

FACT SHEET
**Mercury and Air Toxics Standards: Proposed Revised Supplemental Finding
and Results of the Residual Risk and Technology Review**

OVERVIEW

- On December 27, 2018, the U.S. Environmental Protection Agency (EPA) proposed to revise the Supplemental Cost Finding for the Mercury and Air Toxics Standards (the MATS rule), as well as the Clean Air Act (CAA) required risk and technology review (RTR).
- After taking account of both the cost to coal- and oil-fired power plants of complying with the MATS rule (costs that range from \$7.4 to \$9.6 billion annually) and the benefits attributable to regulating hazardous air pollutant (HAP) emissions from these power plants (quantifiable benefits that range from \$4 to \$6 million annually), as EPA was directed to do by the United States Supreme Court (*Michigan v. EPA*), the Agency proposes to determine that it is not “appropriate and necessary” to regulate HAP emissions from power plants under Section 112 of the CAA.
- This revised finding would correct flaws in the Agency’s 2016 Supplemental Finding on this issue.
- The emission standards and other requirements of the MATS rule, first promulgated in 2012, would remain in place, however, since EPA is not proposing to remove coal- and oil-fired power plants from the list of sources that are regulated under Section 112 of the Act.
- EPA is also proposing or taking comment on other MATS-related issues in this action.
 - EPA is proposing the results of the risk and technology review required by section 112. The proposed RTR shows that no additional regulations are required.
 - EPA is also soliciting comment on establishing a subcategory for emissions of acid gas HAP from existing electric utility steam generating units (EGUs) firing eastern bituminous coal refuse.
- EPA will take comment on this proposal for 60 days after publication in the *Federal Register* and hold at least one public hearing. Details about the public hearing will be available in a future *Federal Register* notice.

REVISED SUPPLEMENTAL FINDING

Action

- EPA is proposing that it is not “appropriate and necessary” to regulate HAP emissions from coal- and oil-fired power plants under section 112 of the CAA because the costs of such regulation grossly outweigh the quantified HAP benefits.
- EPA has reexamined the cost analyses presented in the 2016 Supplemental Finding and proposes to determine that neither of the Finding’s approaches to considering cost satisfies the Agency’s obligation under CAA section 112(n)(1)(A) as interpreted by the Supreme Court in *Michigan*.

- EPA proposes the 2016 Supplemental Finding erred in its consideration of cost. Specifically, we find that what was described in the 2016 Supplemental Finding as the preferred approach, or “cost reasonableness test,” does not meet the statute’s requirements to fully consider costs, and was an unreasonable interpretation of the CAA mandate.
- In this proposal, EPA uses a different consideration of cost for purposes of the appropriate and necessary finding, one that aligns with the purpose of CAA section 112(n)(1)(A) as set forth in *Michigan*.
- EPA proposes to find that equal reliance on the particulate matter (PM) air quality co-benefits projected to occur as a result of the reductions in HAPs was flawed as the focus of CAA section 112 is HAP emissions reductions.
- EPA proposes to directly compare the cost of compliance with MATS with the benefits specifically associated with reducing emissions of HAP in order to satisfy our duty to consider cost in the context of the CAA section 112(n)(1)(A) appropriate and necessary finding.
- A proper consideration of costs demonstrates that the total cost of compliance with MATS (\$7.4 to \$9.6 billion annually) dwarfs the monetized HAP benefits of the rule (\$4 to \$6 million annually).
- While there are unquantified HAP benefits and significant monetized PM co-benefits associated with MATS, the Administrator has concluded that the identification of these benefits is not sufficient, in light of the gross imbalance of monetized costs and HAP benefits, to support a finding that it is appropriate and necessary to regulate EGUs under CAA section 112.
- Further, EPA is proposing that making this determination that it is not “appropriate and necessary” would not remove coal- and oil-fired EGUs from the list of affected source categories for regulation under section 112 nor would it affect the 2012 MATS, which would stay in place.
- EPA is taking comment on alternative interpretations of the effects of its proposed finding. Specifically, EPA is taking comment on whether it has the authority or obligation to remove coal- and oil-fired EGUs from the CAA list of affected source categories and rescind MATS.

Background

- The CAA lays out a multi-step process for regulating HAP emissions from power plants. The process includes looking at whether it is “appropriate and necessary” to regulate coal- and oil-fired power plants for HAPs— referred to as an A&N Finding; taking an action to “list” EGUs for HAP regulation under section 112 of the CAA; and setting HAP emission standards .
- In December 2000, pursuant to CAA section 112(n)(1)(A), EPA determined it was “appropriate and necessary” to regulate coal- and oil-fired EGUs under CAA section 112(d) and added such units to the CAA section 112(c) List of Categories of Major and Area Sources.
- In 2005, EPA issued a final rule that reversed the A&N Finding, removed coal- and oil-fired EGUs from the CAA section 112(c) list, and established standards for mercury emissions under CAA section 111 (Clean Air Mercury Rule or CAMR).

