

FACT SHEET

CONSIDERATION OF COST IN THE APPROPRIATE AND NECESSARY FINDING FOR THE MERCURY AND AIR TOXICS STANDARDS FOR POWER PLANTS

ACTION

- On November 20, 2015, the Environmental Protection Agency (EPA) proposed a supplemental finding that including a consideration of cost does not alter the EPA's previous determination that it is appropriate to regulate air toxics, including mercury, from power plants.
- This proposed supplemental finding responds to a narrow decision by the U.S. Supreme Court that the EPA erred when the agency concluded that cost did not need to be considered in the appropriate and necessary finding supporting the Mercury and Air Toxics Standards (MATS).
- EPA has considered whether the cost of compliance with MATS is reasonable when weighed against, among other things, the substantial hazards to public health and the environment posed by air toxics from power plants.
- Mercury can damage children's developing nervous systems, reducing their ability to think and learn. Other toxic air pollutants emitted by power plants, including nickel and arsenic, can cause a range of dangerous health problems in adults, from cancer to respiratory illnesses.
- MATS protects the health of all Americans from toxic air pollution, including mercury, from power plants. EPA estimated that for every dollar spent to reduce toxic pollution from power plants, the American public would see up to \$9 in health benefits.
- The proposed supplemental finding does not affect power plants' compliance obligations, which began in April of this year, or the steps that many plants across the country have already taken and are continuing to take to meet those obligations by installing controls and technologies to reduce toxic air emissions.
- In the proposed supplemental finding, EPA considered the power industry's ability to afford the cost of compliance with MATS and still perform its primary and unique function – the generation, transmission and distribution of electricity—at a reasonable cost to consumers.
- EPA considered several different cost metrics to evaluate whether compliance with MATS is reasonable for the power sector.
 - **Annual compliance costs as a percent of power sector sales:** The total cost of MATS is a small fraction compared to overall sales in the power sector -- between just 2.7 and 3.5 percent of annual electricity sales from 2000 to 2011.
 - **Annual compliance capital expenditures compared to the power sector's annual capital expenditures:** The capital costs to comply with MATS are also a small fraction of capital expenditures in a historical context -- representing between 2.7 and 5.9 percent of total annual power sector capital expenditures over a 10-year period. This

falls within the range of historical variability for such capital expenditures.

- **Impact on retail price of electricity:** The projected impact on electricity rates of 0.3 cents/kWh represents an increase of 3.1 percent, well within the range of retail price fluctuations over a 10-year period.
- **Impact on power sector resource capacity:** Modeling indicated power plants would be able to absorb the anticipated compliance costs.
- These analyses demonstrate that the costs and impacts of MATS requirements are reasonable as judged by affordability of compliance costs to the power sector and its consumers.
- This supplemental finding, if finalized after consideration of comments, will confirm that coal- and oil-fired electric utility steam-generating units (EGUs) are properly included in the Clean Air Act (CAA) section 112(c) list of sources that must be regulated under section 112(d) of the CAA.
- EPA will take public comment for 45 days after publication in the Federal Register and – if one is requested - hold a public hearing in North Carolina in mid-December.
- EPA is accepting comment only on the consideration of cost in making the appropriate and necessary determination and listing of EGUs.

BACKGROUND

- On December 20, 2000, the EPA determined, pursuant to CAA section 112(n)(1)(A), that it is appropriate to regulate coal- and oil-fired EGUs, based on the determination that air toxic emissions, most notably mercury, pose hazards to public health and the environment and that there are available controls to reduce air toxic emissions from these units.
- EPA also determined that it is necessary to regulate air toxic emissions from EGUs because the other CAA requirements applicable to EGUs would not result in emissions reductions that were adequate to address the hazards these air toxics pose. EPA added these units to the CAA section 112(c) list of sources that must be regulated under CAA section 112(d).
- On May 3, 2011, the EPA reaffirmed the December 2000 finding and listing of EGUs and issued proposed air toxics standards for coal- and oil-fired EGUs.
- On February 16, 2012, EPA published final air toxics standards for coal- and oil-fired EGUs also known as the Mercury Air Toxics Standards or “MATS.”
- Industry, states, environmental organizations and public health organizations challenged many aspects of the EPA’s December 2000 finding and the final MATS rule in the U.S. Court of Appeals for the District of Columbia Circuit Court. The Court denied all challenges.
- Some industry and state petitioners sought further review of the final MATS rule, and the U.S. Supreme Court granted *certiorari* to determine whether the EPA erred when it

concluded that the appropriate and necessary finding under CAA section 112(n)(1)(A) could be made without consideration of cost.

- On June 29, 2015, the U.S. Supreme Court ruled that the EPA erred when the agency concluded that cost did not need to be considered in the appropriate and necessary finding supporting MATS.
- The EPA, in response to the U.S. Supreme Court's direction, has now considered cost in the appropriate and necessary finding. The EPA is proposing a supplemental finding that a consideration of cost does not alter the EPA's previous determination that it is appropriate and necessary to regulate air toxic emissions from coal- and oil-fired EGUs.

HOW TO COMMENT

- The EPA will accept comment on the proposal for 45 days after publication in the *Federal Register*. Comments, identified by Docket ID No. EPA-HQ-OAR-2009-0234, may be submitted by one of the following methods:
 - www.regulations.gov: follow the on-line instructions for submitting comments.
 - Email: Comments may be sent by electronic mail (email) to a-and-r-Docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2009-0234 in the subject line of the message.
 - Fax: Fax your comments to: (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2009-0234.
 - Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mail Code 28221T, Attention Docket ID No. EPA-HQ-OAR-2009-0234, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
 - Hand/Courier Delivery: EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue, NW, Washington, DC 20004, Attention Docket ID No. EPA-HQ-OAR-2009-0234. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

FOR MORE INFORMATION

- The proposed finding is posted at: <http://www.epa.gov/mats/actions.html> and <http://www.epa.gov/ttn/atw/utility/utilitypg.html>.
- For further information about the notice, contact Dr. Nick Hutson of EPA's Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Energy Strategies Group at (919) 541-2968 or by email at hutson.nick@epa.gov.