

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 23 bridge across the Gulf Intracoastal Waterway (Algiers Alternate Route), mile 3.8, at Belle Chasse, Plaquemines Parish, Louisiana. The deviation is necessary to facilitate movement of vehicular traffic for the 2011 N'Awlins Air Show, to be held at the U.S. Naval Air Station, Joint Reserve Base at Belle Chasse, Louisiana. This deviation allows the bridge to remain closed to navigation for several hours on three afternoons to allow for the movement of vehicular traffic.

**DATES:** This deviation is effective from 3:30 p.m. on Friday, May 6, 2011 until 7:45 p.m. on Sunday, May 8, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-1141 and are available online at <http://www.regulations.gov>. They are also available for inspection or copying at two locations: The Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail David Frank, Bridge Administration Branch; telephone 504-671-2128, e-mail [David.m.frank@uscg.mil](mailto:David.m.frank@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:** The Department of the Navy requested a temporary deviation from the regulations governing the State Route 23 vertical lift span drawbridge. The change accommodates the additional volume of vehicular traffic that the N'Awlins Air Show generates each year. A large number of the public is expected to attend the Naval Air Station Open House and Air Show on each day. The change allows for the expeditious dispersal of the heavy volume of vehicular traffic expected to depart the Naval Air Station, Joint Reserve Base following the event. This year, the event is being held on the weekend of May 6-8, 2011. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 3:30 p.m. until 6:45 p.m. on Friday, May 6, 2011 and from 3:30 p.m. until 7:45 p.m. on Saturday, May 7, 2011 and Sunday, May 8, 2011.

In accordance with 33 CFR 117.451(b), the bridge currently opens on signal; except that, from 6 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draw need not be opened for the passage of vessels.

The State Route 23 vertical lift span drawbridge across the Gulf Intracoastal Waterway (Algiers Alternate Route), mile 3.8, at Belle Chasse, Louisiana has a vertical clearance of 40 feet above mean high water in the closed-to-navigation position and 100 feet above mean high water in the open-to-navigation position. Navigation on the waterway consists primarily of tugs with tows, commercial fishing vessels, and occasional recreational craft. Mariners may use the Gulf Intracoastal Waterway (Harvey Canal) to avoid unnecessary delays.

The Coast Guard has coordinated the closure with waterway users, industry, and other Coast Guard units. It has been determined that this closure will not have a significant effect on vessel traffic; however, the bridge can be opened in an emergency.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 3, 2011.

**David M. Frank,**

*Bridge Administrator.*

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**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[EPA-HQ-OAR-2005-0031; FRL-9255-1]

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:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to amend the new source performance standards for electric utility steam generating units and industrial-commercial-institutional steam generating units. This action amends the testing requirements for owners/operators of steam generating

units that elect to install particulate matter continuous emission monitoring systems. It also amends 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 corrects several editorial errors identified from previous rulemakings.

**DATES:** This final rule is effective on March 21, 2011 without further notice, unless EPA receives adverse comment by February 22, 2011. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that some or all of the amendments to the affected subparts will not take effect.

**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.

**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 using a direct final rule?
- II. Does this action apply to me?
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  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
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  - K. Congressional Review Act

**I. Why is EPA using a direct final rule?**

We are publishing this rule without a prior proposed rule because we view this as a non-controversial action and anticipate no adverse comment. As explained in section IV, this action amends the testing requirements for owners/operators of steam generating units that elect to install particulate matter continuous emission monitoring systems (PM CEMS). This action also amends 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 (COMS). In addition, this action corrects several editorial errors identified from previous rulemakings. These amendments do not change the technical standards for

owners/operators of affected facilities nor result in the imposition of any costs beyond those included in the final rule. Other issues raised by petitioners for reconsideration of the January 28, 2009, rulemaking will be addressed in a future rule proposal to provide opportunity for public comment on any additional revisions to subparts D, Da, Db, or Dc of 40 CFR part 60.

