

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 58**

[AD-FRL-7388-4]

RIN 2060-AK05

National Ambient Air Quality Standard: Particulate Matter**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: The EPA is taking direct final action to amend the national ambient air quality standards for particulate matter. The revision reduces to 15 percent the requirement that reporting organizations collocate 25 percent of State and local air monitoring station (SLAMS) sites with a second sampler in order to estimate precision at a reporting organization level.

The regulations describe the number of collocated sites required within a reporting organization. With today's action, EPA is making a simple change in the regulations by changing the requirement to collocate 25 percent of reporting organizations sites to 15 percent of the reporting organizations sites. The effect of this change will be to reduce the number of monitors which must be collocated. This in turn will reduce the cost of implementing and maintaining monitoring networks but without significantly affecting our confidence in the precision at the reporting organization level or in providing acceptable estimates of achievement of the precision Data Quality Objectives (DQOs). Since reporting organizations are of unequal size in the number of monitors they implement, 15 percent was considered an acceptable limit of providing enough precision information for smaller reporting organizations while not unduly burdening larger reporting organizations.

DATES: This direct final rule will be effective on March 31, 2003 without further notice, unless significant adverse comments are received by January 30, 2003. If significant adverse comments are received, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A96-51, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to:

Air and Radiation Docket and Information Center (6102), Attention: Docket A96-51, U.S. EPA, 401 M Street, SW., Washington, DC 20460. We request that you send a separate copy of your comments to Mr. Michael Papp, Monitoring and Quality Assurance Group (C339-02), Emissions, Monitoring, and Analysis Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

FOR FURTHER INFORMATION CONTACT: For information concerning the direct final rule, contact Mr. Michael Papp, Monitoring and Quality Assurance Group (C339-02), Emissions, Monitoring, and Analysis Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2408.

SUPPLEMENTARY INFORMATION: We are publishing this direct final without prior proposal because we view this as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rule section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed.

If we receive any significant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time.

Docket. The docket is an organized and complete file of information compiled by EPA in developing this direct final rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the docket contains the record in the case of judicial review. The docket number for this rulemaking is A-96-51.

Worldwide Web (WWW). In addition to being available in the docket, electronic copies of this action will be posted on the Technology Transfer Network (TTN). Following signature, we will post a copy of the supplemental proposal on the Air Monitoring Technology Information Center's TTN

Web site at <http://www.epa.gov/ttn/amtic/pmcfr.html> under the title "PM_{2.5} Collocated Precision Reduction." The TTN provides information and technology exchange in various areas of air pollution control. If you need more information regarding the TTN, call the TTN HELP line at (919) 541-5384.

Authority. Sections 110, 301(a), and 319 of the Clean Air Act, as amended, 42 U.S.C. 7410, 7601 (a), 7619.

I. Background

The Clean Air Act as amended (1990 Amendments), established requirements for States to prepare and submit State Implementation plans (SIPs) to EPA to implement and enforce national ambient air quality standards (NAAQS). 42 U.S.C. 7401 *et seq.* Specifically, section 110 of the Clean Air Act (Act) identifies particular requirements for these SIPs and lists the elements which each must contain in order to be approvable by EPA. Included in these provisions is the requirement that each SIP:

provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to—

- (i) monitor, compile, and analyze data on ambient air quality, and
- (ii) upon request, make such data available to the Administrator;

42 U.S.C 7410(a)(2)(B). Any air quality monitoring systems required in such SIP's were further required to utilize standard criteria and methodologies established by regulations to be promulgated by EPA pursuant to section 319 of the Act.

When EPA promulgated NAAQS for fine particulate matter (PM_{2.5}), it also adopted regulations for air sampling (62 FR 38833, July 18, 1997). These regulations included quality assurance (QA) requirements in Appendix A based on data quality objectives developed using PM_{2.5} data available in EPA's Aerometric Information Retrieval System (AIRS) and other sources prior to the July 18, 1997 rulemaking. These QA objectives were developed to ensure that decision makers would have PM_{2.5} data of adequate quality to support important decisions such as the comparison to the PM_{2.5} NAAQS.

