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March 25, 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
Chair
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Environmental Protection Agency: Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review*

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 “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review” (RIN: 2060-AV16). We received the rule on January 11, 2024. It was published in the *Federal Register* as a final rule on March 8, 2024. 89 Fed. Reg. 16820. The effective date is May 7, 2024.

EPA states that the final rule takes multiple actions to reduce air pollution from the Crude Oil and Natural Gas source category. First, EPA states that the final rule finalizes revisions to the new source performance standards (NSPS) regulating greenhouse gases (GHGs) and volatile organic compounds (VOCs) emissions for the Crude Oil and Natural Gas source category pursuant to the Clean Air Act (CAA), 42 U.S.C. §§ 7401 *et seq.* Second, EPA states that the final rule finalizes emission guidelines (EGs) under CAA for states to follow in developing, submitting, and implementing state plans to establish performance standards to limit GHG emissions from existing sources (designated facilities) in the Crude Oil and Natural Gas source category. Third, EPA states that the final rule finalizes several related actions stemming from the joint resolution of Congress, adopted on June 30, 2021, under the Congressional Review Act, 5 U.S.C. §§ 801 *et seq.* disapproving EPA’s final rule titled “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review,” September 14, 2020 (“2020 Policy Rule”). Fourth, EPA states that the final rule finalizes a protocol under the general provisions for optical gas imaging (OGI).

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.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and a distinct 'A'.

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
“STANDARDS OF PERFORMANCE FOR NEW, RECONSTRUCTED,
AND MODIFIED SOURCES AND EMISSIONS GUIDELINES FOR EXISTING SOURCES:
OIL AND NATURAL GAS SECTOR CLIMATE REVIEW”
(RIN: 2060-AV16)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) analyzed the costs and benefits of this final rule for the period spanning 2024 through 2038. At a two-percent discount rate, with dollar estimates in millions of 2019 dollars, EPA found that the rule provided net benefits having a present value of \$97,000 and an equivalent annual value of \$7,600. At a three-percent discount rate, with dollar estimates in millions of 2019 dollars, EPA found that the rule provided net benefits having a present value of \$97,000 and an equivalent annual value of \$7,500. At a seven-percent discount rate, with dollar estimates in millions of 2019 dollars, EPA found that the rule provided net benefits having a present value of \$98,000 and an equivalent annual value of \$7,300.

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

EPA stated that it prepared a final regulatory flexibility analysis (FRFA) for this final rule, as required by the Act. EPA further stated that the FRFA addresses the issues raised by public comments and that the scope of the FRFA is limited to the final rule’s new source performance standards (NSPS), to be codified at 40 C.F.R. part 60, subpart OOOOb, because the final rule’s emission guidelines (EGs), to be codified at 40 C.F.R. part 60, subpart OOOOc, do not place explicit requirements on the regulated industry. EPA stated that the EG impacts will be evaluated pursuant to the development of a federal plan.

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

EPA stated that the NSPS included in the final rule contains a federal mandate covered under the Act and that EPA has therefore prepared a written statement under section 202 of the Act.

Consistent with section 205 of the Act, EPA stated that it has identified and considered reasonable regulatory alternatives to the final rule.

EPA stated that the EGs included in the final rule do not impose any direct compliance requirements on designated facilities, apart from the requirement for states to develop state plans. EPA also stated that the EGs do not impose specific requirements on tribal governments and that the burden for states to develop state plans based on the final rule is estimated to be below \$100 million in any one year. Thus, EPA stated that the EGs are not subject to sections 203 or 205 of the Act.

Finally, EPA stated that the NSPS and EGs are not subject to the requirements of section 203 of the Act because they contain no regulatory requirements that might 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 discuss the Act in the 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 November 15, 2021, EPA published a proposed rule. 86 Fed. Reg. 63110. On December 6, 2022, EPA published a supplemental proposed rule. 87 Fed. Reg. 74702. EPA received over 470,000 public comments on the proposed rule and over 515,000 additional public comments on the supplemental proposed rule. EPA responded to comments in the final rule, as well as providing an additional Response To Comments document.

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

EPA stated that the final rule contains information collection requirements that have been submitted to OMB for review and assigned OMB Control Number 2060-0721. EPA provided burden estimates for separate components of the final rule as follows:

- 40 C.F.R. part 60, subpart OOOOa: Total estimated burden of 373,338 hours; total estimated cost of \$126,543,957 (2019 dollars), which includes no capital costs or operations and maintenance costs.
- 40 C.F.R. part 60, subpart OOOOb: Total estimated burden of 883,625 hours; total estimated cost of \$58,535,262, which includes \$12,182,846 in capital costs.

- 40 C.F.R. part 60, subpart OOOOc: Estimated annual burden to the states of 166,000 to 208,000 hours with a total annual labor cost between \$21 million and \$26 million. Estimated annual burden for the federal government of 22,520 hours with a total annual labor cost of \$1,399,930. Estimated annual burden for industry of 2.2 million hours at a total annual labor cost of \$166 million.

Statutory authorization for the rule

EPA promulgated the final rule pursuant to section 4701, *et seq.* of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

EPA stated that the final rule is a significant regulatory action under the Order and that it submitted the final rule to OMB for review. EPA further stated that it prepared a regulatory impact analysis consistent with the Order.

Executive Order No. 13132 (Federalism)

EPA stated that the final rule does not have federalism implications as defined in the Order.