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March 21, 2024

The Honorable Thomas R. Carper
Chairman
The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Cathy McMorris Rodgers
Chairman
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Environmental Protection Agency: Reconsideration of the National Ambient Air Quality Standards for Particulate Matter*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Environmental Protection Agency (EPA) entitled “Reconsideration of the National Ambient Air Quality Standards for Particulate Matter” (RIN: 2060-AV52). We received the rule on February 9, 2024. It was published in the *Federal Register* as a final rule on March 6, 2024. 89 Fed. Reg. 16202. The effective date is May 6, 2024.

According to EPA, the final rule revises the primary annual particulate matter (PM) PM_{2.5} standard by lowering the level from 12.0 µg/m³ to 9.0 µg/m³. EPA stated it is retaining the current primary 24-hour PM_{2.5} standard and the primary 24-hour PM₁₀ standard. Additionally, EPA stated is not changing the secondary 24-hour PM_{2.5} standard, secondary annual PM_{2.5} standard, and secondary 24-hour PM₁₀ standard at this time. EPA also stated it is also finalizing revisions to other key aspects related to the PM National Ambient Air Quality Standards (NAAQS), including revisions to the Air Quality Index and monitoring requirements for the PM NAAQS.

Enclosed is our assessment of EPA’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

Shirley A. Jones
Managing Associate General Counsel

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
“RECONSIDERATION OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS
FOR PARTICULATE MATTER”
(RIN: 2060-AV52)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) estimated the costs and benefits of the final rule at various particulate matter levels. For example, at the 10/35 level, EPA estimated costs at \$200,000,000 and benefits to be between \$8,500,000,000 and \$17,000,000,000. EPA stated that relevant law and court decisions restrict consideration of the costs and benefits when setting particulate matter levels, so EPA stated these estimates did not contribute to its analysis.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

EPA certified the final rule would not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

EPA determined the final rule does not contain an unfunded mandate of \$100 million or more and does not significantly or uniquely affect small governments.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

EPA did not address the Act in the final rule or in its submission to us.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On January 27, 2023, EPA published a proposed rule. 88 Fed. Reg. 5558. EPA held a multi-day virtual public hearing from February 21–23, 2023. EPA also received nearly 700,000 comments from the public on the proposed rule. EPA addressed those comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

EPA stated the final rule contained no information collection requirements subject to PRA.

Statutory authorization for the rule

EPA promulgated the final rule pursuant to sections 1857g, 7401, 7403, 7405, 7410, 7414, 7601, 7611, 7614, and 7619 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

EPA determined the final rule was a significant regulatory action and submitted the rule to OMB for review.

Executive Order No. 13132 (Federalism)

EPA determined the final rule 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.