

The EPA Acting Regional Administrator for Region 9, Alexis Strauss, signed the following proposed rule on 1/18/2017, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of public comment. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDsys website (<http://fdsys.gpo.gov/fdsys/search/home.action>) and on Regulations.gov (<http://www.regulations.gov>) in Docket No. EPA-R09-OAR-2016-0775. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 52

[EPA-R09-OAR-2016-0775; FRL-]

Revisions to the Source-Specific Federal Implementation Plan for Navajo Generating Station, Navajo Nation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing limited revisions to the source-specific federal implementation plan (FIP) that we promulgated to regulate emissions from the Navajo Generating Station (NGS), a coal-fired power plant located on the reservation lands of the Navajo Nation near Page, Arizona. These limited revisions propose to remove emission limitation exemptions for periods of startup and shutdown, and an affirmative defense for excess emissions during periods of malfunction. We are also proposing to lower the emission limitation for particulate matter (PM) to conform to the most stringent emission limitation currently applicable to NGS and to replace the opacity limitation and annual PM source testing requirement with a requirement to demonstrate compliance with the lower PM emission limitation using continuous emission monitoring systems. These proposed revisions would ensure consistency with national actions and rulemakings.

DATES: Any comments on this proposal must arrive by **[INSERT DATE 30 DAYS FROM PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by Docket ID number EPA-R09-OAR-2016-0775, at <http://www.regulations.gov>, or via email to lee.anita@epa.gov. For comments submitted

at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the EPA's full public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Anita Lee, EPA Region IX, (415) 972-3958, lee.anita@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Background

A. Action

In today's action, the EPA is proposing limited revisions to a FIP for NGS that we promulgated on October 3, 1991 ("1991 FIP"), March 5, 2010 ("2010 FIP"), and August 8, 2014 ("2014 FIP").¹ The provisions of the 1991 action are codified in the Code of Federal Regulations (CFR) at 40 CFR 52.145(d), and the 2010 and 2014 regulations are codified at 40 CFR 49.5513. We refer collectively to the provisions from the 1991, 2010, and 2014 actions as the "FIP" or the "NGS FIP." The NGS FIP includes federally enforceable emission limitations for PM, opacity, sulfur dioxide (SO₂), and oxides of nitrogen (NO_x).

Generally, the EPA is proposing to move provisions from the 1991 FIP to a different section of the CFR and to update certain provisions in the FIP to be consistent with recent national rulemakings. Specifically, we are proposing to move the 1991 FIP provisions from 40 CFR 52.145(d) to 40 CFR 49.5513. If finalized, the effect of our action will be to move requirements for NGS from subpart D of part 52, which contains the state implementation plan (SIP) provisions for Arizona, to subpart L of part 49, which contains source-specific FIP requirements for NGS, to consolidate all of the applicable requirements for NGS in one section of the CFR. To update the provisions of the 1991 and 2010 FIP for NGS to be consistent with national rulemakings, we are proposing the following: (1) remove emission limit exemptions that applied during periods of startup, shutdown, and catastrophic failure; (2) remove a provision allowing for an affirmative defense for excess emissions during periods of malfunction; and (3)

¹ See 56 FR 50172 (October 3, 1991), 75 FR 10174 (March 5, 2010), and 79 FR 46552 (August 8, 2014).

update the definition of “boiler operating day” in the 1991 FIP to be consistent with the current definition of the term, which includes periods of startup, shutdown, and malfunction.² These revisions, if finalized, would make the NGS FIP consistent with the EPA’s interpretations of Clean Air Act (CAA or “the Act”) requirements, as reflected in the Agency’s recent action concerning how provisions in SIPs treat excess emissions during startup, shutdown, and malfunctions (“2015 SSM Action”).³

In addition, we are proposing to revise the PM compliance demonstration from annual source testing to the use of PM continuous emissions monitoring systems (PM CEMS) on each of the three units at the facility. We are also proposing to lower the PM emission limitation in the 2010 FIP from 0.060 pounds per million British thermal units (lb/MMBtu) to 0.030 lb/MMBtu. This lower emission limitation already applies to NGS pursuant to the Mercury and Air Toxics Standard (MATS) Rule.⁴ Because the operator of NGS will be using PM CEMS to demonstrate continuous compliance with the 0.030 lb/MMBtu emission limitation for PM, the EPA is also proposing to remove the opacity emission limitation and associated continuous opacity monitoring system (COMS) requirements from the NGS FIP. The opacity limitation and COMS have generally functioned as surrogates for ensuring continuous compliance with PM emission limitations. This proposed revision is consistent with the provisions related to PM CEMS and opacity in the New Source Performance Standard for Electric Utility Steam Generating Units (“NSPS for EGUs”) and the 2015 SSM Action.⁵

Finally, we are proposing to remove requirements that have already been satisfied (*e.g.*, a

² See 56 FR 50172 (October 3, 1991), 75 FR 10174 (March 5, 2010), and 40 CFR 52.145(d)(10) and 40 CFR 49.5513(c), (d), and (i).

³ See 80 FR 33840 (June 12, 2015).

⁴ See 77 FR 9303 (February 16, 2012) and 81 FR 20172 (April 6, 2016) (Final Technical Corrections).

⁵ See NSPS for EGUs at 40 CFR part 60 subpart Da at 60.42Da(b). See also 2015 SSM Action at 80 FR 33840 at 33891 and 33892 (June 12, 2015).

one-time requirement that has been met to submit a description of dust suppression methods to the Regional Administrator), update the addresses to which the owner or operator must submit reports, and update a statement related to equipment operations in the 2010 FIP to be consistent with a similar statement in a FIP for the Coronado Generating Station, a coal-fired power plant located in Arizona.⁶ Because the EPA is proposing to remove the affirmative defense provisions for malfunctions that existed in the 2010 FIP, we are also proposing to remove a provision in the 2014 FIP that states that the affirmative defense provisions from the 2010 FIP do not apply to the 2014 FIP.

B. Facility

NGS is a coal-fired power plant located on the reservation lands of the Navajo Nation, just east of Page, Arizona, and approximately 135 miles north of Flagstaff. NGS is co-owned by several entities and operated by Salt River Project (SRP).⁷ The facility currently operates three units, each with a capacity of 750 megawatts (MW) net generation, providing a total capacity of 2250 MW. Operations at the facility produce air pollutant emissions, including emissions of SO₂, NO_x, and PM. Existing pollution control equipment at NGS includes wet flue gas desulfurization units for SO₂ and PM removal, electrostatic precipitators for PM removal, and low-NO_x burners with separated over-fire air to reduce NO_x formation during the combustion process. In the future, the owner or operator of NGS will be taking steps to reduce emissions of NO_x further, pursuant to the requirements of the 2014 FIP.

C. Attainment Status

⁶ See 40 CFR 49.5513(h).

