6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA-R09-OAR-2016-0339; FRL-9955-92-Region 9]

Revisions to the Source-Specific Federal Implementation Plan for Four Corners Power Plant, Navajo Nation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing limited revisions to the source-specific Federal Implementation Plan (FIP) that was promulgated to regulate air pollutant emissions from the Four Corners Power Plant (FCPP), a coal-fired power plant located on the reservation lands of the Navajo Nation, near Farmington, New Mexico. These limited revisions propose to make certain provisions of the FIP consistent with national actions and rulemakings promulgated since 2012; update the FIP to reflect recent operating changes; and add new provisions to the FIP to include the air pollution control requirements for FCPP of a Consent Decree entered in the United States District Court for the District of New Mexico on August 17, 2015.

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

ADDRESSES: Submit your comments, identified by Docket ID number EPA-R09-OAR-2016-0339, at *http://www.regulations.gov*, or via email to *lee.anita@epa.gov*. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission,

the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the EPA's full public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

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

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

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I. Background

A. Action

In today's action, the EPA is proposing limited revisions to the FIP for FCPP that we promulgated on May 7, 2007 ("2007 FIP") and August 24, 2012 ("2012 FIP").[1] The 2007 and 2012 regulations are codified in the Code of Federal Regulations (CFR) at 40 CFR 49.5512, and we refer collectively to the provisions from the 2007 and 2012 actions as the "FIP" or the "FCPP FIP." The EPA established federally enforceable emission limitations for particulate matter (PM), sulfur dioxide (SO_2), oxides of nitrogen (NO_X), and opacity in the FCPP FIP.

The EPA is proposing revisions to the FIP for several reasons: (1) to make certain provisions in the FIP consistent with national actions and rulemakings promulgated since 2012; (2) to update the FIP to reflect recent operating changes; and (3) to add new provisions to the FIP to include the air pollution control requirements for FCPP of a Consent Decree ("Consent Decree") entered in the United States District Court for the District of New Mexico on August 17, 2015.[2]

To update the FCPP FIP for consistency with national actions and rulemakings, we are proposing to remove: (1) emission limit exemptions that apply during periods of startup and shutdown; (2) a provision allowing for an affirmative defense during periods of malfunctions; and (3) exemptions for water vapor from the opacity standard and monitoring and reporting requirements.[3] These revisions, if finalized, would make the FCPP FIP consistent with the EPA's interpretations of Clean Air Act (CAA, or "the Act") requirements, as reflected in the Agency's recent action concerning how provisions in state implementation plans (SIPs) treat excess emissions during startup, shutdown, and malfunctions ("2015 SSM Action").[4]

The EPA is also proposing to update the testing requirements for PM in the FCPP FIP to

[1] *See* 72 FR 25698 (May 7, 2007) and 77 FR 51620 (August 24, 2012).
[2] *See* Consent Decree for *Dine CARE v. Arizona Public Service Company* and *EPA v. Arizona Public Service Company*, US District Court for the District of New Mexico, Case No. 1:11-cv-00889-JB-SCY (August 17, 2015).
[3] *See* 72 FR 25705 (May 7, 2007) and 40 CFR 49.5512(h)(2) and (h)(3), and 40 CFR 49.5512(c)(7).
[4] *See* 80 FR 33840 (June 12, 2015).

be consistent with PM testing requirements promulgated nationally in the Mercury and Air Toxics Standards (MATS) Rule.[5] The revisions to the PM testing requirements, if finalized, would increase the frequency of PM testing in the FIP to match the MATS Rule, allow the operator the option to demonstrate compliance using alternative methods, *e.g.*, PM continuous emission monitoring systems (PM CEMS), and streamline the existing PM testing requirements.

In order to update the FIP to reflect the current operation of FCPP, we are proposing to add a statement to the applicability section of the FIP to clarify that Units 1, 2 and 3 have been permanently retired, and to remove certain provisions related to Units 1, 2, and 3 from the FIP that are no longer applicable following the permanent retirement of those units. The operator of FCPP removed those units from service by January 1, 2014 to comply with the requirements in the 2012 FIP that the EPA promulgated to address the Best Available Retrofit Technology (BART) provisions of the Regional Haze Rule for NO_X.[6] These revisions, if finalized, would enhance regulatory clarity by removing requirements that apply to emission units that have permanently ceased operation.

The final changes in this proposed rulemaking are to add new provisions to the FCPP FIP to reflect requirements in the Consent Decree. Generally, the Consent Decree requires greater emission reductions of SO_2, NO_X, and PM by establishing lower emission limitations than the existing limitations in the FIP for these pollutants. The Consent Decree requires the operator of the facility to request that the EPA amend the FCPP FIP to incorporate the requirements and limitations from the Consent Decree. These proposed revisions, if finalized, would make the emission limitations and other requirements from the Consent Decree federally enforceable.

B. Facility

[5] *See* 77 FR 9303 (February 16, 2012) and 81 FR 20172 (April 6, 2016) (Final Technical Corrections).
[6] *See* 77 FR 51620 (August 24, 2012) and 40 CFR 49.5512(i)(3).

FCPP is a coal-fired power plant located on the Navajo Nation Indian Reservation, just west of Farmington, New Mexico, and it is co-owned by several entities and operated by Arizona Public Service (APS).[7] The facility includes two units, Units 4 and 5, each with a capacity of 770 megawatts (MW) net generation, providing a total capacity of 1540 MW.[8] Operations at the facility produce emissions of air pollutants, including SO_2, NO_X, and PM. Existing pollution control equipment on Units 4 and 5 include baghouses for PM control, lime spray towers ("scrubbers") for SO_2 control, and low-NO_X burners for limiting NO_X formation during the combustion process. FCPP is in the process of installing selective catalytic reduction (SCR) on Units 4 and 5 for additional NO_X emission reductions to comply with the "better than BART" provisions of the 2012 FIP (under 40 CFR 49.5512(i)(3)) and with the Consent Decree.

C. Attainment Status

FCPP is located in the Four Corners Interstate air quality control region, which is designated attainment for all criteria pollutants under the CAA.[9]

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

When the CAA was amended in 1990, Congress included a new provision, section 301(d), granting the EPA authority to treat tribes in the same manner as states where appropriate.[10] In 1998, the EPA promulgated regulations known as the Tribal Authority Rule (TAR).[11] The EPA's promulgation of the TAR clarified, among other things, that state air quality regulations generally do not, under the CAA, apply to facilities located anywhere within the

[7] FCPP is currently co-owned by Arizona Public Service, Public Service Company of New Mexico, Salt River Project, Tucson Electric Power, and El Paso Electric Company.
[8] APS retired Units 1 – 3 (total capacity of 560 MW) at FCPP in January 2014 as part of a "better than BART" alternative it suggested to the EPA. For more information on the EPA's "better than BART" determination, please *see* 77 FR 51620 (August 24, 2012).
[9] *See* 40 CFR 81.332.
[10] *See* 40 U.S.C. section 7601(d).
[11] *See* 40 CFR Parts 9, 35, 49, 50 and 81. See also 63 FR 7254 (February 12, 1998).

exterior boundaries of Indian reservations.[12] Prior to the addition of section 301(d) and promulgation of the TAR, some states had mistakenly included emission limitations in their SIPs that they may have believed could apply under the CAA to private facilities operating on adjacent Indian reservations.

In the preambles to the proposed and final 1998 TAR, the EPA generally discusses the legal basis in the CAA that authorizes the EPA to regulate sources of air pollution in Indian country.[13] The EPA concluded that the CAA authorizes the EPA to protect air quality throughout Indian country.[14] In fact, in promulgating the TAR, the EPA specifically provided that, pursuant to the discretionary authority explicitly granted to the EPA under sections 301(a) and 301(d)(4) of the Act, the EPA "[s]hall promulgate without unreasonable delay such federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 304(a) [sic] and 301(d)(4), if a tribe does not submit a tribal implementation plan meeting the completeness criteria of 40 CFR part 51, Appendix V, or does not receive EPA approval of a submitted tribal implementation plan."[15]

E. Historical Overview of FCPP FIP Actions

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

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

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

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

On September 8, 1999, the EPA proposed a source-specific FIP for FCPP.[16] The 1999 proposed FIP stated: "Although the facility has been historically regulated by New Mexico since its construction, the state lacks jurisdiction over the facility or its owners or operations for CAA compliance or enforcement purposes." The EPA intended for the 1999 FIP to "federalize" the emission limitations that New Mexico had erroneously included in its SIP.[17] The EPA received comments on the proposed 1999 FIP. However, at that time, concurrent negotiations between an environmental non-governmental organization, APS, and the Navajo Nation resulted in an agreement by APS to voluntarily increase the SO_2 removal efficiency from the scrubbers at FCPP. The EPA did not take final action on the 1999 proposal.

In 2006, the EPA proposed a new source-specific FIP for FCPP and took action to finalize it in 2007.[18] This new FIP imposed federally enforceable emission limitations for SO_2, based on the increased scrubber SO_2 removal efficiency (72 to 88 percent), and for PM, based on the PM emission limitation from the New Mexico SIP. The 2006 proposed FIP also established an emission limitation for opacity and a requirement for control measures to limit dust emissions from coal handling and storage facilities, flyash handling and storage facilities, and from road-sweeping activities. In addition, the 2006 proposed FIP contained NO_X emission limitations that already applied to FCPP as part of the Acid Rain Program created in the 1990 CAA Amendments.

On August 24, 2012, the EPA promulgated a final rule that established limits for NO_X emissions from FCPP under the BART provision of the Regional Haze Rule, as well as control measures to limit emissions of dust.[19] The final rule required the owners of FCPP to choose

[16] *See* 64 FR 48731 (September 8, 1999).
[17] *Id*. at 48733.
[18] *See* 72 FR 25698 (May 7, 2007), codified at 40 CFR 49.5512(a)-(h).
[19] *See* 77 FR 51620 (August 24, 2012).

between two strategies for BART compliance: (1) compliance with a plant-wide BART emission limitation of 0.11 pounds of NO_X per million British thermal units of heat input (lb/MMBtu) by October 23, 2017, or (2) retirement of Units 1, 2, and 3 by January 1, 2014 and compliance with a BART emission limitation for NO_X of 0.098 lb/MMBtu on Units 4 and 5 by July 31, 2018. The second BART compliance strategy, involving retirement of Units 1, 2, and 3, was based on a plan originally put forth by APS. This compliance strategy was proposed and finalized as an alternative emission control strategy that achieved greater reasonable progress than BART ("better than BART").[20] APS permanently ceased operation of Units 1, 2, and 3 at FCPP by January 1, 2014, and is currently engaged in the process of installing SCR on Units 4 and 5 to meet the applicable NO_X emission limitations.

