous field studies and consider an industry concern that

contradictory bias test results were more likely to occur at low, than at high, emission concentrations. Field work for this study was completed from August 16–31, 1993. Separate data summary (Docket Item, A–97–56, II–A–1) and statistical analyses reports summary (Docket Item, A–97–56, II–A–2) were completed in March 1994 and September 1996 respectively.

The second study involved collection and analysis of bias test results from the field tests conducted by affected units under Part 75 for certification of their CEMS. The certification test data, including the bias test, were submitted to EPA from November 1993 to September 1996. The study results reported here (and contained in Docket Item, A–97–56, II–A–3) were available in 1997 only after the CEMS at the majority of both Phase I and Phase II (lower emitting) units had been received and certified by EPA.

B. Collaborative Field Study

In the collaborative field study at Unit 2 of Big Rivers Electric Corporation's Green Generating Station (''Green Unit 2''), four labs (i.e., test teams) simultaneously performed Reference Methods 6C (for SO_2), 7E (for NO_X), and 3A (for CO_2). To test the two general monitoring technologies available for performing the reference methods, two of the teams used ''wet-basis'' sampling techniques and two used ''dry-basis'' techniques. In the ''wet-basis'' sampling techniques, a dilution probe is used to extract a diluted sample of the effluent from the stack gas. The diluted gas sample is then analyzed using an ambient-level analyzer (e.g., pulsed fluorescence for SO_2, chemiluminescence for NO_X, and infrared absorption for CO_2), which does not require removal of moisture from the gas sample. In the ''dry-basis'' sampling techniques, a gas sample is extracted from the effluent stream without dilution. Moisture is condensed from the gas sample and the resulting dry sample is then analyzed using a source-level analyzer (infrared or ultraviolet for SO_2, chemiluminescence for NO_X, and infrared for CO_2).

Seventy-two runs of usable data (out of 76 total runs) were collected by the four labs. Concurrent measurements were also collected from Green Unit 2's SO_2, NO_X, and CO_2 continuous emissions monitoring systems, previously certified under the Acid Rain Program. On 36 of the runs, each lab and the unit's CEMS used separate calibration gases as required under 40 CFR Part 75. On the other 36 runs, all labs and the plant's CEMS shared common gases when calibrating.

Issues #1 and #2 involve evaluation of the sources of variability inherent in EPA's reference methods. In the consideration of these two issues only the reference method measurements were analyzed, not the unit's CEMS. Issues #3 and #4 involve a comparison of the CEMS and the reference method measurements to determine if bias (systematic error) is detected in the CEMS measurement. In the consideration of these two issues, the unit's CEMS measurements were paired with each of the four lab's concurrent reference method measurements. This produced four sets of concurrent Relative Accuracy Test Audits (RATA's) which could be used in evaluating bias test result consistency across the four labs.

To address the first two issues concerning the sources and extent of variability inherent in the reference methods, the collaborative field study employed an experimental design (technically known as a ''randomized complete block design'') which allowed the quantification of the relative variability associated with (i) among-laboratory variation, (ii) variation between monitoring technologies (i.e., ''wet-basis'' or ''dry-basis'' sampling techniques), (iii) the variability associated with different calibration gas scenarios (i.e., separate or shared calibration gases), and (iv) random error.

Applying an analysis of variance (ANOVA) statistical procedure to the field study data, EPA found that the overall variation in the reference methods, considering all the monitoring technologies and calibration gas scenarios, was 2.93%RSD (Relative Standard Deviation) for SO_2, 2.01%RSD for NO_X, and 1.59%RSD for CO_2. Reference method variations below approximately 3%RSD are consistent with the findings of an earlier collaborative field study, reported in Docket Item, A–97–56, II–A–5, where variations of 1.4%RSD and 2.9%RSD were found for SO_2 and NO_X respectively. (The variation for CO_2 is not available from the earlier study since that study did not include CO_2 reference method measurements.) Based on these findings, with respect to Issue #1 EPA believes that the statistically significant variances in the EPA reference methods are small.

The analysis in the most recent collaborative study also revealed that the range in the Relative Standard Deviation due to the choice of reference method monitor (i.e., different analyzers using ''wet-basis'' or ''dry-basis'' technology) among allowable reference method technologies was very small (below 1%RSD) whether the labs used separate or shared calibration gases. Consequently, EPA believes with respect to Issue #2 that the variability due to the choice of reference method monitor among those available is very small.