Because this is an amendment of regulatory language through a rule action, a rule redline has been created of the current rule with the amendments. The redline document is in the docket to aid the public to read and comment on the specific changes to the regulatory text, which will be promulgated by this direct final action.

However, in the “Proposed Rules” section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule for amending the regulatory text in the new source performance standards (NSPS) for electric utility steam generating units and industrial-commercial-institutional steam generating units if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If we receive adverse comment on this direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that the amendments in this rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

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

The regulated categories and entities potentially affected by this direct final 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 .....	221112	Fossil fuel-fired electric utility steam generating units owned by the Federal Government.
State/local/tribal government .....	221112	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.

Category	NAICS <sup>1</sup>	Examples of regulated entities
	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 final rule. To determine whether your facility is regulated by this final 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 final 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 final action will be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final 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?

EPA published a final rule in the **Federal Register** on January 28, 2009 (74 FR 5072), that amended 40 CFR part 60, subparts D, Da, Db, and Dc to add compliance, recordkeeping, and reporting requirements for owners/operators of certain affected facilities. After promulgation, EPA received a petition for reconsideration of certain provisions of the amended rule from the Utility Air Regulatory Group (UARG). UARG also filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit. EPA granted UARG's petition for reconsideration and intends to address the issues raised in the petition through a subsequent rulemaking. This direct final action addresses two specific issues raised by UARG. First, UARG asserts that the condensable PM testing requirements for owners/operators of subpart Da affected facilities that elect to install PM CEMS to determine compliance with an applicable filterable PM standard are technically problematic in a number of respects and are not

necessary in light of other actions taken by EPA subsequent to the promulgation of the January 2009 amendments. Second, UARG asserts that there is confusion regarding the implementation of the amended opacity monitoring provisions requiring owners/operators of affected subpart D facilities that are subject to an opacity standard, but do not use a COMS to measure opacity, to perform periodic visible emissions performance testing using EPA Method 9. This direct final rule amends specific provisions in subparts D and Da to address these issues. (The direct final rule also amends parallel provisions in subparts Db and Dc requiring owners/operators of affected facilities that are subject to an opacity standard, but do not use a COMS to measure opacity, to perform periodic visible emissions performance testing using EPA Method 9.) None of these changes will affect EPA's ability to implement and enforce the emission standards as EPA intended. The rationale for the amendments made by this direct final rulemaking follows.

For the reasons discussed below, this direct final rule eliminates the condensable PM testing requirement added by the January 2009 rulemaking. The January 2009 rulemaking added a condition to subparts D, Da, Db, and Dc that requires owners/operators electing to use a PM CEMS, in lieu of a COMS, to conduct performance tests for condensable PM emissions during the correlation testing runs of the PM CEMS required by Performance Specification 11. The existing subparts D, Da, Db, and Dc do not include specific emissions standards for condensable PM. The inclusion of this requirement in the January 2009 amendments was an initial attempt by EPA to begin collecting data on the condensable PM component of total PM. As EPA explained in the preamble to the January 2009 final rule, EPA intended to use the data collected to determine if the condensable PM emissions from steam generating units have significant health and/or environmental impacts, and whether condensable PM should be included in future amendments to the PM standards under subparts Da, Db, and Dc (74 FR 5074, January 28, 2009).

Subsequent to the January 2009 rulemaking, EPA distributed to existing facilities operating electric utility steam generating units a comprehensive information collection request (ICR) to collect data to support various rule development directives. This ICR included a requirement for selected respondents to conduct, and submit the results of, tests for condensable PM emissions by September 2010. We have concluded that the data collected pursuant to this ICR will provide sufficient data to perform a condensable PM analysis. Therefore, the condensable PM testing requirement added to subparts D, Da, Db, and Dc through the January 2009 rulemaking is no longer required, and creates an unnecessary additional testing burden for affected owners/operators. Consequently, we are amending the rules to remove the requirement for owners/operators electing to use a PM CEMS, in lieu of a COMS, to conduct performance tests for condensable PM emissions during the correlation testing runs for the PM CEMS.