The provisions of the 2007 FIP are codified at 40 CFR 49.5512(a)-(h).[21] The BART provisions of the 2012 FIP are codified at 40 CFR 49.5512(i), and the dust control measures from the 2012 FIP are codified at 40 CFR 49.5512(j).

II. Basis for Proposed Action

In this proposed FIP revision, the EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a). The EPA is proposing to find that it is "necessary or appropriate" to revise the FCPP FIP, because it contains certain provisions that are inconsistent with more recent actions and rulemakings promulgated by the EPA in the MATS Rule and the statutory requirements of the CAA, as reflected in the 2015 SSM Action. Thus, these provisions of the current FCPP FIP are inconsistent with current requirements and need to be revised to make them consistent with regulatory and statutory requirements. The EPA

[20] For additional information regarding the EPA's analyses regarding BART and the alternative emission control strategy, see the EPA's BART proposal (75 FR 64221, October 29, 2010), supplemental proposal (76 FR 10530, February 25, 2011) and final rule (77 FR 51620, August 24, 2012).
[21] The 2007 FIP was originally codified at 40 CFR 49.23. On April 29, 2011, the FCPP FIP was redesignated to 40 CFR 49.5512 at 76 FR 23879 (April 29, 2011).

is also concerned that that these inconsistencies create confusion and could lead to regulatory uncertainty by the source, regulators, courts, or affected members of the public. Additionally, the Consent Decree requires APS to submit a request to the EPA to amend its FIP to include requirements of the Consent Decree. APS submitted its request on June 9, 2016.[22] The EPA is also proposing to find that it is "necessary or appropriate" to revise the FIP at this time to include the Consent Decree provisions. For the reasons set forth above, we are proposing to find that limited revisions to the FIP for FCPP are "necessary or appropriate" to further protect air quality on the Navajo Nation.

III. Summary of Proposed FIP Revisions

A. Proposed FIP Revisions

The EPA is proposing limited revisions to the FCPP FIP at 40 CFR 49.5512 described as follows. We have included a document in the docket for this rulemaking that shows the original text of 40 CFR 49.5512 and the EPA's proposed revisions to that text.[23]

1. Revisions to 40 CFR 49.5512(a)

In the applicability section of the FIP, the EPA is proposing to add a statement that Units 1, 2, and 3 at FCPP permanently ceased operation by January 1, 2014 pursuant to the requirements of 40 CFR 49.5512(i)(3).

2. Revisions to 40 CFR 49.5512(c)

The EPA is proposing to: (1) specify that the definitions in paragraph (c) of 40 CFR 49.5512(c) apply to paragraphs (a) through (j) of 40 CFR 49.5512; (2) delete the definition of affirmative defense at 40 CFR 49.5512(c)(1); and (3) delete the portion of the definition of

[22] *See* "Request to Include Consent Decree in Four Corners Federal Implementation Plan" from Thomas H. Livingston, Fossil Plant Manager and Responsible Official, to Elizabeth Adams, Acting Director, Air Division, EPA Region IX, dated June 9, 2016.
[23] *See* document titled "2016_1118 FCPP FIP existing reg text RLSO" in the docket for this proposed rulemaking.

malfunction that provides for an affirmative defense for malfunctions at 40 CFR 49.5512(c)(7). We are also proposing to delete portions of the definitions for shutdown (at 40 CFR 49.5512(c)(12)) and startup (at 40 CFR 49.5512(c)(13)) that relate to Units 1, 2, and 3.

3. Revisions to 40 CFR 49.5512(d)

The EPA is proposing to add a statement that the emission limitations under 40 CFR 49.5512(d) apply to FCPP at all times. Under 40 CFR 49.5512(d)(2), we are proposing to delete the portion of the PM emission limitation that provides detailed specifications, *i.e.*, test duration and minimum collection volume, related to PM testing. The EPA is also proposing to delete the dust provisions in 40 CFR 49.5512(d)(3). Under 40 CFR 49.5512(d)(4), we are proposing to delete the exclusion of uncombined water droplets from the opacity standard and to add a provision stating that any unit for which the owner or operator installs, calibrates, maintains, and operates a PM CEMS to demonstrate compliance with emission limitations for PM will be exempt from the opacity standard. Finally, the EPA is proposing to delete the portion of the emission limitation for NO_X under 40 CFR 49.5512(d)(5)(i) that applied to Units 1, 2, and 3.

4. Revisions to 40 CFR 49.5512(e)

Paragraph (e) of 40 CFR 49.5512 addresses testing and monitoring and generally uses sub-paragraphs (e)(1) – (e)(8) to outline pollutant-specific requirements to ensure compliance with the emission limitations in paragraph (d). Under 40 CFR 49.5512(e), the EPA is proposing to delete specific provisions for PM testing and move revised provisions for PM testing to 40 CFR 49.5512(e)(3). Also under 40 CFR 49.5512(e), we are proposing to remove provisions that exempt units from opacity monitoring requirements during periods when the stack is saturated and also to remove a presumption that high opacity readings that occur when the baghouse is operating within normal parameters are caused by water vapor and shall not be considered a

violation. In addition, we are proposing to move the opacity monitoring requirements from 40 CFR 49.5512(e) to 40 CFR 49.5512(e)(6). In paragraph 49.5512(e)(1), we are proposing to delete provisions that specify the compliance deadline for installing CEMS for SO_2 and NO_X because CEMS for those pollutants have already been installed at FCPP. In paragraph (e)(3), we are proposing to revise the testing requirements for PM to be consistent with the three options for PM testing under the MATS Rule in 40 CFR part 63 subpart UUUUU. In paragraph (e)(6), we are proposing to clarify that (e)(6) applies if the opacity standard in paragraph (d)(4) is applicable, *i.e.*, if the owner or operator has not elected to install and certify PM CEMS for demonstrating compliance with PM emission limitations. In addition, we are revising the opacity monitoring requirements in (e)(6) to provide three options for determining compliance with the opacity standard, if the opacity standard applies. Because Units 1, 2, and 3 at FCPP have permanently ceased operation, the EPA is also proposing to delete the testing requirements for those units in paragraph (e)(8).

5. Revisions to 40 CFR 49.5512(f)

The EPA is proposing revisions to the reporting and recordkeeping requirements to provide additional clarity that all reports and notifications required in paragraph (f), (f)(4), and (f)(4)(ii) should be reported to the Navajo Nation Environmental Protection Agency (NNEPA) and the EPA. We are also revising paragraph (f) to require that the Air Division and the Enforcement Division within the Region IX office of the EPA be provided reports and notifications. Paragraph (f)(1) includes CEMS notification and recordkeeping requirements, and we are proposing to add notification and recordkeeping requirements for the Continuous Opacity Monitoring Systems (COMS) and visible emission testing. In addition, we are also proposing to delete the water vapor exemptions in paragraphs (f)(4)(i) and (f)(4)(i)(H). Finally, paragraph

(f)(4)(i)(G) requires written reports to include opacity exceedances from the COMS, and we are proposing to also require reporting of opacity exceedances from the visible emission performance tests.

6. Revisions to 40 CFR 49.5512(h)

The EPA is proposing to delete the startup and shutdown exemptions for opacity and PM at paragraph (h)(2), and to delete the provisions related to an affirmative defense for malfunctions in paragraph (h)(3).

7. Revisions to 40 CFR 49.5512(i)

The EPA is proposing to delete the technical specifications in paragraph (i)(1) for annual PM testing and require that PM testing be performed in accordance with paragraph (e)(3) of 49.5512, which requires either testing using procedures in accordance with the MATS Rule at 40 CFR part 63 subpart UUUUU, or the installation, calibration, maintenance, and operation of a continuous parametric monitoring system (CPMS) or a CEMS for PM. In addition, under paragraph (i)(2)(iii), we are proposing to correct a typographical error.

8. Addition of 40 CFR 49.5512(k)

The EPA is proposing to promulgate paragraph (k) to add emission limitations and other provisions from the Consent Decree to the FCPP FIP.

B. Justification for Proposed FIP Revisions

1. Revisions to 40 CFR 49.5512(a)

The EPA is proposing to add a statement to the applicability paragraph of the FIP that Units 1, 2, and 3 at the Four Corners Power Plant permanently ceased operation by January 1, 2014 pursuant to the requirements of 40 CFR 49.5512(i)(3). This proposed revision is intended to update the FIP to reflect current operation at FCPP.

The EPA's 2012 FIP for Regional Haze required FCPP to comply with either emission limitations for BART, achievable with the installation of SCR on all five units at FCPP, or a "better than BART" alternative.[24] The operator of FCPP elected to comply with the alternative. Under the alternative, the operator retired Units 1, 2, and 3 by January 1, 2014, and has begun the process to install SCR on the Units 4 and 5.

Units 1, 2, and 3 have not been operated since January 1, 2014, and the operator has been begun the process to dismantle those units. Accordingly, it is reasonable to add a statement regarding the status of those units. This revision, if finalized as proposed, would not relax any requirement or affect the stringency of the FIP. This proposed change to update the FIP would not have any effect on air quality in the area surrounding FCPP.

2. Revisions to 40 CFR 49.5512(c)

Paragraph (c) defines certain terms used in the FIP. As discussed elsewhere, the EPA is proposing to add a new paragraph (k) that includes provisions, including a separate set of definitions, from the Consent Decree. Therefore, to avoid confusion associated with slight differences that may exist between terms common to both sets of definitions, we are proposing to specify that the definitions in paragraph (c) apply to paragraph (a) through (j). This revision, if finalized as proposed, would not relax any requirement or affect the stringency of the FIP, and would not have any effect on air quality in the area surrounding FCPP.

Consistent with the proposed revisions to paragraph (a), the EPA is proposing to remove portions of definitions for shutdown and startup (at paragraph (c)(12) and (13)), related to Units 1, 2, and 3, in order to update the FIP to reflect current operating conditions. Because these units were retired by January 1, 2014, these revisions, if finalized as proposed, would not relax any requirements or affect the stringency of the FIP as contemplated by CAA section 110(l). These

[24] See 40 CFR 49.5512(i)(2) and (3). See also 77 FR 51620 (August 24, 2012).

proposed changes to update the FIP would not have any effect on air quality in the area surrounding FCPP.

