

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

2. E-mail: [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

3. Fax: (312) 886-5824.

4. Mail: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. Hand Delivery: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:**  
Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6057, [doty.edward@epa.gov](mailto:doty.edward@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: November 27, 2007.

**Mary A. Gade,**

Regional Administrator, Region 5.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA-R09-OAR-2007-1150; FRL-8505-4]

#### Disapproval of Plan of Nevada: Clean Air Mercury Rule

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to disapprove the State Plan submitted by Nevada on November 15, 2006. The plan is intended to address the requirements of EPA's Clean Air Mercury Rule (CAMR), promulgated on May 18, 2005 and subsequently revised on June 9, 2006. EPA is proposing to determine that the submitted Nevada State Plan does not meet certain CAMR requirements and, therefore, must be disapproved.

CAMR requires States to regulate emissions of mercury (Hg) from large coal-fired electric generating units (EGUs). CAMR establishes State budgets for annual EGU Hg emissions and requires States to submit State Plans that ensure that annual in-state EGU Hg emissions will not exceed the applicable State budget. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participating in the EPA-administered CAMR cap-and-trade program. In the State Plan that EPA is proposing to disapprove, Nevada has chosen to meet CAMR requirements by participating in the EPA-administered CAMR cap-and-trade program addressing Hg emissions. However, Nevada's plan does not meet the mandatory timing requirements for allowance allocations, and differs substantively from certain required provisions of EPA's model rule (including the provision requiring unrestricted allowance transfer and trading).

**DATES:** Comments must be received on or before January 28, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2007-1150, by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.

2. E-mail: [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. Mail: EPA-R09-OAR-2007-1150, Andrew Steckel (Air-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

4. Hand Delivery or Courier: Andrew Steckel (Air-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R09-OAR-2007-1150. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](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 through [www.regulations.gov](http://www.regulations.gov) or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](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 [www.regulations.gov](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 and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. 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 copyrighted material, is not placed on the Internet and will be

publicly available only in hard copy form. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning today's proposal, please contact Lily Wong, 75 Hawthorne Street, San Francisco, California 94105. The telephone number is (415) 947-4114. Ms. Wong can also be reached via electronic mail at [wong.lily@epa.gov](mailto:wong.lily@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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#### I. What Action Is EPA Proposing To Take?

EPA is proposing to disapprove Nevada's State Plan, submitted on November 15, 2006, because Nevada's submitted State Plan does not meet certain CAMR requirements necessary for participation in the EPA-administered CAMR cap-and-trade program. Nevada's plan requires EGUs to participate in the EPA-administered CAMR cap-and-trade program addressing Hg emissions. However, the State Plan does not meet the mandatory allocation timing requirements under 40 CFR 60.24(h)(6)(ii)(C) and (D) and differs substantively from certain required provisions of EPA's model rule at 40 CFR part 60, subpart HHHH (including the requirement to provide for unrestricted allowance transfer and trading). Furthermore, as an allowance system that does not meet the above requirements, Nevada's State Plan fails to state that Hg allowances issued under the Nevada CAMR program will not qualify as Hg allowances under the EPA-administered cap-and-trade program as required by 40 CFR 60.24(h)(7). Consequently, EPA is proposing to determine that the State Plan does not meet the applicable requirements of CAMR and to disapprove the plan on that basis.

#### II. What Is the Regulatory History of CAMR?

CAMR was published by EPA on May 18, 2005 (70 FR 28606, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Final Rule"). In

this rule, acting pursuant to its authority under section 111(d) of the Clean Air Act (CAA), 42 U.S.C. 7411(d), EPA required that all States meet Statewide annual budgets limiting Hg emissions from large coal-fired electric generating units (i.e., EGUs, as defined in 40 CFR 60.24(h)(8)). EPA further required all States to submit State Plans that include control measures that ensure that total, annual Hg emissions from new and existing EGUs do not exceed the applicable Statewide annual EGU Hg emissions budget. Under CAMR, States may implement these emissions limitations either by participating in the EPA-administered CAMR cap-and-trade program or by adopting other effective and enforceable control measures.

CAMR explains what must be included in State Plans and sets a deadline for submittal to EPA by November 17, 2006. Under 40 CFR 60.27(b), the Administrator will approve or disapprove the submitted State Plans. The purpose of this action is to propose disapproval of Nevada's CAMR State Plan.

