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Part II

Environmental Protection Agency

**40 CFR Parts 60, 62, 72, and 78
Revisions of Standards of Performance
for New and Existing Stationary Sources;
Electric Utility Steam Generating Units;
Federal Plan Requirements for Clean Air
Mercury Rule; and Revisions of Acid Rain
Program Rules; Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 62, 72, and 78

[EPA-HQ-OAR-2006-0905; FRL-8255-1]

RIN 2060-AN98

Revisions of Standards of Performance for New and Existing Stationary Sources; Electric Utility Steam Generating Units; Federal Plan Requirements for Clean Air Mercury Rule; and Revisions of Acid Rain Program Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA proposes a Federal Plan to implement Clean Air Act (CAA) section 111 mercury (Hg) standards of performance for new and existing coal-fired electric utility steam generating units (Utility Unit or EGU) located in States or Indian Country covered by the Clean Air Mercury Rule (CAMR) which do not have EPA approved and currently effective State plans. The EPA will not take final action on the proposed Federal Plan until EPA either finds that a State has failed to timely submit a plan or disapproves a submitted plan. Any final Federal Plan is expected to serve primarily to temporarily fill a regulatory gap in circumstances where either a State fails to timely submit a plan or EPA disapproves a submitted plan as, in either case, States will be free to submit an approvable plan after promulgation of the Federal Plan and upon approval of the State Plan by EPA, the Federal Plan will no longer apply to coal-fired Utility Units covered by the State Plan.

This action also proposes certain revisions to both the CAMR State Plan model cap-and-trade rule (in order to make it compatible with the Federal Plan cap-and-trade rule and to make technical corrections) and the Acid Rain Program regulations (in order to simplify the provision concerning alternate designated representatives and to make the administrative appeals process applicable to the decisions of the Administrator under the State Plan and Federal Plan cap-and-trade rules).

DATES: *Comments.* Comments on this proposal must be received on or before

February 20, 2007. A public hearing will be held in Washington, DC prior to the end of the public comment period. EPA will publish a separate **Federal Register** notice announcing the date, location, and time for the public hearing. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the public hearing.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-HQ-OAR-2006-0905, by one of the following methods:

A. *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:* A-AND-R-Docket@epa.gov.

C. *Mail:* Air Docket, ATTN: Docket Number EPA-HQ-OAR-2006-0905, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

D. *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue, NW., Room 3334, Washington, DC. 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 Docket Number EPA-HQ-OAR-2006-0905. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.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 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 EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: For information concerning this proposed CAMR Federal Plan as well as Integrated Planning Model (IPM) analyses performed in developing the final CAMR, contact Meg Victor, Program Development Branch, Clean Air Markets Division (MC 6204J), EPA, Washington, DC 20460; telephone number (202) 343-9193; fax number (202) 343-2359; electronic mail address: victor.meg@epa.gov.

For information concerning all other analyses performed in developing the final CAMR, contact Mr. William Maxwell, Energy Strategies Group, Sector Policies and Programs Division (Mail Code D243-01), EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541-5430; fax number (919) 541-5450; electronic mail address: maxwell.bill@epa.gov.

SUPPLEMENTARY INFORMATION:
Regulated Entities. Categories and entities potentially regulated by this action include the following:

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

Category	NAICS code ¹	Examples of potentially regulated entities
	921150	Fossil fuel-fired electric utility steam generating units in Indian country.

¹ North American Industry Classification System.

² Federal, State, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should examine the applicability criteria in 40 CFR 60.45Da of the final new source performance standards (NSPS) amendments and 40 CFR 60.24(h) of the final CAMR. If you have questions regarding the applicability of this action to a particular entity, consult your State or local agency (or EPA Regional Office).

World Wide Web. In addition to being available in the docket, an electronic copy of this action will also be available on the World Wide Web through EPA's Office of Air and Radiation. Following signature by the Administrator, a copy of this action will be posted on the CAMR page at <http://www.epa.gov/camr>.

Public Hearing. A public hearing will be held in Washington, DC prior to the end of the public comment period. EPA will publish a future **Federal Register** notice announcing the details of the public hearing including the time, date, and location, and will announce the public hearing on EPA's Web site for this rulemaking at <http://www.epa.gov/camr>.

Because the hearing will be held at a U.S. Government facility, everyone planning to attend should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Oral testimony will be limited to 5 minutes per commenter. The EPA encourages commenters to provide written versions of their oral testimonies either electronically (on computer disk or CD-ROM) or in paper copy. Verbatim transcripts and written statements will be included in the rulemaking docket.

The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rule. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations or comments at that time. Written statements and supporting

information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at a public hearing.

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

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 - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act
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I. Background

A. Summary of This Action

On May 18, 2005, EPA finalized CAMR and established standards of performance for Hg for new and existing coal-fired electric utility steam generating units (Utility Units or EGUs). (The standards of performance for existing Utility Units are in the form of emission guidelines which do not apply to individual sources until they are implemented through an EPA approved State plan or a promulgated Federal plan.) (See 70 FR 28606.) CAMR established a mechanism by which Hg emissions from new and existing coal-fired Utility Units are capped at specified, nation-wide levels. A first phase cap of 38 tpy becomes effective in 2010, and a second phase cap of 15 tpy becomes effective in 2018. EPA then set State level emission caps that States must meet and developed an emissions cap-and-trade program States can use to meet these caps. State plans to implement and enforce these standards of performance were due to EPA by November 17, 2006.¹ Under 40 CFR 60.27(b), the Administrator must approve or disapprove State Plans within 4 months of the November 17, 2006 submission deadline.

CAA section 111 requires States, and CAA section 301(d) and the Tribal Air Rule, 40 CFR part 49, allow Tribes granted treatment as States (TAS), with existing coal-fired Utility Units to submit plans to EPA that implement and enforce the standards of performance. The CAMR itself requires States to submit a plan for addressing Hg emissions from new Utility Units even if there are no existing Utility Units in the State.

CAA section 111(d)(2) grants the Administrator the same authority to prescribe a plan for a State in cases where the State fails to submit a satisfactory plan as he would have under section 110(c) of the CAA in the case of a State's failure to submit an

¹ In a separate **Federal Register** notice entitled "Notice of Finding that Certain States Did Not Submit Clean Air Mercury Rule (CAMR) State Plans for New and Existing Electric Utility Steam Generating Units and Status of Submission of Such Plans," EPA made findings that certain States did not submit CAMR State Plans by the November 17, 2006 deadline and otherwise provided notice of the status of State Plan submissions.

implementation plan. Section 60.27 of 40 CFR part 60 directs the Administrator to promptly prepare and publish proposed regulations for a State if the State fails to submit a plan by the prescribed deadline or the Administrator disapproves the State's submitted plan and to promulgate those regulations by the date 6 months after the date required for plan submission. Thus, if a State didn't submit a plan by November 17, 2006, EPA is required to promulgate a Federal Plan no later than 6 months after the deadline, unless, prior to such promulgation, the State submits a plan that the Administrator determines to be approvable. In this action, EPA proposes a Federal Plan to implement standards of performance for Utility Units located in all States, the District of Columbia, and Indian Country covered by CAMR (*see* 40 CFR 60.24(h)(1) listing the jurisdictions covered by CAMR) for which a plan was not submitted by November 17, 2006.² In addition, with regard to jurisdictions that submitted plans by November 17, 2006, EPA proposes to adopt a Federal Plan, as set forth in today's notice, in the event that EPA reviews the submitted plan and determines that the plan does not meet the requirements of CAMR. The EPA believes that it is appropriate to propose now the Federal Plan that would apply to each jurisdiction without an approvable plan, whether or not the jurisdiction involved submitted a plan by November 17, 2006. In all of these potential circumstances, the Agency would be hard pressed to both propose and promulgate a Federal Plan of this magnitude in a six-month time period and so must begin the process now by proposing the Federal Plan that would apply if the Agency determines that the jurisdiction does not have an approvable plan. Because in today's action EPA is proposing the Federal Plan that would apply to any jurisdiction that the Agency determines not to have an approvable plan, the Agency requests that all persons with concerns about or comments on the proposed Federal Plan submit comments in response to today's notice, whether such concerns or comments involve sources in jurisdictions that submitted plans by November 17, 2006 or jurisdictions that did not submit plans by that deadline. Today's action provides the opportunity for public

² Under the TAR (40 CFR part 49), which implements CAA section 301(d), Tribes may elect to be treated in the same manner as a State in implementing sections of the CAA. However, EPA determined in the TAR that it was inappropriate to treat Tribes in a manner similar to a State with regard to specific plan submittal and implementation deadlines.

comment on the Federal Plan that the Agency proposes to use for any jurisdiction for which the Agency may promulgate a Federal Plan under 40 CFR 60.27 because of the absence of a plan meeting the requirements of CAMR. The EPA will not take final action on the proposed Federal Plan for any specific jurisdiction until EPA either finds that a plan has not been timely filed or disapproves a submitted plan. (*See also* "Notice of Finding that Certain States Did Not Submit Clean Air Mercury Rule (CAMR) State Plans for New and Existing Electric Utility Steam Generating Units and Status of Submission of Such Plans.")

B. Regulatory Background of CAMR

1. Relevant Federal Register Actions

On December 20, 2000, EPA issued a finding pursuant to CAA section 112(n)(1)(A) that it was appropriate and necessary to regulate coal- and oil-fired Utility Units under CAA section 112. In making this finding, EPA considered the results of the study mandated by CAA section 112(n)(1)(A) (the Utility Study), which was completed and submitted to Congress in February 1998.

In December 2000, EPA concluded that the positive appropriate and necessary determination under CAA section 112(n)(1)(A) constituted a decision to list coal- and oil-fired Utility Units on the CAA section 112(c) source category list. Relying on CAA section 112(e)(4), EPA explained in its December 2000 finding that neither the appropriate and necessary finding under CAA section 112(n)(1)(A) nor the associated listing were subject to judicial review at that time. EPA did not add natural-gas fired units to the CAA section 112(c) list in December 2000, because it did not make a positive appropriate and necessary finding for such units.

On January 30, 2004, EPA published in the **Federal Register** a notice of proposed rulemaking (NPR) entitled "Proposed National Emissions Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units." (*See* 69 FR 4652.) In that NPR, EPA proposed three alternative regulatory approaches. First, EPA proposed to retain the December 2000 Finding and associated listing of coal- and oil-fired Utility Units and to issue maximum achievable control technology-based (MACT) national emission standards for hazardous air pollutants (NESHAP) for such units under CAA section 112. Second, EPA alternatively proposed

revising the Agency's December 2000 Finding, removing coal- and oil-fired Utility Units from the CAA section 112(c) list,³ and issuing final standards of performance under CAA section 111 using emissions cap-and-trade for new and existing coal-fired units that emit Hg and new and existing oil-fired units that emit nickel (Ni). Finally, as a third possible alternative, EPA took comment on retaining the December 2000 finding and regulating Hg emissions from Utility Units under CAA section 112(n)(1)(A) using a cap-and-trade approach.

On March 16, 2004, EPA published in the **Federal Register** a supplemental notice of proposed rulemaking (SNPR) entitled "Supplemental Notice for the Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units." (*See* 69 FR 12398.) In the SNPR, EPA proposed certain additional regulatory text that largely addressed the proposed CAA section 111 standards of performance for Hg, which included a cap-and-trade program. The SNPR also proposed State Plan approvability criteria and a model cap-and-trade rule for Hg emissions from coal-fired Utility Units.

On December 1, 2004, EPA published in the **Federal Register** a notice of data availability (NODA) entitled "Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources, Electric Utility Steam Generating Units: Notice of Data Availability." (*See* 69 FR 69864.) EPA issued this NODA: (1) To seek additional input on certain new data and information concerning Hg that the Agency received in response to the January 30, 2004 NPR and March 16, 2004 SNPR; and (2) to seek input on a revised proposed benefits methodology for assessing the benefits of regulating Hg.

On March 29, 2005 (70 FR 15994), EPA revised the December 2000 appropriate and necessary finding and concluded that it is not appropriate and necessary to regulate coal- and oil-fired Utility Units under CAA section 112. We took this action because we now believe that the December 2000 finding lacked foundation and because recent information demonstrates that it is not

³ We did not propose revising the December 2000 finding for gas-fired Utility Units because EPA continues to believe that regulation of such units under CAA section 112 is not appropriate and necessary. We, therefore, take no action today with regard to gas-fired Utility Units.

appropriate or necessary to regulate coal- and oil-fired Utility Units under CAA section 112. Based solely on the revised finding, we removed coal- and oil-fired Utility Units from the CAA section 112(c) list and instead established standards of performance for Hg for new and existing coal-fired Utility Units under CAA section 111 on May 18, 2005 (70 FR 28606). The regulations promulgated pursuant to EPA's authority under CAA section 111 established a mechanism by which Hg emissions from new and existing coal-fired Utility Units are capped at specified, nation-wide levels. A first phase cap of 38 tons per year becomes effective in 2010, and a second phase cap of 15 tons per year becomes effective in 2018. The final CAMR included State Plan approvability criteria and a model cap-and-trade rule for Hg emissions from coal-fired Utility Units.

2. CAA Section 111 Authority

CAA section 111 creates a program for the establishment of "standards of performance." A "standard of performance" is "a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction, which (taking into account the cost of achieving such reduction, any non-air quality health and environmental impacts and energy requirements), the Administrator determines has been adequately demonstrated." (42 U.S.C. 7411(a)(1).)

For new sources, EPA must first establish a list of stationary source categories, which the Administrator has determined "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." (42 U.S.C. 7410(b)(1)(A).) EPA must then set Federal standards of performance for new sources within each listed source category. (42 U.S.C. 7411(b)(1)(B).) The standards for new sources under CAA section 111(b) apply nationally and are applicable to sources on which construction, reconstruction or modification is commenced after the date of proposal of the standards. (*See id.*)

Existing sources are addressed under CAA section 111(d). EPA must issue a standard of performance for existing sources in a source category for a pollutant if it has established a standard of performance for new sources covering an air pollutant for which air quality criteria have not been issued or which is not included on a list published under CAA section 108(a), even where

those pollutants are subject to the standard for new sources. (*See* 42 U.S.C. 7411(d)(1)). CAA section 111(d) authorizes EPA to promulgate standards of performance that States must adopt through a SIP-like process, which requires State rulemaking action followed by review and approval of State Plans by EPA. If a State fails to submit a satisfactory plan, EPA has the authority to prescribe a plan for the State. (*See* 42 U.S.C. 7411(d)(2)(A).)

The final CAMR (70 FR 28606; May 18, 2005) discusses in more detail (i) The applicable standards of performance for Hg from new coal-fired Utility Units under CAA section 111(b), (ii) the legal authority under CAA section 111(d) to regulate Hg from existing coal-fired Utility Units, and (iii) the legal authority to implement a cap-and-trade program for existing and new Utility Units.

C. State Plan Requirements

1. Summary of State Plan Requirements

As finalized under CAMR (70 FR 28632), each State is required to submit a State Plan that assures compliance with the State's assigned Statewide Hg emission budget for coal-fired Utility Units. CAMR is described here primarily for the convenience of the reader, and EPA is only requesting comments on CAMR with regard to revisions to the CAMR State model trading rule that are proposed in this notice. *See* Section IV of this preamble. Because the State must meet a coal-fired EGU Hg emission budget, all emission reductions must necessarily come from coal-fired Utility Units. Each State Plan should include fully-adopted State rules for the EGU Hg reduction strategy with compliance dates providing for controls by 2010 and 2018 that will achieve the State EGU Hg emissions budgets. The State Plans were due by November 17, 2006. As a required element of a State Plan, a State must demonstrate that it has the legal authority to adopt and implement the emission requirements and compliance schedules in the State Plan. The State also must identify the enforceable State mechanism for implementing the emission guidelines (*e.g.*, a State rule or other State enforcement mechanism). Following receipt of a State Plan, EPA has up to 4 months to approve or disapprove the plan. (*See* 40 CFR 60.27(b).)

The emission reduction requirement in CAMR applies to all coal-fired Utility Units located in all 50 States of the U.S., the District of Columbia, as well as those located in Indian country. (As used herein, the term "Indian country" generally refers to all areas within

Indian reservations, dependent Indian communities, and Indian allotments.) CAMR includes mercury emission budgets for coal-fired Utility Units located in Indian country; the emission budgets cover both existing and new units. EPA generally will implement the emission trading rule for coal-fired Utility Units located in Indian country unless a Tribe seeks and obtains Treatment-as-a-State (TAS) status and submits a Tribal Plan to implement the allocated Hg emissions budget. Eligible Tribes which choose to do so will be responsible for submitting a Tribal Plan analogous to the State Plans discussed throughout this preamble, and, like States, can choose to adopt the model trading rule.

2. Performance Standard Approvability Criteria

As discussed in CAMR (70 FR 28616), CAA sections 111(a) and (d)(1) authorize EPA to promulgate a "standard of performance" that States must apply to existing EGU sources through a State Plan, and EPA interpreted the term "standard of performance," as applied to existing EGU sources, to include a cap-and-trade program.

The State EGU Hg budgets are not an independently enforceable requirement. Rather, each State must impose control requirements that the State demonstrates will limit Statewide Hg emissions from affected new and existing EGU sources to no more than the amount of the EGU Hg budget. Under CAMR, EPA finalized that States may meet their Statewide EGU Hg emission budgets by allowing their EGU sources to participate in a national cap-and-trade program. That is, a State may authorize its affected EGU sources to buy and sell Hg allowances allocated in or outside of the State, so that any difference between the State's EGU Hg budget and the total amount of Statewide EGU Hg emissions will be offset in another State (or other States). Regardless of State participation in the national cap-and-trade program, EPA believes that the best way to assure this emission limitation is for the State to limit total EGU Hg emissions for new and existing units in the State to the amount of the State EGU Hg budget. In addition, EPA finalized that sources will be required to comply with the 40 CFR part 75 requirements. EPA believes that compliance with these requirements is necessary to demonstrate compliance with a mass emissions limit.

II. Federal Plan Process

A. Legal Authority for Federal Plan

CAA section 111(d) and 40 CFR 60.24(h) require States to develop and implement State Plans for coal-fired Utility Units designed to implement and enforce the promulgated Hg emission guidelines. The State Plans were due by November 17, 2006. Following receipt of a State Plan, EPA has up to 4 months to approve or disapprove the plan. (CAA section 111(d)(2)(A) provides EPA the same authority to prescribe a plan for a State in cases where the State fails to submit a satisfactory plan as the Agency would have under CAA section 110(c) in the case of a failure to submit an implementation plan.)

EPA is proposing a CAMR Federal Plan that will fulfill the Agency's obligation under the CAA to establish emission limits and other requirements for coal-fired Utility Units located in States that have not timely submitted approvable plans or for which EPA has disapproved a submitted plan. EPA is proposing the Federal Plan under the legal authority of CAA sections 111(d)(2) and 301(a). The Federal Plan is intended, upon promulgation, to implement the emission guidelines adopted as part of CAMR. Any final Federal Plan is expected to serve primarily to temporarily fill a regulatory gap in circumstances where either a State fails to timely submit a plan or EPA disapproves a submitted plan as, in either case, States will be free to submit an approvable plan after promulgation of the Federal Plan and upon approval of the State Plan by EPA, the Federal Plan will no longer apply to coal-fired Utility Units covered by the State Plan.

B. Implementation of Federal Plan

Congress has determined that the primary responsibility for air pollution control rests with State and local agencies. See 42 U.S.C. 1401(a)(3). It is also intended under CAA section 111 that the States take the primary responsibility for ensuring that emission reduction targets are met. (See, 42 U.S.C. 7411(d)(1).) Accordingly, EPA has designed the proposed CAMR Federal Plan to readily facilitate the transfer of authority for implementing and enforcing the emission guidelines from EPA to State and local agencies. For this action, EPA is identifying two mechanisms for transferring implementation responsibility to State and local agencies: (1) If EPA approves a State Plan submitted to EPA after the Federal Plan is promulgated and is effective in that State, the approved State Plan will supersede the Federal Plan. (In approving the State Plan, EPA

may impose conditions it determines necessary to ensure that the transition from the Federal Plan to the approved State Plan will be minimally disruptive.); or (2) if EPA approves a State allocation methodology that addresses only allowance allocations and meets certain requirements for such allocations, EPA would implement the Federal Plan except for the allocation provisions that the State would implement under the approved State allocation methodology.⁴

1. State Submits a State Plan After Becoming Subject to the Federal Plan—Full Transfer of Authority Through State Plan Approval

Even after coal-fired Utility Units in a particular State become subject to the Federal Plan, the State or a local agency may still adopt and submit to EPA for approval a State Plan. The EPA will determine if the State Plan is at least as protective as the CAMR emission guidelines. If EPA determines that the State Plan is at least as protective as the emission guidelines, EPA will approve the State Plan. Upon the approval and effectiveness of the State Plan, the Federal Plan will no longer apply and the State will implement and enforce the State Plan in lieu of the Federal Plan. Making the State Plan effective as soon as possible after approval expedites a State's assumption of responsibility for implementing the CAMR emission guidelines through the State Plan mechanism as intended by Congress. (EPA recognizes, however, that there may be circumstances in which it will be necessary to delay the effective date of an approved State Plan, or impose other conditions in approving the State Plan, in order to minimize the impacts of any disruption resulting from the transition from the Federal Plan to an approved State Plan.) If EPA determines that the State Plan is not at least as protective as the guidelines, EPA cannot approve the State Plan.

2. State Implements Allowance Allocations Under the Federal Plan

The State may implement allowance allocations even if there is not a State Plan in effect. EPA believes that, to the extent authorized by State law, States may want to undertake implementation of Hg allocations under a Federal Plan cap-and-trade program. A State could

⁴ The proposed option for States to implement allowance allocations under a CAMR Federal Plan is similar to the option with respect to Clean Air Interstate Rule (CAIR) implementation wherein a State can submit an abbreviated CAIR SIP revision to make implementation decisions about certain elements of the CAIR FIP trading programs (71 FR 25345). The proposed CAMR option is limited to allowance allocations.

choose to submit a State allocation methodology, rather than submitting a State Plan addressing all elements of the Hg model trading rule (see Section III.C of this preamble for discussion of allocations). In this way, the State could choose to allocate Hg allowances to its EGU sources as it deems most appropriate, while leaving other elements of CAMR implementation to the Federal Plan.

C. Timing of Federal Plan Action

As described in CAMR and summarized in section I.C of this notice, EPA required States to develop, adopt and submit their State Plans by November 17, 2006. Proposing a CAMR Federal Plan today is necessary in order for EPA to promulgate a Federal Plan in accordance with 40 CFR 60.27 for States without timely submitted, approvable plans. EPA intends to expedite the Federal Plan promulgation to help assure emission reductions occur expeditiously.

In a separate **Federal Register** notice entitled "Notice of Finding that Certain States Did Not Submit Clean Air Mercury Rule (CAMR) State Plans for New and Existing Electric Utility Steam Generating Units and Status of Submission of Such Plans," EPA made findings that certain States did not submit CAMR State Plans by the November 17, 2006 deadline and otherwise provided notice of the status of State Plan submissions. EPA intends to promulgate a Federal Plan for any State that fails to timely submit an approvable plan. EPA intends to approve expeditiously State Plans that meet the CAMR requirements. In order to meet the requirements of CAA section 111(d), this notice proposes a Federal Plan for all States covered by CAMR (50 States, District of Columbia, and Indian country). The proposed Federal Plan requirements for each State are identical. Final rulemaking on the proposed Federal Plan may address only one State or may address several States, depending on how the individual States respond to the provisions of the final CAMR.

The Agency is proposing this action to provide a Federal backstop for CAMR in circumstances where not all States submit timely, approvable State Plans. In no way should the proposed Federal Plan for CAMR be viewed as a sign of any concern about States ultimately making the emission reductions required under CAMR. Rather, the Agency intends the Federal Plan to represent an additional option for achieving the emission reductions specified in CAMR. States which would otherwise adopt the model trading

program in CAMR as their State Plan can accept the Federal Plan and significantly reduce the State resources needed to establish a program to implement CAMR.