The EPA is also proposing to remove definitions and provisions in paragraph 49.5512(c) that provide an affirmative defense for malfunction episodes. After the EPA's promulgation of the 2007 FIP, the United States Court of Appeals for the District of Columbia ("DC Circuit") ruled that CAA sections 113 (federal enforcement) and 304 (citizen suits) preclude EPA from creating affirmative defense provisions in the Agency's own regulations imposing emission limitations on sources.[25] The DC Circuit found that such affirmative defense provisions purport to alter the jurisdiction of federal courts to assess liability and impose penalties for violations of those limits in private civil enforcement cases. The DC Circuit's holding makes clear that the CAA does not authorize promulgation of such a provision by the EPA. In particular, the DC Circuit's decision turned on an analysis of CAA sections 113 and 304. These provisions apply with equal force to a civil action brought to enforce the provisions of a FIP. The logic of the DC Circuit's decision thus applies to the promulgation of a FIP, and precludes the EPA from including an affirmative defense provision in a FIP.[26] For these reasons, the EPA is proposing to delete the provision in the FIP that provides an affirmative defense for exceedances of emission limitations that occur during malfunctions at FCPP. This proposed revision, if finalized, will not relax any requirements in the FIP and would not have any adverse effects on air quality in the area. Additionally, by removing an inconsistency between the FIP and the EPA's more recently promulgated regulations and the 2015 SSM Action, the proposed revision provides more clarity and certainty.

[25] *See NRDC v. EPA*, 749 F.3d 1055 (D.C. Cir. 2014).
[26] *See* February 4, 2013 Memorandum to Docket EPA-HQ-OAR-2012-0322: "State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Statutory, Regulatory, and Policy Context for this Rulemaking."

3. Revisions to 40 CFR 49.5512(d)

The EPA is proposing to add a statement to make clear that the emission limitations under 40 CFR 49.5512(d) apply continuously and at all times. Exemptions from emission limitations during any mode of source operation are contrary to CAA requirements. CAA section 110(a)(2)(A) requires SIPs to include, among other requirements, "enforceable emission limitations." Section 302(k) of the CAA defines an emission limitation as: "a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this Act." The courts have held that the plain meaning of the term "continuous" does not allow exemptions from emission limitations.[27] For these reasons, the EPA is proposing to add a statement to clarify in 40 CFR 49.5512(d) that the emission limitations in that paragraph apply at all times. This proposed revision, if finalized, would strengthen the existing emission limitations by clarifying that the limits are applicable at all times, including during periods of startup and shutdown.

Under paragraph (d)(2), the EPA is proposing to delete the portion of the PM emission limitation that specifies requirements related to the test duration and minimum collection volume for PM testing. Generally, the testing requirements for PM and other pollutants are found in paragraph (e). To improve clarity of the regulation, the EPA is proposing to delete the provisions in paragraph (d)(2) that relate to testing and rely solely on paragraph (e) to specify the requirements for test methods. This proposed revision, if finalized, would not relax any requirements and would not affect air quality in the area surrounding FCPP.

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

Under paragraph (d)(3), we are proposing to delete the requirements for dust control. The EPA promulgated paragraph (d)(3) as part of the 2007 FIP. Following final action on the 2007 FIP, the operator of FCPP filed a petition for review, claiming, among other things, that the EPA had not provided an adequate explanation for promulgating the dust control requirements.[28] In the litigation, the EPA agreed that the dust control requirements should be remanded and vacated because the 2007 FIP did not contain an adequate explanation of its rationale. On November 13, 2008, the EPA issued a final rule to stay the effectiveness of the dust control requirements at paragraph (d)(3).[29] In the EPA's 2012 action to implement the BART requirements for FCPP, the EPA proposed and finalized dust control measures in the FCPP FIP at paragraph (j) that were consistent with the requirements in paragraph (d)(3) requiring submission of a dust control plan and compliance with a 20-percent opacity limit.[30] The proposal provided the EPA's rationale for establishing dust control requirements, and these requirements were not challenged in the final 2012 FIP. Because the requirements in paragraph (d)(3) were stayed in 2008 and replaced by paragraph (j) in 2012, which remains in effect, the EPA's proposal to remove the dust control requirements at paragraph (d)(3) would not relax any requirements and would not have any effects on air quality in the area surrounding FCPP.

Paragraph (d)(4) establishes a requirement that the discharge of emissions from the stacks of Units 4 and 5 shall not exhibit greater than 20 percent opacity, excluding uncombined water droplets. We are proposing to delete the exclusion of uncombined water droplets from the opacity standard. This specific exclusion of water vapor is inconsistent with the 2015 SSM Action. The exclusion is also inconsistent with the EPA's treatment of opacity in other rulemakings. For example, although FCPP is not subject to the New Source Performance

[28] *Arizona Public Service Company v. EPA et al.,* 562 F.3d 1116, Case No. 07-9546, (10th Circuit, Apr. 14, 2009).
[29] See 73 FR 67107 (November 13, 2008).
[30] See 75 FR 64211 (October 19, 2010) and 77 FR 51620 (August 12, 2012).

Standard (NSPS) for electric generating units at 40 CFR part 60 subpart Da, the subpart Da standard does not include a specific exclusion for water vapor in the opacity standard.[31] However, it does include provisions for addressing interference of water vapor with the COMS by providing alternative monitoring requirements to assure continuous monitoring of baghouse performance.[32] In addition, subpart B to 40 CFR part 75 includes an exemption from the opacity monitoring requirements of part 75 (*i.e.,* COMS) for units with wet flue gas pollution control systems where it is demonstrated that condensed water is present and impedes the accuracy of opacity measurements.[33] Generally, these alternatives for addressing water vapor interference would be invoked for systems that consistently experience saturated stack conditions.

The EPA promulgated the exclusion of uncombined water droplets in the 2007 FIP to address the technical challenge at FCPP associated with the use of COMS to monitor opacity when the stacks are saturated.[34] Currently, the scrubbers for SO_2 control at FCPP operate with a bypass specifically to avoid saturated stack conditions given the physical limitations of the existing unlined stacks.[35] Furthermore, we understand from the operator of FCPP that Units 4 and 5 infrequently experience high opacity readings as a result of water vapor interference, and the limited instances generally resulted from equipment or process issues.[36]

The EPA is proposing to remove the provisions exempting water vapor from the opacity standard and the associated monitoring and reporting requirements because these exemptions are

[31] *See* 40 CFR part 60 subpart Da at 60.42Da(b). Subpart Da to part 60 is the "Standard of Performance for Electric Utility Steam Generating Units" and applies to units that are capable of combusting more than 73 MW heat input of fossil fuel and for which construction, modification, or reconstruction commenced after September 18, 1978. The units at FCPP were constructed prior to 1978 and are not subject to part 60 subpart Da.
[32] *See* 40 CFR part 60 subpart Da 60.49Da(a).
[33] *See* 40 CFR part 75 subpart B at 75.14.
[34] *See* 72 FR 25698 at 25701 (May 7, 2007).
[35] We note that the Consent Decree requires the operator to modify the existing ductwork at FCPP to withstand saturated conditions in order to eliminate the bypass. *See* proposed regulatory text at 40 CFR 49.5512(k)(3)(ii).
[36] *See* document titled "Opacity Exceedances due to Saturated Stack.docx," in the docket for this rulemaking, showing three opacity exceedances from Units 4 and 5 combined due to wet stack conditions over 2011-2015, generally resulting from equipment malfunction.

inconsistent with the 2015 SSM Action, stating that emission standards must apply at all times, including periods of malfunction. Our proposal, to remove the water vapor exemption from the opacity standard and monitoring requirements, represents a strengthening of the FIP. Therefore, we anticipate that this proposed revision would not have any adverse effects on air quality in the surrounding area.

Under paragraph (d)(4), we are also proposing to add a provision that any unit for which the owner or operator installs, calibrates, maintains, and operates a PM CEMS to demonstrate compliance with a PM emission limitation shall be exempt from the opacity standard in paragraph (d)(4), and the associated monitoring and recordkeeping requirements in paragraphs (e) and (f). This provision is consistent with the provisions of the NSPS at 60.42Da(b)(1) and the Acid Rain Program requirements at 40 CFR 75.14(e), which generally provides that any owner or operator that elects to install, calibrate, maintain, and operate a CEMS for measuring PM emissions is exempt from the opacity standard and monitoring requirements.[37] The PM CEMS is a monitoring system that provides a continuous assessment of compliance with a PM limit. Generally, opacity standards and COMS have been used as a surrogate to ensure continuous compliance with a PM emission standard that would otherwise be subject to periodic source testing.[38] As noted above, FCPP is not subject to the NSPS at 60.42Da. However, we are proposing to follow the same rationale from Subpart Da to exempt any unit from the opacity standard and COMS requirement if a PM CEMS is installed on that unit and used for determining continuous compliance with its PM emission limitation.

As discussed elsewhere in this proposed rule, the Consent Decree requires the operator of FCPP, by early 2017, to install PM CEMS and, by mid-2018, to make modifications to the stacks

[37] *See* also 77 FR 9304 (February 16, 2012).
[38] *See*, *e.g.*, discussion of opacity in the 2007 FIP for FCPP, 72 FR 25698 at 25701 (May 7, 2007), stating that opacity limits are generally applied to ensure a unit is meeting its PM limit.

to withstand saturated conditions to allow greater SO_2 removal efficiency (by reducing or eliminating the existing scrubber bypass). After these stack modifications are made in 2018, we anticipate that the units at FCPP will more consistently experience saturated stack conditions that may impede the accuracy of opacity measurements. We consider the use of PM CEMS to be an improvement upon the use of an opacity standard and COMS as a surrogate for measuring continuous compliance with PM limits, particularly for wet stacks. Therefore, the EPA does not consider these revisions to relax any requirements or to result in any adverse effects on air quality in the surrounding area.

The last proposed revision under paragraph (d) is to remove the emission limitation for NO_X that applied to Units 1, 2, and 3 at FCPP under 40 CFR 49.5512(d)(5)(i). The owner or operator permanently ceased operation of Units 1, 2, and 3 by January 1, 2014; therefore, removal of the emission limitations for these retired units specified in paragraph (d)(5)(i) would not relax any requirements or have any effect on air quality in the area surrounding FCPP.

4. Revisions to 40 CFR 49.5512(e)

Paragraph (e) of 40 CFR 49.5512 generally relates to testing and monitoring requirements that follow in subparagraphs (e)(1) – (e)(8). Under paragraph (e), prior to subparagraph (e)(1), we are proposing to remove specific provisions for particulate matter testing and to move revised provisions for PM to subparagraph (e)(3). The EPA is proposing this revision to improve the clarity of the regulatory requirements. Therefore, this proposed revision, to address testing and monitoring requirements elsewhere, within specific sub-paragraphs in paragraph (e), would not relax any requirements or affect air quality in the surrounding area. We address the specific provisions related to revisions to the PM testing and monitoring provisions in a separate discussion on paragraph (e)(3).

