

## **EPA Promulgates The Utility MACT Rule: The World Has Not Yet Come to and End**

December 23, 2011 by [Seth Jaffe](#)

On Wednesday, EPA promulgated the [final Utility MACT rule](#). I'm doubting that anyone reading this blog isn't already aware of the big news.

As seems frequently to be the case with EPA rules, this one, weighing in at 2.4MB and 1,117 pages, cannot easily be summarized here. In fact, the rule is so complicated – and controversial – that EPA had to generate four separate fact sheets to summarize the rule and its impacts: (1) [Costs and Benefits](#) (or, as EPA carefully puts it, “Benefits and Costs”); (2) [Summary of the Rule](#); (3) [Clean Air and Reliable Electricity](#) (I wonder why EPA thought this one necessary?); and (4) [Adjustments from Proposal to Final](#).

We live in a complex world, so there is not much use in complaining about how overwhelming this rule is, and about the problems inherent in a system in which rules with costs of approximately \$10B annually and benefits ranging from \$37B to \$90B annually are this complicated and are probably truly understood by a very small number of people. As I tell my Libertarian friends, even Jefferson wouldn't be a Jeffersonian today. Nonetheless, it is troubling.

The issues worth noting in a blog post are probably the changes from the proposal. Significant changes include:

- Use of filterable PM for the particulate emissions limit, rather than total PM (which would include condensables).
- Use of work practice standards, rather than emission limits, during start-up and shut-down. This is an important change, which will make life much easier for regulated units.
- Greater flexibility in facility-wide averaging.

Reliability has obviously been the big issue for EPA. Units will generally have three years to comply. Permitting authorities may grant a 4<sup>th</sup> year, if necessary, and EPA has said that they expect the extra year to be “broadly available.” EPA has also provided a mechanism for “units that are shown to be critical for reliability to obtain” a 5<sup>th</sup> year to comply – though EPA has said that it does not expect many units to require or qualify for the 5<sup>th</sup> year.

My predictions on the rule's fate and impact?

- I'll be stunned if the rule does not survive judicial review. Of course, in an 1,117 page rule, there may be some obscure provision that is struck down, but the basic provisions will be upheld.

- The sky will not fall. Significant numbers of jobs will not be lost, and the increase in electricity prices will be smaller than predicted. Since I whack EPA often enough, I'll defend it here – to a limited extent. I don't think that there has been a single big rule ever promulgated by EPA where the implementation costs haven't been less than expected. That's been true for one simple reason. When industry has clear rules to follow (even if they are not the cost-effective rules I would prefer), industrial innovation works to bring down compliance costs in ways that were not imagined, either by EPA or industry, when the rule was promulgated.
- Of course, if there is a Republican President and a Republican Congress, all bets are off. Of course, when Mitt Romney was Governor of Massachusetts, he supported regulations by MassDEP that were essentially a state version of the Utility MACT rule, notwithstanding his criticism today of EPA for wanting to promulgate job-killing regulations. Of course, Mitt
- Romney has been known to change his mind. Of course,... oh, never mind.



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