The Agency proposes to provide States that are subject to these proposed Federal requirements with the option to submit a State allocation methodology without submitting a State Plan to meet the requirements of CAMR. By proposing to accept a State allocation methodology, the Agency intends to increase the options available for States to comply with CAMR. As there are no sanctions associated with the proposed Federal Plan, EPA anticipates that some States may prefer to avoid spending the time and resources necessary to adopt and submit a State Plan. Upon approval of any State allocation methodology, EPA anticipates that the corresponding portions of the CAMR Federal Plan for that State would be replaced or their application to affected sources would be modified.

In offering a framework for submission of a State allocation methodology, the Agency anticipates that some States will wish to retain control over the allocation of allowances to their EGU sources even in circumstances where the Federal Plan otherwise governs. EPA requests comment on the proposed option for States to submit a State allocation methodology under the Federal Plan trading program. A more complete discussion of the proposed State allocation methodology provisions is found in Section III, below.

Although the deadline for States to develop, adopt, and submit State Plans that meet the requirements of CAMR was November 17, 2006, EPA remains ready to work with the States to develop fully-approvable State Plans. The Federal Plan will only be effective in a State where EPA has found that a State has not timely submitted an approvable State Plan. In addition, EPA will withdraw the Federal Plan for any affected State after EPA approves a State Plan that meets the CAMR requirements in that State.

EPA's goal is to have approvable programs in place that meet the requirements of CAMR whether they are in the form of a State Plan or a Federal Plan. By finalizing a Federal Plan, EPA would in no way preclude a State from developing its own State Plan that either adopts the Hg model trading rule with any discretionary elements allowed by CAMR or meets the State's EGU Hg emissions budget through different measures of the State's choosing. EPA will carefully consider the timing of the Federal Plan adoption process, and the

transition from a finalized Federal Plan to an approved State Plan, to make sure to preserve each State's freedom to develop and implement a State Plan. In this way, EPA will enhance each State's options for complying with the requirements of CAMR while ensuring that all the Hg emissions reductions and environmental benefits of CAMR are realized.

D. Federal Plan Control Measures

In contrast to the State Plan process—where selection and implementation of control measures is the primary responsibility of the State—in the case of a Federal Plan, it is EPA's responsibility to select the Hg control measures for each coal-fired EGU and assure compliance with those measures. (See, 40 CFR 60.27(e).) Thus, the Federal Plan would be designed by EPA to achieve the same total Statewide EGU Hg emission budgets as those described in CAMR and discussed below. The specific emission reductions assigned in the Federal Plan could be different from what a State might choose. In selecting the specific Hg emission reductions for the CAMR Federal Plan, EPA is proposing to adopt as the Federal Plan the CAMR State model cap-and-trade program rule, modified slightly to allow for Federal instead of State implementation.

EPA believes it is essential that compliance with the Hg control strategy be verified. Tracking emissions is the principal mechanism to ensure compliance with the Hg emissions budget. The Hg emissions control requirements for coal-fired Utility Units proposed in the CAMR Federal Plan include requirements that the affected EGU sources directly report emissions data to EPA that can be used to determine compliance with the Hg emissions decreases required by the proposed Federal Plan. The specifics of the Hg cap-and-trade program for the Federal Plan are discussed below in Section III. The Federal Plan includes the proposed methodology for allocating Hg allowances that EPA would use to allocate allowances to units but does not include the allocations themselves. EPA will provide the allocations for individual units in later regulatory actions; the allocations will meet the State Hg budgets that are established in CAMR for coal-fired Utility Units.

E. National Mercury Budget and Compliance Dates

In this action, the Agency is proposing a Federally-administered program to meet the CAMR Hg emission reduction requirements in accordance with the caps and timeline under

CAMR. This action does not establish those emission reduction requirements or schedule, which were established by the CAMR rulemaking. Thus, the Agency is not requesting comment on the emission reduction requirements or the schedule for implementing these reductions.

For CAMR, EPA determined that there was authority under CAA section 111(d) for a Hg cap-and-trade program. Thus, EPA interpreted the term "standard of performance," as applied to existing EGU sources, to include a cap-and-trade program. EPA also determined that a cap-and-trade program based on Hg control technology available in the relevant timeframe is the best demonstrated system for reducing Hg emissions from existing coal-fired Utility Units. CAMR adds Hg to the list of pollutants covered under 40 CFR part 60, subpart Da, by establishing emission limits for new sources and emission guidelines for existing EGU sources.

CAMR established a mechanism by which Hg emissions from new and existing Hg Budget units are capped at specified, nation-wide levels. A first phase cap of 38 tons per year becomes effective in 2010, and a second phase cap of 15 tons per year becomes effective in 2018. Facilities must demonstrate compliance with the standard by holding one "allowance" for each ounce of Hg emitted in any given year. Allowances are readily transferable among all regulated facilities.

The added benefit of the cap-and-trade approach is that it dovetails well with the sulfur dioxide (SO₂) and nitrogen oxides (NO_x) emission caps under CAIR (see 70 FR 25162, May 12, 2005). CAIR establishes a broadly-applicable cap-and-trade program that significantly limits SO₂ and NO_x emissions from the power sector. The advantage of regulating Hg at the same time and using the same basic regulatory mechanism as for SO₂ and NO_x is that significant Hg emissions reductions, especially reductions of oxidized Hg, can and will be achieved by the air pollution controls designed and installed to reduce SO₂ and NO_x emissions. Because significant Hg emissions reductions can be obtained as a "co-benefit" of controlling emissions of SO₂ and NO_x, the coordinated regulation of Hg, SO₂, and NO_x allows Hg reductions to be achieved in a timely and cost-effective manner.

As discussed in CAMR, a Phase I cap based on "co-benefits" fulfills EPA's obligation to set a standard of performance based on the best demonstrated system of emissions reduction. The Phase I Hg cap is

supported by current information on the availability of control technologies, incremental cost-effectiveness of Hg emissions reductions beyond co-benefits, and analysis of engineering, financial, and other factors needed to install controls. The Phase I Hg emissions cap of 38 tons reflects the co-benefits level and is established as a fixed cap in CAMR.

In CAMR, EPA established a Phase II Hg emissions cap based on the reductions in Hg emissions resulting from the CAIR program together with reductions that can be reasonably obtained through the use of Hg-specific controls. This Hg cap of 15 tons is effective in 2018. As discussed in CAMR, EPA concluded that the 2018 cap is warranted because Hg-specific air pollution control technologies such as activated carbon injection (ACI) will be available for general use sufficiently before 2018, thereby allowing for their deployment to comply with the Phase II cap in 2018. The 15-ton cap in 2018 is also supported by cost considerations, because the cap level will not have significant impacts on energy supply and the cost of energy to the consumer.

F. State and Indian Country Emission Budgets

In CAMR, EPA outlined a method for apportioning the nation-wide budget to coal-fired Utility Units located in individual States and in Indian country. EPA maintains that the Hg emissions budget provides an efficient method for achieving necessary reductions in Hg emissions, while providing substantial flexibility in implementing the program. The methodology for determining State budgets is described in CAMR (*see* 70 FR 28606). The 2010 State budgets were revised slightly as a result of the reconsideration process (*see* Notice of Final Action on Reconsideration, 71 FR 33388, June 9, 2006). EPA is not inviting comment on the CAMR State and Indian country Hg budgets in connection with this proposed rule.

In CAMR, EPA finalized a formula for determining the Hg budget for coal-fired Utility Units located in a State or Indian country for 2010 and 2018. Under that formula, the EGU Hg budget for the State or Indian Country equals the sum of the weighted shares for each existing affected EGU in the State or Indian country of total baseline heat input, where a unit's baseline heat input and the total baseline heat input are adjusted to reflect the ranks of coal combusted by the unit during the baseline period, to total heat input of all affected units. As discussed in CAMR, EPA finalized adjustment factors of 1 for bituminous, 1.25 for subbituminous, and 3 for lignite

coals (*see* also "Technical Support Document for the Clean Air Mercury Rule Notice of Final Rulemaking, State, and Indian Country Emissions Budgets," EPA, March 2005; EPA-HQ-OAR-2002-0056-6154).

Each of the 50 States and the District of Columbia covered by the final CAMR has been assigned a State Hg emissions budget for coal-fired Utility Units. An EGU Hg emissions budget has also been assigned for existing coal-fired Utility Units located in Indian country. States have the flexibility to meet these State budgets by participating in a trading program or establishing another methodology for Hg emissions reductions from coal-fired Utility Units, as discussed elsewhere in this action. States have the ability to require Hg reductions beyond those required by the State budget determined by EPA. Tribes that choose to seek and obtain TAS status for that purpose have the same flexibility in developing an appropriate Tribal Plan. The State EGU Hg emission budgets are a permanent cap regardless of growth in the electric sector and, therefore, States have the responsibility of incorporating new coal-fired units in their EGU Hg emission budgets. Similarly, the Hg emission budgets for coal-fired Utility Units located in Indian country act as a permanent cap, and EPA, or a Tribe that has obtained TAS status and is implementing an approved Tribal Plan, has responsibility for incorporating new units into the EGU Hg emission budget.

The final State, Indian country, and District of Columbia EGU Hg emission budgets are presented in Table II-1 of this preamble. In CAMR (as revised in the CAMR Notice of Final Action on Reconsideration, 71 FR 33388), EPA established budgets for the 50 States, the District of Columbia, the Navajo Nation and the Ute Indian Tribe.

In CAMR, for areas of Indian country that do not currently have any coal-fired electricity generation, EPA noted its intent to address any future planned construction of coal-fired Utility Units in those areas on a case-by-case basis, by working with the relevant Tribal government to regulate the Utility Units through either a Tribal Plan, if an eligible Tribe chooses to submit one, or a Federal Plan. The Agency further explained that "EPA does not believe that there is sufficient information to design allocation provisions for new generation which locates in Indian country at this time. Therefore, rather than create a Federal allowance set-aside for Tribes, the EPA will work with Tribes and potentially affected States to address concerns regarding the equity of allowance allocations on a case-by-case

basis as the need arises. The EPA may choose to revisit this issue through a separate rulemaking in the future." (*See* 70 FR 28606).

In this action, EPA is proposing to address the issue of how new generation in areas of Indian country without an emissions budget will be treated under CAMR and the CAMR Federal Plan. Since CAMR was finalized, EPA has become aware of potential development of new generation in Indian country, and the need to provide such generation with certainty related to compliance costs.

After detailed consideration of this issue, EPA proposes to treat new generation in areas of Indian country without an emissions budget in the same way it treats new generation in States without emissions budgets. New units in areas of Indian country without an emissions budget and participating in the CAMR trading program would not receive an allowance allocation, though these units, like new units in States without emissions budgets, would be required to hold allowances equal to emissions. For the two Tribes that have existing generation and, thus, an emissions budget, they can provide new sources with allowances through a new unit set-aside if they choose to seek, and ultimately are granted, treatment as State (TAS) status for that purpose and then submit a tribal implementation plan (TIP) which incorporates the CAMR trading program. EPA does not believe that there is a strong argument for treating new units locating in areas of Indian country without Hg emissions budgets differently from new units locating in States without emissions budgets. Further, EPA analysis suggests that the cost of allowance purchase will be a very small share of the total annual cost associated with a new unit, on the order of 1 percent of total annualized costs in 2010. (*See* TSD and spreadsheet titled "Cost Analysis of Potential New Subbituminous Coal Plant" available in the docket.)

EPA is also taking comment on the alternative of creating a set-aside budget for new unit generation locating in areas of Indian country that do not have an emissions budget. A potential option is that EPA could create a 300-pound (lb) annual set-aside budget (approximately the annual Hg emissions for 10 new 300 MW coal-fired units with 90 percent Hg control) for new unit generation in such areas. This would require additional revisions to the CAMR State budgets. The set-aside budget would be created by reducing each State's EGU Hg emission budget by about 0.4 percent for years 2012-2017 and by 1.0 percent for 2018 and thereafter, to maintain

nationwide annual budgets of 38 tons and 15 tons, respectively. Such a set-aside budget would not be created until 2012, in order to allow States time to adjust their budgets and planned control strategies. Considering the lead-time required to develop new coal-fired generation, a new unit set-aside budget commencing in 2012 would likely be well-timed to coincide with the earliest that new generation might come on-line.

EPA would distribute this set-aside budget to new sources based on a source's emissions from the previous year, consistent with the approach that is used to determine the distribution of

the new source set-aside discussed in section III.C. If this budget were oversubscribed for a given year, EPA would distribute the budget on a pro-rata basis. However, if this budget were undersubscribed for a given year, EPA would not redistribute the remaining portion of the budget because of the further changes to State Plans that doing so would require.

EPA requests comment on the creation of such a budget, the appropriate size and start date, as well as whether the set-aside should be available to new generation in States that do not have an Hg emission budget,

in addition to new generation in areas of Indian country with no Hg emission budget.

As discussed in CAMR, EPA finalized Hg emission budgets of zero tons for three States (Idaho, Rhode Island, and Vermont) and the District of Columbia. New coal-fired Utility Units locating in these areas will, nevertheless, be required to hold allowances equal to their Hg emissions. As participants in the cap-and-trade program, these sources could buy Hg allowances and meet their requirements. This is similar to the situation that new units face under the existing Acid Rain Program.

TABLE II-1.—STATE ANNUAL EGU HG EMISSION BUDGETS

State	Budget (tons)	
	2010–2017	2018 and thereafter
Alaska	0.010	0.004
Alabama	1.289	0.509
Arkansas	0.516	0.204
Arizona	0.454	0.179
California	0.041	0.016
Colorado	0.706	0.279
Connecticut	0.053	0.021
Delaware	0.072	0.028
District of Columbia	0	0
Florida	1.232	0.487
Georgia	1.227	0.484
Hawaii	0.024	0.009
Idaho	0	0
Iowa	0.727	0.287
Illinois	1.594	0.629
Indiana	2.097	0.828
Kansas	0.723	0.285
Kentucky	1.525	0.602
Louisiana	0.601	0.237
Massachusetts	0.172	0.068
Maryland	0.49	0.193
Maine	0.001	0.001
Michigan	1.303	0.514
Minnesota	0.695	0.274
Missouri	1.393	0.550
Mississippi	0.291	0.115
Montana	0.377	0.149
Navajo Nation Indian Country	0.600	0.237
North Carolina	1.133	0.447
North Dakota	1.564	0.617
Nebraska	0.421	0.166
New Hampshire	0.063	0.025
New Jersey	0.153	0.060
New Mexico	0.299	0.118
Nevada	0.285	0.112
New York	0.393	0.155
Ohio	2.057	0.812
Oklahoma	0.721	0.285
Oregon	0.076	0.030
Pennsylvania	1.779	0.702
Rhode Island	0	0
South Carolina	0.58	0.229
South Dakota	0.072	0.029
Tennessee	0.944	0.373
Texas	4.656	1.838
Utah	0.506	0.200
Ute Indian Tribe Reservation Indian Country	0.060	0.024
Virginia	0.592	0.234
Vermont	0	0
Washington	0.198	0.078

TABLE II-1.—STATE ANNUAL EGU Hg EMISSION BUDGETS—Continued

State	Budget (tons)	
	2010–2017	2018 and thereafter
Wisconsin	0.89	0.351
West Virginia	1.394	0.550
Wyoming	0.952	0.376

III. Federal Hg Cap-and-Trade Program

A. Overall Structure of the Federal Hg Cap-and-Trade Program

In this action, EPA proposes to regulate coal-fired Utility Units using a market-based, cap-and-trade program with a declining cap. As discussed in CAMR (70 FR 28617), this type of program is a proven method for achieving highly cost-effective emissions reductions while providing sources compliance flexibility and certainty.

In 40 CFR part 62, subpart LLL, EPA proposes a Federal Hg cap-and-trade program as a means of controlling Hg mass emissions from coal-fired Utility Units (the proposed rules use the term “electric generating unit” or “EGU”) in a State for which this Federal Plan is promulgated. Participation in the Hg Budget Trading Program would be mandatory for all Utility Units covered by the final Federal Plan resulting from this proposal. Mercury allowances—each allowance representing a limited authorization to emit one ounce of Hg—would be the currency used in the trading program. A total number of Hg allowances would be allocated to coal-fired Utility Units in a State equal to the amount of the State’s EGU Hg trading program budget under the Federal Plan. Utility Units participating in either the Federal Hg cap-and-trade program or the CAMR State Hg cap-and-trade program would be able to trade Hg allowances with each other, and use, for compliance, Hg allowances issued under either type of program.

Under 40 CFR part 62, subpart LLL, as proposed, EPA would be responsible for all aspects of program implementation, with the exception of permitting. Permitting responsibility will lie with State and local air permitting authorities with title V permit programs found by EPA to meet the requirements of title V and its implementing regulations, or in appropriate circumstances, with tribal authorities implementing a delegated 40 CFR part 71 permit program. Mercury Budget sources that currently have title V permits will be required to obtain an amended permit which includes the Hg

Budget Trading Program requirements. Any Utility Unit that does not currently have a title V permit will be required to obtain one which includes the necessary Hg Budget Trading Program requirements. While they must be included in a Hg Budget source’s title V permit, the requirements of the Federal Hg Budget Trading Program rule are Federally enforceable independent of that permit.

As explained further in Section II of this preamble, the Agency is proposing to provide an additional option under which States could choose to submit a State allocation methodology, rather than a complete State Plan addressing all elements of the CAMR Hg trading program. In this way, the State could choose the methodology for allocating Hg allowances to its EGU sources which it deems most appropriate, while leaving other elements of CAMR implementation to a Federal Plan.

Under 40 CFR part 62, subpart LLL, as proposed, sources in the Federal Hg Budget Trading Program would be required to monitor and report their emissions in accordance with relevant portions of 40 CFR part 75. Under CAMR, EPA promulgated revisions to 40 CFR part 75 that establish Hg mass monitoring requirements and provide some flexibility to regulated sources. Consistent and accurate monitoring of emissions is necessary for accountability regarding compliance with the requirement to hold Hg allowances and to ensure that an ounce of Hg emissions attributed to one source in one State is equivalent to an ounce attributed to another source in the same or another State.

EPA intends that if States choose to meet their Hg emission reduction obligations under CAMR by adopting the State Plan model cap-and-trade rule and participating in the EPA-administered trading program, the EPA-administered State Plan trading program will be fully integrated with the Federal Hg trading program that EPA may promulgate in a final Federal Plan. Integration is possible because CAMR and the corresponding Federal Plan both seek to achieve the same level of

Hg emission reductions from the same sources (*i.e.*, coal-fired Utility Units), and the State Hg model trading rule and the Federal Hg trading rule contain essentially the same provisions.

In particular, EPA believes that, in order to be eligible to participate in an effective Hg emissions cap and trade program, a source must meet two principal criteria. The first criterion is that each source must be able to account accurately and consistently for all of its emissions to ensure the trading program goal of maintaining emissions within a cap. Emissions monitoring must be accurate and consistent among all sources so that each allowance represents the same amount of emissions. The second criterion for participation in a trading program is that each source must identify a responsible party who would be accountable for demonstrating and ensuring compliance with program requirements. EPA believes that this action—like the State Hg model trading rule—imposes requirements that meet those criteria. The Agency also believes that, because this action contains the same program elements as are in the State Plan model trading program and is designed to meet the same environmental goals and cap the same sources at the same levels as that model trading program, it is appropriate to design a CAMR Federal Plan that is integrated with the CAMR State Plan trading program.

Under this scenario of an integrated trading program, EGU sources subject to the Federal Hg trading program under the Federal Plan and EGU sources in States choosing to participate in the EPA-administered CAMR State Plan trading program could trade Hg allowances with one another under common emissions caps across participating States. Integration of the trading programs reduces the possibility of inconsistent or conflicting deadlines or requirements, increases the potential cost savings for sources, and streamlines program administration. Unnecessary inconsistencies between the two types of trading programs could hamper sources’ ability to plan and achieve the

needed reductions as cost effectively as possible and could complicate program administration. In addition the integration of the programs means that, if a State would submit a State Plan including the EPA-administered Hg emissions trading program after EPA had established a Federal Hg trading program under a Federal Plan, disruptions to sources that would shift from regulation under a Federal Plan to regulation under a State Plan would be minimized.

1. Road Map of Federal Hg Cap-and-Trade Rule

The following is a brief "road map" to the proposed Federal Hg cap-and-trade program and is provided as a convenience to the reader. Please refer to the detailed provisions of the proposed rule for further information.

a. *State Participation.* States may be granted the authority to implement Hg allowance allocations through a State allocation methodology submitted under the Federal Plan. In this submission, a State could adopt its own methodology or adopt this proposed Federal allocation methodology and allocate Hg allowances.

State and local agencies would be the permitting authorities for the majority of Hg Budget sources, with title V permits that would include, in the Hg-Budget-permit portion, Hg Budget Trading Program requirements.

b. *Allocation of Allowances to Sources.* Mercury allowances would be allocated by the Administrator based on the methodology proposed in this Federal Plan preamble and described in the proposed regulatory text, unless a State allocation methodology is approved.

c. *Emission Monitoring and Reporting by Sources.* Utility Units would monitor and report their Hg mass emissions using 40 CFR part 75.

Source information management, emissions data reporting, and allowance trading will be conducted through on-line systems similar to those currently used for the Acid Rain SO₂ and NO_x Budget Trading programs.

d. *Compliance and Penalties.* For the Federal Hg cap-and-trade program, any Utility Unit found to have excess emissions would have to surrender allowances from the next control period equal to three times the ounces of excess emissions.

B. Sources Affected Under the Federal Hg Cap-and-Trade Rule

As discussed above, EPA is proposing a Federal Hg cap-and-trade program as a means of controlling Hg emissions from coal-fired Utility Units in each

State and Indian country for which a Federal Plan is promulgated. For the reasons discussed in CAMR (70 FR 28625) and the CAMR Notice of Final Action on Reconsideration (71 FR 33388), EPA is proposing to use the same applicability provisions for the Federal Plan in 40 CFR part 62, subpart LLL, and the State Plan in 40 CFR part 60, subpart HHHH.

As discussed in detail below, certain coal-fired units, in a State or Indian country for which a Federal Plan is promulgated, will be Hg Budget units (*i.e.*, units subject to the Federal Hg Budget Trading Program), and any source that includes one or more such units will be an Hg Budget source, subject to the requirements of 40 CFR part 62, subpart LLL.

With certain clarifications and exemptions, the provisions of 40 CFR part 62, subpart LLL (and 40 CFR part 60, subpart HHHH), generally apply to Utility Units (boilers or combustion turbines serving on or after November 15, 1990 a generator with a nameplate capacity greater than 25 megawatts electrical (MWe) and producing electricity for sale) that are coal-fired (*i.e.*, units where any amount of coal or coal-derived fuel is used at any time). The definition of "coal-fired" is similar to the definition that is used in the Acid Rain Program.

In the CAMR Notice of Final Action on Reconsideration (71 FR 33388), EPA finalized revisions to the applicability provisions in the CAMR State Plan model trading rule (*see* Section IV below). The applicability provisions in this proposed Federal Hg trading program are identical to the revised applicability provisions for the CAMR model State trading rule.

First, in the Notice of Final Action on Reconsideration, EPA clarified the applicability provisions in the State Plan Hg model trading rule (40 CFR 60.4104) to specifically exclude from the trading program certain solid waste incineration units (municipal waste combustors (MWC)) subject to an applicable NSPS, an EPA-approved State Plan, or certain Federal Plans. In this action, EPA is proposing to include this same exemption in the Federal Hg trading rule.

