ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, and 60

[EPA–HQ–OAR–2017–0355; FRL–9982–89–OAR]

RIN 2060–AT67

Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing three distinct actions, including Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs). First, EPA is proposing to replace the Clean Power Plan (CPP) with revised emissions guidelines (the Affordable Clean Energy (ACE) rule) that inform the development, submittal, and implementation of state plans to reduce greenhouse gas (GHG) emission from certain EGUs. In the proposed emissions guidelines, consistent with the interpretation described in the proposed repeal of the CPP, the Agency is proposing to determine that heat rate improvement (HRI) measures are the best system of emission reduction (BSER) for existing coal-fired EGUs. Second, EPA is proposing new regulations that provide direction to both EPA and the states on the implementation of emission guidelines. The new proposed implementing regulations would apply to this action and any future emission guideline issued under section 111(d) of the Clean Air Act (CAA). Third, the Agency is proposing revisions to the New Source Review (NSR) program that will help prevent NSR from being a barrier to the implementation of efficiency projects at EGUs.

DATES:

Comments. Comments must be received on or before October 30, 2018. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before October 1, 2018.

Public hearing: EPA is planning to hold at least one public hearing in response to this proposed action. Information about the hearing, including location, date, and time, along with instructions on how to register to speak at the hearing, will be published in a second **Federal Register** document.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2017–0355, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* See **SUPPLEMENTARY INFORMATION** for detail about how EPA treats submitted comments. *Regulations.gov* is our preferred method of receiving comments.[1] However, other submission methods are accepted:

- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2017–0355 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2017–0355.
- *Mail:* To ship or send mail via the United States Postal Service, use the following address: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2017–0355, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* Use the following Docket Center address if you are using express mail, commercial delivery, hand delivery, or courier: EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. Delivery verification signatures will be available only during regular business hours.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Mr. Nicholas Swanson, Sector Policies and Programs Division (Mail Code D205–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4080; fax number: (919) 541–4991; and email address: *swanson.nicholas@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket. EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2017–0355. All documents in the docket are listed in *Regulations.gov.* Although listed, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2017–0355. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. This type of information should be submitted by mail as discussed below.

EPA may publish any comment received to its public docket. 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. 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov* website allows you to submit your comments anonymously, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any

[1] Comments submitted on the proposed repeal will be considered in the promulgation of this rulemaking so there is no need to resubmit comments that have already been timely submitted.

of existing sources than we believe biomass to be at this time).

Certain kinds of biomass, including that from managed forests, have the potential to offer a wide range of economic and environmental benefits, including carbon benefits. However, these benefits can typically only be realized if biomass feedstocks are sourced responsibly, which can include ensuring that forest biomass is not sourced from lands converted to non-forest uses. States that intend to propose the use of forest-derived biomass for compliance by affected units may refer to EPA's April 2018 statement on its intended treatment of biogenic CO_2 emissions from stationary sources that use forest biomass for energy production.[34] [35] As discussed in the recent statement, EPA's policy is to treat biogenic CO_2 emissions resulting from the combustion of biomass from managed forests at stationary sources for energy production as carbon neutral.36 EPA will continue to evaluate the applicability of this policy of treating forest-biomass derived biogenic CO_2 as carbon neutral based on relevant information, including data from interagency partners on updated trends in forest carbon stocks.

EPA solicits comments on the inclusion of forest-derived biomass as a compliance option for affected units to meet state plan standards under this rule (Comment C–20). The Agency also solicits comment on the inclusion of non-forest biomass (*e.g.*, agricultural, waste stream-derived) for energy production as a compliance option, and what value to attribute to the biogenic CO_2 emissions associated with non-forest biomass feedstocks (Comment C–21). EPA recognizes that CCS technology (described above in this section) could be applied in conjunction with biomass use.

1. State Discretion To Consider Remaining Useful Life and Other Factors in Setting Standards of Performance

Section 111(d)(1) requires that EPA's regulations must permit states to take into account, among other factors, an affected source's remaining useful life when establishing an appropriate standard of performance. In other words, Congress explicitly envisioned under section 111(d)(1) that states could implement standards of performance that vary from EPA's emission guidelines under appropriate circumstances.

