

US EPA ARCHIVE DOCUMENT

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 72, and 75

[OAR-2002-0056; FRL-XXXX-X]

[RIN 2060-XXXX]

Standards of Performance for New and Existing Stationary  
Sources: Electric Utility Steam Generating Units:  
Reconsideration

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

**ACTION:** Notice of reconsideration of final rule; request for public comment; notice of public hearing.

**SUMMARY:** On May 18, 2005, pursuant to section 111 of the Clean Air Act (CAA), EPA published a final rule, entitled "Standards of Performance for New and Existing Stationary Sources: Electric Steam Generating Units" (the Clean Air Mercury Rule or CAMR; see 70 FR 28606). The final rule establishes standards of performance for emissions of mercury (Hg) from new and existing coal-fired electric utility steam generating units (Utility Units or EGU).

After the notice of final rule appeared in the Federal Register, the Administrator received four petitions for reconsideration of certain aspects of CAMR. In this notice, EPA is announcing reconsideration of specific issues in CAMR, and we are requesting comment on those

issues.

We are seeking comment only on the aspects of CAMR specifically identified in this notice. We will not respond to any comments addressing other provisions of CAMR or any related rulemakings.

**DATES:** Comments. Comments must be received on or before December 19, 2005. Because of the need to resolve the issues raised in this notice in a timely manner, EPA will not grant requests for extensions beyond this date.

Public Hearing. A public hearing will be held on November 17, 2005. For further information on the public hearing and requests to speak, see the ADDRESSES section of this preamble.

**ADDRESSES:** Comments. Submit your comments, identified by "Docket ID No. OAR-2002-0056 (Legacy Docket ID No. A-92-55)," by one of the following methods:

- Federal eRulemaking Portal:

<http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- Agency Website:

<http://docket.epa.gov/edkpub/index.jsp>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-

line instructions for submitting comments.

- E-mail: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov)
- Fax: (202) 566-1741
- Mail: Air and Radiation Docket and Information Center, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand Delivery: Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, NW, Washington, D.C. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. OAR-2002-0056 (Legacy Docket ID No. A-92-55). 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.epa.gov/edkpub/index.jsp>, 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 EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the

Federal regulations.gov websites are "anonymous access" systems, 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 EDOCKET or 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.

Public Hearing. The public hearing will run from 8:00 a.m. to 5:00 p.m., Eastern time, and will be held in room 111C at the EPA facility, Research Triangle Park, N.C. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Pamela Garrett at least 2 days in advance of the public hearing (see FOR FURTHER INFORMATION CONTACT section of this preamble). The public

hearing will provide interested parties the opportunity to present data, views, or arguments concerning this notice. If no one contacts Ms. Garrett in advance of the hearing with a request to present oral testimony at the hearing, we will cancel the hearing. The record for this action will remain open for 30 days after the date of the hearing to accommodate submittal of information related to the public hearing.

Docket. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edkpub/index.jsp>.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copy righted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, NW, Washington, D.C. 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 and

Radiation Docket and Information Center is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Contact Mr. William Maxwell, Combustion Group, Emission Standards Division, Mail Code: C439-01, U.S. EPA, Research Triangle Park, NC 27711; telephone number: (919) 541-5430; fax number: (919) 541-5450; e-mail address: [maxwell.bill@epa.gov](mailto:maxwell.bill@epa.gov). For questions about the public hearing, contact Ms. Pamela Garrett, Combustion Group, Emission Standards Division, Mail Code: C439-01, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541-7966; fax number: (919) 541-5450; e-mail address: [garrett.pamela@epa.gov](mailto:garrett.pamela@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Outline. The information presented in this preamble is organized as follows:

- I. General Information
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  - H. EO 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act

#### **I. General Information**

- A. Does this reconsideration notice apply to me?

Categories and entities potentially affected by today's notice include:

Category	NAICS code <sup>1</sup>	Examples of potentially regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal government	221122 <sup>2</sup>	Fossil fuel-fired electric utility steam generating units owned by the Federal government.
State/local/Tribal government	221122 <sup>2</sup> 921150	Fossil fuel-fired electric utility steam generating units owned by municipalities. Fossil fuel-fired electric utility steam generating units in Indian country.

<sup>1</sup> North American Industry Classification System.

<sup>2</sup> Federal, State, or local government-owned and operated establishments are classified according to the activity in



which they are engaged.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by today's notice. This table lists examples of the types of entities EPA is now aware could potentially be regulated by today's notice. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is regulated by today's notice, you should examine the applicability criteria in 40 CFR 60.45Da of the final new source performance standards (NSPS) amendments. If you have questions regarding the applicability of today's notice to a particular entity, consult Mr. William Maxwell listed in the preceding FOR FURTHER INFORMATION CONTACT section.

