

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52 and 97**

[EPA-R03-OAR-2007-0448; FRL-8465-7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Clean Air Interstate Rule**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted on June 8, 2007 by the State of West Virginia for the Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_x) Annual and NO_x Ozone Season Abbreviated SIP. The abbreviated SIP revision EPA is proposing to approve includes West Virginia's methodology for allocation of annual NO_x and ozone season NO_x allowances for Phase 1 of CAIR, which is comprised of control periods 2009 through 2014. EPA is not proposing to make any changes to the CAIR Federal Implementation Plan currently in effect in West Virginia, but is proposing, to the extent EPA approves West Virginia's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval. The intended effect of this action is to reduce NO_x emissions in West Virginia that are contributing to nonattainment of the 8 hour ozone and PM_{2.5} National Ambient Air Quality Standard (NAAQS) in downwind states. This action is being taken under section 110 of the Clean Air Act.

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. If no adverse comments are received in response to this action, 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 If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule.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.

DATES: Comments must be received in writing by October 15, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2007-0448 by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. *E-mail:* powers.marilyn@epa.gov.
C. *Mail:* EPA-R03-OAR-2007-0448, Marilyn Powers, Acting Branch Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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. EPA-R03-OAR-2007-0448. 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 information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. 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, any form of encryption, and 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency,

Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814-2308, or by e-mail at powers.marilyn@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. 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.

Dated: August 30, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 62**

[EPA-R03-OAR-2007-0345; FRL-8467-8]

Approval of Plan of the Commonwealth of Pennsylvania; Clean Air Mercury Rule**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA is proposing to approve a State Plan submitted by the Commonwealth of Pennsylvania (Pennsylvania) which addresses the requirements of EPA's Clean Air Mercury Rule (CAMR), which EPA promulgated on May 18, 2005 and subsequently revised on June 9, 2006. EPA is proposing to determine that the submitted State Plan fully implements the CAMR requirements for Pennsylvania.

CAMR requires States to regulate emissions of mercury (Hg) from large coal-fired electric generating units (EGUs). CAMR establishes State budgets for annual EGU mercury emissions and requires States to submit State Plans that ensure that annual EGU mercury 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.

Pennsylvania chose to adopt a State-specific plan for the control of mercury emissions from EGUs within the State instead of participating in the EPA-administered CAMR cap-and-trade program. Pennsylvania's plan includes a Pennsylvania-specific mercury control regulation for coal-fired EGUs and other elements which the State intends to implement to ensure that Pennsylvania meets its mercury budget.

Pennsylvania's state-specific mercury control regulation establishes annual mercury emission limitations for EGUs as part of a Statewide nontradable mercury allowance program; sets mercury emissions standards for EGUs; and includes monitoring, recordkeeping, reporting and other provisions.

DATES: Comments must be received on or before October 15, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2007-0345, by one of the following methods:

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

2. *E-mail: Campbell.Dave@epa.gov*.

3. *Mail: EPA-R03-OAR-2007-0345*, Dave Campbell, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

4. *Hand Delivery or Courier:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2007-0345. 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. 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* 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are also available at the Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Proposing To Take?

EPA is proposing to approve Pennsylvania's State Plan for the control of mercury emissions from coal-fired EGUs, as submitted by Pennsylvania on

November 6, 2006, and as subsequently revised by Pennsylvania on March 16, 2007. EPA is proposing to determine that the State Plan will meet the applicable requirements of CAMR. In its State Plan, Pennsylvania would meet CAMR requirements by implementing a Pennsylvania-specific mercury control regulation for coal-fired EGUs, rather than through participation in the EPA-administered CAMR cap-and-trade program. Pennsylvania's state-specific regulation establishes annual emission limitations as part of a Statewide mercury nontradable allowance program; sets mercury emissions standards; and includes other requirements for the purpose of controlling mercury emissions from coal-fired EGUs.