Congress explicitly mentions consideration of remaining useful life in 111(d). Ultimately remaining useful life impacts cost. When EPA develops a BSER, EPA typically considers factors such as cost relative to assumptions about a typical unit. If the remaining useful life of a particular unit is less, that will generally increase the cost of control because the time to amortize capital costs is less. When congress mentions other factors, EPA believes that these are generally other factors that may substantially increase costs relative to a more typical unit.

As such, EPA is proposing, as part of the proposed implementing regulations, to permit states to take into account remaining useful life, among other factors, in establishing a standard of performance for a particular affected source, consistent with section 111(d)(1)(B). EPA solicits comments on the manner in which states should be permitted to exercise their statutory authority to take into account remaining useful life and on what "other factors" might appropriately be besides remaining useful life (Comment C–22). As described in Section VII.F., EPA further proposes as part of the new implementing regulations that the following factors give meaning to section 111(d)(1)(B):

- Unreasonable cost of control resulting from plant age, location, or basic process design;
- Physical impossibility of installing necessary control equipment; or

Other factors specific to the facility (or class of facilities) that make application of a less stringent standard or final compliance time significantly more reasonable. Given that there are unique attributes and aspects of each affected source, there are important factors that influence decisions to invest in technologies to meet a potential performance standard. These include timing considerations like expected life of the source, payback period for investments, the timing of regulatory requirements, and other unit-specific criteria. The state may find that there are space or other physical barriers to implementing certain HRIs at specific units. Or the state may find that some heat rate improvement options are either not applicable or have already been implemented at certain units. EPA understands that many of these "other factors" that can affect the application of the BSER candidate technologies distill down to a consideration of cost. Applying a specific candidate technology at an affected EGU can be a unit-by-unit determination that weighs the value of both the cost of installation and the CO_2 reductions. Accordingly, EPA proposes that these factors are the types that are specific to the facility (or class of facilities) that make a variance from the emission guideline significantly more reasonable, as allowed under proposed 40 CFR 60.24a(e)(3). EPA, therefore, proposes to allow states to take these factors into account in establishing a standard of performance for state plans in response to this emission guideline. EPA further solicits comments on what are other factors that states should be allowed to consider in establishing a standard of performance, per the proposed variance provision (Comment C–23).

As previously described, EPA proposes that states that utilize the proposed variance provision in the new implementing regulations to establish a less stringent standard of performance for an affected EGU and/or a compliance schedule that is longer than that contemplated in EPA's final emission guideline must demonstrate as part of their state plan submission that such application of the provision meets the criteria described in the factors in Section VII.D. EPA also recognizes that for some sources, the criteria may result in determining that no measures in the candidate technologies are applicable. Two examples of this might be a unit with a very short remaining useful life or a unit that has already implemented all of the candidate technologies of the BSER. In cases such as these, a state should still establish a standard of performance. In the case of a unit with a short remaining useful life, EPA takes comment on what such a standard might look like (Comment C–24). For instance, a state could set a standard using both an emission rate and a compliance deadline to address this instance. The emission standard would only be applicable if a source did not shut down by the compliance deadline. In the case of an affected EGU that has already implemented all of the candidate technologies, EPA would expect that a state set a standard of performance that would reflect an emission rate that is at least as stringent as "business as usual" for that source without allowing for any backsliding on performance. EPA requests comment on these proposed treatments of a source that either has a short remaining useful

[34] *https://www.epa.gov/sites/production/files/2018-04/documents/biomass_policy_statement_2018_04_23.pdf.*

[35] This policy statement aligns with provisions in the Consolidated Appropriations Act, 2018, which calls for EPA, the Department of Energy and the Department of Agriculture to establish policies that, consistent with their missions, jointly "reflect the carbon-neutrality of forest bioenergy and recognize biomass as a renewable energy source, provided the use of forest biomass for energy production does not cause conversion of forests to non-forest use." *https://www.congress.gov/115/bills/hr1625/BILLS-115hr1625enr.pdf.*