In paragraph (e), we are also proposing to remove provisions related to opacity and move revised opacity monitoring requirements to paragraph (e)(6). We are proposing to remove the existing opacity monitoring exemption for periods when the stack is saturated and to remove the presumption that high opacity readings that occur when the baghouse is operating within normal parameters is caused by water vapor and shall not be considered a violation. As outlined in our justification for proposed revisions to paragraph (d)(4), the existing exemptions for opacity monitoring for periods of saturated stacks are inconsistent with the EPA's interpretation of CAA requirements to prohibit emission limitation exemptions and affirmative defenses applicable to excess emissions during malfunctions. The proposed revisions to the opacity standard and monitoring requirements strengthen the FIP and therefore, these changes would not affect air quality in the surrounding area.

In paragraph (e)(1), we are proposing to remove the provision specifying a compliance deadline for installing CEMS for SO_2, NO_X, and a diluent because the CEMS for those pollutants have already been installed. The EPA is not revising the provisions related to the required operation, maintenance, or certification of the CEMS. Because we are proposing to delete a requirement that merely establishes a compliance date that has already been met, this proposed revision would not relax any requirements or affect air quality in the surrounding area.

In paragraph (e)(3), the EPA is proposing to revise the annual PM testing requirements to require the owner or operator to either: conduct PM testing in accordance with the quarterly testing specifications in the MATS Rule (*see* Table 5, 40 CFR part 63, subpart UUUUU); to install, calibrate, maintain, and operate a CPMS on each unit in accordance with the MATS Rule (*see* 40 CFR part 63, subpart UUUUU); or to install, calibrate, maintain, and operate a PM CEMS on each unit, in accordance with the MATS Rule (*see* 40 CFR part 63, subpart UUUUU).

Currently, paragraph (e)(3) requires annual PM testing. We are proposing to align the PM testing requirement in the 2007 FIP with the testing requirements in the MATS Rule, which includes either quarterly testing or continuous monitoring. Therefore, this proposed revision would increase the frequency of PM testing required in the FIP from an annual basis to either a quarterly or a continuous basis. In addition, the testing provisions in the MATS Rule generally refer to the same test methods as those already referenced elsewhere in the FCPP FIP in paragraphs (e) and (i)(1), *e.g.*, 40 CFR part 60 Appendices A-1 through A-3, Methods 1 through 4, and Method 5. Therefore, this proposed revision streamlines testing for PM, does not relax any other requirements, and makes the testing requirements for PM under the FIP consistent with the PM testing requirements in a recent national rulemaking. This proposed revision would not have adverse impacts on air quality in the surrounding area.

In paragraph (e)(6), we are proposing to clarify that this opacity monitoring provision applies only to units at FCPP that are subject to the opacity standard at paragraph (d)(4). As discussed elsewhere in this proposed rule, we are proposing that the opacity standard would apply only if the owner or operator does not elect to monitor compliance with the PM limit using PM CEMS. If the opacity standard applies, under paragraph (e)(6) we are proposing three options for determining compliance with the opacity standard. The first option specifies separate compliance demonstrations for the opacity standard under dry and wet conditions. When the stack is dry (unsaturated), we are proposing to continue to require use of the existing COMS. However, during periods of wet (saturated) stack conditions, which are currently infrequent, the condensed water vapor may impede the accuracy of opacity measurements. Therefore, anticipating that saturated stack conditions at FCPP may occur more frequently in the future, we are proposing to require the owner or operator to demonstrate compliance with the opacity

standard during saturated stack conditions using visible emission performance testing. We consider the visible emission compliance demonstrations to provide reasonable demonstrations of compliance with the opacity standard during these infrequent occurrences. However, when the stacks at FCPP are lined to eliminate the scrubber bypass and result in consistently saturated stacks, continuous visible emission performance tests may be impractical. Therefore, we are proposing two additional options for determining compliance with the opacity standard. Both options are provided in 40 CFR part 60 subpart Da as alternatives to COMS for units experiencing interference from water vapor.[39] In paragraph (e)(6)(ii), we are proposing a second option that requires the installation and maintenance of a CPMS, in accordance with the MATS Rule at 40 CFR part 63 subpart UUUUU, combined with periodic visible emission testing in accordance with 40 CFR 60.49Da(a)(3). In paragraph (e)(6)(iii), we are proposing a third option that requires monitoring performance of the existing baghouses using a bag leak detection system in accordance with 40 CFR 60.48Da(o)(4), or an alternative bag leak detection system approved by the EPA, combined with periodic visible emission testing in accordance with 40 CFR 60.49Da(a)(3).[40] As discussed elsewhere in this notice, the proposed revisions to the opacity standard and monitoring requirements would strengthen the FIP and benefit air quality in the surrounding area because they remove existing exemptions in the FIP and provide reasonable alternatives to address saturated stack conditions in a manner that is consistent with other national rulemakings.

Because Units 1, 2, and 3 have permanently ceased operation, we are proposing to delete the testing requirements for those units in paragraph (e)(8). Removal of the testing requirements

[39] *See* 40 CFR 60.49Da(2)(i) and 60.49Da(a)(4)(ii).
[40] Under 40 CFR 60.13(h)(3)(i), the Administrator may approve alternatives to any monitoring procedures or requirements of part 60.

for these retired units would not relax any requirements or have any effect on air quality in the area surrounding FCPP.

5. Revisions to 40 CFR 49.5512(f)

The EPA is proposing revisions to the reporting and recordkeeping requirements to provide additional clarity that all reports and notifications required in paragraph (f), (f)(4), and (f)(4)(ii) must be submitted to the NNEPA and the EPA. Within the recordkeeping and reporting requirements in paragraph (f), we are proposing changes to clarify that any reports that are required to be submitted to the Regional Administrator or the Administrator must be submitted to the Director of NNEPA and to the Air Division Director at Region IX office of the EPA. We are also revising paragraph (f) to require that the Director of the Enforcement Division, in addition to the Director of the Air Division, at the Region IX office of the EPA, be provided reports and notifications. These proposed revisions do not relax any requirements or have any effect on air quality in the area surrounding FCPP.

Paragraph (f)(1) requires notification and recordkeeping requirements for the CEMS. The EPA is proposing to add the COMS and visible emission testing to the notification and recordkeeping requirements in this paragraph. These proposed revisions do not relax any requirements and would not adversely affect air quality in the area surrounding FCPP.

In paragraph (f)(3), we are proposing to delete the specification related to the frequency of particulate matter testing but are not proposing to modify any provisions related to PM testing reports to the EPA. As discussed elsewhere, we are proposing modifications to the PM testing requirements to align with the MATS Rule, which provides three options for demonstrating compliance with the PM emission limitations: quarterly stack tests, CPMS, or PM CEMS. Deleting the specification in paragraph (f)(3) that PM testing occurs annually is consistent with

the proposed revision to align the PM testing and monitoring requirements for FCPP with those of the MATS Rule.

In addition, in paragraphs (f)(4)(i) and (f)(4)(ii), we are proposing to delete the mailing addresses and other details related to reporting requirements, as they are redundant to the provisions in paragraph (f). All reports and notifications under paragraph (f) must be submitted to the NNEPA and the EPA, and we are proposing to clarify under paragraph (f) that all references to the Regional Administrator in that paragraph mean the Directors of the NNEPA and two divisions within the EPA Region IX office. Paragraph (f)(4) repeats addresses and other details already stated in paragraph (f). The EPA is proposing to delete these redundant provisions in paragraph (f)(4). We anticipate this revision would improve regulatory clarity and would have no impact on air quality in the surrounding area.

Consistent with the proposed revisions to the opacity standard and COMS requirement in paragraphs (d) and (e), we are proposing to delete references to saturated stack conditions in paragraphs (f)(4)(i) and (f)(4)(i)(H). In paragraph (f)(4)(i)(G), we are also proposing to require the owner or operator to report opacity exceedances determined from the visible emission performance tests. As discussed elsewhere in this notice, because provisions in the existing FCPP FIP exempt the units from the opacity limit during periods where the stacks were saturated, the removal of the exemption represents a strengthening of the FIP and would not relax other requirements in the FCPP FIP.

6. Revisions to 40 CFR 49.5512(h)

The EPA is proposing to delete the startup and shutdown exemptions for the opacity and PM emission limitations at paragraph (h)(2) and to delete the provisions related to an affirmative defense for malfunctions in paragraph (h)(3). As discussed previously, exemptions from

emission limitations and provisions that allow an affirmative defense are inconsistent with CAA requirements. Using the same rationale we provided elsewhere in this notice, for the proposed revisions to 40 CFR 52.5512(c) and (d), the EPA is proposing to delete the provisions at paragraph (h)(2) that provide an exemption from emission limitations during periods of startup and shutdown and also to delete the provisions in the paragraph (h)(3) that provide an affirmative defense for malfunctions at FCPP. The proposed removal of these provisions strengthens the FIP and does not relax any other requirements in the FIP. Therefore, the removal of these revisions would not adversely affect air quality in the surrounding area.

7. Revisions to 40 CFR 49.5512(i)

Under paragraph (i)(1), promulgated in the 2012 FIP, the EPA is proposing to delete the existing provisions related to annual PM testing and add a provision that PM testing shall be performed in accordance with paragraph (e)(3), which requires quarterly PM testing, or installation, calibration, and operation of CPMS, or PM CEMS, in accordance with the MATS Rule. This proposed revision would increase the frequency of PM testing from an annual basis to either a quarterly or continuous basis. The testing provisions in the MATS Rule generally refer to the same test methods already referenced in the FIP in paragraphs (e) and (i)(1), *e.g.*, 40 CFR part 60 Appendices A-1 through A-3, Methods 1 through 4, and Method 5. This proposed revision would not relax any requirements and would make the testing requirements for PM under the FIP consistent with the PM testing requirements in recent national rulemakings. Therefore, this revision would not have adverse impacts on air quality in the surrounding area.

In addition, under paragraph (i)(2)(iii) of the 2012 FIP, we are proposing to correct a typographical error in a citation. Paragraph (i)(2)(iii) provides the schedule for the installation of add-on post-combustion NO_X controls and refers to interim emission limitations for NO_X at

paragraph (i)(2)(ii)(A). However, the interim emission limitations are found in paragraph (i)(2)(ii), and subparagraph (A) to paragraph (i)(2)(ii) does not exist. Although the interim limits under paragraph (i)(2)(ii) do not apply because the owner or operator elected to implement paragraph (i)(3) in lieu of paragraph (i)(2) for NO_X, the EPA is proposing to correct this error in order to improve regulatory clarity. This proposed revision would have no effect on air quality in the surrounding area.