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 mercury emissions from coal-fired EGUs (as defined in 40 CFR 60.24(h)(8)) under Clean Air Act (CAA) section 111(d). EPA required all States to submit State Plans with control measures that ensure that total, annual mercury 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 Administrator will approve or disapprove the State Plans.

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

CAMR establishes Statewide annual EGU mercury 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 mercury budget.

Each State Plan must require coal-fired EGUs to comply with the monitoring, recordkeeping, and reporting provisions of 40 CFR part 75 concerning mercury 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 mercury 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 mercury emissions from new and existing coal-fired EGUs to the amount of the State's applicable annual EGU mercury 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 mercury 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 mercury 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 mercury trading rule (40 CFR part 60, subpart HHHH) or incorporate by reference the model rule. CAMR provides that States

may only make limited changes to the model rule if the States want to participate in the EPA-administered trading program. A State Plan may change the model rule only by altering the allowance allocation provisions to provide for State-specific allocation of mercury 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 mercury budget for that year.

V. Analysis of Pennsylvania's CAMR State Plan Submittal

A. EPA Is Proposing To Find That Pennsylvania's State Plan Meets All CAMR Budget Related and Other Requirements for Approval

In today's action, EPA is proposing to approve Pennsylvania's State Plan as assuring that mercury emissions from the State's EGUs will not exceed the levels specified in the CAMR budget for Pennsylvania found at 40 CFR 60.24(h)(3), i.e., 1,779 tons per year for EGU mercury emissions in Phase 1 and 0.702 tons per year for EGU mercury emissions in Phase 2.

The State Plan includes a State-specific regulation which requires owners or operators of affected new or existing coal-fired EGUs¹ to comply with a Statewide mercury nontradable allowance program among other provisions. Pennsylvania assured that the regulation would apply to all of the EGUs which have emissions required to be accounted for under the CAMR budget for Pennsylvania by using in the regulation a definition of EGU consistent with the definition specified in CAMR at 40 CFR 60.24(h)(8). Pennsylvania's Statewide mercury nontradable allowance program, limits total mercury emissions from EGUs in the State to the same Phase 1 and Phase 2 amounts as are set forth in the CAMR budget for Pennsylvania found at 40 CFR 60.24(h)(3). Pennsylvania's mercury nontradeable allowance program requires its Phase 1 reductions to be achieved starting January 1, 2010, the same date as the Phase 1 reductions are required to be achieved under the CAMR, but requires its Phase 2

reductions to be achieved starting January 1, 2015, earlier than the required Phase 2 reductions under CAMR.

Pennsylvania's State-specific regulation implements the annual limits on total mercury emissions of EGUs in the State by setting aside for each EGU an amount of nontradable allowances that comprises the annual emission limitation (in ounces of mercury emissions) for that EGU. The amount set aside may include allowances requested by the owner or operator and provided from an annual emission limitation supplement pool. Further, the regulation states, in § 123.207(p), that an owner or operator must demonstrate compliance with annual emission limitation on a unit-by-unit, facility-wide, or system-wide basis and explains, in § 123.207(q) and (r), that, under facility-wide or system-wide compliance, the total annual emissions from the EGUs involved must be less than the total amount of allowable annual emissions for such EGUs. However, the regulation also provides, in §§ 123.207(j)(5) and 123.209, that each ounce of emissions by an EGU, facility, or system, as applicable, in excess of the amount of allowances set aside for the EGU, facility, or system, including any set aside under § 123.209, constitutes a violation. EPA interprets § 123.207(j)(5) and (p) through (r) and § 123.209 as requiring that the total mercury emissions from an EGU, or from the appropriate group of EGUs where compliance is on a facility-wide or system-wide basis, determined in accordance with §§ 123.210–123.215, must not exceed the total amount of allowances set aside for the EGU or the appropriate group of EGUs, including any allowances set aside from the annual emission limitation supplement pool, for the year.

