

**Authority:** 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Revise § 100.104 to read as follows:

**§ 100.104 Empire State Regatta, Albany, New York.**

(a) *Regulated area.* All waters of the Hudson River between the Albany Rensselaer Swing Bridge, river mile 146.2, and Light 224, (LLNR 39015), river mile 147.5, located approximately 750 years north of the I-90/Patruon Island Bridge.

(b) *Effective period.* This section is effective annually from 12 p.m. Friday through 8 p.m. Sunday, on the first weekend of June.

(c) *Special local regulations.* (1) The regulated area will be closed to all vessel traffic, except official patrol craft and sponsor craft, during the following times: Friday from 12 p.m. to 8 p.m.; Saturday from 6 a.m. to 8 p.m.; and on Sunday from 6 a.m. to 8 p.m.

(2) Vessels greater than 20 meters in length shall not transit the regulated area at any time during the effective period unless allowed to do so by the Coast Guard Patrol Commander.

(3) Vessels less than 20 meters in length may transit the regulated area at the conclusion of each day of racing. Transiting vessels will be escorted by official regatta patrol vessels specified in paragraph (c)(5) of this section. Approximate periods for transit will be: Friday at 8 p.m. through Saturday at 6 a.m.; and again on Saturday at 8 p.m. through Sunday at 6 a.m.

(4) Unless otherwise directed by the Coast Guard Patrol Commander, transiting vessels shall: proceed at no-wake speeds, remain clear of the race course area as marked by the sponsor-provided buoys, not interfere with races or any shells in the area, make no stops and keep to the eastern edge of the Hudson River.

(5) Official patrol vessels include Coast Guard and Coast Guard Auxiliary vessels, New York State and local police boats and other vessels so designated by the regatta sponsor or Coast Guard Patrol Commander.

(6) No person or vessel may enter or remain in the regulated area during the effective period unless participating in the event, or authorized to be there by the sponsor or Coast Guard patrol personnel.

(7) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast

Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(8) In the event of an emergency or as directed by the Coast Guard Patrol Commander, the sponsor shall dismantle the race course to allow the passage of any U.S. Government vessel or any other designated emergency vessel.

Dated: April 12, 1999.

**R.M. Larrabee,**

*Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.*

[FR Doc. 99-10115 Filed 4-21-99; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 50

[AD-FRL-6326-5]

RIN 2060-AI48

#### Revisions to Reference Method for the Determination of Fine Particulate Matter as PM<sub>2.5</sub> in the Atmosphere

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

**ACTION:** Direct final rule.

**SUMMARY:** A new national network of fine particulate monitors is being established over the next two years. In order to assure that monitoring data are of the highest quality and are comparable both within and between air monitoring agencies, many specific design and performance requirements were detailed in 40 CFR part 50, appendix L. Other requirements were set forth in documents such as section 2.12 of the "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Specific Methods," EPA/600/R-94/038b.

This direct final action revises two requirements for measurement of fine particulates in 40 CFR part 50. For transport of exposed filters from the sample location to the conditioning environment, 40 CFR part 50 will no longer specify that the protective shipping container be made of metal. For verification of sampler flow rate, 40 CFR part 50 will now specify that new calibrations shall be performed if the reading of the sampler's flow rate indicator or measurement device differs by more than  $\pm 4$  percent or more from the flow rate measured by the flow rate standard. The flow rate verification tolerance was previously set at  $\pm 2$  percent.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to revise two requirements for measurement of fine particulate in 40 CFR part 50 should adverse comments be filed.

**DATES:** This rule is effective on June 21, 1999 unless the Agency receives adverse comments by May 24, 1999. Should the Agency receive such comments, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. If adverse comments are timely received on an amendment, paragraph, or section of this rule and that provision may be addressed separately from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of adverse comment, effective on June 21, 1999.

**ADDRESSES:** Comments should be submitted (in duplicate, if possible) to: Air Docket (A-95-54), US Environmental Protection Agency, Attn: Docket No. A-95-54, 401 M Street, SW, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Tim Hanley, Emissions, Monitoring, and Analysis Division (MD-14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone: (919) 541-4417, e-mail: hanley.tim@epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. Authority

Sections 110, 301(a), and 319 of the Clean Air Act as amended 42 U.S.C. 7409, and 7601(a).

##### II. Background

A new national network of fine particulate monitors is being established over the next two years. In order to assure that monitoring data are of the highest quality and are comparable both within and between air monitoring agencies, many specific design and performance requirements were detailed in 40 CFR part 50, appendix L. Other requirements were set forth in documents such as section 2.12 of the "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Specific Methods," EPA/600/R-94/038b.

One design requirement detailed in 40 CFR part 50, appendix L, is the use of a protective metal container for transporting filter cassettes from

monitoring sites to the conditioning environment. (Sample filters are weighed before and after sample collection. To help assure that any post-sampling weight gain is due to PM<sub>2.5</sub>, sample filters must be "conditioned" at the same moisture and temperature conditions prior to weighing.) 40 CFR part 50, appendix L, section 10.10, second sentence, reads: "This protective container shall be made of metal and contain no loose material that could be transferred to the filter." The EPA believes that the requirement of a metal container should not be mandated and container selection should be based on performance, not design. What is important is not that the container be made of metal but that it not contain loose material that could be transferred to the filter. So, this direct final rule eliminates the requirement for metal containers and leaves in place the requirement that the containers not contain loose material that could be transferred to the filter.