#### III. What Are the General Requirements of CAMR State Plans?

CAMR establishes Statewide annual EGU Hg emission budgets implemented in two phases. The first phase starts in 2010 and continues through 2017. The second phase starts in 2018 and continues thereafter. CAMR requires States to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered CAMR cap-and-trade program; or (2) adopting other EGU control measures of the respective State's choosing and demonstrating that such control measures will result in compliance with the applicable State annual EGU Hg emissions budget.

Each State Plan must require EGUs to comply with the monitoring, recordkeeping, and reporting provisions of 40 CFR part 75 concerning Hg mass emissions. Each State Plan must also show that the State has the legal authority to adopt the appropriate emission standards, compliance schedules, and other requirements.

#### IV. How Can States Comply With CAMR?

Many States have chosen to meet the CAMR requirements by requiring new and existing EGUs to participate in the EPA-administered CAMR cap-and-trade program while many other States have chosen to control Statewide annual Hg emissions for new and existing EGUs through an alternative mechanism. Each State that chooses an alternative mechanism must include with its plan a demonstration that the State Plan will

ensure that the State will meet its assigned State annual EGU Hg emission budget.

A State submitting a State Plan that requires EGUs to participate in the EPA-administered CAMR cap-and-trade program may either adopt regulations that are substantively identical to the EPA model Hg trading rule (40 CFR part 60, subpart HHHH) or incorporate by reference the entire model rule. Alternatively, CAMR provides that a State requiring participation in the cap-and-trade program may adopt regulations, or an incorporation by reference, that make only limited changes to the model rule and must otherwise be substantively identical to the model rule. A State Plan may change the model rule only by altering the allowance allocation provisions to provide for a State-specific methodology for allocating Hg allowances. A State's alternative allowance allocation provisions must meet certain mandatory allocation timing requirements and must ensure that total allocations for each calendar year will not exceed the State's annual EGU Hg budget for that year.

A State may submit a State Plan that establishes an allowance system that does not meet the above-described requirements for participation in the EPA-administered CAMR cap-and-trade program and that does not require such participation, and EPA will review the State Plan on a case-by-case basis to determine if the plan meets CAMR requirements applicable to plans not involving such participation. However, such State Plans must state that Hg allowances issued under such an allowance system will not qualify as Hg allowances under the EPA-administered CAMR cap-and-trade program.

#### V. Analysis of Nevada's CAMR State Plan Submittal

The Nevada State Plan requires EGUs to participate in the EPA-administered CAMR cap-and-trade program. The State Plan incorporates by reference some provisions of the EPA model Hg trading rule (40 CFR part 60, subpart HHHH), but replaces other provisions of the model rule. In particular, the State has chosen to replace model rule provisions addressing retired units, the standard requirements for sources subject to the EPA-administered CAMR cap-and-trade program, the allocation of allowances, and the recordation of allowance allocations. Nevada's rule also added certain definitions to those in the model rule and adopted allowance allocation provisions establishing an alternate allowance allocation methodology.

Under CAMR, States may establish a different Hg allowance allocation methodology and still participate in the EPA-administered CAMR cap-and-trade program if certain mandatory requirements are met concerning the timing of submission of allocations to EGUs to the Administrator for recordation and the total amount of allowances allocated for each control period and if the State Plan is otherwise substantively identical to the model rule. In adopting alternative Hg allowance allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations (e.g., whether allocations for each year will be determined in advance by an even longer period than under the mandatory allowance allocation timing requirements);
3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and
4. The use of allowance set-asides and, if used, their size. See 70 FR 28627.

Nevada's alternative allowance allocation methodology effectively distributes Hg allowances based upon a unit's actual emissions. However, while Nevada's State Plan requires sources to participate in the EPA-administered CAMR cap-and-trade program and so does not state that Nevada-issued allowances will not qualify as Hg allowances under the EPA-administered program, Nevada's method for the allocation of allowances does not comply with the mandatory timing requirements of 40 CFR 60.24(h)(6)(ii)(C) and (D). Under 40 CFR 60.24(h)(6)(ii)(C) and (D), allowances for existing units must be allocated generally three years before, and allowances for new units must be allocated by October 31 of, the first control period for which the allowances may be used for compliance. Nevada's State Plan also differs substantively from certain other provisions of EPA's model rule that are required for participation in the EPA-administered CAMR cap-and-trade program. Specifically, Nevada's State Plan creates restrictions on allowance transfer and trading, fails to state that an allowance does not constitute a property right, substitutes the Director of the Nevada Division of Environmental Protection for the Administrator, lacks deadlines for recordation of allowance allocations, misstates the requirements for compliance with the requirement to hold allowances covering emissions, allows for Director's discretion to create

an exception to the requirement that sources maintain records on-site, and allows for Director's discretion in specifying the content of CAMR permit applications and permits. These inconsistencies of Nevada's rule with the requirements of CAMR are discussed in detail in the Technical Support Document (TSD) entitled *EPA Proposed Analysis of Nevada Clean Air Mercury Rule State Plan*, which is included in the docket for this notice.