⁷ Currently, the participants in NGS are the United States Bureau of Reclamation, SRP, Arizona Public Service Company, Tucson Electric Company, and NV Energy. SRP, which serves as the facility operator, recently increased its ownership share after it purchased the shares previously owned by the Los Angeles Department of Water and Power.

NGS is located in the Northern Arizona Intrastate air quality control region, which is designated unclassifiable for all criteria pollutants under the Act.⁸

D. The EPA's Authority to Promulgate a FIP in Indian Country

When the CAA was amended in 1990, Congress included a new provision, section 301(d), granting the EPA authority to treat tribes in the same manner as states where appropriate.⁹ In 1998, the EPA promulgated regulations known as the Tribal Authority Rule (TAR).¹⁰ The EPA's promulgation of the TAR clarified, among other things, that state air quality regulations generally do not, under the CAA, apply to facilities located anywhere within the exterior boundaries of Indian reservations.¹¹ Prior to the addition of section 301(d) and the promulgation of the TAR, some states had mistakenly included emission limitations in their SIPs that they may have believed could apply under the CAA to private facilities operating on adjacent Indian reservations.

In the preambles to the proposed and final 1998 TAR, the EPA generally discusses the legal basis in the CAA that authorizes the EPA to regulate sources of air pollution in Indian country.¹² The EPA concluded that the CAA authorizes the EPA to protect air quality throughout Indian country.¹³ The TAR, therefore, provides that the EPA “[s]hall promulgate without unreasonable delay such federal implementation plan provisions as are necessary or appropriate

⁸ See 40 CFR 81.303.

⁹ See 40 U.S.C. section 7601(d).

¹⁰ See 40 CFR Parts 9, 35, 49, 50 and 81. See also 63 FR 7254 (February 12, 1998).

¹¹ See 63 FR 7254 at 7258 (noting that unless a state has explicitly demonstrated its authority and has been expressly approved by the EPA to implement CAA programs in Indian country, the EPA is the appropriate entity to implement CAA programs prior to tribal primacy), *Arizona Public Service Company v. EPA.*, 211 F.3d 1280 (D.C. Cir. 2000), *cert. denied sub nom, Michigan v. EPA.*, 532 U.S. 970 (2001) (upholding the TAR); see also *Alaska v. Native Village of Venetie Tribal Government*, 533 U.S. 520, 526 n.1 (1998) (primary jurisdiction over Indian country generally lies with federal government and tribes, not with states).

¹² See 59 FR 43956 (August 25, 1994); 63 FR 7253 (February 12, 1998).

¹³ See 63 FR 7253 at 7262 (February 12, 1998); 59 FR 43956 at 43960-43961 (August 25, 1994) (citing, among other things, to CAA sections 101(b)(1), 301(a), and 301(d)).

to protect air quality, consistent with the provisions of sections 304(a) [*sic*] and 301(d)(4), if a tribe does not submit a tribal implementation plan meeting the completeness criteria of 40 CFR part 51, Appendix V, or does not receive EPA approval of a submitted tribal implementation plan.”¹⁴

E. Historical Overview of FIP Actions for NGS

In 1987, the EPA issued a visibility FIP for the state of Arizona.¹⁵ This action followed a report issued by the National Park Service that identified NGS as a source of visibility impairment in Grand Canyon National Park. The EPA preliminarily determined that such visibility impairment was reasonably attributable to emissions of SO₂ from NGS.¹⁶ Under the visibility regulations, such impairment was required to be addressed in accordance with 40 CFR 51.302(c), which sets forth measures for achieving reasonable progress, including requirements for installation of the best available retrofit technology (BART).¹⁷ In 1991, the EPA revised the visibility FIP for the state of Arizona to include an SO₂ emission limit for NGS to remedy visibility impairment in Grand Canyon National Park that was reasonably attributable to NGS.¹⁸ Under the 1991 FIP, NGS was required to phase-in compliance with the SO₂ emission limit, by installing scrubbers in 1997, 1998, and 1999.¹⁹ In establishing the SO₂ emission limit for NGS in

¹⁴ See 63 FR at 7273 (codified at 40 CFR 49.11(a)). In the preamble to the final TAR, the EPA explained that it was inappropriate to treat tribes in the same manner as states with respect to section 110(c) of the Act, which directs the EPA to promulgate a FIP within 2 years after the EPA finds a state has failed to submit a complete state plan or within 2 years after the EPA disapproval of a state plan. Although the EPA is not required to promulgate a FIP within the 2-year period for tribes, the EPA promulgated 40 CFR 49.11(a) to clarify that the EPA will continue to be subject to the basic requirement to issue any necessary or appropriate FIP provisions for affected tribal areas within some reasonable time. See 63 FR at 7264-65.

¹⁵ See 52 FR 45132 (November 24, 1987). On December 2, 1980, EPA issued regulations addressing visibility impairment that is traceable or “reasonably attributable” to a single source or small group of sources. 45 FR 80084 (December 2, 1980), codified at 40 CFR sections 51.300-51.307. These regulations required a number of States to submit SIPs no later than September 2, 1981. Most States, including Arizona, failed to submit SIPs as called for by the regulations.

¹⁶ See 54 FR 36948 (September 5, 1989).

¹⁷ *Id.*

¹⁸ 56 FR 50172 (October 3, 1991), codified at 40 CFR 52.145.

¹⁹ 40 CFR 52.145(d)(7).

the final 1991 FIP, the EPA determined that the FIP would provide for greater reasonable progress toward the national visibility goal than implementation of BART.²⁰

On September 8, 1999, the EPA proposed a source-specific FIP for NGS.²¹ The 1999 proposed FIP stated: “Although the facility has been historically regulated by Arizona since its construction, the state lacks jurisdiction over the facility or its owners or operations for CAA compliance or enforcement purposes.” The EPA intended for the proposed action in 1999 to “federalize” the emission limitations that Arizona had erroneously included in its SIP.²² The EPA received comments on the proposed FIP but did not finalize the proposal.

In 2006, the EPA published a new proposed rule to promulgate federally enforceable emission limitations for PM and SO₂ and took action to finalize it in 2010.²³ The 2010 FIP also established an opacity limit and a requirement for control measures to limit dust emissions. In the 2010 FIP, the EPA determined that the emission limitations for PM and SO₂ were more stringent than, or at least as stringent as, the emission limitations that had historically applied at NGS pursuant to an operating permit issued by Arizona. Therefore, the EPA concluded that air quality in this area would be positively impacted by the 2010 FIP.²⁴

On August 8, 2014, the EPA promulgated a final rule that established limits for NO_x emissions from NGS under BART provisions of the Regional Haze Rule.²⁵ We finalized an alternative to BART based on agreed-upon recommendations developed by a group of diverse stakeholders. The 2014 FIP limits emissions of NO_x from NGS by establishing a long-term facility-wide cap on total NO_x emissions from 2009 to 2044 and requires the implementation of

²⁰ 56 FR 50172 (October 3, 1991).

²¹ See 64 FR 48725 (September 8, 1999).

²² 64 FR 48725 at 48727.

