

## PART 70—PROCEDURE AND ADMINISTRATION

13. The authority citation for part 70 continues to read as follows:

**Authority:** 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5123, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

14. [The proposed amendatory instructions and the proposed regulatory text for part 70 are the same as the amendatory instructions and the amendatory regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.]

Signed: June 2, 2010.

**Mary G. Ryan,**

*Acting Administrator.*

Approved: August 18, 2010.

**Timothy E. Skud,**

*Deputy Assistant Secretary, Tax, Trade, and Tariff Policy.*

[FR Doc. 2011–1144 Filed 1–19–11; 8:45 am]

**BILLING CODE 4810–31–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[EPA–HQ–OAR–2005–0031; FRL–9255–2]

RIN 2060–AQ46

### Standards of Performance for Fossil-Fuel-Fired, Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to amend the new source performance standards for electric utility steam generating units and industrial-commercial-institutional steam generating units. This action would amend the testing requirements for owners/operators of steam generating units that elect to install particulate matter continuous emission monitoring systems. It would also amend the opacity monitoring

requirements for owners/operators of affected facilities subject to an opacity standard that are exempt from the requirement to install a continuous opacity monitoring system. In addition, this action would correct several editorial errors identified from previous rulemakings.

**DATES:** Written comments must be received on or before February 22, 2011, unless a public hearing is requested by January 31, 2011. If a timely hearing request is submitted, the public hearing will be held on February 4, 2011 and we must receive written comments on or before March 7, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0031, by one of the following methods:

- *http://www.regulations.gov:* Follow the instructions for submitting comments.
- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov), or [fellner.christian@epa.gov](mailto:fellner.christian@epa.gov).
- *Fax:* (202) 566–9744.
- *Mail:* EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

• *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0031. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured

and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

*Public Hearing:* If a public hearing is requested, it will be held at 10 a.m. at the EPA Facility Complex in Research Triangle Park, North Carolina, or at an alternate site nearby. Contact Mr. Christian Fellner at 919–541–4003 to request a hearing, to request to speak at a public hearing, to determine if a hearing will be held, or to determine the hearing location.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christian Fellner, Energy Strategies Group, Sector Policies and Programs Division (D243–01), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–4003, FAX number (919) 541–5450, electronic mail (e-mail) address: [fellner.christian@epa.gov](mailto:fellner.christian@epa.gov).

**SUPPLEMENTARY INFORMATION:** The information presented in this preamble is organized as follows:

- I. Why is EPA issuing this proposed rule?
- II. Does this action apply to me?
- III. Where can I get a copy of this document?
- IV. Why are we amending the rule?
- V. What amendments are we making to the rule?

- VI. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
  - J. Executive Order 12898: Federal Actions To Address Environmental

Justice in Minority Populations and Low-Income Populations

**I. Why is EPA issuing this proposed rule?**

In the “Rules and Regulations” section of this **Federal Register**, we have also published for the new source performance standards for electric utility steam generating units and industrial-commercial-institutional steam generating units a direct final action amending the rule with the identical regulatory language proposed by this action because we view these amendments as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment by February 22, 2011, we will not take

further action on this proposed rule. If we receive adverse comment, we will withdraw the amendments in the direct final rule or certain amendments in the direct final rule and those amendments will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, *please see* the information provided in the **ADDRESSES** section of this document.

**II. Does this action apply to me?**

The regulated categories and entities potentially affected by this proposed rule include, but are not limited to, the following:

| Category  | NAICS <sup>1</sup>  | Examples of regulated entities   |
|---|---------------------|--|
| Industry .....  | 221112 .....        | Fossil fuel-fired electric utility steam generating units.                                 |
| Federal Government .....  | 22112 .....         | Fossil fuel-fired electric utility steam generating units owned by the Federal Government. |
| State/local/tribal government .....   | 22112 .....         | Fossil fuel-fired electric utility steam generating units owned by municipalities.         |
|   | 921150 .....        | Fossil fuel-fired electric utility steam generating units located in Indian Country.       |
| Any industrial, commercial, or institutional facility using a steam generating unit as defined in 60.40b or 60.40c. | 211 .....           | Extractors of crude petroleum and natural gas.   |
|   | 321 .....           | Manufacturers of lumber and wood products.   |
|   | 322 .....           | Pulp and paper mills.  |
|   | 325 .....           | Chemical manufacturers.  |
|   | 324 .....           | Petroleum refiners and manufacturers of coal products.                                     |
|   | 316, 326, 339 ..... | Manufacturers of rubber and miscellaneous plastic products.                                |
|   | 331 .....           | Steel works, blast furnaces.   |
|   | 332 .....           | Electroplating, plating, polishing, anodizing, and coloring.                               |
|   | 336 .....           | Manufacturers of motor vehicle parts and accessories.                                      |
|   | 221 .....           | Electric, gas, and sanitary services.  |
|   | 622 .....           | Health services.   |
|   | 611 .....           | Educational Services.  |

<sup>1</sup> North American Industry Classification System (NAICS) code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed rule. To determine whether your facility is regulated by this proposed rule, you should examine the applicability criteria in § 60.40, § 60.40Da, § 60.40b, or § 60.40c of 40 CFR part 60. If you have any questions regarding the applicability of this proposed rule to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**III. Where can I get a copy of this document?**

In addition to the docket, an electronic copy of this proposed action will be available on the Worldwide Web (WWW) through the Technology

Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN’s policy and guidance page for newly proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg/>. The TTN provides information and technology exchange in various areas of air pollution control.

