(g) *Equipment Operations.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the Plant including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the Plant. With regard to the operation of the baghouses on Units 4 and 5, placing the baghouses in service before coal fires are initiated will constitute compliance with this paragraph. (If the baghouse inlet temperature cannot achieve 185 degrees Fahrenheit using only gas fires, the owner or operator will not be expected to place baghouses in service before coal fires are initiated; however, the owner or operator will remain subject to the requirements of this paragraph.)

(h) *Enforcement.* (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant to whether the Plant would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard in the plan.

(2) During periods of startup and shutdown the otherwise applicable emission limits or requirements for opacity and particulate matter shall not apply provided that:

(i) At all times the facility is operated in a manner consistent with good practice for minimizing emissions, and the owner or operator uses best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limit;

(ii) The frequency and duration of operation in start-up or shutdown mode are minimized to the maximum extent practicable; and

(iii) The owner or operator's actions during start-up and shutdown periods are documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(3) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit. However, it shall be an affirmative defense in an enforcement action seeking penalties if the owner or operator has met with all of the following conditions:

(i) The malfunction was the result of a sudden and unavoidable failure of process or air pollution control equipment or of a process to operate in a normal or usual manner;

(ii) The malfunction did not result from operator error or neglect, or from improper operation or maintenance procedures;

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iv) Steps were taken in an expeditious fashion to correct conditions leading to the malfunction, and the amount and duration of the excess emissions caused by the malfunction were minimized to the maximum extent practicable;

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(vi) All emissions monitoring systems were kept in operation if at all possible; and

(vii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

[FR Doc. E6–15097 Filed 9–11–06; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 49

**[EPA–R09–OAR–2006–0185; FRL–8218–6]**

## Source-Specific Federal Implementation Plan for Navajo Generating Station; Navajo Nation

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to promulgate a source-specific Federal Implementation Plan (FIP) to regulate emissions from the Navajo Generating Station (NGS), a coal-fired power plant located on the Navajo Indian Reservation near Page, Arizona.

**DATES:** Any comments on this proposal must arrive by November 6, 2006.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2006–0185, by one of the following methods:

(1) *Federal eRulemaking portal: http://www.regulations.gov.* Follow the on-line instructions.

(2) *E-mail: rosen.rebecca@epa.gov.*

(3) *Mail or deliver:* Rebecca Rosen (AIR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Rosen, EPA Region IX, (415) 947–4152, *rosen.rebecca@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

**Table of Contents**

## I. Background

### *A. Action*

In today's action, EPA proposes to promulgate a FIP to establish Federally enforceable emissions limitations for total particulate matter (PM) and sulfur dioxide ($SO_2$) applicable to the NGS. The FIP also proposes Federally enforceable emissions limitations for opacity and control measures for dust.

### *B. Facility*

NGS is a coal-fired power plant located on the Navajo Indian Reservation, just east of Page, Arizona, approximately 135 miles north of Flagstaff, that is owned and operated by Salt River Project (SRP). Through lease agreements, the facility utilizes real property held in trust by the Federal government for the Navajo Nation. The facility operates three units, each with a capacity of 750 megawatts (MW) net generation. The total capacity of the facility is 2250 MW. Operations at the facility produce emissions of sulfur dioxide, nitrogen dioxide, and particulate matter.

### *C. Attainment Status*

NGS is located in the Northern Arizona Intrastate air quality control region (AQCR), which is designated unclassifiable for all criteria pollutants under the Clean Air Act (CAA or ''the Act''). See 40 CFR 81.303. The proposed NGS FIP establishes Federally enforceable emissions limitations that are more stringent than, or at least as stringent as, the emissions limitations with which NGS has historically complied. Therefore, EPA believes that air quality in this area will be positively impacted by this action.

### *D. Visibility FIP*

In 1987, EPA issued a visibility FIP for the state of Arizona addressing reasonably attributable visibility impairment.[1] 52 FR 45132 (November 24, 1987). Following a report issued by the National Park Service that identified NGS as a source of visibility impairment in the Grand Canyon National Park, EPA preliminarily determined that visibility impairment at the Grand Canyon was reasonably attributable to emissions of $SO_2$ from NGS. See 54 FR 36948 (September 5, 1989). Under the visibility regulations, such impairment must be addressed in accordance with 40 CFR 51.302(c), which sets forth measures for achieving reasonable progress, including best available retrofit technology (BART). Id. In 1991, EPA revised the visibility FIP for the state of Arizona to include an $SO_2$ emission limit for NGS to remedy visibility impairment in the Grand Canyon National Park that was reasonably attributable to NGS. 56 FR 50172 (October 3, 1991), codified at 40 CFR 52.145. Under the 1991 visibility FIP, NGS was required to phase-in compliance with the $SO_2$ emission limit, by installing scrubbers in 1997, 1998, and 1999. 40 CFR 52.145(d)(7). In establishing the $SO_2$ emission limit for NGS, which includes a higher level of control than that proposed as BART, EPA determined that the FIP would provide for greater reasonable progress toward the national visibility goal than implementation of BART. 56 FR 50172.