Second, in the Notice of Final Action on Reconsideration, EPA discussed the potential inclusion of certain industrial boilers in both CAMR and the CAA section 112 Industrial Commercial Institutional Steam Generating Unit MACT standards (the Boiler MACT, 70 FR 55217, 40 CFR part 63, subpart DDDDD). EPA addressed this potential overlap in two ways. First, EPA issued language amending 40 CFR part 63,

subpart DDDDD (*see* National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration of Emissions Averaging Provision and Technical Corrections) in response to a petition for reconsideration for the Boiler MACT. The amended language specifically excludes units subject to CAMR from regulation under the Boiler MACT. Second, EPA revised the applicability provisions in the State Plan Hg model trading rule (40 CFR 60.4104) to include only stationary, coal-fired boilers or stationary, coal-fired combustion turbines serving, at any time on or after November 15, 1990, a generator with a nameplate capacity of more than 25 MWe producing electricity for sale. This date would be consistent with the dates used in the Acid Rain Program and CAIR. EPA is proposing the same language in the applicability provisions of this Federal Hg trading rule.

Finally, as discussed in the Notice of Final Action on Reconsideration, EPA made certain other clarifying changes to applicability provisions in 40 CFR 60.4104 with regard to cogeneration units in order to ensure that the regulatory text unambiguously reflects EPA's intent, as expressed in the CAMR preamble (*see* 70 FR 28612, 28625–26) regarding cogeneration units. EPA is proposing today to include the same language in the applicability provisions of the Federal Hg trading rule.

In particular, certain cogeneration units would be exempt from the proposed Federal Hg cap-and-trade program. Cogeneration units are units having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through sequential use of energy which also meet certain operating and efficiency standards. The program would have different applicability provisions for non-cogeneration units and cogeneration units. Any cogeneration unit, serving (since the later of November 15, 1990 or the start-up of the unit), a generator with a nameplate capacity of greater than 25 MWe supplying more than 1/3 of its potential electric output capacity and more than 219,000 MW-hr annually to any utility power distribution system for sale, would be subject to the requirements of the proposed Federal CAMR trading rule. Otherwise, the unit would qualify for an exemption under the proposed Federal rule.

In summary, EPA is proposing that, except for a unit that qualifies as a cogeneration unit and meets certain other requirements or an MWC that is subject to an applicable NSPS, an EPA-

approved State Plan, or certain Federal Plans, a Hg Budget unit is any stationary, coal-fired boiler or stationary, coal-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

C. Allocation of Emission Allowances

For States that choose under CAMR to participate in the EPA-administered State Plan Hg cap-and-trade program, EPA provided an example methodology for allocating Hg allowances to individual units in the Hg model trading rule. For this proposed Federal Plan, the Agency is proposing to use an Hg allocation methodology that is the same as the example methodology in the model trading rule. Within each affected State, the Agency would allocate to existing and new units a total amount of allowances that equals the tonnage in the State's Hg budget. The Agency's proposed timeline for allocating and recording Hg allowance allocations and proposed Hg allowance allocation methodology are described below.

1. Timing for Initial Allocation Distributions

The Agency proposes that, for all but the first 3 years of Hg allocations, EPA will record unit-by-unit allocations of allowances for existing units for a given year in the source compliance accounts no less than 3 years before January 1 of that year (*i.e.*, the first year for which the allowance can be used to meet the allowance-holding requirement). This approach provides sources sufficient lead time to facilitate their participation in the allowance market (*e.g.*, by buying or selling allowances or allowance futures). For the first set of Hg allocations under the Federal Plan (covering control periods 2010–2014), the Agency proposes to record unit-by-unit allocations in source accounts as follows: by December 1, 2007, for allocations for 2010; by December 1, 2008, for allocations for 2011; by December 1, 2009, for allocations for 2012–2013; and by December 1, 2010 for allocations for 2014.

As explained in CAMR, States had until November 17, 2006 to submit State Plans to the Agency, at which time a State that chooses to participate in the EPA-administered Hg cap-and-trade program would submit its Hg trading rule (including Hg allocation methodology) and first set of allocations. As mentioned above, the Agency is proposing to provide an additional option under which a State

could choose to submit only a State allocation methodology, rather than a complete Hg trading rule. In this way, the State could choose to allocate Hg allowances to its EGU sources in the manner it deems most appropriate, while leaving other elements of the trading program to be governed by the Federal Plan. Under this option, the Agency proposes that States would have until May 30, 2007 to submit the State allocation methodology. The Agency intends to work with the States to assure (consistent with timing requirements for allowance recordation) that, for any State that chooses to allocate Hg allocations (either under an approved State Plan or an approved State allocation methodology), the State's allocations, rather than EPA-determined Federal Plan allocations, would be recorded in EGU source accounts.

As discussed in CAMR, allowance allocation decisions in a cap-and-trade program raise primarily distributional issues, as economic forces are expected to result in economically least-cost and environmentally similar outcomes regardless of the manner in which allowances are initially distributed. Consequently, in a State allocation methodology submitted in the context of a Federal Plan (like in a State Plan under CAMR), States are given latitude in developing their Hg allocation approach. Specifically, States will have flexibility concerning whether allowances are distributed to sources for free and concerning the frequency of Hg allocations, the basis for distributing the Hg allowances, and the use and size of Hg allowance set-asides. The final CAMR preamble provides a further discussion of Hg allocation approaches. (*See* 70 FR 28627).

For the reasons discussed in Section II.C above, EPA intends to finalize a CAMR Federal Plan. By finalizing a Federal Plan, the EPA would in no way preclude a State from developing and submitting for approval its own State Plan for Utility Units that either adopts the Hg model trading rule (with the flexibility allowed by CAMR concerning allocation of Hg allowances) or meets the CAMR Hg emission reduction requirements for Utility Units through different measures of the State's choosing.

The Agency's preference is for States participating in the EPA-administered cap-and-trade program to make decisions about Hg allocations for their EGU sources. EPA intends to determine Federal Plan unit-by-unit Hg allocations (with opportunity for public objections). However, we intend to only record those EPA-determined allocations in allowance accounts for EGU sources

located in a State without a timely, approved CAMR State Plan or a timely, approved State allocation methodology.

In considering when to record Federal Plan Hg allocations in EGU source accounts, the Agency seeks to balance the following two goals: (1) To provide certainty to sources regarding their CAMR Hg allocations and time for EGU sources to make compliance decisions, and (2) to provide States choosing to allocate CAMR Hg allowances with time to do so and EPA with time to approve State Plans that include State-determined allocations. Taking into consideration the submission deadlines for a State Plan or a State allocation methodology, the amount of time needed by the Agency to approve a State Plan or State allocation methodology, and the amount of time remaining before the initial CAMR control period, EPA developed a proposed schedule (summarized above and in Table III–1) for recording Hg allocations in source accounts for the Federal Hg trading program. EPA seeks comment on this proposed schedule.

The Agency will endeavor to work with States to ensure that we can approve State Plans or State allocation methodologies and timely record State Hg allocations in EGU source accounts. EPA intends to act in such a way that, once EPA-determined Federal Plan Hg allocations are recorded for a particular control period (which would only occur in the absence of a timely, approved State Plan or a timely, approved State allocation methodology), we would not approve overlapping State allocations for that same control period.⁵ Rather, EPA will work with the States to approve State Plans, or State allocation methodologies, providing State Hg allocations for control periods that begin upon the expiration of the last control period for which EPA-determined allocations have been recorded in EGU source accounts. It would be highly disruptive to the allowance market if EPA-determined Hg allowances that had already been recorded and then traded in the market could subsequently be rendered invalid due to approval of overlapping State-determined allocations for the same control period.

The discussion in this section is focused on the timing for recordation of EPA-determined Hg allocations in coordination with approval of State Plans or State allocation methodologies

⁵ As discussed in CAMR, each State has flexibility in the State Plan to allocate its allowances however it chooses (within its State budget) so long as certain timing requirements are met. A State would have the same flexibility in developing a State allocation methodology in the context of the Federal Plan.

and recordation of State allocations, assuming States choose to participate in the EPA-administered CAMR trading program. The Agency would also carefully consider the timing of a transition from Federal- to State-implemented programs for any State choosing to use a method other than the EPA-administered State Plan model trading program to meet CAMR obligations.

As discussed further below, EPA intends to record EPA-determined Federal Plan Hg allocations for 2010 and 2011 one year at a time. In this manner, even if a State does not have an approved State Plan in time for the Agency to record State allocations for the first or second control period, it would be possible to record State allocations for subsequent control periods. The Agency strongly urges States to submit State Plans or State allocation methodologies to the Agency in a timely manner. We intend to work with States and ensure that there will not be overlapping Hg allocations for any control period.

The State Plan Hg model trading rule, revised somewhat in the Notice of Final Action on Reconsideration (71 FR 33388), and 40 CFR 60.24(h), require States to submit their State Plans by November 17, 2006. For a State that chooses to participate in the EPA-administered Hg model trading program, this State Plan submittal would be required to comprise a full trading program including the State's Hg allocation methodology. The EPA anticipates that it may require about 6 months to approve a State Plan submission.

As discussed above, the Agency is proposing that States may choose to submit only a State allocation methodology, which would allocate Hg allowances to individual Utility Units in the State in the context of the Federal Plan. In this way, a State could choose to allocate Hg allowances to its Utility Unit sources in the manner it deems most appropriate while letting the Federal Plan control all other aspects of the trading program. Through submission of a State allocation methodology, a State can also ensure that its Hg allocations will apply even

in circumstances where its State Plan is still undergoing EPA review. The Agency proposes that States would have until May 30, 2007 to submit their State allocation methodologies. The EPA proposes to allow States to submit State allocation methodologies later than State Plans because we anticipate that we will be able to complete the approval process more quickly for State allocation methodologies due to their narrower scope. The Agency proposes that the State would have until October 31, 2007 to submit the first set of Hg allocations pursuant to an approved State allocation methodology submission.

Assuming that States submit State allocation methodologies by the May 2007 deadline and that EPA can approve these submissions in about 6 months and assuming that some additional time may be required for coordination between States and EPA before State allocations can be recorded in EGU source accounts, it is reasonable to assume that EPA will be able to record such allocations by December 1, 2007. Therefore, EPA proposes to record Hg allocations in EGU source accounts for the 2010 control period by December 1, 2007. If a State's timely Hg allocations are approved, then the Agency would record State Hg allocations for the 2010 control period. However, for any State for which a State Plan or State allocation methodology is not approved by December 1, 2007, the EPA would record EPA-determined Hg allocations for 2010. Recording Hg allocations by December 1, 2007 for the 2010 control period would provide affected EGU sources with certainty of their allocations just over 2 years in advance of the beginning of the control period.

The Agency proposes to record EPA-determined Hg allocations in source accounts 1 year at a time for the 2010 and 2011 control periods in order to provide flexibility to States. If EPA records EPA-determined allocations for the 2010 control period and subsequently approves a State's timely State Plan or timely State allocation methodology, the Agency would record the State's allocations for future years. The Agency does not intend to approve State Hg allocations for any control

period that would overlap with EPA-determined allocations already recorded in source accounts.

EPA proposes to record EPA-determined Hg allocations in source accounts by December 1, 2008 for the 2011 control period. If a State's Hg allocations are approved by then, the Agency may record State allocations for the 2011 control period. However, for any State for which a State Plan or State allocation methodology is not approved by December 1, 2008, EPA would record EPA-determined Hg allocations for 2011. Therefore, if a State obtained State Plan or State allocation methodology approval after December 1, 2007 but before December 1, 2008, the State's Hg allocations may be recorded in source accounts for the 2011 control period.

The Agency proposes to record Hg allocations in source accounts by December 1, 2009 for the 2012 and 2013 control periods. Therefore, if a State obtained State Plan or State allocation methodology approval after December 1, 2008 but before December 1, 2009, the State's Hg allocations may be recorded in source accounts for the 2012 and 2013 control periods. However, for any State for which a State Plan or State allocation methodology is not approved by December 1, 2009, the EPA would record EPA-determined Hg allocations for 2012 and 2013.

Beginning in 2010 and each year thereafter, EPA proposes to record EPA-determined Hg allocations for the Federal Hg trading program in source accounts by December 1 for the control period in the fourth year after the recordation year, thereby providing allowances about 3 years in advance for sources to plan their compliance strategies. For example, EPA would record allocations for the 2014 control period by December 1, 2010.

Table III-1, below, summarizes the Agency's proposed timing for recording Hg allocations in EGU source accounts for the Federal Hg trading program. The table shows the timing through the 2016 control period. Timing for subsequent control periods would follow the same pattern as is shown for 2013-2016 (*i.e.*, allocations would be recorded by 3 years in advance of the control period).

TABLE III-1.—PROPOSED RECORDATION DEADLINES FOR HG ALLOCATIONS FOR THE FEDERAL HG TRADING PROGRAM⁶

CAMR control period	Deadline by which Hg allocations are recorded for Federal Hg trading program (EPA-determined allocations or State-determined allocations)	Time between recordation date and beginning of control period
2010	December 1, 2007	About 2 years.
2011	December 1, 2008	About 2 years.
2012	December 1, 2009	About 2 years.
2013	December 1, 2009	About 3 years.

TABLE III-1.—PROPOSED RECORDATION DEADLINES FOR Hg ALLOCATIONS FOR THE FEDERAL Hg TRADING PROGRAM⁶—
Continued

CAMR control period	Deadline by which Hg allocations are recorded for Federal Hg trading program (EPA-determined allocations or State-determined allocations)	Time between recordation date and beginning of control period
2014	December 1, 2010	About 3 years.
2015	December 1, 2011	About 3 years.
2016	December 1, 2012	About 3 years.

The Agency intends to publish its determination of Hg allocations for 2010–2014 in a single NODA with opportunity for submission of objections to the determination. Starting in 2011, the Agency would publish its determination of Hg allocations with opportunity for submission of objections prior to July 31 of each year for the control period 4 years from the year of publication. For example, we would publish EPA-determined Hg allocations for the 2015 control period by July 31, 2011.

For States choosing to submit a State Plan for CAMR, the Agency suggests they could consider designating Hg allocation provisions as being submitted both as part of a State Plan and as a State allocation methodology submission in the context of the Federal Plan. Because the Agency anticipates that we would be able to approve State allocation methodologies more quickly than State Plans, a State could, by designating its Hg allocation provisions as a State allocation methodology (as well as being part of a State Plan), potentially allow for the allocation provisions to be approved more quickly. This might have benefit, for example, in a situation in which it was not feasible to approve a State's State Plan before December 1, 2007. If the Hg allocation provisions could be approved by December 1, 2007, then the State's Hg allocations may be recorded in source accounts in the context of the Federal Plan. Until the State Plan was subsequently approved, the other elements of the trading program would be controlled by the Federal Plan. Provisions for withdrawal of the Federal Plan for a State are discussed elsewhere in this preamble.

2. Hg Allowance Allocation Methodology

In this action, the Agency is proposing its Hg allocation methodology for the Federal Hg cap and trade program. In CAMR, EPA included an example allocation methodology for States (offered for informational guidance only). This methodology distributes allocations to existing coal-

fired Utility Units based on historic baseline heat input and reflects adjustments based on coal type. Allocations are calculated annually to take into account new units on a modified-output basis, where output would be converted into heat input using specified conversion factors. This methodology also utilizes a new unit set-aside for new coal-fired Utility Units that have not yet established baseline data to be used for updating or are otherwise not yet included in the updating. In this action, for the reasons discussed in CAMR (70 FR 28627), EPA is proposing the same methodology for the Federal Plan.

For existing units, the proposed Hg allocation methodology uses input-based allocations, adjusting baseline heat input for each year of data by factors based on coal type, as discussed below. As in the example allocation methodology in the CAMR model rule, for existing units, the Agency proposes to calculate baseline heat input as the average of the 3 highest amounts of a unit's adjusted heat input for 5 years (2000–2004). EPA believes that this approach provides baseline heat input data that reasonably represents normal operating conditions. Relevant data for these years is currently available. EPA also asks for comment on two modifications to this approach: (1) Using heat input based on 3 or 4 years of data rather than 5 years; or (2) using heat input data from 2001 through 2005 rather than 2000 through 2004.

For new units that have established 5 years of baseline data, EPA proposes that allocations will be based on generation using a modified output approach (described below) to convert output to heat input, and allocations to existing units would be updated to take into account new generation, because these new units would receive allocations from the pool of allowances shared with existing sources. New units that have not yet established baseline data or that are otherwise not yet included in the updating would receive allowances from a new unit set-aside.

Under the proposed method, allocations are made from the given

State's EGU Hg budget covered by a Federal Plan for the first five control periods (2010 through 2014) of the Federal Hg cap-and-trade program for existing EGU sources on the basis of historic baseline heat input. Consistent with CAMR, EPA is proposing January 1, 2001 as the cut-off on-line date for considering Utility Units as existing units, so that there are at least 5 years of operating data, *i.e.*, data for 2000 through 2004 (the Agency also seeks comment on, if data for 2001 through 2005 were used instead, the use of January 1, 2002 as the cut-off on-line date). The allowances for 2015 and later will be determined from the State's EGU Hg budget annually, 4 years in advance, taking into account output data from new units with established baselines (modified by the specified conversion factors to yield heat input numbers). As new coal-fired Utility Units enter into service and establish baselines, they are allocated Hg allowances in proportion to their share of the total calculated heat input (which is existing units' adjusted heat input plus new units' modified output). Once a baseline heat input is established for a new or existing EGU, this baseline heat input does not change. Allowances allocated to existing Utility Units slowly decline as their share of total calculated heat input decreases with the entry of new Utility Units.

New coal-fired Utility Units that have entered service in States or areas of Indian country that have an Hg emissions budget, but have not yet started receiving Hg allowances through the update, would receive allowances each year after the first year of commercial operation from a new unit set-aside. Consistent with CAMR, the new unit set-aside would be equal to 5 percent of a State's Hg emission budget for the years 2010–2014 and 3 percent of a State's Hg emission budget for the subsequent years. New Utility Units would begin receiving Hg allowances from the set-aside for the control period immediately following the control period in which the new Utility Unit commences commercial operation, based on the Utility Unit's Hg emissions

from the preceding control period (a new Utility Unit would not be allocated allowances for the control period in which it commences operation). For instance, a source might be required to hold Hg allowances during its start-up year, but would not receive an allocation for that year. Under the proposed CAMR Federal Plan, EPA would allocate Hg allowances from the set-aside to all new Utility Units in any given year as a group. If there are more Hg allowances requested than in the set-aside, allowances would be distributed on a pro-rata basis. Allowance allocations for a given new Utility Unit in following years will continue to be based on the prior year's Hg emissions until the new Utility Unit establishes a baseline, is treated as an existing Utility Unit, and is allocated Hg allowances through the updating process.

Under the proposed Federal Plan, after 5 years of operation, a new EGU would have an adequate operating baseline of output data to be incorporated into the calculations for Hg allocations to all affected Utility Units. The average of the highest 3 years from these 5 years would be converted to a modified output value that would be used as the unit's baseline heat input for determining the new Utility Unit's Hg allowance allocation. The new unit's modified output would be calculated by multiplying its gross output (expressed in kWh) by a heat rate conversion factor of 7,900 British thermal units per kilowatt-hour (Btu/kWh). The 7,900 Btu/kWh value for the conversion factor is an average of heat-rates for new pulverized coal plants and new integrated gasification combined cycle (IGCC) coal plants (based upon assumptions in the Energy Information Administration's (EIA's) Annual Energy Outlook (AEO) 2004). (See EIA, "Annual Energy Outlook 2004, with Projections to 2025," January 2004 and <http://www.eia.doe.gov/oiaf/archive/aeo04/assumption/tbl38.html>.) As discussed in CAMR, a single conversion rate would create consistent and level incentives for efficient generation, rather than favoring new Utility Units with higher heat rates.

New units would update their heat input numbers only once—for the initial 5-year baseline period after they start operating. As in the CAMR State Plan example methodology, existing units as a group would not update their heat input. This eliminates the potential for a generation subsidy because current or future operating behavior would not impact the units' allocations. Retired Utility Units would continue to receive Hg allowances indefinitely, thereby creating an incentive to retire less

efficient Utility Units instead of continuing to operate them in order to maintain the Hg allowance allocations.

a. *Adjustments to Heat Input Data by Coal Adjustment Factors.* For the reasons discussed in CAMR, EPA is proposing the use of heat input adjustment factors, differentiated by coal type, for the Hg allocation process. Consistent with the methodology used to establish the State Hg budgets in CAMR, EPA is proposing that these adjustment factors primarily reflect the relative abilities of bituminous, subbituminous, and lignite coals to be controlled for Hg through the use of NO_x and SO₂ controls. Consistent with CAMR, EPA is proposing to use the coal adjustment factors of 1.0 for bituminous coals, 1.25 for subbituminous coals, and 3.0 for lignite coals for adjusting baseline heat input.

During the CAMR reconsideration process, EPA performed an analysis comparing the allocation approach of the model rule with allocations based on pure (unadjusted) heat input (see 71 FR 33388). In comparing these two allocation approaches, EPA used the same methodology that was used to compare EPA's chosen allocations approach for NO_x and SO₂ with alternative approaches for the CAIR Notice of Final Action on Reconsideration (see 70 FR 25328). This analysis compares the extent to which State budgets reflect projected emissions under CAIR as well as under CAIR and CAMR.

EPA followed the approach presented in the CAIR Statewide NO_x Budgets Calculations technical support document (TSD) (<http://www.epa.gov/cair/pdfs/0053-2228.pdf>) which states "To quantitatively evaluate whether the fuel factor approach is providing States with annual NO_x budgets that more closely reflected their projected emissions, EPA calculated the arithmetic mean of the (absolute) difference between a State's coverage ratio and 1.0 (i.e., the value representing a State's projected emissions matching the State's CAIR NO_x budget). In other words, EPA calculated how far off the State's coverage ratio was from 1.0, and then averaged these values for each approach." Under this approach, the closer this mean value is to zero, the more the allowance allocation approach minimizes disparities between State budgets and emissions.

For Hg, EPA compared the State budgets to projected emissions for CAIR, which is the appropriate baseline for evaluating the CAMR State budgets (rather than the 1999 ICR data), as well as projected emissions under CAMR. Using projected CAIR emissions for

2010, the resulting average absolute differences were 0.57 for the coal-adjustment factor approach under CAMR, and 0.63 for the pure heat input approach. Using projected CAMR emissions for 2010, the resulting average absolute differences were 0.59 for the coal-adjustment approach under CAMR and 0.68 for the pure heat input approach. Likewise, for 2020, using projected CAIR emissions, the resulting average absolute differences were 0.26 for the coal-adjustment approach under CAMR and 0.30 for the pure heat input approach. Using projected CAMR emissions for 2020, the resulting average absolute differences were 0.32 for the coal-adjustment approach, and 0.36 for the pure heat input approach.

This analysis suggests that while the two allocation methods yield results that are similar, the adjusted heat input approach used by EPA in the final CAMR minimizes the discrepancies between State budgets and State emissions more effectively than a pure heat input approach. This analysis is explained in the TSD and spreadsheet titled "CAMR Hg Allowance Allocation Approach Analysis," available in the docket.

EPA recognizes that units may have been blending coals or may have switched coals during the baseline period. For this reason, EPA is proposing to adjust baseline heat input data separately for each year in order to reflect the coal burned during that year. If a unit was blending coal during any year, a weighted average coal adjustment factor would be used. This approach is consistent with the example allocation approach included in the CAMR model rule.

In CAMR, EPA adjusted coal type for the calculation of State budgets using coal use data from the 1999 ICR. EPA does not routinely collect coal type and use data, and, therefore, proposes to adjust baseline heat input data using EIA plant-level data for the years that comprise the baseline. Because the EIA data are reported at the plant level, EPA proposes to apply the same coal-adjustment factor to all affected units at a given plant.

EPA is not proposing adjustments by coal type with the modified output approach because we do not want the allocation process to favor the use of any particular rank of coal for new coal units. In other words, EPA does not want to provide an incentive for new units to burn a certain type of coal in order to increase the number of allowances they receive.

b. *New Cogeneration Units.* For new cogeneration Utility Units, their shares of the Hg allowances would be

calculated by converting the available thermal output (Btu) of useable steam from a boiler to an equivalent heat input by dividing the total thermal output (Btu) by a general boiler/heat exchanger efficiency of 80 percent. For new cogeneration units that are combustion turbines, electrical output would be converted to heat input, the heat energy of steam from the heat recovery steam generator would be converted to heat input, and the units' shares of the Hg allowances would be based on the sum of these heat inputs. Steam output, like electrical output, is a useable form of energy that can be utilized to power other processes. Because it would be nearly impossible to adequately define the efficiency in converting steam energy into the final product for all of the various processes, this approach focuses on the efficiency of a cogeneration unit in capturing energy in the form of steam from the fuel input.

c. Sources of Data for Hg Allocations. The Agency proposes for the Federal Plan Hg allocations to use heat input and fuel type data reported to EPA's Electronic Data Reporting (EDR) system, where available, and to use best available heat input and fuel type data (e.g., data from the EIA) where EDR data are not available.