B. How do I submit CBI?

Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the

comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. How do I obtain a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of today's notice also will be available on the World Wide Web (WWW) through EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this notice will be posted on the TTN's policy and guidance page for newly proposed rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

## **II. Background**

The Administrator signed CAMR on March 15, 2005, and the final rule was published in the Federal Register on May 18, 2005. (See 70 FR 28606.) CAMR is based on a notice of proposed rulemaking (NPR) dated January 30, 2004 (69 FR 4652), wherein EPA proposed two alternative regulatory approaches. Under the first approach, EPA would retain its

December 2000 "appropriate and necessary" finding and the associated CAA section 112(c) listing of Utility Units and issue final emission standards under CAA section 112(d). Under the second approach, EPA would revise its December 2000 "appropriate and necessary" finding, remove Utility Units from the CAA section 112(c) list, and issue final standards of performance under CAA section 111.

On March 15, 2005, EPA finalized the second regulatory approach. Specifically, the EPA Administrator signed a final action that revised the December 2000 appropriate and necessary finding and concluded that it is not appropriate or necessary to regulate coal- and oil-fired Utility Units under CAA section 112. (See 70 FR 15994; March 29, 2005.) EPA took this final action because it believed that the December 2000 finding lacked foundation and because recent information demonstrated that it is neither appropriate nor necessary to regulate coal- and oil-fired Utility Units under CAA section 112. Based solely on the revised finding, EPA removed coal- and oil-fired Utility Units from the CAA section 112(c) list. (See 70 FR 15994.)

In CAMR, EPA established NSPS for Hg emissions from new affected coal-fired Utility Units pursuant to CAA section 111(b). EPA also created a market-based cap-and-

trade program pursuant to CAA section 111(d) that will reduce nationwide utility emissions of Hg from existing units in two distinct phases. Under this provision of CAMR, States undergo a process similar to that outlined in State Implementation Plans (SIP), whereby they detail in a plan submitted to EPA how they will meet their EPA-established State electric generating unit Hg budgets under both Phase I and Phase II.

Following promulgation of the final rule, the Administrator received four petitions for reconsideration pursuant to CAA section 307(d)(7)(B).<sup>1</sup> The purpose of today's notice is to initiate a process for responding to certain issues raised in these petitions.<sup>2</sup>

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<sup>1</sup> One petition was submitted by 14 States: New Jersey, California, Connecticut, Delaware, Illinois, Maine, Massachusetts, New Hampshire, New Mexico, New York, Pennsylvania, Rhode Island, Vermont, and Wisconsin (State petitioners). The second petition was submitted by five environmental groups: the Natural Resources Defense Council (NRDC), the Clean Air Task Force (CATF), the Ohio Environmental Council, the U.S. Public Interest Research Group (USPIRG), and the Natural Resources Council of Maine. The third petition was submitted by the Jamestown Board of Public Utilities. The fourth petition was submitted by the Integrated Waste Service Association (IWSA).

<sup>2</sup> In a letter dated August 19, 2005, we informed the petitioners that we intended to initiate a reconsideration process for at least one issue raised in the petitions. We indicated that we would provide particulars in a subsequent Federal Register notice. This is that notice. Also in that August 19, 2005 letter, we denied petitioners request

**III. Today's Action**

Today, we are granting reconsideration of, and requesting comment on, certain issues raised in the four petitions for reconsideration. Generally, the petitioners claim that CAMR contains information that is of central relevance to the final rule but that was not sufficiently reflected in the proposed rule. The petitioners, therefore, contend that they did not have an adequate opportunity to provide input on these matters during the designated public comment period.

There is a high degree of public interest in CAMR and the public had three separate opportunities to submit comments on whatever matters they deemed relevant to the rulemaking, following the January 30, 2004 NPR, the March 16, 2004 Supplemental Notice of Proposed Rulemaking (SNPR), and the December 1, 2004 Notice of Data Availability (NODA). EPA received, reviewed, and responded to tens of thousands of comments. Thus, a robust public discussion of CAMR has already occurred. Nonetheless, in the interest of ensuring that interested persons have an ample opportunity to comment on all meaningful aspects of this important rule, we are granting reconsideration on certain issues and

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that we administratively stay the CAMR under CAA section

asking the public for additional comment on those issues. The issues for which we are granting reconsideration at this time, and for which we are soliciting comment are discussed below.

Our final decision on reconsideration of all the issues for which we are not granting reconsideration today will be issued no later than the date by which we take final action on the issues discussed in today's action.

#### **IV. Discussion of Issues Subject to Reconsideration**

##### **A. 2010 Phase I Statewide Hg Emission Budgets and the Unit-Level Hg Emission Allocations on Which Those Budgets are Based**

Petitioners state that the Phase I Hg budgets and allocations appeared for the first time in the final CAMR, making it impracticable to raise objections during the period provided for public comment. Although, as noted below, EPA believes that it adequately noticed both its general intent with regard to the Hg budget and allocation approach and the specifics of the calculation procedure, we are at this time opening for public comment the methodology for determining the Phase I State Hg budgets and the unit-specific allocations on which those budgets are based.