The 1991 visibility FIP is not being amended or changed by today's action. The visibility FIP remains in full force and effect and this rulemaking does not provide an opportunity for public comment or judicial review of EPA's earlier actions promulgating the 1991 visibility FIP.

### *E. Historical Overview of NGS FIP Actions*

When the Clean Air Act was amended in 1990, Congress included a new provision, Section 301(d), granting EPA authority to treat Tribes in the same manner as States where appropriate. See 40 U.S.C. 7601(d). In 1998, EPA promulgated regulations known as the Tribal Authority Rule (TAR). See 40 CFR parts 9, 35, 49, 50 and 81, 63 FR 7254 (February 12, 1998). EPA's promulgation of the TAR clarified, among other things, that State air quality regulations generally do not, under the Clean Air Act, apply to facilities located anywhere within the exterior boundaries of Indian reservations. See 63 FR at 7254, 7258 (noting that unless a state has explicitly demonstrated its authority and been expressly approved by EPA to implement Clean Air Act programs in Indian country, EPA is the appropriate entity to implement Clean Air Act programs prior to tribal primacy), *Arizona Public Service Company* v. *E.P.A.*, 211 F.3d 1280 (D.C. Cir. 2000), cert. denied sub nom, *Michigan* v. *E.P.A.*, 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).

Prior to the addition of Section 301(d) and promulgation of the TAR, some States had mistakenly included emissions limitations in their State Implementation Plans (SIPs) which they may have believed could apply under the Clean Air Act to private facilities operating on adjacent Indian reservations. Such was the case for NGS. The SIP for Arizona, and permits issued pursuant to the SIP, contained emissions limitations purported to apply to NGS and with which NGS was complying.

However, EPA recognized that Arizona's SIP emissions limits do not apply to NGS under the Clean Air Act, and on September 8, 1999, EPA proposed a source-specific FIP for NGS. See 64 FR 48725 (September 8, 1999). The 1999 proposed FIP stated: ''Although the facility has been historically regulated by Arizona since its construction, the state lacks jurisdiction over the facility or its owners or operations for CAA compliance or enforcement purposes.'' EPA intended for the 1999 NGS FIP to ''Federalize'' the emissions limitations that Arizona had erroneously included in its State Implementation Plan. 64 FR at 48727. EPA received comments on the proposed 1999 FIP but did not take action finalizing the proposal.

Today's proposed rule would promulgate Federally enforceable emissions limits for PM and $SO_2$. The 1991 visibility FIP includes an $SO_2$ emission limit for the NGS that is more stringent than the emissions limitation for $SO_2$ set out in today's proposed rule. However, the $SO_2$ limit included in today's proposed rule is a short-term emissions limit, unlike the annual emissions limit in the 1991 visibility FIP.

EPA is also proposing to establish an emissions limitation for opacity and a requirement for control measures to

[1] On December 2, 1980, EPA issued regulations addressing visibility impairment that is traceable or ''reasonably attributable'' to a single source or small group of sources. 45 FR 80084, codified at 40 CFR parts 300–307. These regulations required a number of States to submit State Implementation Plans (SIPs) no later than September 2, 1981. Most States, including Arizona, failed to submit SIPs as called for by the regulations.

limit dust emissions. In addition, the proposed FIP contains $NO_X$ and $SO_2$ emissions limitations that apply to NGS as part of the Acid Rain program, which was also added when the Clean Air Act was amended in 1990.

