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

Subject: *Environmental Protection Agency: National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology 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 “National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review” (RIN: 2060-AV53). We received the rule on May 8, 2024. It was published in the *Federal Register* as a final rule on May 7, 2024. 89 Fed. Reg. 38508. The effective date of the rule is July 8, 2024.

According to EPA, this final rule finalizes amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Coal- and Oil-Fired Electric Utility Steam Generating Units (EGUs) source category. EPA stated that the changes include amending the filterable particulate matter (fPM) surrogate emission standard for non-mercury metal hazardous air pollutants (HAP) for existing coal-fired EGUs, the fPM emission standard compliance demonstration requirements, and the mercury (Hg) emission standard for lignite-fired EGUs. Additionally, EPA stated that the rule finalizes a change to the definition of “startup.”

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 Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

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

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
“NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS:
COAL- AND OIL-FIRED ELECTRIC UTILITY STEAM GENERATING UNITS REVIEW
OF THE RESIDUAL RISK AND TECHNOLOGY REVIEW”
(RIN: 2060-AV53)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) prepared a Regulatory Impact Analysis (RIA) for this final rule. EPA discussed the rule's costs as well as monetized and non-monetized benefits. EPA estimated compliance costs over a ten-year period of \$96 million per year, at a 2 percent discount rate, \$92 million per year, at a 3 percent discount rate, and \$80 million per year, at a 7 percent discount rate. EPA estimated health benefits of \$33 million per year, at a 2 percent discount rate, \$31 million per year, at a 3 percent discount rate, and \$25 million per year, at a 7 percent discount rate. EPA estimated climate benefits of \$14 million per year, at 2, 3, and 7 percent discount rates. EPA estimated net benefits of -\$49 million per year, at a 2 percent discount rate, -\$47 million per year, at a 3 percent discount rate, and -\$41 million per year, at a 7 percent discount rate. EPA also analyzed the potential non-monetized benefits of the rule and determined that if these benefits were able to be monetized, the rule would have greater net benefits.

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

EPA certified that this final rule will 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 that this final rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million or more, adjusted annually for inflation, in any one year.

(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 this final rule. In its submission to us, EPA indicated that the Act does not apply to the rule.

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

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

On April 24, 2023, EPA published a proposed rule. 88 Fed. Reg. 24854. EPA received comments and responded to the comments in this final rule.

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

EPA determined that this final rule contains information collection requirements under the Act. EPA submitted the information collection requirements to OMB. The revised requirements will be included in the information collection titled “NESHAP for Coal- and Oil-Fired Electric Utility Steam Generating Units (40 C.F.R. Part 63, Subpart UUUUU)” (OMB Control Number 2060-0567). EPA stated that the incremental cost associated with the revised information collection requirements is \$2.4 million per year.

Statutory authorization for the rule

EPA promulgated this final rule pursuant to sections 7401 *et seq.* of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

EPA determined that this final rule is significant under the Order and submitted it to OMB for review.

Executive Order No. 13132 (Federalism)

EPA determined that this final rule does not have federalism implications and will not have substantial direct effects on states, on the relationship between the federal government and states, or on the distribution of power and responsibilities among the various levels of government.