8. Addition of 40 CFR 49.5513(k)

The EPA is proposing to add paragraph (k) to include provisions required for compliance with the Consent Decree. The EPA is not revisiting or opening for comment any of the specific requirements of the Consent Decree and is requesting comment only on whether the EPA has incorporated all appropriate requirements from the Consent Decree into the FIP. Generally, the Consent Decree established emission limitations and other requirements to reduce emissions of SO_2, NO_X and PM. The Consent Decree requires the owner or operator to modify the existing ductwork and stacks for Units 4 and 5 to accommodate a wet stack in order to eliminate the need to bypass flue gas around the scrubbers and to achieve and maintain an SO_2 removal efficiency of at least 95 percent, which is more stringent than the requirement to achieve an 88 percent removal efficiency in paragraph (d)(1)(i). The Consent Decree also established an emission limitation for NO_X of 0.080 lb/MMBtu, which is more stringent than the NO_X limit of 0.098 lb/MMBtu in 40 CFR 49.5512(i)(3) from the 2012 FIP. Finally, the Consent Decree established a PM emission limitation of 0.0150 lb/MMBtu for Units 4 and 5, which is more stringent than the PM limit of 0.015 lb/MMBtu that was applied to those units in the 2012 FIP. Because the Consent Decree set more stringent emission limitations, the proposed revision to incorporate the provisions of the Consent Decree into the FIP for FCPP strengthens the FIP and would not relax

any existing requirements. In this action, the EPA is merely proposing to incorporate the existing Consent Decree requirements into the FIP for FCPP and is requesting comment only on whether the EPA has incorporated all appropriate requirements from the Consent Decree into the FIP. The Consent Decree is anticipated to benefit air quality, and the proposed inclusion of the Consent Decree requirements in the FIP would make those requirements continue to be federally enforceable after the Consent Decree is terminated.

C. Compliance Schedule

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

IV. Proposed Action and Solicitation of Comments

As described above, the EPA proposes revisions to the FCPP FIP for several reasons: (1) to make certain provisions in the FIP consistent with national rulemakings and other actions since 2012; (2) to update the FIP to reflect recent operating changes; and (3) to add new provisions to the FIP to include the requirements of the Consent Decree.

The EPA solicits comments on the limited revisions of the FCPP FIP that we are proposing in this rulemaking. We are also soliciting comment on whether the EPA has accurately incorporated the requirements from the Consent Decree into paragraph (k) of the FIP. We are not accepting comment on any provisions of the FCPP FIP that we are not proposing to revise, and we are not accepting comment on the specific requirements of the Consent Decree. Accordingly, please limit your comments to those specific provisions recited above that we are proposing to revise in today's action.

V. Environmental Justice Considerations

The Four Corners Power Plant is located on the reservations lands of the Navajo Nation, and the EPA recognizes there is significant community interest in the emissions and environmental effects of this facility. As discussed elsewhere in this document, the proposed revisions to the FCPP FIP would: strengthen the FIP by removing emission limitation exemptions for periods of startup, shutdown, and saturated stacks; remove an affirmative defense applicable to excess emissions during malfunctions; and codify more stringent emission limitations for SO_2, NO_X, and PM from a Consent Decree dated August 17, 2015. Additional revisions to the FCPP FIP proposed in this notice, including to streamline certain testing requirements to be consistent with national rulemakings promulgated since 2008 and to remove requirements for units that have permanently ceased operation, would not relax any condition in the FCPP FIP. Therefore, the EPA considers this proposed action to be beneficial for human and environmental health, and to have no potential disproportionately high and adverse effects on minority, low-income, or indigenous populations.

VI. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

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

C. Regulatory Flexibility Act (RFA)

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

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications, as specified in Executive Order 13175. Although this proposed action affects a facility located in Indian country, the proposed limited revisions to existing provisions in the FIP for FCPP, and the incorporation of provisions into the FIP from a Consent Decree, which has already undergone public review and was the subject of tribal consultation, will not have substantial direct effects on any Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. Thus, Executive Order

13175 does not apply to this action. However, we note that we have engaged in numerous discussions with the NNEPA during the development of this proposed rule and continue to invite consultation on this proposed action.

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

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

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

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

I. National Technology Transfer and Advancement Act

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

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

The EPA believes the human health or environmental risk addressed by this action will

not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. If this rule is finalized as proposed, we expect that the limited revisions to the FIP will strengthen requirements for periods of startup, shutdown, and malfunction and will not relax any other existing requirements. Additional revisions related to streamlining of PM testing and providing options for PM and opacity testing that are in accordance with other rulemakings from the EPA will not affect air quality in the area surrounding FCPP.

List of Subjects in 40 CFR Part 49

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

Dated: November 22, 2016.

Alexis Strauss,

Acting Regional Administrator,

Region IX.

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

PART 49 – INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

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

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

Subpart L – Implementation Plans for Tribes – Region IX

2. Section 49.5512 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (c) introductory text;

c. Removing and reserving paragraph (c)(1);

d. Revising paragraph (c)(7);

e. Revising paragraph (c)(12);

f. Revising paragraph (c)(13);

g. Revising paragraph (d) introductory text;

h. Revising paragraph (d)(2);

i. Removing and reserving paragraph (d)(3);

j. Revising paragraph (d)(4);

k. Revising paragraph (d)(5);

l. Revising paragraph (e) introductory text;

m. Revising paragraph (e)(1);

n. Revising paragraph (e)(3);

o. Revising paragraph (e)(6);

p. Removing and reserving paragraph (e)(8);

q. Revising paragraph (f) introductory text;

r. Revising paragraph (f)(1);

s. Revising paragraph (f)(3) introductory text;

t. Revising paragraphs (f)(4)(i) introductory text, (f)(4)(i)(G) and (H) and (f)(4)(ii);

u. Removing and reserving paragraphs (h)(2) and (3);

v. Revising paragraph (i)(1);

w. Revising paragraph (i)(2)(iii)(A); and

x. Adding paragraph (k).

The text to read as follows:

§ 49.5512 Federal Implementation Plan Provisions for Four Corners Power Plant, Navajo Nation.

(a) Applicability. The provisions of this section shall apply to each owner or operator of the coal burning equipment designated as Units 1, 2, 3, 4, and 5 at the Four Corners Power Plant (the Plant) on the Navajo Nation Indian Reservation located in the Four Corners Interstate Air Quality Control Region (see 40 CFR 81.121). Units 1, 2, and 3 at the Four Corners Power Plant permanently ceased operation by January 1, 2014, pursuant to the requirements of paragraph (i)(3).

* * * * *

(c) Definitions. For the purposes of paragraphs (a) – (j):

(1) [Reserved]

* * * * *

(7) Malfunction means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner.

* * * * *

(12) Shutdown means the cessation of operation of any air pollution control equipment, process equipment, or process for any purpose. For Units 4 or 5, shutdown begins when the unit drops below 300 MW net load with the intent to remove the unit from service.

(13) Startup means the setting into operation of any air pollution control equipment, process equipment, or process for any purpose. For Units 4 or 5, startup ends when the unit reaches 400 MW net load.

* * * * *

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

* * * * *

(2) Particulate Matter. No owner or operator shall discharge or cause the discharge of particulate matter from any coal burning equipment into the atmosphere in excess of 0.050 pounds per million British thermal unit (lb/MMBtu) of heat input (higher heating value).

(3) [Reserved].

(4) Opacity. No owner or operator shall discharge or cause the discharge of emissions from the stacks of Units 4 and 5 into the atmosphere exhibiting greater than 20 percent opacity, averaged over any six (6) minute period, except for one six (6) minute period per hour of not more than 27 percent opacity. Any unit for which the owner or operator installs, calibrates, maintains, and operates particulate matter CEMS under paragraph (e)(3) of this section shall be exempt from this opacity standard in this paragraph (d)(4) and associated requirements in paragraphs (e) and (f) to demonstrate compliance with the opacity standard.

(5) Oxides of nitrogen. No owner or operator shall discharge or cause the discharge of NO_X into the atmosphere in excess of the amounts specified below.

(i) 0.65 lb/MMBtu of heat input per unit averaged over any successive thirty (30) boiler operating-day period from Units 4 and 5;

(ii) 335,000 lb per 24-hour period when coal-burning equipment is operating, on a plant-wide basis; for each hour when coal-burning equipment is not operating, this limitation shall be reduced. If the unit which is not operating is Unit 1, 2, or 3, the limitation shall be reduced by 1,542 lb per hour for each unit which is not operating. If the unit which is not operating is Unit 4 or 5, the limitation shall be reduced by 4,667 lb per hour for each unit which is not operating.

(e) Testing and Monitoring. Compliance with the emissions limits set for SO_2 and NO_X shall be determined by using data from a CEMS unless otherwise specified in paragraphs (e)(2) and (e)(4) of this section.

(1) The owner or operator shall maintain and operate CEMS for SO_2, NO or NO_X, and a diluent, and for Units 4 and 5 only, COMS, in accordance with 40 CFR 60.8 and 60.13, and appendix B of 40 CFR part 60. Completion of 40 CFR part 75 monitor certification requirements shall be deemed to satisfy the requirements under 40 CFR 60.8 and 60.13 and appendix B of part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75, and all reports required thereunder shall be submitted to the Regional Administrator. The owner or operator shall provide the Regional Administrator notice in accordance with 40 CFR 75.61.

* * * * *

(3) To assure continuous compliance with the particulate matter limits in paragraph

(d)(2), the owner or operator shall either conduct particulate matter testing in accordance with the testing specifications outlined in Table 5 of 40 CFR part 63 subpart UUUUU, or install, calibrate, operate, and maintain a continuous parametric monitoring system (CPMS) for that unit in accordance with 40 CFR part 63 subpart UUUUU, or install, calibrate, maintain, and operate particulate matter CEMS in accordance with 40 CFR part 63 subpart UUUUU. The owner or operator shall submit a written notification, in accordance with paragraph (f), of intent to demonstrate compliance with this paragraph by using a CPMS or PM CEMS. This notification shall be sent at least 30 calendar days before the initial startup of the monitor for compliance determination purposes. The owner or operator may discontinue operation of the monitor and instead return to demonstration of compliance with this paragraph using quarterly PM testing by submitting written notification, in accordance with paragraph (f), of such intent at least 30 calendar days before shutdown of the monitor for compliance determination purposes. Nothing in this paragraph replaces or supersedes the requirements for PM CEMS in the August 17, 2015 Consent Decree under paragraph (k).