- In 2008, in *New Jersey v. EPA*, the D.C. Circuit Court vacated the delisting and CAMR, ruling that EPA's reversal of its A&N Finding did not remove coal- and oil-fired EGUs from the CAA section 112(c) source category list and that the Agency failed to comply with the CAA section 112(c)(9) requirements for delisting a source category.
- In 2012, EPA reaffirmed its initial 2000 A&N Finding and finalized MATS, which regulates HAP from coal- and oil-fired EGUs.
- In 2015, in *Michigan v. EPA*, the Supreme Court ruled that the Agency erred when it determined cost did not have to be considered when making the A&N Finding. The D.C. Circuit Court remanded MATS, requiring the Agency to consider the cost of MATS relative to the A&N Finding.
- EPA's response to the remand was the 2016 Supplemental Finding, in which the Agency concluded that the consideration of cost did not change its conclusion that it was appropriate and necessary to regulate HAP emissions from coal- and oil-fired EGUs.
- The 2016 Supplemental Finding drew additional legal challenges, including *Murray Energy Corp. v. EPA*, which challenged the conclusions reached in EPA's Supplemental Finding.
- In response to this challenge, in 2017, EPA moved the D.C. Circuit Court to hold the *Murray Energy Corp. v. EPA* case in abeyance so the new Administration could have time to review the 2016 Supplemental Finding.

RESIDUAL RISK AND TECHNOLOGY REVIEW

Action

- EPA is proposing the results of the RTR of MATS that the Agency is required to conduct in accordance with CAA section 112.
- **Residual Risk Review:** The CAA requires EPA to assess the risk remaining after the promulgation of final HAP standards. Based on the completed risk assessment, EPA has determined that the residual risks due to emissions of HAPs from the coal- and oil-fired EGUs source category are acceptable and that the current standards provide an ample margin of safety to protect public health.
- **Technology Review:** The CAA also requires EPA to assess, review and revise HAP standards, as necessary, taking into account developments in practices, processes and control technologies. Based on the technology review of MATS, no new developments in HAP emission controls to achieve additional cost-effective reductions were identified.
- EPA proposes that no revisions to MATS are warranted based on the results of these reviews.

Background

- Section 112 of the CAA requires EPA to regulate HAPs, from categories of industrial facilities in two phases.
- The first phase is "technology-based," where EPA develops standards for controlling the emissions of HAPs from sources in an industry group or "source category" under section 112(d) of the CAA. These maximum achievable control technology (MACT) standards are

based on emissions levels that are already being achieved by the best-controlled and lower-emitting sources in an industry.

- Within 8 years of setting the MACT standards, section 112(f)(2) of the CAA directs EPA to assess the remaining health risks from each source category to determine whether the standards protect public health with an ample margin of safety and protect against adverse environmental effects. This second phase is a “risk-based” approach called residual risk. Here, EPA must determine whether more health-protective standards are necessary.
- Also, every 8 years after setting MACT standards, section 112(d)(6) of the CAA requires EPA to review and revise the standards, if necessary, to account for improvements in air pollution controls and/or prevention.

SOLICITATION OF COMMENT ON EASTERN BITUMINOUS COAL REFUSE SUBCATEGORY

Issue

- EPA is considering establishing a subcategory for emissions of acid gas HAP from existing EGUs firing eastern bituminous coal refuse.
- EPA is requesting comment on establishing a subcategory and on the acid gas HAP emission standards that would be established if such a subcategory were created.
- The subcategory and standards would affect an estimated 10 existing EGUs (small units in Pennsylvania and West Virginia) that use eastern bituminous coal refuse to generate electricity.
- Bituminous coal refuse-fired EGUs must install some sort of downstream acid gas control technology to meet the final acid gas MATS standards and EPA believes that such control technology would be expensive and potentially technically and practically infeasible to retrofit on the small units that are currently firing eastern bituminous coal refuse.

Background

- In 2011, EPA proposed hydrochloric acid (HCl) and sulfur dioxide (SO₂) standards for all coal-fired EGUs.
- Public comments on the proposal claimed that the characteristics of coal refuse made it too costly to comply with the acid gas HAP standards and requested a subcategory for EGUs burning coal refuse.
- EPA determined there was no basis for a subcategory and, in 2012, finalized HCl and SO₂ standards that apply to all coal-fired EGUs.
- EPA’s decision was challenged, and, in 2014, upheld by the D.C. Circuit Court in *White Stallion v. EPA*.
- EPA received a petition for reconsideration requesting a subcategory for the acid gas standards for EGUs burning all types of coal refuse, and EPA denied the petition.
- EPA’s denial of the petition was challenged, the petitioner claiming that its petition only requested subcategorization for EGUs burning bituminous coal refuse, not for all coal refuse EGUs (*ARIPPA v. EPA*).
- In 2017, EPA asked the Court to hold the case in abeyance.

HOW TO COMMENT

- Comments on the proposal should be identified by Docket ID No. EPA-HQ-OAR-2018-0794, and may be submitted by one of the following methods:
 - **Online:** Go to <https://www.regulations.gov> and follow the online instructions for submitting comments to Docket ID No. EPA-HQ-OAR-2018-0794.
 - **Email:** Comments may be sent to a-and-r-Docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2018-0794 in the subject line of the message.
 - **Fax:** Fax your comments to: (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2018-0794.
 - **Mail:** Environmental Protection Agency, EPA Docket Center (EPA/DC), Mail Code 28221T, Attention Docket ID No. EPA-HQ-OAR-2018-0794, 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-2018-0794. 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 additional information, including the full EPA public comment policy, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR MORE INFORMATION

- A copy of the proposed rule is available on EPA's website at <https://www.epa.gov/mats>