As noted earlier, Issues #3 and #4 require consideration of simultaneous measurements by the unit's CEMS along with the four test labs. To respond to Issue #3, concerning the consistency of the bias test results, the field test data were analyzed to determine how much agreement was found among the four labs as to whether the CEM was biased or not biased when current provisions of Part 75 are followed. In particular, the consistency in bias test results was evaluated by counting the number of concurrent RATA's in which agreement among the four test teams was 100% (all four labs agree), 75% (three out of four labs agree) and 50% (two labs find bias and two find no bias). For each pollutant there was never less than 75% agreement among the test teams when the reference methods and the installed CEMS were each calibrated using independently selected calibration gases, as is required under 40 CFR Part 75. For NO_X and CO_2 there was always 100% agreement. For SO_2 there was 100% agreement in bias test results in more than 76% of the concurrent RATA's.

These test results lead EPA to believe that even at a site exhibiting low SO_2 emission concentrations, there is a high degree of consistency in bias test results.

C. Certification Test Study

To respond further to Issue #3, EPA analyzed the consistency in bias test results across the universe of affected units, by conducting a study of the bias test results for all CEMS for which certification tests data were submitted under Part 75 between November 1993 and September 1996. To see how test results were affected by emission levels, the pass/fail rates at different concentrations (SO_2) and emission rates (NO_X) were compared for 1023 SO_2 and 1293 NO_X bias tests submitted under the Acid Rain Program. This analysis was not performed on CO_2 monitors, because under Part 75 units are not required to perform the bias test on their CO_2 monitors.

Grouping monitors according to the average concentration level (for SO_2 CEMS) and average emission rate (for NO_X CEMS), reported by the CEMS during the RATA, the pass/fail rates were plotted at regular increasing SO_2 emission concentration levels and NO_X emission rates. The resulting graphs revealed that the percentage of passes and fails remained relatively consistent

across concentration and emission rate categories. For example, for all SO_2 monitors, 73% (750 out of a total of 1023 monitors) passed the bias test. Assigning each tested monitor to one of fourteen 100 ppm categories, beginning at 0–100 ppm and ending at above 1300 ppm, showed that the percent of passing monitors in all but three of the concentration categories fell between 70 and 90%. The three categories whose passing rates were outside this range were 400–500 ppm (56% passing), 600–700 ppm (69%), and above 1300 ppm (63%). Thus, there was little or no apparent correlation between concentration level and bias test failure rates.

The graphical analysis for SO_2 monitors was confirmed by calculation of the r-squared value for the data. The r-squared value is a measure of the strength of the linear relationship between two data sets. R-squared can take on values from zero to one. A high r-squared value, i.e., closer to 1 than to 0, would suggest that the bias test pass/fail rate is highly correlated with the emission concentration level, e.g., that bias test failure is more likely with low emission concentration as suggested by utilities. A low r-squared value, i.e., closer to 0 than to 1, would suggest the absence of correlation between the bias pass/fail rate and the emission concentration level. For the plotted SO_2 data, the r-squared value was low: 0.0109.

The same graphical and statistical analysis was performed on the certification test data submitted for NO_X CEMS. Bias test pass/fail rates for 1293 NO_X monitors were divided into sixteen 0.1 lb/mmBTU categories. Considering all these categories, 67% (866 out of a total of 1293 monitors) passed the bias test. A plot of the data by emission category showed the bias test passing rate fell between 65% and 85% in all but of 3 of the 16 NO_X emission categories. The three emission rate categories whose passing rates were outside this range were not correlated to the measured NO_X emission rate: 0.1–0.2 lb/mmBTU (47% passing), 0.4–0.5 lb/mmBTU (59%), and 1.4–1.5 lb/mmBTU (50%). Again, there was little or no apparent correlation between bias test pass/fail rates and emission rate, and this was confirmed by the statistical analysis. The r-squared value for the NO_X data was low: 0.1109.

Thus, the graphical and statistical analysis performed in the certification test study indicates consistent bias test results across emission levels.

