

**A. Attendance**

The seminars are open to all interested parties. Metal and nonmetal mine operators, including contractors, who use diesel-powered equipment underground, as well as miners who work at those operations, miners' representatives and diesel powered equipment manufacturers are encouraged to attend the seminars. Registration to attend the seminars is not required.

**B. Conduct of the Seminars**

The seminars will begin each day at 9 a.m. During the morning session, MSHA will answer questions about requirements of the rule including compliance determination, the final PELs, applications for extensions of time in which to meet the final limits, medical evaluation, and transfer provisions. MSHA will give a PowerPoint presentation of the final rule provisions, followed by a question and answer session with the attendees. The afternoon session will focus on a discussion of control technology. The

purpose of the controls session is to provide the mining community with technical information on DPM control technologies that can be used to reduce personal exposures to DPM in underground MNM mines. The PowerPoint presentations will be made available on MSHA's Internet site at <http://www.msha.gov>.

**C. Location of Seminars**

The seminars will be held on the following dates and at the locations indicated:

Date	Location	Phone
June 27, 2006 .....	Pittsburgh Airport Marriott, 777 Aten Road, Coraopolis, PA 15108 .....	(800) 328-9297
June 29, 2006 .....	Executive Inn, 978 Phillips Lane, Louisville, KY 40213 .....	(800) 626-2706
July 13, 2006 .....	Reno Sparks Convention Center, 4590 S Virginia Street, Reno, NV 89502-6013 .....	(775) 827-7620

The Reno, NV seminar is being held in conjunction with the National Metal and Nonmetal Mine Rescue Contest and is at the same location as the contest.

**II. Background**

In January 2001, MSHA promulgated a final rule addressing DPM exposure of underground metal and nonmetal miners (66 FR 5706). The 2001 final rule established new health standards for underground metal and nonmetal mines that use equipment powered by diesel engines. The rule established an interim concentration limit of 400 micrograms of total carbon (TC) per cubic meter of air (400<sub>TC</sub> µg/m<sup>3</sup>) which became applicable July 20, 2002, and a final concentration limit of 160 micrograms of total carbon per cubic meter of air (160<sub>TC</sub> µg/m<sup>3</sup>) to become applicable after January 19, 2006; (amended on September 19, 2005 (70 FR 55019), to become applicable May 20, 2006). Industry challenged the rule and organized labor intervened in the litigation. Settlement negotiations with the litigants have resulted in other regulatory actions on several requirements of the rule. On February 27, 2002 (67 FR 9180), MSHA revised the 2001 final rule to clarify § 57.5060(b)(1) and (b)(2) regarding maintenance and to add a new paragraph (b)(3) to § 57.5067 regarding the transfer of existing equipment between underground mines. MSHA published the 2005 final rule on June 6, 2005, which converted the interim concentration limit measured by TC to a comparable permissible exposure limit (PEL) measured by elemental carbon (EC).

The 2006 final rule phases in the DPM final limit of 160<sub>TC</sub> µg/m<sup>3</sup> over a two-year period, based on feasibility. On

May 20, 2006, the first phase of the final limit of 308<sub>EC</sub> µg/m<sup>3</sup> became effective. On January 20, 2007, the DPM final limit will be reduced to 350<sub>TC</sub> µg/m<sup>3</sup>. The final limit of 160<sub>TC</sub> µg/m<sup>3</sup> will become effective on May 20, 2008. Mine operators must continue to use engineering and administrative controls, supplemented by respiratory protection when needed, to reduce miners' exposures to the prescribed limits. As with the interim DPM limit, MSHA will enforce the final limits as permissible exposure limits (PEL).

This final rule also establishes new requirements for medical evaluation of miners required to wear respiratory protection, and transfer of miners who are medically unable to wear a respirator. It deletes the existing provision that restricts newer mines from applying for an extension of time in which to meet the final limit.

Dated: June 6, 2006.

**Patricia W. Silvey,**

*Acting Director, Office of Standards, Regulations and Variances.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

[EPA-HQ-OAR-2002-0056; FRL-8180-4]

RIN 2060-AN50

**Revision of December 2000 Clean Air Act Section 112(n) Finding Regarding Electric Utility Steam Generating Units; and Standards of Performance for New and Existing Electric Utility Steam Generating Units: Reconsideration**

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

**ACTION:** Final rule; notice of final action on reconsideration.

**SUMMARY:** This action sets forth EPA's decision after reconsidering certain aspects of the March 29, 2005 final rule entitled "Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from the Section 112(c) List" (Section 112(n) Revision Rule). We are also issuing our final decision regarding reconsideration of certain issues in the May 18, 2005 final rule entitled "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (Clean Air Mercury Rule; CAMR).

After considering the petitions for reconsideration and the comments received, we are not revising the final Section 112(n) Revision Rule other than explaining in more detail what we meant by the effectiveness element in the term "necessary." The only two substantive changes we are making to

CAMR in response to comments involve revisions to the State mercury (Hg) allocations, and to the new source performance standards (NSPS). We also are finalizing the regulatory text that clarifies the applicability of CAMR to municipal waste combustors (MWC) and certain industrial boilers. Finally, we are denying the requests for reconsideration with respect to all other issues raised in the petitions for reconsideration submitted for both rules.

**DATES:** *Effective Date:* This final action is effective on June 9, 2006.

**ADDRESSES:** *Docket.* EPA has established a docket for this action including Docket ID No. EPA-HQ-OAR-2002-0056, legacy EDOCKET ID No. OAR-2002-0056, and legacy Docket ID No. A-92-55. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through

<http://www.regulations.gov> or in hard copy at the following address: Air and Radiation Docket and Information Center (Air Docket), EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566-1744. The 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 general and technical information, contact Mr. William Maxwell, Emission Strategies Group, Sector Policies and Programs Division, Mailcode: D243-01, U.S. EPA, Research Triangle Park, NC 27711; telephone number: (919) 541-5430; fax number: (919) 541-5450; e-mail address: [maxwell.bill@epa.gov](mailto:maxwell.bill@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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

- I. General Information
  - A. Does this reconsideration action apply to me?

- B. How do I obtain a copy of this document and other related information?
- C. Is this action subject to judicial review?
- II. Background
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  - A. Section 112(n) Revision Rule
  - B. CAMR
- IV. Issues Not Corrected in the CAMR Technical Corrections or in the Reconsideration Documents
- V. Statutory and Executive Order (EO) Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
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  - C. Regulatory Flexibility Act
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  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act (NTTAA)
  - J. Congressional Review Act

**I. General Information**

*A. Does this reconsideration action apply to me?*

Categories and entities potentially affected by this action include:

Category	NAICS code <sup>1</sup>	Examples of potentially regulated entities
Industry .....	221112	Fossil fuel-fired electric utility steam generating units.
Federal Government .....	<sup>2</sup> 221122	Fossil fuel-fired electric utility steam generating units owned by the Federal government.
State/local/Tribal Government .....	<sup>2</sup> 221122 921150	Fossil fuel-fired electric utility steam generating units owned by municipalities. Fossil fuel-fired electric utility steam generating units in Indian country.

<sup>1</sup> North American Industry Classification System.

<sup>2</sup> 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 affected by this action. This table lists examples of the types of entities EPA is now aware could potentially be affected by this action. Other types of entities not listed could also be affected. If you have questions regarding the applicability of this action to a particular entity, consult Mr. William Maxwell listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. How do I obtain a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this action also will be available on the World Wide Web (WWW) through EPA's Technology Transfer Network (TTN). Following the Administrator's signature,

a copy of this action will be posted on the TTN's policy and guidance page for newly proposed rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

*C. Is this action subject to judicial review?*

Under section 307(b) of the Clean Air Act (CAA or the Act), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before August 8, 2006. Only those objections to the final action which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by this final action may not

be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

**II. Background**

For a brief history of the Section 112(n) Revision Rule rulemaking process that preceded this final action, see our discussion at 70 FR 62200 (October 28, 2005). On March 29, 2005, we issued a final rule (70 FR 15994) that revised the Agency's December 2000 finding made pursuant to CAA section 112(n)(1)(A), and based on that revision, removed coal- and oil-fired electric utility steam generating units (Utility Units or power plants) from the CAA section 112(c) source category list.

