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May 23, 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: New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule*

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 “New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule” (RIN: 2060-AV09). We received the rule on May 8, 2024. It was published in the *Federal Register* as a final rule on May 9, 2024. 89 Fed. Reg. 39798. The effective date of the rule is July 8, 2024.

According to EPA, this final rule finalizes multiple actions under section 111 of the Clean Air Act (CAA), codified at 42 U.S.C. § 7411, addressing greenhouse gas (GHG) emissions from fossil fuel-fired electric generating units (EGUs). EPA stated that the rule: (1) finalizes the repeal of the Affordable Clean Energy Rule; (2) finalizes emission guidelines for GHG emissions from existing fossil fuel-fired steam generating EGUs, which include both coal-fired and oil/gas-fired steam generating EGUs; (3) finalizes revisions to the New Source Performance Standards (NSPS) for GHG emissions from new and reconstructed fossil fuel-fired stationary combustion turbine EGUs; and (4) finalizes revisions to the NSPS for GHG emissions from fossil fuel-fired steam generating units that undertake a large modification, based upon the 8-year review required by CAA.

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 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
“NEW SOURCE PERFORMANCE STANDARDS FOR GREENHOUSE GAS EMISSIONS
FROM NEW, MODIFIED, AND RECONSTRUCTED FOSSIL FUEL-FIRED ELECTRIC
GENERATING UNITS; EMISSION GUIDELINES FOR GREENHOUSE GAS EMISSIONS
FROM EXISTING FOSSIL FUEL-FIRED ELECTRIC GENERATING UNITS;
AND REPEAL OF THE AFFORDABLE CLEAN ENERGY RULE”
(RIN: 2060-AV09)

(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 24-year period of \$980 million per year, at a 2 percent discount rate, \$910 million per year, at a 3 percent discount rate, and \$650 million per year, at a 7 percent discount rate. EPA estimated health benefits of \$6.3 billion per year, at a 2 percent discount rate, \$6.1 billion per year, at a 3 percent discount rate, and \$5.2 billion per year, at a 7 percent discount rate. EPA estimated climate benefits of \$14 billion per year, at 2, 3, and 7 percent discount rates. EPA estimated net benefits of \$20 billion per year, at a 2 percent discount rate, \$19 billion per year, at a 3 percent discount rate, and \$19 billion 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 prepared a Final Regulatory Flexibility Analysis. The analysis: (1) provided a statement of the need for, and objectives of, the rule; (2) addressed the issues raised by public comments on the Initial Regulatory Flexibility Analysis for the proposed rule, including public comments filed by the Chief Counsel for Advocacy of the Small Business Administration; (3) described the small entities to which the rule will apply; (4) described the projected reporting, recordkeeping, and other compliance requirements of the rule and their impacts; and (5) described the steps the agency has taken to minimize impacts on small entities consistent with the stated objectives of the Clean Air Act.

(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 have an effect on the private sector of \$100 million or more, adjusted annually for inflation, in any one year, but will not have such an effect on state, local, or tribal governments, in the aggregate, and will not significantly or uniquely affect small governments. EPA prepared a cost-benefit analysis in accordance with the Act. EPA also consulted with national organizations representing state and local elected officials as well as air and utility professional groups who may have state and local government members.

(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 May 23, 2023, EPA published a proposed rule. 88 Fed. Reg. 33240. EPA responded to 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 information collection requirements are associated with 40 C.F.R. part 60, subparts TTTTa and UUUUb. EPA estimated the subpart TTTTa requirements will result in a burden of 110 hours per year and costs of \$12,000 per year. EPA estimated that the subpart UUUUb requirements will result in a burden for states of 89,000 hours per year and costs of \$11.7 million per year, including annualized capital or operation and maintenance costs of \$35,000 per year, and a burden for the federal government of 24,000 hours per year and costs of \$1.7 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 federal implications as defined by the Order and will not have substantial direct effects on the states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government.