In the NPR, EPA provided notice of the formula for determining State EGU Hg budgets. Although this formula

was only applied in deriving the 2018 budgets at that time, the intent to make this formula applicable to the first-phase State EGU Hg budgets was expressed specifically in the March 16, 2004 SNPR (69 FR 12398), where EPA stated (69 FR 12406) "The January 30, 2004 NPR proposed a formula for determining the total amount of emissions for the Budget Trading Program within a specific State for 2010, and, using that same mechanism, proposed the amount of emissions for the Program within each State for 2018. That formula is, in essence, the sum of the hypothetical allocations to each affected Utility Unit in the State. . ." EPA then proceeded to outline the process for developing the hypothetical unit allocations using baseline heat input and the development of the baseline heat input adjustment factors used in those calculations. Hypothetical unit Hg allocations for 2018 using the same methodology that EPA indicated it would apply for 2010, are included in appendix B to the preamble to the SNPR (69 FR 12421).

Nevertheless, as stated above, at this time, EPA is soliciting comments on both the individual State EGU Hg budgets and the unit-specific allocations on which those budgets are based.

B. Definition of "designated pollutant" under 40 CFR 60.21

Petitioners claim that they did not have an opportunity to comment on EPA's proposed revision of the term "designated pollutant" in 40 CFR 60.21. As explained in the NPR, both the House of Representatives and Senate amended CAA section 111(d) in 1990 and both amendments were enacted into law. In the NPR, EPA interpreted the two different amendments to section 111(d) and solicited comment on its interpretation. EPA then finalized its interpretation of the conflicting House of Representatives and Senate amendments to CAA section 111(d) on March 15, 2005. EPA's interpretation is set forth, in full, in the final action revising EPA's December 2000 appropriate and necessary finding and removing Utility Units from the CAA section 112(c) list (see 70 FR 15994; the Section 112(n) Revision Rule). EPA incorporated its interpretation of section 111(d) into CAMR by reference to the final Section 112(n) Revision Rule.

EPA also explained in CAMR that it was revising the term "designated pollutant" at 40 CFR 60.21 because that definition was promulgated in 1975 and interpreted the 1970 CAA, not the 1990 Act. The revisions to the term "designated pollutant" in the final CAMR reflect EPA's interpretation of the conflicting amendments to CAA section



111(d) enacted in 1990, which EPA both proposed and finalized. However, because EPA did not seek specific comment on the regulatory change and whether that change is consistent with its interpretation of CAA section 111(d), as described in the final Section 112(n) Revision Rule, EPA is requesting comment on the regulatory definition of “designated pollutant” contained in the final CAMR.

C. EPA’s Subcategorization for Subbituminous Coal-fired Units in the Context of the New Source Performance Standards (NSPS)

Petitioners assert that the use of the type of control device as a basis for subcategorization is arbitrary and capricious and relies on factors not intended by Congress.

In the NPR (January 30, 2004; 69 FR 4652), EPA proposed to subcategorize on the basis of the four coal types. (EPA also proposed to establish a fifth subcategory for integrated gasification combined cycle (IGCC) units.) We did not propose any subcategorization based on the type of control device employed. In the final CAMR, we established subcategories for subbituminous coal-fired units that appear to be based on the type of pollution control device used for sulfur dioxide (SO<sub>2</sub>) control (i.e., wet or dry flue gas desulfurization (FGD) system). It was

not our intent, however, to subcategorize on the basis of control technology. Rather, our intent was to recognize that new units located in some areas will have access to an adequate supply of water while units in other areas will not have such access. Where adequate water is available, we believe, as stated in the preamble to CAMR, that wet FGD represents best demonstrated technology (BDT). We also believe, however, that where adequate water is not available, dry FGD represents BDT. The two subcategories of subbituminous units thus reflect our recognition of the impact of not having adequate water available, not our intent to subcategorize on the basis of control technology. In order to make this fact clear, we are proposing in today's notice to specify that where an adequate water supply is available (i.e., in areas receiving greater than 25 inches per year (in/yr) mean annual precipitation, based on U.S. Department of Agriculture 30-year data), new subbituminous coal-fired units must meet an emission limit based on the use of a wet FGD. Only in situations where an adequate water supply is not available (i.e., in areas receiving less than or equal to 25 in/yr mean annual precipitation, based on U.S. Department of Agriculture 30-year data) may new subbituminous coal-fired units meet an

emission limit based on the use of dry FGD.

As noted in the preamble for CAMR, we took the position that BDT could be different for new subbituminous coal-fired units located in certain areas because of concerns about the availability of water for Utility Units located in areas of limited mean annual precipitation. Such units could face potential water restrictions, a nonair quality environmental impact consideration. Such units are generally located in the Western part of the U.S. and, thus, generally burn subbituminous coal. A review of the permits available at promulgation of CAMR (OAR-2002-0056-6192) indicates that all subbituminous coal-fired units located in the Western portion of the U.S. are planning on utilizing dry FGD systems. We recognize that some existing subbituminous coal-fired units located in the Western portion of the U.S. currently utilize wet FGD systems. However, with the growth in population in this region, EPA believes that the possibility exists that such units would have their water availability curtailed through local or State water conservation actions (e.g., to make more water available for agricultural or residential uses during periods of drought), and, thus, limit their operational status.