D. Allowance Banking

EPA proposes to include banking as a feature in the Federal Hg Budget Trading Program for the reasons set forth in CAMR. Proposed 40 CFR part 62, subpart LLL, sets forth the same provisions for banking and the management of banked allowances as specified in 40 CFR part 60, subpart HHHH. In accordance with these provisions, Hg allowances held, and not used for compliance in the year for which they are issued, may be banked for future use.

Banking is the retention of unused allowances from one calendar year for use in a later calendar year. Banking allows sources to make reductions beyond required levels and "bank" the unused allowances for use later. Generally, banking has several advantages. First, banking results in early reductions as companies over-control their units' emissions; it is very unlikely that significant levels of early reductions would occur without banking. Second, banked allowances can be used at any time, so they provide flexibility for companies to respond to growth and changing marketplace conditions over time as well as any unforeseen Hg control technology difficulties. Although banking can result in emissions below the cap on allowances allocated in early years of

the program and emissions above the cap level in the later years of the compliance period, the permanency of the cap in each phase of the program ensures that banking does not result in an increase in *cumulative* emissions. This is an important trade-off for getting early reductions.

Therefore, like in subpart HHHH (the State Plan model cap-and-trade rule), EPA is proposing that banking would be allowed without restriction after the start of the Federal Hg cap-and-trade program in 2010.

E. Source-Level Emissions Monitoring and Reporting Requirements

CAMR added subpart I to 40 CFR part 75. (Although EPA is requesting comment on the monitoring, reporting, and recordkeeping requirements in the proposed Federal trading rule, EPA is not requesting comments on 40 CFR part 75, which is described here only for the convenience of the reader.) 40 CFR part 75, subpart I, specifies the basic emission monitoring, reporting, and recordkeeping requirements necessary to administer an Hg trading program for new and existing Hg Budget units. CAMR also revised the regulatory language at several places in 40 CFR parts 72 and 75 to include specific Hg monitoring definitions and provisions, in support of 40 CFR part 75, subpart I. Mercury Budget units would be required to comply with these Hg monitoring provisions as part of a Federal Hg cap-and-trade program. The changes to 40 CFR part 75 are discussed in greater detail in CAMR (70 FR 28633).

Monitoring and reporting of an affected source's emissions are integral parts of any cap-and-trade program. Consistent and accurate measurement of Hg emissions ensures that each Hg allowance actually represents one ounce of emissions and that one ounce of reported emissions from one source is equivalent to one ounce of reported emissions from another source. This establishes the integrity of each allowance and instills confidence in the market mechanisms that are designed to provide sources with flexibility in achieving compliance. In addition, those flexibilities result in substantial cost savings to the industry and to the public consumer of electricity.

Given the variability in the unit type, manner of operation, and fuel mix among coal-fired Utility Units, EPA believes that Hg emissions must generally be monitored continuously in order to ensure the precision, reliability, accuracy, and timeliness of Hg emissions data necessary to support the cap-and-trade program. For application

in both the Federal and State trading programs, CAMR allows two methodologies for continuously monitoring Hg emissions: (1) Hg continuous emission monitors (CEMS); and (2) sorbent trap monitoring systems. EPA believes it is reasonable to expect that both technologies will be well-developed and commercially available by the time CAMR monitoring requirements take effect in 2009.

As provided in CAMR, for affected sources with Hg emissions at or below a specified threshold value, 40 CFR 75.81(b) provides additional regulatory flexibility by allowing default Hg concentrations obtained from periodic Hg emission testing to be used to quantify Hg mass emissions, instead of continuously monitoring the Hg concentration. The use of this low mass emitter option is restricted to sources that emit no more than 29 lb (464 ounces) of Hg per year. The rationale for this threshold is provided in CAMR (70 FR 28633–28635).

The amendments to 40 CFR part 75 set forth the specific monitoring and reporting requirements for Hg mass emissions necessary for a cap-and-trade program. The provisions of 40 CFR part 75 are used in both the Acid Rain and the NO_x Budget Trading programs, and most sources affected by CAMR are already meeting the requirements of 40 CFR part 75 to monitor SO₂ and/or NO_x for one or both of those programs.

In order to ensure program integrity, the proposed Federal trading rule requires year-round 40 CFR part 75 monitoring and reporting for Hg emissions for all Hg Budget units. Deadlines for monitor certification and other details are specified in the proposed Federal trading rule. EPA believes that if these provisions are implemented, emissions will be accurately and consistently monitored and reported from unit-to-unit and from State-to-State, ensuring the overall integrity of the Hg trading program.

As is required for SO₂ and NO_x emissions data in the Acid Rain Program and the NO_x Budget Trading Program, Hg emissions data will be provided to EPA on a quarterly basis in a format specified by the Agency and submitted to EPA electronically using EPA-provided software. We found this centralized reporting requirement necessary to ensure consistent review, checking, and posting of the emissions and monitoring data from all affected sources, which contributes to the integrity and efficiency of the trading program.

Finally, consistent with the current requirements in 40 CFR part 75 for the Acid Rain Program and the NO_x Budget

Trading Program, CAMR allows sources to petition for an alternative to any of the specified monitoring, reporting, or recordkeeping requirements in the final rule. This provision also provides sources with the flexibility to petition to use an alternative monitoring system under 40 CFR part 75, subpart E, as long as the requirements of 40 CFR 75.66 are met.

F. Compliance and Penalties

Penalty provisions for excess emissions under the CAMR State model trading rule are described in CAMR (70 FR 28624). The Agency intends the penalty provisions for excess emissions in the Federal Plan trading rule to be identical to the provisions in CAMR. Under CAMR, for the Hg cap-and-trade program, any source found to have excess emissions must surrender allowances from the next control period equal to three times the excess emissions. This includes a one-for-one offset of, and an additional two-for-one surrender for, each ounce of excess emissions.

G. Elements of the Federal Hg Trading Program That Differ From the State Model Hg Trading Program

EPA proposes to make the Federal and State Hg Budget Trading Programs as similar as possible. Although EPA has modeled proposed 40 CFR part 62, subpart LLL, largely after 40 CFR part 60, subpart HHHH, finalized under CAMR, EPA also proposes some revisions to 40 CFR part 60, subpart HHHH, that would integrate the two trading programs and would generally also be reflected in proposed 40 CFR part 62, subpart LLL. EPA notes that discussion of the evolution of the Hg Budget Trading Program is set forth in the SNPR at 69 FR 12403 and in CAMR at 70 FR 28624. The following provides a discussion of the sections in 40 CFR part 62, subpart LLL, that incorporate certain differences from the corresponding sections in subpart 40 CFR part 60, HHHH, to provide for Federal implementation of the Hg Budget Trading Program.

The general provisions explain that proposed 40 CFR part 62, subpart LLL, sets forth the provisions for the Federal Hg Budget Trading Program. For 40 CFR part 62, subpart LLL, EPA is proposing to use essentially the same definitions as those for 40 CFR part 60, subpart HHHH, revised as proposed in this action.

With regard to the Hg allowance allocations under 40 CFR part 62, subpart LLL, these provisions are the same as the example allocation methodology provisions in 40 CFR part

60, subpart HHHH, except that the Administrator, rather than the State permitting authority, would allocate Hg allowances under the Federal Hg Budget Trading Program. This reflects the fact that the Federal Hg Budget Trading Program would be Federally implemented, rather than implemented by the State as under CAMR. A detailed discussion of the allocation of emission allowances under the Federal Plan is provided in Section III.C, above.

40 CFR part 62, subpart LLL, also addresses monitoring and reporting requirements including, among other things, general requirements, initial certification and recertification procedures, out of control periods, notifications, recordkeeping and reporting, and petitions. These provisions are essentially the same as the monitoring-related provisions of 40 CFR part 60, subpart HHHH. The differences between the provisions reflect the fact that administration of the monitoring requirements is overseen by the Administrator, rather than by the Administrator and the permitting authority as in the State Plan Hg model trading program. As a result, for example, monitoring certification applications are submitted to the appropriate EPA Regional Office and the Administrator, not the permitting authority, will act on the applications. Further, the Administrator handles all audit decertifications and all petitions for alternatives to the monitoring requirements.

EPA is proposing these monitoring provisions under 40 CFR part 62, subpart LLL, for the reasons set forth both in CAMR and in order to minimize differences between the Federal and State Hg Budget Trading Programs. In particular, for the reasons set forth in CAMR, EPA proposes that Hg budget units be required to meet the monitoring, reporting, and recordkeeping requirements for Hg monitoring in 40 CFR part 75, subpart I (70 FR 28633).

IV. Proposed Revisions of the CAMR State Model Cap-and-Trade Program Rule

EPA is proposing several revisions of the CAMR State model cap-and-trade program. Some of the proposed revisions are necessary to integrate the State model Hg trading program and the proposed Federal Hg trading program, while other proposed revisions reflect needed technical and clarifying changes and are consistent with the analogous provisions of the proposed Federal Hg trading program.

In particular, several of the definitions of terms are proposed to be revised. For

example, the definitions of “Hg designated representative” and “alternate Hg designated representative” would be modified to require that the respective individuals designated for these positions be the same individuals as designated, for a given source, as the designated representative and alternate designated representative under all applicable CAIR trading programs. (In order to implement this change, new definitions for “CAIR NO_x source”, “CAIR NO_x Ozone Season source”, and CAIR SO₂ source” would be added.) This would greatly simplify the administration of the allowance tracking systems for the trading programs and obviate the need for the requirement (which would be eliminated from the recordkeeping and reporting provisions) that quarterly emissions reports, which include emissions data for all trading programs applicable to the unit involved, be signed by more than one individual.

As a further example, certain new definitions would be added (“municipal waste,” “replacement,” and “solid waste incineration unit”) and certain definitions would be modified (“cogeneration unit,” “commence commercial operation,” and “commence operation”) to reflect the revised applicability provisions for the Hg trading program and to clarify and streamline the language in the definitions. In the CAMR Notice of Final Action on Reconsideration (71 FR 33388), EPA revised the definition of “electric generating unit or EGU” in 40 CFR 60.24(h) and the applicability provisions of the State model trading rule (40 CFR 60.4104) to: (1) Exempt certain solid waste incineration units from CAMR; (2) limit applicability to coal-fired units serving, as of November 15, 1990 or any time later, a generator with a greater than 25 MWe nameplate capacity producing electricity for sale; and (3) clarify the language concerning cogeneration units. In 40 CFR 60.24(h), EPA also added definitions for “municipal solid waste” and “solid waste incineration unit.” The new and revised definitions, in the State Plan Hg model trading rule, related to applicability would be consistent with the definitions in 40 CFR 60.24(h) and the applicability provisions in 40 CFR 60.4104.

In addition, the definitions of “allocate,” “Hg allowance,” and “Hg Budget Trading Program” would be modified to provide for integrated operation of the State Hg trading programs administered by EPA and Federal Hg trading program. Mercury allowances issued under either type of program would be an “Hg allowance”

usable for meeting the allowance-holding requirement under the State model trading program (or Federal Hg trading program) regulations. In addition, the definition of "maximum design heat input" would be simplified, and the definition of "nameplate capacity" would be clarified.

Further, the retired unit exemption provisions would be revised to clarify that the appeal procedures generally applicable to final actions of the Administrator would be applicable to final actions of the Administrator with regard to retired units. The rule text concerning the appeal procedures themselves would be revised simply to reference part 78 of the Acid Rain Program regulations, and part 78 would, in turn, be revised to refer specifically, where appropriate, to the Hg trading programs in the same way as part 78 currently refers specifically, where appropriate, to the CAIR trading programs.

In addition, the provisions listing the content of a certificate of representation are revised to clarify that the identification of each unit covered by the certificate of representation includes identification and nameplate capacity of each generator served by the unit. EPA believes that the current rule language requiring "identification" of each unit subject to the trading program is already broad enough to encompass such information concerning each generator served by the unit, particularly since only a unit serving a generator with a nameplate capacity greater than 25 MWe can be subject to the Hg trading programs. However, EPA is proposing the revised language to make it clear that generator information is required in the certificate of representation.

EPA also proposes technical revisions to the provisions concerning the reflection in certificates of representation of the owners and operators of the source and units involved. The changes would make it clear that all owners and operators must be listed and that those that should be, but are not, listed are still bound by the certificate of representation and the CAMR designated representative.

Further, new provisions concerning designated representatives and authorized account representatives would be added to clarify that such individuals may use agents in order to make electronic submissions. The existing State model trading program regulations provide for certain submissions (*i.e.*, certificates of representation, applications for general account, allowance transfers, and quarterly emissions reports) required to be "in a format prescribed" or "in a

format specified" by the Administrator. (The terms "prescribed" and "specified" have the identical meaning in these contexts.) These submissions may be made, or in the case of quarterly emissions reports must be made, electronically. Although the formats for the Hg Budget Trading Program have not yet been developed, other EPA-administered trading programs (*i.e.*, the Acid Rain Program and the NO_x Budget Trading Program) have analogous language concerning submission formats and have existing, prescribed formats for submissions. The electronic formats prescribed by the Administrator for the Acid Rain Program and the NO_x Budget Trading Program allow the designated representative or authorized account representative, as appropriate, to designate other individuals ("agents") who may make the electronic submissions for the designated representative or authorized account representative, who is fully bound by the agent's actions. EPA maintains that the references in the Acid Rain Program and NO_x Budget Trading Program regulations to "prescribed" (or "specified") formats, coupled with the existing electronic formats, provide the legal authority necessary for designated representatives and authorized account representatives to use agents to make electronic submissions in the applicable trading programs. EPA plans to adopt electronic formats for the Hg Budget Trading Program that, similarly, allow for the use of agents. EPA believes that the existing references in the CAMR State model trading program regulations to "format[s] prescribed" or "specified" by the Administrator, when coupled with the appropriate electronic formats, will similarly provide the legal authority necessary for the use of agents. However, in order to remove any uncertainty about such legal authority, EPA proposes to add provisions to the State Hg model trading program regulations (and to include a provision in the Federal Hg trading program regulations) that explicitly authorize the use of agents for electronic submissions.

In addition, in the permitting provisions, EPA proposes to revise the deadline for submission of Hg Budget permit applications to run from the later of January 1, 2010 or the date on which the unit commences commercial operation, rather than the date on which the unit simply commences operation. A unit's date of commencement of commercial operation is not likely to range from more than a few days to a few months later than the unit's date of commencement of operation since owners and operators of electric

generating units generally prefer to minimize using fuel without producing electricity. Moreover, running the permit application deadline from the commencement of commercial operation avoids the need for a complex definition of "commence operation" to account for units that are not subject to the Hg Budget Trading Program when they first combust fuel and that subsequently become Hg Budget units.

Further, EPA proposes certain technical corrections in the Hg allowance allocation provisions. In particular, the current provisions concerning timing of submission of unit allocations by the permitting authority to the Administrator provide that if the unit allocations are not submitted on time, the Administrator will assume that the allocations are the same as in the prior year. If the year for which allocations are submitted late is 2018 (the beginning of phase II of the CAMR Hg Budget trading program), the Administrator will assume that the allocations equal the allocations for the control period in 2017, multiplied by the amount of ounces (*i.e.*, tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under § 60.4140 for 2018 and thereafter and divided by such amount of ounces of Hg emissions for 2010 through 2017. EPA is removing these provisions both for existing and new units because they seem unlikely to be used and are unduly complicated. There are no comparable provisions in the proposed Federal Hg trading program regulations.

EPA is also proposing to revise the current provisions for new unit allocations that provide that a new unit is eligible for allocations from the new unit set-aside until that unit has operated long enough to develop a baseline heat input using the 3 highest figures for converted control period heat input out of such figures for the first 5 years of operation. At that point, the unit is supposed to be allocated allowances from the pool of allowances allocated to all units that have a baseline heat input. However, allowances for units with baselines are allocated a number of years in advance of the first year for which such allowances may be used to meet the allowance-holding requirement. Consequently, it is possible for a new unit to have a baseline as of a given year but find that no more allowances are available for that year for units with baselines because the allowances for that year were allocated before the time when the new unit's baseline was developed. A new unit could find that, for some years, it was both ineligible for

the new unit set-aside and unable to obtain an allocation from the pool for units with baselines. EPA intended that new units move seamlessly from new-unit-set-aside eligibility to units-with-baselines allocations and not to fall in between the two types of allocation procedures. EPA proposes to revise the allocation provisions to clarify that a new unit continues to be eligible for the new unit set-aside so long as the unit is not allocated allowances from the pool for units with baselines allocations either because the new unit does not yet have a baseline or because all the allowances for units with baselines have already been allocated for the year involved.

EPA also proposes technical changes that make it clear that a separate request for new-unit-set-aside allowances must be submitted for each control period for which they are sought and must be submitted by May 1 of that control period. This approach will reasonably put the burden on owners and operators to inform the State permitting authority each year. This will ensure that the State permitting authority can keep track, for each control period in the future, of which units are seeking new-unit-set-aside allowances for that control period. These submission deadlines will give the State permitting authorities more time to process (which may include, when appropriate, opportunity for public comment) the requests in time to submit the allocations to the Administrator for recordation by December 1.

In addition, EPA proposes to adopt technical changes to the provisions for recordation of allowance allocations. For example, the current provisions require the Administrator to record the initial allocations for 2010–2014 by December 1, 2006. Because State Plans were not due until November 17, 2006, EPA cannot review and approve all State plans in time to record allowance allocations in those plans by December 1, 2006, which date EPA proposes to change to December 1, 2007. Further, the current provisions also require the recordation of allocations for subsequent years to occur only after completion of the end-of-year compliance determination process for a previous year. Because of the need to finalize emissions data for a year before the compliance determination process for that year can be completed, the current provisions may delay recordation for a number of months. However, as a matter of logic, there is no necessary connection between one year's compliance determination and the future year's allocation recordation. Consequently, EPA proposes to remove

the connection made in the current provisions and is setting an independent deadline (December 1) for allocation recordation, which will result in recordation several months earlier than under the current provisions.

Further, EPA proposes technical changes to the provisions referring to when an allowance transfer by the owner of an allowance to another allowance tracking system account is "correctly submitted." The changes would clarify that a "correctly submitted" allowance transfer is one that references allowances that both: Were in the owner's allowance tracking system account when the allowance transfer form was submitted to the Administrator; and continue to be in such account when the allowance transfer form is processed by the Administrator.

In addition, EPA proposes to revise the provisions for deducting allowances to determine compliance with the allowance-holding requirement under the trading programs. The proposed revisions would not change the requirements that an allowance usable for compliance: Be allocated for the year, or a year before the year, for which compliance is being determined; and be in or covered by a proper request for transfer into the source's compliance account by the allowance transfer deadline. However, the statement indicating that the allowance must also not be necessary to account for excess emissions for a prior year would be removed because it is confusing and inconsistent with the compliance procedures that EPA has been using in its ongoing cap-and-trade programs (*i.e.*, the Acid Rain Program and the NO_x Budget Trading Program).

In addition, EPA proposes to revise certain provisions concerning the use of substitute data when the owner or operator of a unit adds a new stack or flue and fails to meet the deadline for monitoring certification. EPA proposes to remove procedures that would seem to allow for substitute data other than data reflecting maximum potential emissions. This is proposed because EPA believes that the removed provisions would actually still result in the use of data reflecting maximum potential emissions.

Further, EPA proposes to remove a provision that separately requires units to monitor heat input. The provision is unnecessary because heat input monitoring is already explicitly required in the monitoring provisions in § 60.4170.

A few changes are proposed for some other provisions (*e.g.*, revising the definitions of "CAIR NO_x Trading

Program," "CAIR NO_x Ozone Season Trading Program," and "CAIR SO₂ Trading Program" to be consistent with the definitions of these terms in the CAIR trading rules) of the State model trading rule. These other changes are similarly technical or clarifying in nature. All of the above-proposed changes are consistent with the analogous provisions in the proposed Federal Hg trading program.

V. Proposed Revisions of the Acid Rain Program Regulations

A few changes are proposed for the Acid Rain Program regulations. EPA proposes to revise the provisions concerning alternate designated representatives in order to simplify the provisions. Specifically, EPA proposes to remove 40 CFR 72.22(e), which allows in certain limited circumstances the appointment of two alternate designated representatives, rather than the customary one alternate designated representative, for an affected source under the Acid Rain Program. This option has rarely been used: Out of the approximately 1,500 affected plants currently in the program, only 17 currently have two alternate designated representatives. As discussed above in Section IV of this preamble, the Acid Rain Program regulations already allow a designated representative or alternate designated representative to use agents to perform online many of the same tasks that a second alternate designated representative can perform under the existing § 72.22(e). Since § 72.22(e) seems to be unnecessary and is rarely used, EPA proposes to remove it in order to simplify the provisions applicable to alternate designated representatives.

Further, as discussed above in Section IV of this preamble, EPA proposes to revise the appeal provisions of 40 CFR part 78 to apply to the appeals procedures to final actions of the Administrator under the State Hg trading program and the Federal Hg trading program, just as these provisions already apply to final Administrator actions under the CAIR trading programs. 40 CFR part 78 would be revised to refer specifically, where appropriate, to the Hg trading programs in the same way as 40 CFR part 78 currently refers specifically, where appropriate, to the CAIR trading programs.

VI. Units Subject to the CAMR Federal Plan and New Source Performance Standards

This section describes the relationship between the Federal Plan and the NSPS finalized under CAMR in

terms of applicability and Hg emission limits. As discussed above and in CAMR, CAMR added Hg to the list of pollutants covered under 40 CFR part 60, subpart Da, by establishing emission limits for new sources and guidelines for existing sources.

CAMR finalized NSPS for new coal-fired Utility Units, subcategorized by coal type and, in some cases, unit type. In addition to complying with these standards, new Utility Units, along with existing coal-fired Utility Units, subject to the Federal Plan, will be subject to the cap-and-trade provisions finalized in CAMR and being proposed in this Federal Plan. The State Hg emission budgets are a permanent cap regardless of growth in the electric sector and, therefore, States, in the case of State Plans, and EPA, in the case of Federal Plan, have the responsibility of incorporating new Utility Units in their Hg emissions budgets.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is an economically “significant regulatory action.” This determination is made in view of this action’s important policy implications and potential effect on the economy of over \$100 million. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

This Federal Plan proposal represents a Federal mandate to implement CAMR (70 FR 28606) covering the same Hg emissions reductions in the event that States fail to implement CAMR. For this reason, EPA is relying on the economic analysis conducted for CAMR entitled “Regulatory Impact Analysis of the Final Clean Air Mercury Rule.”

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions for the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The PRA requirements of this rule are satisfied through the Information Collection Request (ICR) submitted to OMB for review and approval as part of CAMR. The burden of this proposed rule is essentially the same as the burden estimated for CAMR. There is a modest transfer of burden from the States to EPA if the Federal plan is

implemented rather than the CAMR State Plan. The overall total burden is essentially unchanged. The Office of Management and Budget (OMB) previously approved the information collection requirements contained in the final CAMR regulations (40 CFR 60.40Da–60.52Da; 40 CFR 60.4100–60.4199) under the provisions of the PRA, and has assigned OMB control number 2060–0567 and EPA ICR number 2137.02. A copy of the OMB approved ICR may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington DC 20460, or by calling (202) 566–1672.