* * * * *

(6) If the opacity standard in paragraph (d)(4) applies, the owner or operator shall demonstrate compliance with the opacity standard using one of the following options:

(i) Operate Continuous Opacity Monitoring Systems (COMS) and maintain a set of opacity filters to be used as audit standards. Compliance with the opacity standard during periods of dry (unsaturated) stack conditions shall be determined using COMS. Compliance with the opacity standard during periods of wet (saturated) stack conditions shall be determined using visible emission performance testing specified in

40 CFR part 60 appendix A-4 Method 9 during the duration of the saturated stack condition, or

(ii) Install, calibrate, operate, and maintain a continuous parametric monitoring system (CPMS) for that unit in accordance with 40 CFR part 63 subpart UUUUU, including the requirements for the development of site-specific monitoring plans and recordkeeping and reporting; and conduct periodic performance testing of visible emissions using the procedures specified in paragraphs 40 CFR 60.49Da(a)(3), or

(iii) monitor performance of the baghouses using a bag leak detection system in accordance with 40 CFR 60.48Da(o)(4), or an alternative bag leak detection system approved by the EPA, including requirements for the development of site-specific monitoring plans and recordkeeping and reporting; and conduct periodic performance testing of visible emissions using the procedures specified in paragraphs 40 CFR 60.49Da(a)(3).

* * * * *

(8) [Reserved]

(f) Reporting and Recordkeeping Requirements. All requests, reports, submittals, notifications, and other communications to the Regional Administrator or Administrator required by this paragraph (f) and references therein shall be submitted to the Director, Navajo Nation Environmental Protection Agency, P.O. Box 339, Window Rock, Arizona 86515, (928) 871-7692, (928) 871-7996 (facsimile); to the Director, Air Division, U.S. Environmental Protection Agency, Region IX, to the attention of Mail Code: AIR-3, at 75 Hawthorne Street, San Francisco, California 94105, (415) 972-397490, (415) 947-3579 (facsimile); and to the Director, Enforcement Division, U.S. Environmental Protection Agency, to the attention of Mail Code

ENF-2-1, at 75 Hawthorne Street, San Francisco, California, 94105, (415) 972-3982, or by email to r9.aeo@epa.gov. For each unit subject to the emissions limitation in this section and upon completion of the installation of CEMS and COMS as required in this section, the owner or operator shall comply with the following requirements:

(1) For each emissions limit in this section, comply with the notification and recordkeeping requirements for CEMS and COMS compliance monitoring in 40 CFR 60.7(c) and (d), and for visible emissions testing, if applicable under paragraph (e)(6), record and report results of the test in accordance with 40 CFR 60.7(d).

* * * * *

(3) Furnish the Regional Administrator with reports describing the results of the particulate matter emissions tests postmarked within sixty (60) days of completing the tests. Each report shall include the following information:

* * * * *

(4) * * *

(i) For excess emissions, the owner or operator shall notify the Regional Administrator by telephone or in writing within one business day (initial notification). A complete written report of the incident shall be submitted within ten (10) working days of the initial notification. The complete written report shall include:

* * * * *

(G) For an opacity exceedance, the 6-minute average opacity monitoring data or visible emission performance test results greater than 20 percent opacity for the 24 hours prior to and during the exceedance for Units 4 and 5; and

(H) The efforts taken or being taken to minimize the excess emissions and to

repair or otherwise bring the Plant into compliance with the applicable emissions limit(s) or other requirements.

(ii) If the period of excess emissions extends beyond the submittal of the written report, the owner or operator shall also notify the Regional Administrator in writing of the exact time and date when the excess emissions stopped. Compliance with the excess emissions notification provisions of this section shall not excuse or otherwise constitute a defense to any violations of this section or of any law or regulation which such excess emissions or malfunction may cause.

* * * * *

(i) * * *

(1) Particulate Matter from Units 4 and 5 shall be limited to 0.015 lb/MMBtu for each unit. Particulate matter testing shall be performed in accordance with paragraph (e)(3) of this section.

(2) * * *

(iii) * * *

(A) Within 4 years of the effective date of this rule, FCPP shall have installed add-on post-combustion NO_X controls on at least 750 MW (net) of generation to meet the interim emission limit in paragraph (i)(2)(ii) of this section.

* * * * *

(k) Emission limitations from August 17, 2015 Consent Decree. The emission limitations and other requirements from this paragraph (k), originally contained in a Consent Decree filed on August 17, 2015 in the United States District Court for the District of New Mexico, are in addition to the requirements in paragraphs (a) through (j) of this section.

(1) Definitions. Every term expressly defined in this paragraph (k) shall have the meaning given that term herein. Every other term used in this paragraph (k) that is also a term used under the Act or in a federal regulation implementing the Act shall mean what such term means under the Act or those regulations.

(i) A "30-Day Rolling Average NO_X Emission Rate" for a Unit shall be expressed in lb/MMBtu and calculated in accordance with the following procedure: first, sum the total pounds of NO_X emitted from the Unit during the current Unit Operating Day and the previous twenty nine (29) Unit Operating Days; second, sum the total heat input to the Unit in MMBtu during the current Unit Operating Day and the previous twenty-nine (29) Unit Operating Days; and third, divide the total number of pounds of NO_X emitted during the thirty (30) Unit Operating Days by the total heat input during the thirty (30) Unit Operating Days. A new 30-Day Rolling Average NO_X Emission Rate shall be calculated for each new Unit Operating Day. Each 30-Day Rolling Average NO_X Emission Rate shall include all emissions that occur during all periods within any Unit Operating Day, including emissions from startup, shutdown, and Malfunction.

(ii) A "30-Day Rolling Average SO_2 Removal Efficiency" means the percent reduction in the mass of SO_2 achieved by a Unit's FGD system over a thirty (30) Unit Operating Day period and shall be calculated as follows: step one, sum the total pounds of SO_2 emitted as measured at the outlet of the FGD system for the Unit during the current Unit Operating Day and the previous twenty-nine (29) Unit Operating Days as measured at the outlet of the FGD system for that Unit; step two, sum the total pounds of SO_2 delivered to the inlet of the FGD system for the Unit

during the current Unit Operating Day and the previous twenty-nine (29) Unit Operating Days as measured at the inlet to the FGD system for that Unit (this shall be calculated by measuring the ratio of the lb/MMBtu SO_2 inlet to the lb/MMBtu SO_2 outlet and multiplying the outlet pounds of SO_2 by that ratio); step three, subtract the outlet SO_2 emissions calculated in step one from the inlet SO_2 emissions calculated in step two; step four, divide the remainder calculated in step three by the inlet SO_2 emissions calculated in step two; and step five, multiply the quotient calculated in step four by 100 to express as a percentage of removal efficiency. A new 30-Day Rolling Average SO_2 Removal Efficiency shall be calculated for each new Unit Operating Day, and shall include all emissions that occur during all periods within each Unit Operating Day, including emissions from startup, shutdown, and Malfunction.

(iii) "Annual Tonnage Limitation" means the limitation on the number of tons of the pollutant in question that may be emitted from FCPP during the relevant calendar year (*i.e.*, January 1 through December 31), and shall include all emissions of the pollutant emitted during periods of startup, shutdown and Malfunction.

(iv) "Baghouse" means a full stream (fabric filter) particulate emissions control device.

(v) "Clean Air Act" and "the Act" mean the federal Clean Air Act, 42 USC 7401-7671q, and its implementing regulations.

(vi) "CEMS" and "Continuous Emission Monitoring System," mean, for obligations involving the monitoring of NO_X and SO_2 emissions under this paragraph (k), the devices defined in 40 CFR 72.2, and the SO_2 monitors required by this paragraph

(k) for determining compliance with the 30-Day Rolling Average SO_2 Removal Efficiency requirement set forth in this paragraph (k).

(vii) "Continuous Operation," "Continuously Operate," and "Continuously Operating" mean that when a pollution control technology or combustion control is required to be used at a Unit pursuant to this paragraph (k) (including, but not limited to, SCR, FGD, or Baghouse), it shall be operated at all times such Unit is in operation, consistent with the technological limitations, manufacturers' specifications, good engineering and maintenance practices, and good air pollution control practices for minimizing emissions (as defined in 40 CFR 60.11(d)) for such equipment and the Unit.

(viii) "Day" means calendar day unless otherwise specified in this paragraph (k).

(ix) "Emission Rate" means, for a given pollutant, the number of pounds of that pollutant emitted per million British thermal units of heat input ("lb/MMBtu"), measured in accordance with this paragraph (k).

(x) "Flue Gas Desulfurization System" and "FGD" mean a pollution control device that employs flue gas desulfurization technology, including an absorber utilizing lime slurry, for the reduction of SO_2 emissions.

(xi) "Fossil Fuel" means any hydrocarbon fuel, including coal, petroleum coke, petroleum oil, or natural gas.

(xii) "lb/MMBtu" means one pound of a pollutant per million British thermal units of heat input.

(xiii) "Make-Right Vendor Guarantee" means, for an SCR, a guarantee offered by an SCR vendor that covers the SCR, including the catalyst, ammonia injection

system, and support structure, under operating conditions (excluding any Malfunctions) above minimum operating temperature for the SCR, the achievement of which is demonstrated solely during two performance tests: one performance test no later than 90 Days after initial operation of the SCR, and one performance test after no fewer than 16,000 hours of SCR operation, but no later than December 31, 2020 regardless of the number of operating hours achieved. If the SCR does not meet the guarantee in one of these two performance tests, a Make-Right Vendor Guarantee requires the SCR vendor to repair, replace, or correct the SCR to meet the specified guaranteed Emission Rate, which is demonstrated by successful achievement of a performance test.

(xiv) "Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not Malfunctions.

(xv) "NO_X Allowance" means an authorization or credit to emit a specified amount of NO_X that is allocated or issued under an emissions trading or marketable permit program of any kind established under the Clean Air Act or an applicable implementation plan. Although no NO_X Allowance program is applicable to FCPP as of the promulgation of this paragraph (k), this definition of "NO_X Allowance" includes authorizations or credits that may be allocated or issued under emissions trading or marketable permit programs that may become applicable to FCPP in the future.

(xvi) "Operating Day" means any Day on which a Unit fires Fossil Fuel.

(xvii) “PM” means total filterable particulate matter, measured in accordance with the provisions of this paragraph (k).

(xviii) “PM CEMS” and “PM Continuous Emission Monitoring System” mean, for obligations involving the monitoring of PM emissions under this paragraph (k), the equipment that samples, analyzes, measures, and provides, by readings taken at frequent intervals, an electronic and/or paper record of PM emissions.

(xix) “Removal Efficiency” means, for a given pollutant, the percentage of that pollutant removed by the applicable emission control device, measured in accordance with the provisions of this paragraph (k).

(xx) “Selective Catalytic Reduction” and “SCR” mean a pollution control device that destroys NO_X by injecting a reducing agent (*e.g.*, ammonia) into the flue gas that, in the presence of a catalyst (*e.g.*, vanadium, titanium, or zeolite), converts NO_X into molecular nitrogen and water.

(xxi) “Semi-annual reports” are periodic reports that are submitted to EPA within 60 days after the end of each half of the calendar year.

(xxii) “SO_2 Allowance” means an authorization to emit a specified amount of SO_2 that is allocated or issued under an emissions trading or marketable permit program of any kind established under the Clean Air Act or an applicable implementation plan, including as defined at 42 USC 7651a(3).