EPA does not think it appropriate public policy to preclude use of this coal type on a regional basis strictly because a new unit may not be able to acquire the water necessary to operate a wet FGD system (which requires more water than does a dry FGD system). Because CAA section 111(b) (2) authorizes EPA to distinguish between classes, types and sizes within categories of new sources for purposes of establishing standards, we believe that the above proposed subcategorization is appropriate. We further believe that the availability of water is a nonair quality environmental impact within the provisions of CAA section 111 and, thus, is an appropriate consideration in this case.

EPA is proposing to revise its basis for the subcategorization of subbituminous coal-fired units. We are proposing that any new unit locating in an area with a mean annual precipitation of less than or equal to 25 in/yr, based on U.S. Department of Agriculture 30-year data, have an emission limit of  $97 \times 10^{-6}$  pounds per megawatt-hour (lb/MWh) while any new unit locating in an area with a mean annual precipitation greater than 25 in/yr have an emission limit of  $66 \times 10^{-6}$  lb/MWh. EPA is soliciting comment on this expanded definition of its basis

for the subcategorization of subbituminous coal-fired units.

D. Statistical Analysis Used for the NSPS

Petitioners contend that EPA's reanalysis and revision of the NSPS limits was not subject to public review or comment. The petitioners further contend that EPA applied an inappropriate statistical analysis in establishing the level of the NSPS and that the statistical analysis contains numerical inconsistencies and arithmetic errors.

As with any NSPS analysis, EPA evaluated the controls that effect the best emission reduction of the pollutant in question (in this case, Hg). NSPS are based on the "best system of emission reduction" (CAA section 111) rather than on only the "most efficient units" as put forward by the petitioners or on the best-performing units as required under CAA section 112. EPA determined the "best system" for each subcategory and then developed the NSPS. Similarly, EPA used data from all units utilizing the "best system" in its evaluation of the NSPS absent any information that a particular unit was not operating their emission controls appropriately.

Consistent with the development of other NSPS, EPA used statistical analysis of the data to account for the natural variability in Hg content in coals and as one measure to account for cost in the NSPS (i.e., many coal-fired Utility

Units may switch coal sources, within the same coal rank, based on cost; therefore, the analysis included the highest average content of Hg potentially available).

Although, EPA believes that analysis by subcategory is appropriate for Hg at this time, it has reviewed its analysis and agrees that the analysis used for CAMR contains certain inconsistencies and errors. Therefore, EPA has reanalyzed the data and revised its NSPS analysis. This revised analysis is provided in the docket and is summarized below.

For each coal type, information collection request (ICR) emission test data (ICR-3) were reviewed to identify the units that were using technologies which were most effective at capturing Hg from coal-fired power plants (i.e., BDT). The technologies that appeared most effective in reducing Hg emissions were those that were installed, or likely would be installed, to comply with the current NSPS standards for particulate matter and SO<sub>2</sub>. This combination of controls was most effective in reducing Hg emissions and, thus, is considered BDT. For bituminous coal-fired boilers, BDT is considered to be the combination of a fabric filter (FF) and an FGD system. The FGD may be either a wet scrubber system (wet FGD) or a spray dryer absorber (SDA; dry FGD). Of the 27 bituminous coal-fired units listed in ICR-3, 6 units had a combination of a FF and a FGD. For subbituminous coal-fired units, BDT was determined to be

dependent on water availability as noted above. For new subbituminous coal-fired units that are located where an adequate water supply is not available, BDT is considered to be a dry FGD system (i.e., a combination of a FF with a SDA). For new subbituminous coal-fired units that are located where an adequate water supply is available, BDT is considered to be a wet FGD system. Of the 27 subbituminous coal-fired units listed in ICR-3, 2 units have controls representing BDT for the "wet" subbituminous subcategory and 4 units have controls representing BDT for the "dry" subbituminous subcategory. For lignite coal-fired units, BDT is considered to be either an FF/SDA system, a fluidized bed combustor (FBC) with an electrostatic precipitator (ESP), or an ESP with a wet FGD system. Of the 12 lignite coal-fired units listed in ICR-3, 7 units have controls representing BDT. The ICR-3 contains data on only two units firing coal refuse. Both were FBC units equipped with FF. Both have reported Hg control efficiency of greater than 99 percent. Therefore, BDT for coal refuse-fired units is considered to be a FBC with FF. One unit fired waste anthracite, the other fired waste bituminous.

To determine the appropriate achievable Hg emission level for each coal type that reflects BDT, a statistical analysis was conducted to determine the appropriate control efficiency achieved by BDT. That is, we determined the 90<sup>th</sup> percentile Hg reduction efficiency achievable for a source

using BDT (i.e., the control efficiency which BDT is estimated to achieve 90 percent of the time) using the one-sided t-statistics test. The control efficiency used was the greater of that achieved either from the coal-to-the-stack or across the control device as shown through the ICR-3 3-run averages. This approach was used to minimize the impact of "negative" control removals indicated by some of the test results. It is recognized that Hg cannot be generated within a utility boiler/control system and that any negative removals merely indicate that no control is being shown. However, it is also believed that most of the Hg control achieved is being achieved by the last control device (the one tested during the ICR program) and that little Hg is removed in the boiler. Therefore, it is believed that use of the highest control adequately reflects performance of the entire system. Further, as negative reductions are not realistic, any negative reductions found were equated to zero.