Following publication of the March 29, 2005 **Federal Register** rule, the Administrator received two petitions, filed pursuant to section 307(d)(7)(B) of the CAA, requesting reconsideration of

many aspects of the final rule.<sup>1</sup> On October 28, 2005 (70 FR 62200), we granted reconsideration on several issues raised by petitioners (October Reconsideration Notice).<sup>2</sup> At that time, we did not act on any of the remaining issues in those petitions. We are responding to those issues in this action.

The issues on which we granted reconsideration involved several aspects of the final rule, including:

- Legal interpretations;
- EPA's methodology and

conclusions concerning why utility Hg emissions remaining after imposition of the requirements of the CAA are not reasonably anticipated to result in hazards to public health;

- Detailed discussion of certain issues related to coal-fired Utility Units as set forth in section VI of the final Section 112(n) Revision Rule; and

- EPA's decision related to nickel (Ni) emissions from oil-fired Utility Units.

We describe these issues at 70 FR 62200. For the reasons indicated in a letter dated June 24, 2005, we denied petitioners request that we administratively stay the Section 112(n) Revision Rule under CAA section 307(d)(7)(B). On August 4, 2005, the D.C. Circuit denied a similar request to stay the Section 112(n) Revision Rule pending the outcome of the litigation challenging the rule.

For a brief history of the CAMR rulemaking process that preceded this final action, see our discussion at 70 FR 62213 (October 28, 2005). On May 18, 2005, we issued a final rule (70 FR 28606) that established standards of performance for emissions of Hg from new and existing, coal-fired electric utility steam generating units (Utility Units or EGU). Following publication of the May 18, 2005 **Federal Register** rule the Administrator received four petitions, filed pursuant to CAA section 307(d)(7)(B), requesting reconsideration of many aspects of the final rule.<sup>3</sup>

<sup>1</sup> One petition was submitted by 14 States: New Jersey, California, Connecticut, Delaware, Illinois, Maine, Massachusetts, New Hampshire, New Mexico, New York, Pennsylvania, Rhode Island, Vermont, and Wisconsin (State petitioners). The other petition was submitted by five environmental groups and four Indian Tribes: The Natural Resources Defense Council (NRDC), the Clean Air Task Force (CATF), the Ohio Environmental Council, the U.S. Public Interest Research Group (USPIRG), the Natural Resources Council of Maine; the Aroostook Band of Micmacs, the Houlton Band of Maliseet Indians, the Penobscot Indian Nation, and the Passamaquoddy Tribe of Maine (Indian Township and Pleasant Point) (Environmental petitioners).

<sup>2</sup> In this action, the term "petitioner" refers only to those entities that filed petitions for reconsideration.

<sup>3</sup> One petition was submitted by 14 States: New Jersey, California, Connecticut, Delaware, Illinois,

On October 28, 2005 (70 FR 62213), we granted reconsideration on seven issues raised by petitioners. At that time, we did not act on any of the remaining issues in those petitions. We are responding to those issues in this action.

The issues on which we granted reconsideration involved seven narrow aspects of the final rule as follows:

- 2010 phase I Statewide Hg emission budgets and the unit-level Hg emission allocations on which those budgets are based;
- Definition of "designated pollutant" under 40 CFR 60.21;
- EPA's subcategorization for subbituminous coal-fired units in the context of the new source performance standards (NSPS);
- Statistical analysis used for the NSPS;
- Hg content in coal used to derive the NSPS;
- Definition of covered units as including municipal waste combustors (MWC); and,
- Definition of covered units as including some industrial boilers.

We describe these issues at 70 FR 62213. For the reasons indicated in a letter dated August 19, 2005, we denied petitioners request that we administratively stay CAMR under CAA section 307(d)(7)(B).

On November 17, 2005, we held a public hearing on the issues for which we granted reconsideration under all six petitions. Five individuals gave oral presentations at the hearing. The transcript of their comments is located in Docket EPA-HQ-OAR-2002-0056, which can be accessed on the Internet at <http://www.regulations.gov>.

We provided a public comment period on the reconsideration issues that ended on December 19, 2005. More than 300 written public comments on the reconsideration issues were received (for both the Section 112(n) Revision Rule and CAMR). The individual comment letters can be found in Docket EPA-HQ-OAR-2002-0056.

### III. This Action

We are making available in Docket EPA-HQ-OAR-2002-0056 a document

Maine, Massachusetts, New Hampshire, New Mexico, New York, Pennsylvania, Rhode Island, Vermont, and Wisconsin (State petitioners). The second petition was submitted by five environmental groups: the Natural Resources Defense Council (NRDC), the Clean Air Task Force (CATF), the Ohio Environmental Council, the U.S. Public Interest Research Group (USPIRG), and the Natural Resources Council of Maine. The third petition was submitted by the Jamestown Board of Public Utilities. The fourth petition was submitted by the Integrated Waste Service Association (IWSA).

entitled, "Response to Significant Public Comments Received in Response to: Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from the Section 112(c) List: Reconsideration (70 FR 62200; October 28, 2005) and Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units: Reconsideration (70 FR 62213; October 28, 2005)," (Final Reconsideration Response to Comment Document, RTC). This document contains (1) a summary of the comments received on the issues for which we granted reconsideration and our responses to these comments, and (2) a summary of issues raised in the petitions for which we are denying reconsideration, and our rationale for denying reconsideration. This document is available on our Web site at <http://www.epa.gov/ttn/atw/utility/utiltoxpg.html> and through the docket at <http://www.regulations.gov>.

#### A. Section 112(n) Revision Rule

In the final Section 112(n) Revision Rule, EPA revised the regulatory finding that it issued in December 2000 pursuant to section 112(n)(1)(A) of the CAA, and based on that revision, removed coal- and oil-fired electric utility steam generating units (coal- and oil-fired Utility Units) from the CAA section 112(c) source category list.

At this time, we are announcing our final action after reconsideration of several aspects of the Section 112(n) Revision Rule. We are also announcing our final decision on reconsideration of the remaining issues that were raised by the petitioners.

#### 1. Issues for Which We Granted Reconsideration

After carefully considering the petitions and the information that was submitted during the public comment period, we have determined that none of the new information presented leads us to conclude that our original determination as presented in the final Section 112(n) Revision Rule was incorrect. Therefore, we are reaffirming the March 29, 2005 action. A summary of the comments received and our responses to these comments can be found in our Final Reconsideration RTC. A short summary of the final 112(n) decision follows:

a. *Legal Interpretations.* Congress treated Utility Units differently from other major and area sources and provided EPA considerable discretion in determining whether to regulate such

units under CAA section 112. CAA section 112(n)(1)(A) provides:

The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) of this section after imposition of the requirements of this Act. The Administrator shall report the results of this study to the Congress within 3 years after November 15, 1990. The Administrator shall develop and describe in the Administrator's report to Congress alternative control strategies for emissions which may warrant regulation under this section. The Administrator shall regulate electric utility steam generating units under this section, if the Administrator finds such regulation is appropriate and necessary after considering the results of the study required by this subparagraph.

The rationale behind our interpretation of the above language is set forth in the final Section 112(n) Revision Rule, the Reconsideration Notice, and attendant response to comment documents. See, e.g., 70 FR 15997–16002; Final Reconsideration RTC; Section 1.1.1. In those documents we explain how we reasonably interpreted the terms “appropriate” and “necessary,” as well as why it was reasonable for us to interpret CAA section 112(n)(1)(A) to focus on (1) hazards to public health and (2) hazardous air pollutant (HAP) emissions from Utility Units remaining after imposition of the requirements of the Act when making our appropriate and necessary inquiries. Although in this action we are not reiterating all the reasons our interpretations are reasonable, we note that the comments received during reconsideration did not cause us to change those interpretations.

We are, however, clarifying what we meant when we said that the “necessary” inquiry entails an analysis of whether the alternative authorities identified under the Act would “effectively address” the remaining HAP emissions from Utility Units. See 70 FR 16001. In interpreting the phrase “necessary” to incorporate an effectiveness inquiry, we did not intend for such an inquiry to involve a public health-based assessment, or “health test,” as some commenters called it. Rather, the sole purpose of including the effectiveness inquiry as part of the “necessary” analysis was to ensure that EPA was not precluded from regulating Utility Units under CAA section 112 where another statutory authority identified would do so in a manner that was either not cost-effective or administratively effective in terms of ease of implementation of the program for regulators and the regulated community (even though that statutory

authority may address any remaining hazards to public health).