(xxiii) “Surrender” means to permanently surrender SO_2 Allowances so that such SO_2 Allowances can never be used to meet any compliance requirement under the Clean Air Act or this paragraph (k).

(xxiv) “Unit” means, solely for purposes of this paragraph (k), collectively, the coal

pulverizer, stationary equipment that feeds coal to the boiler, the boiler that produces steam for the steam turbine, the steam turbine, the generator, equipment necessary to operate the generator, steam turbine and boiler, and all ancillary equipment, including pollution control equipment, at or serving a coal-fired steam electric generating unit at FCPP.

(xxv) "Wet Stack" means a stack designed to be capable of use with a saturated gas stream constructed with liner material(s) consisting of one or more of the following: carbon steel with a protective lining (organic resin, fluoroelastomers, borosilicate glass blocks or a thin cladding of a corrosion-resistant alloy), fiberglass-reinforced plastic, solid corrosion-resistant alloy, or acid-resistant brick and mortar.

(2) NO_X Emission Limitations and Control Requirements. (i) The owner or operator shall install and commence Continuous Operation of an SCR on or FCPP Unit 5 by no later than March 31, 2018. Commencing no later than 30 Operating Days thereafter, the owner or operator shall Continuously Operate the SCR so as to achieve and maintain a 30-Day Rolling Average NO_X Emission Rate of no greater than 0.080 lb/MMBtu, subject to the petition process paragraph (k)(2)(iii).

(ii) The owner or operator shall install and commence Continuous Operation of an SCR on the FCPP Unit 4 by no later than July 31, 2018. Commencing no later than 30 Operating Days thereafter, the owner or operator shall Continuously Operate the SCR so as to achieve and maintain a 30-Day Rolling Average NO_X Emission Rate of no greater than 0.080 lb/MMBtu, subject to the petition process in paragraph (k)(2)(iii).

(iii) At any time after March 31, 2019 but before December 31, 2020, the owner or

operator may submit to EPA a petition for a proposed revision to the 30-Day Rolling Average NO_X Emission Rate of 0.080 lb/MMBtu for either or both of the FCPP Units. The petition must demonstrate all of the following:

(A) That the design of the SCR system met the following parameters:

(*1*) The SCR system was designed to meet a NO_X emission rate of 0.049 lb/MMBtu, on an hourly average basis, under normal operating conditions once the minimum operating temperature of the SCR catalyst is achieved; and

(*2*) The owner or operator obtained a Make-Right Vendor Guarantee for a NO_X emission rate of 0.049 lb/MMBtu;

(B) That best efforts have been taken to achieve the 30-Day Rolling Average NO_X Emission Rate of 0.080 lb/MMBtu. Best efforts include but are not limited to exhausting the Make-Right Vendor Guarantee and obtaining independent outside support from a registered professional engineer expert in SCR design. To demonstrate best efforts have been taken, the petition shall also include:

(*1*) The request for bid for the subject SCR;

(*2*) Winning bid documents, including all warranties and design information;

(*3*) NO_X, NH_3, and heat rate CEMS data and all related stack tests;

(*4*) Daily coal quality data, including sulfur, ash, and heat content;

(*5*) Operating and maintenance logs documenting all exceedances of the 0.080 lb/MMBtu 30-Day Rolling Average NO_X Emission Rate and

measures taken to correct them;

(*6*) Vendor certification pursuant to a Make-Right Vendor Guarantee that the 0.080 lb/MMBtu 30-Day Rolling Average NO_X Emission Rate cannot be met by the SCR as designed;

(*7*) A signed and sealed report by a registered professional engineer expert in SCR design confirming the 0.080 lb/MMBtu 30-Day Rolling Average NO_X Emission Rate cannot be met by the SCR as designed; and

(*8*) Affidavits documenting causes of failure to meet the 0.080 lb/MMBtu 30-Day Rolling Average NO_X Emission Rate, signed and sealed by a licensed professional engineer;

(C) That the SCR system was properly operated and maintained pursuant to the manufacturer's specifications for achieving and Continuously Operating to meet the design NO_X emission rate of 0.049 lb/MMBtu; and

(D) That the owner or operator Continuously Operated the SCR and maximized the percent of flue gas or water bypassed around the economizer during any startup and shutdown events in a manner to attain minimum operating temperature as quickly as reasonably possible during startup and to maintain minimum operating temperature during shutdowns as long as reasonably possible;

(E) That the owner or operator Continuously Operated the SCR and controlled the percent of flue gas or water bypassed around the economizer to maintain minimum operating temperature during load changes.

(iv) In any petition submitted pursuant to paragraph (k)(2)(iii), the owner or operator

shall include an alternate 30-Day Rolling Average NO_X Emission Rate, but in no event may the owner or operator propose a 30-Day Rolling Average NO_X Emission Rate more than 0.085 lb/MMBtu. The owner or operator shall also submit all studies, reports, and/or recommendations from the vendor and contractor(s) required by this paragraph and paragraph (k)(2)(iii), evaluating each measure undertaken in an effort to meet a 30-Day Rolling Average NO_X Emission Rate of no greater than 0.080 lb/MMBtu. The owner or operator shall also deliver with each submission all pertinent documents and data that support or were considered in preparing such submission, as well as all data pertaining to the performance of the SCR in question since August 17, 2015 and the operational history of the Unit since August 17, 2015.

(v) In addition to meeting the emissions rates set forth in paragraphs (k)(2)(i) and (k)(2)(ii), all Units at FCPP, collectively, shall not emit NO_X in excess of the following Annual Tonnage Limitation: 31,060 tons of NO_X per year in 2016 and 2017; 12,165 tons of NO_X per year in 2018; and 4,968 tons of NO_X per year in 2019 and thereafter. However, if the 30-Day Rolling Average NO_X Emission Rate of 0.080 lb/MMBtu required under Paragraphs (k)(2)(i) and (k)(2)(ii) is revised pursuant to the petition process set forth in paragraphs (k)(2)(iii) and (k)(2)(iv), the annual NO_X tonnage limitations set forth as follows shall increase by the ratio of the new NO_X rate in lb/MMBtu determined pursuant to paragraphs (k)(2)(iii) and (k)(2)(iv) divided by 0.080 lb/MMBtu.

(vi) In determining the 30-Day Rolling Average NO_X Emission Rate, the owner or operator shall use CEMS in accordance with the procedures of 40 CFR part 75, except that NO_X emissions data for the 30-Day Rolling Average NO_X Emission Rate

need not be bias adjusted and the missing data substitution procedures of 40 CFR part 75 shall not apply. Diluent capping (*i.e.*, 5 percent CO_2) will be applied to the NO_X emission calculation for any hours where the measured CO_2 concentration is less than 5 percent following the procedures in 40 CFR part 75, Appendix F, Section 3.3.4.1. The owner or operator shall report semiannually all hours where diluent capping procedures were applied during the reporting period.

(vii) For purposes of determining compliance with the Annual Tonnage Limitations in paragraph (k)(2)(v), the owner or operator shall use CEMS in accordance with the procedures specified in 40 CFR Part 75.

(viii) The owner or operator shall not sell, trade, or transfer any surplus NO_X Allowances allocated to FCPP that would otherwise be available for sale or trade as a result of the actions taken by the owner or operator to comply with the requirements of this rule.

(3) SO_2 Emission Limitations and Control Requirements. (i) Beginning on August 17, 2015, the owner or operator shall continuously operate the existing FGDs at FCPP Unit 4 and Unit 5 so as to emit SO_2 from FCPP at an amount no greater than 10.0 percent of the potential combustion concentration assuming all of the sulfur in the coal is converted to SO_2. Compliance with this emissions standard shall be determined on a rolling 365-Operating Day basis using the applicable methodologies set forth in paragraph (e)(2) of this section. The first day for determining compliance with this emissions standard shall be 365 Days after August 17, 2015. The requirements of this paragraph shall remain in effect until the owner or operator achieve compliance with the requirements set forth in paragraphs (k)(3)(ii) and (k)(3)(iii).

(ii) By no later than March 31, 2018, the owner or operator shall convert the existing ductwork and stack at FCPP Unit 5 to a Wet Stack, so as to eliminate the need to bypass flue gas around the FGD absorbers for reheat purposes. Commencing no later than 30 Operating Days thereafter, the owner or operator shall continuously operate the existing FGD at FCPP Unit 5 so as to achieve and maintain a 30-Day Rolling Average SO_2 Removal Efficiency of at least 95.0 percent.

(iii) By no later than July 31, 2018, the owner or operator shall convert the existing ductwork and stack at FCPP Unit 4 to a Wet Stack, so as to eliminate the need to bypass flue gas around the FGD absorbers for reheat purposes. Commencing no later than 30 Operating Days thereafter, the owner or operator shall Continuously Operate the existing FGD at FCPP Unit 4 so as to achieve and maintain a 30-Day Rolling Average SO_2 Removal Efficiency of at least 95.0 percent.

(iv) In addition to meeting the emission rates set forth in paragraphs (k)(3)(i), (k)(3)(ii) and (k)(3)(iii), all Units at FCPP, collectively, shall not emit SO_2 in excess of the following Annual Tonnage Limitations: 13,300 tons of SO_2 per year in 2016 and 2017; 8,300 tons of SO_2 per year in 2018; 6,800 tons of SO_2 per year in 2019 and thereafter.

(v) By each of the dates by which the owner or operator must comply with the 30-Day Rolling Average SO_2 Removal Efficiency required under paragraphs (k)(3)(ii) and (k)(3)(iii), the owner or operator shall install, certify, maintain, and operate FGD inlet SO_2 and any associated diluent CEMS with respect to that Unit in accordance with the requirements of paragraph (e)(1) of this section.

(vi) In determining the 30-Day Rolling Average SO_2 Removal Efficiency, the owner

or operator shall use CEMS in accordance with the procedures of 40 CFR part 75, except that SO_2 emissions data for the 30-Day Rolling Average SO_2 Removal Efficiency need not be bias adjusted, and the missing data substitution procedures of 40 CFR part 75 shall not apply. Diluent capping (*i.e.*, 5 percent CO_2) will be applied to the SO_2 emission calculation for any hours where the measured CO_2 concentration is less than 5 percent following the procedures in 40 CFR part 75, Appendix F, Section 3.3.4.1. The owner or operator shall submit a semi-annual report that includes all hours where diluent capping procedures were applied during the reporting period.

(vii) For purposes of determining compliance with the Annual Tonnage Limitations in paragraph (k)(3)(iv), the owner or operator shall use CEMS in accordance with the procedures specified in 40 CFR part 75.