²³ 75 FR 10179 (March 5, 2010) codified at 40 CFR 49.24(a) – (i) and redesignated to 40 CFR 49.5513(a) – (i). See 76 FR 23879 (April 29, 2011).

²⁴ 75 FR 10174 (March 5, 2010).

²⁵ 79 FR 46514 (August 8, 2014).

one of several alternative operating scenarios to ensure that the 2009-2044 cap is met. Generally, the alternative operating scenarios require the closure of one unit at NGS (or the curtailment of electricity generation by a similar amount) in 2019, and compliance with a NO_x emission limit that is achievable with the installation of selective catalytic reduction on two units in 2030.

II. Basis for Proposed Action

In this proposed FIP revision, the EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a). The EPA is proposing that it is necessary or appropriate to revise the FIP for NGS because it contains certain provisions that are inconsistent with the statutory requirements of the CAA, as reflected in the 2015 SSM Action, and to update provisions to be more consistent with the MATS Rule and the NSPS for EGUs. These proposed revisions are necessary or appropriate to strengthen the NGS FIP by removing emission limitation exemptions and requiring a PM CEMS to demonstrate compliance with a lower PM emission limitation.

For the reasons set forth above, we are proposing to find that limited revisions to the FIP for NGS are necessary or appropriate to further protect air quality on the Navajo Nation.

III. Summary of FIP Provisions

A. Proposed FIP Revisions

The EPA is proposing the following limited revisions to the FIP for NGS at 40 CFR 52.145(d) and 40 CFR 49.5513. We have included two documents in the docket for this proposed rulemaking that show the original text of 40 CFR 52.145(d) and 40 CFR 49.5513 and the EPA's proposed revisions to those provisions.²⁶

1. Revisions to 40 CFR 52.145(d)

²⁶ See documents titled "2016_1219 NGS part 49 FIP RLSO.docx" and "2016_1219 part 52 FIP RLSO.docx" in the docket for this rulemaking.

The EPA is proposing to move the 1991 FIP promulgated at 40 CFR 52.145(d) to 40 CFR 49.5513(k). We are also proposing to revise 40 CFR 52.145(d) by changing internal citations referring to paragraph (d) to refer instead to paragraph (k). For clarity, in today's action we continue to refer to the 1991 FIP as designated in 40 CFR 52.145(d).

In addition, we are proposing to revise the definition of boiler operating day in paragraph 52.145(d)(1) to be consistent with its definition in the 2014 FIP. We are also proposing to add a sentence to paragraph 52.145(d)(2) to clarify that the emission limitation in (d)(2) applies at all times. Finally, we are proposing to delete the provision providing an exclusion for catastrophic failure at 52.145(d)(10).

2. Revisions to 40 CFR 49.5513(b)

Under paragraph (b) of 40 CFR 49.5513, we are proposing to add a statement to the compliance dates specifying that compliance with the requirements of the section is required upon the effective date of the section, unless otherwise specified within specific provisions in 40 CFR 49.5513.

3. Revisions to 40 CFR 49.5513(c)

We are proposing to remove the definition of affirmative defense in paragraph (c)(2) and replace it with a definition for excess emissions, and to remove the statement about the affirmative defense in the definition of malfunction in paragraph (c)(3). In paragraphs (c)(8) and (c)(9), we are proposing to remove statements within the definitions of startup and shutdown that provide an affirmative defense for excess emissions during periods of startup and shutdown.

4. Revisions to 40 CFR 49.5513(d)

We are proposing to add a clarifying sentence to 40 CFR 49.5513(d) that the following emission limits shall apply at all times. In 40 CFR 49.5513(d)(2), we are proposing to revise the

emission limitation for PM from 0.060 lb/MMBtu to 0.030 lb/MMBtu and remove specifications related to PM testing. In 40 CFR 49.5513(d)(3), we are proposing to remove the compliance date for submitting to the EPA a dust suppression plan because the owner or operator met this requirement on June 4, 2010. The final revision we are proposing to 40 CFR 49.5513(d) is to remove the opacity limit and exclusions for water vapor in paragraph (4).

5. Revisions to 40 CFR 49.5513(e)

In 40 CFR 49.5513(e)(1), we are proposing to delete the requirement to operate COMS. In 40 CFR 49.5513(e)(2), we are proposing to replace the existing specifications related to annual PM testing with a requirement to demonstrate compliance with the PM emission limit in 40 CFR 49.5513(d)(2) using PM CEMS in accordance with 40 CFR part 63 subpart UUUUU. Under 40 CFR 49.5513(e)(4), we are proposing to remove the provision related to COMS.

6. Revisions to 40 CFR 49.5513(f)

The EPA is proposing revisions to the reporting and recordkeeping requirements to provide additional clarity that all reports and notifications required in 40 CFR 49.5513(f), (f)(2), and (f)(4), should be reported to the Navajo Nation Environmental Protection Agency (NNEPA) and the EPA. We are also revising 40 CFR 49.5513(f) to update addresses for reporting to the EPA. In addition, in 40 CFR 49.5513(f)(4), consistent with the proposed removal of the opacity emission limitation and COMS requirement in 40 CFR 49.5513(d) and (e), we are proposing to replace a requirement to submit excess opacity reports as recorded by COMS with a requirement to submit excess emission reports for PM as recorded by CEMS, and to remove additional provisions related to the COMS.

7. Revisions to 40 CFR 49.5513(h)

We are proposing to revise the requirements related to equipment operations at 40 CFR

49.5513(h) to be consistent with the updated equipment operations requirements in a FIP for the Coronado Generating Station in Arizona.²⁷

8. Revisions to 40 CFR 49.5513(i)

The EPA is proposing to remove the emission limit exemptions for periods of startup and shutdown in 40 CFR 49.5513(i)(2) and to remove the affirmative defense for excess emissions during periods of malfunction in paragraph (i)(3).

9. Revisions to 40 CFR 49.5513(j)

Under 40 CFR 49.5513(j)(8), we are proposing to remove addresses for the NNEPA and the EPA that are already provided in 40 CFR 49.5513(f) and to require that all reports and notifications under 40 CFR 49.5513(j) be submitted to the NNEPA and the EPA in accordance with 40 CFR 49.5513(f). We are also proposing to revise the equipment operations section in 40 CFR 49.5513(j)(10) to be consistent with our proposed revision to the equipment operations section in 40 CFR 49.5513(h). Finally, we are proposing to remove 40 CFR 49.5513(j)(11) because stating that the affirmative defense provisions in the 2010 FIP do not apply to paragraph (j) as codified in the 2014 FIP will no longer be necessary after deleting the affirmative defense provisions from the 2010 FIP.