It should be noted that Pennsylvania's mercury reduction regulation also restricts the emissions of mercury from existing and new coal-fired EGUs through the imposition of emission standards. These standards, established in § 123.205, are to be achieved in addition to the Statewide mercury nontradeable allowance program provisions described above. The CAMR does not establish or require similar emissions standards to be applied to individual emission units. As discussed above, CAMR requires a demonstration that the State Plan will ensure that the State will meet its assigned State annual EGU mercury emission budget. Pennsylvania meets this requirement through the establishment of its Statewide nontradeable mercury allowance program and not through the

¹ EPA notes that Pennsylvania's definitions of "existing EGU" and "new EGU" overlap in that an EGU that "commenced construction, modification, or reconstruction" on January 1, 2004 would be covered by both definitions. EPA believes that this technical problem with the rule will likely have no practical consequence since it is unlikely that there will be such a unit and Pennsylvania can resolve this if and when a problem arises. Therefore, EPA's proposed approval includes these definitions.

emission limitations required by § 123.205.

In addition, EPA is proposing to approve Pennsylvania's Plan, interpreted as discussed below, as meeting the CAMR provision that State plans must require owners and operators of coal-fired EGUs to meet the monitoring, recordkeeping, and reporting requirements of 40 CFR part 75. The provisions of the regulation included in the State's plan concerning monitoring, recordkeeping, and reporting, found at §§ 123.210–123.215, are intended to be consistent with the monitoring, reporting, and recordkeeping requirements for mercury mass emissions in 40 CFR part 75, Subpart I and in EPA's CAMR model rule, which is based on and references 40 CFR part 75, Subpart I. Section 123.210(a) and (b) states that, for purposes of compliance with 12-month rolling average mercury emission requirements in § 123.205 and annual mercury mass emission requirements in § 123.207, the monitoring, reporting, and recordkeeping requirements of §§ 123.210–123.215 and 139.101, 40 CFR part 75, Subpart I, and Pennsylvania's Continuous Source Monitoring Manual (DEP 274–0300–001) apply. The manual (at 1), in turn, states that part 75 applies to “monitoring systems required pursuant to only” part 75 (e.g., mercury mass monitoring systems) and that “[a]pproval for compliance with [part 75] must be obtained from” EPA. In addition, § 123.210(k) states that an owner or operator may not use any alternative to a part 75 requirement unless the alternative is approved by the Administrator in writing. EPA therefore interprets the monitoring, reporting, and recordkeeping requirements in Pennsylvania's regulation as requiring owners and operators to meet the requirements of 40 CFR part 75, Subpart I and providing that, if there is any conflict between those requirements and any other requirements set forth in §§ 123.210–123.215, the part 75 provisions will take precedence for the purpose of compliance with annual mercury mass emission requirements.

Specifically, Pennsylvania's regulation includes provisions, in § 123.210(n)(1), allowing discontinuation of use of an approved monitoring system when the owner or operator is using another certified monitoring system for the appropriate parameter that is approved by the department in accordance with §§ 123.210–123.215 and Chapter 139, Subchapter C. In light of the other provisions of Pennsylvania's regulation discussed above, EPA interprets

§ 123.210(n)(1) as allowing discontinuation of an approved monitoring system used for determining compliance with the annual mercury mass emission requirements in § 123.207 only if another monitoring system for the appropriate parameter is approved in accordance with part 75, subpart I.²

Further, Pennsylvania's regulation includes provisions, in § 123.211(a)(5)(iii), requiring the substitution of alternative data in cases where the State “issues a notice of disapproval of a certification application or a notice of disapproval of certification status” and allowing the substitution of either data values as specified in part 75 or “an alternative emission value that is more representative of actual emissions that occurred during the period.” In light of the other provisions of Pennsylvania's regulation discussed above, EPA interprets § 123.211(a)(5)(iii) as giving Pennsylvania the authority to approve substitute data values other than those specified by part 75 only in cases where those data values would be used solely for the purpose of showing compliance with the mercury emission requirements in § 123.205 and not for any data required for the purpose of showing compliance with the annual mercury mass emission limitation in § 123.207.