## II. Basis for Proposed Action

*EPA's Authority To Promulgate a FIP in Indian Country*

As mentioned above, States generally lack authority to administer Clean Air Act programs in Indian country. See *Alaska* v. *Native Village of Venetie Tribal Government,* 533 U.S. 520, 526 n.1 (1998). In the preamble to the proposed and final 1998 TAR, EPA discusses generally the legal basis under the CAA by which EPA is authorized to regulate sources of air pollution in Indian country. See 59 FR 43956; 63 FR 7253. EPA concluded that the CAA authorizes EPA to protect air quality throughout Indian country. See 63 FR 7262; 59 FR 43960–43961 (citing, among other things, to CAA sections 101(b)(1), 301(a), and 301(d)). In fact, in promulgating the TAR, EPA specifically provided that, pursuant to the discretionary authority explicitly granted to EPA under sections 301(a) and 301(d)(4) of the Act, 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.'' See 63 FR at 7273 (codified at 40 CFR 49.11(a)).[2]

Since there is not currently an approved Implementation Plan covering NGS, a regulatory gap exists with regard to this facility. EPA is thus proposing to remedy this gap with a source-specific FIP. This FIP will establish Federally enforceable emissions limits for PM, $SO_2$, and opacity, and control measures for dust.

Therefore, in this proposed FIP, EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate a FIP to remedy an existing regulatory gap under the Act with respect to NGS. EPA's FIP will establish Federally enforceable emissions limits applicable to NGS to provide for maintenance of the national ambient air quality standards. Given the magnitude of the emissions from the plant, EPA believes that the proposed FIP provisions are necessary or appropriate to protect air quality on the Reservation.

## III. Navajo Generating Station Facility Description

NGS is a 2250 MW (net generation) coal-fired power plant located on the Navajo Indian Reservation near Page, Arizona. NGS is a baseload generating station consisting of three 750 MW (net generation) units which became operational between 1974 and 1976. SRP is the operating agent for NGS, which is jointly owned by SRP, the Los Angeles Department of Water and Power, the Arizona Public Service, the Nevada Power Company, and the Tucson Electric Power Company. Existing pollution control equipment at NGS includes electrostatic precipitators for PM removal and burners specifically designed for $NO_X$ control. Furthermore, to meet the emission limits in the 1991 visibility FIP, NGS installed limestone wet scrubbers on each unit to reduce $SO_2$ emissions by 90%. These scrubbers are now fully operational. Compliance with the $SO_2$ emission limit in the 1991 visibility FIP is determined on a plant-wide annual rolling average basis. See 40 CFR 52.145.

## IV. Summary of FIP Provisions

*A. Proposed FIP Standards*

1. EPA is proposing to limit particulate matter at 0.060 pounds per million british thermal units (lbs/MMbtu), determined by averaging the results of at least three sampling runs, each at minimum 60 minutes in duration, each collecting a minimum sample of 30 dry standard cubic feet, on a plant-wide basis. The Arizona particulate emissions standard was changed from $17.0\ Q^{0.4320}$ pounds per hour (where Q is million BTU per hour) to 0.060 pounds per million BTU because this standard is a generally recognized form for the particulate standard and it is more reliably measured.[3]

The FIP we are proposing specifically states that the particulate standard will be measured on a plant-wide basis. Although the Arizona permit did not state this explicitly, this was the way that Arizona determined compliance at the NGS historically.

2. Opacity from each unit is limited to 20% averaged over any normal six (6) minute period, excluding condensed water vapor, and 40% opacity, averaged over six (6) minutes, during absorber upset transition periods. The proposed opacity standard specifically excludes condensed water vapor. NGS has opacity monitors on each of its stacks; condensed water vapor, which will be present in all stacks because of the $SO_2$ scrubbers, causes inaccurate excess emission readings on the opacity monitors. Therefore, excess opacity due to condensed water vapor in the stack does not constitute a reportable exceedance.

3. $SO_2$ emissions are limited to 1 lb/MMbtu averaged over a three-hour period, on a plant-wide basis.[4] The method of compliance determination has been changed from one based on the sulfur content of coal to one based on continuous emission monitoring (CEM). We are making this change not only because the facility has experienced difficulty with the analysis of the sulfur content of coal, but because the Federal acid rain regulations require CEM monitoring, which is generally recognized as being more accurate and precise than monitoring the sulfur content of coal.

NGS previously complied with the limit of 1 lb/MMbtu on a per-unit basis by using very low sulfur coal. Because NGS has now installed scrubbers to comply with the 1991 visibility FIP, however, NGS will be able to comply with its short-term limits by removing sulfur from the exhaust stream. This will allow NGS to purchase slightly higher sulfur coal; additionally, the plant-wide average allows one scrubber to be down for periodic maintenance (lasting usually 30 to 40 days) without requiring the purchase of specific low sulfur coal for use during the maintenance. Nevertheless, the actual $SO_2$ emissions from NGS will remain 90% lower on an annual basis than they were before the scrubbers were installed to comply with the 1991 visibility FIP. To ensure, however, that NGS continues to meet this limit, we are proposing to include the 1 lb/MMbtu 3 hour average limit in today's FIP. With the scrubbers in place, the plantwide hourly

[2] In the preamble to the final TAR, 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 EPA to promulgate a FIP within two years after EPA finds a state has failed to submit a complete state plan or within two years after EPA disapproval of a state plan. Although EPA is not required to promulgate a FIP within the two-year period for Tribes, EPA promulgated 40 CFR 49.11(a) to clarify that 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 7264–7265.

