

FACT SHEET

Mercury and Air Toxics Standards for Power Plants: Revised Supplemental Finding and Residual Risk and Technology Review Final Rule

- On April 16, 2020, EPA completed a reconsideration of the appropriate and necessary finding for the Mercury and Air Toxics Standards (MATS), correcting flaws in the approach to considering costs and benefits while ensuring that hazardous air pollutant (HAP) emissions from power plants continue to be appropriately controlled.
- Under this action, no more mercury or any other hazardous air pollutant will be emitted into the air than before. EPA is maintaining its mercury and air toxics emissions standards as Administrator Wheeler announced nearly a year ago.
- EPA is not removing coal- and oil-fired power plants from the list of affected source categories for regulation under section 112 of the Clean Air Act (CAA), so MATS remains in effect.
- This action is about responding to the U.S. Supreme Court and cost benefit analysis in regulations.
 - In 2015, the U.S. Supreme Court held that EPA had failed to consider the cost of compliance when proposing regulation of hazardous air pollutants from coal and oil fired power plants.
 - EPA is now appropriately responding to that Supreme Court decision and directive to EPA.
 - For EPA to regulate HAP emissions from coal- and oil-fired power plants under the Clean Air Act, it must make a finding that such regulation is appropriate and necessary (i.e., the A&N finding). The A&N finding must consider the cost and benefits of reducing those HAP emissions.
 - EPA's information demonstrated MATS was projected to cost up to \$9.6 billion annually while the monetizable benefits derived from mercury emission reductions were valued at up to \$6 million annually.
- Mercury standards will stay in place despite the reversal of the A&N finding.

FINAL ACTION HAS TWO PARTS: REVISED FINDING AND RTR

- In *Michigan v. EPA*, the U.S. Supreme Court ruled that EPA was required to consider costs when determining whether it is “appropriate and necessary” to regulate hazardous air pollutants (HAP), or “air toxics,” from power plants.
- After primarily considering compliance costs relative to the HAP benefits of MATS, EPA is concluding that it is not "appropriate and necessary" to regulate electric utility steam generating units (EGUs) under section 112 of the Clean Air Act (CAA).
- This revised finding corrects flaws in the Agency's 2016 Supplemental Finding on this issue.
- However, EPA is not removing coal- and oil-fired EGUs from the list of affected source categories for regulation under section 112 of the CAA, so the MATS rule remains in effect.
- EPA is also taking final action on the residual risk and technology review (RTR) that is required by CAA section 112. The results from the RTR show that emissions of HAP have been reduced such that residual risk is at acceptable levels, that there are no developments in

HAP emissions controls to achieve further cost-effective reductions beyond the current standards, and, therefore, no changes to the MATS rule are warranted.

REVISED SUPPLEMENTAL FINDING

Action

- EPA is finalizing its conclusion that it is not “appropriate and necessary” to regulate emissions of air toxics from coal- and oil-fired power plants under section 112 of the CAA because the costs of such regulation outweigh the benefits of HAP emission reductions.
- EPA has reexamined the cost analyses presented in the 2016 Supplemental Finding and has determined 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 has concluded that the consideration of cost in the 2016 Supplemental Finding was flawed. 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 final action, 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 has determined that equal reliance on the particulate matter (PM) air quality benefits that were projected to occur as an ancillary result of HAP emission reductions was flawed since CAA section 112 is specifically designed to achieve HAP emissions reductions.
- EPA has determined that the correct consideration of cost (to satisfy our duty in the context of the CAA section 112(n)(1)(A) appropriate and necessary finding) is to primarily compare the cost of compliance with MATS with the benefits that are specifically attributable to reductions in emissions of HAP.
- A proper consideration of costs demonstrates that the total projected 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 associated with MATS, the Administrator has concluded that the identification of these benefits is not sufficient, in light of the 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, it is inappropriate given the HAP-specific focus of CAA section 112, for monetized PM co-benefits to be the primary determinative factor in EPA’s appropriate and necessary finding.
- EPA has concluded that making this determination that it is not “appropriate and necessary” does not remove coal- and oil-fired EGUs from the list of affected source categories for regulation under section 112 nor does it affect the status of the MATS rule, which remains in effect.

Background

- The CAA lays out a multi-step process for regulating air toxics from power plants. The process includes a requirement that EPA determine whether or not it is “appropriate and

necessary” to regulate EGUs for emissions of air toxics – referred to as an A&N Finding; taking an action to “list” EGUs for air toxics regulation under section 112 of the CAA; and setting emission standards for air toxics.

- 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, 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 air toxics 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 subsequently remanded the rule back to EPA (without vacatur) to allow the Agency to address the identified deficiency.
- 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 previous conclusion that it was appropriate and necessary to regulate air toxics from coal- and oil-fired EGUs.
- The 2016 Supplemental Finding was challenged in the D.C. Circuit Court (*Murray Energy Corp. v. EPA*).
- In 2017, in response to this challenge, EPA requested (and the court granted) that the case be held in abeyance to allow the new Administration to review the 2016 Supplemental Finding.

RESIDUAL RISK AND TECHNOLOGY REVIEW

Action

- EPA is finalizing the results of the RTR of MATS that the Agency is required to conduct in accordance with CAA section 112.
- **Residual Risk Review:** Based on the completed risk assessment, EPA has determined that the residual risks due to emissions of air toxics 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 and prevent an adverse environmental effect.
- **Technology Review:** Based on the technology review of MATS, EPA has identified no cost-effective air toxics emissions controls to achieve further emission reductions.
- EPA is not promulgating any revisions to MATS based on the results of these reviews.

Background

- Section 112 of the CAA requires EPA to regulate air toxics from listed categories of industrial facilities in two phases.
- The first phase is “technology-based,” where EPA develops standards for controlling the emissions of air toxics 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.

FOR MORE INFORMATION

- The fact sheet and a copy of the final rule are on EPA’s website at <https://www.epa.gov/mats>.