To summarize, there are two aspects of the “necessary” inquiry. The first aspect involves a determination as to whether there are any other authorities under the Act that, if implemented, would address any hazards to public health posed by the remaining Utility HAP emissions. The second aspect involves the effectiveness inquiry, which we have now clarified involves an assessment of whether the alternative statutory authority identified can be implemented in a cost-effective and administratively-effective manner.<sup>4</sup>

b. *CMAQ*. EPA received numerous comments regarding its use of the Community Multi-scale Air Quality (CMAQ) modeling system for the Section 112(n) Revision Rule. The Final Reconsideration RTC contains a detailed summary of comments and responses on particular issues raised (e.g., 36 kilometer (km) grid cell, emissions inventory, dry deposition). Below we respond generally to criticisms that it is premature to use CMAQ for this rule, and arguments that recent information from an ongoing receptor modeling study shows that CMAQ underestimates local deposition.

The CMAQ model contains the best science available to EPA to model Hg deposition. All atmospheric modeling analyses include some assumptions and uncertainties that are improved as scientific understanding evolves.

The peer review process was part of this process. The CMAQ peer review process has been the same for Hg, ozone, and fine particulate matter (PM<sub>2.5</sub>).<sup>5</sup> In fact, the latest peer review

<sup>4</sup> We recognize that the final rule may have engendered some confusion as to the two distinct steps of the “necessary” inquiry. For example, in the first column of page 16005 of the final rule, we note that regulation under CAA sections 110(a)(2)(D) and 111 “would effectively address” utility Hg emissions because the level of utility Hg emissions remaining after CAIR will not result in hazards to public health. This discussion in the preamble mixes the first and second steps of the “necessary inquiry.” As explained above, the first inquiry under the “necessary” prong is whether there are any alternative authorities in the Act that, if implemented, would address the identified hazards to public health associated with the remaining Utility Unit HAP emissions. The second inquiry under the necessary prong involves the effectiveness inquiry and the scope of that inquiry is clarified above.

<sup>5</sup> Because the necessary Hg measurements do not exist, it has not been possible to subject the Hg portion of the model to the kind of evaluation against empirical measurements that the ozone and fine particulate matter portions have received. However, we applied the CMAQ model for CAMR only in a relative sense (the CMAQ estimate of the percent of deposition, not the absolute amount, due to power plants was used as an input into the Mercury Maps model as described in the Effectiveness TSD—thus, empirical validation of

of CMAQ focused both on PM<sub>2.5</sub> and Hg. The peer review panel consisted of six to eight experts from academia, industry, and consulting. The panel was charged with review and oversight of all aspects of CMAQ, including emissions pre-processors, meteorological inputs and chemical mechanisms in the model. The peer review panel received documentation and presentations from EPA Office of Research and Development (ORD) scientists on ozone, PM<sub>2.5</sub>, Hg, and other aspects of CMAQ science. The peer review panel was also able to question, in-person, EPA ORD scientists on all aspects of the science contained in CMAQ. After the latest peer review,<sup>6</sup> the panel then prepared a report on the results of their peer review, which is contained on the Community Modeling and Analysis System (CMAS) Web site (<http://www.cmascenter.org>) and in the CAMR docket.<sup>7</sup> In addition the ORD response to this peer review is also found at this location on this Web site. The New York Department of Environmental Conservation findings to-date show CMAQ to be the best performing model for wet deposition at the MDN sites. Importantly, the peer review process did not identify any concerns regarding assumptions used or with uncertainties in the modeling that EPA was not already aware of and considering as it used the model. Thus, although it is true that a portion of the peer review occurred after EPA issued the Section 112(n) Revision Rule and CAMR, even if the peer review had occurred before the rules were final, it would not have resulted in EPA's using CMAQ differently or reaching a different conclusion.

We also received numerous comments citing to an EPA ORD receptor modeling study in Steubenville, Ohio. The Steubenville study can not be directly compared with the model results because, among other things, the Steubenville study included sources other than U.S. power plants and used a different timeframe for its analysis. However, the results of the Steubenville,

absolute values is not as critical to this use of the model.

<sup>6</sup> A December 2003 peer review focused on the total CMAQ platform and specifically on enhancements to the Hg chemical solver, which is responsible for Hg transformation and deposition in CMAQ. A May 2005 peer review included an extended discussion on the CMAQ Hg model science, the specific version of CMAQ used in CAMR, the 2001 model-Mercury Deposition Network (MDN) intercomparison study and the upcoming North American Intercomparison Study.

<sup>7</sup> Community Modeling and Analysis System (CMAS). Final Report: Second Peer Review of the CMAQ Model. July 2005. <http://www.cmascenter.org>. See also EPA-HQ-OAR-2002-0056-6307.

Ohio, receptor modeling study conducted by EPA ORD are consistent, not inconsistent, with those obtained by the CMAQ modeling. The results of this receptor modeling study show that 67 percent of the Hg depositing in precipitation in 2003 at the Steubenville monitor location is from all forms of coal-combustion, with an uncertainty range of  $\pm 14$  percent. The CMAQ Hg modeling predicts for 2001 that utility coal combustion contributes 44 percent to Hg deposition at the CMAQ 36-km square grid cell containing the Steubenville, Ohio, monitoring site. One grid cell to the north and three grid cells to the east of this monitoring site, the CMAQ model predicts 57 percent and 71 percent, respectively of Hg deposition from utility coal combustion. Thus, because this receptor modeling study provides utility and other coal combustion percentages roughly in the same range as those provided by the CMAQ model for utilities only, it improves confidence in the CMAQ source-attribution results. Furthermore, the CMAQ model predicted wet deposition at the grid cell containing the ORD Steubenville monitoring site of 14.2 micrograms per square meter ( $\mu\text{g}/\text{m}^2$ ) for 2001. The measured Hg wet deposition at the Steubenville monitoring site for 2003 is 13.1  $\mu\text{g}/\text{m}^2$ . At the closest MDN site (PA37) to Steubenville, the 2001 CMAQ predicted and measured Hg wet deposition rates are 9.9 and 9.4  $\mu\text{g}/\text{m}^2$ . Thus, it appears that CMAQ model is predicting Hg wet deposition values in the Steubenville area with sufficient accuracy for these rules.

We note that the Steubenville study estimates current deposition at a single point.<sup>8</sup> Although these data will be useful for validating air quality models, they are not useful for estimating exposure because deposition over a larger geographic area is needed to estimate the contribution to watersheds, MeHg concentrations in fish, and ultimately human exposure. As explained in the Effectiveness TSD, Section 2, the hydrologic unit code (HUC-8) watershed is the appropriate scale for estimating exposure to Hg. The CMAQ model, not a single point estimate, is used for estimating deposition within the watersheds.

In conclusion, CMAQ was applied using the best available Hg science for the Section 112(n) Revision Rule. Nonetheless, we recognize that, as new Hg scientific information becomes

available and accepted by the scientific community, we will incorporate it into future versions of the CMAQ model. Indeed, EPA released an updated version of the CMAQ Hg model on the CMAS Web site in March 2006 which partially addresses the concerns of the peer review. Importantly, even if we were to use of the March 2006 version of CMAQ it would not materially alter the results of our March decision. Future versions of CMAQ will address other aspects of the peer review.

*c. Public Health Analysis.* EPA conducted a thorough and sophisticated public health analysis pursuant to CAA section 112(n)(1)(A). The final Section 112(n) Revision Rule, the Effectiveness TSD, the Reconsideration TSD, and the Final Reconsideration RTC set forth EPA's methodology and analysis supporting its conclusion under CAA section 112(n)(1)(A) that the utility-attributable emissions remaining after imposition of the requirements of the Act are not reasonably anticipated to pose hazards to public health. Specifically, EPA examined in detail the impact of remaining utility Hg emissions on consumers of self-caught freshwater fish because this exposure pathway results in the highest utility-attributable Hg exposure. See 70 FR 16021; Reconsideration TSD at 1. Thus, consumers of self-caught freshwater fish that substitute other sources of fish (e.g., aquaculture, commercial freshwater, or marine) for self-caught freshwater fish in their diet will lower (reduce) their exposure to utility-attributable Hg.