[3] Using EPA Region 9's policy of conducting emissions tests at 90 percent to 100 percent of the facility's full load, the original equation in the Arizona State Implementation Plan (SIP) yields estimated allowable emissions of between 0.057 and 0.061 pounds per million BTU. Thus, a limit of 0.060 lb/MMbtu is appropriate.

[4] This emissions limit for $SO_2$ was previously established in the Arizona State Implementation Plan.

emissions (tons per hour) will always be less than under the prior state limit, since at least one unit with its scrubber operating and removing $SO_2$ will be needed to meet the plantwide $SO_2$ three hour limit.

4. Opacity is limited to 20 percent averaged over a six minute period for dust from emissions associated with coal transfer and storage and other dust-generating activities. NGS is required to submit a description of the dust control measures.

*B. Other Requirements*

All periods of excess emissions are violations of the emission limitation. This rule does, however, provide NGS with an affirmative defense to enforcement actions for penalties brought for excess emissions that arise during certain startup, shutdown, and malfunction episodes. As explained in EPA's excess emissions policy [5], affirmative defenses must be restricted to malfunctions that are sudden, unavoidable, and unpredictable. In addition, NGS must have taken all possible steps to minimize excess emissions. This rule accordingly requires an owner or operator to meet several conditions to qualify for an affirmative defense. An affirmative defense is not available to NGS if, during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to NGS.

*C. Compliance Schedule*

EPA proposes that the requirements contained in this proposal become effective upon final promulgation of these regulations.

## V. Other Requirements for NGS

*A. Visibility FIP*

Under the 1991 visibility FIP, $SO_2$ emissions are limited to 0.1 lb/MMbtu on a plant-wide (all units, either in operation or not) rolling annual basis. NGS installed scrubbers, operable on all three units, by February 1999.

The $SO_2$ scrubbers substantially lower the $SO_2$ emissions from NGS. When the scrubbers are operating, $SO_2$ emissions are less than 0.1 lbs/MMbtu. However, we note that compliance with the $SO_2$ emission limits is determined based on an annual average, as this was determined to be protective of visibility in the Grand Canyon. These provisions are not being amended or changed by today's action.

[5] ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999)(the Excess Emissions Policy).

*B. Acid Rain Program Requirements*

NGS is subject to the Federal Acid Rain requirements under title IV of the Clean Air Act. NGS elected to comply early as a Phase I $NO_X$ facility which means NGS currently has a $NO_X$ limit of 0.45 lbs/MMbtu, per unit, on an annual basis. This limit applies until 2008, when it will be lowered to 0.40 lbs/MMbtu.

## VI. Solicitation of Comments

The EPA solicits comments on all aspects of today's proposal to promulgate a FIP to regulate air emissions from NGS. Interested parties should submit comments to the address listed in the front of this proposed rule. Public comments postmarked by November 6, 2006 will be considered in the final action taken by EPA.

## VII. Administrative Requirements

*A. Executive Order 12866*

Under Executive Order (E.O.) 12866, 58 FR 51735 (October 4, 1993), all ''regulatory actions'' that are ''significant'' are subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. A ''regulatory action'' is defined as ''any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to result in the promulgation of a final rule or regulation, including* * * notices of proposed rulemaking.'' A ''regulation or rule'' is defined as ''an agency statement of general applicability and future effect,* * * .''

The proposed FIP is not subject to OMB review under E.O. 12866 because it applies to only a single, specifically named facility and is therefore not a rule of general applicability. Thus, it is not a ''regulatory action'' under E.O. 12866.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., EPA must prepare a regulatory flexibility analysis to assess the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. The Federal implementation plan for the Navajo Generating Station proposed today does not impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985)(agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Therefore, pursuant to 5 U.S.C. 605(b), EPA certifies that today's action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

*C. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and for final rules for which EPA published a notice of proposed rulemaking, if those rules contain ''Federal mandates'' that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If section 202 requires a written statement, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Regional Administrator publishes with the final rule an explanation why EPA did not adopt that alternative. The provisions of section 205 do not apply when they are inconsistent with applicable law. Section 204 of UMRA requires EPA to develop a process to allow elected officers of state, local, and tribal governments (or their designated, authorized employees), to provide meaningful and timely input in the development of EPA regulatory proposals containing significant Federal intergovernmental mandates.

