

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 proposed rule 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. Thus, the requirements of Section 6 of the Executive Order do not apply to this proposed rule.

F. 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 6, 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.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

This proposed rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

G. 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: (1) is determined to be “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, EPA 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 that EPA considered. This proposed rule is not subject to Executive Order 13045 because it is not economically significant under Executive Order 12866 and because it does not concern environmental health and safety risks.

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

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not expected to have a significant adverse affect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act of 1995

The National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d), Public Law 104–113, requires Federal agencies and departments to use voluntary consensus standards instead of government-unique standards in their 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 method, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires federal agencies like us to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

During this rulemaking, we identified no voluntary consensus standards that might be applicable. Specifically, there were none which specified quality assurance/quality control procedures for continuous opacity monitoring systems.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Continuous opacity monitoring.

Dated: May 2, 2003.

Christine Todd Whitman,
Administrator.

We propose that 40 CFR part 60 be amended as follows:

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

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

2. Appendix F of part 60 is amended by adding Procedure 3 to read as follows:

Appendix F to Part 60—Quality Assurance Procedures

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Procedure 3—Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources

1. What Are the Purpose and Applicability of Procedure 3? The purpose of Procedure 3 is to help implement procedures established by Performance Specification 1 (PS–1) for testing and verification of continuous opacity monitoring systems (COMS) applicable to new stationary sources by establishing the minimum quality control (QC) and quality assurance (QA) requirements to assess and assure the quality of a continuous opacity monitoring system (COMS). Procedure 3 applies to a COMS used for continuously determining compliance with emission standards as specified in an applicable federally enforceable regulation.

1.1 Who must comply with Procedure 3? You must comply with Procedure 3 if you are required by a federally enforceable regulation to install and operate a COMS on a continuous basis.

1.2 What are the data quality objectives of Procedure 3? The overall data quality objective (DQO) of Procedure 3 is the generation of valid, representative opacity data. Procedure 3 specifies the minimum requirements for controlling and assessing the quality of COMS data submitted to us or the delegated regulatory agency. Procedure 3 requires you to perform periodic evaluations of a COMS performance and to develop and implement QA/QC programs to ensure that a COMS data quality is maintained. You must meet these minimum requirements if you are responsible for one or more COMS used for compliance monitoring.

1.3 What is the intent of the QA/QC procedures found in Procedure 3? Procedure 3 is intended to establish the minimum requirements to verify and maintain an acceptable level of quality of the data produced by COMS. Its general terms are intended to allow you to develop a program that is most effective for your circumstances. You may adopt QA/QC procedures which go beyond these minimum requirements to ensure compliance with applicable regulations.

1.4 When must I comply with Procedure 3? You must comply with Procedure 3