Similarly, § 123.212(a) of Pennsylvania's regulations requires the use of substitute data based on the Continuous Source Monitoring Manual if a monitoring system fails to meet certain quality-assurance, quality-control, or data validation requirements. As discussed above, the manual requires mercury mass emission monitoring systems to meet the requirements of part 75. Further, § 123.212(a) also states that a mercury mass emission monitoring system failing to meet quality-assurance or quality-control requirements must use substitute data under part 75. EPA therefore interprets § 123.212(a) to require the use of substitute data as prescribed in part 75 for the purpose of showing compliance with the annual mercury mass emission limitation in § 123.207.

² EPA notes that § 123.210(j) incorrectly references “subsections (f)–(h)” (rather than just subsection (h)) and that the provision only makes sense where a certified monitoring system already exists and a new stack or flue or new control device is added, which is addressed only in subsection (h). In any event, that § 123.210(j) is based on a provision in § 60.4170(c)(2) that EPA has proposed to remove. See 71 FR 77100, 77117 (2006). EPA interprets § 123.210(j) to apply only with regard to subsection (h), and, if EPA finalizes removal of § 60.4170(c)(2), § 123.210(j) will no longer apply at all for the purpose of compliance with the annual mercury mass emission limitation under § 123.207.

EPA is also proposing to approve the Plan as meeting the requirements of CAMR, and also of 40 CFR Subpart B, entitled, “Adoption and Submittal of State Plans for Designated Facilities,” for a demonstration of legal authority. The State's Plan includes an opinion by the Chief Counsel of the Pennsylvania Department of Environmental Protection which demonstrates that the State has the required legal authority to adopt emission standards and compliance schedules necessary for attainment and maintenance of the State's annual EGU mercury 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.

Finally, EPA is proposing to approve the State's Plan as meeting the other applicable general requirements for approval under 40 CFR part 60, subpart B. The State's Plan requires owners and operators of affected coal-fired EGUs in Pennsylvania to comply with emission limitations (expressed as nontradable mercury allowances) that ensure that total emissions from the affected coal-fired EGUs in Pennsylvania will not exceed the CAMR budget for Pennsylvania found at 40 CFR 60.24(h)(3). The State's Plan also requires owners or operators of affected coal-fired EGUs to achieve mercury emission reductions on a schedule that is equivalent to, or more rapid than, the schedule under CAMR. The State's Plan includes evidence that three public hearings were held, and also that public notice of these hearings was provided. The State's Plan also includes an emissions inventory of the State's EGUs.

EPA describes the State's Plan in more detail below.

B. Summary of State Plan

Pennsylvania's State Plan includes a State regulation at 25 Pa. Code, Chapter 123, Standards for Contaminants; Mercury, Annex A. Pennsylvania's state-specific mercury control regulation establishes annual mercury emission limitations for EGUs as part of a Statewide mercury nontradable allowance program, sets mercury emissions standards for EGUs, and includes monitoring, recordkeeping, reporting and other provisions.

Pennsylvania's State-specific regulation is applicable to all of the EGUs which have emissions required to be accounted for under the CAMR budget for Pennsylvania found at 40 CFR 60.24(h)(3). Pennsylvania assured that the regulation would apply to all of the EGUs which have emissions required to be accounted for under the CAMR budget for Pennsylvania by using

in the regulation a definition of EGU consistent with the definition specified in CAMR at 40 CFR 60.24(h)(8).

The Statewide mercury nontradable allowance program ensures that the mercury emissions from new and existing EGUs in the State will not exceed the CAMR budget for Pennsylvania found at 40 CFR 60.24(h)(3) by limiting total mercury emissions from EGUs in the State to the same Phase 1 and Phase 2 amounts as specified in the CAMR budget for the State. Under the Statewide mercury nontradable mercury allowance program the total amount of mercury emissions allowed to be emitted from affected coal-fired EGUs is 56,928 ounces (3,558 lbs or 1.779 tons) per year during Phase 1 extending from January 1, 2010 through December 31, 2014, and 22,464 ounces (1,404 pounds or 0.702 tons) per year during Phase 2 starting January 1, 2015 (rather than January 1, 2018, as specified in the CAMR budget for Pennsylvania found at 40 CFR 60.24(h)(3)) and continuing in subsequent years.