EPA has determined that the proposed FIP contains no Federal mandates on state, local or tribal governments, because it will not impose any additional enforceable duties on any of these entities. EPA further has determined that the proposed FIP is not likely to result in the expenditure of $100 million or more by the private sector in any one year. Although the proposed FIP imposes enforceable duties on an entity in the private sector, the costs are expected to be minimal. Consequently, sections 202, 204, and 205 of UMRA do not apply to the proposed FIP.

Before EPA establishes any regulatory requirements that might significantly or

uniquely affect small governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed FIP will not significantly or uniquely affect small governments, because it imposes no requirements on small governments. Therefore, the requirements of section 203 do not apply to the proposed FIP. Nonetheless, EPA worked closely with representatives of the Tribe in the development of today's proposed action.

*D. Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *.'' 44 U.S.C. 3502(3)(A). Because the proposed FIP only applies to one company, the Paperwork Reduction Act does not apply.

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

The NGS FIP is not subject to Executive Order 13045 because it implements previously promulgated health or safety-based Federal standards. Executive Order 13045 applies to any rule that: (1) Is determined to be ''economically significant'' as that term is defined in E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation.

*F. Executive Order 12875: Enhancing the Intergovernmental Partnership*

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and EPA's position supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

As stated above, the proposed FIP will not create a mandate on state, local or tribal governments because it will not impose any additional enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule. Nonetheless, EPA worked closely with representatives of the Tribe during the development of today's proposed action.

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

Under Executive Order 13175, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13175 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13175 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

The proposed FIP does not impose substantial direct compliance costs on the communities of Indian tribal governments. The proposed FIP imposes obligations only on the owner or operator of NGS. Accordingly, the requirements of section 3(b) of Executive Order 13175 do not apply to this rule. As discussed above, EPA worked closely with representatives of the Tribe during the development of today's proposed action.

*H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12 (10 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (VCS) are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA Performance Specification 1 (see 40 CFR part 60, Appendix B) for the opacity monitoring for this facility is a consensus standard. It was promulgated on August 10, 2000.

With regard to the remaining measurement needs as listed below, there are a number of voluntary consensus standards that appear to have possible use in lieu of the EPA test methods and Performance Specifications (40 CFR part 60, Appendices A and B) noted next to the measurement requirements. It would not be practical to specify these standards in the current rulemaking due to a lack of sufficient data on equivalency and validation and because some are still under development. However, EPA's Office of Air Quality Planning and Standards is in the process of reviewing all available VCS for incorporation by reference into the test methods and performance specifications of 40 CFR part 60, Appendices A and B. Any VCS so incorporated in a specified test method

or performance specification would then be available for use in determining the emissions from this facility. This will be an ongoing process designed to incorporate suitable VCS as they become available.

*Particulate Matter Emissions*—EPA Methods 5 or 17.

*Opacity*—EPA Method 9 and Performance Specification Test 1 for Opacity Monitoring.

$SO_2$—EPA Method 6C and Performance Specification 2 for Continuous $SO_2$ Monitoring.

**List of Subjects in 40 CFR Part 49**

Environmental protection, Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 30, 2006.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

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

## PART 49—[AMENDED]

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

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

2. Part 49 is proposed to be amended by adding § 49.20 to read as follows:

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

(a) *Applicability*. The provisions of this section shall apply to each owner or operator of the fossil fuel-fired, steam-generating equipment designated as Units 1, 2, and 3, and the two auxiliary steam boilers at the Navajo Generating Station (NGS) on the Navajo Nation located in the Northern Arizona Intrastate Air Quality Control Region (see 40 CFR 81.270).

(b) *Compliance Dates.* Compliance with the requirements of this section is required upon the effective date of this section.

(c) *Definitions.* For the purposes of this section:

(1) *Absorber upset transition period* means the 24-hour period following an upset of an $SO_2$ absorber mode.

(2) *Affirmative defense* means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding. This rule provides an affirmative defense to actions for penalties brought for excess emissions that arise during certain malfunction episodes.

(3) *Malfunction* means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions. An affirmative defense is not available if during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to the emitting source.