B. Justification for Proposed FIP Revisions

1. Revisions to 40 CFR 52.145(d)

We are proposing to move the 1991 FIP from 40 CFR 52.145(d) to 40 CFR 49.5513(k). The 1991 FIP was originally codified in 40 CFR part 52 subpart D, which contains the SIP provisions for the state of Arizona. The provisions at 52.145 relate to visibility protection and paragraph (d) pertains to the control of SO₂ emissions from NGS based on the effects of those

²⁷ 71 FR 21735 (April 13, 2016).

emissions on visibility at Grand Canyon National Park. Because the EPA has subsequently promulgated FIP requirements for NGS in 40 CFR Part 49 subpart L, for regulatory clarity, we are proposing to move the SO₂ requirements from the 1991 FIP to the same part of the CFR as the implementation plans in Indian country, including the FIP requirements for NGS promulgated in 2010 and 2014. This move will not relax any existing FIP requirements for NGS and will have no effect on air quality in the area surrounding NGS.

Throughout 40 CFR 52.145(d), the provisions include internal citations referring to specific subparagraphs in paragraph (d). Consistent with our proposal to move the provisions from the 1991 FIP to 40 CFR 49.5513(k), we are also proposing to revise the internal citations that currently refer to paragraph (d) (*i.e.*, 40 CFR 52.145(d)) to refer instead to paragraph (k) (*i.e.*, 40 CFR 49.5513(k)). This proposed revision will not relax any existing FIP requirements for NGS and will have no effect on air quality in the area surrounding NGS.

We are also proposing to revise a definition of boiler operating day in 40 CFR 52.145(d)(1). The term is currently defined as a 24-hour calendar day during which coal is combusted in that unit for the entire 24-hours. We are proposing to revise the definition to mean a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time, such that it is not necessary for fuel to be combusted the entire 24-hour period. This revised definition, if finalized, would be identical to the definition of boiler operating day promulgated in the 2014 FIP and would be consistent with the recent changes to the definition promulgated by the EPA elsewhere (*e.g.*, the NSPS for EGUs). Because the existing definition from the 1991 FIP requires fuel to be combusted for the entire 24-hour period in order to count as a boiler operating day, the existing definition may exclude periods of startup, shutdown, and malfunction from compliance demonstrations to the extent that these operating

periods result in 24-hour compliance periods when fuel is not combusted for the entire 24-hour period.

Exemptions from emission limits are not allowed by the CAA. CAA section 110(a)(2)(A) requires SIPs to include, among other requirements, “enforceable emission limitations.” Section 302(k) of the CAA defines an emission limitation as: “a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this Act.” The courts have held that the plain meaning of the term “continuous” does not allow exemptions from emission limitations.²⁸ For these reasons, we are proposing to revise the existing definition of boiler operating day in 40 CFR 52.145(d)(1). For the same reasons, we are proposing to add a provision in 40 CFR 52.145(d)(2) to state that the emission limit in this paragraph shall apply at all times, and to delete 40 CFR 52.145(d)(10), which excludes periods of catastrophic failure (*i.e.*, malfunctions) from compliance determinations. The EPA anticipates that the revision of the definition of boiler operating day, the clarification that the emission limit in the 1991 FIP applies at all times, and the removal of the exclusion for periods of catastrophic failure would not relax any existing FIP requirements for NGS and will not have adverse effects on air quality in the surrounding area.

2. Revisions to 40 CFR 49.5513(b)

Under paragraph (b) of 40 CFR 49.5513, we are proposing to add a statement to the compliance dates specifying that compliance with the requirements of the section is required

²⁸ See, e.g., *Sierra Club v. Johnson*, 551 F.3d 1019 (D.C. Cir. 2008); *US Magnesium, LLC v. EPA*, 690 F.3d 1157 (10th Cir. 2012). This issue is discussed at length in “Memorandum to Docket EPA-HQ-OAR-2012-0322, Statutory, Regulatory, and Policy Context for this Rulemaking”, February 4, 2013 (“February 2013 Memorandum”).

upon the effective date of the section, unless otherwise specified within specific provisions in 40 CFR 49.5513. Because the FIP provisions for NGS promulgated in 1991, 2010, and 2014 all have different compliance dates, we are proposing to add this provision for regulatory clarity. This proposed revision would not relax any existing FIP requirements for NGS and would have no effect on air quality in the area surrounding NGS.

3. Revisions to 40 CFR 49.5513(c)

Paragraph (c) to 40 CFR 49.5513 contains definitions used in the 2010 FIP. We are proposing to remove the definition of affirmative defense in paragraph (c)(2) and replace it with a definition for excess emissions, which is currently undefined, and to remove the reference to an affirmative defense in paragraph (c)(3). In paragraphs (c)(8) and (c)(9), within the definitions of startup and shutdown, we are proposing to delete the provisions that provide an affirmative defense for excess emissions during those periods.

After the EPA's promulgation of the 2010 FIP, the United States Court of Appeals for the District of Columbia ("DC Circuit") ruled that CAA sections 113 (federal enforcement) and 304 (citizen suits) preclude EPA from creating affirmative defense provisions in the Agency's own regulations imposing emission limitations on sources.²⁹ The DC Circuit found that such affirmative defense provisions purport to alter the jurisdiction of federal courts to assess liability and impose penalties for violations of those limits in private civil enforcement cases. The DC Circuit's holding makes clear that the CAA does not authorize promulgation of such a provision by the EPA. In particular, the DC Circuit's decision turned on an analysis of CAA sections 113 and 304. These provisions apply with equal force to a civil action brought to enforce the provisions of a FIP. The logic of the DC Circuit's decision thus applies to the promulgation of a FIP, and precludes the

²⁹ See *NRDC v. EPA*, 749 F.3d 1055 (D.C. Cir. 2014).

EPA from including an affirmative defense provision in a FIP.³⁰ For these reasons, we are proposing to delete the provisions in paragraph (c) providing an affirmative defense for periods of startup, shutdown, and malfunction at NGS. These proposed changes would not relax any existing FIP requirements for NGS and would not have adverse effects on air quality in the surrounding area. Additionally, by removing an inconsistency between the FIP and the EPA's more recently promulgated regulations and the 2015 SSM Action, the proposed revision provides more clarity and certainty.

We are proposing to replace the definition of affirmative defense at paragraph (c)(2) with a definition of excess emissions that means the emissions of air contaminants in excess of an applicable emissions limitation or requirement. This term is currently not defined in the NGS FIP and adding this term will provide regulatory clarity. These proposed change would not relax any existing FIP requirements for NGS and would not have adverse effects on air quality in the surrounding area.