Based on this reanalysis of the appropriate NSPS emission limits, EPA is today proposing the following revised Hg limits:

Bituminous coal:	$20 \times 10^{-6}$ lb/MWh
Subbituminous coal (wet units):	$66 \times 10^{-6}$ lb/MWh
Subbituminous coal (dry units):	$97 \times 10^{-6}$ lb/MWh
Lignite coal:	$175 \times 10^{-6}$ lb/MWh
Coal refuse:	$1.0 \times 10^{-6}$ lb/MWh



Although EPA has reanalyzed the available data and revised the NSPS Hg emission limits, as noted in the final CAMR, we continue to believe that these limits are of short-term value only. That is, the CAMR Hg cap will be a greater long-term factor in constraining Hg emissions from new coal-fired Utility Units than will the NSPS emission limits. In addition, the new source review (NSR) provisions provide an additional constraint on new-source emissions, further diminishing the importance of the revised NSPS Hg emission limits. Essentially, the NSPS limits become a "backstop" for the trading program and other NSR requirements.

EPA seeks comment on this statistical approach.

E. Hg Content in Coal Used to Derive the NSPS

Petitioners contend that EPA arbitrarily applied its statistical analysis to coal containing the highest annual average content of Hg, an approach which does not encourage the use of the cleanest fuels. Further, they contend that insufficient notice of this approach was afforded the public.

Many coal-fired Utility Units may switch coal sources, within the same coal rank, based on spot-market availability and cost. Therefore, the analysis was based on a reasonable maximum Hg content in coal (represented by the 90<sup>th</sup> percentile of measured Hg concentrations in coal) as a means of complying with previous Court decisions that

mandate that an NSPS must be achievable by all new units to which it will apply over the full range of operating conditions which can reasonably be anticipated to occur.

EPA is taking comment on this approach.

F. Definition of Covered Units as Including Municipal Waste Combustors (MWC)

Petitioners claim that CAMR inappropriately extends the definition of covered units to include MWC<sup>3</sup> and that EPA gave no notice that it intended to include MWC units under CAMR, thereby depriving interested parties of the opportunity to provide comment. Further, petitioners contend that EPA should conclude that as a source category, MWC units are already well regulated under CAA sections 129 and 111 and, therefore, should not be included under CAMR.

EPA did not intend for MWC units subject to NSPS and emission guidelines, as implemented through approved State plans or an applicable Federal plan, to be subject to CAMR, either directly or through a State or Federal plan implementing the CAA section 111(d) guidelines for existing units, even if such units combust certain amounts of coal and, thus, fall under the current definition of "coal-

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<sup>3</sup> An MWC is a "solid waste incineration unit" as defined in CAA section 129(g)(1) combusting "municipal waste" as defined in CAA section 129(g)(5).

fired.” EPA is, therefore, granting reconsideration on the issue of the definition of an “Electric generating unit or EGU” in 40 CFR 60.24(h) as it relates to MWC units and is taking comment on that issue. EPA is taking this action because it did not specifically indicate that it intended such units to be excluded from the model trading program, approved State plans, and any subsequently adopted Federal plan under CAMR.

In this proposed rulemaking, EPA is proposing to clarify the definition of “Electric generating unit or EGU” to specifically exclude MWC units subject to an applicable NSPS, an EPA-approved State plan, or an applicable Federal plan. The proposed revised definition would establish a specific exemption for MWC. EPA has only included specific changes to the definition of “Electric generating unit or EGU” as it appears in 40 CFR 60.24(h) necessary to establish the exemption in this proposed rule. EPA is, however, also proposing to make conforming changes to the applicability provisions in the model trading rule (subpart HHHH, 40 CFR 60.4104) based on the final action EPA takes on the proposed rule as those provisions are intended to be consistent with the definition in 40 CFR 60.24(h).

G. Definition of Covered Units as Including Some

Industrial Boilers

Petitioners contend that CAMR, as written, would subject certain units to regulation under both CAMR and the CAA section 112 Industrial Commercial Institutional Steam Generating Unit Maximum Achievable Control Technology (MACT) standards (the Boiler MACT). Petitioners also claim that EPA changed the applicability definition in the final CAMR to include units that had ever been connected to a generator having a capacity greater than 25 megawatts electric (MWe) and, thus, provided no opportunity for public comment on this definition.