The January 2009 rulemaking exempted the owners/operators of certain affected facilities subject to subparts D, Da, Db, or Dc from the requirement to use COMS to measure opacity but not the otherwise applicable opacity standard. These affected sources must conduct periodic opacity observations using Method 9, Method 22, or the results from digital opacity compliance systems to demonstrate compliance with the applicable opacity standard (§ 60.45, § 60.49Da, § 60.48b, and § 60.47c of 40 CFR part 60). The requirement to monitor compliance with the opacity standard is an essential aspect of the NSPS. However, the implementation of the monitoring provisions as promulgated in the January 2009 rulemaking warrants clarification in a number of respects. First, the existing regulations require the owners/operators of affected sources with opacity readings above levels specified in the rule to conduct a new Method 9 test every 30 calendar days. This requirement potentially conflicts with the requirement in the general provisions (40 CFR part 60, subpart A) for an owner/operator to provide written notice to EPA at least 30 calendar days

before the date on which the owner/operator intends to conduct a performance test (40 CFR 60.8(d)). Thus, the regulations as written could potentially cause problems for owners/operators of affected facilities trying to meet the notification deadline.

Second, the opacity monitoring requirements, as written, were effective immediately for owners/operators of affected facilities subject to an opacity standard that are exempt from the COMS requirement. The amended regulatory text does not, however, specify a deadline by which new sources must complete the initial opacity performance test. In addition, since the required opacity testing or monitoring frequency depends on the results of the last performance test, there was some question as to when the first post January 2009 promulgation opacity reading needed to be completed by affected facilities already subject to the NSPS.

In addition to these issues specifically identified by the petitioner, EPA recognized another issue regarding the monitoring requirements. Consistent with the provisions of subparts D and Da prior to the January 2009 rulemaking, all steam generating units subject to either subpart D or Da must meet an opacity standard regardless of the fuel burned in the unit. The heat recovery steam generator (HRSG) portion of natural gas-fired combined cycle power plants can be subject to subpart D or Da. In cases where natural gas-fired duct burners are used to boost the temperature of the hot exhaust gases from the stationary combustion turbine entering the HRSG, the HRSG may be an affected facility that could be subject to subpart D or Da. Consequently, as an unintended result of the January 2009 rulemaking, some HRSGs using duct burners at combined cycle power plants became subject to the added requirements for opacity monitoring. Prior to the January 2009 rulemaking, State permitting authorities often imposed only minimal opacity monitoring requirements for these units. It was not our intent to require regular opacity monitoring from all natural gas-fired affected facilities.

We are planning to propose amendments to the opacity monitoring requirements in these subparts to address the issues raised by petitioners for reconsideration, as well as the issue regarding natural gas-fired affected facilities, thereby providing an opportunity for public comment on EPA's approach to resolving the issues. In the interim, we are taking a number of steps in this direct final rule to immediately address these issues. First,

to allow time to meet the notification deadline in the General Provisions, this direct final rule amends the minimum time between Method 9 performance tests from 30 to 45 days. The extended testing deadline will still maintain the intent of frequent observations and will also provide a reasonable amount of time in which to comply with the notification requirement and conduct the performance test. Second, this direct final rule establishes a deadline of April 29, 2011, for owners/operators who have not already done so to implement the opacity monitoring requirements for all affected facilities subject to opacity standards that are exempt from the COMS requirement. This date is over 2 years after the publication of the final amendments and will provide owners/operators of affected facilities that are not yet monitoring opacity sufficient time to begin the required monitoring. Any owners/operators of affected facilities that are currently meeting the opacity testing and monitoring provisions of the January 2009 amendments are expected to continue to meet the promulgated monitoring schedule. Finally, to reduce unnecessary performance testing, subparts D and Da are amended to give the permitting authority the ability to exempt owners/operators of affected facilities burning only natural gas from the periodic opacity monitoring requirements.