The Statewide mercury nontradable allowance program provides that of the total of 56,928 ounces per year of mercury emissions available for emission limitation set-asides during Phase 1, 54,080 ounces will be allocated to existing affected EGUs and the remaining five (5) percent will be set-aside for use by new affected EGUs. The Statewide mercury nontradable allowance program further provides that of the 22,464 ounces per year of mercury emissions available for emission limitation set-asides during Phase 2, 21,790 ounces will be allocated to existing affected coal-fired EGUs and the remaining three (3) percent will be set aside for new affected coal-fired EGUs.

The Statewide mercury nontradable allowance program provides that the annual nontradeable allowances set aside for owners and operators of new affected coal-fired EGUs shall be placed in an annual emission limitation supplement pool administered by the State. Upon petition by owners or operators of new affected EGUs, Pennsylvania may grant annual nontradeable allowances for the new affected coal-fired EGUs from this annual emission limitation supplement pool.

Under the Statewide mercury nontradable allowance program owners or operators of new affected coal-fired EGUs that do not yet have a baseline heat input will be allocated allowances in accordance with the requirements of an approved State permit. The Statewide mercury nontradable

allowance program specifies that after a new affected coal-fired EGU has commenced operation and completed three control periods of operation, the EGU will become an existing EGU. The Statewide mercury nontradable allowance program provides that a new affected EGU will continue to receive annual nontradeable mercury allowances from the new unit set-aside until the new affected EGU is eligible for annual nontradable mercury allowances allocated from the set-aside for existing EGUs. Under the allowance program when a new affected EGU is eligible to receive annual nontradable mercury allowances from the set-aside for existing affected EGUs, new maximum allowance levels for all existing affected EGUs will be established, and the State will publish these new allocation levels in the Pennsylvania Bulletin for comment by May 31 of the year that is two years prior to the affected control period.

The Statewide mercury nontradable allowance program provides for determining the maximum number of annual nontradeable allowances set aside for the owners or operators of all existing affected coal-fired EGUs, except for owners or operators of existing circulating fluidized bed (CFB) units, by multiplying the EGU's baseline heat input fraction of the State's total baseline annual heat input from all affected EGUs by the State's annual mercury allowance set-aside for existing affected EGUs for each Phase.

The Statewide mercury nontradable allowance program provides for determining the maximum number of annual nontradable mercury allowances set aside for owners or operators of existing affected CFB units by multiplying the affected CFB's baseline heat input fraction of the State's total baseline annual heat input for all EGUs by the State's Phase 2 annual mercury allowance for existing EGUs.

The Statewide mercury nontradable allowance program provides that the State will publish for comment in the *Pennsylvania Bulletin*, by May 31, 2008, the maximum number of annual nontradeable allowances set aside for "the owner or operator of each existing affected CFB and EGU other than CFB for Phase 1 of the Statewide mercury allowance program," and that it will publish for comment in the *Pennsylvania Bulletin*, by May 31, 2013, the maximum number of annual nontradeable allowances set aside for "the owner or operator of each existing affected CFB and EGU other than CFB for Phase 2 of the Statewide mercury allowance program."

The Statewide mercury nontradable allowance program specifies that the actual number of annual nontradable mercury allowances awarded to the owner or operator of the EGU, facility, or system shall be based on the actual emissions reported to the State. The Statewide mercury nontradable allowance program further specifies that the actual number of annual nontradable mercury allowances awarded to the owner or operator of the EGU, facility, or system may not exceed the maximum number of annual nontradeable mercury allowances assigned to the owner or operator of the EGU, facility, or system, except in cases where the owner or operator has petitioned for and been granted supplemental allowances. Under the Statewide mercury nontradable allowance program the State could provide such allowances from its annual emission limitation supplement pool.

