

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

**Clean Air Mercury Rule Incorporation by Reference
(LAC 33:III.3003) (AQ257ft)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.3003 (Log #AQ257ft).

This proposed rule is identical to federal regulations found in 70 FR 28606-28700 (May 18, 2005), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rulemaking incorporates by reference the federal Clean Air Mercury Rule (CAMR) and provides for participation in the EPA-administered cap-and-trade program for annual mercury emissions. The federal rule seeks to reduce mercury emissions from coal-fired electrical generating units (EGUs). The federal EGU mercury cap-and-trade program for coal-fired EGUs was promulgated on May 18, 2005, and is closely based upon the highly successful Acid Rain Program. States have until November 2006 to submit to EPA their corresponding EGU emissions control plan based upon Section 111 of the Clean Air Act Amendments of 1990.

Mercury is a metal that exists naturally in the environment around the world. It has been demonstrated that mercury can be transported globally in the atmosphere. This mercury transport occurs from both natural and man-made sources. Emissions from coal-fired EGUs in the United States have been determined to be a significant source of mercury. Although there are numerous sources of mercury exposure in homes, industries, and nature, some of the most significant exposure risks occur when the mercury in the atmosphere eventually settles to the ground and finds its way into lakes, rivers, and streams. This mercury in the bottom sediments of some rivers and lakes undergoes methylation, a process carried out by bacteria in certain conditions. Methyl mercury then gets into the food chain and results in mercury exposure to persons who eat fish. There are numerous fish consumption advisories in Louisiana. Human exposure to mercury can affect the nervous system and the function of several internal organs, such as the brain and the kidneys. Young children, especially the unborn, developing fetus, are particularly susceptible to the effects of mercury.

The federal rule establishes mercury limits from new and existing coal-fired EGUs and creates a market based cap-and-trade program that will reduce EGU emissions of mercury in two separate phases, in the years 2010 and 2018. Each state receives a mercury budget for each year. Louisiana's budget is 0.601 tons of mercury for years 2010-2017 and 0.237 tons of mercury thereafter. Each state can adopt any methodology to allocate their mercury allowances. The department proposes to adopt the federal model rule for mercury allowance allocations that are based upon baseline heat input. It also proposes to adopt the new source set-aside of five percent

of the allowances in Phase 1, and three percent in Phase 2. New coal-fired EGUs will have to meet stringent new source performance standards in addition to being subjected to the caps. While individual states do have the authority to develop an alternative rule different from the federal cap-and-trade program, the department has concluded that alternatives to the EPA program which produce earlier and deeper reductions of mercury may not be technologically feasible and that rules which require all coal-fired EGUs to install mercury controls may not be cost effective, possibly subjecting the electricity rate payer to higher than necessary rates without a corresponding decrease in state-wide mercury deposition levels. The basis and rationale for this proposed rule are to mirror the federal regulations for CAMR.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on June 28, 2006, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ257ft. Such comments must be received no later than June 28, 2006, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to judith.schuerman@la.gov. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ257ft. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

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Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 30. Standards of Performance for New Stationary Sources (NSPS)

Subchapter A. Incorporation by Reference

§3003. Incorporation by Reference of 40 *Code of Federal Regulations* (CFR) Part 60

A. Except for 40 CFR Part 60, Subpart AAA₂, and as modified in this Section, Standards of Performance for New Stationary Sources, published in the *Code of Federal Regulations* at 40 CFR Part 60, July 1, 2005, are hereby incorporated by reference as they apply to the state of Louisiana. Also incorporated by reference are revisions to 40 CFR Part 60, Subparts A, B, Da, and HHHH as promulgated as the Clean Air Mercury Rule on May 18, 2005, in the *Federal Register*, 70 FR 28606-28700; and Subpart EEEE, “Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006,” and Subpart FFFF, “Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004,” promulgated on December 16, 2005, in the *Federal Register*, 70 FR 74870-74924.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1239 (July 1999), LR 25:1797 (October 1999), LR 26:1607 (August 2000), LR 26:2460, 2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002), LR 29:316 (March 2003), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 32:** (May 2006), LR 32:**.