The remaining amendments included in this direct final rule are correcting previous editorial mistakes made in the text to subparts D, Da, and Db. These errors were only recently identified. First, we are correcting an incorrect reference in paragraph 60.42(c) of subpart D. The regulatory text currently exempts owner/operators of affected facilities subject to subpart D that elect to use PM CEMS from the opacity standard if they also elect to comply with the relevant sulfur dioxide (SO<sub>2</sub>) standard in paragraph 60.43Da(a) of subpart Da. However, as discussed in the preamble to the final rule (74 FR 5073), EPA intended to exempt owners/operators of subpart D affected facilities from the opacity standard if they elect to use PM CEMS and also elect to comply with the filterable PM standards in paragraph 60.42Da(a) of subpart Da. Second, we are adding the following as a new second sentence in paragraph 60.48Da(c): "The sulfur dioxide emission standards under § 60.43Da apply at all times except during periods of startup, shutdown, or when both emergency conditions exist and the procedures under paragraph (d) of this section are implemented." This sentence

was included in the original 1979 rulemaking (44 FR 33616), but was unintentionally deleted during the 2005 promulgation of the Clean Air Mercury Rule (70 FR 28606) and subsequent rulemakings carried the deletion forward and failed to add the sentence back. Third, we are amending subpart Db by adding back paragraph 60.42b(k)(4) which the **Federal Register** inadvertently deleted in publishing the January 2009 final rule (74 FR 5072). Paragraph 60.42b(k)(4) was added to subpart Db in 2007 (72 FR 32745), and in the January 2009 final rule we amended paragraphs (k)(1) through (k)(3), but intended to leave (k)(4) as it existed prior to the amendments. The paragraph was, however, unintentionally dropped when the rule was published in the **Federal Register**.

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

The applicable paragraphs in subparts D, Da, Db, and Dc in 40 CFR part 60 are amended to delay until April 29, 2011, the implementation of a requirement for owners/operators of affected facilities subject to an opacity standard that do not use a COMS to conduct periodic opacity observations. In addition, the applicable paragraphs in subparts D and Da are amended to give the permitting authority the ability to exempt owners/operators of affected facilities burning only natural from the periodic opacity monitoring requirements.

The applicable paragraphs in subparts Da, Db, and Dc in 40 CFR part 60 are amended to delete the condition for an owner/operator that elects to use a PM CEMS, in lieu of a COMS, to conduct condensable PM performance tests during the correlation testing runs of the CEMS required by Performance Specification 11.

Subpart D in 40 CFR part 60 is amended to correct the reference in § 60.42(c) from § 60.43Da(a) to § 60.42Da(a). As discussed above, this change will implement the original intent of the rule that owners/operators of subpart D affected facilities electing to use PM CEMS be exempt from the opacity standard if they also elect to comply with the PM, not the SO<sub>2</sub>, standard in subpart Da.

Subpart Da in 40 CFR part 60 is amended to correct the unintentional deletion of a sentence from § 60.48Da(c) by reinstating the original provision which specified that the SO<sub>2</sub> emission standards under § 60.43Da apply at all times except during periods of startup, shutdown, or when both emergency conditions exist.

Finally, subpart Db in 40 CFR part 60 is amended to correct the unintentional

deletion of a paragraph from § 60.42Da(k) by reinstating the original provision under § 60.42Da(k)(4). The provision provides an alternative SO<sub>2</sub> emission standard of not emitting any gases that contain SO<sub>2</sub> in excess of 87 nanograms per joule (ng/J) (0.20 lb/million British thermal unit (MMBtu)) heat input or 10 percent (0.10) of the potential SO<sub>2</sub> emission rate (90 percent reduction) and 520 ng/J (1.2 lb/MMBtu) heat input for modified facilities that combust coal or a mixture of coal with other fuels.

## 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 12866. EPA has concluded that the amendments EPA is promulgating will not change the costs or benefits of this direct final rule.

