



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 02 2015

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Correction of Inadvertent Errors in the Proposed Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations, and Associated Regulatory Impact Analysis

FROM: Janet G. McCabe 
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THRU: Lorie Schmidt, Associate General Counsel 
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TO: Gina McCarthy
Administrator (1101A)

Inadvertent errors were made in the process of preparing the signature package for the proposal titled, “Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations,” signed on August 3, 2015. Corrections have been made to ensure the accuracy and consistency of the preamble and the regulatory text. Corrections to the signed proposed rule that merit explanation are listed below. All of the corrections are shown in the redline and strikeout version of the signed proposed rule, which is provided as Attachment 1. The corrections shown include those listed below, as well as grammatical, punctuation and formatting corrections, including edits needed to conform to requirements for publication in the *Federal Register*.

In addition, inadvertent errors were made in the process of preparing the Regulatory Impact Analysis (RIA). Corrections to the RIA that merit explanation are listed below. Attachment 2 is a redline and strikeout version of the RIA that shows all corrections.

Preamble

- Passim – Revised “emission guidelines” or “guidelines” to “EGs” for consistency.
- Passim – Replaced “CPP” with “Clean Power Plan” for consistency.
- Passim – Revised “IGCC units” to “IGCC” for consistency.
- Passim – Revised “take comment...” to “request comment...” for consistency.
- Passim – Revised “emission rate standard” to “rate-based emission standard” or “rate-based emission standards,” as a terminological correction.

- Passim – Revised “NGCC” to “NGCC unit” and “NGCCs” to “NGCC units,” for consistency.
- Passim – Revised “EGU” to “affected EGU,” “EGUs” to “affected EGUs” and “EGU’s” to “affected EGU’s,” for consistency.
- Passim – Revised “...the EPA is requesting comment...” to “...the EPA requests comment...” for consistency and active voice.
- Passim – Inserted “for this proposal” after “the RIA.”
- Page 2 – Revised to spell out first usage of acronym NGCC.
- Pages 3-7 – Revised to reflect dates and venues of public hearings.
- Page 12 – Revised to clarify meaning of acronym IGCC.
- Page 15 – Revised lettering of sections within section V.
- Page 15 – Revised to add section titled “Error Corrections” and correct lettering of subsequent sections within section VII.
- Page 16 – Added “and 1 CFR Part 51” in the section title.
- Page 27 – Revised “In the process of developing a final federal plan, the EPA will also take actions to address those concerns as well.” to “In the process of developing a final federal plan, the EPA will take actions to address those concerns as well.”
- Page 29 – Revised “...and simplify compliance options for affected EGUs.” to “...and simplify compliance planning for affected EGUs.” to reflect that there is continued flexibility, even under the scenario discussed.
- Page 29 – Revised “compliance options” to “compliance planning” to recognize flexibility of options under either approach.
- Page 30 – Revised to spell out first usage of acronym ERC.
- Page 31 – Revised to spell out first usage of acronym RE.
- Page 34 – Revised “integrated gasification combined cycle unit (IGCC)” to “integrated gasification combined cycle (IGCC)” for consistency.
- Page 43 – Deleted “as a ‘note’” to reflect that that provision is now in the operative portion of the regulatory text and not a “note.”
- Page 49-50 – Reworded sentence to read, “The EPA will withdraw the federal plan for a state when that state submits, and the EPA approves, a final plan,” to accurately reflect the cited EGs regulatory text.
- Page 51 – Added “as proposed to be amended, see section VII below,” to make clear that aspects of the timelines for federal action are being proposed.
- Page 52 – Revised to add text “Under the completeness-criteria process proposed to be added to 40 CFR 60.27, see section VII.E below,...” and revised text, “The EPA will have 6 months...” to “the EPA would have 6 months...” to clarify this is a proposal.
- Page 52 – Revised “In the case of initial submittals under 60.5765, the EPA will have 60 days from September 6, 2016 to notify a state that its initial submittal does not meet the requirements of 60.5760(a).” to “In the case of initial submittals under 40 CFR 60.5765, the EPA will have 60 days from the date the EPA received the initial submittal to notify a state that its initial submittal does not meet the requirements of 40 CFR 60.5765(a).” for consistency with 40 CFR 60.5765.
- Page 56 – Revised “emission goal” to “emission goals” to reflect interim and final goals.
- Page 92 – Revised “The BART Guidelines provide: The ‘remaining useful life’ of a source, if it represents a relatively short time period, may affect the annualized costs of retrofit controls.... If the remaining useful life will clearly exceed th[e] time period [for amortization based on the type of control], the remaining useful life has essentially no effect on control costs and on the BART determination process. Where the remaining useful life is less than the time period for amortizing costs, you should use this shorter time period in your cost calculation. 40 CFR part 51, appendix Y,