To help assure that a sampler's collection of fine particles is acceptable for its intended use, 40 CFR part 50 requires that specific air flow rates be maintained and verified. Section 9.2.5 of appendix L, 40 CFR part 50 states "If during a flow rate verification the reading of the sampler's flow rate indicator or measurement device differs by  $\pm 2$  percent or more from the flow rate measured by the flow rate standard, a new multi-point calibration shall be performed and the flow rate verification must then be repeated." The EPA believes that while flow rate is a critical parameter whose accuracy must be controlled, having too tight a control limit on verifications may result in unnecessary field calibrations. This is due to the expectation that flow rate verifications will be performed in the field on a schedule detailed in the "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Specific Methods," EPA/600/R-94/038b. Since conditions in the field will always be less controllable than in a laboratory, a more relaxed tolerance for verification of the flow rate will be set at  $\pm 4$  percent.

### III. Administrative Requirements Section

#### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to 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, State and local 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 or 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 action is not a "significant regulatory action" under the terms of the Executive Order 12866 and is therefore not subject to formal OMB review.

#### B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

In compliance with Executive Order 12875, the Agency involved State, local, and Federal governments in the development of this rule. These governments are not directly impacted by the rule; i.e., they are not required to purchase control systems to meet the requirements of the rule. However, they will be required to implement the rule. Representatives of State environmental agencies have been members of the EPA work group developing this rule. The

comments and suggestions of State agency staffs have been carefully considered in the rule development. In addition, all States had opportunity to comment on the proposed rule during the public comment period and the EPA fully considered these comments in the final rulemaking.

#### C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under Executive Order 12866, and (2) 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 direct final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

#### D. Executive Order 13084

Under Executive Order 13084 entitled "Consultation and Coordination with Indian Tribal Governments," EPA 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA 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." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements

of section 3(b) of Executive Order 13084 do not apply to this rule.

#### *E. Paperwork Reduction Act*

Today's action does not impose any new information collection burden. This action revises the part 50 air monitoring regulations for particulate matter to allow for flexibility in the type of containers used and a reduction in unnecessary flow rate calibrations. The Office of Management and Budget (OMB) has previously approved the information collection requirements in the part 50 regulation 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 No. 0940.13 and revised by 0940.14).

#### *F. Impact on Small Entities*

The Regulatory Flexibility Act generally requires an agency 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 whose jurisdictions are less than 50,000 people. This final rule will not have a significant impact on a substantial number of small entities because it does not impact small entities whose jurisdictions cover less than 50,000 people. Pursuant to the provision of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities.

Since this modification is classified as minor, no additional reviews are required.

#### *G. Unfunded Mandates Reform Act*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final standards that include a Federal mandate that may result in estimated costs to State, local, or tribal governments, or to the private sector, of, in the aggregate, \$100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the standard and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by

the standards. The EPA has determined that this action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments. Therefore, the requirements of the Unfunded Mandates Act of 1995 do not apply to this action.

#### *H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 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 rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. The search was performed by querying the National Resource for Global Standards Database available on the world wide web at [www.nssn.org](http://www.nssn.org). This database, maintained by the American National Standards Institute, is a comprehensive data network for national, foreign, regional and international standards and regulatory documents. The search did not identify any voluntary consensus standard that referenced the required use of metal containers or specific flow rate tolerances in standards applicable to particulate matter. Therefore, EPA intends to use the technical standards proposed herein.

#### *I. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 40 CFR Part 50**

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Quality assurance requirements, Ambient air quality monitoring network.

Dated: April 9, 1999.

**Carol M. Browner,**  
Administrator.

\* \* \* \* \*

For the reasons set forth in the preamble, title 40, chapter I, part 50 of the Code of Federal Regulations is amended as follows:

#### **PART 50—[AMENDED]**

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

**Authority:** 42 U.S.C. 7410, 7601(a), 7613, 7619.

2. Appendix L is amended by revising section 9.2.5 to read as follows:

#### **Appendix L to Part 50—Reference Method for the Determination of Fine Particulate Matter as PM<sub>2.5</sub> in the Atmosphere**

9.2.5 If during a flow rate verification the reading of the sampler's flow rate indicator or measurement device differs by  $\pm 4$  percent or more from the flow rate measured by the flow rate standard, a new multipoint calibration shall be performed and the flow rate verification must then be repeated.

3. Appendix L is further amended by revising the second sentence of section 10.10 to read as follows:

10.10 \* \* \* The protective container shall contain no loose material that could be transferred to the filter. \* \* \*

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#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 63**

[FRL-6326-2]

#### **Approval of the Clean Air Act, Section 112(I), Delegation of Authority to Puget Sound Air Pollution Control Agency in Washington; Amendment**

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

**ACTION:** Delegation of authority; amendment.

**SUMMARY:** This action provides an amendment to a direct final **Federal Register** action published on December