### B. Paperwork Reduction Act

This action does not impose any new information collection burden. These final amendments result in no changes to the information collection requirements of the existing standards of performance and will 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 have not been 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 final 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 direct final rule on small entities, I certify that this action will 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 USC 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 direct final rule reduces testing requirements for owner/operators of affected facilities using PM CEMS and allows reduced opacity monitoring for owner/operators of natural gas-fired affected facilities. We have therefore concluded that today’s direct final rule will relieve regulatory burden for all affected small entities.

### D. Unfunded Mandates Reform Act

This direct final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, these final amendments are not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This direct final 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

This action 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. These amendments will not impose substantial direct compliance costs on State or local governments, and they will 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 final amendments do not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). These final amendments will 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 final 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 final 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.

### K. 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 Congress and to the Comptroller General of the United States. EPA will submit a

report containing these final amendments 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 the final rules in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). These final amendments will be effective on March 21, 2011.

### 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.

For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

### PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart D—[Amended]

■ 2. Section 60.42 is amended by revising the last sentence in paragraph (c) to read as follows:

#### § 60.42 Standard for particulate matter (PM).

\* \* \* \* \*

(c) \* \* \* If the Administrator grants the petition, the source will from then on (unless the unit is modified or reconstructed in the future) have to comply with the requirements in § 60.42Da(a) of subpart Da of this part.

■ 3. Section 60.45 is amended as follows:

■ a. By revising paragraph (b)(7) introductory text;

■ b. By revising paragraph (b)(7)(i)(D); and

■ c. By revising the last sentence of paragraph (b)(7)(ii)(A).

#### § 60.45 Emissions and fuel monitoring.

\* \* \* \* \*

(b) \* \* \*

(7) An owner or operator of an affected facility subject to an opacity standard under § 60.42 that elects to not use a COMS because the affected facility burns only fuels as specified under paragraph (b)(1) of this section, monitors PM emissions as specified under paragraph (b)(5) of this section, or

monitors CO emissions as specified under paragraph (b)(6) of this section, shall conduct a performance test using Method 9 of appendix A-4 of this part and the procedures in § 60.11 to demonstrate compliance with the applicable limit in § 60.42 by April 29, 2011 or within 45 days after stopping use of an existing COMS, whichever is later, and shall comply with either paragraph (b)(7)(i), (b)(7)(ii), or (b)(7)(iii) of this section. The observation period for Method 9 of appendix A-4 of this part performance tests may be reduced from 3 hours to 60 minutes if all 6-minute averages are less than 10 percent and all individual 15-second observations are less than or equal to 20 percent during the initial 60 minutes of observation. The permitting authority may exempt owners or operators of affected facilities burning only natural gas from the opacity monitoring requirements.

(i) \* \* \*

(D) If the maximum 6-minute average opacity is greater than 10 percent, a subsequent Method 9 of appendix A-4 of this part performance test must be completed within 45 calendar days from the date that the most recent performance test was conducted.

(ii) \* \* \*

(A) \* \* \* If the sum of the occurrence of visible emissions is greater than 5 percent of the observation period (i.e., 90 seconds per 30 minute period), the owner or operator shall either document and adjust the operation of the facility and demonstrate within 24 hours that the sum of the occurrence of visible emissions is equal to or less than 5 percent during a 30 minute observation (i.e., 90 seconds) or conduct a new Method 9 of appendix A-4 of this part performance test using the procedures in paragraph (b)(7) of this section within 45 calendar days according to the requirements in § 60.46(b)(3).

\* \* \* \* \*

### Subpart Da—[Amended]

■ 4. Section 60.48Da is amended by revising paragraph (c) to read as follows:

#### § 60.48Da Compliance provisions.

\* \* \* \* \*

(c) The PM emission standards under § 60.42Da and the NO<sub>x</sub> emission standards under § 60.44Da apply at all times except during periods of startup, shutdown, or malfunction. The sulfur dioxide emission standards under § 60.43Da apply at all times except during periods of startup, shutdown, or when both emergency conditions exist

and the procedures under paragraph (d) of this section are implemented.