section IV.D.4.k.” to “In the context of the visibility program, we have interpreted this provision to mean that the remaining useful life should be considered when calculating the annualized costs of retrofit controls. See 40 CFR part 51, appendix Y, section IV.D.4.k.” to conform to OFR publication guidelines against quoting regulatory or statute text where unnecessary.

- Page 100 – Revised “As a further example of flexibility under title V, the title V regulations allow the use of the minor permit modification procedures for permit modifications ‘involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA’. 40 CFR 70.7(e)(2)(i)(B) and 40 CFR 71.7(e)(1)(i)(B). Therefore, the EPA is proposing...” to “As a further example of flexibility under title V, and consistent with 40 CFR 70.7(e)(2)(i)(B) and 40 CFR 71.7(e)(1)(i)(B), the EPA is proposing...” to conform with OFR publication rules against block quotes of regulatory text.
- Page 106 – Revised to list the correct date of promulgation and FR citation for the final Coal Combustion Residuals rule.
- Page 107 – Reworded sentence to read, “The persons eligible to file such appeals would be designated representatives as defined in this proposed rule and other ‘interested persons’ as defined in part 78.” This is to conform to standard practice in part 78 and correct a false implication that “designated representatives” are automatically included in the definition of “interested person” in part 78, which is not the case.
- Page 131 – Revised “three” to “four” to correctly reflect the number of ERC categories provided in the list. Also revised “fourth” to “fifth” in subsequent sentences to reflect an additional fifth category is being proposed.
- Page 149,152 – Revised to reflect the single biomass treatment option offered for comment, rather than multiple treatment options as the sentence previously inferred.
- Page 152, footnote 59 – Revised “...biogenic feedstocks may include...” to “...biogenic feedstocks include...”
- Page 153, footnote 60 – Revised “...ecosystem services protection as well as climate change mitigation...” to “...ecosystem services protection and climate change mitigation...”
- Page 154 – Deleted the word “plan,” and revised sentence to read, “...which would also potentially apply to eligible generation under the proposed mass-based model trading rule allowance set-aside ...” to reflect that biomass set-asides are not proposed in the federal plan, but are potentially available in the model rule.
- Page 160 – Revised “WHP facilities” to “WHP units” for consistency within this discussion.
- Page 162 – Revised “...emissions, and compliance information.” to “...emissions data, and compliance information.”
- Page 166 – Revised “...reported to the Administrator for recordation...” to “...reported to the Administrator,....”
- Page 170, footnote 71 – Revised “Note that these values will be the submitted values from the affected EGUs to the EPA that have gone through a transparent review process.” to “Note that affected EGUs will submit these values to the EPA and the values will go through a transparent review process.”
- Page 171 – Revised “Subsequently, the EPA will finalize this NODA and issue ERCs accordingly with tracking and serial numbers.” to “Subsequently, the EPA would finalize this NODA and issue ERCs in accordance with the NODA, with tracking and serial numbers.”
- Page 173 – Revised “...demand-side EE, CHP, biomass...” to “...demand-side EE, CHP, WHP, biomass....”

