MEMORANDUM

SUBJECT: Correction of Inadvertent Errors in the Proposed Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units

FROM: Janet G. McCabe
Acting Assistant Administrator (6101A)

THRU: Lorie Schmidt
Associate General Counsel
Air and Radiation Law Office (2344A)

TO: Gina McCarthy
Administrator (1101A)

Several inadvertent errors were made in the process of preparing the signature package for the proposal titled “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units” signed on June 2, 2014. The attached proposal is a redline and strikeout version that identifies these errors and shows the corrected text. All of the significant corrections are listed below, with page numbers cited to the attached redline and strikeout version.

First, it is important to highlight a key correction that is needed. Much of section X.G., titled “What are the benefits of the proposed goals?” was inadvertently omitted. This section describes the methods used to estimate the monetized climate benefits and health co-benefits of the proposed guidelines and provides the results, including 6 tables of benefits information, and is shown on pages 551-572 of the attachment. The regulatory impact analysis (RIA) also provides this and more extensive information.

Second, edits are needed (on page 128) to correctly reflect that the EPA intends to: 1) publish a supplemental proposal that establishes goals for areas of Indian country with affected EGUs and for U.S. territories rather than plans, and 2) take final action on the proposal by June 2015. Conforming edits are needed (on pages 115 and 375) to reflect that “if the EPA determines that a CAA section 111(d) plan is necessary or appropriate,” the EPA has the responsibility to establish a CAA section 111(d) plan for that area of Indian country where affected sources are located unless the tribe on whose lands an affected source (or sources) is located seeks and obtains authority from the EPA to establish a plan itself, pursuant to the Tribal Authority Rule.
Third, the addition of text (on page 407) to better represent Congress’ possible intention regarding the permanence of emission performance of improvements would include that, through silence, Congress authorized the EPA to reasonably require permanence.

Fourth, the addition of a footnote (#249 on p. 322) that is included in the Legal Memo, which describes an alternative way to justify why the emission standards that the states include their 111(d) state plans meet the CAA requirements as “standards of performance.”

Other corrections to the preamble and the regulatory text are listed below.

Preamble

- Page 2 – Revised to reflect public hearing information for Washington, DC.
- Pages 3-4 – Revised to reflect that the REAL ID Act will be effective (beginning July 21, 2014) and to specify valid forms of identification for entering federal buildings.
- Pages 4 and 49 (footnote 11) – Corrected website address to “www2.epa.gov/cleanpowerplan/”
- Pages 43 & 44 – Changes to reflect proposed annual reporting (while we are requesting comment on biennial reporting).
- Page 58 – Made a correction from “78,000 jobs” to “78,800 jobs”
- Page 110 – Edited to conform with the building block descriptions throughout preamble.
- Page 112 – Removed inaccurate information about an April 2016 letter of intent replaced with accurate information about the June 2016 submittal that conforms with information elsewhere in the preamble.
- Page 117 – Added “already been” to “… the EPA is proposing two alternative BSER for fossil fuel-fired EGUs, each of which is based on methods that have already been employed…”
- Pages 122-123 – Adding missing sentence in, to also reflect House version of amendment CAA section 111(d)(1)(A)(i) (in addition to the Senate version) and to correctly relocate to the footnote (footnote 87) to this sentence.
- Page 128 – Added text to clarify that we will propose goals for territories (instead of plans) by June 2015; the territory will establish the plan.
- Page 164 – Corrected to interpret that “the EPA estimated,” as opposed to Sargent & Lundy or their study, as reflected in “Based on the study, the EPA estimated that…”
- Page 166 – Edited footnote 124 on heat rate improvements for conformity with statements elsewhere in preamble by removing “…because we have less data from which to estimate these improvements” and adding text to identify that we are requesting comment on that aspect of the proposal.
- Page 189 – Made a clarifying edit regarding the degree of emission reductions achievable through re-dispatch.
- Pages 248-249 – Edited for clarity and conformity with usage elsewhere in preamble, to read: “… the combination of all four building blocks provides the basis for satisfying the legal criteria to be considered the BSER.”
- Page 294 – Deleted “compliance” from “in formulating their compliance plans,” for consistency in terminology.
- Pages 309 and 310 - Corrected to add “part of” to read “reduced generation in specified amounts... is part of the ‘best’ system of emission reduction...”
- Page 371 - Removed “directly” from “requirements that apply directly to entities other than affected EGUs” to avoid any confusion about direct/indirect measures.
- Page 379 - Removed “once approved into a plan” and replaced with “if included in an approved plan” for clarification and to avoid confusion.
- Page 390 - Changed “regulated entity” to “affected entity” as a conforming edit.
- Page 400 - Edits to clarify that eligible rate adjustments are not limited just to EE/RE (e.g., could include adjustments related to incremental or “at risk” nuclear).
- Page 407 - Added citation as footnote 280 – CAA section 411(b).
- Page 411 - Corrected “economic growth” to “electricity demand” to read “two options for addressing any perceived need for emissions flexibility in light of anticipated electricity demand growth after 2029.”
- Page 411 - Removed the “new” from discussion about how states design their plans to achieve both the interim and final goals, as the reference to “new” is extraneous and may cause confusion.
- Page 425 - Added clarifying text to make a distinction for self-correcting plans that reads “the EPA proposes that each plan must have the following twelve components, except as indicated otherwise for self-correcting plans...”
- Page 440 - Deleted incorrect statement about request for comment in the CAA section 111(b) new source proposal and retained correct statement about the request for comment in the CAA modified and reconstructed source proposal.
- Page 441 - Deleted duplicative sentence.
- Page 447 - Deleted footnote 289, as it is already explained in the body of the text with which it was associated.
- Page 488 - Replaced “the compliance period” with “a plan performance period.”
- Page 488 - Added “under a mass-based approach,” for clarification and accuracy, to read “under a mass-based approach, any measure that reduces affected EGU emissions -- even if not included in the state plan -- will, if implemented during a plan performance period, help to achieve actual emissions performance that meets the required level.”
- Page 489 - For accuracy and consistency, replaced “a state compliance demonstration” with “a state plan demonstration of emission performance.”
- Pages 520-521 - Revised text to reflect that the proposed CWA section 316(b) rule has been finalized and to accurately reflect the final rule requirements.

Regulatory text

- Page 615 (60.5700) - Replaced “standards of performance” with “emission standard” to be consistent with the preamble and the CAA.
- Page 622 (60.5745) - Replaced “States may submit a multi-state plan that.” with “A multi-state plan, if submitted by a state, must.” The change clarifies the intent that a state that does elect to submit a multi-state plan “must” submit the element in the section.
- Page 638 (60.5805) - Deleted “to the delegated authority” as it is redundant, not needed for this rule and could cause confusion.
The redline and strikeout shown on pages of the preamble and rule identify all of the errors described above and show the corrected text. These preamble and rule changes are shown on the pages identified above. Minor clarifications to terms, and grammatical corrections, and corrections to table numbering, formatting, and citations to preamble sections are also shown.

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

_________________________                        ________________________
Gina McCarthy,                                                    Dated
Administrator.

Attachment

cc: Amy Hambrick/OA (1101A)