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

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations in 40 CFR, after appearing in the preamble of the final rule, are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today’s rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; a small governmental jurisdiction that is a government of a

city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today’s proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. As was discussed in the final CAMR, EPA determined that it was not necessary to prepare a regulatory flexibility analysis in conjunction with this rulemaking. Although not required by the RFA, the Agency conducted an additional analysis of the effects of CAMR on small entities in order to provide additional information to States and affected sources. This analysis is detailed in both the final CAMR and the “Regulatory Impact Analysis of the Final Clean Air Mercury Rule.” This analysis found that CAMR would not have a significant direct impact on a substantial number of small entities. This analysis is applicable to this proposed rule.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that “includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more * * * in any one year.” A “Federal mandate” is defined under UMRA section 421(6), 2 U.S.C. 658(6), to include a “Federal intergovernmental mandate” and a “Federal private sector mandate.” A “Federal intergovernmental mandate,” in turn, is defined to include a regulation that “would impose an enforceable duty upon State, local, or Tribal governments,” UMRA section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is “a condition of Federal assistance,” UMRA section 421(5)(A)(i)(I). A “Federal private sector mandate” includes a regulation that

“would impose an enforceable duty upon the private sector,” with certain exceptions, UMRA section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under UMRA section 202, UMRA section 205, 2 U.S.C. 1535, generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

EPA has determined that this rule contains a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Accordingly, EPA prepared a written statement for the final CAMR consistent with the requirements of UMRA section 202. Furthermore, as EPA stated in the rule, EPA is not directly establishing any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. Thus, EPA is not obligated to develop under UMRA section 203 a small government agency plan. Furthermore, in a manner consistent with the intergovernmental consultation provisions of UMRA section 204, EPA carried out consultations with the governmental entities affected by this rule.

For the final CAMR, EPA conducted an analysis of the potential economic impacts anticipated of CAMR on government-owned entities. The results support EPA's assertion in the NPR that the proposed rule would not have a disproportionate budgetary impact on government entities. This analysis is detailed in both the final CAMR and the “Regulatory Impact Analysis of the Final Clean Air Mercury Rule.” This analysis is applicable to this proposed rule.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the EO to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This proposed rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. These effects would not occur from the final rule itself because it is the provisions of the CAA that require EPA, after a State has failed to submit a State Plan or a complete State Plan, to make a finding to that effect and then promulgate a Federal Plan. Although EPA would be exercising discretion to promulgate the Federal Plan at an early date, EPA would rescind the Federal Plan for each State that submits a State Plan that EPA approves. Moreover, as emphasized throughout the preamble, States are not required to adopt the Federal Plan provisions, or any particular portion thereof, in order for EPA to approve their State Plans. Thus, EO 13132 does not apply to this proposed rule.

Even so, in the spirit of EO 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA consulted with State and local officials early in the process of developing the proposed regulation to permit them to have meaningful and timely input into its development. EPA is including a number of provisions for States in the proposed rule so as not to constrain States' abilities to complete approvable State Plans, such as the ability to submit State allocation methodologies, and intends to withdraw the Federal Plan upon approval of State Plans.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.” This proposal does not have “Tribal implications” as specified in EO 13175.

This proposal addresses pollution composed of Hg and mercuric compounds. The final CAMR required annual Hg reductions for the power sector in 50 States, the District of Columbia, and in Indian country, through a cap-and-trade system that States and eligible Tribes have the option of adopting. The CAA provides for States and eligible Tribes to develop plans to regulate emissions of air

pollutants within their areas. The regulations clarify the statutory obligations of States and eligible Tribes that develop plans to implement this rule. The TAR (40 CFR 49.1–49.119) gives eligible Tribes the opportunity to develop and implement CAA programs, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, the Tribe will adopt. As noted earlier, the EPA will implement the emission trading rule for coal-fired Utility Units located in Indian country in accordance with the TAR unless the relevant Tribe for the land on which a particular coal-fired Utility Unit is located seeks and obtains TAS status and submits a TIP to implement the allocated Hg emissions budget. Tribes which choose to do so will be responsible for submitting a TIP analogous to the State Plans discussed throughout this preamble, and, like States, can choose to adopt the Model Cap-and-Trade Rule described elsewhere in this action.

This proposal does not have Tribal implications as defined by EO 13175. It does not have a substantial direct effect on one or more Indian Tribes, because no Tribe has implemented a Federally enforceable air quality management program under the CAA at this time. Furthermore, this proposal does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the national ambient air quality standards (NAAQS), and this proposal does nothing to modify that relationship. EPA has complied with the provisions of EO 13175.

EPA notes that in the event a Tribe does implement a TIP in the future, this proposal could have implications for that Tribe, but it would not impose substantial direct costs upon the Tribe, nor preempt Tribal law. EPA has estimated that the total annual private costs for the rule for Hg as implemented by State, local, and eligible Tribal governments (or EPA in the absence of any Tribe seeking TAS status) is approximately \$160 million in 2010, \$100 million in 2015, and \$750 million in 2020 (1999\$). There are currently three coal-fired Utility Units located in Indian country that will be affected by this rule and the percentage of Indian country that will be impacted is very small. For eligible Tribes that choose to regulate sources in Indian country, the costs would be attributed to inspecting regulated facilities and enforcing adopted regulations.

EPA consulted with Tribal officials in developing the final CAMR and this proposal. The EPA encouraged Tribal input at an early stage. A Tribal representative from the Navajo Nation was a member of the official workgroup and was provided with all workgroup materials. EPA has provided two briefings for Tribal representatives and the newly formed National Tribal Air Association (NTAA), and other national Tribal forums such as the National Tribal Environmental Council (NTEC) and the National Tribal Forum during the period prior to issuance of the CAMR NPR. Another briefing for Tribal representatives, NTAA, and NTEC was provided post-proposal to provide opportunity for additional input. In addition, Tribal representatives participated in EPA's regional implementation workshops for CAMR in the summer of 2005.

EPA conducted additional informal outreach for Tribes during the CAMR reconsideration process. First, EPA prepared an update on the reconsideration and CAMR Federal Plan development for the EPA Tribal Newsletter in January 2006. Second, EPA, through both Headquarters and Regional Offices, has worked to address Tribes' specific questions or concerns regarding implementation of CAMR. Finally, EPA has met with representatives from one Tribe that is concerned with the implications of CAMR for the development of new tribal electricity generation.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) Is determined to be "economically significant" as defined under EO 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5-501 of the EO directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

We believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Accordingly, we have evaluated the environmental health or safety effects of this rule on children. The results of this evaluation are

discussed in the final CAMR and in the "Regulatory Impact Analysis for the Final Clean Air Mercury Rule." EPA concluded that CAMR will further improve air quality and will further improve children's health.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 (66 FR 28355, May 22, 2001) provides that agencies shall prepare and submit to the Administrator of the Office of Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as "significant energy actions." Section 4(b) of EO 13211 defines "significant energy actions" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of final rulemaking, and notices of final rulemaking: (1)(i) That is a significant regulatory action under EO 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a "significant energy action." Although this proposal is a significant regulatory action under EO 12866, this rule likely will not have a significant adverse effect on the supply, distribution, or use of energy. EPA concluded that the impact of the final CAMR is not significant because the final rule did not have a greater than 1 percent impact on the cost of electricity production and because it does not result in the retirement of greater than 500 MW of coal-fired generation. EPA's analysis of the energy impacts of the final CAMR can be found in the "Regulatory Impact Analysis for the Final Clean Air Mercury Rule."

I. National Technology Transfer and Advancement Act

As noted in the CAMR final rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104-113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies.

The NTTAA requires EPA to provide Congress, through OMB, with explanations when EPA decides not to use available and applicable voluntary consensus standards.

During the development of the final CAMR, EPA searched for voluntary consensus standards that might be applicable. The search identified three voluntary consensus standards that were considered practical alternatives to the specified EPA test methods. An assessment of these and other voluntary consensus standards is presented in the preamble to the final CAMR (70 FR 28647; May 18, 2005). This proposed action does not propose the use of any additional technical standards beyond those cited in the final CAMR. Therefore, EPA is not considering the use of any additional voluntary consensus standards for this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

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. According to EPA guidance,⁷ agencies are to assess whether minority or low-income populations face risks or a rate of exposure to hazards that are significant and that "appreciably exceed or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group." (EPA, 1998)

In accordance with EO 12898, the Agency has considered whether this proposal may have disproportionate negative impacts on minority or low income populations. The Agency expects this proposal to lead to beneficial reductions in air pollution and exposures generally with a small negative impact through increased utility bills. The increase in the price for electric power is estimated to be 0.2 percent of retail electricity prices when it is shared among all members of society equally. The price increase is not considered to be a disproportionate impact on minority populations and low-income populations. For this reason, negative impacts to these sub-populations that appreciably exceed

⁷ 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.

similar impacts to the general population are not expected.

There will be beneficial outcomes to these populations as the result of this action. In the absence of CAMR, there are health effects that are likely to affect certain populations in the U.S., including subsistence anglers, Native Americans, and Asian Americans. These populations may include low income and minority populations who are disproportionately impacted by Hg exposures due to their economic, cultural, and religious activities that lead to higher levels of consumption of fish than the general populations. CAMR is expected to reduce Hg exposures among these populations. EPA's analysis of these impacts is found in the "Regulatory Impact Analysis for the Final Clean Air Mercury Rule."

List of Subjects

40 CFR Part 60

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

40 CFR Part 62

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 72

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

40 CFR Part 78

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

Dated: December 7, 2006.

Stephen L. Johnson,
Administrator.

For the reasons set forth in the preamble, parts 60, 62, 72, and 78 of chapter 1 of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 60—[AMENDED]

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

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

§ 60.17 [Amended]

2. Section 60.17 is amended, in paragraph (a)(14) by revising the words "and 60.4102" to read ", 60.4120, and 62.15902".

3. Section 60.24 is amended as follows:

a. In paragraph (h)(8) in the definition of "Boiler", by revising the words "fossil-or other fuel-fired" to read "fossil- or other-fuel-fired";

b. In paragraph (h)(8) in the definition of "Cogeneration unit", by revising in paragraph (2) the words "after which" to read "after the calendar year in which";

c. In paragraph (h)(8) in the definition of "Combustion turbine", by revising in paragraph (2) the words "heat recovery steam generator" to read "duct burner, heat recovery steam generator,";

d. In paragraph (h)(8), by removing the definition of "Heat input";

e. In paragraph (h)(8), by revising the definition of "Maximum design heat input";

f. In paragraph (h)(8) in the definition of "Nameplate capacity", by revising the words "(derates) as specified" to read "(deratings) as of such installation as specified" and by revising the words "(derates), such increased maximum amount as specified" to read "(deratings), such increased maximum amount as of such completion as specified";

g. In paragraph (h)(8) in the definition of "Sequential use of energy", by revising in paragraph (2) the word "seful" to read "useful";

h. In paragraph (h)(8) in the definition of "Useful thermal energy", by revising in paragraph (2) the words "heat" to read "heating"; and

i. In paragraph (h)(8), by adding new definitions of "Municipal waste" and "Solid waste incineration unit";

j. By adding a new paragraph (h)(9) to read as follows:

§ 60.24 Emission standards and compliance schedules.

* * * * *

(h) * * *

(8) * * *

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady-state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

* * * * *

Municipal waste means "municipal waste" as defined in section 129(g)(5) of the Clean Air Act.

* * * * *

Solid waste incineration unit means a stationary, coal-fired boiler or

stationary, coal-fired combustion turbine that is a "solid waste incineration unit" as defined in section 129(g)(1) of the Clean Air Act.

* * * * *

(9) Notwithstanding any other provision of this paragraph, a State may adopt, and submit by May 30, 2007, a State Hg allowance allocation methodology replacing the provisions in §§ 62.15941 and 62.15942 of this chapter under the Federal Hg Budget Trading Program under subpart HHHH of this part with:

(i) Allocation provisions substantively identical to §§ 62.15941 and 62.15942 of this chapter, under which the permitting authority makes the allocations; or

(ii) Any methodology for allocating Hg allowances to individual sources under which the permitting authority makes the allocations, provided that:

(A) The State's methodology must not allow the permitting authority to allocate Hg allowances for a year in excess of the amount in the State's trading budget for such year.

(B) The State's methodology must require that, for EGUs commencing operation before January 1, 2001, the permitting authority will determine, and notify the Administrator of, each unit's allocation of Hg allowances by October 31, 2007 for 2010, 2011, and 2012 and by October 31, 2009 and October 31 of each year thereafter for the 4th year after the year of the notification deadline.

(C) The State's methodology must require that, for EGUs commencing operation on or after January 1, 2001, the permitting authority will determine, and notify the Administrator of, each unit's allocation of Hg allowances by October 31 of the year for which the Hg allowances are allocated.

4. Section 60.4102 is amended as follows:

a. By revising the definition of "Allocate or allocation";

b. By revising the definition of "Allowance transfer deadline";

c. In the definition of "Alternate Hg designated representative", by revising the words "in accordance with §§ 60.4110 through 60.4114," to read ", in accordance with §§ 60.4110 through 60.4115," and by adding four sentences at the end of the definition;

d. In the definition of "Automated data acquisition and handling system or DAHS", by revising the words "under §§ 60.4170 through 60.4176" to read "under §§ 60.4170 through 60.4175" and by revising the words "required §§ 60.4170 through 60.4176" to read "required by §§ 60.4170 through 60.4175".

e. In the definition of “Boiler”, by revising the words “fossil- or other-fuel-fired” to read “fossil- or other-fuel-fired”;

f. By revising the definition of “CAIR NO_x Annual Trading Program”;

g. By revising the definition of “CAIR NO_x Ozone Season Trading Program”;

h. By revising the definition of “CAIR SO₂ Trading Program”;

i. In the definition of “Cogeneration unit”, by revising in paragraph (2) the words “after which” to read “after the calendar year in which”;

j. In the definition of “Combustion turbine”, by revising in paragraph (2) the words “heat recovery steam generator” to read “duct burner, heat recovery steam generator.”;

k. By revising the definition of “Commence commercial operation”;

l. By revising the definition of “Commence operation”;

m. In the definition of “Continuous emission monitoring system or CEMS”, in the introductory text by revising the word “CEMS” to read “continuous emission monitoring systems” and by revising the words “§§ 60.4170 through 60.4176” to read “§§ 60.4170 through 60.4175” whenever they appear and in paragraphs (1) and (2) by revising the words “in units of” to read “in”.

n. In the definition of “Control period”, by revising the words “January 1 of a calendar year and” to read “January 1 of a calendar year, except as provided in § 60.4106(c)(2), and”;

o. In the definition of “Emissions”, by revising the words “§§ 60.4170 through 60.4176” to read “§§ 60.4170 through 60.4175”;

p. In the definition of “Heat input”, by revising the words “§§ 60.4170 through 60.4176” to read “§§ 60.4170 through 60.4175”;

q. By revising the definition of “Hg allowance”;

r. In the definition of “Hg allowance deduction or deduct CAIR NO_x allowances”, by adding, after the words “compliance account”, the words “, e.g.”, by removing the words “§§ 60.4150 through 60.4157 and”, and by revising the words “§§ 60.4170 through 60.4176” to read “§§ 60.4170 through 60.4175”;

s. In the definition of “Hg authorized account representative”, by revising the words “§ 60.4152” to read “§§ 60.4110 through 60.4115 and §§ 60.4150 through 60.4157”;

t. In the definition of “Hg Budget emissions limitation”, by revising the words “in ounces” to read “, in ounces of Hg emissions in a control period,” and revising the words “for a control period” to read “for the control period”;

u. By revising the definition of “Hg Budget Trading Program”;

v. In the definition of “Hg designated representative”, by revising the words “§§ 60.4110 through 60.4114” to read “§§ 60.4110 through 60.4115” and by adding four sentences at the end of the definition;

w. By revising the definition of “Maximum design heat input”;

x. In the definition of “Monitoring system”, by revising the words “§§ 60.4170 through 60.4176” to read “§§ 60.4170 through 60.4175”;

y. In the definition of Nameplate capacity”, by revising the words “other deratings) as specified” to read “other deratings) as of such installation as specified” and by revising the words “maximum amount as specified” to read “maximum amount as of such completion as specified”;

z. In the definition of “Ounce”, by revising the words “§§ 60.4170 through 60.4176” to read “§§ 60.4170 through 60.4175”;

aa. In the definition of “Permitting authority”, by removing the words “in accordance with §§ 60.4120 through 60.4124”;

bb. In the definition of “Receive or receipt”, by revising the words “correspondence log” to read “log”;

cc. In the definition of “Source”, by revising the word “CAA” to read “Clean Air Act”;

dd. In the definition of “Title V operating permit”, by revising the word “CAA” to read “Clean Air Act”;

ee. In the definition of “Title V operating permit regulations”, by revising the word “CAA” to read “Clean Air Act”;

ff. In the definition of “Useful thermal energy”, by revising in paragraph (2) the words “heat application” to read “heating application”; and

gg. Adding new definitions of “CAIR NO_x Ozone Season source”, “CAIR NO_x source”, “CAIR SO₂ source”, “Municipal waste”, “Replacement, replace, or replaced”, and “Solid waste incineration unit”:

§ 60.4102 Definitions.

* * * * *

Allocate or allocation means, with regard to Hg allowances, the determination by a permitting authority or the Administrator of the amount of such Hg allowances to be initially credited to a Hg Budget unit, a new unit set-aside, or other entity.

* * * * *

Allowance transfer deadline means, for a control period, midnight of March 1 (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day), immediately following the control period and is the deadline by which a

Hg allowance transfer must be submitted for recordation in a Hg Budget source’s compliance account in order to be used to meet the source’s Hg Budget emissions limitation for such control period in accordance with § 60.4154.

* * * * *

Alternate Hg designated representative means * * * If the Hg Budget source is also a CAIR NO_x source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Annual Trading Program. If the Hg Budget source is also a CAIR SO₂ source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO₂ Trading Program. If the Hg Budget source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the Hg Budget source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program.

* * * * *

CAIR NO_x Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AA through II of part 96 of this chapter and § 51.123(o)(1) or (2) of this chapter or established by the Administrator in accordance with subparts AA through II of part 97 of this chapter and § 51.123(p) and 52.35 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_x Ozone Season source means a source that is subject to the CAIR NO_x Ozone Season Trading Program.

CAIR NO_x Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAAA through IIII of part 96 of this chapter and § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter or established by the Administrator in accordance with subparts AAAA through IIII of part 97 of this chapter and § 51.123(ee) and 52.35 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_x source means a source that is subject to the CAIR NO_x Annual Trading Program.

CAIR SO₂ source means a source that is subject to the CAIR SO₂ Trading Program.

CAIR SO₂ Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAA through III of part 96 of this chapter and § 51.124(o)(1) or (2) of this chapter or established by the Administrator in accordance with subparts AAA through III of part 97 of this chapter and §§ 51.124(r) and 52.36 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

* * * * *

Commence commercial operation means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 60.4105.

(i) For a unit that is a Hg Budget unit under § 60.4104 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a Hg Budget unit under § 60.4104 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 60.4105, for a unit that is not a Hg Budget unit under § 60.4104 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a Hg Budget unit under § 60.4104.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber.

(2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(3) For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition, as appropriate.

* * * * *

Hg allowance means a limited authorization issued by a permitting authority or the Administrator under provisions of a State plan that are approved under § 52.24(h)(6) of this chapter, or under §§ 62.15940 through 62.15943 of this chapter, to emit one ounce of mercury during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the Hg Budget Trading Program. An authorization to emit mercury that is not issued under provisions of a State plan that are approved under § 52.24(h)(6) of this chapter or under §§ 62.15940

through 62.15943 of this chapter shall not be a "Hg allowance."

* * * * *

Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance with this subpart and § 60.24(h)(6) or established by the Administrator in accordance with subpart LLL of part 62 of this chapter, § 60.24(h)(9), and § 62.13(f) of this chapter, as a means of reducing national Hg emissions.

* * * * *

Hg designated representative means * * * If the Hg Budget source is also a CAIR NO_x source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Annual Trading Program. If the Hg Budget source is also a CAIR SO₂ source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO₂ Trading Program. If the Hg Budget source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the Hg Budget source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program.

* * * * *

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady-state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

* * * * *

Municipal waste means "municipal waste" as defined in section 129(g)(5) of the Clean Air Act.

* * * * *

Replacement, replace, or replaced means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

* * * * *

Solid waste incineration unit means a stationary, coal-fired boiler or stationary, coal-fired combustion turbine that is a "solid waste incineration unit" as defined in section 129(g)(1) of the Clean Air Act.

* * * * *

5. Section 60.4103 is revised to read as follows:

§ 60.4103 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart are defined as follows:

Btu—British thermal unit.
CO₂—carbon dioxide.
H₂O—water.
Hg—mercury.
hr—hour.
kW—kilowatt electrical.
kWh—kilowatt hour.
lb—pound.
MMBtu—million Btu.
MWe—megawatt electrical.
MWh—megawatt hour.
NO_x—nitrogen oxides.
O₂—oxygen.
ppm—parts per million.
scfh—standard cubic feet per hour.
SO₂—sulfur dioxide.
yr—year.

§ 60.4104 [Amended]

6. Section 60.4104 is amended, in paragraph (a)(1) by removing the words “and subparts BB through HH of this part”.

§ 60.4105 [Amended]

7. Section 60.4105 is amended as follows:

a. In paragraph (a)(1), by revising the words “through (8), § 60.4107, and §§ 60.4150” to read “through (7), § 60.4107, § 60.4108, §§ 60.4110 through 60.4115, and §§ 60.4140”;

b. In paragraph (b)(3), by revising the words “shall retain at the source” to read “shall retain, at the source” and

c. In paragraph (b)(7), by revising the words “§§ 60.4170 through 60.4176” to read “§§ 60.4170 through 60.4175” and by revising the words “commences operation and commercial operation” to read “commences commercial operation”.

§ 60.4106 [Amended]

8. Section 60.4106 is amended as follows:

a. In paragraph (a)(1)(i), by revising the words “in § 60.4121(a) and (b)” to read “in § 60.4121”;

b. In paragraph (a)(3), by revising the words “is not required” to read “is not otherwise required” whenever they appear;

c. In paragraphs (b)(1), (b)(2), and (c)(1), by revising the words “§§ 60.4170 through 60.4176” to read “§§ 60.4170 through 60.4175”;

d. In paragraph (c)(2), by revising the words “under paragraph (c)(1) of this section” to read “under paragraph (c)(1) of this section for the control period” and by revising the words “under § 60.4170(b)(1) or (2)” to read “under § 60.4170(b)(1) or (2) and for each control period thereafter”;

e. In paragraph (c)(4), by revising the words “§§ 60.4160” to read “§§ 60.4150”;

f. In paragraph (c)(7), by revising the words “§§ 60.4150” to read “§§ 60.4140”, by revising the words “from a Hg Budget unit’s compliance account” to read “from a Hg Budget source’s compliance account”, and by removing the words “that includes the Hg Budget unit”;

g. In paragraph (d)(1), by removing the paragraph designation “(1)” and by redesignating paragraph (d)(1)(i) as paragraph (d)(1);

h. By removing paragraph (d)(2) and by redesignating paragraph (d)(1)(ii) as paragraph (d)(2);

i. In paragraphs (e)(1)(ii) and (e)(2), by revising the words “§§ 60.4170 through 60.4176” to read “§§ 60.4170 through 60.4175” whenever they appear; and

j. In paragraph (g), by revising the word “CAA” to read “Clean Air Act”.

§ 60.4108 [Amended]

9. Section 60.4108 is amended by revising the words “shall be the procedures” to read “are” and removing the second sentence.

§ 60.4110 [Amended]

10. Section 60.4110 is amended, in paragraph (e)(2), by revising the words “owner” to read “owners”.

§ 60.4111 [Amended]

11. Section 60.4111 is amended, in paragraph (c), by revising the words “60.4151, and 60.4174,” to read “60.4115, and 60.4151.”.

§ 60.4112 [Amended]

12. Section 60.4112 is amended, in paragraph (c)(1), by revising the words “a new owner” to read “an owner”, by revising the words “such new owner” to read “such owner”, and by revising the words “the new owner” to read “the owner”.