**IV. Why are we amending the rule?**

On January 28, 2009, EPA promulgated amendments to the performance standards for steam generating units to add compliance, recordkeeping, and reporting requirements for owners and operators of certain affected facilities. Subsequently, EPA received a petition for reconsideration which it granted. The petitioner that submitted the

petition for reconsideration also filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit. In this action, EPA is proposing to amend specific provisions in the performance standards for steam generating units to resolve specific issues and questions raised in the petition for review, but not in the petition for reconsideration, and to address one issue raised in the petition for reconsideration.

**V. What amendments are we making to the rule?**

For a detailed description of the proposed amendments, see the information provided in the direct final rule published in the Rules and Regulations section of this **Federal Register**.

## VI. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, exempt from review under the 12866. EPA has concluded that the amendments EPA is proposing would not change the costs or benefits of this proposed rule.

### B. Paperwork Reduction Act

This action would not impose any new information collection burden. These proposed amendments would result in no changes to the information collection requirements of the existing standards of performance and would have no impact on the information collection estimate of projected cost and hour burden made and approved by the Office of Management and Budget (OMB) during the development of the existing standards of performance. Therefore, the information collection requests would not be amended. However, OMB has previously approved the information collection requirements contained in the existing standards of performance (40 CFR part 60, subparts D, Da, Db, and Dc) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, at the time the standards were promulgated on June 11, 1979 (40 CFR part 60, subpart Da, 44 FR 33580), November 25, 1986 (40 CFR part 60, subpart Db, 51 FR 42768), and September 12, 1990 (40 CFR part 60, subpart Dc, 55 FR 37674). OMB assigned OMB control numbers 2060–0023 (ICR 1053.07) for 40 CFR part 60, subpart Da, 2060–0072 (ICR 1088.10) for 40 CFR part 60, subpart Db, 2060–0202 (ICR 1564.06) for 40 CFR part 60, subpart Dc. OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure 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.

For purposes of assessing the impacts of these proposed amendments on small entities, small entity is defined as: (1) A

small business as defined by the Small Business Administration’s regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the rule on small entities.” 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule would reduce testing requirements for owner/operators of affected facilities using PM CEMS and would allow reduced opacity monitoring for owner/operators of natural gas-fired affected facilities. We have therefore concluded that today’s proposed rule will relieve regulatory burden for all affected small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

### D. Unfunded Mandates Reform Act

This proposed rule contains no Federal mandates 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, the proposed amendments are not subject to the requirements of section 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not unfairly apply to small governments.

### E. Executive Order 13132: Federalism

The proposed amendments do not have federalism implications. It would 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. These amendments would not impose substantial direct compliance costs on State or local governments, and they would not preempt State law. Thus, Executive Order 13132 does not apply to this action.

### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

These proposed amendments do not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). These proposed amendments would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to the proposed amendments.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health and safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

This action 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.

### I. 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 us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical

standards (e.g., material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This action does not involve any new technical standards or the incorporation by reference of existing technical standards. Therefore, the consideration of voluntary consensus standards is not relevant to this action.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed rulemaking. New source performance standards are technology-based standards intended to promote use of the best air pollution control technologies, taking into account the cost of such technology and any other non-air quality, health, and environmental impact and energy requirements at a broad national level.

**List of Subjects in 40 CFR Part 60**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 7, 2011.

**Lisa P. Jackson,**  
*Administrator.*

[FR Doc. 2011-1009 Filed 1-19-11; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 67**

[Docket ID FEMA-2011-0002; Internal Agency Docket No. FEMA-B-1171]

**Proposed Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

**DATES:** Comments are to be submitted on or before April 20, 2011.

**ADDRESSES:** The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1171, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4064, or (e-mail) [luis.rodriquez1@dhs.gov](mailto:luis.rodriquez1@dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4064, or (e-mail) [luis.rodriquez1@dhs.gov](mailto:luis.rodriquez1@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency

(FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

*National Environmental Policy Act.* This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

*Executive Order 12866, Regulatory Planning and Review.* This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

*Executive Order 13132, Federalism.* This proposed rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This proposed rule meets the applicable standards of Executive Order 12988.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

**PART 67—[AMENDED]**

1. The authority citation for part 67 continues to read as follows: