

The Administrator, E. Scott Pruitt, signed the following notice on September 12, 2017, and EPA is submitting it for publication in the Federal Register (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on [federalregister.gov](http://federalregister.gov) and on [regulations.gov](http://regulations.gov) in Docket No. EPA-HQ-OW-2009-0819.

6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 423**

**[EPA-HQ-OW-2009-0819; FRL-9962-51-OW]**

**RIN 2040-AF76**

**Postponement of Certain Compliance Dates for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final Rule

**SUMMARY:** Under the Clean Water Act (“CWA”), EPA intends to conduct a rulemaking to potentially revise certain best available technology economically achievable (“BAT”) effluent limitations and pretreatment standards for existing sources (“PSES”) for the steam electric power generating point source category, which were published in the Federal Register on November 3, 2015. EPA is, accordingly, postponing the associated compliance dates in the 2015 Rule. In particular, EPA is postponing the earliest compliance dates for the new, more stringent, BAT effluent limitations and PSES for flue gas desulfurization (“FGD”) wastewater and bottom ash transport water in the 2015 Rule for a period of two years. At this time, EPA does not intend to conduct a rulemaking that would potentially revise the new, more stringent BAT effluent limitations and pretreatment standards in the 2015 Rule for fly ash transport water, flue gas mercury control wastewater, and gasification wastewater, or any of the other requirements in the 2015 Rule. As such, EPA is not changing the compliance dates for the BAT limitations and PSES established by the 2015 Rule for these wastestreams. EPA’s action to postpone certain

compliance dates in the 2015 Rule is intended to preserve the status quo for FGD wastewater and bottom ash transport water until EPA completes its next rulemaking concerning those wastestreams, and it thus does not otherwise amend the effluent limitations guidelines and standards for the steam electric power generating point source category.

**DATES:** The final rule is effective [INSERT PUBLICATION DATE]. In accordance with 40 CFR part 23, this regulation shall be considered issued for purposes of judicial review at 1 p.m. Eastern time on [INSERT DATE 2 WEEKS AFTER PUBLICATION IN THE FR]. Under section 509(b)(1) of the CWA, judicial review of this regulation can be had only by filing a petition for review in the U.S. Court of Appeals within 120 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2), the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-OW-2009-0819. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., 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 form.

Publicly available docket materials are available electronically through

<http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ronald Jordan, United States Environmental Protection Agency, Engineering and Analysis Division; telephone number: (202) 566-1003; email address: jordan.ronald@epa.gov. Electronic copies of this document and related materials are available on EPA's Web site at <https://www.epa.gov/eg/steam-electric-power-generating-effluent-guidelines-2015-final-rule>. Copies of this final rule are also available at

<http://www.regulations.gov>.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On November 3, 2015, the EPA published a final rule amending 40 CFR part 423, the effluent limitations guidelines and standards for the steam electric power generating point source category, under Sections 301, 304, 306, 307, 308, 402, and 501 of the CWA (33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361). The amendments addressed limitations and standards on various wastestreams at steam electric power plants: FGD wastewater, bottom ash transport water, fly ash transport water, flue gas mercury control wastewater, gasification wastewater, and combustion residual leachate. Collectively, this rulemaking is known as the “Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category,” or “2015 Rule.” For further information on the 2015 Rule, see 80 FR 67838 (Nov. 3, 2015).

EPA received seven petitions for review of the 2015 Rule. The U.S. Judicial Panel on Multi-District Litigation issued an order on December 8, 2015, consolidating all of the petitions in the U.S. Court of Appeals for the Fifth Circuit, *Southwestern Electric Power Co., et al. v. EPA*, No. 15-60821.

In a letter dated March 24, 2017, the Utility Water Act Group (“UWAG”)<sup>1</sup> submitted a petition for reconsideration of the 2015 Rule which requested that EPA suspend the Rule’s approaching deadlines. UWAG supplemented its petition with additional information in a letter dated April 13, 2017. In a letter dated April 5, 2017, the Small Business Administration (“SBA”) Office of Advocacy sent EPA a second petition for reconsideration of the 2015 Rule, which

---

<sup>1</sup> According to the petition, UWAG is a voluntary, ad hoc, unincorporated group of 163 individual energy companies and three national trade associations of energy companies: Edison Electric Institute, the National Rural Electric Cooperative Association, and the American Public Power Association.

expressly supports UWAG's petition and raises issues that SBA considers to be pertinent to small businesses. The petitions raise wide-ranging objections to the Rule.<sup>2</sup> Among other things, the UWAG petition points to new data which they believe show that plants burning subbituminous and bituminous coal cannot comply with the 2015 Rule's limitations and standards for FGD wastewater and questions EPA's characterization of bottom ash transport water. UWAG also requested that EPA suspend or delay the "rule's fast-approaching compliance deadlines while EPA works to reconsider and revise, as appropriate, the substantive requirements of the current rule."