\* \* \* \* \*

■ 5. Section 60.49Da is amended as follows:

- a. By revising paragraph (a)(3) introductory text;
- b. By revising paragraph (a)(3)(ii)(D);
- c. By revising the last sentence of paragraph (a)(3)(iii)(A); and
- d. By removing paragraph (v)(2)(ii); and
- e. By redesignating paragraph (v)(2)(iii) as paragraph (v)(2)(ii).

**§ 60.49Da Emission monitoring.**

(a) \* \* \*

(3) The owner or operators of an affected facility that meets the conditions in paragraph (a)(2) of this section may, as an alternative to using a COMS, elect to monitor visible emissions using the applicable procedures specified in paragraphs (a)(3)(i) through (iv) of this section. The opacity performance test requirement in paragraph (a)(3)(i) must be conducted by April 29, 2011, within 45 days after stopping use of an existing COMS, or within 180 days after initial startup of the facility, whichever is later. The permitting authority may exempt owners or operators of affected facilities burning only natural gas from the opacity monitoring requirements.

\* \* \* \* \*

(ii) \* \* \*

(D) If the maximum 6-minute average opacity is greater than 10 percent, a subsequent Method 9 of appendix A-4 of this part performance test must be completed within 45 calendar days from the date that the most recent performance test was conducted.

(iii) \* \* \*

(A) \* \* \* If the sum of the occurrence of visible emissions is greater than 5 percent of the observation period (*i.e.*, 90 seconds per 30 minute period), the owner or operator shall either document and adjust the operation of the facility and demonstrate within 24 hours that the sum of the occurrence of visible emissions is equal to or less than 5 percent during a 30 minute observation (*i.e.*, 90 seconds) or conduct a new Method 9 of appendix A-4 of this part performance test using the procedures in paragraph (a)(3)(i) of this section within 45 calendar days according to the requirements in § 60.50Da(b)(3).

\* \* \* \* \*

**Subpart Db—[Amended]**

■ 6. Section 60.42b is amended by adding paragraph (k)(4) to read as follows:

**§ 60.42b Standard for sulfur dioxide (SO<sub>2</sub>).**

\* \* \* \* \*

(k) \* \* \*

(4) As an alternative to meeting the requirements under paragraph (k)(1) of this section, modified facilities that combust coal or a mixture of coal with other fuels shall not cause to be discharged into the atmosphere any gases that contain SO<sub>2</sub> in excess of 87 ng/J (0.20 lb/MMBtu) heat input or 10 percent (0.10) of the potential SO<sub>2</sub> emission rate (90 percent reduction) and 520 ng/J (1.2 lb/MMBtu) heat input.

■ 7. Section 60.46b is amended by removing paragraph (j)(11)(ii) and redesignating paragraph (j)(11)(iii) as paragraph (j)(11)(ii).

■ 8. Section 60.48b is amended as follows:

- a. By revising paragraph (a) introductory text;
- b. By revising paragraph (a)(1)(iv); and
- c. By revising the last sentence of paragraph (a)(2)(i).

**§ 60.48b Emission monitoring for particulate matter and nitrogen oxides.**

(a) Except as provided in paragraph (j) of this section, the owner or operator of an affected facility subject to the opacity standard under § 60.43b shall install, calibrate, maintain, and operate a continuous opacity monitoring system (COMS) for measuring the opacity of emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility subject to an opacity standard under § 60.43b and meeting the conditions under paragraphs (j)(1), (2), (3), (4), or (5) of this section who elects not to use a COMS shall conduct a performance test using Method 9 of appendix A-4 of this part and the procedures in § 60.11 to demonstrate compliance with the applicable limit in § 60.43b by April 29, 2011, within 45 days of stopping use of an existing COMS, or 180 days after initial startup of the facility, whichever is later, and shall comply with either paragraphs (a)(1), (a)(2), or (a)(3) of this section. The observation period for Method 9 of appendix A-4 of this part performance tests may be reduced from 3 hours to 60 minutes if all 6-minute averages are less than 10 percent and all individual 15-second observations are less than or equal to 20 percent during the initial 60 minutes of observation.