- Page 174 – Corrected sentence to reflect language in the final EGs that the determination of eligible RE is generation-based and not measure-based by removing term, “measure must be implemented,” replaced it with, “generation was produced.” Corrected citation to final guidelines by adding “see sections VIII.K.1 and,” and deleting, “of the final EGs.” Clarified the context of a statement of geographic limitations on ERC issuance by adding, “submitted for ERC issuance,” “rate-based” and “approach.”
- Page 176 – Corrected statement on EM&V requirements so that it applied to all proposed eligible providers by adding, “or nuclear.” Corrected citation to other section by adding, “see above geographic eligibility discussion and section III.A.” Corrected terminology in ERC issuance process by replacing, “ERC Issuance Application,” with, “M&V Report.” Page 188, footnote 77 – Revised “...and other eligible measures and thereby ensure that...” to “...and other eligible measures to ensure that...”
- Page 190 – Revised “This federal plan proposes...” to “This action proposes....”
- Page 196 – Revised “...and nuclear ...” to “...and nuclear energy....”
- Page 199 – Revised paragraph to read “An additional consideration regarding distributed RE units that directly serve on-site end-use electricity loads is that avoided transmission and distribution (T&D) system losses can be quantified, as is commonly practiced with demand-side EE. If such T&D losses are quantified, the requirements for demand-side EE would be applicable,” to correctly characterize this topic as a “consideration” rather than a “criterion” and explain proposed treatment.
- Page 199 – Revised “...and other requirements included in this subsection...” to “...and other requirements proposed in this subsection....”
- Page 199 – Deleted “in Clean Power Plan” from “for use in Clean Power Plan compliance” because CPP itself does not create the compliance obligation in this context.
- Page 202 – Revised “eligible nuclear” to “eligible nuclear energy resources.”
- Page 227 – Revised “The two ERCs owed for each ERC needed for compliance is in addition to...” to “The two ERCs owed for each ERC needed for compliance but not supplied is in addition to...” for clarification.
- Page 230 – Revised “The EPA also has reservations due to the fact...” to “The EPA also has reservations concerning this concept due to the fact...” for clarity.
- Page 241-243 – Added asterisks to three states in Table 8 and a note to clarify that the values in the table exclude EGUs located in Indian country within those three states.
- Pages 249,250 – Revised citations: “The EPA has adopted facility-level compliance in previous emissions budget-trading programs including the ARP (70 FR 25162), the CAIR (70 FR 25162), and the CSAPR (76 FR 48208).” to “The EPA has adopted facility-level compliance in previous emissions budget-trading programs including the ARP, see 70 FR 25162, at 25296-98 (May 12, 2005); the CAIR FIP, see 71 FR 25328, at 25365 (April 28, 2006); and the CSAPR, see 75 FR 45210, at 45323 (Aug. 2, 2010).”
- Page 254 – Revised footnote 93 to be consistent with the preamble language that it references.
- Page 273 – Deleted, “and model rule proposal” because the restriction on EPA regulating new sources under 111(d) does not apply to the model rule.
- Page 275 – Deleted reference to text that was removed from preamble: “... and in state-based GHG regulatory programs.”
- Page 276, 277 – Deleted block quote of FR notice and replaced with paraphrase in conformance with OFR policy to avoid block quotes.
- Page 285 – Corrected “certificate of registration” to “certificate of representation.”
- Page 290 – Added “and other types of projects” to expand scope of the request for comment on what other projects should be eligible under the renewable energy set aside.