In an April 12, 2017 letter to those who submitted the reconsideration petitions, the Administrator announced his decision to reconsider the 2015 Rule. See DCN SE06612. As explained in that letter, after considering the objections raised in the reconsideration petitions, the Administrator determined that it is appropriate and in the public interest to reconsider the Rule. On April 14, 2017, EPA requested that the Fifth Circuit hold the case in abeyance while the Agency undertook reconsideration. On April 24, 2017, the Fifth Circuit granted the motion and placed the case in abeyance.

On June 6, 2017 (82 FR 26017), EPA proposed to postpone the compliance dates for the new, more stringent, BAT effluent limitations and PSES in the 2015 Rule for each of the following wastestreams: FGD wastewater, bottom ash transport water, fly ash transport water, flue gas mercury control wastewater, and gasification wastewater, while reconsideration of the 2015 Rule was underway. EPA explained that this postponement would preserve the regulatory status quo with respect to wastestreams subject to the 2015 Rule's new, and more stringent, limitations and standards during reconsideration and that postponement of compliance dates is

---

<sup>2</sup> A copy of each petition and the supplemental information is included in the docket for this rule, Docket ID No. EPA-HQ-OW-2009-0819.

intended to prevent the unnecessary expenditure of resources until EPA finalizes any rulemaking as a result of its reconsideration of the 2015 Rule. EPA also solicited comments on whether this postponement should be for a specified period of time, for example, two years.

On August 11, 2017, EPA sent a second letter to those who had requested reconsideration of the 2015 Rule, announcing the Administrator's decision to conduct a new rulemaking to potentially revise the new, more stringent BAT limitations and PSES in the 2015 Rule that apply to two wastestreams: FGD wastewater and bottom ash transport water. See DCN SE06670. On August 14, 2017, EPA filed a motion to govern further proceedings in the U.S. Court of Appeals for the Fifth Circuit, which explained that EPA intends to conduct further rulemaking to potentially revise the new, more stringent BAT/PSES requirements in the 2015 Rule applicable to FGD wastewater and bottom ash transport water, and requested, in part, that the Court sever and hold in abeyance all judicial proceedings concerning portions of the 2015 Rule related to those particular requirements. On August 22, 2017, the Court granted EPA's motion.

In an earlier action, EPA administratively postponed certain compliance dates that had not yet passed in part of the 2015 Rule pursuant to Section 705 of the Administrative Procedure Act ("APA"), 5 U.S.C. 705, which states that "[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it pending judicial review." 82 Fed. Reg. 19005 (April 25, 2017). EPA had postponed the compliance dates as a temporary measure pursuant to Section 705 to preserve the status quo while the litigation in the Fifth Circuit was pending and EPA's reconsideration was underway. Because EPA has decided to conduct further rulemaking to potentially revise the new, more stringent BAT limitations and PSES in the 2015 Rule applicable to two specific wastestreams (FGD wastewater and bottom ash transport water), and it is today finalizing a rule which postpones the associated compliance dates in the 2015

Rule pending its next rulemaking, there is no longer any need for the Agency to maintain its prior action pursuant to Section 705 of the APA. EPA, hereby, withdraws that action.

## **II. Summary of Comments Received**

EPA received thousands of written comments on the proposed rule to postpone certain compliance dates in the 2015 Rule. EPA also held a public hearing on July 31, 2017. The comments on the proposed rule generally fall into one of four categories: 1) support for postponement of compliance dates; 2) opposition to the postponement of compliance dates; 3) comments on the substantive requirements of the 2015 Rule (which are outside the scope of this action, which concerns postponing certain compliance dates only); and 4) comments on the length of time that EPA should postpone the compliance dates.