In response to complaints that arose under previous regulations about the burden of QA requirements, 62 FR 38767, July 18, 1997 section IV, "Discussion of Regulatory Revisions and Major Comments on Part 58," EPA stated that "[i]n an effort to assist State and local agencies in achieving the data quality objectives of the PM_{2.5} monitoring program, an incentive program has been established that is based on network performance and

maturity that can reduce these QA requirements.” Within 40 CFR part 58, appendix A data quality objectives for precision (10 percent) and bias (± 10 percent) were identified. In order to meet the precision data quality objective, reporting organizations are currently required by the regulations to collocate 25 percent of the monitoring sites with a second federal reference method monitor. This second monitor would collect a sample every 6 days. The data quality objective is assessed using 3 years of this collocated information, which would provide approximately 182 values for any one site. Over the data collection years of 1999 and 2000, EPA performed data quality assessments on PM_{2.5} data and found that the majority of the reporting organizations are achieving the precision data quality objective.

In 2001, EPA also reviewed the original 1997 data quality objectives using the 1999 and 2000 PM_{2.5} data set. Using this more robust data set, EPA determined that the precision data quality objective was less influential on decision errors than the bias data quality objective and therefore greater imprecision could be tolerated in the network without adverse effect on overall uncertainty and therefore decision making. Based on the data quality assessments and the evaluation of the original data quality objective, EPA concluded that a reduction in the precision siting requirement would not significantly affect confidence in precision estimates at the reporting organization level or in providing acceptable estimates of achievement of the precision DQO. Therefore, in keeping with the commitment established in the July 18, 1997 **Federal Register** document, EPA has determined that it would be appropriate to reduce the monitor collocation requirements. We view these amendments as noncontroversial and anticipate no adverse comments, and we are publishing these amendments in a direct final rule.

II. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is “significant” and therefore subject to review by the 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 obligation 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.

We have determined that this direct final rule does not qualify as a “significant regulatory action” under the terms of Executive Order 12866 and therefore, is not subject to review by OMB.

B. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use.

This direct final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13132, Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires that we 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 the 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 direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule is a revision to an existing rule governing the requirements for State and local monitoring networks and reduces the burden on affected States. Thus, the requirements of section 6 of the Executive Order do not apply to this direct final rule.

D. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This direct final rule does not impose substantial direct compliance costs but lessens the existing requirements on the tribal governments. This rule revises an existing regulation which details the requirements for State, local and tribal air monitoring networks. Accordingly, the requirements of Executive Order 13175 do not apply to this action.

E. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that we determine (1) is “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because this does not establish an environmental

standard intended to mitigate health or safety risks.

F. Unfunded Mandates Reform Act of 1995

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, 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 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this direct final rule does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector in any 1 year. This rule does not impose new requirements, but rather reduces somewhat the requirements of existing regulations for State and local air monitoring networks. We have also determined that this rule does not significantly or uniquely impact small

governments. Therefore, the requirements of the Unfunded Mandates Act do not apply to this rule.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires that we conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. This direct final rule does not have a significant impact on a substantial number of small entities because no additional cost will be incurred by such entities because of the changes specified by the rule. The rule reduces the requirements for the number of sites at which collocated monitors are required. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

H. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 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.

In this direct final rule there is no consensus standard for the setting of a precision requirement for a monitoring network. The determination of the confidence needed in the estimates

derived for a particular monitoring network determine the amount and quality of the precision information. EPA used accepted statistical practices for the generation of the number of collocated sites it felt was appropriate for use in the network and used similar techniques for determining that the requirement could be reduced.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, et seq., as 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 the Congress and to the Comptroller General of the United States. We will submit a report containing this direct final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this direct final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This direct final is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 58

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

Dated: December 18, 2002.

Christine Todd Whitman,
Administrator.

For the reasons set forth in the preamble, title 40, chapter I, is amended as follows:

PART 58—[AMENDED]

1. The authority citation for part 58 continues to read as follows: 42 U.S.C. 7401, 7416, 7601, and 7619.

2. In Appendix A to part 58, section 3.5.2 is amended by revising paragraph (a)(1) to read as follows:

Appendix A to Part 58—Quality Assurance Requirements for State and Local Air Monitoring Stations (SLAMS)

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3.5.2 * * *

(a) * * *

(1) Have 15 percent of the monitors collocated (values of .5 and greater round up).

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