- Page 291 – Corrected TSD reference by replacing “Allowance Allocation Proposed Rule TSD” with “Renewable Energy Set-aside TSD.”
- Page 300 – Corrected preamble citation by replacing, “EM&V section above,” with, “section IV.D.8 of this preamble (EM&V section for the rate-based approach).”
- Page 300 - Corrected sentence to delete 3 from “3 years” because compliance periods are not all 3 years. Changed “performance” to “compliance period” for accuracy. Clarified the context of comment request regarding disqualifying set-aside recipients from receiving ERCs if they are disqualified from receiving set-aside allowances by adding, “from states with rate-based plans.” Deleted last clause of same sentence to correct for inaccuracy.
- Page 305 – Corrected sentence by replacing “ERCs” with “allowances.”
- Page 306 – Corrected sentence by replacing “ERCs” with “allowances.”
- Page 308 – Deleted “to affected sources” to make the sentence consistent with the preamble section that it references.
- Page 333 – Added the following as an introductory sentence: “The EPA proposes to establish the following schedule and procedures for recordation of allowance allocations and transfers.”
- Page 334 – Revised “A transfer would be submitted providing ...” to “Allowances could be transferred by submitting a transfer form providing ...” for clarity.
- Page 334 – Added the following as an introductory sentence: “The EPA proposes to include the following provisions regarding compliance with emission limitations. Under the proposed provisions, once ...”
- Page 340 – Deleted quote of CAA section 101 and replaced with paraphrase in conformance with OFR policy to avoid statutory quotes.
- Page 341 – Revised “Legally, delegation of a standard or requirement means that obligations a source may have to the EPA under a federally promulgated standard become obligations to a state or tribe” to “Delegation of a standard or requirement generally means that obligations a source may have to the EPA under a federally promulgated standard become obligations to a state or tribe in the first instance.”
- Page 342 – Revised “See generally “Good Practices Manual for Delegation of NSPS and NESHAP” (EPA, February 1983)” to “These criteria are explained generally in the “Good Practices Manual for Delegation of NSPS and NESHAP” (EPA, February 1983).”
- Page 343 – Revised “(A copy of this manual has been placed in the docket for this action.)” to “(A copy of this delegation has been placed in the docket for this action.)”
- Page 354 – Revised “The 1970 CAA only allowed the EPA to approve or disapprove SIP submittals” to “The 1970 CAA only allowed the EPA two choices - to approve or disapprove SIP submittals.”
- Page 356 – Revised “This mechanism are situations” to “This approach would also address those situations.”
- Page 359 – Revised “18 months after the date of the notice” to “18 months after the date of the action.”
- Page 364, 365 – Changed “shall” to “must” in each occurrence in this paragraph for consistency with regulatory text.
- Page 366 – Revised “...identification of emission standards for the designated facilities...” to “identification of emission standards for each designated facility....” Page 367 – Added sentences to clarify meaning of “complete by operation of law” as proposed to be added to the implementing regulations: “In cases where a state does not submit anything to the agency, however, the Administrator must make a finding of failure to submit no later than 6 months after the date, if any,

by which a state is required to submit the plan or revision. (In other words, ‘completeness by operation of law’ is only available where the state has actually submitted a plan to the agency.)”

- Page 390 – Revised “as a compliance with the standards” to “as a compliance approach with the standards.”
- Page 390 – Added “for this proposal” after “in the RIA.”
- Page 415, 416 – Changed “final” to “proposed,” deleted “to assist states and stakeholders,” spelled out EJ, and added “federal” before “plan” to adjust language from final EGs preamble to proposed federal plan preamble.
- Page 416 – Revised “steps that the EPA is going to be taking to assist communities” to “steps that the EPA will take to assist communities.”
- Page 432 – Inserted “for this rulemaking” after “in the docket.”
- Page 433 – Deleted phrase “if implemented by states and affected EGUs in response to the proposed rule” because inaccurate and unnecessary in context.
- Page 456 – Revised “proposed guidelines” to “proposed federal plan” to correctly identify the reference to the federal plan being proposed.
- Page 457 – Added “and 1 CFR Part 51” to the NTTAA section title.
- Page 457 – Revised NTTAA section from: “This proposed action does not involve technical standards” to “This proposed action involves technical standards. The EPA proposes to recognize ANSI accreditation under ISO 14065 for GHG validation and verification bodies as a component of accreditation of independent verifiers under both proposed federal plan approaches. The EPA also proposes that net energy output measurements must be performed using 0.2 accuracy class electricity metering instrumentation and calibration procedures as specified under ANSI Standards No. C12.20.”
- Page 464 – Included “Incorporation by Reference” in the List of Subjects.