Commenters that support the postponement rule generally assert that the postponement is appropriate to prevent industry from spending “unnecessary resources” until EPA completes its reconsideration of the 2015 Rule. Many commenters who support a postponement in compliance dates state that, given the substantial costs required to implement technology required to comply with the 2015 Rule, as well as the time needed for designing and optimizing treatment systems, certainty in the discharge requirements is needed and postponement of compliance dates allows for that. In addition, commenters argue that the Agency has both the authority and the responsibility to postpone the 2015 Rule until it completes any rulemaking following its reconsideration process.

Comments on the length of the postponement generally assert that EPA should postpone the compliance dates for a minimum of two years, until EPA has taken final action on any rule revisions, or some time period beyond when EPA has taken final action on any rule revisions.

Commenters that oppose the postponement rule generally assert that 1) the technology

bases underlying the 2015 Rule are widely available and affordable now, many steam electric plants have already installed or are in the process of implementing these technologies, and postponing the compliance dates would hinder technology development; 2) any postponement allows power plants to continue to discharge pollutants that are harmful to public health and the environment, and the forgone public health and environmental benefits during any postponement outweigh the costs to industry; and 3) EPA lacks authority to postpone the compliance dates.

### **III. Rationale for Finalizing a Postponement of Compliance Dates**

In light of new information not contained in the record for the 2015 Rule and the inherent discretion the Agency has to reconsider past policy decisions consistent with the CWA and other applicable law, EPA intends to conduct a new rulemaking regarding the appropriate technology bases and associated limits for the BAT/PSES requirements applicable to FGD wastewater and bottom ash transport water discharged from steam electric power plants. Given this, and after carefully considering comments received on the proposed rule, EPA finds it appropriate to postpone the earliest compliance dates for the new, more stringent, BAT effluent limitations and PSES applicable to FGD wastewater and bottom ash transport water in the 2015 Rule until it completes the new rulemaking. This maintains the 2015 Rule as a whole at this time, with the only change being to postpone specific compliance deadlines for two wastestreams. Thus, the earliest compliance dates for plants to meet the new, more stringent FGD wastewater and bottom ash wastewater limitations and standards in the 2015 Rule, which were to be determined by the permitting authority as a date “as soon as possible beginning November 1, 2018 . . .”, are now to be determined by the permitting authority as a date “as soon as possible beginning November 1, 2020 . . . .” EPA is not changing the “no later than” date of December 31, 2023, because EPA is not aware that the 2023 date is an immediate driver for expenditures by plants (petitioners had

requested relief from the “fast-approaching compliance deadlines” in the 2015 Rule), and EPA plans to take up the appropriate compliance period in its next rulemaking. In order to be absolutely clear about what is being postponed, the final rule includes more precise regulatory text to implement the rule than was included in the proposed rule.

Agencies have inherent authority to reconsider past decisions and to revise, replace or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass’n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42 (1983). *See also Nat’l Ass’n of Home Builders v. EPA*, 682 F.3d 1032, 1038 & 1043 (D.C. Cir. 2012). Particularly relevant here, the CWA expressly authorizes EPA to revise effluent limitations and standards. 33 U.S.C. §§ 1311(d), 1314(b), (g)(1), (m)(1)(A), 1317(b)(2). Moreover, in doing so, Section 304(b)(2)(B) of the CWA directs EPA to consider several factors, including “other factors as the Administrator deems appropriate,” and the Agency is afforded considerable discretion in deciding how much weight to give each factor. *See, e.g., Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1045 (D.C. Cir. 1978). In this case, where EPA has decided to undertake a new rulemaking, which may result in substantive changes to the 2015 Rule, that is an appropriate factor to consider and one that warrants the postponement of compliance dates for the new, more stringent BAT and PSES requirements for two wastestreams in the 2015 Rule, until such a rulemaking is complete (*i.e.*, EPA issues any final rule that substantively revises the 2015 Rule or EPA decides not to issue such a final rule). This will prevent the potentially needless expenditure of resources during a rulemaking that may ultimately change the 2015 Rule in these respects.