(1) \* \* \*

(iv) If the maximum 6-minute average opacity is greater than 10 percent, a subsequent Method 9 of appendix A-4 of this part performance test must be completed within 45 calendar days from the date that the most recent performance test was conducted.

(2) \* \* \*

(i) \* \* \* If the sum of the occurrence of visible emissions is greater than 5 percent of the observation period (*i.e.*, 90 seconds per 30 minute period), the owner or operator shall either document and adjust the operation of the facility and demonstrate within 24 hours that the sum of the occurrence of visible emissions is equal to or less than 5 percent during a 30 minute observation (*i.e.*, 90 seconds) or conduct a new Method 9 of appendix A-4 of this part performance test using the procedures in paragraph (a) of this section within 45 calendar days according to the requirements in § 60.46d(d)(7).

\* \* \* \* \*

**Subpart Dc—[Amended]**

■ 9. Section 60.45c is amended by removing paragraph (c)(11)(ii) and redesignating paragraph (c)(11)(iii) as paragraph (c)(11)(ii).

■ 10. Section 60.47c is amended as follows:

- a. By revising paragraph (a) introductory text;
- b. By revising paragraph (a)(1)(iv); and
- c. By revising the last sentence of paragraph (a)(2)(i).

**§ 60.47c Emission monitoring for particulate matter.**

(a) Except as provided in paragraphs (c), (d), (e), (f), and (g) of this section, the owner or operator of an affected facility combusting coal, oil, or wood that is subject to the opacity standards under § 60.43c shall install, calibrate, maintain, and operate a continuous opacity monitoring system (COMS) for measuring the opacity of the emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility subject to an opacity standard in § 60.43c(c) that is not required to use a COMS due to paragraphs (c), (d), (e), or (f) of this section that elects not to use a COMS shall conduct a performance test using Method 9 of appendix A-4 of this part and the procedures in § 60.11 to demonstrate compliance with the applicable limit in § 60.43c by April 29, 2011, within 45 days of stopping use of an existing COMS, or 180 days after initial startup of the facility, whichever is later, and shall comply with either paragraphs (a)(1), (a)(2), or (a)(3) of this section. The observation period for Method 9 of appendix A-4 of this part performance tests may be reduced from 3 hours to 60 minutes if all 6-minute averages are less than 10 percent and all individual 15-second observations are less than or equal to 20 percent during the initial 60 minutes of observation.

(1) \* \* \*

(iv) If the maximum 6-minute average opacity is greater than 10 percent, a subsequent Method 9 of appendix A-4 of this part performance test must be completed within 45 calendar days from the date that the most recent performance test was conducted.

(2) \* \* \*

(i) \* \* \* If the sum of the occurrence of visible emissions is greater than 5 percent of the observation period (*i.e.*, 90 seconds per 30 minute period), the owner or operator shall either document and adjust the operation of the facility and demonstrate within 24 hours that the sum of the occurrence of visible emissions is equal to or less than 5 percent during a 30 minute observation (*i.e.*, 90 seconds) or conduct a new Method 9 of appendix A-4 of this part performance test using the procedures in paragraph (a) of this section within 45 calendar days according to the requirements in § 60.45c(a)(8).

\* \* \* \* \*

[FR Doc. 2011-1008 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]

**Final Flood Elevation Determinations**

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

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that

each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

**ADDRESSES:** The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**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) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for

each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

*National Environmental Policy Act.* This final 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.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

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

*Executive Order 12988, Civil Justice Reform.* This final 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 amended as follows:

**PART 67—[AMENDED]**

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

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.11 [Amended]**

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
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**Ashley County, Arkansas, and Incorporated Areas  
Docket No.: FEMA-B-1085**

Snake Creek .....	Approximately 1,400 feet downstream of Main Street ..... Approximately 1,200 feet downstream of Main Street .....	+131 +131	City of Crossett.
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\* National Geodetic Vertical Datum.  
+ North American Vertical Datum.  
# Depth in feet above ground.