D. Proposed Findings and Conclusions

Based on the analyses performed to address Issues #1–3 in the collaborative and certification field studies, EPA considered Issue #4, concerning the necessity and feasibility of adjustments to the bias test. EPA currently believes that the small variability in the reference methods (less than 3%RSD across all gas scenarios and monitor technologies) indicates that there is very low probability that a continuous emission monitoring system will fail the bias test for reasons other than the presence of true measurement bias in the CEMS. The high level of consistency in bias test results seems to support this view.

Based on these studies, EPA proposes to find that:

1. The variability attributable to measurement error and to the choice of reference monitor technology in the Agency's approved test methods for SO_2, NO_X, and CO_2 is low (below 3.0% Relative Standard Deviation).

2. Differences in measurement variability among different allowable reference method technologies are small (below 1.0% RSD).

3. There is a high occurrence of consistency in bias test results.

4. There is no evidence that bias test failure rates are significantly influenced by emission levels.

Documentation of these proposed findings can be found in four docket items: A Collaborative Field Evaluation of EPA Test Methods 6C, 7E, and 3A (March 1994) (Docket Item, A–97–56, II–A–1) gives a detailed description of the collaborative field test activities, site characteristics, and equipment employed, presents data obtained in the field study, and discusses preliminary findings on the variability of the reference methods. A second report, An Operator's Guide to Eliminating Bias in CEM System (November 1994) (Docket Item, A–97–56, II–A–6) is an independent technical guidance document advising environmental technicians on procedures for detecting and correcting engineering problems that could produce measurement bias in CEM systems. A third report, Statistical Analysis of Reference Method Variability and Bias Test Consistency in the Collaborative Field Study of EPA Test Methods 6C, 7E, and 3A at Big Rivers Electric Corporation, Green Generating Station, Unit 2 (September 1996) ((Docket Item, A–97–56, II–A–2), focuses on the analysis of the collaborative study field data, reports the results of this analysis with respect to the four issues that the study was designed to address, and, based on this analysis, makes recommendations concerning whether adjustments are needed to the bias test. Finally, the graphs and supporting data from the certification test study can be found in ''Bias Test Pass/Fail Rates at Different SO_2 and NO_X Emission Levels as Reported in Certification Relative Accuracy Test Audits (RATA's) submitted through September 1996 under 40 CFR Part 75.'' (December 1997) (Docket Items, A–97–56, II–A–3 and II–A–4).

Based on the proposed findings enumerated above, EPA proposes to determine that adjustments to the equations in the bias test are technically unnecessary to properly determine measurement bias. EPA therefore proposes not to initiate a rulemaking to change the bias test under § 75.7.

II. EPA Analyses in Response to 40 CFR 75.8

A. Background

In accordance with a settlement agreement, signed on April 17, 1995 in *Environmental Defense Fund* v. *Browner,* No. 93–1203 and consolidated cases (D.C. Cir., 1993), which addressed various CEMS issues, § 75.8 was adopted as part of the direct final rule, dated May 17, 1995, amending the January 11, 1993 rule's CEM provisions. Section 75.8 required EPA to evaluate the appropriateness of the current relative accuracy and availability trigger conditions for missing data substitution for SO_2, NO_X, and CO_2 CEMS and flow monitors. This evaluation was to be based on initial certification test data and quarterly report data for the 1993–1996 period. Using the evaluation, EPA was to determine whether to retain the current specifications or propose alternative performance specifications. A report evaluating this data was to be prepared by July 1, 1997, and EPA is to issue either a notice determining that the current rule provisions are appropriate or a notice proposing revisions. Any proposal revising the current rule is to be issued by October 31, 1997 and finalized by October 31, 1998. The results of EPA's evaluations of the current relative accuracy and availability trigger conditions are described below.

B. Relative Accuracy

Relative accuracy is a statistical indicator of how closely the measurements by an installed CEM approximate those obtained by a concurrently used EPA reference method during a 9–12 run field demonstration (known as the relative accuracy test audit (RATA)) that must

be performed periodically for each CEMS under Part 75. Relative accuracy is expressed as a percent deviation of the CEMS results from the reference method results. The lower the relative accuracy value for a CEMS, the closer its measurements are to the reference method. Under 40 CFR Part 75, Appendix A, § 3, and Appendix B, § 2.3.1, all SO_2, NO_X, and CO_2 CEMS are required to have in a RATA a relative accuracy of 10%. Those that have a superior relative accuracy of 7.5% or less have one year to undergo their next RATA. Those that have a relative accuracy equal to or less than the required 10% but greater than 7.5% must undergo their next RATA within six months. The tighter specification of 7.5% is referred to as the ''reduced frequency standard,'' while the 10% specification is known as the ''normal frequency standard.'' For flow monitors the normal frequency standard is 15%, while the reduced frequency standard is 10%. On January 1, 2000 the normal and reduced frequency standards for flow monitors will be lowered to correspond to the standards for the pollutant CEMS, i.e., 10% and 7.5% respectively.