As mentioned, some commenters stated that the record for the 2015 Rule demonstrates that the technologies underlying the new, more stringent requirements for FGD wastewater and

bottom ash transport water are widely available and affordable. Notwithstanding statements in the 2015 Rule record, certain parties have raised serious concerns about the availability and affordability of the technology basis for the FGD wastewater and bottom ash transport water requirements in the 2015 Rule, and the Administrator wishes to take some time to carefully review these requirements in light of those concerns and ensure any such requirements are technologically available and economically achievable within the meaning of the statute. EPA has discretion in determining technological availability and economic achievability and is not constrained by the CWA to make the same policy decision as the former Administration, so long as its decision is reasonable. As explained above, the Agency may reconsider past policy decisions consistent with the Clean Water Act and other applicable law. The Agency may also reconsider technical determinations in light of new information submitted to the Agency that was not in the record for the 2015 Rule. EPA intends to fully evaluate all of the issues raised in the petitions, including concerns about: cost and impacts to steam electric facilities, public availability of information on which the rule is based, lack of data for plants that burn certain types of coal, and validity of certain pollutant data used in EPA's 2015 Rule analysis. For example, petitioners raised concerns about the numerical BAT limitations and PSES applicable to FGD wastewater in the 2015 Rule. They assert that there are differences among coal types that affect the performance and costs of biological treatment and that EPA did not have data to demonstrate the performance of biological treatment on all coal types. To resolve this concern, following the rulemaking, industry collected (and continues to collect) additional data on the performance of biological treatment for different coal types. As another example, petitioners raised questions about the inclusion and validity of certain data due, in part, to what they assert are flaws in data acceptance criteria, obsolete analytical methods, and the treatment of non-detect

analytical results, which petitioners believed resulted in an overestimation of pollutant loadings for bottom ash transport water. EPA agrees that these are important issues that warrant further consideration in conjunction with the statutory factors for determining BAT for these wastestreams. EPA thus intends to re-evaluate these and other concerns raised in the petitions in the next rulemaking. EPA acknowledges that postponement of certain of the 2015 Rule's compliance dates may be disruptive to vendors and treatment technology suppliers. EPA, however, must also consider the substantial investments required by the steam electric power industry to comply with the BAT limitations and PSES,<sup>3</sup> and that certainty regarding the limitations and standards deserves prominent consideration by the Agency when these limitations and standards may change. As UWAG pointed out in its April 13, 2017 letter, "a rule of this magnitude and complexity requires substantial time to come into compliance for multiple wastestreams. Detailed studies and planning, followed by large capital expenditures and subsequent installation and testing, are time-consuming." Companies have been evaluating their compliance options and are reaching the point at which they will be committing funds, incurring costs, or commencing construction to install technologies.

As part of the 2015 Rule, EPA estimated the costs associated with compliance with the 2015 Rule's new requirements. For all applicable wastestreams, EPA assessed the operations and treatment system components, identified equipment and process changes that the plant would likely make to meet the 2015 Rule, and estimated the cost to implement those changes. This includes, among other things, the capital costs of installing the technology (based on estimates of the technology selected as representing the level of control) and the operation and maintenance costs of operating the technology. See Technical Development Document ("TDD"), pp. 9-1

---

<sup>3</sup>In the 2015 Rule, EPA estimated the total annualized pre-tax compliance costs for the FGD and bottom ash requirements to be \$486.8 million. See DCN SE05978.

through 9-52. EPA estimated that the total post-tax annualized compliance costs would be \$339.6 million/year. See Regulatory Impact Analysis (“RIA”), Table 3-2 (Option D).<sup>4</sup>

The 2015 rulemaking record also describes evaluation of the initial capital costs that regulated parties would incur in the near term (if a stay were not in place) to meet the 2015 Rule’s effluent limitations and standards. For the purpose of analysis, in the RIA, EPA assumed that all capital costs are incurred concurrently with technology installation according to discharge permit renewal schedules, but EPA realizes that feasibility studies and planning may need to be completed in advance of that date. Specifically, plants would incur engineering design costs, costs to acquire equipment, freight shipping costs to transport equipment from manufacturers to the installation site, costs for actions to prepare the site (such as installing concrete foundations and buildings for the new equipment), and construction expenses associated with connecting electrical and piping systems to new equipment. See TDD, p. 9-3. EPA estimated post-tax annualized capital costs of \$204.4 million/year. See RIA, Table 3-2 (Option D). Although there is a wide degree of variability among the costs particular plants would expend, EPA estimates that the average post-tax annualized capital compliance costs for a plant would be approximately \$ 1.5 million/year. See TDD, Table 9-19 (plants with compliance costs); RIA, Table 3-2 (Option D). To the extent that these costs are associated with the 2015 Rule requirements for FGD wastewater and bottom ash transport water, and in the event that EPA revises these requirements in a future rulemaking, these are costs that would be incurred for activities that ultimately might not be necessary. In that case, this would reflect costs incurred by facilities and potentially passed on to utility rate payers that ultimately did not need to be spent.

