

EPA Expected to Finalize New Source MATS Reconsideration This Month

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EPA is expected to finalize the long-awaited new source MATS reconsideration before the end of the month. The final rule is expected to raise the MATS emission limits for Hg, PM, HCl, SO₂, selenium, and lead applicable to new EGUs. EPA is also expected to finalize changes to the startup and shutdown work practice standards and the utility NSPS provisions in Subpart Da. Developers of new coal-fired utilities have urged EPA to finalize the new source MATS reconsideration before the April 12, 2013 deadline to commence construction in order to avoid becoming subject to EPA's proposed GHG NSPS rule. EPA's February 13, 2013 status update to the U.S. Court of Appeals for the D.C. Circuit in *White Stallion Energy Center, LLC v. EPA* indicated that "[t]he Agency remains on track to finalize the rule in March of 2013."

Despite EPA's assurances, it is unclear whether EPA will be able to finalize the rule this month because EPA has not yet submitted the rule to the White House Office of Management & Budget (OMB) for mandatory pre-publication review. While there is no minimum time period for OMB review, Executive Order 12866 limits OMB review to 90 days, although the OMB Director or the EPA Administrator can extend the review time. OMB review is typically a lengthy process, which may force EPA to delay issuance of the final rule.

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