EPA did not intend for any units subject to the Boiler MACT to also be subject to CAMR. EPA proposes to address this problem in two ways. First, EPA is in the process of preparing proposed revisions to the Boiler MACT in response to a petition for reconsideration of that rule. One of the proposed revisions will be to specifically exclude units subject to CAMR from regulation under the Boiler MACT. Second, EPA is today proposing to revise the definition of "Electric generating unit or EGU" in 40 CFR 60.24(h) to include only stationary, coal-fired boilers or stationary, coal-fired combustion turbines serving, at any time after November 15, 1990, a generator with nameplate capacity of

more than 25 MWe producing electricity for sale. This date would be consistent with the dates used in the Acid Rain Program and the Clean Air Interstate Rule (CAIR).

In evaluating the changes necessary to respond to the petition, EPA determined that certain other clarifying changes to the definition need to be made with regard to cogeneration units and when they are to be considered "electric generating units" under this rule to ensure that the regulatory text unambiguously reflects EPA's intent, as expressed in the CAMR preamble (see 70 FR 28612, 28625), regarding cogeneration units. EPA is today proposing to make those changes in 40 CFR 60.24(h).

EPA is also proposing to make conforming changes to the applicability provisions in the model trading rule (subpart HHHH, 40 CFR 60.4104) based on the final action EPA takes on the proposed rule as those provisions are intended to be consistent with the definition in 40 CFR 60.24(h).

#### **V. Issues Not Corrected in the CAMR Technical Corrections**

##### **Federal Register Notice**

On August 30, 2005 (70 FR 51266), EPA issued a technical corrections notice addressing certain corrections to the May 18, 2005 (70 FR 28606) CAMR. We have

subsequently found certain other errors in CAMR that need correction. We believe that all of these corrections are non-controversial.

This notice corrects the following errors. First, it has been brought to our attention that we were inconsistent in the use of "new, modified, and reconstructed" in the applicability provisions of the NSPS portion of CAMR. We propose to correct this inconsistency by revising the language to indicate that the NSPS applies to units which are constructed, modified, or reconstructed after January 30, 2004. Second, an inconsistency between the definitions of "coal" and "coal-fired electric utility steam generating unit" has been brought to our attention. In defining "coal" we indicate that "coal" includes "petroleum coke" while in defining "coal-fired electric utility steam generating unit" we identify "petroleum coke" as an example of a supplemental fuel (i.e., a fuel that is burned with coal). We propose to correct this inconsistency by removing "petroleum coke" from the definition of "coal" as we do not think "petroleum coke" is properly classified as "coal." Third, because of the delay between signature and publication of CAMR, the submittal dates for the individual State Hg allocation plans and the full State plans are not

consistent. We propose to resolve this problem by changing the October 31, 2006 date for submitting Hg allowance allocations to the Administrator specified in 40 CFR 60.24(h) (6) (ii) (C) and 40 CFR 60.4141(a) of the model trading rule to November 17, 2006, consistent with the date for submitting State plans specified in 40 CFR 60.24(h) (2). Finally, we have identified additional instances where the section renumbering, noted in the August 30, 2005 notice, was not corrected, and we are proposing to correct these.

## **VI. Statutory and Executive Order (EO) Reviews**

### **A. EO 12866: Regulatory Planning and Review**

Under EO 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the EO. The EO defines a "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 entitlement, grants, user fees, or loan programs, or the rights and obligations 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 EO.

Pursuant to the terms of EO 12866, it has been determined that today's notice of reconsideration is a "significant regulatory action" because it raises novel legal or policy issues. As such, the action was submitted to OMB for review under EO 12866. Changes made in response to OMB suggestions or recommendations are documented in the public record (see ADDRESSES section of this preamble).

B. Paperwork Reduction Act

The information collection requirements in the final rule were submitted for approval to OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. (Information Collection Request No. 2137.02; OMB Number 2060-0567). The information collection requirements are not enforceable until OMB approves them.



Today's notice of reconsideration imposes no new information collection requirements on the industry. Because there is no additional burden on the industry as a result of the notice of reconsideration, the information collection request (ICR) has not been revised.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in

40 CFR part 9 and 48 CFR chapter 15.

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 not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's notice of reconsideration on small entities, a small entity is defined as: (1) a small business that is identified by the NAICS Code, as defined by the Small Business Administration (SBA); (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. Categories and entities potentially regulated by the final rule with applicable NAICS codes are provided in the Supplementary

Information section of this action.

According to the SBA size standards for NAICS code 221122 Utilities-Fossil Fuel Electric Power Generation, a firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million MWh.

After considering the economic impacts of today's notice of reconsideration on small entities, we certify that the notice will not have a significant economic impact on a substantial number of small entities. EPA has determined that none of the small entities will experience a significant impact because the notice of reconsideration imposes no additional regulatory requirements on owners or operators of affected sources. We continue to be interested in the potential impacts of the rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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 by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, UMRA section 205 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's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's notice of reconsideration 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 1 year. Although the final rule projected that in 2020, 2 years into the start of the second phase of the cap-and-trade program, compliance costs to government-owned entities would be approximately \$48 million, today's notice of reconsideration does not add new requirements that would increase this cost. Thus, today's notice of reconsideration is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that today's notice of reconsideration does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them.

Therefore, today's notice of reconsideration is not subject to UMRA section 203.