4. Revisions to 40 CFR 49.5513(d)

We are proposing to add a clarifying sentence to 40 CFR 49.5513(d) that emission limits shall apply at all times. This revision is consistent with CAA requirements, as described in our proposed revisions to 40 CFR 52.145(d)(2). In 40 CFR 49.5513(d)(2), we are proposing to revise the PM emission limitation from 0.060 lb/MMBtu to 0.030 lb/MMBtu for consistency with the emission limitation in the MATS Rule. The emission limitation for PM in the 2010 FIP is higher than the PM emission limitation in the MATS Rule. Because NGS is subject to the MATS Rule, revising the PM emission limitation in 40 CFR 49.5513(d)(2) to 0.030 lb/MMBtu will streamline

³⁰ See February 4, 2013 Memorandum to Docket EPA-HQ-OAR-2012-0322: "State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Statutory, Regulatory, and Policy Context for this Rulemaking."

the PM emission limitations that apply to NGS. The EPA anticipates this will not result in any substantive change in the applicable requirements or the method of PM control for this facility. In 40 CFR 49.5513(d)(2), we are also proposing to delete the provisions related to PM testing. The requirements for demonstrating compliance with the PM emission limitation are instead addressed in 40 CFR 49.5513(e). In 40 CFR 49.5513(d)(3), we are proposing to remove the compliance date for submitting to the EPA a dust suppression plan because the owner or operator met this requirement on June 4, 2010. Because this provision is a one-time requirement that has already been satisfied, the EPA is proposing to remove this provision as it is no longer necessary.

In 40 CFR 49.5513, we are proposing to remove paragraph (d)(4), which contains provisions related to the opacity limit. In 2016, SRP installed and calibrated PM CEMS on each unit at NGS. We are proposing to remove the opacity limit from the NGS FIP because in 40 CFR 49.5513(e)(2), we are proposing to add a new requirement to operate the PM CEMS on each unit to demonstrate compliance with the PM emission limitation of 0.030 lb/MMBtu. This provision is consistent with the NSPS for EGUs at 40 CFR 60.42Da(b)(1) and the Acid Rain Program requirements at 40 CFR 75.14(e), which generally provide that any owner or operator that elects to install, calibrate, maintain, and operate a PM CEMS for demonstrating compliance with a sufficiently stringent PM emission limitation (*i.e.*, 0.030 lb/MMBtu or lower) need not meet the opacity limit and monitoring requirements.³¹ The PM CEMS is a monitoring system that

³¹ See NSPS for EGUs at 40 CFR 60.42Da and the Acid Rain Program requirements at 40 CFR part 70. Subpart Da to part 60 is the “Standard of Performance for Electric Utility Steam Generating Units” and applies to units that are capable of combusting more than 73 MW heat input of fossil fuel and for which construction, modification, or reconstruction commenced after September 18, 1978. The units at NGS were constructed prior to 1978 and are not subject to part 60 subpart Da. See also SSM Action at 80 FR 33840 at 33891 and 33892 (June 12, 2015), stating that “States evaluating how best to replace impermissible SSM exemptions from opacity standards may wish to consider a similar approach conditioned upon the use of PM CEMS and a sufficiently stringent PM emission limitation,” and footnote 148, which indicates 0.030 lb/MMBtu is deemed sufficiently stringent because the contribution of filterable PM to opacity at PM levels of 0.030 lb/MMBtu or less is generally negligible and therefore, those unit will operate with little or no visible emissions (*i.e.*, less than 5 percent opacity).

provides a continuous assessment of compliance with a PM emission limitation. Generally, opacity limits and COMS have been used as a surrogate to ensure continuous compliance with a PM emission standard that would otherwise be subject to periodic source testing.³² NGS is not subject to the NSPS for EGUs at 40 CFR 60.42Da. However, we are proposing to follow the same rationale from Subpart Da to remove the opacity limit and COMS requirement because we are concurrently proposing to revise the NGS FIP to require the installation, calibration, operation, and maintenance of PM CEMS to demonstrate continuous compliance with the lower proposed PM emission limitation of 0.030 lb/MMBtu. Because the PM CEMS provides a better continuous demonstration of compliance with the PM emission limitation than an opacity limit and COMS, this proposed revision would not relax any existing requirements in the NGS FIP and would not adversely affect air quality in the surrounding area.

5. Revisions to 40 CFR 49.5513(e)

In 40 CFR 49.5513(e)(1) and (e)(4), we are proposing changes to remove testing and monitoring requirements for opacity, consistent with our proposed removal of the opacity limit in 40 CFR 49.5513(d)(4). Because we are proposing to remove the opacity limit, the requirements in 40 CFR 49.5513(e)(1) to operate COMS and in (e)(4) to maintain two sets of opacity filters for the COMS are no longer necessary. In paragraph (e)(2), we are proposing to replace the existing specifications related to annual PM testing with a requirement to install, calibrate, maintain, and operate PM CEMS to demonstrate compliance with the 0.030 lb/MMBtu emission limit in accordance with the specifications in the MATS Rule. The use of PM CEMS is a continuous measurement and is a better method for ensuring continuous compliance with the PM emission limit than annual source testing combined with an opacity limit and COMS. Therefore,

³² See, e.g., discussion of opacity in the 2007 FIP for the Four Corners Power Plant, 72 FR 25698 at 25701 (May 7, 2007), stating that opacity limits are generally applied to ensure a unit is meeting its PM limit.

these revisions would not relax any requirements or result in adverse effects on air quality in the surrounding area.

6. Revisions to 40 CFR 49.5513(f)

The EPA is proposing revisions to the reporting and recordkeeping requirements to specify that all reports and notifications required in 40 CFR 49.5513 should be sent to the NNEPA and the Regional Administrator of the Region IX office of the EPA. Because 40 CFR 49.5513(f)(2) repeats addresses and other reporting details already provided in paragraph (f), we are also proposing to delete the redundant provisions in paragraph (f)(2). These proposed administrative changes would not relax any requirements or have any effect on air quality in the area surrounding NGS.

In addition, consistent with the proposed removal of the COMS requirement in paragraph (e), we are also proposing to remove the reporting requirements related to the COMS in paragraph (f)(4). Because we are proposing to replace the opacity limit and COMS requirement with a requirement to use PM CEMS to demonstrate continuous compliance with a PM emission limitation of 0.030 lb/MMBtu, this revision does not relax any requirements or have any effect on air quality in the area surrounding NGS.

7. Revisions to 40 CFR 49.5513(h)

We are proposing to revise the requirements related to equipment operations at 40 CFR 49.5513(h) to be consistent with updated equipment operations requirements in a FIP for the Coronado Generating Station in Arizona.³³ The existing provisions require the owner or operator to operate all equipment or systems consistent with good engineering practice to maintain compliance with emission limitations. The revised provisions are substantially similar but

³³ 71 FR 21735 (April 13, 2016).

provide more detail, *e.g.*, specifying that the operator shall continuously operate all air pollution control equipment to minimize emissions at all times, including startup, shutdown, and malfunction. These proposed changes to 40 CFR 49.5513(h) do not relax any requirements or have any effect on air quality in the area surrounding NGS.

8. Revisions to 40 CFR 49.5513(i)

The EPA is proposing to delete the emission limit exemptions for periods of startup and shutdown in paragraph (i)(2) and to delete the affirmative defense for excess emissions during malfunctions in paragraph (i)(3). As discussed previously, exemptions from emission limitations during periods of startup and shutdown and provisions that allow an affirmative defense are inconsistent with CAA requirements. Using the same rationale that we provided for the proposed revisions to 40 CFR 52.5513(c)(3), (c)(8), and (c)(9), the EPA is proposing to delete the provisions at paragraph (i)(2) that provide an exemption from emission limitations during periods of startup and shutdown and also to delete the provisions in the paragraph (i)(3) that provide an affirmative defense for excess emissions during malfunctions at NGS. The proposed removal of these provisions strengthens the NGS FIP and does not relax any other requirements in the FIP. Therefore, the removal of these revisions would not adversely affect air quality in the surrounding area.