(4) *Owner or Operator* means any person who owns, leases, operates, controls or supervises the NGS, any of the fossil fuel-fired, steam-generating equipment at the NGS, or the auxiliary steam boilers at the NGS.

(5) *Plant-wide* means a weighted average of particulate matter and $SO_2$ emissions for Units 1, 2, and 3 based on the heat input to each unit as determined by 40 CFR part 75.

(6) *Point source* means any crusher, any conveyor belt transfer point, any pneumatic material transferring, any baghouse or other control devices used to capture dust emissions from loading and unloading, and any other stationary point of dust that may be observed in conformance with Method 9 (excluding stockpiles).

(7) *Regional Administrator* means the Regional Administrator of the Environmental Protection Agency Region 9 or his/her authorized representative.

(8) *Startup* shall mean the period from start of fires in the boiler with fuel oil, to the time when the electrostatic precipitator is sufficiently heated such that the temperature of the air preheater inlet reaches 400 degrees Fahrenheit and startup ends when a unit reaches 300 MW net load. Proper startup procedures shall include energizing the electrostatic precipitator prior to the combustion of coal in the boiler. This rule provides an affirmative defense to actions for penalties brought for excess emissions that arise during startup episodes. An affirmative defense is not available if during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to the emitting source.

(9) *Shutdown* shall be the period from cessation of coal fires in the boiler until the electrostatic precipitator is de-energized. Shutdown begins when the unit drops below 300 MW net load with the intent to remove the unit from service. The precipitator shall be maintained in service until boiler fans are disengaged. This rule provides an affirmative defense to actions for penalties brought for excess emissions that arise during shutdown episodes. An affirmative defense is not available if during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to the emitting source.

(10) *Oxides of nitrogen ($NO_X$)* means the sum of nitrogen oxide (NO) and nitrogen dioxide ($NO_2$) in the flue gas, expressed as nitrogen dioxide.

(d) *Emissions Limitations and Control Measures.*

(1) *Sulfur Oxides.* No owner or operator shall discharge or cause the discharge of sulfur oxides into the atmosphere from Units 1, 2 or 3 in excess of 1.0 pound per million British thermal units (lb/MMBtu) averaged over any three (3) hour period, on a plant-wide basis.

(2) *Particulate Matter.* No owner or operator shall discharge or cause the discharge of particulate matter into the atmosphere in excess of 0.060 lb/MMBtu, as averaged from at least three sampling runs, each at minimum 60 minutes in duration, each collecting a minimum sample of 30 dry standard cubic feet, on a plant-wide basis.

(3) *Dust.* Each owner or operator shall operate and maintain the existing dust suppression methods for controlling dust from the coal handling and storage facilities. Within ninety (90) days after promulgation of these regulations the owner or operator shall submit to the Regional Administrator a description of the dust suppression methods for controlling dust from the coal handling and storage facilities, fly ash handling and storage, and road sweeping activities. Each owner or operator shall not emit dust with an opacity greater than 20% from any crusher, grinding mill, screening operation, belt conveyor, truck loading or unloading operation, or railcar unloading station.

(4) *Opacity.* No owner or operator shall discharge or cause the discharge of emissions from the stacks of Units 1, 2, or 3 into the atmosphere exhibiting greater than 20% opacity, excluding condensed water vapor, averaged over any normal six (6) minute period and 40% opacity, averaged over six (6) minutes, during absorber upset transition periods.

(e) *Testing and Monitoring.* (1) Effective sixty (60) days after promulgation of this section, the owner or operator shall maintain and operate Continuous Emissions Monitoring Systems (CEMS) for $NO_X$ and $SO_2$ and Continuous Opacity Monitoring Systems (COMS) on Units 1,2, and 3 in

accordance with 40 CFR 60.8 and 60.13(e), (f), and (h), and Appendix B of Part 60. The owner or operator shall comply with the quality assurance procedures for CEMS and COMS found in 40 CFR part 75, or 40 CFR part 60, whichever is more stringent.

(2) The owner or operator shall conduct annual mass emissions tests for particulate matter on Units 1, 2, and 3, operating at rated capacity, using coal that is representative of that normally used. The tests shall be conducted using the appropriate test methods in 40 CFR part 60, Appendix A.