The Statewide mercury nontradable allowance program provides that by March 31 of the year following each reporting year, Pennsylvania will notify the owner or operator of each affected EGU, facility, or system, in writing, of the actual number of annual nontradable mercury allowances awarded to the owner or operator of the affected EGU, facility, or system for the control period.

The Statewide mercury nontradable allowance program provides that the owner or operator of one or more affected mercury allowance program EGUs shall demonstrate compliance either on: (1) A unit-by-unit basis, (2) a facility-wide basis, or (3) a system-wide basis. Under the Statewide mercury nontradable allowance program, each ounce of mercury emitted in excess of the maximum number of annual nontradable mercury allowances set aside for the owner or operator of an EGU, facility, or system constitutes a violation of the program and of Pennsylvania's Air Pollution Control Act, unless the owner or operator has petitioned for and has been granted supplemental allowances.

Under the Statewide mercury nontradable allowance program if the actual emissions of mercury reported to the State for an EGU, facility, or system are less than the maximum number of annual nontradeable mercury allowances set aside for the owner or operator of the EGU, facility, or system, the State will place the unused portion of the allowances in its annual emission limitation supplement pool.

The Statewide mercury nontradable allowance program specifies that the unused portion of annual nontradeable mercury emission allowances assigned

to the owner or operator of an affected EGU, facility, or system for any year may not be added to the maximum number of annual nontradable mercury allowances assigned to the owner or operator of the affected EGU, facility, or system for use in future years. Under the Statewide mercury nontradable allowance program annual nontradable mercury allowances may not be banked for use in future years.

The Statewide mercury nontradable allowance program does not apply to the owner or operator of an EGU that will be permanently shutdown no later than December 31, 2009. The allowance program provides that annual nontradable mercury allowances will not be set aside for the owner or operator of an existing affected EGU that is already shut down or scheduled for shutdown unless the owner or operator of the EGU obtains a plan approval for the construction of a new EGU, or is on "standby" as of the effective date of each set-aside Phase. When a standby unit is ready for normal operation, the owner or operator may petition the State for annual nontradeable allowances. Under the regulation's allowance program the State could provide such allowances from its annual emission limitation supplement pool.

The Statewide mercury nontradable allowance program specifies that an owner or operator of an existing affected EGU who enters into an enforceable agreement with the State, by December 31, 2007, to shutdown that existing EGU and to replace it, by December 31, 2012, with a new Integrated Gasification Combined Cycle (IGCC) unit, is eligible to request annual nontradable mercury allowances from the annual emission limitation supplement pool.

The Statewide mercury nontradable allowance program provides that the State may revise the percentage of set-aside used to determine the number of ounces of mercury set-aside for future annual mercury emission limitations to accommodate the emissions from new EGUs, or changes in the calculation of baseline heat input, so that the total number of ounces of mercury emissions in the Statewide mercury nontradable allowance program is not exceeded.

Pennsylvania's regulation requires owners or operators of EGUs not only to keep the emissions of their EGUs at or below levels consistent with their allowances for their EGUs, but also to meet emission limits. The emission limits for EGUs vary depending upon whether or not the EGU qualifies as a new or existing unit and on the type of EGU.

The regulation defines a new EGU as "[a]n EGU which commenced

construction modification, or reconstruction, as defined under 40 CFR Part 60 (relating to standards of performance for new stationary sources), on or after January 30, 2004, and has less than three complete control periods of heat input data as of December 31 of the preceding control period." The regulation defines an existing EGU as "[a]n EGU which commenced construction, modification or reconstruction on or before January 30, 2004, or which has three complete control periods of heat input data as of December 31 or the preceding control period."

For new EGUs, Pennsylvania's regulation requires the owner or operator to comply at the commencement of operation on a rolling 12 month basis with one of the following standards:

(1) Pulverized Coal Fired (PCF) EGU. The owner or operator of a PCF EGU shall comply with either or the following:

(i) A mercury emission standard of 0.011 pound of mercury per Gigawatt-hour (GWh).