The evaluation of initial certification test data submitted for 1993–1996 showed that the average relative accuracy was 3.42% for the 965 SO_2 CEMS installed under the Acid Rain Program, 3.62% for 1272 NO_X CEMS, 3.28% for 1097 CO_2 CEMS., and 6.88% for 1070 flow monitors. This means that for all pollutants and flow, the average relative accuracy was below the reduced frequency standard. Furthermore, 91.3% of all SO_2 CEMS, 94.1% of all NOx CEMS, 96.3% of all CO_2 CEMS, and 91.9% of all flow monitors met their respective reduced frequency standard. See Docket Item, A–97–56, II–A–7 for a complete analysis of the certification test relative accuracy results.

A similar evaluation was performed on the relative accuracy test results reported in quarterly reports for the 1994–1996 period. This analysis showed that the average relative accuracy over the three years of data was 3.49% on 2802 SO_2 RATAs, 3.67% on 3935 NO_X RATAs, 3.06% on 2736 CO_2 RATAs, and 5.78% on 3019 flow RATAs. Like the certification test results, the data in the quarterly reports indicate that for each type of monitor, the average relative accuracy was below the reduced frequency standard. In addition, on 96.2% of the SO_2 RATAs, 96.0% of the NO_X RATAs, 97.9% of the CO_2 RATAs, and 93.5% of flow RATAs, the monitors met their respective reduced frequency standard. A complete analysis of the quarterly report relative accuracy test results can be found in Docket Item, A–97–56, II–A–8.

The relative accuracy test results obtained by these installed CEMS imply that no appreciable improvement in achieved relative accuracies could be expected unless the relative accuracy standard were brought down to or below these currently achieved average relative accuracies. However, studies cited above (Docket Item, A–97–56, II–A–2 and II–A–5) of the variability of the reference methods for SO_2, NO_X, and CO_2 suggest that such reduced relative accuracy standards might be beyond the technological limits of current monitoring technology since they approach the variability inherent in the reference methods themselves. Thus, tightening the relative accuracy standards further for these CEMS is unlikely to produce a corresponding improvement in the achievable relative accuracy.

Moreover, the existing regulations already provide that the normal and reduced frequency relative accuracy standards for flow monitors will be tightened to the same levels as for the other CEMS beginning in the year 2000. In light of the already low average relative accuracy (reflecting high monitor accuracy) for flow monitors, there is little or no basis at this time for concluding that any further tightening would be appropriate. In addition, EPA believes that the results of the tightening in 2000 should be evaluated before any further tightening is contemplated.

Therefore, based on the evaluation required under § 75.8, the Agency proposes to conclude that the current performance specifications for relative accuracy are appropriate at this time.

C. Availability Trigger Conditions for Missing Data Substitution Procedure

In 40 CFR 75.30–75.38 (Subpart D) a missing data procedure is prescribed for calculating emissions when valid data are not being supplied by a unit's continuous emissions monitoring system. The missing data procedure is a multi-tiered computational routine for deriving a substitution value from values previously recorded, or the highest potential values, by the monitor. The procedure is based on the premise that the lower the annual monitor availability and/or the longer the gap in recorded data, the more conservative the value to be substituted.

In concert, two trigger conditions determine the conservativeness of the substituted value. The first trigger condition is annualized monitor availability, i.e., the percentage of the immediately preceding 8760 unit operating hours in which valid, quality assured data was obtained. The second trigger condition is the length of the current period during which valid data are not being produced. Current availability trigger conditions include three tiers: (1) less than 90% availability, (2) equal to or greater than 90% but less than 95% availability, and (3) 95% or greater availability.

