

regulatory action and has determined that the benefits would justify the costs. These changes are intended to promote consistency in the Department's assertion of privileges and objections, and thereby prevent harm that may result from inappropriate disclosure of confidential information or inappropriate allocation of agency resources. The anticipated costs of this regulatory action would be minimal.

## 2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 8.1 What is the scope and application of this part?.)
- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the ADDRESSES section of this preamble.

## Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

## Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

## Intergovernmental Review

These proposed regulations are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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(Catalog of Federal Domestic Assistance Number does not apply.)

## List of Subjects in 34 CFR Part 8

Courts, Government employees, Reporting and recordkeeping requirements.

Dated: December 18, 2007.

## Margaret Spellings,

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary of Education proposes to amend part 8 of title 34 of the Code of Federal Regulations as follows:

## PART 8—DEMANDS FOR TESTIMONY OR RECORDS IN LEGAL PROCEEDINGS

1. The authority citation for part 8 continues to read as follows:

**Authority:** 5 U.S.C. 301; 5 U.S.C. 552; 20 U.S.C. 3474, unless otherwise noted.

### § 8.1 [Amended]

2. The introductory text of § 8.1(a) is amended by removing the words "if the Department or any departmental employee" and adding, in their place, the words "when the Department or any employee of the Department".

### § 8.2 [Amended]

3. The definition of "Employee" in § 8.2 is amended by adding the words "or former" between the words "current" and "employee".

### § 8.3 [Amended]

4. Section 8.3 is amended by:

- A. In the introductory text of paragraph (a), removing the words "or former employee,"
- B. In paragraph (a)(2), removing the words "and why the information sought is unavailable by any other means" and

adding, in their place, the words " , why the information sought is unavailable by any other means, and the reason why the release of the information would not be contrary to an interest of the Department or the United States".

C. In paragraph (b), removing the words "or former employee" each time they appear.

D. In paragraph (b), removing the words "room 4083, FOB-6," and adding, in their place, the words "room 6E300, Lyndon Baines Johnson Building,".

E. In paragraph (c), removing the words "or former employee".

F. In paragraph (c), removing the words "Records Management Branch Chief, Office of Information Resources Management, U.S. Department of Education, 7th and D Streets, SW., ROB-3" and adding, in their place, the words "Records Officer, Information Policy and Standards Team, Regulatory Information Management Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., room 9161, PCP".

[FR Doc. E7-24966 Filed 12-21-07; 8:45 am]

BILLING CODE 4000-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA-R07-OAR-2007-1143; FRL-8510-7]

## Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Kansas; Clean Air Mercury Rule

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the State Plan submitted by Kansas on June 19, 2007. The plan addresses 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 State Plan fully meets the CAMR requirements for Kansas.

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 to ensure that annual 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 approve, Kansas would meet CAMR requirements by participating in the EPA trading program.

**DATES:** Comments must be received on or before January 25, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2007-1143, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: [jay.michael@epa.gov](mailto:jay.michael@epa.gov).
3. *Mail*: Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier*: Deliver your comments to Michael Jay, Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101. 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 a.m. to 4:30 p.m., excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R07-OAR-2007-1143. 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*, 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* or e-mail, information that you consider to be CBI or otherwise protected. The *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*, 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.

**Docket:** All documents in the electronic docket are listed in the *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. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michael Jay at (913) 551-7460 or by e-mail at [jay.michael@epa.gov](mailto:jay.michael@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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  - A. State Budgets
  - B. CAMR State Plan
- VI. Statutory and Executive Order Reviews

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

EPA is proposing to approve Kansas's State Plan, submitted on June 19, 2007. In its State Plan, Kansas would meet CAMR by requiring certain coal-fired EGUs to participate in the EPA-administered cap-and-trade program addressing Hg emissions. EPA is proposing to determine that the State Plan meets the applicable requirements of CAMR. Kansas has included as part of its submittal Kansas rule K.A.R. 28-19-720, relating to new source performance standards. EPA will take action on those provisions in a separate rulemaking.

**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 and the District of Columbia (all of which are referred to herein as States) meet Statewide annual budgets limiting Hg emissions from coal-fired EGUs (as defined in 40 CFR 60.24(h)(8)) under CAA section 111(d). EPA required all States to submit State Plans with control measures that ensure that total, annual Hg emissions from the coal-fired EGUs located in the respective States do not exceed the applicable statewide annual EGU mercury budget. Under CAMR, States may implement and enforce these reduction requirements by participating in the EPA-administered cap-and-trade program or by adopting any other effective and enforceable control measures.

CAA section 111(d) requires States, and along with CAA section 301(d) and the Tribal Air Rule (40 CFR part 49), allows Tribes granted treatment as States (TAS), to submit State Plans to EPA that implement and enforce the standards of performance. CAMR explains what must be included in State Plans to address the requirements of CAA section 111(d). The State Plans were due to EPA by November 17, 2006. Under 40 CFR 60.27(b), the EPA proposes, and subsequently approves or disapproves, the State Plans.

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

CAMR establishes Statewide annual EGU Hg emission budgets and is to be implemented in two phases. The first phase of reductions starts in 2010 and continues through 2017. The second phase of reductions starts in 2018 and continues thereafter. CAMR requires States to implement the budgets by either: (1) requiring coal-fired EGUs to participate in the EPA-administered cap-and-trade program; or (2) adopting other coal-fired 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 budget.