(ii) A minimum 90% control of total mercury as measured from the mercury content in the coal, either as fired or as approved in writing by Pennsylvania.

(2) Circulating Fluidized Bed (CFB) EGU. The owner or operator of a CFB EGU shall comply with the following applicable provisions:

(i) CFB EGUs burning 100% coal refuse as the only solid fossil fuel shall comply with either of the following:

(A) A mercury emission standard of 0.0096 pound of mercury per GWh.

(B) A minimum 95% control of total mercury as measured from the mercury content in the coal refuse, either as fired or as approved in writing by the State.

(ii) CFB EGU's burning 100% coal as the only solid fossil fuel shall comply with either of the following:

(A) A mercury emission standard of 0.011 pound of mercury per GWh.

(B) A minimum 90% control of total mercury as measured from the mercury content in the coal refuse, either as fired or as approved in writing by the State.

(iii) CFB EGUs burning multiple fuels shall comply with a prorated emission standard based on the percentage of heat input from the coal and the percentage of heat input from the coal refuse.

(3) Integrated Gasification Combined Cycle (IGCC) EGU. The owner or operator of an IGCC EGU shall comply with one of the following:

(i) A mercury emission standard of 0.0048 pound of mercury per GWh.

(ii) A minimum 95% control of total mercury as measured from the mercury

content in the coal, either as processed or as approved in writing by the State.

Pennsylvania's regulation notifies owners or operators of new EGUs that they are also required to comply with the New Source Performance Standards (NSPS) found at 40 CFR Part 60, Subpart Da. In addition, the regulation indicates that the State's emission standards will serve as the baseline the State uses for review and approval of case-by-case best available technology determinations in accordance with the State's requirements relating to construction, modification, reactivation and operation of sources.

For existing EGUs, the regulation requires the owner or operator to comply on a rolling 12-month basis with one of the following standards:

(1) Phase 1—Effective from January 1, 2010 through December 31, 2014:

(i) PCF EGU—The owner or operator of a PCF shall comply with one of the following:

(A) A mercury emission standard of 0.024 pound of mercury per GWh.

(B) A minimum 80% control of total mercury as measured from the mercury content in the coal, either as fired or as approved in writing by the State.

(ii) CFB EGU—The owner or operator of a CFB burning coal refuse shall comply with one of the following:

(A) A mercury emission standard of 0.0096 pound of mercury per GWh.

(B) A minimum 95% control of total mercury as measured from the mercury content in the coal refuse, either as fired or as approved in writing by the State.

(2) Phase 2—Effective beginning January 1, 2015, and each subsequent year:

(i) PCF EGU—The owner or operator of a PCF shall comply with one of the following:

(A) A mercury emission standard of 0.012 pound of mercury per GWh.

(B) A minimum 90% control of total mercury as measured from the mercury content in the coal, either as fired or as approved in writing by the State.

(ii) CFB EGU—The owner or operator of a CFB burning coal refuse shall comply with one of the following:

(A) A mercury emission standard of 0.0096 pound of mercury per GWh.

(B) A minimum 95% control of total mercury as measured from the mercury content in the coal refuse, either as fired or as approved in writing by the State.

The regulation also provides that the owner or operator of an EGU may request, in writing, credit for the mercury removal efficiency resulting from the pretreatment of coal or coal refuse towards the minimum specified percent control efficiency of the total mercury requirements.

The regulation provides that the owner or operator of one or more EGUs subject to the mercury emissions standards shall demonstrate compliance on: (1) A unit-by-unit basis, or (2) a facility-wide basis.