9. Revisions to 40 CFR 49.5513(j)

In 40 CFR 49.5513(j)(8), we are proposing to remove addresses for the NNEPA and the EPA that are already provided in 40 CFR 49.5513(f) and to require that all reports and notifications under paragraph (j) be submitted to the NNEPA and the EPA in accordance with 40 CFR 49.5513(f). This proposed revision removes redundant information and requires reporting for 40 CFR 49.55153(j) to be consistent with the reporting requirements in 40 CFR 49.5513(f).

Therefore, these proposed revisions would not adversely affect air quality in the surrounding area. We are also proposing to revise the equipment operations section in 40 CFR 49.5513(j)(10) to be consistent with our proposed revision to the equipment operations section in 40 CFR 49.5513(h). The revised provisions in 40 CFR 49.5513(j)(10) are substantially similar to the existing provisions but provide more detail. These proposed changes to 40 CFR 49.5513(j)(10) do not relax any requirements or have any effect on air quality in the area surrounding NGS.

In addition, we are also proposing to remove paragraph (j)(11). Because the EPA is proposing to delete the affirmative defense provisions in 40 CFR 49.5513(c)(2) and (i), a provision stating that an affirmative defense does not apply to paragraph (j) will no longer be necessary. Removal of the affirmative defense provisions strengthens the FIP. Therefore, these proposed revisions would not adversely affect air quality in the surrounding area.

C. Compliance Schedule

EPA proposes that the requirements contained in this revised FIP will become enforceable on the effective date following final promulgation of this FIP revision, unless otherwise provided in a specific provision of the FIP.

IV. Proposed Action and Solicitation of Comments

As described above, the EPA is proposing the following revisions: (1) move the 1991 FIP provisions from 40 CFR 52.145(d) to 40 CFR 49.5513; (2) remove emission limit exemptions that applied during periods of startup, shutdown, and malfunction; (3) remove provisions allowing for an affirmative defense for excess emissions during periods of malfunction; and (4) replace the existing opacity limit and COMS requirement with a new requirement to continuously demonstrate compliance with the PM emission limitation of 0.030 lb/MMBtu using PM CEMS. These revisions, if finalized, would make the NGS FIP consistent with the EPA's

2015 SSM Action, as well as the MATS Rule and NSPS for EGUs.

The EPA solicits comments on the limited provisions of the NGS FIP that we are proposing to revise in this rulemaking. We are not accepting comment on any provisions of the NGS FIP that we are not proposing to revise. Accordingly, please limit your comments to those specific provisions listed above that we are proposing to revise in today's action.

V. Environmental Justice Considerations

The Navajo Generating Station is located on the reservations lands of the Navajo Nation, and the EPA recognizes there is significant community interest in the emissions and environmental effects of this facility. As discussed elsewhere in this document, the proposed revisions to the NGS FIP would strengthen the FIP by removing emission limitation exemptions for periods of startup, shutdown, and malfunction and remove provisions for an affirmative defense for excess emissions during malfunctions. Additional revisions proposed in this notice would require the use of PM CEMS to demonstrate continuous compliance with the lower PM emission limitation of 0.030 lb/MMBtu. Because the proposed revisions strengthen the NGS FIP, the EPA considers this action to be beneficial for human health and the environment, and to have no potential disproportionately high and adverse effects on minority, low-income, or indigenous populations.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review. This rule applies to only one facility and is therefore not a rule of general applicability.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule applies to only one facility. Therefore, its recordkeeping and reporting provisions do not constitute a “collection of information” as defined under 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

C. Regulatory Flexibility Act (RFA)

I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. This action will not impose any requirements on small entities. Firms primarily engaged in the generation, transmission, and/or distribution of electric energy for sale are small if, including affiliates, the total electric output for the preceding fiscal year did not exceed four million megawatt-hours. Each of the owners of the facility affected by this rule, Salt River Project, the Bureau of Reclamation, Arizona Public Service, Tucson Electric Power, and NV Energy, exceed this threshold.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action 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.

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

This action does not have tribal implications, as specified in Executive Order 13175. Although this proposed action affects a facility located in Indian country, the proposed limited

revisions to existing provisions in the NGS FIP will not have substantial direct effects on any Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this action. However, we note that we have engaged in numerous discussions with the NNEPA during the development of this proposed rule and continue to invite consultation on this proposed action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This action involves technical standards. The technical standards in this action are based on the technical standards used in other rulemakings promulgated by the EPA. We refer to the discussion of the technical standards and voluntary consensus standards in the final rule for 40 CFR part 60 subpart Da and 40 CFR part 63 subpart UUUUU at 77 FR 9304 at 9441 (February 16, 2012).

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. If this rule is finalized as proposed, we expect that the limited revisions to the FIP will strengthen requirements for periods of startup, shutdown, and malfunction, strengthen requirements for PM compliance demonstrations with a lower PM emission limitation of 0.030 lb/MMBtu, and will not relax any other existing requirements.

List of Subjects

40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Startup shutdown and malfunction.

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Startup shutdown and malfunction, Visibility.

January 18, 2017.

/s/

Dated:

Alexis Strauss,
Acting Regional Administrator,
Region IX.

Chapter I, title 40, of the Code of Federal Regulations is proposed to be amended as follows:

PART 49 – INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

1. The authority citation for part 49 continues to read as follows:

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

Subpart L – Implementation Plans for Tribes – Region IX

2. Section 49.5513 is proposed to be amended by:

- a. Revising paragraph (b);
- b. Revising paragraph (c)(2);
- c. Revising paragraph (c)(3);
- d. Revising paragraph (c)(8);
- e. Revising paragraph (c)(9);
- f. Revising paragraph (d) introductory text;
- g. Revising paragraph (d)(2);
- h. Revising paragraph (d)(3);
- i. Removing and reserving paragraph (d)(4);
- j. Revising paragraph (e)(1);
- k. Revising paragraph (e)(2);
- l. Revising paragraph (e)(4);
- m. Revising paragraph (f) introductory text;
- n. Revising paragraph (f)(2);
- o. Revising paragraph (f)(4);
- p. Revising paragraph (h);
- q. Revising paragraph (i)(2);

- r. Revising paragraph (i)(3);
- s. Revising paragraph (j)(8); and
- t. Removing and reserving paragraph (j)(11); and
- u. Adding paragraph (k).

The text to read as follows:

§ 49.5513 Federal Implementation Plan Provisions for Navajo Generating Station, Navajo Nation.