Each State Plan must require coal-fired 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 emission standards and compliance schedules necessary for attainment and maintenance of the State's annual EGU Hg budget and to require the owners and operators of coal-fired EGUs in the State to meet the monitoring,

recordkeeping, and reporting requirements of 40 CFR part 75.

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

Each State Plan must impose control requirements that the State demonstrates will limit Statewide annual Hg emissions from new and existing coal-fired EGUs to the amount of the State's applicable annual EGU Hg budget. States have the flexibility to choose the type of EGU control measures they will use to meet the requirements of CAMR. EPA anticipates that many States will choose to meet the CAMR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAMR cap-and-trade program. EPA also anticipates that many States may choose to control Statewide annual Hg emissions for new and existing coal-fired EGUs through an alternative mechanism other than the EPA-administered CAMR cap-and-trade program. 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 coal-fired 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 model rule. CAMR provides that States may only make limited changes from the model rule if the States want to participate in the EPA-administered trading program. A State Plan may deviate from the model rule only by altering the allowance allocation provisions to provide for State-specific allocation of Hg allowances using a methodology chosen by the State. A State's alternative allowance allocation provisions must meet certain 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.

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

##### A. State Budgets

In this action, EPA is proposing to approve Kansas's State Plan that adopts the annual EGU Hg budgets established for the State in CAMR, i.e., 0.723 tons for EGU Hg emissions in 2010–2017 and 0.285 tons for EGU Hg emissions in 2018 and thereafter. Kansas's State Plan sets these budgets as the total amount of allowances available for allocation for

each year under the EPA-administered CAMR cap-and-trade program.

##### B. CAMR State Plan

The Kansas State Plan requires coal-fired EGUs to participate in the EPA-administered CAMR cap-and-trade program. The State Plan incorporates by reference the EPA model Hg trading rule but has adopted an alternative allowance allocation methodology. Under the Hg allowance allocation methodology in the model rule, Hg allowances are allocated to units that have operated for 5 years, based on heat input data from a 3-year period that are adjusted for coal rank by using coal factors of 3.0 for the lignite combusted by the unit, 1.25 for the subbituminous combusted by the unit, and 1 for other coal ranks combusted by the unit. The model rule also provides a new unit set-aside from which units without 5 years of operation are allocated allowances based on the units' prior year emissions.

States may establish in their State Plan submissions a different Hg allowance allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. 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;
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.

In Kansas's alternative allowance methodology, as authorized by the CAMR, Kansas has deviated from the portion of the model rule described above relating to the basis for allocating allowances to new units and existing units. For existing units, 97 percent of the total annual allowances are distributed based on the individual unit's pro-rata share of total heat input for all existing units, adjusted by coal type, for the years 2000 through 2004. The baseline for each unit was established by averaging the three highest annual adjusted heat input rates for the five-year period. For new units, allowances will be distributed from a set-aside pool of allowances equal to 3 percent of the State's budget for each year of the program. The new unit methodology distributes allowances

based on an emission rate (up to 5 ounces of Hg/MW for 2010–2017 and up to 2 ounces of Hg/MW in 2018 and thereafter) multiplied by the nameplate capacity. However, no single unit can receive more than one-third of the set-aside in a control period nor can the total number of new units receive more than the 3 percent set-aside pool of allowances. Mercury allowances for new and existing units are permanent. Because allocations are considered permanent, if the new unit set-aside is fully subscribed as new units make requests for allowances, there may be future new units that are not allocated allowances from the new unit set-aside. There are also provisions for distribution of allowances in the new unit set-aside for the case of undersubscription. The Kansas allowance distribution methodologies are acceptable under CAMR.

Kansas's State Plan requires coal-fired EGUs to comply with the monitoring, recordkeeping, and reporting provisions of 40 CFR part 75 concerning Hg mass emissions. Kansas's State Plan also demonstrates that the State has the legal authority to adopt emission standards and compliance schedules necessary for attainment and maintenance of the State's annual EGU Hg budget and to require the owners and operators of coal-fired EGUs in the State to meet the monitoring, recordkeeping, and reporting requirements of 40 CFR part 75. The State cites provisions in Kansas State Law, K.S.A. 65–3005, as containing the legal authority for the Kansas Department of Health and Environment to adopt the State's rule that allows for Kansas's participation in the nationwide cap-and-trade program for mercury.

EPA's review of Kansas's State Plan has found that it meets the requirements of CAMR. As a result, EPA is proposing to approve Kansas's State Plan.

#### VI. 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 approve State law as meeting Federal requirements and would impose no additional requirements beyond those imposed by State law. 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 approve 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 approve a State rule implementing a Federal standard. It does not alter the relationship or the distribution of power and responsibilities established in the 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 proposes to approve a State rule implementing a Federal standard.

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>1</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 approve a state rule implementing 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 Executive Order 12898, the Agency has

<sup>1</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.

considered whether CAMR may have disproportionate negative impacts on minority or low-income populations and determined it would not.

In reviewing State Plan submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. 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, Mercury, Reporting and recordkeeping requirements.

Dated: December 14, 2007.

**John B. Askew,**

*Regional Administrator, Region 7.*

[FR Doc. E7-24967 Filed 12-21-07; 8:45 am]

**BILLING CODE 6560-50-P**