Regulatory text

- Page 465 (60.27(b)) – Changed “will” to “shall” for internal consistency and consistency with parallel statutory provision.
- Page 465 (60.27(b)) – Added “complete” before “plan” and “plan revision” for consistency with prior sentence.
- Page 465 (60.27(c)) – Changed “must” to “shall” for internal consistency and consistency with parallel statutory provision.
- Page 467 (60.27(g)) – Changed “must” to “shall” for internal consistency and consistency with statute.
- Page 470 (60.27(g)(4)(iv)) – Corrected citation from “(g)(2)(E) through (I)” to “(g)(2)(v) through (ix)”.
- Pages 487-488 (62.16235) – Replaced Table 1 to Subpart MMM of Part 62 because some values in the table were inadvertently shifted to the wrong rows.
- Page 511 (62.16250(c)) – Changed “...savings in submitted M&V reports, and any other requirements...” to “...savings in submitted M&V reports, or in any other submissions...” for clarification and grammatical consistency.
- Page 524 (62.16260(c)(7)(iii)) – Corrected “...EE program, EE project, or EE project...” to “EE program, EE project, or EE measure...”
- Page 525 (62.16260(c)(7)(iii)(B)) – Clarified “...part of a utility EE program direct install EE program...” by deleting “direct install EE program”
- Page 572 (62.16330(b)) – Changed “A CO₂ allowance transfer must be correctly submitted if:” to “A CO₂ allowance is correctly submitted if:” for clarification.

- Page 584-586 (62.16345(a)(6)(i)(A) and (B)) – Changed “...relative to SATP conditions, as applicable)...” to “relative to SATP conditions as defined in § 62.16375, as applicable)...” for clarification.
- Page 606 (62.16375, definition for Emissions) – Corrected “With regard to a period before the affected EGU or affected EGU is required to measure...” to “With regard to a period before the affected EGU or facility is required to measure...”
- Page 601-602 (62.16375, definition for CEMS) – Corrected citation from “62.xx30 through 62.xx35” to “§ 62.16345”
- Pages 614 (62.16375, definition for Permanently retired) – Changed “Permanently retired means, with regard to an affected EGU, an affected EGU that is unavailable for service and for which the affected EGU’s owners and operators...” to “Permanently retired means, with regard to an affected EGU, that an affected EGU is unavailable for service and the affected EGU’s owners and operators...” for clarification.
- Page 618 (62.16415(a)) – Added heading “Exemption” so that text reads “(a) Exemption. (1) Any affected EGU...” for clarification.
- Page 642 (62.16440(c)) – Changed “...savings in submitted M&V reports, and any other requirements...” to “...savings in submitted M&V reports, or in any other submissions...” for clarification and grammatical consistency.
- Page 643 (62.16445(a)(1)) – Changed “...account representative of the ERC resource...” to “...account representative of the eligible resource...” for consistency.
- Page 652 (62.16450(d)(3)) – Changed “...general account of the ERC resource...” to “...general account of the eligible resource...” for clarification.
- Page 662 (62.16455(c)(7)(iii)) – Corrected “...EE program, EE project, or EE project...” to “EE program, EE project, or EE measure...”
- Page 663 (62.16455(c)(7)(iii)(B)) – Corrected “...part of a utility EE program direct install EE program...” by deleting “direct install EE program.”
- Page 674 (62.16465(b)(5)) – Changed “...relating to the ERC resource...” to “...relating to the eligible resource...” for consistency.
- Page 686 (62.16485(c)) – Corrected “...shall be construed to include the designated representative or any alternate designated representative” by deleting “or any alternate designated representative.”
- Page 687 (62.16495) – Corrected section heading from “What are the processes for changing designated representative, alternate designated representative, owners and operators?” to “What are the processes for changing designated representative, alternate designated representative, owners and operators, and affected EGUs?”
- Page 707 (62.16515(c)(5)(v)) – Changed “...submission by the designated representative or alternate designated representative...” to “...submission by the authorized account representative or alternate authorized account representative...” for consistency.
- Page 710 (62.16515(i)(2)) – Changed “...a list of all ERC resources...” to “...a list of all eligible resources...” for consistency.
- Page 711 (62.16525(b)) – Changed “An ERC transfer must be correctly submitted if:” to “An ERC transfer is correctly submitted if:” for clarification.
- Pages 722--724 (62.16540(a)(5)(i)(A) and (B)) – Changed “...relative to SATP conditions, as applicable)...” to “relative to SATP conditions as defined in § 62.16570, as applicable)...” for clarification.
- Page 726 (62.16555) – Moved heading “(a)” from before sentence “You must prepare and submit reports according to paragraphs (a) through (g) of this section, as applicable.” to after this sentence for clarification.