This sophisticated analysis involved our modeling utility Hg deposition following implementation of CAIR and CAMR, and then applying Mercury Maps and actual fish tissue sample data to estimate corresponding changes in methylmercury (MeHg) fish tissue concentrations. We then folded into the analysis fish consumption rates from various sources, including the Exposure Factors Handbook (EFH), the Methylmercury Water Quality Criterion, and a study of Native American subsistence fisher consumption rates. All of this information was compiled in order to compare the exposure to utility-attributable MeHg for a freshwater fisher to the Reference Dose (RfD) for Hg—what we labeled the index of daily intake (IDI). This comparison was done not only at several consumption rates, including the mean recreational freshwater fisher and the 99th percentile Native American subsistence fisher, but also for various levels of utility-attributable MeHg fish tissue concentrations. See Effectiveness TSD, Table 6.4; Final Reconsideration RTC, Table 2. An IDI of less than one (1) is

equal to a utility-attributable exposure lower than the RfD. See 70 FR 16021.

As these IDI tables show, CAIR, and, furthermore, CAMR, reduce the general public's exposure to utility-attributable MeHg due to freshwater fish consumption well below the RfD (e.g., IDI less than 1). In particular, for all consumption rates analyzed, the IDI is below 1 when eating freshwater fish from up to and including the 50th percentile for fish tissue utility-attributable MeHg. When eating solely freshwater fish in the 75th to 95th percentiles for fish tissue utility-attributable MeHg, the only two groups with IDIs above 1 are the 95th and 99th Native American subsistence fishers. Finally, only when eating solely freshwater fish from the 99th percentile for fish tissue utility-attributable MeHg do the 99th percentile recreational fisher and mean Native American subsistence fisher show IDIs above 1. See Effectiveness TSD, Table 6.4; Final Reconsideration RTC, Table 2. These results show that the overwhelming majority of the general public and high-end consumers of self-caught freshwater fish are not expected to be exposed to an IDI above 1 (e.g., utility-attributable MeHg exposure would be below the RfD).

Importantly, as discussed in the final Section 112(n) Revision Rule, the likelihood that factors will converge such that a person would both eat at a high consumption rate and eat solely freshwater fish with high utility-attributable MeHg concentrations is small. See 70 FR 16024. Notably, this is true for Native American subsistence fishers because deposition and fish tissue maps indicate that the overwhelming majority of tribal populations live outside areas most impacted by utility-attributable Hg deposition and elevated utility-attributable fish tissue levels. *Id.* Moreover, as discussed elsewhere, although the RfD is an appropriate benchmark, an IDI above 1 (e.g., above the RfD) does not necessarily mean that a public health hazard exists.<sup>9</sup> *Id.*

In the Reconsideration TSD, we looked beyond the self-caught freshwater fish exposure pathway. We were able to undertake a similar quantitative IDI analysis only for the marine fish consumption pathway. That analysis, which likely overstates the utility-attributable Hg levels in marine

<sup>8</sup> We note that the location of the sole monitor for the Steubenville study is not designed to be representative of the deposition to the entire watershed. In fact, it is placed on top of a hill and not at a location where fish are caught.

<sup>9</sup> The World Health Organization (WHO), Health Canada, and the Agency for Toxic Substances and Disease Registry (ATSDR) all set higher thresholds for Hg than EPA's RfD, which would in turn lead to lower IDIs. For example, the WHO sets the level at 0.23 g/kg/day; Health Canada sets the level at 0.2 g/kg/day; and ATSDR sets a value of 0.3 g/kg/day.

fish, showed that for the general public eating at both mean and high-end consumption rates the IDIs are well below 1 (e.g., 0.00 to 0.05). See Reconsideration TSD, Table 3.2. EPA went further and calculated IDI values for consumption of marine species with high MeHg concentration, yet those IDIs also were below 1, even for a person consuming in the 99.9th percentile consuming exclusively fish with high utility-attributable MeHg concentrations. *Id.*, Table 3.3. Finally, Table 3 of the Final Reconsideration RTC shows that even when higher marine fish consumption rates (for marine fish with average utility-attributable MeHg concentrations) are added to the freshwater consumption rates, the IDI values do not change substantially (e.g., increase ranges from 0.03 to 0.09).<sup>10</sup> Notably, such an increase is highly unlikely because an individual first would need to eat a large amount of marine fish in addition to a given amount of freshwater fish. Even if it were to occur, such an increase would not materially affect the IDI values, which again supports our focus on utility-attributable exposure from freshwater fish consumption.

Although scientific uncertainties and a lack of data made similar quantitative IDI analyses for other pathways (e.g., commercial freshwater, estuarine, and aquaculture) not possible, EPA presented detailed qualitative analyses showing that the contribution from these pathways would be small, and in all cases are bounded by the self-caught freshwater pathway. See Reconsideration TSD, Sections 4 through 7. For example, EPA explained how it is the location and type of feed caught to make fish feed, as opposed to the location of the aquaculture farms, that is relevant to assessing the utility-attributable concentration of MeHg in aquaculture fish. See 60 FR 62207. Furthermore, many of the commonly consumed aquaculture fish species (e.g., catfish) tend to have lower concentrations of MeHg than many of the commonly consumed marine fish, and the total amount of aquaculture fish consumed in the U.S. is substantially

less than the total amount of marine fish consumed in the U.S. Thus, having already concluded that an upper-bound estimate of utility-attributable Hg exposure due to marine fish is small and that the utility-attributable Hg exposure due to aquaculture is smaller than for marine fish, we reasonably concluded that the utility-attributable Hg exposure due to aquaculture fish is minimal. *Id.*

For the estuarine pathway, we discussed how EPA finds that the available data indicate that the utility-attributable exposure to Hg from estuarine fish and shellfish will likely be small relative to that from self-caught freshwater fish. *Id.* We estimated that the total exposure from the entire global Hg pool (i.e., all Hg sources, including, but, not limited to power plants,) associated with consumption of estuarine and nearcoastal fish is roughly one third of the exposure from all marine species. This estimate of total Hg exposure from estuarine species is thought to be an upper bound because it is based on total Hg concentrations in shellfish rather than MeHg concentrations, the Hg species that is toxicologically most significant. See Reconsideration TSD, Section 4. Moreover, of the Hg exposure associated with the consumption of estuarine and near-coastal fish, we estimate that the utility-attributable fraction is small.<sup>11</sup>

Finally, for the commercial freshwater fish pathway, we explained how freshwater commercial fish are not a significant exposure pathway because total consumption is small when compared to recreational freshwater fish consumption. See Reconsideration TSD, Section 6; 70 FR 62205. Further, even though utility-attributable Hg deposition is comparatively higher around the Great Lakes and the regional watershed surrounding the Great Lakes as defined by the U.S. Geological Survey (USGS), in comparison with the rest of the U.S., it is still only a small percentage of Hg deposition from all sources. Additionally, only a portion of the commercial freshwater harvesting area is affected by comparatively higher concentrations of utility-attributable Hg deposition in  $\mu\text{g}/\text{m}^2$  (e.g., Lakes Michigan, Erie, and Huron), and the Great Lakes utility-attributable Hg

deposition is not disproportionately higher than the immediately surrounding areas for recreational freshwater harvest. All of these factors lead us to believe that the commercial freshwater fish exposure pathway is still expected to be small relative to the national recreational freshwater exposure pathway. See 70 FR 62206.

After reviewing the comments received during the reconsideration, we are not changing our analyses of these consumption pathways and continue to find that self-caught freshwater fish represent the pathway most impacted by utility Hg emissions.

Finally, in addition to the above IDI analyses, EPA evaluated whether, following CAIR and, furthermore, following CAMR, there would be any utility hotspots, defined as water bodies that are a source of consumable fish with MeHg tissue concentrations attributable solely to utilities greater than the MeHg water quality criterion of 0.3 mg/kg. See 70 FR 16026. EPA's analysis showed that after implementation of CAIR and, furthermore, after CAMR we do not believe that there will be any utility hotspots. See 70 FR 16027. Nonetheless, as indicated elsewhere, EPA intends to monitor the situation and take action as necessary. *Id.*<sup>12</sup>

In summary, this information supports EPA's conclusion that following CAIR, and, moreover, following CAMR, utility Hg emissions are not reasonably anticipated to result in a hazard to public health. Specifically, the overwhelming majority of the general public and high-end fish consumers are not expected to be exposed above the MeHg RfD (an IDI value greater than 1). Although the possibility exists that a very small group of people may be exposed above the RfD (an IDI value greater than 1), significant uncertainties exist with respect to the existence and actual size of such a group. There are also significant uncertainties concerning the extent to which such exposure might exceed the RfD (an IDI value greater than 1) and whether exposure at such levels would cause adverse effects. Notably, as the U.S. Court of Appeals for the District of Columbia Circuit in *Vinyl Chloride* held, "safe" does not mean risk-free. See 824 F.2d 1165. *Id.* Rather, EPA must "determine what inferences should be drawn from available scientific data and

<sup>10</sup> In Section 1.1.1.1.1 of the Final Reconsideration RTC, EPA explained in more detail why it is very likely that its CAA section 112(m)(1)(A) conclusion regarding hazards to public health would remain unchanged even had it applied the health-based prong of the CAA section 112(f) ample margin of safety inquiry. In particular, we discussed how we effectively considered the factors relevant in the benzene analysis (e.g., estimates of individual risk, incidence, numbers of exposed persons within various risk ranges, scientific uncertainties, weight of evidence, as well as potential standards' technical feasibility, cost, and economic impact).