(4) Use and Surrender of SO_2 Allowances. (i) The owner or operator shall not use SO_2 Allowances to comply with any requirement of paragraph (k), including by claiming compliance with any emission limitation required paragraph (k) by using, tendering, or otherwise applying SO_2 Allowances to offset any excess emissions.

(ii) Except as provided in paragraph (k), the owner or operator shall not sell, bank, trade, or transfer any SO_2 Allowances allocated to FCPP.

(iii) Beginning with calendar year 2015, and continuing each calendar year thereafter, the owner or operator shall surrender to EPA, or transfer to a non-profit third party selected by the owner or operator for Surrender, all SO_2 Allowances allocated to FCPP for that calendar year that the owner or operator does not need in order to meet their own federal and/or state Clean Air Act statutory or regulatory

requirements for the FCPP Units.

(iv) Nothing in paragraph (k)(4) shall prevent the owners or operator from purchasing or otherwise obtaining SO_2 Allowances from another source for purposes of complying with Clean Air Act requirements to the extent otherwise allowed by law.

(v) For any given calendar year, provided that FCPP is in compliance for that calendar year with all emissions limitations for SO_2 set forth in this section, nothing in paragraph (k), including the provisions of paragraphs (k)(4)(ii) and (k)(4)(iii) pertaining to the Use and Surrender of SO_2 Allowances, shall preclude the owner or operator from selling, trading, or transferring SO_2 Allowances allocated to FCPP that become available for sale or trade that calendar year solely as a result of:

(A) The installation and operation of any pollution control technology or technique at Unit 4 or Unit 5 that is not otherwise required by paragraph (k); or

(B) Achievement and maintenance of a 30-Day Rolling Average SO_2 Removal Efficiency at Unit 4 or Unit 5 at a higher removal efficiency than the 30-Day Rolling Average SO_2 Removal Efficiency required by paragraph (k)(3); so long as the owner or operator submits a semi-annual report of the generation of such surplus SO_2 Allowances that occur after August 17, 2015.

(vi) The owner or operator shall Surrender, or transfer to a non-profit third party selected by the owner or operator for Surrender, all SO_2 Allowances required to be Surrendered pursuant to paragraph (k)(4)(iii) by April 30 of the immediately following calendar year. Surrender need not include the specific SO_2 Allowances

that were allocated to FCPP, so long as the owner or operator Surrender SO_2 Allowances that are from the same year and that are equal to the number required to be Surrendered under paragraph (k)(4)(vii).

(vii) If any SO_2 Allowances are transferred directly to a non-profit third party, the owner or operator shall include a description of such transfer in the next semi-annual report submitted to EPA. Such report shall:

(A) Provide the identity of the non-profit third-party recipient(s) of the SO_2 Allowances and a listing of the serial numbers of the transferred SO_2 Allowances; and

(B) Include a certification by the third-party recipient(s) certifying under the penalty of law that the recipient(s) will not sell, trade, or otherwise exchange any of the allowances and will not use any of the SO_2 Allowances to meet any obligation imposed by any environmental law. The certification must also include a statement that the recipient understands that there are significant penalties for submitting false, inaccurate or incomplete information to the United States.

(C) No later than the third semi-annual report due after the transfer of any SO_2 Allowances, the owner or operator shall include a statement that the third-party recipient(s) Surrendered the SO_2 Allowances for permanent Surrender to EPA in accordance with the provisions of paragraph (k)(4)(ix) within one (1) year after the owner or operator transferred the SO_2 Allowances to them. The owner or operator shall not have complied with the SO_2 Allowance Surrender requirements of subparagraph (k)(4)(viii) until all third-party recipient(s) shall

have actually Surrendered the transferred SO_2 Allowances to EPA.

(viii) For all SO_2 Allowances Surrendered to EPA, the owner or operator or the third-party recipient(s) (as the case may be) shall first submit an SO_2 Allowance transfer request form to the EPA Office of Air and Radiation's Clean Air Markets Division directing the transfer of such SO_2 Allowances to the EPA Enforcement Surrender Account or to any other EPA account that EPA may direct in writing. Such SO_2 Allowance transfer requests may be made in an electronic manner using the EPA's Clean Air Markets Division Business System or similar system provided by EPA. As part of submitting these transfer requests, the owner or operator or the third-party recipient(s) shall irrevocably authorize the transfer of these SO_2 Allowances and identify -- by name of account and any applicable serial or other identification numbers or station names -- the source and location of the SO_2 Allowances being Surrendered.

(5) PM Emission Reduction Requirements

(i) The owner or operator shall operate each FCPP Unit in a manner consistent with good air pollution control practice for minimizing PM emissions, as set forth in paragraph (g). In addition, with respect to FCPP Units 4 and 5, the owner or operator shall, at a minimum, to the extent practicable:

(A) Operate each compartment of the Baghouse for each Unit (except the compartment provided as a spare compartment under the design of the baghouse), regardless of whether those actions are needed to comply with opacity limits;

(B) Repair any failed Baghouse compartment at the next planned Unit outage

(or unplanned outage of sufficient length);

(C) Maintain and replace bags on each Baghouse as needed to achieve the required collection efficiency;

(D) Inspect for and repair during the next planned Unit outage (or unplanned outage of sufficient length) any openings in Baghouse casings, ductwork, and expansion joints to minimize air leakage; and

(E) Ensure that a bag leak detection program is developed and implemented to detect leaks and promptly repair any identified leaks.

(ii) The owner or operator shall Continuously Operate a Baghouse at FCPP Unit 4 and Unit 5 so as to achieve and maintain a filterable PM Emission Rate no greater than 0.0150 lb/MMBtu.

(iii) Once in each calendar year, the owner or operator shall conduct stack tests for PM at FCPP Units 4 and 5. Alternatively, following the installation and operation of PM CEMS as required by paragraph (k)(6), the owner or operator may seek written approval to forego stack testing and instead demonstrate continuous compliance with an applicable filterable PM Emission Rate using CEMS on a 24-hour rolling average basis.

(iv) Unless EPA approves a request to demonstrate continuous compliance using CEMS under paragraph (k)(5)(iii) to determine compliance with the PM Emission Rate established in subparagraph (k)(5)(ii), the owner or operator shall use the reference methods and procedures (filterable portion only) specified in 40 CFR part 60, App. A-3, Method 5, Method 5 as described in subpart UUUUU, Table 5, or App. A-6, Method 17 (provided that Method 17 shall only be used for stack tests

conducted prior to conversion of an FCPP Unit to a Wet Stack), or alternative stack tests or methods that are requested by the owner or operator and approved by EPA. Each test shall consist of three separate runs performed under representative operating conditions not including periods of startup, shutdown, or Malfunction. The sampling time for each run shall be at least 120 minutes and the volume of each run shall be at least 1.70 dry standard cubic meters (60 dry standard cubic feet). The owner or operator shall calculate the PM Emission Rate from the stack test results in accordance with 40 CFR 60.8(f). The results of each PM stack test shall be submitted to EPA and NNEPA within 60 Days of completion of each test.

(v) Once each calendar year, the owner or operator shall conduct a PM stack test for condensable PM at FCPP Units 4 and 5, using the reference methods and procedures set forth at 40 C.F.R. Part 51, Appendix M, Method 202 and as set forth in paragraph (vi). This test shall be conducted under as similar operating conditions and as close in time as reasonably possible as the test for filterable PM in paragraph (k)(5)(iv). Each test shall consist of three separate runs performed under representative operating conditions not including periods of startup, shutdown, or Malfunction. The sampling time for each run shall be at least 120 minutes and the volume of each run shall be at least 1.70 dry standard cubic meters (60 dry standard cubic feet). The owner or operator shall calculate the number of pounds of condensable PM emitted in lb/MMBtu of heat input from the stack test results in accordance with 40 CFR 60.8(f). The results of the PM stack test conducted pursuant to this paragraph shall not be used for the purpose of determining compliance with the PM Emission Rates required by paragraph (k). The results of each PM stack test shall be submitted to

EPA within sixty (60) Days of completion of each test. If EPA approves a request to demonstrate continuous compliance with an applicable PM Emission Rate at a Unit using PM CEMS under paragraph (k)(5)(iii), annual stack testing for condensable PM using the reference methods and procedures set forth at 40 CFR part 51, Appendix M, Method 202 is not required for that Unit.

(6) PM CEMS. (i) The owner or operator shall install, correlate, maintain, and operate a PM CEMS for FCPP Unit 4 and FCPP Unit 5 as specified below. The PM CEMS shall comprise a continuous-particle mass monitor measuring particulate matter concentration, directly or indirectly, on an hourly average basis and a diluent monitor used to convert the concentration to units expressed in lb/MMBtu. The PM CEMS installed at each Unit must be appropriate for the anticipated stack conditions and capable of measuring PM concentrations on an hourly average basis. Each PM CEMS shall complete a minimum of one cycle of operations (sampling, analyzing and data recording) for each successive 15-minute period. The owner or operator shall maintain, in an electronic database, the hourly-average emission values of all PM CEMS in lb/MMBtu. Except for periods of monitor malfunction, maintenance, or repair, the owner or operator shall continuously operate the PM CEMS at all times when the Unit it serves is operating.

(ii) By no later than February 16, 2017, the owner or operator shall ensure that the PM CEMS are installed, correlated, maintained and operated at FCPP Units 4 and 5.

(iii) The owner or operator shall ensure that performance specification tests on the PM CEMS are conducted and shall ensure compliance with the PM CEMS installation plan and QA/QC protocol submitted to and approved by EPA. The PM CEMS shall be operated in accordance with the approved plan and QA/QC protocol.

(iv) The data recorded by the PM CEMS during Unit operation, expressed in lb/MMBtu on a 3-hour, 24-hour, and 30-Day rolling average basis, shall be included in the semiannual report submitted to EPA in electronic format (Microsoft Excel-compatible).

(v) Notwithstanding any other provision of paragraph (k), exceedances of the PM Emission Rate that occur as a result of detuning emission controls as required to achieve the high-level PM test runs during the correlation testing shall not be considered a violation of the requirements of this section provided that the owner or operator made best efforts to keep the high-level PM test runs during such correlation testing below the applicable PM Emission Rate.

(vi) Stack testing conducted pursuant to paragraph (k)(5)(iv) shall be the compliance method for the PM Emission Rates established by paragraph (k)(5), unless EPA approves a request under paragraph (k)(5)(iii), in which case PM CEMS shall be used to demonstrate continuous compliance with an applicable PM Emission Rate on a 24-hour rolling average basis. Data from PM CEMS shall be used, at a minimum, to monitor progress in reducing PM emissions on a continuous basis.

(7) Reporting. The owner or operator shall submit all notifications, petitions, and reports under paragraph (k), unless otherwise specified, to EPA and NNEPA in accordance with paragraph (f).

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