(3) Within 90 days after promulgation of this section, the owner or operator shall conduct initial mass emissions tests for sulfur dioxide, nitrogen oxides and particulate matter on the two auxiliary steam boilers, operating at rated capacity, using oil that is representative of that normally used. Thereafter, the tests shall be conducted annually from the promulgation date of this rule or after 720 hours of operation, whichever is later. The tests shall be conducted using the appropriate test methods in 40 CFR part 60, Appendix A. For particulate matter, testing shall consist of three test runs. Each test run shall be at least sixty (60) minutes in duration and shall collect a minimum volume of thirty (30) dry standard cubic feet.

(4) The owner or operator shall maintain two sets of opacity filters for each type of COMS, one set to be used as calibration standards and one set to be used as audit standards. At least one set of filters shall be on site at all times.

(5) All emissions testing and monitor evaluation required pursuant to this section shall be conducted in accordance with the appropriate method found in 40 CFR part 60, Appendices A and B.

(6) The owner or operator shall install, maintain and operate ambient monitors at Glen Canyon Dam for particulate matter ($PM_{2.5}$ and $PM_{10}$), nitrogen dioxide, sulfur dioxide, and ozone. Operation, calibration and maintenance of the monitors shall be performed in accordance with 40 CFR part 58, manufacturer's specification, and ''Quality Assurance Handbook for Air Pollution Measurements Systems'', Volume II, U.S. EPA as applicable to single station monitors. Data obtained from the monitors shall be reported annually to the Regional Administrator. All particulate matter samplers shall operate at least once every six days, coinciding with the national particulate sampling schedule.

(7) Nothing herein shall limit EPA's ability to ask for a test at any time under section 114 of the Clean Air Act, 42 U.S.C. 7413, and enforce against any violation of the Clean Air Act or this section.

(f) *Reporting and Recordkeeping Requirements.* Unless otherwise stated all requests, reports, submittals, notifications and other communications to the Regional Administrator required by this section shall be submitted to the Director, Navajo Environmental Protection Agency, P.O. Box 339, Window Rock, Arizona 86515, (928) 871–7692, (928) 871–7996 (facsimile), and to the Director, Air Division, U.S. Environmental Protection Agency, Region IX, to the attention of Mail Code: AIR–5, at 75 Hawthorne Street, San Francisco, California 94105, (415) 972–3990, (415) 947–3579 (facsimile). For each unit subject to the emissions limitations in this section the owner or operator shall:

(1) Comply with the notification and recordkeeping requirements for testing found in 40 CFR 60.7. All data/reports of testing results shall be submitted to the Regional Administrator and postmarked within 60 days of testing.

(2) For excess emissions, notify the Navajo Environmental Protection Agency Director and the U.S. Environmental Protection Agency Regional Administrator by telephone or in writing within one business day. This notification should be sent to the Director, Navajo Environmental Protection Agency, by mail to: P.O. Box 339, Window Rock, Arizona 86515, or by facsimile to: (928) 871–7996 (facsimile), and to the Regional Administrator, U.S. Environmental Protection Agency Region 9, by mail to the attention of Mail Code: AIR–5, at 75 Hawthorne Street, San Francisco, California 94105, by facsimile to: (415) 947–3579 (facsimile), or by e-mail to: *r9.aeo@epa.gov*. A complete written report of the incident shall be submitted to the Regional Administrator within ten (10) working days after the event. This notification shall include the following information:

(i) The identity of the stack and/or other emissions points where excess emissions occurred;

(ii) The magnitude of the excess emissions expressed in the units of the applicable emissions limitation and the operating data and calculations used in determining the magnitude of the excess emissions;

(iii) The time and duration or expected duration of the excess emissions;

(iv) The identity of the equipment causing the excess emissions;

(v) The nature and cause of such excess emissions;

(vi) If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of such malfunction; and

(vii) The steps that were taken or are being taken to limit excess emissions.

(3) Notify the Regional Administrator verbally within one business day of determination that an exceedance of the NAAQS has been measured by a monitor operated in accordance with this regulation. The notification to the Regional Administrator shall include the time, date, and location of the exceedance, and the pollutant and concentration of the exceedance. The verbal notification shall be followed within fifteen (15) days by a letter containing the following information:

(i) The time, date, and location of the exceedance;

(ii) The pollutant and concentration of the exceedance;

(iii) The meteorological conditions existing 24 hours prior to and during the exceedance;

(iv) For a particulate matter exceedance, the 6-minute average opacity monitoring data greater than 20% for the 24 hours prior to and during the exceedance; and

(v) Proposed plant changes such as operation or maintenance, if any, to prevent future exceedances. Compliance with this paragraph (f)(3)(v) 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.