§ 60.4113 [Amended]

13. Section 60.4113 is amended as follows:

a. In paragraph (a)(1), by revising the words “is submitted.” to read “is submitted, including identification and nameplate capacity of each generator served by each such unit”; and

b. In paragraph (a)(4)(iv), by revising the words “where a customer” to read “where a utility or industrial customer”.

14. Add a new § 60.4115 to read as follows:

§ 60.4115 Delegation by Hg designated representative and alternate Hg designated representative.

(a) A Hg designated representative may delegate, to one or more natural

persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(b) An alternate Hg designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the Hg designated representative or alternate Hg designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such Hg designated representative or alternate Hg designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an “agent”);

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such Hg designated representative or alternate Hg designated representative:

(i) “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a Hg designated representative or alternate Hg designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 60.4115(d) shall be deemed to be an electronic submission by me.”

(ii) “Until this notice of delegation is superseded by another notice of delegation under 40 CFR 60.4115(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address, unless all delegation of authority by me under 40 CFR 60.4115 is terminated.”

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the Hg designated representative or alternate Hg designated representative identified in such notice, upon receipt of such notice by the Administrator and until

receipt by the Administrator of a superseding notice of delegation submitted by such Hg designated representative or alternate Hg designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the Hg designated representative or alternative Hg designated representative submitting such notice of delegation.

§ 60.4120 [Amended]

15. Section 60.4120 is amended, in paragraph (a), by revising the words “otherwise by this section and” to read “otherwise by paragraph (b) of this section, § 60.4105, and”.

§ 60.4121 [Amended]

16. Section 60.4121 is amended, in paragraph (a), by revising the words “commences operation” to read “commences commercial operation”.

§ 60.4123 [Amended]

17. Section 60.4123 is amended, in paragraph (b), by revising the words “§§ 60.4150” to read “§§ 60.4140”.

§ 60.4141 [Amended]

18. Section 60.4141 is amended as follows:

a. In paragraph (b)(1), by removing the paragraph designation “(1)” and by revising the words “October 31, 2008” to read “October 31, 2009”;

b. By removing paragraph (b)(2);

c. In paragraph (c)(1), by removing the paragraph designation “(1)”;

d. By removing paragraph (c)(2).

19. Section 60.4142 is amended as follows:

a. By revising paragraph (c) introductory text;

b. In paragraph (c)(2), by revising the words “The Hg allowance allocation request must be submitted on or before July 1 of the first control period for which Hg allowances are requested” to read “A separate Hg allowance allocation request for each control period for which Hg allowances are sought must be submitted on or before May 1 of such control period”;

c. In paragraph (c)(3), by revising the words “control period immediately before” to read “calendar year immediately before”;

d. In paragraph (c)(4)(ii), by revising the words “On or after July 1” to read “On or after May 1”;

e. In paragraph (d), by revising the words “for 2010 through 2014, and 97 percent for 2014” to read “for a control period in 2010 through 2014, and 97 percent for a control period in 2015”.

§ 60.4142 Hg allowance allocations.

* * * * *

(c) For each control period in 2009 and thereafter, the permitting authority will allocate Hg allowances to Hg Budget units in a State that are not allocated Hg allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input but all Hg allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

* * * * *

20. Section 60.4151 is amended as follows:

a. By revising paragraph (b)(2) introductory text;

b. In paragraph (b)(3)(iii)(A), by revising the words “a new person” to read “a person”, by revising the words “such new person” to read “such person”, and by revising the words “the new person” to read “the person”;

c. In paragraph (b)(3)(iii)(B), by revising the words “addition of persons” to read “addition of a new person”;

d. In paragraph (b)(4) introductory text, by revising the word “representative” to read “representative and alternate Hg authorized account representative”;

e. In paragraphs (b)(4)(ii) and (iii), by revising the words “alternative Hg” to read “alternate Hg” whenever they appear; and

f. By adding a new paragraph (b)(5) to read as follows:

§ 60.4151 Establishment of accounts.

* * * * *

(b) * * *

* * * * *

(2) *Authorization of Hg authorized account representative and alternate Hg authorized account representative.*

* * *

* * * * *

(5) *Delegation by Hg authorized account representative and alternate Hg authorized account representative.*

(i) A Hg authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic

submission to the Administrator provided for or required under this section and §§ 60.4152 through 60.4162.

(ii) An alternate Hg authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this section and §§ 60.4152 through 60.4162.

(iii) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (b)(5)(i) or (ii) of this section, the Hg authorized account representative or alternate Hg authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(A) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such Hg authorized account representative or alternate Hg authorized account representative;

(B) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an “agent”);

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (b)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such Hg authorized account representative or alternate Hg authorized account representative: “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a Hg authorized account representative or alternate Hg authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 60.4151(b)(5)(iv) shall be deemed to be an electronic submission by me.”; and

(E) The following certification statement by such Hg authorized account representative or alternate Hg authorized account representative: “Until this notice of delegation is superseded by another notice of delegation under 40 CFR 60.4151 (b)(5)(iv), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority under 40 CFR 60.4151(b)(5) is terminated.”

(iv) A notice of delegation submitted under paragraph (b)(5)(iii) of this section shall be effective, with regard to the Hg authorized account representative or alternate Hg authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such Hg authorized account representative or alternate Hg authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in paragraph (b)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (b)(5)(iv) of this section shall be deemed to be an electronic submission by the Hg designated representative or alternate Hg designated representative submitting such notice of delegation.

* * * * *

21. Section 60.4153 is amended as follows:

a. In paragraph (a), by revising the words "By December 1, 2006," to read "By December 1, 2007," and by revising the words "at a source" to read "at the source";

b. In paragraph (b), by revising the words "December 1, 2008" to read "December 1, 2009" and by removing the words "or as determined by the Administrator";

c. By revising paragraph (c); and

d. In paragraph (d), by removing the words "or determined by the Administrator".

§ 60.4153 Recordation of Hg allowance allocations.

* * * * *

(c) By December 1, 2010 and December 1 of each year thereafter, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the permitting authority in accordance with § 60.4141(b), for the control period in the sixth year after the year of the applicable deadline for recordation under this paragraph.

* * * * *

§ 60.4154 [Amended]

22. Section 60.4154 is amended:

a. In paragraph (a)(1), by revising the words "prior year;" to read "prior year; and";

b. In paragraph (a)(2), by revising the words "§§ 60.4160 through 60.4162 by

the allowance transfer deadline for the control period; and" to read "§§ 60.4160 and 60.4161 by the allowance transfer deadline for the control period.";

c. By removing paragraph (a)(3);

d. In paragraph (b) introductory text, by revising the words "§§ 60.4160 through 60.4162" to read "§ 60.4161";

e. In paragraph (b)(1), by revising the words "§§ 60.4170 through 60.4176" to read "§§ 60.4170 through 60.4175";

f. In paragraph (c)(2)(ii), by revising the words "to any unit" to read "to any entity";

g. In paragraph (d)(2), by revising the word "violation" to read "violations";

h. In paragraph (e), by revising the words "under paragraph (b) or (d)" to read "under paragraphs (b) and (d)"; and

i. In paragraph (f)(2), by revising the words "of this section." to read "of this section, and record such deductions and transfers."

§ 60.4157 [Amended]

23. Section 60.4157 is amended in paragraphs (a) and (b) by revising the words "§ 60.4160 through 60.4162" to read "§§ 60.4160 and 60.4161".

24. Section 60.4170 is amended as follows:

a. In the introductory text and paragraphs (a)(1) and (a)(2), by revising the words "§§ 60.4170 through 60.4176" to read "§§ 60.4170 through 60.4175";

b. In paragraph (b) introductory text, by revising the words "The owner" to read "Except as provided in paragraph (e) of this section, the owner";

c. In paragraph (c)(1), by removing the paragraph designation "(1)" and by revising the words "Except as provided in paragraph (c)(2) of this section, the owner" to read "The owner";

d. By removing paragraph (c)(2);

e. In paragraph (d)(1), by revising the words "§§ 60.4171 through 60.4176" to read "§§ 60.4171 through 60.4174";

f. In paragraph (d)(2), by revising the words "§§ 60.4171 through 60.4176" to read "§§ 60.4171 through 60.4175";

g. In paragraph (d)(3), by revising the words "the atmosphere" to read "the atmosphere or heat input" and by revising the words "§§ 60.4171 through 60.4176" to read "§§ 60.4171 through 60.4175";

h. In paragraph (d)(4) introductory text, by revising the words "this subpart" to read "this section and §§ 60.4171 through 60.4175"

i. In paragraph (d)(4)(ii), by revising the words "§§ 60.4171 through 60.4176" to read "§§ 60.4171 through 60.4175"; and

j. By adding a new paragraph (e) to read as follows:

§ 60.4170 General requirements.

* * * * *

(e) *Long-term cold storage.* The owner or operator of a Hg Budget unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 60.4171 [Amended]

25. Section 60.4171 is amended as follows:

a. In paragraph (c) introductory text, by revising the words "(e.g.," to read "(i.e.,";

b. In paragraph (c)(1), by revising the words "each monitoring system under § 60.4170(a)(1)" to read "each continuous monitoring system under § 60.4170(a)(1)";

c. In paragraph (c)(3) introductory text, by revising the words "apply the word 'recertification' instead of" to read "replace" and revise the words "and apply the word 'recertified' instead of the word 'certified'" to read "with the word 'recertification', replace the word 'certified' with the word 'recertified'";

d. In paragraph (c)(3)(v)(A), by revising the words "§ 75.20(a)(4)(iii), or" to read "§ 75.20(a)(4)(iii) or";

e. In paragraph (c)(3)(v)(A)(1), by revising the words "of this chapter, and" to read "of this chapter."; and

f. In paragraph (e), by revising the words "by the Administrator and, if applicable, the permitting authority" to read "by the Administrator".

§ 60.4173 [Amended]

26. Section 60.4173 is amended by removing the words " , except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority".

27. Section 60.4174 is amended as follows:

a. By revising paragraph (a);

b. In paragraph (d)(3), by removing the words "and § 60.4176"; and

c. In paragraph (e)(1), by removing the words "§ 60.4176,"; and

d. Revising paragraph (e)(2).

§ 60.4174 Recordkeeping and reporting.

(a) *General provisions.* The Hg designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements of § 75.84 of this chapter, and the requirements of § 60.4110(e)(1).

* * * * *

(e) * * *

(2) For a unit with add-on Hg emission controls, a flue gas desulfurization system, a selective catalytic reduction system, or a compact hybrid particulate collector system and

for all hours where Hg data are substituted in accordance with § 75.34(a)(1) of this chapter,

(i)(A) The Hg add-on emission controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter, or

(B) With regard to a flue gas desulfurization system or a selective catalytic reduction system, quality-assured SO₂ emission data recorded in accordance with part 75 of this chapter document that the flue gas desulfurization system was operating properly or quality-assured NO_x emission data recorded in accordance with part 75 of this chapter document that the selective catalytic reduction system was operating properly, as applicable, and

(ii) The substitute data values do not systematically underestimate Hg emissions.

§ 60.4175 [Amended]

28. Section 60.4175 is amended by revising the words “Hg unit” to read “Hg Budget unit” and by removing the words “and § 60.4176” whenever they appear.

§ 60.4176 [Removed]

29. Section 60.4176 is removed.

PART 62—[AMENDED]

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

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

31. Section 62.13 is amended by adding a new paragraph (f) to read as follows:

§ 62.13 Federal plans.

* * * * *

(f) The substantive requirements of the coal-fired electric steam generating units mercury Federal plan are contained in subpart LLL of this part. These requirements include emission limits, compliance schedules, testing, monitoring, and reporting and recordkeeping requirements.

32. Add a new subpart LLL to read as follows:

Subpart LLL—Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units

Sec.

Hg Budget Trading Program General Provisions

- 62.15901 Purpose.
- 62.15902 Definitions.

62.15903 Measurements, abbreviations, and acronyms.

- 62.15904 Applicability.
- 62.15905 Retired unit exemption.
- 62.15906 Standard requirements.
- 62.15907 Computation of time.
- 62.15908 Appeal procedures.

Hg Designated Representative for Hg Budget Sources

- 62.15910 Authorization and responsibilities of Hg designated representative.
- 62.15911 Alternate Hg designated representative.
- 62.15912 Changing Hg designated representative and alternate Hg designated representative; changes in owners and operators.
- 62.15913 Certificate of representation.
- 62.15914 Objections concerning Hg designated representative.
- 62.15915 Delegation by Hg designated representative and alternate Hg designated representative.

Permits

- 62.15920 General Hg budget trading program permit requirements.
- 62.15921 Submission of Hg budget permit applications.
- 62.15922 Information requirements for Hg budget permit applications.
- 62.15923 Hg budget permit contents and term.
- 62.15924 Hg budget permit revisions.
- 62.15930 [Reserved]

Hg Allowance Allocations

- 62.15940 State trading budgets.
- 62.15941 Timing requirements for Hg allowance allocations.
- 62.15942 Hg allowance allocations.
- 62.15943 Alternative of allocation of Hg allowances by permitting authority.

Hg Allowance Tracking System

- 62.15950 [Reserved]
- 62.15951 Establishment of accounts.
- 62.15952 Responsibilities of Hg authorized account representative.
- 62.15953 Recordation of Hg allowance allocations.
- 62.15954 Compliance with Hg budget emissions limitation.
- 62.15955 Banking.
- 62.15956 Account error.
- 62.15957 Closing of general accounts.

Hg Allowance Transfers

- 62.15960 Submission of Hg allowance transfers.
- 62.15961 EPA recordation.
- 62.15962 Notification.

Monitoring and Reporting

- 62.15970 General requirements.
 - 62.15971 Initial certification and recertification procedures.
 - 62.15972 Out of control periods.
 - 62.15973 Notifications.
 - 62.15974 Recordkeeping and reporting.
 - 62.15975 Petitions.
- Appendix A to Subpart Lll of Part 62—States With Approved State Plans Concerning Allocations

Subpart LLL—Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units

Hg Budget Trading Program General Provisions

§ 62.15901 Purpose.

(a) This subpart sets forth the general provisions and the designated representative, permitting, allowance, and monitoring provisions for the federal mercury (Hg) Budget Trading Program, under section 111 of the Clean Air Act (CAA), as a means of reducing national Hg emissions.

(b) Sources located in the following States, for which the Administrator has made a finding of failure to submit an approvable State plan under § 60.24(h) of this chapter and have not subsequently submitted to the Administrator an approved and currently effective State plan under § 60.24(h) of this chapter are subject to this subpart: [Reserved].

§ 62.15902 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each Hg Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or allocation means, with regard to Hg allowances, the determination by a permitting authority or the Administrator of the amount of Hg allowances to be initially credited to a Hg Budget unit, a new unit set-aside, or other entity.

Allowance transfer deadline means, for a control period, midnight of March 1 (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day), immediately following the control period and is the deadline by which a Hg allowance transfer must be submitted for recordation in a Hg Budget source's compliance account in order to be used to meet the source's Hg Budget emissions limitation for such

control period in accordance with § 62.15954.

Alternate Hg designated representative means, for a Hg Budget source and each Hg Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with §§ 62.15910 through 62.15915, to act on behalf of the Hg designated representative in matters pertaining to the Hg Budget Trading Program. If the Hg Budget source is also a CAIR NO_x source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Annual Trading Program. If the Hg Budget source is also a CAIR SO₂ source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO₂ Trading Program. If the Hg Budget source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the Hg Budget source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program.

Automated data acquisition and handling system or DAHS means that component of the continuous emission monitoring system (CEMS), or other emissions monitoring system approved for use under §§ 62.15970 through 62.15975, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required under §§ 62.15970 through 62.15975.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CAIR NO_x Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AA through II of part 97 of this chapter and §§ 51.123(p) and 52.35 of

this chapter or approved and administered by the Administrator in accordance with subparts AA through II of part 96 of this chapter and § 51.123(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_x Ozone Season source means a source that is subject to the CAIR NO_x Ozone Season Trading Program.

CAIR NO_x Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AAAA through IIII of part 97 of this chapter and §§ 51.123(ee) and 52.35 of this chapter or approved and administered by the Administrator in accordance with subparts AAAA through IIII of part 96 of this chapter and § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_x source means a source that is subject to the CAIR NO_x Annual Trading Program.

CAIR SO₂ source means a source that is subject to the CAIR SO₂ Trading Program.

CAIR SO₂ Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program established by the Administrator in accordance with subparts AAA through III of part 97 of this chapter and §§ 51.124(r) and 52.36 of this chapter or approved and administered by the Administrator in accordance with subparts AAA through III of part 96 of this chapter and § 51.124(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

Certifying official means:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, Federal, or other public agency, a principal executive officer or ranking elected official.

Clean Air Act or CAA means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388-77, 90, 91, 95, 98a, or 99

(Reapproved 2004)ε¹ (incorporated by reference, *see* § 60.17).

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Coal-fired means combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year.

Cogeneration unit means a stationary, coal-fired boiler or stationary, coal-fired combustion turbine:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity:

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means:

(1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

Commence commercial operation means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 62.15905.

(i) For a unit that is a Hg Budget unit under § 62.15904 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the

date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a Hg Budget unit under § 62.15904 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 62.15905, for a unit that is not a Hg Budget unit under § 62.15904 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a Hg Budget unit under § 62.15904.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber.

(2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(3) For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition, as appropriate.

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a Hg Allowance Tracking System account, established by the Administrator for a Hg Budget source under §§ 62.15950 through 62.15957, in which any Hg allowance allocations for the Hg Budget units at the source are initially recorded and in which are held any Hg allowances available for use for a control period in order to meet the source's Hg Budget emissions limitation in accordance with § 62.15954.

Continuous emission monitoring system or *CEMS* means the equipment required under §§ 62.15970 through 62.15975 to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of Hg emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under §§ 62.15970 through 62.15975:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A Hg concentration monitoring system, consisting of a Hg pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of Hg emissions in micrograms per dry standard cubic meter ($\mu\text{g}/\text{dscm}$);

(3) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O .

(4) A carbon dioxide monitoring system, consisting of a CO_2 concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2

concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2 ; and

(5) An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2 , in percent O_2 .

Control period means the period beginning January 1 of a calendar year, except as provided in § 62.15906(c)(2), and ending on December 31 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the Hg designated representative and as determined by the Administrator in accordance with §§ 62.15970 through 62.15975.

Excess emissions means any ounce of mercury emitted by the Hg Budget units at a Hg Budget source during a control period that exceeds the Hg Budget emissions limitation for the source.

General account means a Hg Allowance Tracking System account, established under § 62.15951, that is not a compliance account.

Generator means a device that produces electricity.

Gross electrical output means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Heat input means, with regard to a specified period of time, the product (in MMBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/MMBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the Hg designated representative and determined by the Administrator in accordance with §§ 62.15970 through 62.15975 and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in MMBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in MMBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Hg allowance means a limited authorization issued by a permitting authority or the Administrator under §§ 62.15940 through 62.15943, or under provisions of a State plan that are approved under § 52.24(h)(6) of this chapter, to emit one ounce of mercury during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the Hg Budget Trading Program. An authorization to emit mercury that is not issued under §§ 62.15940 through 62.15943 or under provisions of a State plan that are approved under § 52.24(h)(6) of this chapter shall not be a "Hg allowance."

Hg allowance deduction or *deduct Hg allowances* means the permanent withdrawal of Hg allowances by the Administrator from a compliance account, e.g., in order to account for a specified number of ounces of total mercury emissions from all Hg Budget units at a Hg Budget source for a control period, determined in accordance with §§ 62.15970 through 62.15975, or to account for excess emissions.

Hg Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of Hg allowances under the Hg Budget Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

Hg Allowance Tracking System account means an account in the Hg Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of Hg allowances.

Hg allowances held or *hold Hg allowances* means the Hg allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with §§ 62.15950 through 62.15962, in a Hg Allowance Tracking System account.

Hg authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with §§ 62.15910 through 62.15915 and §§ 62.15950 through 62.15957, to transfer and otherwise dispose of Hg allowances held in the general account and, with regard to a compliance account, the Hg designated representative of the source.

Hg Budget emissions limitation means, for a Hg Budget source, the equivalent, in ounces of Hg emissions in a control period, of the Hg allowances available for deduction for the source under § 62.15954(a) and (b) for the control period.

Hg Budget permit means the legally binding and Federally enforceable written document, or portion of such document, issued by the permitting authority under §§ 62.15920 through 62.15924, including any permit revisions, specifying the Hg Budget Trading Program requirements applicable to a Hg Budget source, to each Hg Budget unit at the source, and to the owners and operators and the Hg designated representative of the source and each such unit.

Hg Budget source means a source that includes one or more Hg Budget units.

Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program established by the Administrator in accordance with this subpart, § 60.24(h)(9) of this chapter, and § 62.13(f) or approved and administered by the Administrator in accordance with subpart HHHH of part 60 and § 60.24(h)(6) of this chapter, as a means of reducing national Hg emissions.

Hg Budget unit means a unit that is subject to the Hg Budget Trading Program under § 62.15904.

Hg designated representative means, for a Hg Budget source and each Hg Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with §§ 62.15910 through 62.15915, to represent and legally bind each owner and operator in matters pertaining to the Hg Budget Trading Program. If the Hg Budget source is also a CAIR NO_x source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Annual Trading Program. If the Hg Budget source is also a CAIR SO₂ source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO₂ Trading Program. If the Hg Budget source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the Hg Budget source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional

amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;
 (2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Lignite means coal that is classified as lignite A or B according to the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388-77, 90, 91, 95, 98a, or 99 (Reapproved 2004) ϵ^1 (incorporated by reference, see § 60.17).

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady-state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

Monitoring system means any monitoring system that meets the requirements of §§ 62.15970 through 62.15975, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Municipal waste means "municipal waste" as defined in section 129(g)(5) of the Clean Air Act.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as of such completion as specified by the person conducting the physical change.

Operator means any person who operates, controls, or supervises a Hg Budget unit or a Hg Budget source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Ounce means 2.84×10^7 micrograms. For the purpose of determining compliance with the Hg Budget emissions limitation, total ounces of mercury emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with §§ 62.15970 through 62.15975, but with any remaining fraction of an ounce equal to or greater than 0.50 ounces deemed to equal one ounce and any remaining fraction of an ounce less than 0.50 ounces deemed to equal zero ounces.

Owner means any of the following persons:

(1) With regard to a Hg Budget source or a Hg Budget unit at a source, respectively:

(i) Any holder of any portion of the legal or equitable title in a Hg Budget unit at the source or the Hg Budget unit;

(ii) Any holder of a leasehold interest in a Hg Budget unit at the source or the Hg Budget unit; or

(iii) Any purchaser of power from a Hg Budget unit at the source or the Hg Budget unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such Hg Budget unit; or

(2) With regard to any general account, any person who has an ownership interest with respect to the Hg allowances held in the general account and who is subject to the binding agreement for the Hg authorized account representative to represent the person's ownership interest with respect to Hg allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the Hg Budget Trading Program or, if no such agency has been so authorized, the Administrator.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the

document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or recorded means, with regard to Hg allowances, the movement of Hg allowances by the Administrator into or between Hg Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Replacement, replace, or replaced means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

(1) Atmospheric or pressurized fluidized bed combustion;

(2) Integrated gasification combined cycle;

(3) Magnetohydrodynamics;

(4) Direct and indirect coal-fired turbines;

(5) Integrated gasification fuel cells; or

(6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

Serial number means, for a Hg allowance, the unique identification number assigned to each Hg allowance by the Administrator.

Solid waste incineration unit means a stationary, coal-fired boiler or stationary, coal-fired combustion turbine that is a "solid waste

incineration unit" as defined in section 129(g)(1) of the Clean Air Act.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

State means:

(1) For purposes of referring to a governing entity, one of the States in the United States, the District of Columbia, or, if approved for treatment as a State under part 49 of this chapter, the Navajo Nation or Ute Indian Tribe where such governing entity is subject to a finding by the Administrator of failure to submit an approvable State plan under § 60.24(h) of this chapter and has not subsequently submitted to the Administrator an approved and currently effective State plan under § 60.24(h) of this chapter; or

(2) For purposes of referring to geographic areas, one of the States in the United States, the District of Columbia, the Navajo Nation Indian country, or the Ute Tribe Indian country that is not covered by an Administrator approved and currently effective State or Tribal plan.