To determine if retaining the current availability trigger conditions is appropriate, the Agency analyzed the annual percent monitor availability (PMA) as reported in the 1994–1996 quarterly emission reports. The PMA indicates the proportion of the operating hours in each year that the monitor was providing valid, quality assured measurements. High PMAs would indicate that current trigger conditions are providing a sufficient incentive for keeping monitors operating properly.

The evaluation of the quarterly report data for 1994–1996 showed that the average PMA for SO_2 CEMS was 94.7% in 1994, 96.7% in 1995, and 97.2% in 1996. For the same three year period it was 91.8%, 94.1%, and 95.8% for NOx CEMS, and 95.0%, 96.3%, and 97.0% for flow monitors. As a rule, separate percent monitor availabilities for the CO_2 CEMS are not routinely reported, since CO_2 CEMS usually serve as diluent components in NO_X systems. However, the average PMA for CO2 CEMS in a given year must be at least as good as the corresponding average of the reported NO_X PMAs. Not only are the average PMAs above the 95% availability trigger level, but they have also consistently increased in each successive year of the Acid Rain Program. To appreciably improve monitor availabilities would require increasing the third tier availability trigger up to or above the high average availabilities currently being achieved. EPA believes that such an increase in the required availabilities would be close to or beyond the limits of what is reasonable to expect from current CEMS technology when properly operated under the conditions prevailing in utility stacks. A complete summary of the PMA's submitted in the 1994–1996 quarterly reports can be found in Docket Item, A–97–56, II–A–9.

Moreover, any tightening of the availability trigger conditions would require reprogramming of most affected units' data acquisition and handling systems, which automatically calculate and record the appropriate substitution values for periods when valid CEMS data are not available. Given the current high levels of monitor availability, there is little or no basis for finding that adjusting the trigger conditions would improve availability sufficiently to

justify the reprogramming costs that such a change would impose.

Therefore, based on the evaluation required under § 75.8, the Agency proposes to determine that retaining the current performance specifications for availability trigger conditions is appropriate at this time.

III. Proposed Rule Revisions

Having completed the studies and evaluations required in 40 CFR 75.7 and 75.8 and in light of EPA's determinations proposed above for retaining current rule provisions for the bias test, relative accuracy, and availability trigger conditions, EPA proposes revising Part 75 to delete §§ 75.7 and 75.8.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (1993), the Administrator 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, 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.

Pursuant to the terms of Executive Order 12866, it has been determined that this proposed rule is a ''significant regulatory action'' because the rule seems to raise novel legal or policy issues. As such, this action was submitted to OMB for review. Any written comments from OMB to EPA, any written EPA response to those comments, and any changes made in response to OMB suggestions or recommendations are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

B. Unfunded Mandates Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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, before promulgating a proposed or final rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 205 generally requires that, before promulgating a rule for which a written statement must be prepared, EPA 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 explains why that alternative was not adopted. Finally, section 203 requires that, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must have developed a small government agency plan. The plan must provide for notifying any 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.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

As discussed above, the proposed rule would eliminate two sections requiring studies and evaluations by EPA of certain existing regulatory provisions and would not include any other changes to the existing regulations. The proposed rule therefore would not change in any way the expenditure by State, local, and tribal governments or the private sector, or the effect on small governments, resulting from the existing regulations.

C. Paperwork Reduction Act

This action proposing revisions to the continuous emission monitoring regulations would not impose any new information collection burden. OMB has previously approved the information collection requirements contained in the continuous emission monitoring regulations, 40 CFR part 75, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* Note, however, that the Agency is proposing other revisions to the continuous emission monitoring regulations in a separate action in today's **Federal Register** and that those revisions would result in a change to the current information collection burden.

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.

D. Regulatory Flexibility

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, generally requires federal agencies to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the proposed 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.

As discussed above, the proposed rule would eliminate two sections requiring studies and evaluations by EPA and would not include any other changes to the existing regulations. The proposed rule therefore does not change in any way the potential impacts on small entities resulting from the existing regulations. Therefore, I hereby certify

that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 75

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

Dated: April 27, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 75 of title 40, chapter 1 of the Code of Federal Regulations is proposed to be amended as follows:

PART 75—[AMENDED]

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

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

2. Section 75.7 is removed and reserved.

3. Section 75.8 is removed and reserved.

[FR Doc. 98–11750 Filed 5–20–98; 8:45 am]

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