



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2013-0495; EPA-HQ-OAR-2013-0603; FRL-9946-09-OAR]

Reconsideration of Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action denying petitions for reconsideration.

SUMMARY: The U.S. Environmental Protection Agency (EPA) received six petitions for reconsideration of the final Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, published in the **Federal Register** on October 23, 2015. The agency is providing notice that it is denying five of these petitions, and deferring action on the issue of treatment of biomass raised in the petitions of both the Biogenic CO₂ Coalition and the State of Wisconsin. The basis for the EPA's action is set out fully in a separate memorandum available in the rulemaking docket.

DATES: Effective [insert date of publication in the **Federal Register**].

FOR FURTHER INFORMATION CONTACT: Dr. Nick Hutson, Energy Strategies Group, Sector Policies and Programs Division (D243-01), U.S. EPA, Research Triangle Park, NC 27711; telephone

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SUPPLEMENTARY INFORMATION:

I. Where can I get a copy of this document and other related information?

A copy of this **Federal Register** notice, the petitions for reconsideration, and the separate memorandum describing the full basis for this action is available in the rulemaking dockets (Docket ID No. EPA-HQ-OAR-2013-0495 and Docket ID No. EPA-HQ-OAR-2013-0603). In addition, following signature, an electronic copy of this final action and the memorandum will be available on the World Wide Web (WWW) at the following address:
<https://www.epa.gov/cleanpowerplan>.

II. Judicial Review

Section 307(b)(1) of the Clean Air Act (CAA) specifies which Federal Courts of Appeal have venue over petitions for review of final EPA actions. This section provides, in part, that "a petition for review of action of the Administrator in promulgating . . . any standard of performance or requirement

under section [111] of [the CAA],” or any other “nationally applicable” final action, “may be filed only in the United States Court of Appeals for the District of Columbia.”

The EPA has determined that its action denying the petitions for reconsideration is nationally applicable for purposes of CAA section 307(b) (1) because the action directly affects the Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, which are nationally applicable section 111 standards. Thus, any petitions for review of the EPA’s decision to deny petitioners’ requests for reconsideration must be filed in the United States Court of Appeals for the District of Columbia by [insert date 60 days after publication in the Federal Register].

III. Background and Summary of the Action

On October 23, 2015, pursuant to section 111(b) of the CAA, the EPA published the final rule titled “Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units.” (“section 111(b) greenhouse gas (GHG) new source performance standards (NSPS)”) 80 FR 64510.¹ Following

¹ The rule is also often referred to as the “Carbon Pollution Standards.”

publication of the final rule, the Administrator received petitions for reconsideration of certain provisions of the final rule pursuant to CAA section 307(d)(7)(B).

CAA section 307(d)(7)(B) requires the EPA to convene a proceeding for reconsideration of a rule if a party raising an objection to the rule "can demonstrate to the Administrator that it was impracticable to raise such objection within [the public comment period] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." The requirement to convene a proceeding to reconsider a rule is, thus, based on the petitioner demonstrating to the EPA both: (1) that it was impracticable to raise the objection during the comment period, or that the grounds for such objection arose after the comment period but within the time specified for judicial review (*i.e.*, within 60 days after publication of the final rulemaking notice in the **Federal Register**, see CAA section 307(b)(1)); and (2) that the objection is of central relevance to the outcome of the rule.

The EPA received six petitions for reconsideration of the CAA section 111(b) greenhouse gas (GHG) new source performance standard (NSPS) from the following entities: the Utility Air

Regulatory Group (UARG); American Electric Power (AEP); Ameren Corp. (Ameren); the Energy and Environmental Legal Institute (EELI); State of Wisconsin; and the Biogenic CO₂ Coalition. The EPA is denying all but the last of these petitions as not satisfying one or both of the statutory conditions for compelled reconsideration. The EPA is deferring action on the petition of the Biogenic CO₂ Coalition pending our further on-going consideration of the underlying issue of whether and how to account for biomass when co-firing with fossil fuels.²

We discuss each of the five petitions we are denying and the basis for those denials in a separate, docketed memorandum titled "Basis for Denial of Petitions to Reconsider the CAA

² The State of Wisconsin, in its petition, also raises the issue of whether and how to account for biomass fuels for purposes of determining compliance with applicable standards when biomass is co-fired with fossil fuels. The EPA is likewise not acting at this time on this portion of the State's petition.

section 111(b) Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Utility Generating Units." For reasons set out in the memorandum, the petitions for review of UARG, AEP, Ameren, EELI, and the State of Wisconsin (with the exception of the issue regarding treatment of biomass) are denied.³

Dated: April 29, 2016.

Gina McCarthy,
Administrator.

³ The Administrator is also sending an individual letter to each of the petitioners announcing her decision on their petition.