---

<sup>4</sup> EPA analyzed both pre-tax and post-tax costs. Pre-tax costs provide insight on the total expenditures as initially incurred by the plants. Post-tax costs are a more meaningful measure of compliance impact on privately owned for-profit plants, and incorporate approximate capital depreciation and other relevant tax treatments in the analysis. RIA, p. 3-6.

In light of these imminent planning and capital expenditures that facilities incurring costs under the 2015 Rule would need to undertake in order to meet the earliest compliance deadlines for the new, more stringent limitations and standards in the 2015 Rule, and the fact that the Agency is conducting a new rulemaking regarding the appropriate technology bases and associated limits for BAT limitations and PSES applicable to FGD wastewater and bottom ash transport water, the Agency views it as appropriate to postpone the earliest compliance dates that have not yet passed for these wastestreams in 2015 Rule. This will preserve the regulatory status quo with respect to requirements for FGD wastewater and bottom ash transport water until the new rulemaking is complete.

Some commenters also express concerns that postponement of compliance dates would hinder technology advancements. EPA's experience does not support this concern. The record for the 2015 Rule demonstrates that technology advancements were not hindered during that rulemaking. Rather, as explained in the preamble to the final 2015 Rule, vendors continued to improve existing technologies and to develop new technologies during the rulemaking leading up to the 2015 Rule.

EPA acknowledges that postponement of the compliance dates could lead to a delay in the accrual of some of the benefits attributable to the 2015 Rule. The 2015 Rule required that steam electric power plants would comply with the new, more stringent requirements no later than 2023, with plants expected to implement new control technologies over a five-year compliance period of 2019-2023 according to their permit renewal schedule. In the record for the 2015 Rule, EPA estimated the value of certain benefits linked to reduced pollutant discharges that could be monetized for the period 2019 through 2042. Based on the 2015 Rule data and methodology, and depending on the inclusion of the Clean Power Plan, EPA estimates that

foregone annualized benefits for a two-year delay would be between \$26.6 million and \$33.6 million.<sup>5</sup> EPA similarly estimates that plants would experience annualized cost savings of between \$27.5 million and \$36.8 million as a result of a two-year delay. See DCN SE06668 for additional details, including calculations of the foregone benefits and cost savings. EPA understands that these estimates have uncertainty due to, for example, the possibility of unexpected implementation approaches, and thus that the actual cost savings could have been somewhat higher or lower than estimated. Similarly, due to data and analysis limitations, the forgone monetized benefits are likely underestimated. These estimates, however, are consistent with and reflect the best data and analysis available at the time of the 2015 Rule.

EPA notes that, as explained earlier, there is uncertainty as to the FGD wastewater and bottom ash transport water BAT/PSES requirements while EPA conducts a new rulemaking. If EPA did not postpone the compliance dates, industry would likely incur costs as it prepares to comply with the 2015 Rule, irrespective of what EPA ultimately determines to be BAT/PSES for FGD wastewater and bottom ash transport water. By contrast, under the 2015 Rule, even if permits were written today, the earliest those permits would have required compliance with the limitations and standards at issue are “as soon as possible beginning November 1, 2018.” So, while some companies would have to plan to comply and spend money right away, the benefits would not begin to accrue until 2018, at the earliest. Also, these benefits may not be lost if a permitting authority requires similar effluent limitations where necessary to meet applicable water quality standards, under CWA section 301(b)(1)(C). EPA has carefully weighed the concerns about potentially foregone benefits with the consideration of the costs that could

---

<sup>5</sup> The calculations are based on the benefits and costs estimated for the 2015 Rule, which were detailed in the “Benefit and Cost Analysis for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category” (BCA) and “Regulatory Impact Analysis for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category” (RIA) reports.

needlessly be incurred should the requirements be changed, as well as the overall uncertainty and potential confusion that would be caused by imposing the 2015 Rule requirements while simultaneously undertaking rulemaking that may change those requirements. On balance, EPA has concluded the more reasonable approach is to postpone the compliance dates in the 2015 Rule.

