



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 423

[EPA–HQ–OW–2009–0819; FRL– 8794.3-02-OW]

RIN 2040-AG48

Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category – Initial Notification Date Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The U.S. Environmental Protection Agency (the EPA or Agency) is taking direct final action to extend the date for existing steam electric power plants to decide whether to submit a notice of planned participation (NOPP) for the permanent cessation of coal combustion subcategory in the 2024 Supplemental Steam Electric Reconsideration Rule (“2024 rule”).

DATES: This rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice, unless the EPA receives adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If the EPA receives adverse comment, the agency will publish a timely withdrawal in the *Federal Register* informing the public that this direct final rule will not take effect.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OW–2009–0819, by any of the following methods:

Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.

Mail: U.S. Environmental Protection Agency, EPA Docket Center, Office of Water, Office of Science and Technology, Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

Hand Delivery or Courier: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov>, including personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Richard Benware, Engineering and Analysis Division Office of Water (Mail Code 4303T), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW; Washington, DC 20460; telephone number: 202-566-1369; email address: benware.richard@epa.gov. Information about the 2024 rule is available online at: <https://www.epa.gov/eg/steam-electric-power-generating-effluent-guidelines-2024-final-rule>.

SUPPLEMENTARY INFORMATION:

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I. Why is the EPA using a direct final rule?

The EPA is taking direct final action because the agency views this as a noncontroversial action and anticipates no adverse comment because the rule extends the date for existing steam electric power plants to submit a NOPP in the 2024 rule's (89 FR 40198, May 9, 2024) subcategory for electric generating units (EGUs) permanently ceasing coal combustion by

December 31, 2034, from December 31, 2025, to December 31, 2031. This direct final rule does not otherwise amend 40 CFR part 423 in any way. In the “Proposed Rules” section of this issue of the *Federal Register*, however, the EPA is publishing a separate document that will serve as the proposed rulemaking to extend the initial notification date if adverse comments are received on this direct final rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the ADDRESSES and DATES sections of this document.

If the EPA receives adverse comment on this direct final rule, it will publish a timely withdrawal in the *Federal Register* informing the public that this direct final rule will not take effect. The EPA would address all public comments in any subsequent final rule based on the proposed rulemaking.

II. Does this action apply to me?

Entities potentially regulated by this action include:

Category	Example of regulated entity	North American Industry Classification System (NAICS) Code
Industry	Electric Power Generation Facilities – Electric Power Generation	22111
	Electric Power Generation Facilities – Fossil Fuel Electric Power Generation	221112

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table includes the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not included could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in 40 CFR 423.10 (Applicability). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

III. What is the agency’s authority for taking this action?

The statutory authority for this rule is the same as that relied upon for the 2024 rule: Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, including Clean Water Act sections 301; 304(b), (c), (e), and (g); 306; 307; 308 and 501(a); 33 U.S.C. 1311, 1314(b), 1314(c), 1314(e), 1314(g), 1316, 1317, 1318, and 1361(a).

The statutory authority for the rulemaking procedures followed in this action is Administrative Procedure Act (APA) section 553(b)(B), 5 U.S.C. 553(b)(B). The EPA finds good cause to forego notice-and-comment rulemaking as unnecessary because the Agency does not anticipate adverse comments on this limited deadline extension. However, if the EPA receives adverse comments, it will withdraw this direct final rule and respond to comments as indicated in the proposed rule published in the *Federal Register* contemporaneously with this action.

