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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 62**

[EPA-R07-OAR-2007-0655; FRL-8510-6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Iowa; Clean Air Mercury Rule**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is taking final action to approve the State Plan submitted by Iowa on August 15, 2006, and updates to rules submitted on April 26, 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 has determined that the submitted State Plan fully meets the CAMR requirements for Iowa.

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 approving today, Iowa has met the CAMR requirements by electing to participate in the EPA trading program.

DATES: This rule is effective on January 25, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2007-0655. All documents in the docket are listed on the <http://www.regulations.gov> Web site. 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 through <http://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. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT:

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I. What Action Is EPA Taking?

EPA is taking final action to approve Iowa's State Plan, submitted on August 15, 2006, and the incorporation by reference date changes submitted on April 26, 2007. In its State Plan, Iowa has met CAMR by requiring certain coal-fired EGUs to participate in the EPA-administered cap-and-trade program addressing Hg emissions. EPA proposed to approve Iowa's request to amend the State's Plan on September 5, 2007 (72 FR 50913). No comments were received. EPA is finalizing the approval as proposed based on the rationale stated in the proposal and in this final action.

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 Iowa's CAMR State Plan Submittal

A. State Budgets

In this action, EPA is taking final action to approve Iowa's State Plan that adopts the annual EGU Hg budgets established for the State in CAMR, i.e., 0.727 tons for EGU Hg emissions in 2010–2017 and 0.287 tons for EGU Hg emissions in 2018 and thereafter. Iowa'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 Iowa 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. 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 Iowa's alternative allowance methodology, as authorized by the CAMR, Iowa has deviated from the portion of the model rule, described above, relating to the basis for allocating allowances to new units commencing operation on or after January 1, 2001. In Iowa's rule 567–34.304, the State has limited the timeframe within which a unit can meet the requirements to apply for allowances under the new unit set-aside to units that commence operation on or after January 1, 2001, and commence construction before January 1, 2006. As a result, one facility meets this criterion and is provided the full allocation under the new source set-aside for both phases amounting to 5 percent of the State's budget for phase I and 3 percent for phase II. Also in the section relating to new units, in the event a generator is served by two or more units, the nameplate capacity will be attributed to each unit in equal fraction of the total nameplate capacity multiplied by 7900 British Thermal Units per Kilowatt Hour for the determination of heat input for each unit.

Iowa'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. Iowa'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. Iowa cites Section 455B.133 of the Iowa Code, which contains the broad enabling authority for Iowa's air pollution control regulations, as containing the legal authority for the Iowa Environmental Protection Commission to adopt the State's rule that allows for Iowa's participation in the nationwide cap and trade program for mercury.

Iowa has addressed the issue related to the definition of "permit authority" discussed in the proposal of September 5, 2007 (72 FR 50913). As discussed in more detail in that notice, on February 17, 2007, EPA provided a letter to Iowa that requested and outlined necessary definition revisions for all rules intended to meet the Clean Air Interstate Rule (CAIR) and CAMR. The EPA requested revisions were adopted by the Iowa Environmental Protection Commission on October 1, 2007, and were published in the Iowa Administrative Code on October 24, 2007. The revisions became State effective on November 28, 2007. Once submitted to EPA, and through separate rulemaking, EPA will act on the State's revisions to its 111(d) plan for CAMR and its SIP for CAIR.

EPA's review of Iowa's State Plan has found that it meets the requirements of CAMR. As a result, EPA is taking final action to approve Iowa'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 approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this 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 approves pre-existing requirements under State law and does 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 action 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 action also does not have Federalism implications because it does

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 approves 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 action 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 guidance¹ 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 approves 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 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 rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *February 25, 2008*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in Part 62

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

Dated: December 14, 2007.

John B. Askew,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart Q—Iowa

■ 2. Subpart Q is amended by adding an undesignated center heading and § 62.3918 to read as follows:

Mercury Emissions From Coal-Fired Electric Steam Generating Units

§ 62.3918 Identification of Plan.

(a) *Identification of plan.* Section 111(d) plan and associated State regulations as adopted in the Iowa Administrative Bulletin on June 7, 2006, page 1811 and associated amendments on February 28, 2007, page 1157.

(b) *Identification of sources.* The plan applies to all new and existing mercury budget units meeting the applicability requirements in Iowa's State rule 567–34.301.

(c) *Effective date.* The effective date for the portion of the plan applicable to mercury budget units as described in Iowa State rule 567–34.301 is January 25, 2008.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 89

[EPA–HQ–OAR–2007–0652; FRL–8509–9]

RIN 2060–A037

Partial Removal of Direct Final Rule and Revision of the Nonroad Diesel Technical Amendments and Tier 3 Technical Relief Provision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; partial removal; revision.

SUMMARY: Because EPA received adverse comment, we are making a partial withdrawal and revision of the direct final rule for "Nonroad Diesel Technical Amendments and Tier 3 Technical Relief Provision" published on September 18, 2007.

DATES: This rule and partial withdrawal are effective December 26, 2007.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

On September 18, 2007 EPA published a direct final rule for "Nonroad Diesel Technical Amendments and Tier 3 Technical Relief Provision" (72 FR

¹ 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.