E. EO 13132: Federalism

EO 13132 (64 FR 43255, August 10, 1999) requires EPA to 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" are defined in the EO 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."

Today's notice of reconsideration 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 EO 13132. None of the affected facilities are owned or operated by State governments, and the requirements discussed in today's notice will not supersede State regulations that are more stringent. Thus, EO 13132 does not apply to

today's notice of reconsideration.

F. EO 13175: Consultation and Coordination with Indian Tribal Governments

EO 13175 (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" are defined in the EO to include regulations that have "substantial direct effects on one or more Indian tribes, 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."

Today's notice of reconsideration does not have tribal implications. It 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, as specified in EO 13175. No affected facilities are owned or operated by Indian tribal governments. Thus, EO 13175 does not apply to today's notice of reconsideration.

G. EO 13045: Protection of Children from Environmental

Health and Safety Risks

EO 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant," as defined under EO 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 considered by EPA.

Today's notice is a notice of reconsideration of the final CAMR, which is subject to the EO because it is economically significant as defined by EO 12866, and we believe that the environmental health or safety risk addressed by that action may have a disproportionate effect on children. Accordingly, we have evaluated the environmental health or safety effects of that final rule on children. The results of the evaluation are discussed in that final rule (70 FR 28606; May 18, 2005) and are contained in the docket (OAR-2002-0056).

H. EO 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use



Today's notice of reconsideration is not a "significant energy action" as defined in EO 13211 (66 FR 28355; May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we conclude that today's notice of reconsideration is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

As noted in the final rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104-113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB, with explanations when EPA decides not to use available and applicable voluntary consensus standards.

During the development of the final rule, EPA searched for voluntary consensus standards that might be applicable.

The search identified three voluntary consensus standards that were considered practical alternatives to the specified EPA test methods. An assessment of these and other voluntary consensus standards is presented in the preamble to the final rule (70 FR 16034; March 29, 2005). Today's notice of reconsideration does not propose the use of any additional technical standards beyond those cited in the final rule. Therefore, EPA is not considering the use of any additional voluntary consensus standards for this notice.

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

Environmental protection, Administrative practice and procedure, Air pollution control, Coal, Electric power plants, Incorporation by reference, Intergovernmental relations, Metals, Natural gas, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides

**Standards of Performance for New and Existing Stationary  
Sources: Electric Utility Steam Generating Units:  
Reconsideration  
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**40 CFR Part 72**

Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

**40 CFR Part 75**

Acid rain, Air pollution control, Carbon dioxide, Electric utilities, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

Dated:

---

Stephen L. Johnson  
Administrator

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

**PART 60--[AMENDED]**

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

**Authority:** 42 U.S.C. 7401, 7403, 7426, and 7601.

**Subpart B--[AMENDED]**

2. Section 60.24 is amended by:

a. In paragraph (h)(6)(ii)(C), revising the words "October 31, 2006" to read "November 17, 2006"; and

b. In paragraph (h)(8), revising the definition of "Electric generating unit or EGU" to read as follows:

**§60.24 Emission standards and compliance schedules.**

\* \* \* \* \*

(h) \* \* \*

(6)(ii)(C) The State's methodology under paragraph (h)(6)(ii)(A) of this section must require that, for EGUs commencing operation before January 1, 2001, the State will determine, and notify the Administrator of, each unit's allocation of Hg allowances by November 17, 2006 for 2010, 2011, and 2012 and by October 31, 2009 and October 31 of each year thereafter for the fourth year after the year of

the notification deadline; and

\* \* \* \* \*

(8)\* \* \* \* \*

Electric generating unit or EGU means:

(1) (a) Except as provided in paragraphs (2) and (3) of this definition, a stationary, coal-fired boiler or stationary, coal-fired combustion turbine in the State serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 megawatts electric (MWe) producing electricity for sale.

(b) If a stationary boiler or stationary combustion turbine that, under paragraph (1) (a) of this definition, is not an electric generating unit begins to combust coal or coal-derived fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become an electric generating unit on the first date on which it both combusts coal or coal-derived fuel and serves such generator.

(2) A unit that meets the requirements set forth in paragraph (2) (a) (i) of this definition shall not be an electric generating unit:

(a) (i) A unit:

(1) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(2) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 megawatt-hours (MWh), whichever is greater, to any utility power distribution system for sale.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraph (2) (a) (i) of this definition for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become an electric generating unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (2) (a) (i) (2) of this definition.

(3) A "solid waste incineration unit" as defined in Clean Air Act section 129(g) (1) combusting "municipal waste" as defined in Clean Air Act section 129(g) (5) shall not be an electric generating unit if it is subject to one of the following rules:

(a) Subpart Eb of part 60 of this chapter, "Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996";

(b) Subpart AAAA of part 60 of this chapter, "Standards of Performance for Small Municipal Waste Combustors for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001";

(c) An EPA-approved State plan for implementing subpart Cb of part 60 of this chapter, "Emissions Guidelines and Compliance Times for Large Municipal Waste Combustors That Are Constructed On or Before September 20, 1994";

(d) Subpart FFF of part 62 of this chapter, "Federal Plan Requirements for Large Municipal Waste Combustors Constructed On or Before September 20, 1994;

(e) An EPA-approved State Plan for implementing subpart BBBB of part 60 of this chapter, "Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999"; or,

(f) Subpart JJJ of 40 CFR part 62, "Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999".