* * * * *

(b) Compliance Dates. Compliance with the requirements of this section is required upon the effective date of this section unless otherwise indicated by compliance dates contained in specific provisions.

* * * * *

(c) *

* * * * *

(2) Excess emissions means the emissions of air contaminants in excess of an applicable emissions limitation or requirement.

(3) Malfunction means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

* * * * *

(8) Startup shall mean the period from start of fires in the boiler with fuel oil, to the time

when the electrostatic precipitator is sufficiently heated such that the temperature of the air preheater inlet reaches 400 degrees Fahrenheit and when a unit reaches 300 MW net load. Proper startup procedures shall include energizing the electrostatic precipitator prior to the combustion of coal in the boiler.

(9) Shutdown shall begin when the unit drops below 300 MW net load with the intent to remove the unit from service. The precipitator shall be maintained in service until boiler fans are disengaged.

* * * * *

(d) Emissions Limitations and Control Measures. The following emission limits shall apply at all times.

* * * * *

(2) Particulate Matter. No owner or operator shall discharge or cause the discharge of particulate matter into the atmosphere in excess of 0.030 lb/MMBtu, on a plant-wide basis.

(3) Dust. Each owner or operator shall operate and maintain the existing dust suppression methods for controlling dust from the coal handling and storage facilities. Each owner or operator shall not emit dust with an opacity greater than 20% from any crusher, grinding mill, screening operation, belt conveyor, truck loading or unloading operation, or railcar unloading station, as determined using 40 CFR Part 60, Appendix A-4 Method 9.

(4) [Reserved]

(e) Testing and Monitoring.

(1) On and after the effective date of this regulation, the owner or operator shall maintain and operate Continuous Emissions Monitoring Systems (CEMS) for NO_x and SO₂ on

Units 1, 2, and 3 in accordance with 40 CFR 60.8 and 60.13(e), (f), and (h), and Appendix B of Part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75.

(2) The owner or operator shall install, calibrate, maintain, and operate particulate matter CEMS to assure continuous compliance with the particulate matter limits in paragraph (d)(2), in accordance with 40 CFR part 63 subpart UUUUU.

* * * * *

(4) [Reserved]

* * * * *

(f) Reporting and Recordkeeping Requirements. All requests, reports, submittals, notifications and other communications to the EPA, Regional Administrator, or Administrator required by this section and references therein shall be submitted to the Director, Navajo Environmental Protection Agency, P.O. Box 339, Window Rock, Arizona 86515, (928) 871-7692, (928) 871-7996 (facsimile); and to the Regional Administrator, U.S. Environmental Protection Agency, Region IX, to the attention of Mail Code: ORA-1, at 75 Hawthorne Street, San Francisco, California 94105, (415) 947-8000. For each unit subject to the emissions limitations in this section the owner or operator shall:

* * * * *

(2) For excess emissions, notify the Regional Administrator by telephone or in writing within one business day. A complete written report of the incident shall be submitted to the Regional Administrator within ten (10) working days after the event. This notification shall include the following information:

* * * * *

(4) Submit quarterly excess emissions reports for sulfur dioxide and PM as recorded by CEMS together with a CEMS data assessment report to the Regional Administrator no later than 30 days after each calendar quarter. The owner or operator shall complete the excess emissions reports according to the procedures in 40 CFR 60.7(c) and (d) and include the Cylinder Gas Audit.

* * * * *

(h) Equipment Operations. At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate each unit in a manner consistent with good air pollution control practices for minimizing emissions. The owner or operator shall continuously operate pollution control equipment at all times the unit it serves is in operation, and operate pollution control equipment in a manner consistent with technological limitations, manufacturer's specifications, and good engineering and good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of each unit. Following outages of any control equipment or systems the control equipment or system will be returned to full operation as expeditiously as practicable.

(i) Enforcement.

* * * * *

(2) [Reserved]

(3) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit.

(j)

* * * * *

(8) Reporting. All reports and notifications under this paragraph (j) must be submitted as required by paragraph (f) above to the Director, Navajo Nation Environmental Protection Agency and to the Regional Administrator.

* * * * *

(10) At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate each unit in a manner consistent with good air pollution control practices for minimizing emissions. The owner or operator shall continuously operate pollution control equipment at all times the unit it serves is in operation, and operate pollution control equipment in a manner consistent with technological limitations, manufacturer's specifications, and good engineering and good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of each unit. Following outages of any control equipment or systems the control equipment or system will be returned to full operation as expeditiously as practicable.

(11) [Reserved]

(k) This paragraph is applicable to the fossil fuel-fired, steam-generating equipment designated as Units 1, 2, and 3 at the Navajo Generating Station in the Northern Arizona Intrastate Air Quality Control Region (§ 81.270 of this chapter).

(1) Definitions.

Affected Unit(s) means the steam-generating unit(s) at the Navajo Generating Station, all of which are subject to the emission limitation in paragraph (k)(2) of this section, that has accumulated at least 365 boiler operating days since the passage of the date defined in paragraph (k)(6) of this section applicable to it.

Administrator means the Administrator of EPA or his/her designee.

Boiler operating day means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the steam-generating unit. It is not necessary for fuel to be combusted the entire 24-hour period.

Owner or Operator means the owner, participant in, or operator of the Navajo Generating Station to which this paragraph is applicable.

Unit-Week of Maintenance means a period of 7 days during which a fossil fuel-fired steam-generating unit is under repair, and no coal is combusted in the unit.

(2) Emission limitation. The following emission limitation shall apply at all times. No owner or operator shall discharge or cause the discharge of sulfur oxides into the atmosphere in excess of 42 nanograms per Joule (ng/J) [0.10 pound per million British thermal units (lb/MMBtu)] heat input.

(3) Compliance determination. Until at least one unit qualifies as an affected unit, no compliance determination is appropriate. As each unit qualifies for treatment as an affected unit, it shall be included in the compliance determination. Compliance with this emission limit shall be determined daily on a plant-wide rolling annual basis as follows:

- (i)** For each boiler operating day at each steam generating unit subject to the emission limitation in paragraph (k)(2) of this section, the owner or operator shall

record the unit's hourly SO₂ emissions using the data from the continuous emission monitoring systems, [required in paragraph (k)(4) of this section] and the daily electric energy generated by the unit (in megawatt-hours) as measured by the megawatt-hour meter for the unit.

(ii) Compute the average daily SO₂ emission rate in ng/J (lb/MMBtu) following the procedures set out in method 19, appendix A, 40 CFR part 60 in effect on October 3, 1991.

(iii) For each boiler operating day for each affected unit, calculate the product of the daily SO₂ emission rate (computed according to paragraph (k)(3)(ii) of this section) and the daily electric energy generated (recorded according to paragraph (k)(3)(i) of this section) for each unit.

(iv) For each affected unit, identify the previous 365 boiler operating days to be used in the compliance determination. Except as provided in paragraphs (k)(9) and (k)(10) of this section, all of the immediately preceding 365 boiler operating days will be used for compliance determinations.