IV. Background

The EPA promulgated the most recent iteration of the Supplemental Steam Electric Effluent Limitations Guidelines and Standards in 2024. In the 2024 rule, the EPA established a subcategory for EGUs permanently ceasing coal combustion by December 31, 2034. For these EGUs, less stringent limitations and standards apply for discharges of pollutants found in flue gas desulfurization wastewater, bottom ash transport water, and combustion residual leachate (CRL) than limitations applicable to non-closing or non-repowering sources in this source category. These less stringent limitations and standards are the same as the limitations and standards previously applicable under the 2020 Steam Electric Reconsideration Rule (85 FR 64650, October 13, 2020). As there were no nationally applicable limitations and standards for CRL prior to 2024, the subcategory left in place the requirement for permitting authorities to develop case-by-case technology-based effluent limitations using their best professional judgment, and it established mercury and arsenic limitations based on chemical precipitation after retirement of the plant. In order to participate in this subcategory, facilities had to submit a NOPP to their permitting authority or control authority by December 31, 2025, and subsequently

submit annual progress reports on the steps taken to achieve permanent cessation of coal combustion. The NOPP notifies the permitting authority or the control authority of the plant's intent to opt into the 2024 rule's subcategory for sources that anticipate closure or repowering.

Stakeholders, including grid operators, grid reliability experts, trade associations, and utilities, have raised concerns that a significant number of facilities need more time to understand how their operations fit within a changing landscape of local and regional demand that is untethered from rapidly approaching compliance timelines crafted under different demand assumptions used in the 2024 rule. This includes, among other decisions, whether to avail themselves of the compliance pathway for EGUs seeking to retire or convert to alternative fuel sources by December 31, 2034.

V. What action is the EPA taking?

Based on the recent discussions with electric utility trade associations and other stakeholders suggesting that there are likely additional EGUs seeking more time to decide whether to provide notice of intent to voluntarily cease coal combustion by December 31, 2034, and that these EGUs need additional time to make this decision in light of surging electricity demand and corresponding concerns related to energy availability across the country, the EPA is extending the NOPP filing date in 40 CFR 423.19(h) from December 31, 2025, to December 31, 2031. This direct final rule does not change any other dates for the reporting and recordkeeping requirements of 40 CFR 423.19, nor does it make any other changes to 40 CFR part 423.

Any adverse comment on the direct final rule must be submitted within 30 days after publication of this action for the EPA to withdraw the action. Where it is not clear that an adverse comment relates to this direct final rule's extension of the NOPP date, or is submitted after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the EPA may not consider the comment. To the extent that an adverse comment explicitly indicates that it is being submitted on the direct final rule, the EPA will not consider relevant to this direct final action any additional included comments on any topic other than the

extension of the NOPP date for the permanent cessation of coal combustion by 2034 subcategory. Any other comments will be considered outside the scope of this action.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

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.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is considered an Executive Order 14192 deregulatory action. This final rule provides burden reduction by providing additional time for the regulated community associated with their decision making; however, no expenses are incurred at the time of NOPP submission.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040-0310. This rule contains no new requirements for reporting and recordkeeping.

D. Regulatory Flexibility Act (RFA)

This direct final action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the Agency has invoked the APA “good cause” exemption under 5 U.S.C. 553(b).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in Unfunded Mandates Reform Act, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small

governments. The action imposes no enforceable duty on any state, local or Tribal governments, or the private sector.

F. Executive Order 13132: Federalism

This action does not have significant federalism implications under Executive Order 13132, entitled “Federalism” (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 create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249; November 9, 2000).

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

The EPA interprets Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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 action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

K. Congressional Review Act

This action is subject to the Congressional Review Act, 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 facilities, Waste treatment and disposal, Water pollution control.

Lee Zeldin,
Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 423 as follows:

PART 423—STEAM ELECTRIC POWER GENERATING POINT SOURCE

CATEGORY

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

Authority: 33 U.S.C. 1251 *et seq.*; 1311; 1314(b), (c), (e), (g), and (i)(A) and (B); 1316; 1317; 1318 and 1361.

2. Amend § 423.19 by revising paragraph (h)(1) to read as follows:

§ 423.19 Reporting and recordkeeping requirements.

* * * * *

(h) * * *

(1) *Notice of Planned Participation.* For sources seeking to qualify as an electric generating unit that will achieve permanent cessation of coal combustion by December 31, 2034, under this part, a Notice of Planned Participation shall be made to the permitting authority, or to the control authority in the case of an indirect discharger, no later than December 31, 2031.

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