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### PRE-PUBLICATION NOTICE

The EPA Administrator, Michael S. Regan, signed the following direct final rule on March 7, 2023, and EPA is submitting it for publication in the Federal Register (FR). It is not the official version of the notice of availability. This document is not disseminated for purposes of EPA's Information Quality Guidelines and does not represent an Agency determination or policy. While we have taken steps to ensure the accuracy of this internet version of this notice, the official version will be published in a forthcoming FR publication, which will appear on <https://www.federalregister.gov> and on Regulations.gov (<https://www.regulations.gov>) in Docket No. EPA-HQ-OW-2009-0819.

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 423**

**[EPA–HQ–OW–2009–0819; FRL–8794.1-02-OW]**

**RIN 2040-AG28**

**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 Environmental Protection Agency (EPA or agency) is taking direct final action to extend the date for existing coal-fired power plants to submit a notice of planned participation (NOPP) for the permanent cessation of coal combustion subcategory in the 2020 Steam Electric Reconsideration Rule (October 13, 2020) (“2020 rule”) from October 13, 2021, to **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Because this action is not expected to be controversial, EPA is publishing the date change in the *Federal Register* as a direct final rule. As is EPA’s practice for direct final rules, EPA is also publishing a parallel proposed rulemaking with the same changes that are in this direct final rule, if the Agency receives adverse comments. That proposed rule is incorporated into the broader proposal that contains changes to the effluent limitations applicable to certain wastestreams for the industry. See *Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category*, which is elsewhere in this issue of the *Federal Register* in a proposed rule.

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

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OW–2009–0819 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI and multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. All documents in the docket are listed on the <https://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 <https://www.regulations.gov>.

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<https://www.epa.gov/eg/2021-supplemental-steam-electric-rulemaking>.

## **SUPPLEMENTARY INFORMATION:**

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### **I. Why is EPA using a direct final rule?**

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 coal-fired power plants to submit a NOPP in the 2020 rule's (85 FR 64650, October 13, 2020) subcategory for electric generating units (EGUs) permanently ceasing coal combustion by December 31, 2028, from October 13, 2021, to **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. This direct final rule does not otherwise amend 40 CFR part 423 in any way. In the "Proposed Rules" section of this *Federal Register* publication, however, 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

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final rule. 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** section of this document.

If 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. EPA would address all public comments in any subsequent final rule based on the proposed rule.

## II. Does this action apply to me?

Entities potentially regulated by this action include:

<b>Category</b>	<b>Example of regulated entity</b>	<b>North American Industry Classification System (NAICS) Code</b>
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 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 of this preamble.

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

The authority for this rule is the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, including sections 101; 301; 304(b), (c), (e), and (g); 306; 307; 308 and 501.

#### **IV. Background**

EPA promulgated the Steam Electric Reconsideration Rule in 2020. In the 2020 rule, EPA established a subcategory for EGUs permanently ceasing coal combustion by December 31, 2028. For these EGUs, less stringent total suspended solids limitations and standards were established for discharges of pollutants found in flue gas desulfurization (FGD) wastewater and bottom ash (BA) transport water. These limitations and standards were based on the use of surface impoundments. In order to participate in this subcategory, facilities had to submit a NOPP to their permitting authority or control authority by October 13, 2021, and subsequently submit annual progress reports on the steps taken to achieve permanent cessation of coal combustion.<sup>1</sup> After the October 13, 2021 NOPP date had passed, EPA learned in meetings with trade associations and utilities that additional facilities wish to avail themselves of the compliance pathway for EGUs seeking to retire or convert to a non-coal fuel source by December 31, 2028, but were unable to make that commitment by October 13, 2021.

#### **V. What action is EPA taking?**

Based on the recent information submitted to EPA suggesting that there are likely additional EGUs seeking to permanently cease coal combustion by December 31, 2028, EPA is extending the NOPP date in 40 CFR 423.19(f) to **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. This direct final rule does not change any other dates for the reporting and recordkeeping requirements of section 423.19, nor does it make any other changes to 40 CFR part 423.

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<sup>1</sup> While it is also possible for facilities to use the transfer provisions of 40 CFR 423.13(o) to transfer into this subcategory from the voluntary incentives program or low utilization EGU subcategory, EPA is only aware of six facilities which have elected to participate in these programs.

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Elsewhere in this *Federal Register* issue, EPA is proposing certain revisions to strengthen the steam electric effluent guidelines. That document proposes that EPA would retain the subcategory for EGUs permanently ceasing coal combustion by December 31, 2028. EPA is using the same docket for this action as for the proposed rulemaking, and thus the agency requests that any comments on this direct final action be submitted separately from comments on the broader proposed rulemaking and contain language that explicitly denotes they are intended to be for this direct final action relating solely to the NOPP date. Where it is not clear that the comment relates to the extension of the NOPP date, EPA may consider it to be a comment on the broader proposed rulemaking rather than this action. To the extent that a comment explicitly indicates that it is being submitted on this direct final rule, EPA will not consider items on any topic other than the extension of the NOPP date for the permanent cessation of coal combustion by 2028 subcategory. Any other comments will be considered outside the scope of this action; if the comments are intended for the companion proposal, they should be provided separately.

## **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*

Under Executive Order 12866 (58 FR 51735; October 4, 1993) and Executive Order 13563 (76 FR 3821; January 21, 2011), this action is not a “significant regulatory action” and is, therefore, not subject to review by the Office of Management and Budget (OMB). Nevertheless, since this is a companion action to a proposed rulemaking which is a significant regulatory action, EPA has provided this action to OMB to assist with review of the companion proposal.

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*B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040-0004. This rule contains no new requirements for reporting and recordkeeping.

*C. 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, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule has no net burden on the small entities subject to the rule. EPA is limiting its changes to the date that a facility may submit an initial notification to the permitting or control authority. The agency has therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

*D. 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.

*E. 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



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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.

*F. 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). 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 13045: Protection of Children from Environmental Health Risks and Safety Risks*

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 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.

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

This action is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

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*I. 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.

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

EPA believes that this action is not subject to Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629; February 16, 1994), because it does not establish an environmental health or safety standard. This regulatory action is a minor date change for filing a notice contained in a previously promulgated regulatory action and does not have any impact on human health or the environment.

*K. Congressional Review Act (CRA)*

This action is subject to the Congressional Review Act, and 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.

Michael S. Regan,  
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:** 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 § 423.19 by revising paragraph (f)(1) to read as follows:

**§ 423.19 Reporting and recordkeeping requirements.**

\* \* \* \* \*

(f) \* \* \*

(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, 2028, 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 **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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