(v) Sum, for all affected units, the products of the daily SO₂ emission rate-electric energy generated (as calculated according to paragraph (k)(3)(iii) of this section) for the boiler operating days identified in paragraph (k)(3)(iv) of this section.

(vi) Sum, for all affected units, the daily electric energy generated (recorded according to paragraph (k)(3)(i) of this section) for the boiler operating days identified in paragraph (k)(3)(iv) of this section.

(vii) Calculate the weighted plant-wide annual average SO₂ emission rate by dividing the sum of the products determined according to paragraph (k)(3)(v)

above by the sum of the electric energy generated determined according to paragraph (k)(3)(vi) of this section.

(viii) The weighted plant-wide annual average SO₂ emission rate shall be used to determine compliance with the emission limitation in paragraph (k)(2) of this section.

(4) Continuous emission monitoring. The owner or operator shall install, maintain, and operate continuous emission monitoring systems to determine compliance with the emission limitation in paragraph (k)(2) of this section as calculated in paragraph (k)(3) of this section. This equipment shall meet the specifications in appendix B of 40 CFR part 60 in effect on October 3, 1991. The owner or operator shall comply with the quality assurance procedures for continuous emission monitoring systems found in appendix F of 40 CFR part 60 in effect on October 3, 1991.

(5) Reporting requirements. For each steam generating unit subject to the emission limitation in paragraph (k)(2) of this section, the owner or operator:

(i) Shall furnish the Administrator written notification of the SO₂, oxygen, and carbon dioxide emissions according to the procedures found in 40 CFR 60.7 in effect on October 3, 1991.

(ii) Shall furnish the Administrator written notification of the daily electric energy generated in megawatt-hours.

(iii) Shall maintain records according to the procedures in 40 CFR 60.7 in effect on October 3, 1991.

(iv) Shall notify the Administrator by telephone or in writing within one business day of any outage of the control system needed for compliance with the emission

limitation in paragraph (k)(2) of this section and shall submit a follow-up written report within 30 days of the repairs stating how the repairs were accomplished and justifying the amount of time taken for the repairs.

(6) Compliance dates. The requirements of this paragraph shall be applicable to one unit at the Navajo Generating Station beginning November 19, 1997, to two units beginning November 19, 1998, and to all units beginning on August 19, 1999.

(7) Schedule of compliance. The owner or operator shall take the following actions by the dates specified:

(i) By June 1, 1992, award binding contracts to an architectural and engineering firm to design and procure the control system needed for compliance with the emission limitation in paragraph (k)(2) of this section.

(ii) By January 1, 1995, initiate on-site construction or installation of a control system for the first unit.

(iii) By May 1, 1997, initiate start-up testing of the control system for the first unit.

(iv) By May 1, 1998, initiate start-up testing of the control system for the second unit.

(v) By February 1, 1999, initiate start-up testing of the control system for the third unit.

The interim deadlines will be extended if the owner or operators can demonstrate to the Administrator that compliance with the deadlines in paragraph (k)(6) of this section will not be affected.

(8) Reporting on compliance schedule. Within 30 days after the specified date for each deadline in the schedule of compliance in paragraph (k)(7) of this section, the owner or operator shall notify the Administrator in writing whether the deadline was met. If it was not met, the notice shall include an explanation why it was not met and the steps which shall be taken to ensure future deadlines will be met.

(9) Exclusion for equipment failure during initial operation. For each unit, in determining compliance for the first year that such unit is required to meet the emission limitation in paragraph (k)(2) of this section, periods during which one of the following conditions are met shall be excluded:

(i) Equipment or systems do not meet designer's or manufacturer's performance expectations.

(ii) Field installation including engineering or construction precludes equipment or systems from performing as designed.

The periods to be excluded shall be determined by the Administrator based on the periodic reports of compliance with the emission limitation in paragraph (k)(2) of this section which shall identify the times proposed for exclusion and provide the reasons for the exclusion, including the reasons for the control system outage. The report also shall describe the actions taken to avoid the outage, to minimize its duration, and to reduce SO₂ emissions at the plant to the extent practicable while the control system was not fully operational. Whenever the time to be excluded exceeds a cumulative total of 30 days for any control system for any affected unit, the owner or operators shall submit a report within 15 days addressing the history of and prognosis for the performance of the control system.

(10) [Reserved]

(11) Equipment operation. The owner or operator shall optimally operate all equipment or systems needed to comply with the requirements of this paragraph consistent with good engineering practices to keep emissions at or below the emission limitation in paragraph (k)(2) of this section, and following outages of any control equipment or systems the control equipment or system will be returned to full operation as expeditiously as practicable.

(12) Maintenance scheduling. On March 16 of each year starting in 1993, the owner or operator shall prepare and submit to the Administrator a long-term maintenance plan for the Navajo Generating Station that accommodates the maintenance requirements for the other generating facilities on the Navajo Generating Station grid covering the period from March 16 to March 15 of the next year and showing at least 6 unit-weeks of maintenance for the Navajo Generating Station during the November 1 to March 15 period, except as provided in paragraph (k)(13) of this section. This plan shall be developed consistent with the criteria established by the Western States Coordinating Council of the North American Electric Reliability Council to ensure an adequate reserve margin of electric generating capacity. At the time that a plan is transmitted to the Administrator, the owner or operator shall notify the Administrator in writing if less than the full scheduled unit-weeks of maintenance were conducted for the period covered by the previous plan and shall furnish a written report stating how that year qualified for one of the exceptions identified in paragraph (k)(13) of this section.

(13) Exceptions for maintenance scheduling. The owner or operator shall conduct a full 6 unit-weeks of maintenance in accordance with the plan required in paragraph (k)(12) of

this section unless the owner or operator can demonstrate to the satisfaction of the Administrator that a full 6 unit-weeks of maintenance during the November 1 to March 15 period should not be required because of the following:

- (i) There is no need for 6 unit-weeks of scheduled periodic maintenance in the year covered by the plan;
- (ii) The reserve margin on any electrical system served by the Navajo Generating Station would fall to an inadequate level, as defined by the criteria referred to in paragraph (i)(12) of this section.
- (iii) The cost of compliance with this requirement would be excessive. The cost of compliance would be excessive when the economic savings to the owner or operator of moving maintenance out of the November 1 to March 15 period exceeds \$50,000 per unit-day of maintenance moved.
- (iv) A major forced outage at a unit occurs outside of the November 1 to March 15 period, and necessary periodic maintenance occurs during the period of forced outage.

If the Administrator determines that a full 6 unit-weeks of maintenance during the November 1 to March 15 period should not be required, the owner or operator shall nevertheless conduct that amount of scheduled maintenance that is not precluded by the Administrator. Generally, the owner or operator shall make best efforts to conduct as much scheduled maintenance as practicable during the November 1 to March 15 period.

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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

Subpart D – Arizona

2. Section 54.145 is proposed to be amended by removing and reserving paragraph (d) as follows:

§ 52.145 Visibility protection.

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(d) [Reserved]

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