Pennsylvania's regulation requires owners or operators of coal-fired EGUs to comply with the monitoring, recordkeeping, and reporting provisions of 40 CFR part 75 concerning mercury mass emissions. The regulation provides that the monitoring, recordkeeping, and reporting requirements of 40 CFR part 75 Subpart I (relating to mercury mass emission provisions) apply, as well as other monitoring, recordkeeping and reporting provisions which are Pennsylvania-specific, as discussed in detail above. The regulation further indicates that Pennsylvania has adopted by reference the provisions entitled "Mercury Designated Representative for Mercury Budget Sources," found in EPA's model rule, 40 CFR part 60, Subpart HHHH, at sections 60.4110 through 60.4114. In addition, the regulation provides that, for purposes of complying with its requirements, the definitions in 40 CFR 72.2 shall apply.

The regulation also includes provisions pertaining to initial certification and recertification procedures for emissions reporting, provisions for out-of-control periods for emissions monitors, provisions pertaining to monitoring of gross electrical output, provisions pertaining to coal sampling and analysis for input mercury levels, and provisions pertaining to general recordkeeping and reporting.

The regulation provides that owners or operators of new or existing affected EGUs will be issued a State plan approval or operating permit (including Title V permits) in which the applicable mercury control requirements will be specified. The regulation specifies that these plan approvals or permits will be issued before the later of January 1, 2010 or the date on which the affected EGU commences operation.

The regulation further provides, at § 123.206, that the State's Department of Environmental Protection (the Department) "may approve in a plan approval or operating permit, or both, an alternate mercury emission standard or compliance schedule, or both, if the owner or operator of an EGU subject to the emission standards of § 123.205 demonstrates in writing to the Department's satisfaction that the mercury reduction requirements are economically or technologically infeasible. The Department's approval of such an alternative emission standard or compliance schedule does not relieve

the owner or operator of the EGU from complying with the other requirements of §§ 123.201–123.205 and 123.207–123.215."

The State Plan also contains required non-regulatory elements. The State Plan includes an inventory of the existing designated coal-fired EGUs in the State, and provides data regarding the mercury emissions of these EGUs. The Plan also provides documentation of the State's public participation process, including copies of public notices announcing public hearings and the opportunity to comment, a certification that three public hearings were held, and a summary of comments received by the State and of the State's responses. Further, the Plan includes a legal opinion of the Chief Counsel of the Pennsylvania Department of Environmental Protection which 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 mercury 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.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 approves 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 guidance³ 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 EO 12898, the Agency has 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,

³ 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.

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 rule proposing to approve Pennsylvania's State Plan submittal for the CAMR requirements 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.

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

Dated: September 4, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7-18057 Filed 9-12-07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2007-0384; FRL-8467-3]

RIN 2060-AO28

Protection of Stratospheric Ozone: Extension of Global Laboratory and Analytical Use Exemption for Essential Class I Ozone-Depleting Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to extend the global laboratory and analytical use exemption for production and import of class I ozone-depleting substances beyond December 31, 2007, contingent upon and consistent with future anticipated actions by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. The exemption allows persons in the United States to produce and import controlled substances for laboratory and analytical uses that have not been already identified by EPA as nonessential. EPA also is proposing to add, for specific

laboratory uses, the applicability of the laboratory and analytical use exemption to production and import of methyl bromide.

DATES: Written comments on this proposed rule must be received by the EPA Docket on or before November 13, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2007-0384, by one of the following methods:

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

- *E-mail:* A-and-R-docket@epa.gov.

- *Fax:* 202-343-2338, attn: Staci Gatica.

- *Mail:* Air Docket, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery or Courier:* Deliver your comments to: EPA Air Docket, EPA West 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460. 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. EPA-HQ-OAR-2007-0384. EPA's policy is that all comments received by the docket 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 information through www.regulations.gov or e-mail that you consider to be CBI or otherwise protected. If you would like the Agency to consider comments that include CBI, EPA recommends that you submit the comments to the docket that exclude the CBI portion but that you provide a complete version of your comments, including the CBI, to the person listed under **ADDRESSES** above. 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, any form of encryption, and 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 docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT:

Staci Gatica by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460; by courier service or overnight express: 1301 L Street, NW., Washington, DC 20005, Workstation 1047B, by telephone: 202-343-9469; or by e-mail: gatica.staci@epa.gov.

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