Subbituminous means coal that is classified as subbituminous A, B, or C, according to the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388-77, 90, 91, 95, 98a, or 99 (Reapproved 2004)¹ (incorporated by reference, see § 60.17).

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including

electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary, coal-fired boiler or a stationary, coal-fired combustion turbine.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or hour of unit operation means an hour in which a unit combusts any fuel.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(2) Used in a heating application (*e.g.*, space heating or domestic hot water heating); or

(3) Used in a space cooling application (*i.e.*, thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

§ 62.15903 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart are defined as follows:

Btu—British thermal unit.

CO₂—carbon dioxide.

H₂O—water.

Hg—mercury.

hr—hour.

kW—kilowatt electrical.

kWh—kilowatt hour.

lb—pound.

MMBtu—million Btu.

MWe—megawatt electrical.

MWh—megawatt hour.

NO_x—nitrogen oxides.

O₂—oxygen.

ppm—parts per million.

scfh—standard cubic feet per hour.

SO₂—sulfur dioxide.

yr—year.

§ 62.15904 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State shall be Hg Budget units, and any source that includes one or more such units shall be a Hg Budget source, subject to the requirements of this subpart: Any stationary, coal-fired boiler or stationary, coal-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

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

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i) or (b)(2) of this section shall not be Hg Budget units:

(1)(i) Any unit that is a Hg Budget unit under paragraph (a)(1) or (2) of this section:

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

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

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

the requirements of paragraph (b)(1)(i)(B) of this section.

(2) Any unit that is a Hg Budget unit under paragraph (a)(1) or (2) of this section, is a solid waste incineration unit combusting municipal waste, and is subject to the requirements of:

(i) A State Plan approved by the Administrator in accordance with subpart Cb of part 60 of this chapter (emissions guidelines and compliance times for certain large municipal waste combustors);

(ii) Subpart Eb of part 60 of this chapter (standards of performance for certain large municipal waste combustors);

(iii) Subpart AAAA of part 60 of this chapter (standards of performance for certain small municipal waste combustors);

(iv) A State Plan approved by the Administrator in accordance with subpart BBBB of part 60 of this chapter (emission guidelines and compliance times for certain small municipal waste combustion units);

(v) Subpart FFF, of part 62 of this chapter (Federal Plan requirements for certain large municipal waste combustors); or

(vi) Subpart JJJ of part 62 of this chapter (Federal Plan requirements for certain small municipal waste combustion units).

(c) A certifying official of an owner or operator of any combustion device may petition the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section, of the Hg Budget Trading Program to the combustion device.

(1) *Petition content.* The petition shall be in writing and include the identification of the combustion device and the relevant facts about the combustion device. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: "I am authorized to make this submission on behalf of the owners and operators of the combustion device for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting

required statements and information, including the possibility of fine or imprisonment.”

(2) *Submission.* The petition and any other documents provided in connection with the petition shall be submitted to the Director of the Clean Air Markets Division (or its successor), U.S. Environmental Protection Agency, who will act on the petition as the Administrator's duly authorized representative.

(3) *Response.* The Administrator will issue a written response to the petition and may request supplemental information relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the Hg Budget Trading Program to the combustion device shall be binding on the permitting authority unless the petition or other information or documents provided in connection with the petition are found to have contained significant, relevant errors or omissions.

§ 62.15905 Retired unit exemption.

(a)(1) Any Hg Budget unit that is permanently retired shall be exempt from the Hg Budget Trading Program, except for the provisions of this section, § 62.15902, § 62.15903, § 62.15904, § 62.15906(c)(4) through (7), § 62.15907, § 62.15908, §§ 62.15910 through 62.15915, and §§ 62.15940 through 62.15962.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the Hg Budget unit is permanently retired. Within 30 days of the unit's permanent retirement, the Hg designated representative shall submit a statement to the permitting authority otherwise responsible for administering any Hg Budget permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.

(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under §§ 62.15920 through 62.15924 covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.

(b) *Special provisions.*

(1) A unit exempt under paragraph (a) of this section shall not emit any mercury, starting on the date that the exemption takes effect.

(2) The Administrator or the permitting authority will allocate Hg allowances under §§ 62.15940 through 62.15943 to a unit exempt under paragraph (a) of this section.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(4) The owners and operators and, to the extent applicable, the Hg designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the Hg Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the Hg designated representative of the source submits a complete Hg Budget permit application under § 62.15922 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the unit resumes operation.

(6) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the Hg designated representative submits a Hg Budget permit application for the unit under paragraph (b)(5) of this section;

(ii) The date on which the Hg designated representative is required under paragraph (b)(5) of this section to submit a Hg Budget permit application for the unit; or

(iii) The date on which the unit resumes operation, if the Hg designated representative is not required to submit a Hg Budget permit application for the unit.

(7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under §§ 62.15970 through 62.15975, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

§ 62.15906 Standard requirements.

(a) *Permit requirements.*

(1) The Hg designated representative of each Hg Budget source required to have a title V operating permit and each Hg Budget unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete Hg Budget permit application under § 62.15922 in accordance with the deadlines specified in § 62.15921; and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a Hg Budget permit application and issue or deny a Hg Budget permit.

(2) The owners and operators of each Hg Budget source required to have a title V operating permit and each Hg Budget unit required to have a title V operating permit at the source shall have a Hg Budget permit issued by the permitting authority under §§ 62.15920 through 62.15924 for the source and operate the source and the unit in compliance with such Hg Budget permit.

(3) The owners and operators of a Hg Budget source that is not otherwise required to have a title V operating permit and each Hg Budget unit that is not otherwise required to have a title V operating permit are not required to submit a Hg Budget permit application, and to have a Hg Budget permit, under §§ 62.15920 through 62.15924 for such Hg Budget source and such Hg Budget unit.

(b) *Monitoring, reporting, and recordkeeping requirements.*

(1) The owners and operators, and the Hg designated representative, of each Hg Budget source and each Hg Budget unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§ 62.15970 through 62.15975.

(2) The emissions measurements recorded and reported in accordance with §§ 62.15970 through 62.15975 shall be used to determine compliance by each Hg Budget source with the Hg Budget emissions limitation under paragraph (c) of this section.

(c) *Mercury emission requirements.*

(1) As of the allowance transfer deadline for a control period, the owners and operators of each Hg Budget source and each Hg Budget unit at the source shall hold, in the source's compliance account, Hg allowances available for compliance deductions for the control period under § 62.15954(a) in an amount not less than the ounces of total mercury emissions for the control period from all Hg Budget units at the source, as determined in

accordance with §§ 62.15970 through 62.15975.

(2) A Hg Budget unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under § 62.15970(b)(1) or (2) and for each control period thereafter.

(3) A Hg allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the Hg allowance was allocated.

(4) Hg allowances shall be held in, deducted from, or transferred into or among Hg Allowance Tracking System accounts in accordance with §§ 62.15940 through 62.15962.

(5) A Hg allowance is a limited authorization to emit one ounce of mercury in accordance with the Hg Budget Trading Program. No provision of the Hg Budget Trading Program, the Hg Budget permit application, the Hg Budget permit, or an exemption under § 62.15905 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(6) A Hg allowance does not constitute a property right.

(7) Upon recordation by the Administrator under §§ 62.15940 through 62.15962, every allocation, transfer, or deduction of a Hg allowance to or from a Hg Budget source's compliance account is incorporated automatically in any Hg Budget permit of the source.

(d) *Excess emissions requirements.* If a Hg Budget source emits mercury during any control period in excess of the Hg Budget emissions limitation, then:

(1) The owners and operators of the source and each Hg Budget unit at the source shall surrender the Hg allowances required for deduction under § 62.15954(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

(2) Each ounce of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(e) *Recordkeeping and reporting requirements.*

(1) Unless otherwise provided, the owners and operators of the Hg Budget source and each Hg Budget unit at the source shall keep on site at the source each of the following documents for a

period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 62.15913 for the Hg designated representative for the source and each Hg Budget unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 62.15913 changing the Hg designated representative.

(ii) All emissions monitoring information, in accordance with §§ 62.15970 through 62.15975, provided that to the extent that §§ 62.15970 through 62.15975 provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the Hg Budget Trading Program.

(iv) Copies of all documents used to complete a Hg Budget permit application and any other submission under the Hg Budget Trading Program or to demonstrate compliance with the requirements of the Hg Budget Trading Program.

(2) The Hg designated representative of a Hg Budget source and each Hg Budget unit at the source shall submit the reports required under the Hg Budget Trading Program, including those under §§ 62.15970 through 62.15975.

(f) *Liability.*

(1) Each Hg Budget source and each Hg Budget unit shall meet the requirements of the Hg Budget Trading Program.

(2) Any provision of the Hg Budget Trading Program that applies to a Hg Budget source or the Hg designated representative of a Hg Budget source shall also apply to the owners and operators of such source and of the Hg Budget units at the source.

(3) Any provision of the Hg Budget Trading Program that applies to a Hg Budget unit or the Hg designated representative of a Hg Budget unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the Hg Budget Trading Program, a Hg Budget permit application, a Hg Budget permit, or an exemption under § 62.15905 shall be

construed as exempting or excluding the owners and operators, and the Hg designated representative, of a Hg Budget source or Hg Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a Federally enforceable permit, or the Clean Air Act.

§ 62.15907 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the Hg Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the Hg Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the Hg Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 62.15908 Appeal procedures.

The appeal procedures for decisions of the Administrator under the Hg Budget Trading Program are set forth in part 78 of this chapter.

Hg Designated Representative for Hg Budget Sources

§ 62.15910 Authorization and responsibilities of Hg designated representative.

(a) Except as provided under § 62.15911, each Hg Budget source, including all Hg Budget units at the source, shall have one and only one Hg designated representative, with regard to all matters under the Hg Budget Trading Program concerning the source or any Hg Budget unit at the source.

(b) The Hg designated representative of the Hg Budget source shall be selected by an agreement binding on the owners and operators of the source and all Hg Budget units at the source and shall act in accordance with the certification statement in § 62.15913(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 62.15913, the Hg designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the Hg Budget source represented and each Hg Budget unit at the source in all matters pertaining to the Hg Budget Trading Program, notwithstanding any agreement between the Hg designated representative and such owners and operators. The owners

and operators shall be bound by any decision or order issued to the Hg designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No Hg Budget permit will be issued, no emissions data reports will be accepted, and no Hg Allowance Tracking System account will be established for a Hg Budget unit at a source, until the Administrator has received a complete certificate of representation under § 62.15913 for a Hg designated representative of the source and the Hg Budget units at the source.

(e)(1) Each submission under the Hg Budget Trading Program shall be submitted, signed, and certified by the Hg designated representative for each Hg Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the Hg designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owners or operators of a Hg Budget source or a Hg Budget unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 62.15911 Alternate Hg designated representative.

(a) A certificate of representation under § 62.15913 may designate one and only one alternate Hg designated representative, who may act on behalf of the Hg designated representative. The agreement by which the alternate Hg designated representative is selected shall include a procedure for authorizing the alternate Hg designated representative to act in lieu of the Hg designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 62.15913, any

representation, action, inaction, or submission by the alternate Hg designated representative shall be deemed to be a representation, action, inaction, or submission by the Hg designated representative.

(c) Except in this section and §§ 62.15902, 62.15910(a) and (d), 62.15912, 62.15913, 62.15915, and 62.15951, whenever the term "Hg designated representative" is used in this subpart, the term shall be construed to include the Hg designated representative or any alternate Hg designated representative.

§ 62.15912 Changing Hg designated representative and alternate Hg designated representative; changes in owners and operators.

(a) *Changing Hg designated representative.* The Hg designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 62.15913. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Hg designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new Hg designated representative and the owners and operators of the Hg Budget source and the Hg Budget units at the source.

(b) *Changing alternate Hg designated representative.* The alternate Hg designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 62.15913. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate Hg designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate Hg designated representative and the owners and operators of the Hg Budget source and the Hg Budget units at the source.

(c) *Changes in owners and operators.*

(1) In the event a owner or operator of a Hg Budget source or a Hg Budget unit is not included in the list of owners and operators in the certificate of representation under § 62.15913, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the Hg designated representative and any alternate Hg designated representative of the source or unit, and the decisions and orders of the

permitting authority, the Administrator, or a court, as if the owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a Hg Budget source or a Hg Budget unit, including the addition of a new owner or operator, the Hg designated representative or any alternate Hg designated representative shall submit a revision to the certificate of representation under § 62.15913 amending the list of owners and operators to include the change.

§ 62.15913 Certificate of representation.

(a) A complete certificate of representation for a Hg designated representative or an alternate Hg designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the Hg Budget source, and each Hg Budget unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the Hg designated representative and any alternate Hg designated representative.

(3) A list of the owners and operators of the Hg Budget source and of each Hg Budget unit at the source.

(4) The following certification statements by the Hg designated representative and any alternate Hg designated representative:

(i) "I certify that I was selected as the Hg designated representative or alternate Hg designated representative, as applicable, by an agreement binding on the owners and operators of the source and each Hg Budget unit at the source."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the Hg Budget Trading Program on behalf of the owners and operators of the source and of each Hg Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

(iii) "I certify that the owners and operators of the source and of each Hg Budget unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit."

(iv) "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a Hg Budget unit, or where a utility or industrial customer purchases power from a Hg Budget unit under a life-of-the-unit, firm power

contractual arrangement, I certify that: I have given a written notice of my selection as the 'Hg designated representative' or 'alternate Hg designated representative,' as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each Hg Budget unit at the source; and Hg allowances and proceeds of transactions involving Hg allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of Hg allowances by contract, Hg allowances and proceeds of transactions involving Hg allowances will be deemed to be held or distributed in accordance with the contract."

(5) The signature of the Hg designated representative and any alternate Hg designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 62.15914 Objections concerning Hg designated representative.

(a) Once a complete certificate of representation under § 62.15913 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 62.15913 is received by the Administrator.

(b) Except as provided in § 62.15912(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the Hg designated representative shall affect any representation, action, inaction, or submission of the Hg designated representative or the finality of any decision or order by the permitting authority or the Administrator under the Hg Budget Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any Hg designated representative, including

private legal disputes concerning the proceeds of Hg allowance transfers.

§ 62.15915 Delegation by Hg designated representative and alternate Hg designated representative.

(a) A Hg designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(b) An alternate Hg designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the Hg designated representative or alternate Hg designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such Hg designated representative or alternate Hg designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an "agent");

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such Hg designated representative or alternate Hg designated representative:

(i) "I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a Hg designated representative or alternate Hg designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 62.15915(d) shall be deemed to be an electronic submission by me."

(ii) "Until this notice of delegation is superseded by another notice of delegation under 40 CFR 62.15915(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address,

unless all delegation of authority by me under 40 CFR 62.15915 is terminated."

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the Hg designated representative or alternate Hg designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such Hg designated representative or alternate Hg designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the Hg designated representative or alternate Hg designated representative submitting such notice of delegation.

Permits

§ 62.15920 General Hg budget trading program permit requirements.

(a) For each Hg Budget source required to have a title V operating permit, such permit shall include a Hg Budget permit administered by the permitting authority for the title V operating permit. The Hg Budget portion of the title V permit shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter, except as provided otherwise by paragraph (b) of this section, § 62.15905, and §§ 62.15921 through 62.15924.

(b) Each Hg Budget permit shall contain, with regard to the Hg Budget source and the Hg Budget units at the source covered by the Hg Budget permit, all applicable Hg Budget Trading Program requirements and shall be a complete and separable portion of the title V operating permit.

§ 62.15921 Submission of Hg budget permit applications.

(a) *Duty to apply.* The Hg designated representative of any Hg Budget source required to have a title V operating permit shall submit to the permitting authority a complete Hg Budget permit application under § 62.15922 for the source covering each Hg Budget unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the Hg

Budget unit commences commercial operation.

(b) *Duty to reapply.* For a Hg Budget source required to have a title V operating permit, the Hg designated representative shall submit a complete Hg Budget permit application under § 62.15922 for the source covering each Hg Budget unit at the source to renew the Hg Budget permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal.

§ 62.15922 Information requirements for Hg budget permit applications.

A complete Hg Budget permit application shall include the following elements concerning the Hg Budget source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the Hg Budget source;

(b) Identification of each Hg Budget unit at the Hg Budget source; and
 (c) The standard requirements under § 62.15906.

§ 62.15923 Hg budget permit contents and term.

(a) Each Hg Budget permit will contain, in a format prescribed by the permitting authority, all elements required for a complete Hg Budget permit application under § 62.15922.

(b) Each Hg Budget permit is deemed to incorporate automatically the definitions of terms under § 62.15902 and, upon recordation by the Administrator under §§ 62.15940 through 62.15962, every allocation, transfer, or deduction of a Hg allowance to or from the compliance account of the Hg Budget source covered by the permit.

(c) The term of the Hg Budget permit will be set by the permitting authority, as necessary to facilitate coordination of

the renewal of the Hg Budget permit with issuance, revision, or renewal of the Hg Budget source's title V operating permit.

§ 62.15924 Hg budget permit revisions.

Except as provided in § 62.15923(b), the permitting authority will revise the Hg Budget permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.

§ 62.15930 [Reserved].

Hg Allowance Allocations

§ 62.15940 State trading budgets.

The State trading budgets for annual allocations of Hg allowances for the control periods in 2010 through 2017 and in 2018 and thereafter are respectively as follows:

State	State trading budget (tons)	
	2010–2017	2018 and thereafter
Alaska	0.010	0.004
Alabama	1.289	0.509
Arkansas	0.516	0.204
Arizona	0.454	0.179
California	0.041	0.016
Colorado	0.706	0.279
Connecticut	0.053	0.021
Delaware	0.072	0.028
District of Columbia	0	0
Florida	1.232	0.487
Georgia	1.227	0.484
Hawaii	0.024	0.009
Idaho	0	0
Iowa	0.727	0.287
Illinois	1.594	0.629
Indiana	2.097	0.828
Kansas	0.723	0.285
Kentucky	1.525	0.602
Louisiana	0.601	0.237
Massachusetts	0.172	0.068
Maryland	0.49	0.193
Maine	0.001	0.001
Michigan	1.303	0.514
Minnesota	0.695	0.274
Missouri	1.393	0.550
Mississippi	0.291	0.115
Montana	0.377	0.149
Navajo Nation Indian Country	0.600	0.237
North Carolina	1.133	0.447
North Dakota	1.564	0.617
Nebraska	0.421	0.166
New Hampshire	0.063	0.025
New Jersey	0.153	0.060
New Mexico	0.299	0.118
Nevada	0.285	0.112
New York	0.393	0.155
Ohio	2.057	0.812
Oklahoma	0.721	0.285
Oregon	0.076	0.030
Pennsylvania	1.779	0.702
Rhode Island	0	0
South Carolina	0.58	0.229
South Dakota	0.072	0.029
Tennessee	0.944	0.373

State	State trading budget (tons)	
	2010–2017	2018 and thereafter
Texas	4.656	1.838
Utah	0.506	0.200
Ute Indian Tribe Reservation Indian Country	0.060	0.024
Virginia	0.592	0.234
Vermont	0	0
Washington	0.198	0.078
Wisconsin	0.89	0.351
West Virginia	1.394	0.550
Wyoming	0.952	0.376

§ 62.15941 Timing requirements for Hg allowance allocations.

(a) The Administrator will determine by order the Hg allowance allocations, in accordance with § 62.15942(a) and (b), for the control periods in 2010, 2011, 2012, 2013, and 2014.

(b) By July 31, 2011 and July 31 of each year thereafter, the Administrator will determine by order the Hg allowance allocations, in accordance with § 62.15942(a) and (b), for the control period in the fourth year after the year of the applicable deadline for determination under this paragraph.

(c) By July 31, 2010 and July 31 of each year thereafter, the Administrator will determine by order the Hg allowance allocations, in accordance with § 62.15942(a), (c), and (d), for the control period in the year of the applicable deadline for determination under this paragraph.

(d) The Administrator will make available to the public each determination of Hg allowances under paragraph (a), (b), or (c) of this section and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with § 62.15942. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with § 62.15942.

§ 62.15942 Hg allowance allocations.

(a)(1) The baseline heat input (in MMBtu) used with respect to Hg allowance allocations under paragraph (b) of this section for each Hg Budget unit will be:

(i) For units commencing operation before January 1, 2001, the average of the three highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as the sum of the following:

(A) Any portion of the unit's control period heat input for the year that

results from the unit's combustion of lignite, multiplied by 3.0;

(B) Any portion of the unit's control period heat input for the year that results from the unit's combustion of subbituminous coal, multiplied by 1.25; and

(C) Any portion of the unit's control period heat input for the year that is not covered by paragraph (a)(1)(i)(A) or (B) of this section, multiplied by 1.0.

(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

(2)(i) A unit's control period heat input for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total ounces of Hg emissions during a calendar year under paragraph (c)(3) of this section, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the Administrator for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year. The unit's types and amounts of fuel combusted, under paragraph (a)(1)(i) of this section, will be based on the best available data reported to the Administrator for the unit.

(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:

(A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh and divided by 1,000,000 Btu/MMBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to

the unit's share of the total control period heat input of such units for the year;

(B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/MMBtu; or

(C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/MMBtu.

(iii) Gross electrical output and total heat energy under paragraph (a)(2)(ii) of this section will be determined based on the best available data reported to the Administrator.

(3) The Administrator will determine what data are the best available data under paragraph (a)(2) of this section by weighing the likelihood that data are accurate and reliable and giving greater weight to data submitted to a governmental entity in compliance with legal requirements or substantiated by an independent entity.

(b)(1) For each control period in 2010 and thereafter, the Administrator will allocate to all Hg Budget units in a State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of Hg allowances equal to 95 percent for a control period in 2010 through 2014, and 97 percent for a control period in 2015 and thereafter, of the amount of ounces (i.e., tons multiplied by 32,000 ounces/ton)

of Hg emissions in the applicable State trading budget under § 62.15940 (except as provided in paragraph (d) of this section).

(2) The Administrator will allocate Hg allowances to each Hg Budget unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of Hg allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such Hg Budget unit to the total amount of baseline heat input of all such Hg Budget units in the State and rounding to the nearest whole allowance as appropriate.

(c) For each control period in 2009 and thereafter, the Administrator will allocate Hg allowances to Hg Budget units in a State that are not allocated Hg allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input but all Hg allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Administrator will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated Hg allowances equal to 5 percent for a control period in 2010 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of ounces (*i.e.*, tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under § 62.15940.

(2) The Hg designated representative of such a Hg Budget unit may submit to the Administrator a request, in a format specified by the Administrator, to be allocated Hg allowances, starting with the later of the control period in 2010 or the first control period after the control period in which the Hg Budget unit commences commercial operation and until the first control period for which the unit is allocated Hg allowances under paragraph (b) of this section. A separate Hg allowance allocation request for each control period for which Hg allowances are sought must be submitted on or before May 1 of such control period and after the date on which the Hg Budget unit commences commercial operation.

(3) In a Hg allowance allocation request under paragraph (c)(2) of this section, the Hg designated representative may request for a control period Hg allowances in an amount not exceeding the Hg Budget unit's total ounces of Hg emissions during the calendar year immediately before such control period.

(4) The Administrator will review each Hg allowance allocation request under paragraph (c)(2) of this section and will allocate Hg allowances for each control period pursuant to such request as follows:

(i) The Administrator will accept an allowance allocation request only if the request meets, or is adjusted by the Administrator as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after May 1 of the control period, the Administrator will determine the sum of the Hg allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of Hg allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the Administrator will allocate the amount of Hg allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each Hg Budget unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of Hg allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the Administrator will allocate to each Hg Budget unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the Hg allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of Hg allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Administrator will notify each Hg designated representative that submitted an allowance allocation request of the amount of Hg allowances (if any) allocated for the control period to the Hg Budget unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated Hg allowances remain in the new unit set-aside under paragraph (c) for a State for the control period, the Administrator will allocate to each Hg Budget unit that was allocated Hg allowances under paragraph (b) of this section in the State an amount of Hg allowances equal to the total amount of such remaining unallocated Hg allowances, multiplied by the unit's allocation under paragraph (b) of this

section, divided by 95 percent for a control period in 2010 through 2014, and 97 percent for a control period in 2015 and thereafter, of the amount of ounces (*i.e.*, tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under § 62.15940, and rounded to the nearest whole allowance as appropriate.