<sup>11</sup> As described in section 4 of the Reconsideration TSD, utility deposition after CAIR, and even more so after CAMR, is small in the coastal areas, especially taking into account estuarine and near-coastal fisheries on the West Coast. Finally, populated coastal regions like the Chesapeake Bay and Baltimore Harbor (see Mason and Lawrence, 1999) will receive significant land-based (e.g., point source discharges) Hg inputs from wastewater effluents, municipal waste discharges, and historical Hg contamination that is slowly leaching from the watershed.

<sup>12</sup> The EPA Inspector General recently issued a report suggesting that EPA conduct monitoring to ensure that its hotspots analysis is accurate. See EPA Office of Inspector General, "Monitoring Needed to Assess Impact of EPA's Clean Air Mercury Rule on Potential Hotspots," Report No. 2006-P-00025 (May 15, 2006).

decide what risks are acceptable in the world in which we live.” *Id.*

Given the size of the population, including sensitive subpopulations, that after implementation of CAIR and, furthermore, CAMR, will be below the RfD (an IDI value of less than 1); the uncertainty of the size and the level to which certain groups may be exposed above the RfD (an IDI value greater than 1); the uncertainties that adverse effects will be experienced by such groups even at levels significantly above the MeHg RfD; and the nature of those potential adverse effects (*see* Reconsideration TSD), EPA, in its expert judgment, concludes that utility Hg emissions do not pose hazards to public health, and, therefore, that it is not appropriate to regulate such emissions under CAA section 112.

*c. Alternative Global Pool Analysis.* In the final rule, EPA concluded that the utility-attributable emissions remaining after imposition of the requirements of the Act are not reasonably anticipated to pose hazards to public health. Based on this finding and consistent with its interpretation of the term “appropriate,” EPA concluded that it was not appropriate to regulate Utility Units under CAA section 112. EPA’s analysis did not end there, however. EPA went further and concluded that even examining the impact of the global Hg pool, as opposed to the impacts associated with utility-attributable emissions only, it is still not appropriate to regulate Utility Units under CAA section 112. *See* 70 FR 16028–29 (setting forth global pool analysis). In this regard, EPA looked at the global Hg pool and the impact of eliminating all domestic Utility Unit Hg emissions, including those that enter the global mix (versus deposit relatively quickly in the U.S. or nearby ocean waters). *See* 70 FR 16028–29; 70 FR 62208–09. EPA’s analysis showed that total domestic utility-attributable emissions are “a very small fraction of overall methylmercury levels.” *Id.* at 16028. The modeling further showed that even if we were to eliminate (versus merely further reduce) all domestic utility-attributable Hg, “virtually none of the risks to public health stemming from the global pool” would be reduced. *See* 70 FR 16029. In the Reconsideration TSD we went further and undertook a bounding exercise of the monetary benefits, based on intelligence quotient (IQ) decrements, which would occur from elimination of utility Hg emissions. In the context of this global pool argument, EPA assumed a hazard to public health existed resulting from global pool emissions, and then properly proceeded

with its analysis under the “appropriate” prong.

Specifically, in light of its finding that eliminating all domestic utility-attributable Hg would reduce virtually none of the health risks stemming from the global pool, EPA proceeded in the appropriate inquiry by considering the factor of cost. As explained in detail in Section 8 of the Reconsideration TSD, the lower bound cost of regulating under CAA section 112 beyond CAIR *e.g.*, \$750 million) exceeds the upper bound estimate of the benefits of such regulation (*e.g.*, \$210 million).<sup>13</sup> *See* 70 FR 62209. This alternative global pool cost/benefit analysis further supports EPA’s conclusion that it is not appropriate to regulate Utility Units under CAA section 112.

Numerous commenters questioned EPA’s benefits analysis, citing an article by Trasande, *et al.* (2005), a study prepared for the Northeast States for Coordinated Air Use Management (NESCAUM) entitled, “Economic Valuation of Human Health Benefits of Controlling Mercury Emissions from U.S. Coal-fired Power Plants” (February 22, 2005; NESCAUM Report), and a study by Cohen, *et al.* (2005). The Reconsideration TSD and Final Reconsideration RTC contain our detailed response to these studies; however, a summary follows.

As stated in the Reconsideration TSD, EPA’s approach to modeling exposure and health benefits of reducing emissions from power plants differs in some important ways from the approach in the NESCAUM Report. EPA believes that some of these differences simply reflect the large amount of uncertainty in the underlying science. Other differences reflect situations where the science and economics are fairly clear and EPA has concerns about the approach taken in the NESCAUM Report. For example, the NESCAUM Report attempted to quantify the marine exposure pathway but used assumptions that are not supported by the literature on marine fate and transport of Hg, likely resulting in an overestimate by an unknown amount. The NESCAUM Report used REMSAD modeling which appears to over-predict Hg deposition from U.S. power plants. Although EPA does not endorse the approach in the NESCAUM Report approach, at best it should be interpreted as producing an upper-bound estimate of the IQ benefits of reducing Hg emissions from power plants for two reasons. First, it does not appear that the NESCAUM Report took

into account the timeframe for reduced exposure to MeHg. This omission alone leads to an overestimate of estimated benefits in the NESCAUM Report by at least a factor of two. Second, EPA’s integrated analysis of the three major epidemiological studies (*i.e.*, Faroes, Seychelles, New Zealand) produced an estimated relationship between exposure and neurological problems that EPA feels is much more scientifically defensible than the estimated relationship used in the NESCAUM Report, based, in part, on a then unpublished and generally unavailable study (Cohen *et al.*, *see* below).

EPA believes that many of the assumptions made in the Trasande article lead to an extreme overstatement of the benefits of Hg reduction (or cost of Hg exposure). Most importantly, the article as originally published contained an error in the estimate of the linear dose-response curve that overstated the estimates of that model by a factor of 10. EPA’s estimates fall within the range of the corrected estimates, even accepting the author’s other assumptions. However, EPA believes that there are other assumptions embedded in the Trasande, *et al.*, analysis that overstate the possible benefits from Hg reductions. Examples include assumptions regarding the amount of Hg in the supply of edible fish in the U.S., the estimate of the percent of the U.S. edible fish supply that is imported, the assumption that 60 percent of the Hg content in fish affected by domestic deposition is due to U.S. sources, and assumptions related to the derivation of IQ decrements associated with exposure to Hg, including the study’s primary estimate of IQ decrements being based on a logarithmic model, instead of a linear model (as recommended by the National Research Council (NRC)). Finally, in the Final Reconsideration RTC we discuss several reasons why the results from Trasande, *et al.*, are an overestimate of the economic benefits of controlling Hg.

In regard to the Cohen, *et al.*, article, EPA also disagrees with some of the assumptions made. In particular, a key element of the Cohen, *et al.*, methodology was to convert the log regression coefficients from the Faroe Islands study into corresponding linear coefficients. Because the slope of the log regression relationship varies at different levels of exposure, the corresponding linear coefficient can vary based on which portion of the dose-response relationship is chosen (*e.g.*, ranging from –0.2 to –1.0 IQ points per 1 µg/g increase of Hg in hair).

<sup>13</sup> As explained below, we revised our original estimate of \$168 million based on corrections made to the Ryan study.

Although the approach taken by Cohen, *et al.*, is in general a reasonable use of the available data to derive an estimate of the Hg-IQ dose-response relationship, it is evident from the results summarized above that the result is highly sensitive to the assumptions made in converting the log regression coefficients from the Faroe Islands study into linear regression coefficients. The approach taken by EPA and Dr. Ryan was more rigorous than that of Cohen, *et al.*, in a number of respects, but one of the most important differences is that EPA obtained linear regression coefficients directly from the Faroe Islands research team, thus, eliminating the need to make assumptions to convert the log regression coefficients into linear coefficients. If the Cohen, *et al.*, analysis were revised to incorporate the linear coefficients provided by the Faroe Islands researchers to EPA, it is likely that Cohen, *et al.*, would produce a Hg-IQ coefficient very similar to that estimated by Dr. Ryan and used by EPA.