- Pages 727 (62.16555(a)(1)(viii)) – Changed “...and all if an affected EGU is complying with an emission standard by using ERCs the designated representative must include in their report a list of all unique ERC serial numbers...” to “and if an affected EGU is complying with an emission standard by using ERCs, then the designated representative must also include in the report a list of all unique ERC serial numbers...” for clarification.
- Page 741 (62.16570) – Revised “Demand-side energy efficiency or demand-side EE means energy efficiency activities, projects, programs or measures resulting in electricity savings” to “Demand-side energy efficiency or demand-side EE means an installed piece of equipment or system, a modification of existing equipment or system, or a strategy intended to affect consumer electricity-use behavior, that results in a reduction in electricity use (in MWh) at an end-use facility, premises, or equipment connected to the electricity grid. Demand-side EE is implemented through energy efficiency activities, projects, programs or measures” for consistency with the definition in the final EGs.
- Page 743 (62.16570, definition for Emissions) – Corrected “With regard to a period before the affected EGU or affected EGU is required to measure...” to “With regard to a period before the affected EGU or facility is required to measure...”
- Page 753 (62.16570, definition for Permanently retired) – Changed “Permanently retired means, with regard to an affected EGU, an affected EGU that is unavailable for service and for which the affected EGU’s owners and operators...” to “Permanently retired means, with regard to an affected EGU, that an affected EGU is unavailable for service and the affected EGU’s owners and operators...” for clarification.
- Pages 763-64 (78.1(b)) – Corrected “emission reduction credit” to “emission rate credit.”
- Page 764 (78.1(b)(19)(viii)) – Corrected citation from “62.1616535” to “62.16535”.

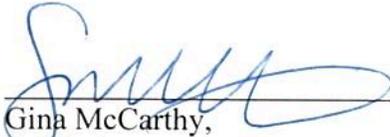
Office of Federal Register (OFR) edits provided by the Office of Policy

- Passim – All 2nd level headings have been italicized.
- Passim – The 3rd level heading has been revised to be in plain text, not bold or italic.
- Passim – References to the term “notice” have been revised to “document” or “action.”
- Page 1 – Revised to add FRL number.
- Page 3 – Revised the instructions for “ADDRESSES” to be consistent with recently revised OFR guidance.

Regulatory Impact Analysis (RIA) document

- Pages 1-8, 2-8, and 2-13 – Changed the web address for Power Sector Modeling from www.epa.gov/powersectormodeling/ to <http://www.epa.gov/airmarkets/powersectormodeling.html>.
- Pages 1-8 and 2-1 – Deleted “In other words, if one approach performs differently than the other on a given metric during a given time period, this does not imply this will apply in all instances.”
- Page 2-1 – Revised “It is very important to note that the differences between the analytical results for the rate-based and mass-based federal plan approaches presented in this RIA may not be indicative of likely differences between the approaches if implemented by states and affected EGUs in response to the proposed rule.” to “It is very important to note that the differences between the analytical results for the rate-based and mass-based federal plan approaches presented in this RIA may not be indicative of likely differences between the approaches.”
- As the RIA contains Executive Order text, edits made to the Executive Order text in the preamble were also made to executive order text in the RIA.

We recommend correction of these inadvertent errors and approval of these changes by signing and dating below.


Gina McCarthy,
Administrator.

Sept 3, 2015
Dated

Attachments

cc: Kristien Knapp/OA (1101A)