Thus, EPA agrees with commenters who argue that it should postpone the new, more stringent BAT/PSES requirements for FGD wastewater and bottom ash transport water in the 2015 Rule until it completes a new rulemaking on these wastestreams. After reflecting on the time it typically takes the Agency to propose and finalize revised effluent limitations guidelines and standards, and in light the characteristics of this industry and the anticipated scope of the next rulemaking, EPA projects it will take approximately three years to propose and finalize a new rule (Fall 2020). See DCN SE06667. Consequently, EPA is postponing the earliest compliance dates for the new, more stringent, BAT effluent limitations and PSES for FGD wastewater and bottom ash transport water for a period of two years (November 1, 2020).<sup>6</sup> To the extent that commenters believe a postponement under this rule should last beyond the time it takes EPA to complete its new rulemaking, such comments are appropriately considered as part of, and in light of, that new rulemaking and not this action. As explained, this rule is intended only as a relatively short-term measure until EPA completes the next rulemaking, and EPA anticipates that the next rulemaking will necessarily address compliance dates in some fashion. Although EPA proposed to postpone the compliance dates for the new, more stringent requirements applicable to fly ash transport water, gasification wastewater, and flue gas mercury control (FGMC) wastewater, in addition to the requirements for FGD wastewater and bottom ash

---

<sup>6</sup>If EPA does not complete a new rulemaking by November, 2020, it plans to further postpone the compliance dates such that the earliest compliance date is not prior to completion of a new rulemaking.

transport water, this final rule does not postpone those former compliance dates. Commenters stated that EPA has no basis to postpone compliance dates for requirements that parties have not expressly argued should be reconsidered, such as those for fly ash transport water and FGMC wastewater. EPA agrees that the final rule should postpone only those requirements that the Agency plans to potentially revise in the next rulemaking. Because EPA is not conducting a new rulemaking concerning any of the other issues addressed by the 2015 Rule, including requirements for fly ash transport water, gasification wastewater, and FGMC wastewater, EPA is not changing the compliance dates for these wastestreams or any of the other compliance dates for the requirements in that Rule. The record for the 2015 Rule demonstrates that changes associated with converting a fly ash system are unrelated from an engineering perspective to conversions/upgrades for bottom ash transport water and FGD treatment systems. Converting a fly ash system requires installing a silo to capture the dry fly ash, which is subsequently transported offsite to beneficial reuse markets (e.g., cement plants) or landfilled. Bottom ash is handled separately, regardless of whether it is wet or dry. The same is true for FGD wastes. EPA recognizes however, that from a financing and long-term planning perspective, there are advantages to a facility in knowing the full suite of requirements it will need to comply with over a longer term planning horizon.

Some facilities commented that they may need to know what the ultimate requirements will be for bottom ash transport water and FGD wastewater to assist them in considering alternatives for meeting the requirements for the other waste streams (fly ash transport water and FGMC wastewater) for which EPA is not postponing the earliest compliance dates. EPA notes that there continues to be discretion under the 2015 Rule for permitting authorities to consider: time needed to “expeditiously plan (including time to raise capital), design, procure, and install

equipment” to comply with the rule; changes being made at the plant to comply with several other rules; and “other factors as appropriate” in determining exactly when, within a specified compliance period, the 2015 Rule’s new, more stringent limitations apply to any given plant. See 40 CFR 423.11(t).

In light of the compliance date postponements being finalized today, in determining the “as soon as possible date,” EPA believes it would be reasonable for permitting authorities to consider the need for a facility to make integrated planning decisions regarding compliance with the requirements for all of the wastestreams currently subject to new, more stringent requirements in the 2015 Rule, as well as the other rules identified in 423.11 (t) to the extent that a facility demonstrates such a need. This could include harmonizing schedules to the extent provided for under the 2015 Rule<sup>7</sup> for meeting the 2015 Rule requirements for fly ash transport water and FGMC wastewater to allow time for a facility to have certainty regarding what their ultimate requirements will be under the steam electric ELGs, as well as the requirements under the other rules listed in 423.11(t).