## 2. Remaining Issues in Petitions for Reconsideration

We deny the petitioners' requests for reconsideration on the remaining issues raised in the petitions because they have failed to meet the standard for reconsideration under CAA section 307(d)(7)(B). Specifically, the petitioners have failed to show: That it was impracticable to raise their objections during the comment period, or that the grounds for their objections arose after the close of the comment period; and/or that their concern is of central relevance to the outcome of the rule. We discuss our reasons for denying reconsideration in the Final Reconsideration RTC, which is available on our Web site at <http://www.epa.gov/ttn/atw/utility/utiltoxpg.html>.

### B. CAMR

CAMR established standards of performance for Hg for new and existing coal-fired electric utility steam generating units (Utility Units), as defined in CAA section 111. The amendments to CAA section 111 rules create 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 (tpy) becomes effective in 2010, and a second phase cap of 15 tpy 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. Such a "cap-and-trade" approach to limiting Hg

emissions is the most cost-effective way to achieve the reductions in Hg emissions from the power sector.

At this time, we are announcing our final action after reconsideration of the seven CAMR issues described above. We are also announcing our final decision on reconsideration of the remaining issues that were raised by the petitioners.

### 1. Issues for Which Reconsideration Was Granted

After carefully considering the petitions and the information that was submitted during the public comment period, we have concluded that one clarification and two revisions to CAMR are warranted. First, for the reasons stated in the October Reconsideration Notice and in the Final Reconsideration RTC, we are finalizing regulatory language to make it clearer that CAMR does not apply to MWC and certain industrial boilers (40 CFR 60.24(h)(8) (definition of "Electric generating unit or EGU"). Specifically, we are providing that CAMR applies to coal-fired boilers and combustion turbines serving, at any time since November 15, 1990, a generator with a nameplate capacity greater than 25 MWe producing electricity for sale and does not apply to cogeneration units meeting certain requirements concerning their electricity sales and to solid waste incineration units combusting municipal waste and subject to certain regulatory requirements. In the October Reconsideration Notice, EPA noted that the Agency would make conforming changes to the applicability provisions in the model trading rule (subpart HHHH, 40 CFR 60.4104) based on the final action EPA takes on the proposed rule as those provisions are intended to be consistent with the definition in 40 CFR 60.24(h). We are, therefore, finalizing revised applicability provisions in 40 CFR 60.4104, which are consistent with the language in revised 40 CFR 60.24(h)(8). (We also noted in the October Reconsideration Notice that we would address the matter of the applicability of units subject to the Industrial Boiler maximum achievable control technology (MACT) standards to units subject to CAMR. We recently proposed language amending 40 CFR part 63, subpart DDDDD, with regard to this matter. *See* 70 FR 62264, 62272; October 31, 2005.) The two changes we are making in response to comments relate to issues raised as a result of our request for comment on: (1) The 2010 phase I Statewide Hg emission budgets and the unit-level Hg emission allocations on which those budgets are based; and, (2) the statistical analysis

used for the NSPS. These revisions are discussed further below. A summary of the comments received and our responses to these comments can be found in our Final Reconsideration RTC.

a. *Statewide Hg Allocations.* Several commenters, in response to the issue of the unit-level Hg emission allocations on which the 2010 phase I Statewide Hg emission budget is based, provided data that indicated that EPA had erred in the allocations for the State of Alaska because it had failed to include a coal-fired unit located in the State. EPA has added the heat input values for Healy Unit #1 reported by the commenters, and made the appropriate adjustment to the State of Alaska budget. However, EPA is not making any corrections for the Healy Clean Coal Project as requested by the commenters. EPA calculated State budgets based on historic heat input for all units, not potential or projected heat input.

The original CAMR State budgets and the revised State budgets based on the addition of the Healy Unit #1 heat input data are provided in the Final Reconsideration RTC. Because of the small total adjustment and the digit at which the budgets are rounded, only six other State budgets are affected.

b. *Statistical Analysis for NSPS.* Petitioners expressed considerable concern over EPA's statistical analysis. Further, certain commenters provided additional data in support of a revision to the NSPS emission limits for coal refuse-fired units. EPA did not change its statistical approach but, as noted in the October Reconsideration Notice, we did correct the arithmetic errors. EPA has reviewed its analysis along with the discussions provided by the petitioners and commenters, and reanalyzed the coal refuse NSPS based on the new data and documented the results (*see* Final Reconsideration RTC; revised NSPS memo available in the docket). Based on this reanalysis of the appropriate NSPS emission limits, EPA is finalizing the following NSPS Hg limits for new units:

Bituminous coal .....	$20 \times 10^{-6}$ lb/MWh
Subbituminous coal (wet units).	$66 \times 10^{-6}$ lb/MWh
Subbituminous coal (dry units).	$97 \times 10^{-6}$ lb/MWh
Lignite coal .....	$175 \times 10^{-6}$ lb/MWh
Coal refuse .....	$16 \times 10^{-6}$ lb/MWh
IGCC .....	$20 \times 10^{-6}$ lb/MWh

### 2. Remaining Issues in Petitions for Reconsideration

We deny the petitioners' requests for reconsideration on the remaining issues raised in the petitions, because they have failed to meet the standard for reconsideration under CAA section

307(d)(7)(B). Specifically, the petitioners have failed to show: that it was impracticable to raise their objections during the comment period, or that the grounds for their objections arose after the close of the comment period; and/or that their concern is of central relevance to the outcome of the rule. We discuss our reasons for denying reconsideration in the Final Reconsideration RTC, which is available on our Web site at <http://www.epa.gov/ttn/atw/utility/utltoxpg.html>.

#### IV. Issues Not Corrected in the CAMR Technical Corrections or in the Reconsideration Documents

On August 30, 2005 (70 FR 51266), EPA issued a technical corrections document addressing certain corrections to the May 18, 2005 (70 FR 28606) CAMR. We subsequently found certain other errors in CAMR that need correction. All of these corrections should be non-controversial.

On October 28, 2005 (70 FR 62213), EPA proposed to correct the following errors. First, we were inconsistent in our use of phrase “new, modified, and reconstructed” in the applicability provisions of the NSPS portion of CAMR. We proposed to correct this inconsistency by revising the language to indicate that the NSPS applies to units which are constructed, modified, or reconstructed after January 30, 2004. Second, there is an inconsistency between the definitions of “coal” and “coal-fired electric utility steam generating unit.” In defining “coal” we indicate that “coal” includes “petroleum coke” while in defining “coal-fired electric utility steam generating unit” we identify “petroleum coke” as an example of a supplemental fuel (*i.e.*, a fuel that is burned with coal). We proposed to correct this inconsistency by removing “petroleum coke” from the definition of “coal” as we do not think “petroleum coke” is properly classified as “coal.” (We have subsequently placed “petroleum coke” in the definition of “petroleum”; *see* 70 FR 9877, February 27, 2006.) Third, because of the delay between signature and publication of CAMR, the submittal dates for the individual State Hg allocation plans and the full State plans are not consistent. We proposed to resolve this problem by changing the October 31, 2006 date for submitting Hg allowance allocations to the Administrator specified in 40 CFR 60.24(h)(6)(ii)(C) and 40 CFR 60.4141(a) of the model trading rule to November 17, 2006, consistent with the date for submitting State plans specified in 40 CFR 60.24(h)(2). Finally, we identified additional instances where the section

renumbering, noted in the August 30, 2005 document, was not corrected, and we proposed to correct these. We received no comments on these issues as a result of the October 28, 2006 document and, therefore, are finalizing these corrections in this action.

Subsequent to the October 28, 2005 document, we found certain other errors in CAMR. With regard to the inconsistency in our use of the phrase “new, modified, and reconstructed” in the applicability provisions of the NSPS portion of CAMR, we missed instances in CAA sections 60.40Da and 60.45Da where this inconsistency was found. We believe that these corrections are non-controversial and we are correcting these in this action.

