

EPA Compromises (Again) on the Boiler Rule: Will It Get Any Credit?

December 6, 2011 by [Seth Jaffe](#)

On Friday, [EPA proposed](#) certain revisions to its rule on air emissions from boilers and commercial and industrial solid waste incinerators (CISWI). As with other major rules under development in the past few years, EPA has taken fairly substantial steps to limit the reach of the rule to those boilers and CISWI that are of greatest concern. Without engaging in formal cost-effectiveness analysis, EPA has sought to make the rule as cost-effective as possible.

As with most of EPA's big rules, it is too complex to be summarized in a blog post. EPA's summary fact sheet is [here](#). Very briefly, the rule exempts 86% of industrial boilers and subjects most other boilers to work practice standards rather than emission limits. For those boilers subject to the emission limits, the new rules relaxed limits for CO, PM, and most metals, but increased the stringency for mercury and acid gases.

EPA also made one important change sought by the biomass industry. The rule will allow biomass to be combusted in boilers and CISWI, by defining it as "non-hazardous secondary material," which can now "be considered a legitimate, non-waste fuel."

As [I have noted with other EPA rules](#), I expect that this rule will survive judicial challenge. Although no cost-effectiveness analysis was provided, EPA estimates that the benefits of the rules exceed the costs by a factor of more than 10. More to the point, as with other rules, much of what EPA has done is dictated by the CAA.

The real question is whether anyone will appreciate EPA's efforts to – if I may use the term – tailor the rule as finely as possible. As [Greenwire noted](#), there remain efforts in Congress to pass legislation both delaying and softening the rules. My sense is that we should at least give EPA credit for drafting better rules, because the agency is certainly not getting any political credit. The environmentalists criticize EPA for not having enough gumption, while EPA's critics still call EPA "the scariest agency in federal government."

On this score, I'll just note one final perspective. In today's New York Times, [David Brooks described](#) Obama – or least Cass Sunstein, director the Office of Information and Regulatory Affairs – as a "wonky liberal." What was the context for this comment? A discussion of the administration's handling of costly environmental regulations. Brooks conceded that "most people in government are trying to find a balance between difficult trade-offs." The problem for the administration is that neither the right nor the left today wants balance.

I enjoy criticizing EPA, but I would want to be trying to juggle the issues that EPA is currently statutorily mandated to address.

© Foley Hoag LLP. All rights reserved. Attorney advertising. Prior results do not guarantee a similar outcome.