This rule is effective immediately upon publication. Section 553(d) of the Administrative Procedure Act, 5 U.S.C. section 553(d), provides that publication of a substantive rule must be made no less than 30 days before its effective date, subject to several exceptions. Section 553(d)(1) establishes an exception for “a substantive rule which grants or recognizes an exemption or relieves a restriction.” The exception in Section 553(d)(1) reflects the purpose of the 30-day notice requirement, which is to give affected entities time to prepare for the effective date of a rule or to take any other action which the issuance of a rule may prompt. This rule fits within Section 553(d)(1) because it postpones certain requirements on steam electric power

---

<sup>7</sup>For any final effluent limitation that is specified to become applicable after November 1, 2018, the specified date must be as soon as possible, but in no case later than December 31, 2023.

plants to control their pollutant discharges by two years, and as a result, it relieves a restriction on regulated entities for that period.

#### **IV. Statutory and Executive Order Reviews**

##### *A. Executive Order 12866: Regulatory Planning and Review; and, Executive Order 13563: Improving Regulation and Regulatory Review*

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

##### *B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in EPA's analysis of the potential costs and benefits associated with this action.

##### *C. Paperwork Reduction Act*

This final rule does not involve any information collection activities subject to the PRA, 44 U.S.C. 3501 et seq.

##### *D. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action maintains the 2015 Rule as a whole at this time, with the only change being to postpone specific compliance deadlines for two wastestreams. As

described above, EPA estimates that steam electric plants, including some small entities, would experience annualized cost savings of \$27.5 million as a result of this two-year delay. We have therefore concluded that this action will relieve regulatory burden for some directly regulated small entities.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000).

*H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

This final rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA previously determined that the environmental health risks or safety risks addressed by the requirements EPA is finalizing do not present a disproportionate risk to children.

*I. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use*

This action is not a “significant energy action” because it is not likely to have a

significant adverse effect on the supply, distribution or use of energy.

*J. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272 note.

*K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

This is a final rule to delay action, and it does not change the requirements of the effluent limitations guidelines and standards published in 2015. While the postponement in compliance dates could delay the protection the 2015 Rule would afford to all communities, including those impacted disproportionately by the pollutants in certain wastewater discharges, this action would not change any impacts of the 2015 Rule upon implementation. The EPA therefore believes it is more appropriate to consider the impact on minority and low-income populations in the context of possible substantive changes as part of any future rulemaking.

*L. Congressional Review Act*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 423**

Environmental protection, Electric power generation, Power plants, Waste treatment and disposal, Water pollution control.

This document is a prepublication version, signed by Administrator E. Scott Pruitt on September 12, 2017. We have taken steps to ensure the accuracy of this version, but it is not the official version.

---

Dated: September 12, 2017

---

E. Scott Pruitt,

Administrator.

For reasons stated in the preamble, EPA amends 40 CFR part 423 as set forth below:

**PART 423—STEAM ELECTRIC POWER GENERATING POINT SOURCE CATEGORY**

1. The authority citation for part 423 continues to read as follows:

**AUTHORITY:** Secs. 101; 301; 304(b), (c), (e), and (g); 306; 307; 308 and 501, Clean Water Act (Federal Water Pollution Control Act Amendments of 1972, as amended; 33 U.S.C. 1251; 1311; 1314(b), (c), (e), and (g); 1316; 1317; 1318 and 1361).

2. Amend § 423.11 by revising paragraph (t) introductory text to read as follows:

**§423.11 Specialized definitions.**

\* \* \* \* \*

(t) The phrase “as soon as possible” means November 1, 2018 (except for purposes of § 423.13(g)(1)(i) and (k)(1)(i), and § 423.16(e) and (g) of this Part, in which case it means November 1, 2020), unless the permitting authority establishes a later date, after receiving information from the discharger, which reflects a consideration of the following factors:

\* \* \* \* \*

**§ 423.13 [Amended]**

3. Amend § 423.13 paragraphs (g)(1)(i) and (k)(1)(i) by removing the text “November 1, 2018” and adding the text “November 1, 2020” in their places respectively.

**§ 423.16 [Amended]**

4. Amend § 423.16 paragraphs (e) two times, and (g) by removing the text “November 1, 2018” and adding the text “November 1, 2020” in their places respectively.