For these reasons, as discussed in detail in the TSD, Nevada's rule is not approvable under 40 CFR 60.24(h)(6) and (7).<sup>1</sup>

#### VI. Implications of State Plan Disapproval

Under 40 CFR 60.27(b), the Administrator must approve or disapprove timely submitted State Plans within four months of the deadline for their submission to the Administrator, i.e., November 17, 2006 in the case of CAMR State Plans. Moreover, under 40 CFR 60.27(c), the Administrator must propose a Federal Plan for States that did not submit State Plans by the submission deadline or whose timely submitted State Plans the Administrator disapproves. The Administrator must finalize a Federal Plan for such States under 40 CFR 60.27(d) within six months of the deadline for their submission to the Administrator, unless in the meantime the State submits a State Plan that the Administrator determines to be approvable. EPA's review of Nevada's State Plan continued beyond the deadline in 40 CFR 60.27(b) because of the complexity of Nevada's rule and because EPA conducted an extended dialogue with Nevada in order to understand the State's concerns and to try to resolve the issues raised by Nevada's State Plan.

In a separate action, EPA has proposed a Federal Plan and intends to issue a final Federal Plan in the near future. Any final Federal Plan will generally apply in those States that did not submit a State Plan by November 17, 2006, whose State Plans submitted by November 17, 2006 have been disapproved by EPA, or whose State Plans submitted after November 17, 2006 have not been approved. A final determination of the categories of States

to which the Federal Plan will apply will be made in the notice finalizing a Federal Plan. If EPA finalizes the disapproval of Nevada's CAMR State Plan and finalizes the Federal Plan as described above, Nevada EGUs will be subject to the Federal Plan. It is EPA's intention to work quickly to review any revision of a disapproved State Plan, so that an approvable State Plan can be approved and take the place of the Federal Plan.

#### VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely proposes to disapprove State law as not meeting Federal requirements and would impose no additional requirements.

Accordingly, the Administrator certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to disapprove pre-existing requirements under State law and would not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposal also does not have Tribal implications because it would not have a substantial direct effect 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This proposed action also does not have Federalism implications because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to disapprove a State rule as failing to implement a Federal standard. It does not alter the relationship or the distribution of power and responsibilities established in the

<sup>1</sup> EPA is acting on the final Nevada CAMR State Plan submitted on November 15, 2006. EPA recognizes that Nevada has since proposed revisions that would address some, but not all, of the approvability issues identified above. EPA is not addressing in this notice Nevada's proposed revisions as they have not yet been adopted or submitted. However, EPA notes that these proposed revisions do not address certain approvability issues, including those allocation timing and restrictions on allowance transfer and trading.

CAA. This proposed rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant. It also does not concern an environmental health or safety risk the EPA has reason to believe may have a disproportionate effect on children.

Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. EPA guidance<sup>2</sup> states that EPA is to assess whether minority or low-income populations face risk or a rate of exposure to hazards that is significant and that “appreciably exceed[s] or is likely to appreciably

exceed the risk or rate to the general population or to the appropriate comparison group.” (EPA, 1998) Because this rule merely proposes to disapprove a state rule as failing to implement the Federal standard established by CAMR, EPA lacks the discretionary authority to modify today's regulatory decision on the basis of environmental justice considerations. However, EPA has already considered the impact of CAMR, including this Federal standard, on minority and low-income populations. In the context of EPA's CAMR published in the **Federal Register** on May 18, 2005, in accordance with E.O. 12898, the Agency has considered whether CAMR may have disproportionate negative impacts on minority or low income populations and determined that it does not.

In reviewing State Plan submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA generally and CAMR specifically. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

standards (VCS), EPA has no authority to disapprove a State Plan for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State Plan submission, to use VCS in place of a State Plan submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Reporting and recordkeeping, Mercury.

Dated: December 3, 2007.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

[FR Doc. E7-24167 Filed 12-12-07; 8:45 am]

**BILLING CODE 6560-50-P**

<sup>2</sup>U.S. Environmental Protection Agency, 1998. Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses. Office of Federal Activities, Washington, DC, April, 1998.