#### V. Statutory and Executive Order (EO) Reviews

##### A. Executive Order 12866: Regulatory Planning and Review

Under EO 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is “significant” and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the EO. The EO defines a “significant regulatory action” as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of EO 12866, it has been determined that this final action on reconsideration is a “significant regulatory action” because it raises novel legal or policy issues. As such, the action was submitted to OMB for review under EO 12866. Changes made in response to OMB suggestions or recommendations are documented in the public record.

##### B. Paperwork Reduction Act

This action does not impose any new information collection burden. This final action on reconsideration imposes no new information collection

requirements on the industry. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR 60.40Da–60.49Da; 40 CFR 60.4100–60.4199) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0567 and EPA ICR number 2137.02. A copy of the OMB approved Information Collection Request (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 are listed in 40 CFR part 9.

##### C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final action.

For purposes of assessing the impacts of this final action on reconsideration on small entities, a small entity is defined as: (1) A small business that is identified by the NAICS Code, as defined by the Small Business Administration (SBA); (2) 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. Categories and entities potentially regulated by the final rule with applicable NAICS codes

are provided in the Supplementary Information section of this action.

According to the SBA size standards for NAICS code 221122 Utilities-Fossil Fuel Electric Power Generation, a firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million MWh.

After considering the economic impacts of this final action on reconsideration on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that none of the small entities will experience a significant impact because the final action on reconsideration imposes no additional regulatory requirements on owners or operators of affected sources.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, UMRA section 205 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. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory

proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this final action on reconsideration does not contain 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 1 year. Although the final rule projected that in 2020, 2 years into the start of the second phase of the cap-and-trade program, compliance costs to government-owned entities would be approximately \$48 million, this final action on reconsideration does not add new requirements that would increase this cost. Thus, this final action on reconsideration is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this final action on reconsideration does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, this final action on reconsideration is not subject to UMRA section 203.

#### *E. Executive Order 13132: Federalism*

EO 13132 (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" are 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 final action on reconsideration 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. None of the affected facilities are owned or operated by State governments, and the requirements discussed in this action will not supersede State regulations that are more stringent. Thus, EO 13132 does not apply to this final action on reconsideration.

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

EO 13175 (65 FR 67249, November 6, 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 final action on reconsideration does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in EO 13175. No affected facilities are owned or operated by Indian tribal governments. Thus, EO 13175 does not apply to this final action on reconsideration.

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

EO 13045 (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, EPA must 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 EPA.

This action is a final action on reconsideration of the final CAMR, which is subject to the EO because it is economically significant as defined by EO 12866, and we believe that the environmental health or safety risk addressed by that action may have a disproportionate effect on children. Accordingly, we have evaluated the environmental health or safety effects of that final rule on children. The results of the evaluation are discussed in that final rule (70 FR 28606; May 18, 2005) and are contained in the docket (OAR-2002-0056).

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

This final action on reconsideration is not a "significant energy action" as defined in EO 13211 (66 FR 28355; May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we conclude that this final

action on reconsideration is not likely to have any adverse energy effects.

*I. National Technology Transfer and Advancement Act*

As noted in the 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 the OMB, with explanations when EPA decides not to use available and applicable voluntary consensus standards.

During the development of the final rule, 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 rule (70 FR 28647; May 18, 2005). This final action on reconsideration does not propose the

use of any additional technical standards beyond those cited in the final rule. Therefore, EPA is not considering the use of any additional voluntary consensus standards for this action.

*J. Congressional Review Act*

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing the final action on reconsideration and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final action on reconsideration in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The final action on reconsideration is not a "major rule" as defined by 5 U.S.C. 804(2). The final action on reconsideration will be effective June 9, 2006.

**List of Subjects in 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.

Dated: May 31, 2006.

**Stephen L. Johnson,**  
*Administrator.*

■ For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of the Federal Regulations is amended as follows:

**PART 60—[AMENDED]**

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

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

**Subpart B—[Amended]**

■ 2. Section 60.24 is amended by:

■ a. In paragraph (h)(3) revising the table;

■ b. In paragraph (h)(6)(ii)(C), by revising the words "October 31, 2006" to read "November 17, 2006"; and

■ c. In paragraph (h)(8), revising the definition of "Electric generating unit or EGU" to read as follows:

**§ 60.24 Emission standards and compliance schedules.**

*	*	*	*	*
(h)	*	*	*	*
(3)	*	*	*	*

State	Annual EGU Hg 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
Florida .....	1.232	0.487
Georgia .....	1.227	0.484
Hawaii .....	0.024	0.009
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 .....	0.490	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 .....	0.600	0.237
North Carolina .....	1.133	0.447
North Dakota .....	1.564	0.617
Nebraska .....	0.421	0.166

State	Annual EGU Hg budget (tons)	
	2010–2017	2018 and thereafter
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	2.056	0.812
Oklahoma	0.721	0.285
Oregon	0.076	0.030
Pennsylvania	1.779	0.702
South Carolina	0.580	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	0.060	0.024
Virginia	0.592	0.234
Washington	0.198	0.078
Wisconsin	0.890	0.351
West Virginia	1.394	0.550
Wyoming	0.952	0.376
Total	38.000	15.000

\* \* \* \* \*

(8) \* \* \*

*Electric generating unit or EGU*

means:

(1)(i) Except as provided in paragraphs (2) and (3) of this definition, a stationary, coal-fired boiler or stationary, coal-fired combustion turbine in the State 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 megawatts electric (MWe) producing electricity for sale.

(ii) If a stationary boiler or stationary combustion turbine that, under paragraph (1)(i) of this definition, is not an electric generating 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 an electric generating unit as provided in paragraph (1)(i) of this definition on the first date on which it both combusts coal or coal-derived fuel and serves such generator.

(2) A unit that meets the requirements set forth in paragraph (2)(i)(A) of this definition shall not be an electric generating unit:

(i)(A) A unit that is an electric generating unit under paragraph (1)(i) or (ii) of this definition:

(1) 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

(2) 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 megawatt-hours (MWh), whichever is greater, to any utility power distribution system for sale.

(B) 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 paragraph (2)(i)(A) of this definition for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become an electric generating 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 (2)(i)(A)(2) of this definition.

(3) A "solid waste incineration unit" as defined in Clean Air Act section 129(g)(1) combusting "municipal waste" as defined in Clean Air Act section 129(g)(5) shall not be an electric generating unit if it is subject to one of the following rules:

(i) An EPA-approved State plan for implementing subpart Cb of part 60 of this chapter, "Emissions Guidelines and Compliance Times for Large Municipal Waste Combustors That Are Constructed On or Before September 20, 1994";

(ii) Subpart Eb of part 60 of this chapter, "Standards of Performance for

Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996";

(iii) Subpart AAAA of part 60 of this chapter, "Standards of Performance for Small Municipal Waste Combustors for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001";

(iv) An EPA-approved State Plan for implementing subpart BBBB of part 60 of this chapter, "Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999";

(v) Subpart FFF of part 62 of this chapter, "Federal Plan Requirements for Large Municipal Waste Combustors Constructed On or Before September 20, 1994; or

(vi) Subpart JJJ of 40 CFR part 62, "Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999".

\* \* \* \* \*

**Subpart Da—[Amended]**

■ 3. Section 60.40Da is amended by revising paragraph (a)(2) to read as follows:

**§ 60.40Da Applicability and designation of affected facility.**

(a) \* \* \*

(2) For which construction, modification, or reconstruction is commenced after September 18, 1978.

\* \* \* \* \*

■ 4. Section 60.41Da is amended by revising the definitions of “Coal” and “Coal-fired electric utility steam generating unit” and in paragraph (b) of the definition of “Potential combustion concentration” by revising “§ 60.48a(b)” to read “§ 60.50Da(b)” to read as follows:

**§ 60.41Da Definitions.**

\* \* \* \* \*

*Coal* means all solid fuels 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) §1 (incorporated by reference, see § 60.17) and coal refuse. Synthetic fuels derived from coal for the purpose of creating useful heat, including but not limited to solvent-refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures are included in this definition for the purposes of this subpart.

*Coal-fired electric utility steam generating unit* means an electric utility steam generating unit that burns coal, coal refuse, or a synthetic gas derived from coal either exclusively, in any combination together, or in any combination with other fuels in any amount.