(e) If the Administrator determines that Hg allowances were allocated under paragraphs (a) and (b) of this section, paragraphs (a) and (c) of this section, or paragraph (d) of this section for a control period and that the recipient of the allocation is not actually a Hg Budget unit under § 62.15904 in such control period, then the Administrator will notify the Hg designated representative and will act in accordance with the following procedures:

(1) Except as provided in paragraph (e)(2) or (3) of this section, the Administrator will not record such Hg allowances under § 62.15953.

(2) If the Administrator already recorded such Hg allowances under § 62.15953 and if the Administrator makes such determination before making deductions for the source that includes such recipient under § 62.15954(b) for the control period, then the Administrator will deduct from the account in which such Hg allowances were recorded under § 62.15953 an amount of Hg allowances allocated for the same or a prior control period equal to the amount of such already recorded Hg allowances. The Hg authorized account representative shall ensure that there are sufficient Hg allowances in such account for completion of the deduction.

(3) If the Administrator already recorded such Hg allowances under § 62.15953 and if the Administrator makes such determination after making deductions for the source that includes such recipient under § 62.15954(b) for the control period, then the Administrator will apply paragraph (e)(1) or (2) of this section, as appropriate, to any subsequent control period for which Hg allowances were allocated to such recipient.

(4) The Administrator will transfer the Hg allowances that are not recorded, or that are deducted, in accordance with paragraphs (e)(1), (2), and (3) of this section to a new unit set-aside for the State in which such recipient is located.

§ 62.15943 Alternative of allocation of Hg allowances by permitting authority.

(a) Notwithstanding §§ 62.15941, 62.15942, and 62.15953 if a State submits, and the Administrator approves, a State allocation

methodology in accordance with § 60.24(h)(9) of this chapter providing for allocation of Hg allowances for any control period by the permitting authority, then, for each such control period:

(1) The permitting authority shall make such allocations in accordance with such approved State allocation methodology;

(2) The Administrator will not make allocations under §§ 62.15941 and 62.15942 for the Hg Budget units in the State; and

(3) Under § 62.15953, the Administrator will record the allocations made under such approved State allocation methodology instead of allocations under §§ 62.15941 and 62.15942.

(b) In implementing paragraph (a) of this section and §§ 62.15941, 62.15942, and 62.15953, the Administrator will ensure that the total amount of Hg allowances allocated, under such provisions and under a State's State allocation methodology approved in accordance with § 60.24(h)(9) of this chapter, for a control period for Hg Budget sources in the State or for other entities specified by the permitting authority will not exceed the State's State trading budget for the year of the control period.

Hg Allowance Tracking System

§ 62.15950 [Reserved]

§ 62.15951 Establishment of accounts.

(a) *Compliance accounts.* Upon receipt of a complete certificate of representation under § 62.15913, the Administrator will establish a compliance account for the Hg Budget source for which the certificate of representation was submitted unless the source already has a compliance account.

(b) *General accounts.*

(1) *Application for general account.*

(i) Any person may apply to open a general account for the purpose of holding and transferring Hg allowances. An application for a general account may designate one and only one Hg authorized account representative and one and only one alternate Hg authorized account representative who may act on behalf of the Hg authorized account representative. The agreement by which the alternate Hg authorized account representative is selected shall include a procedure for authorizing the alternate Hg authorized account representative to act in lieu of the Hg authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the

following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the Hg authorized account representative and any alternate Hg authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the Hg authorized account representative and any alternate Hg authorized account representative to represent their ownership interest with respect to the Hg allowances held in the general account;

(D) The following certification statement by the Hg authorized account representative and any alternate Hg authorized account representative: "I certify that I was selected as the Hg authorized account representative or the alternate Hg authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to Hg allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the Hg Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."

(E) The signature of the Hg authorized account representative and any alternate Hg authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of Hg authorized account representative and alternate Hg authorized account representative.*

(i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

(A) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(B) The Hg authorized account representative and any alternate Hg authorized account representative for the general account shall represent and,

by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to Hg allowances held in the general account in all matters pertaining to the Hg Budget Trading Program, notwithstanding any agreement between the Hg authorized account representative or any alternate Hg authorized account representative and such person. Any such person shall be bound by any order or decision issued to the Hg authorized account representative or any alternate Hg authorized account representative by the Administrator or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate Hg authorized account representative shall be deemed to be a representation, action, inaction, or submission by the Hg authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the Hg authorized account representative or any alternate Hg authorized account representative for the persons having an ownership interest with respect to Hg allowances held in the general account. Each such submission shall include the following certification statement by the Hg authorized account representative or any alternate Hg authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the Hg allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.

(3) *Changing Hg authorized account representative and alternate Hg authorized account representative; changes in persons with ownership interest.*

(i) The Hg authorized account representative for a general account may

be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Hg authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new Hg authorized account representative and the persons with an ownership interest with respect to the Hg allowances in the general account.

(ii) The alternate Hg authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate Hg authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate Hg authorized account representative and the persons with an ownership interest with respect to the Hg allowances in the general account.

(iii)(A) In the event a person having an ownership interest with respect to Hg allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the Hg authorized account representative and any alternate Hg authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to Hg allowances in the general account, including the addition of a new person, the Hg authorized account representative or any alternate Hg authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the Hg allowances in the general account to include the change.

(4) *Objections concerning Hg authorized account representative and alternate Hg authorized account representative.*

(i) Once a complete application for a general account under paragraph (b)(1)

of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the Hg authorized account representative or any alternate Hg authorized account representative for a general account shall affect any representation, action, inaction, or submission of the Hg authorized account representative or any alternate Hg authorized account representative or the finality of any decision or order by the Administrator under the Hg Budget Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the Hg authorized account representative or any alternate Hg authorized account representative for a general account, including private legal disputes concerning the proceeds of Hg allowance transfers.

(5) *Delegation by Hg authorized account representative and alternate Hg authorized account representative.*

(i) A Hg authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this section and §§ 62.15952 through 62.15962.

(ii) An alternate Hg authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this section and §§ 62.15952 through 62.15962.

(iii) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (b)(5)(i) or (ii) of this section, the Hg authorized account representative or alternate Hg authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(A) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such Hg authorized account

representative or alternate Hg authorized account representative;

(B) The name, address, e-mail address, telephone number, and, facsimile transmission number (if any) of each such natural person (referred to as an "agent");

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (b)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such Hg authorized account representative or alternate Hg authorized account representative: "I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a Hg authorized account representative or alternate Hg authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 62.15951(b)(5)(iv) shall be deemed to be an electronic submission by me."; and

(E) The following certification statement by such Hg authorized account representative or alternate Hg authorized account representative: "Until this notice of delegation is superseded by another notice of delegation under 40 CFR 62.15951(b)(5)(iv), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority under 40 CFR 62.15951(b)(5) is terminated."

(iv) A notice of delegation submitted under paragraph (b)(5)(iii) of this section shall be effective, with regard to the Hg authorized account representative or alternate Hg authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such Hg authorized account representative or alternate Hg authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in paragraph (b)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (b)(5)(iv) of this section shall be deemed to be an electronic submission by the Hg designated representative or alternate

Hg designated representative submitting such notice of delegation.

(c) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 62.15952 Responsibilities of Hg authorized account representative.

Following the establishment of a Hg Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of Hg allowances in the account, shall be made only by the Hg authorized account representative for the account.

§ 62.15953 Recordation of Hg allowance allocations.

(a) By December 1, 2007, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source in accordance with § 62.15942(a) and (b) for the control period in 2010.

(b) By December 1, 2008, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source in accordance with § 62.15942(a) and (b) for the control period in 2011.

(c) By December 1, 2009, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source in accordance with § 62.15942(a) and (b) for the control periods in 2012 and 2013.

(d) By December 1, 2010 and December 1 of each year thereafter, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source in accordance with § 62.15942(a) and (b) for the control period in the fourth year after the year of the applicable deadline for recordation under this paragraph.

(e) By December 1, 2009 and December 1 of each year thereafter, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source in accordance with § 62.15942(a) and (c) for the control period in the year of the applicable deadline for recordation under this paragraph.

(f) Serial numbers for allocated Hg allowances. When recording the allocation of Hg allowances for a Hg Budget unit in a compliance account, the Administrator will assign each Hg allowance a unique identification

number that will include digits identifying the year of the control period for which the Hg allowance is allocated.

§ 62.15954 Compliance with Hg Budget emissions limitation.

(a) *Allowance transfer deadline.* The Hg allowances are available to be deducted for compliance with a source's Hg Budget emissions limitation for a control period in a given calendar year only if the Hg allowances:

(1) Were allocated for the control period in the year or a prior year; and

(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a Hg allowance transfer correctly submitted for recordation under §§ 62.15960 and 62.15961 by the allowance transfer deadline for the control period.

(b) *Deductions for compliance.* Following the recordation, in accordance with § 62.15961, of Hg allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account Hg allowances available under paragraph (a) of this section in order to determine whether the source meets the Hg Budget emissions limitation for the control period, as follows:

(1) Until the amount of Hg allowances deducted equals the number of ounces of total Hg emissions, determined in accordance with §§ 62.15970 through 62.15975, from all Hg Budget units at the source for the control period; or

(2) If there are insufficient Hg allowances to complete the deductions in paragraph (b)(1) of this section, until no more Hg allowances available under paragraph (a) of this section remain in the compliance account.

(c)(1) *Identification of Hg allowances by serial number.* The Hg authorized account representative for a source's compliance account may request that specific Hg allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the Hg Budget source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct Hg allowances under paragraph (b) or (d) of

this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of Hg allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any Hg allowances that were allocated to the units at the source, in the order of recordation; and then

(ii) Any Hg allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to §§ 62.15960 through 62.15962, in the order of recordation.

(d) *Deductions for excess emissions.*

(1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the Hg Budget source has excess emissions, the Administrator will deduct from the source's compliance account an amount of Hg allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of ounces of the source's excess emissions.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the Hg Budget source or the Hg Budget units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable State law.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraph (b) and (d) of this section.

(f) *Administrator's action on submissions.*

(1) The Administrator may review and conduct independent audits concerning any submission under the Hg Budget Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct Hg allowances from or transfer Hg allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section, and record such deductions and transfers.

§ 62.15955 Banking.

(a) Hg allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any Hg allowance that is held in a compliance account or a general account will remain in such account unless and until the Hg allowance is

deducted or transferred under § 62.15942, § 62.15954, § 62.15956, or §§ 62.15960 through 62.15962.

§ 62.15956 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any Hg Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the Hg authorized account representative for the account.

§ 62.15957 Closing of general accounts.

(a) The Hg authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under §§ 62.15960 and 62.15961 for any Hg allowances in the account to one or more other Hg Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any Hg allowances, the Administrator may notify the Hg authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of Hg allowances into the account under §§ 62.15960 and 62.15961 or a statement submitted by the Hg authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Hg Allowance Transfers

§ 62.15960 Submission of Hg allowance transfers.

An Hg authorized account representative seeking recordation of a Hg allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the Hg allowance transfer shall include the following elements, in a format specified by the Administrator:

(a) The account numbers for both the transferor and transferee accounts;

(b) The serial number of each Hg allowance that is in the transferor account and is to be transferred; and

(c) The name and signature of the Hg authorized account representative of the transferor account and the date signed.

§ 62.15961 EPA recordation.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a Hg allowance

transfer, the Administrator will record a Hg allowance transfer by moving each Hg allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 62.15960; and

(2) The transferor account includes each Hg allowance identified by serial number in the transfer.

(b) A Hg allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any Hg allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 62.15954 for the control period immediately before such allowance transfer deadline.

(c) Where a Hg allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 62.15962 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a Hg allowance transfer under § 62.15961, the Administrator will notify the Hg authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a Hg allowance transfer that fails to meet the requirements of § 62.15961(a), the Administrator will notify the Hg authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a Hg allowance transfer for recordation following notification of non-recordation.

Monitoring and Reporting

§ 62.15970 General requirements.

The owners and operators, and to the extent applicable, the Hg designated representative, of a Hg Budget unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this section, §§ 62.15971 through 62.15975, and subpart I of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 62.15902 and in § 72.2 of this chapter shall apply, and the terms “affected unit,” “designated representative,” and “continuous emission monitoring system” (or “CEMS”) in part 75 of this

chapter shall be deemed to refer to the terms “Hg Budget unit,” “Hg designated representative,” and “continuous emission monitoring system” (or “CEMS”) respectively, as defined in § 62.15902. The owner or operator of a unit that is not a Hg Budget unit but that is monitored under § 75.82(b)(2)(i) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a Hg Budget unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each Hg Budget unit shall:

(1) Install all monitoring systems required under this section and §§ 62.15971 through 62.15975 for monitoring Hg mass emissions and individual unit heat input (including all systems required to monitor Hg concentration, stack gas moisture content, stack gas flow rate, and CO₂ or O₂ concentration, as applicable, in accordance with §§ 75.81 and 75.82 of this chapter);

(2) Successfully complete all certification tests required under § 62.15971 and meet all other requirements of this section, §§ 62.15971 through 62.15975, and subpart I of part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* Except as provided in paragraph (e) of this section, the owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.

(1) For the owner or operator of a Hg Budget unit that commences commercial operation before July 1, 2008, by January 1, 2009.

(2) For the owner or operator of a Hg Budget unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:

(i) January 1, 2009; or

(ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(3) For the owner or operator of a Hg Budget unit for which construction of a new stack or flue or installation of add-on Hg emission controls, a flue gas desulfurization system, a selective

catalytic reduction system, or a compact hybrid particulate collector system is completed after the applicable deadline under paragraph (b)(1) or (2) of this section, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue, add-on Hg emissions controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system.

(c) *Reporting data.* The owner or operator of a Hg Budget unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for Hg concentration, stack gas flow rate, stack gas moisture content, and any other parameters required to determine Hg mass emissions and heat input in accordance with § 75.80(g) of this chapter.

(d) *Prohibitions.*

(1) No owner or operator of a Hg Budget unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this section and §§ 62.15971 through 62.15974 without having obtained prior written approval in accordance with § 62.15975.

(2) No owner or operator of a Hg Budget unit shall operate the unit so as to discharge, or allow to be discharged, Hg emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this section, §§ 62.15971 through 62.15975, and subpart I of part 75 of this chapter.

(3) No owner or operator of a Hg Budget unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording Hg mass emissions discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this section, §§ 62.15971 through 62.15975, and subpart I of part 75 of this chapter.

(4) No owner or operator of a Hg Budget unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this section and §§ 62.15971 through

62.15975, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 62.15905 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this section, §§ 62.15971 through 62.15975, and subpart I of part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The Hg designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 62.15971(c)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a Hg Budget unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 62.15971 Initial certification and recertification procedures.

(a) The owner or operator of a Hg Budget unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 62.15970(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendix B to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 62.15970(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) Except as provided in paragraph (a) of this section, the owner or operator of a Hg Budget unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (*i.e.*, a continuous emission monitoring system and an excepted monitoring system (sorvent trap monitoring system) under § 75.15) under § 62.15970(a)(1). The owner or operator of a unit that qualifies to use the Hg low mass emissions excepted monitoring methodology under § 75.81(b) of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply

with the procedures in paragraph (d) or (e) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 62.15970(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 62.15970(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system, or an excepted monitoring system (sorvent trap monitoring system) under § 75.15, under § 62.15970(a)(1) that may significantly affect the ability of the system to accurately measure or record Hg mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system, and each excepted monitoring system (sorvent trap monitoring system) under § 75.15, whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site.

(3) *Approval process for initial certification and recertification.* Paragraphs (c)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 62.15970(a)(1). For recertifications, replace the words "certification" and "initial certification" with the word "recertification", replace the word "certified" with the word "recertified",

and follow the procedures in § 75.20(b)(5) of this chapter in lieu of the procedures in paragraph (c)(3)(v) of this section.

(i) *Notification of certification.* The Hg designated representative shall submit to the Administrator and the appropriate EPA Regional Office written notice of the dates of certification testing, in accordance with § 62.15973.

(ii) *Certification application.* The Hg designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the Hg Budget Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (c)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (c)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the Hg Budget Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the Administrator will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the Hg designated representative must submit the additional information required to complete the certification application. If the Hg designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (c)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (c)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (c)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 62.15972(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (c)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (c)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii) or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) of this chapter:

(1) For a disapproved Hg pollutant concentration monitors and disapproved flow monitor, respectively, the maximum potential concentration of Hg and the maximum potential flow rate, as defined in sections 2.1.7.1 and

2.1.4.1 of appendix A to part 75 of this chapter.

(2) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO₂ concentration or the minimum potential O₂ concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(3) For a disapproved excepted monitoring system (sorber trap monitoring system) under § 75.15 and disapproved flow monitor, respectively, the maximum potential concentration of Hg and maximum potential flow rate, as defined in sections 2.1.7.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(B) The Hg designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (c)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(d) *Initial certification and recertification procedures for units using the Hg low mass emission excepted methodology under § 75.81(b) of this chapter.* The owner or operator of a unit qualified to use the Hg low mass emissions (HgLME) excepted methodology under § 75.81(b) of this chapter shall meet the applicable certification and recertification requirements in § 75.81(c) through (f) of this chapter.

(e) *Certification/recertification procedures for alternative monitoring systems.* The Hg designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 62.15972 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D of part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system

and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 62.15971 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 62.15971 for each disapproved monitoring system.

§ 62.15973 Notifications.

The Hg designated representative for a Hg Budget unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

§ 62.15974 Recordkeeping and reporting.

(a) *General provisions.* The Hg designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements of § 75.84 of this chapter, and the requirements of § 62.15910(e)(1).

(b) *Monitoring plans.* The owner or operator of a Hg Budget unit shall comply with requirements of § 75.84(e) of this chapter.

(c) *Certification applications.* The Hg designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 62.15971, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The Hg designated representative shall submit quarterly reports, as follows:

(1) The Hg designated representative shall report the Hg mass emissions data

and heat input data for the Hg Budget unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009 through March 31, 2009; or

(ii) For a unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 62.15970(b), unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 through March 31, 2009.

(2) The Hg designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.84(f) of this chapter.

(3) For Hg Budget units that are also subject to an Acid Rain emissions limitation or the CAIR NO_x Annual Trading Program, CAIR SO₂ Trading Program, or CAIR NO_x Ozone Season Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the Hg mass emission data, heat input data, and other information required by this section, §§ 62.15970 through 62.15973, and § 62.15975.

(e) *Compliance certification.* The Hg designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements by this section, §§ 62.15970 through 62.15973, § 62.15975, and part 75 of this chapter, including the quality assurance procedures and specifications; and

(2) For a unit with add-on Hg emission controls, a flue gas desulfurization system, a selective catalytic reduction system, or a compact hybrid particulate collector system and for all hours where Hg data are substituted in accordance with § 75.34(a)(1) of this chapter,

(i)(A) The Hg add-on emission controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter, or

(B) With regard to a flue gas desulfurization system or a selective catalytic reduction system, quality-assured SO₂ emission data recorded in accordance with part 75 of this chapter document that the flue gas desulfurization system was operating properly or quality-assured NO_x emission data recorded in accordance with part 75 of this chapter document that the selective catalytic reduction system was operating properly, as applicable, and

(ii) The substitute data values do not systematically underestimate Hg emissions.

§ 62.15975 Petitions.

The Hg designated representative of a Hg Budget unit may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of §§ 62.15970 through 62.15974. Application of an alternative to any requirement of §§ 62.15970 through 62.15974 is in accordance with this section and §§ 62.15970 through 62.15974 only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

Appendix A to Subpart LLL of Part 62—States With Approved State Allocation Methodology

The following States have a State allocation methodology under § 52.24(h)(9) of this chapter approved by the Administrator and providing for allocation of Hg allowances by the permitting authority under § 62.15943(a):

[Reserved]

PART 72—PERMITS REGULATION

33. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 72.22 [Amended]

34. Section 72.22 is amended as follows:

a. In paragraph (b), by revising the words “an action, representation, or failure to act” to read “a representation, action, inaction, or submission”; and

b. Removing paragraph (e).

PART 78—APPEAL PROCEDURES

35. The authority citation for part 78 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7411, 7426, 7601, and 7651, *et seq.*

36. Section 78.1 is amended as follows:

a. In paragraph (a)(1), revising the words “under part 72” to read “under subpart HHHH of part 60 of this chapter or State regulations approved under § 60.24(h)(6) of this chapter, subpart LLL of part 62 of this chapter, parts 72”; and

b. Adding new paragraphs (b)(13) and (b)(14) to read as follows:

§ 78.1 Purpose and scope.

* * * * *

(b) * * *

(13) Under subpart HHHH of part 60 of this chapter,

(i) The decision on the allocation of Hg allowances under §§ 60.4140 through 60.4142 of this chapter.

(ii) The decision on the deduction of Hg allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of Hg allowances based on the information as adjusted, under § 60.4154 of this chapter;

(iii) The correction of an error in a Hg Allowance Tracking System account under § 60.4156 of this chapter;

(iv) The decision on the transfer of Hg allowances under § 60.4161 of this chapter;

(v) The finalization of control period emissions data, including retroactive adjustment based on audit;

(vi) The approval or disapproval of a petition under § 60.4175 of this chapter.

(14) Under subpart LLL of part 62 of this chapter,

(i) The decision on the allocation of Hg allowances under §§ 62.15940 through 62.15942 of part 62 of this chapter.

(ii) The decision on the deduction of Hg allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of Hg allowances based on the information as adjusted, under § 62.15954 of this chapter;

(iii) The correction of an error in a Hg Allowance Tracking System account under § 62.15956 of this chapter;

(iv) The decision on the transfer of Hg allowances under § 62.15961;

(v) The finalization of control period emissions data, including retroactive adjustment based on audit;

(vi) The approval or disapproval of a petition under § 62.15975 of this chapter.

* * * * *

37. Section 78.3 is amended as follows:

a. By adding new paragraphs (a)(10), (a)(11), (d)(11), and (d)(12);

b. In paragraph (b)(3)(i), by adding the words “or the Hg designated representative or Hg authorized account representative under paragraph (a)(10) or (11) of this section (unless the Hg designated representative or Hg authorized account representative is the petitioner) after the words “(unless the CAIR designated representative or CAIR authorized account representative is the petitioner)”;

c. In paragraph (d)(3), by adding the words “or a certificate of representation submitted by a Hg designated representative or an application of a general account submitted by a Hg authorized account representative under subpart HHHH of part 60 of this chapter or subpart LLL of part 62 of this chapter” after the words “subparts

AAAA through IIII of part 96 of this chapter, or under part 97 of this chapter”;

§ 78.3 Petition for administrative review and request for evidentiary hearing.

(a) * * *

(10) The following persons may petition for administrative review of a decision of the Administrator that is made under subpart HHHH of part 60 of this chapter and that is appealable under § 78.1(a):

- (i) The Hg designated representative for a unit or source, or the Hg authorized account representative for any Hg Allowance Tracking System account, covered by the decision; or
- (ii) Any interested person.

(11) The following persons may petition for administrative review of a decision of the Administrator that is made under subpart LLL of part 62 and that is appealable under § 78.1(a):

- (i) The Hg designated representative for a unit or source, or the Hg authorized account representative for any Hg Allowance Tracking System account, covered by the decision; or
- (ii) Any interested person.

* * * * *

(d) * * *

(11) Any provision or requirement of subpart HHHH of part 60 of this chapter, including the standard requirements under § 60.4106 of this chapter and any emission monitoring or reporting requirements.

(12) Any provision or requirement of subpart LLL of part 62 of this chapter, including the standard requirements under § 97.206 of this chapter and any emission monitoring or reporting requirements.

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