**Subpart Da--[AMENDED]**

3. Section 60.41Da is amended by revising the definitions of "Coal" and "Coal-fired electric utility steam generating unit" and by revising the existing reference in paragraph (b) of the definition of "Potential combustion concentration" from "\$60.48a(b)" to read "\$60.50Da(b)" to read as follows:

**§60.41Da Definitions.**

\* \* \* \* \*

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388-77, 90, 91, 95, 98a, or 99 (Reapproved 2004)<sup>e1</sup> (incorporated by reference, see §60.17) and coal refuse. Synthetic fuels



derived from coal for the purpose of creating useful heat, including but not limited to solvent-refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures are included in this definition for the purposes of this subpart.

Coal-fired electric utility steam generating unit

means an electric utility steam generating unit that burns coal, coal refuse, or a synthetic gas derived from coal either exclusively, in any combination together, or in any combination with other fuels in any amount.

\* \* \* \* \*

4. Section 60.45Da is amended by:
  - a. Revising paragraph (a) (1);
  - b. Revising paragraph (a) (2) (i);
  - c. Revising paragraph (a) (2) (ii);
  - d. Revising paragraph (a) (3); and
  - e. Revising paragraph (a) (4) to read as follows:

**§60.45Da Standard for mercury.**

\* \* \* \* \*

(a) (1) For each coal-fired electric utility steam generating unit that burns only bituminous coal, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of  $20 \times 10^{-6}$

pound per megawatt hour (lb/MWh) or 0.020 lb/gigawatt-hour (GWh) on an output basis. The International System of Units (SI) equivalent is 0.0025 nanograms per joule (ng/J).

\* \* \* \* \*

(2)(i) If your unit is located in a geographical area receiving greater than 25 inches per year (in/yr) mean annual precipitation, based on U.S. Department of Agriculture 30-year data, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of  $66 \times 10^{-6}$  lb/MWh or 0.066 lb/GWh on an output basis. The SI equivalent is 0.0083 ng/J.

(ii) If your unit is located in a geographical area receiving less than or equal to 25 in/yr mean annual precipitation, based on U.S. Department of Agriculture 30-year data, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of  $97 \times 10^{-6}$  lb/MWh or 0.097 lb/GWh on an output basis. The SI equivalent is 0.0122 ng/J.

(3) For each coal-fired electric utility steam generating unit that burns only lignite, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of  $175 \times 10^{-6}$  lb/MWh or 0.175 lb/GWh on an output basis. The SI equivalent is

0.0221 ng/J.

(4) For each coal-burning electric utility steam generating unit that burns only coal refuse, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of  $1.0 \times 10^{-6}$  lb/MWh or 0.0010 lb/GWh on an output basis. The SI equivalent is 0.00013 ng/J.

\* \* \* \* \*

5. Section 60.48Da is amended by:

a. Revising the existing reference in paragraph (j) from “§60.44a(a)” to read “§60.44Da(a)”;

b. Revising the existing reference in paragraph (j)(2) from “§60.49a” to read “§60.49Da”; and

c. Revising paragraph (l) introductory text to read as follows:

**§60.48Da Compliance provisions.**

\* \* \* \* \*

(l)\* \* \* The owner or operator of an affected facility subject to §60.45Da (new sources constructed, modified, or reconstructed after January 30, 2004) shall calculate the Hg emission rate (lb/MWh) for each calendar month of the year, using hourly Hg concentrations measured according to the provisions of §60.49Da(p) in conjunction

with hourly stack gas volumetric flow rates measured according to the provisions of §60.49Da(1) or (m), and hourly gross electrical outputs, determined according to the provisions in §60.49Da(k). Compliance with the applicable standard under §60.45Da is determined on a 12-month rolling average basis.

\* \* \* \* \*

6. Section 60.49Da is amended by revising the existing reference in paragraph (c)(2) from “§60.51a” to read “§60.51Da”.

7. Section 60.50Da is amended by:

a. Revising the existing reference in paragraph (e)(2) from “§60.48(d)(1)” to read “§60.46(d)(1)”; and

b. In paragraph (g), by deleting the words “and 60.46Da”.

**Subpart Db--[AMENDED]**

8. Section 60.40b is amended by revising the existing reference in paragraph (e) from “§60.40a” to read “§60.40Da”.

**Subpart HHHH--[AMENDED]**

9. Section 60.4141 is amended to read as follows:

**§60.4141 Timing requirements for Hg allowance allocations.**

(a) By November 17, 2006, the permitting authority

will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with §60.4142(a) and (b), for the control periods in 2010, 2011, 2012, 2013, and 2014.

\* \* \* \* \*