(4) Submit quarterly excess emissions reports for sulfur dioxide and opacity as recorded by CEMS and COMS together with a CEMS data assessment report to the Regional Administrator no later than 30 days after each calendar quarter. The owner or operator shall complete the excess emissions reports according to the procedures in 40 CFR 60.7(c) and (d) and include the Quality Assurance assessment of Appendix F of part 60. Excess opacity due to condensed water vapor in the stack does not constitute a reportable exceedance, however, the length of time during which water vapor interfered with COMs readings should be summarized in the § 60.7(c) report.

(g) *Compliance Certifications.* Notwithstanding any other provision in this implementation plan, the owner or operator may use any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certifications.

(h) *Equipment Operations.* The owner or operator shall operate all equipment

or systems needed to comply with this section in accordance with 40 CFR 60.11(d) and consistent with good engineering practices to keep emissions at or below the emissions limitations in this section, and following outages of any control equipment or systems the control equipment or system will be returned to full operation as expeditiously as practicable.

(i) *Enforcement.* (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not a person has violated or is in violation of any standard in the plan.

(2) During periods of start-up and shutdown the otherwise applicable emission limits or requirements for opacity and particulate matter shall not apply provided that:

(i) At all times the facility is operated in a manner consistent with good practice for minimizing emissions, and the owner or operator uses best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limit;

(ii) The frequency and duration of operation in start-up or shutdown mode are minimized to the maximum extent practicable; and

(iii) The owner or operator's actions during start-up and shutdown periods are documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(3) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit. However, it shall be an affirmative defense in an enforcement action seeking penalties if the owner or operator has met with all of the following conditions:

(i) The malfunction was the result of a sudden and unavoidable failure of process or air pollution control equipment and did not result from inadequate design or construction of the process or air pollution control equipment;

(ii) The malfunction did not result from operator error or neglect, or from improper operation or maintenance procedures;

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iv) Steps were immediately taken to correct conditions leading to the malfunction, and the amount and duration of the excess emissions caused by the malfunction were minimized to the maximum extent practicable;

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(vi) All emissions monitoring systems were kept in operation if at all possible; and

(vii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

[FR Doc. E6–15086 Filed 9–11–06; 8:45 am]

**BILLING CODE 6560–50–P**

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 102–35

**[FMR Case 2004–102–1]**

**RIN 3090–AH93**

### Federal Management Regulation; Disposition of Personal Property

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Proposed rule.

**SUMMARY:** The General Services Administration is amending the Federal Management Regulation (FMR) by revising coverage on personal property and moving it into Subchapter B of the FMR. This proposed rule adds a new part to Subchapter B of the FMR to provide an overview of the property disposal regulation and provide definitions for terms found in the FMR parts as well as the Federal Property Management Regulations (FPMR) parts. The FPMR parts will be included in the FMR in the near future. The FMR and any corresponding documents may be accessed at GSA's Web site at *http://www.gsa.gov/fmr*.

**DATES:** Interested parties should submit comments in writing on or before October 12, 2006 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FMR case 2004–102–1 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.gsa.gov/fmr*. Click on FMR Proposed Rules, and the FMR case number to submit comments.
- E-mail: *fmrcase.2004-102-1@gsa.gov*. Include FMR case 2004–102–1 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FMR case 2004–102–1 in all correspondence related to this case. All comments received will be posted without change to *http://www.gsa.gov/fmr*, including any personal information provided. Click on ''FMR Public Comments''.

**FOR FURTHER INFORMATION CONTACT** The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Robert Holcombe, Office of Governmentwide Policy, Personal Property Management Policy, at (202) 501–3828, or e-mail at *robert.holcombe@gsa.gov*. Please cite FMR case 2004–102–1.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

This proposed rule adds a new part, 102–35, to Subchapter B of the FMR to provide an overview of the property disposal regulation and to provide definitions for terms found in FMR parts 102–36 through 102–42 (41 CFR 102–36 through 102–42), as well as FPMR parts 101–42 and 101–48 (41 CFR 101–42 and 101–48) which will be included in the FMR in the near future. This part serves as a summary and overview of the policies relating to the disposal of Federal personal property and provides overall guidance for all methods of property disposal.

Finally, this part emphasizes the use of excess property from other agencies as the first source of supply, and specifically identifying the preference to transfer property to Federal agencies for their own use before transferring that property to agencies for use by non-Federal entities.

#### B. Executive Order 12866

GSA has determined that this proposed rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

#### C. Regulatory Flexibility Act

This proposed rule is not required to be published in the **Federal Register** for notice and comment; therefore the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.