\* \* \* \* \*

■ 5. Section 60.45Da is amended by:

- a. Revising paragraph (a) introductory text;
- b. Revising paragraph (a)(1);
- c. Revising paragraphs (a)(2)(i) and (a)(2)(ii);
- d. Revising paragraph (a)(3);
- e. Revising paragraph (a)(4); and
- f. Revising paragraph (b) to read as follows:

**§ 60.45Da Standard for mercury.**

(a) For each coal-fired electric utility steam generating unit other than an integrated gasification combined cycle (IGCC) electric utility steam generating unit, on and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, modification, or reconstruction commenced after January 30, 2004, any gases which contain mercury (Hg) emissions in excess of each Hg emissions limit in paragraphs (a)(1) through (5) of this section that

applies to you. The Hg emissions limits in paragraphs (a)(1) through (5) of this section are based on a 12-month rolling average using the procedures in § 60.50Da(h).

(1) For each coal-fired electric utility steam generating unit that burns only bituminous coal, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of  $20 \times 10^{-6}$  pound per megawatt hour (lb/MWh) or 0.020 lb/gigawatt-hour (GWh) on an output basis. The International System of Units (SI) equivalent is 0.0025 nanograms per joule (ng/J).

(2)\* \* \*

(i) If your unit is located in a county-level geographical area receiving greater than 25 inches per year (in/yr) mean annual precipitation, based on the most recent publicly available U.S. Department of Agriculture 30-year data, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of  $66 \times 10^{-6}$  lb/MWh or 0.066 lb/GWh on an output basis. The SI equivalent is 0.0083 ng/J.

(ii) If your unit is located in a county-level geographical area receiving less than or equal to 25 in/yr mean annual precipitation, based on the most recent publicly available U.S. Department of Agriculture 30-year data, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of  $97 \times 10^{-6}$  lb/MWh or 0.097 lb/GWh on an output basis. The SI equivalent is 0.0122 ng/J.

(3) For each coal-fired electric utility steam generating unit that burns only lignite, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of  $175 \times 10^{-6}$  lb/MWh or 0.175 lb/GWh on an output basis. The SI equivalent is 0.0221 ng/J.

(4) For each coal-burning electric utility steam generating unit that burns only coal refuse, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of  $16 \times 10^{-6}$  lb/MWh or 0.016 lb/GWh on an output basis. The SI equivalent is 0.0020 ng/J.

\* \* \* \* \*

(b) For each IGCC electric utility steam generating unit, on and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, modification, or reconstruction commenced after January 30, 2004, any

gases which contain Hg emissions in excess of  $20 \times 10^{-6}$  lb/MWh or 0.020 lb/GWh on an output basis. The SI equivalent is 0.0025 ng/J. This Hg emissions limit is based on a 12-month rolling average using the procedures in § 60.50Da(g).

■ 6. Section 60.48Da is amended:

■ a. In paragraph (j) introductory text by revising “§ 60.44a(a)” to read “§ 60.44Da(a)”;

■ b. Revising paragraph (l) to read as follows:

**§ 60.48Da Compliance provisions.**

\* \* \* \* \*

(l) Compliance provisions for sources subject to § 60.45Da. The owner or operator of an affected facility subject to § 60.45Da (new sources constructed, modified, or reconstructed after January 30, 2004) shall calculate the Hg emission rate (lb/MWh) for each calendar month of the year, using hourly Hg concentrations measured according to the provisions of § 60.49Da(p) in conjunction with hourly stack gas volumetric flow rates measured according to the provisions of § 60.49Da(l) or (m), and hourly gross electrical outputs, determined according to the provisions in § 60.49Da(k). Compliance with the applicable standard under § 60.45Da is determined on a 12-month rolling average basis.

\* \* \* \* \*

**§ 60.50Da [Amended]**

■ 7–8. Section 60.50Da is amended by:

■ a. In paragraph (e)(2) by revising “§ 60.48(d)(1)” to read “§ 60.46(d)(1)”;

and

■ b. In paragraph (g) introductory text, by removing the words “and 60.46Da”.

**Subpart Db—[Amended]**

**§ 60.40b [Amended]**

■ 9. Section 60.40b is amended in paragraph (e) by revising “§ 60.40a” to read “§ 60.40Da”.

**Subpart HHHH—Amended]**

■ 10. Section 60.4104 is revised to read as follows:

**§ 60.4104 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 and subparts BB through HH of this part: 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 paragraphs (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 paragraph (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become an 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 an 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).

■ 11. Section 60.4140 is revised to read as follows:

**§ 60.4140 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	Annual EGU Hg 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
Florida .....	1.232	0.487
Georgia .....	1.227	0.484
Hawaii .....	0.024	0.009
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 .....	0.490	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 .....	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

State	Annual EGU Hg budget (tons)	
	2010–2017	2018 and thereafter
New York .....	0.393	0.155
Ohio .....	2.056	0.812
Oklahoma .....	0.721	0.285
Oregon .....	0.076	0.030
Pennsylvania .....	1.779	0.702
South Carolina .....	0.580	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 .....	0.060	0.024
Virginia .....	0.592	0.234
Washington .....	0.198	0.078
Wisconsin .....	0.890	0.351
West Virginia .....	1.394	0.550
Wyoming .....	0.952	0.376
Total .....	38.000	15.000

■ 11. Section 60.4141 is amended by revising paragraph (a) to read as follows:

**§ 60.4141 Timing requirements for Hg allowance allocations.**

(a) By November 17, 2006, the permitting authority will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with § 60.4142(a) and (b), for the control periods in 2010, 2011, 2012, 2013, and 2014.

\* \* \* \* \*

[FR Doc. 06–5173 Filed 6–8–06; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**49 CFR Parts 192, 193, and 195**

[Docket No. PHMSA–05–21253; Amdt. Nos. 192–103, 193–19, and 195–86]

RIN 2137–AD68

**Pipeline Safety: Update of Regulatory References to Technical Standards**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule updates the pipeline safety regulations to incorporate by reference all or parts of new editions of voluntary consensus technical standards to enable pipeline operators to utilize current technology, materials, and practices.

**DATES:** This final rule takes effect on July 10, 2006. The incorporation by

reference of publications listed in the rule is approved by the Director of the Federal Register as of July 10, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Richard D. Huriaux, Director, Technical Standards at (202) 366–4565, by fax at (202) 366–4566, or by e-mail at [richard.huriaux@dot.gov](mailto:richard.huriaux@dot.gov). Copies of this document or other material in the docket can be reviewed by accessing the Docket Management System’s home page at <http://dms.dot.gov>. General information on the pipeline safety program is available at PHMSA’s Web site at <http://ops.dot.gov>.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) directs Federal agencies to use voluntary consensus standards in lieu of government-written standards whenever possible. Voluntary consensus standards are standards developed or adopted by voluntary bodies that develop, establish, or coordinate technical standards using agreed upon procedures.

PHMSA participates in more than 25 national voluntary consensus standards committees. PHMSA’s policy is to adopt voluntary consensus standards when they are applicable to pipeline design, construction, maintenance, inspection, and repair. In recent years, PHMSA has adopted dozens of new and revised voluntary consensus standards into its gas pipeline (49 CFR part 192), hazardous liquid pipeline (49 CFR part 195), and liquefied natural gas (LNG) (49 CFR part 193) regulations.

Parts 192, 193, and 195 incorporate by reference all or parts of more than 60 standards and specifications developed and published by technical

organizations, including the American Petroleum Institute, American Gas Association, American Society of Mechanical Engineers, American Society for Testing and Materials, Manufacturers Standardization Society of the Valve and Fittings Industry, National Fire Protection Association, Plastics Pipe Institute, and Pipeline Research Council International. These organizations update and revise their published standards every 3 to 5 years, to reflect modern technology and best technical practices. PHMSA has reviewed the revised voluntary consensus standards to be incorporated in whole or in part in 49 CFR parts 192, 193, and 195.

This final rule updates the Federal pipeline safety regulations to incorporate by reference all or parts of recent editions of the voluntary consensus technical standards that are currently referenced in the Federal pipeline safety regulations. It updates 38 standards in 49 CFR part 192, *Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards*, 49 CFR part 193, *Liquefied Natural Gas Facilities: Federal Safety Standards*, and 49 CFR part 195, *Transportation of Hazardous Liquids by Pipeline*. This update enables pipeline operators to use current technology, materials, and practices. The incorporation of the most recent editions of standards improves clarity, consistency, and accuracy, and reduces unnecessary burdens on the regulated community.

Previous updates of the regulations to incorporate revised standards were issued on May 24, 1996 (61 FR 26121), June 6, 1996 (61 FR 2877), February 17, 1998 (63 FR 7721), and June 14, 2004