



441 G St. N.W.  
Washington, DC 20548

B-336346

May 24, 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 Sam Graves  
Chairman  
The Honorable Rick Larsen  
Ranking Member  
Committee on Transportation and Infrastructure  
House of Representatives

Subject: *Environmental Protection Agency: Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category*

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 “Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category” (RIN: 2040-AG23). 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. 40198. The effective date of the rule is July 8, 2024.

According to EPA, this final rule updates requirements for wastewater discharges from steam electric power plants, particularly coal-fired power plants. More specifically, according to EPA, the rule revises the technology-based effluent limitations guidelines and standards for the steam electric power generating point source category applicable to flue gas desulfurization wastewater, bottom ash transport water and legacy wastewater at existing sources, and combustion residual leachate at new and existing sources.

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.

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  
“SUPPLEMENTAL EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS  
FOR THE STEAM ELECTRIC POWER GENERATING POINT SOURCE CATEGORY”  
(RIN: 2040-AG23)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) conducted an economic analysis of this final rule. EPA estimated that the rule will cost an additional \$536 million to \$1.1 billion dollars annually in social costs; reduce pollutant discharges by an additional 660 to 672 million pounds per year; and result in \$3.2 billion per year in monetized benefits, using a 2 percent discount rate.

(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 contains a federal mandate under the Act that may have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million in 1995 dollars, updated annually for inflation. EPA stated that it prepared a written statement required by section 202 of the Act that is summarized in the rule. EPA explained that it consulted with government entities potentially affected by the rule. EPA also stated it received comments from state and local government representatives about the proposed rule and considered them in developing the rule. According to EPA, the rule is not subject to the requirements of section 203 of the Act because it contains 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 this final rule. In its submission to us, EPA indicated “N/A” regarding its actions related to the Act.

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

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

On March 29, 2023, EPA published a proposed rule. 88 Fed. Reg. 18824. EPA received more than 22,000 public comment submissions from private citizens, industry representatives, technology vendors, government entities, environmental groups, and trade associations. EPA stated it also hosted two online public hearings during the public comment period on April 20 and 25, 2023. These hearings had a combined total of 196 attendees, 46 of whom registered to provide comment on the proposed rule, according to EPA. EPA stated that available documents from each public hearing include presentations by EPA and two transcripts. 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 stated that it has submitted the information collection activities in the rule to OMB for approval, and that its information collection request (ICR) document was assigned EPA ICR Number 2752.02 and OMB Control Number 2040-0310. EPA estimated for facilities total one-time labor hours associated with this ICR of 6,520, and total annual labor hours of 22,000, for a total annual average of 24,300 hours. EPA estimated the total one-time labor costs to facilities to be \$650,000, with total annual labor costs of about \$2,300,000, for a total annual average of \$2,540,000. EPA also estimated total one-time labor hours associated with this ICR to permitting/control authorities of 416, with total annual labor hours ranging from 3,050 to 3,160, for a total annual average of 3,230 hours. Additionally, EPA estimated total one-time labor costs to permitting/control authorities of \$33,300, with total annual labor costs ranging from \$256,000 to \$265,000, for a total annual average of \$273,000.

Statutory authorization for the rule

EPA promulgated this final rule pursuant to sections 1311, 1314, 1316, 1317, 1318, 1342, and 1361 of title 33, 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 has federalism implications because it imposes direct compliance costs on state or local governments and the federal government will not provide the funds necessary to pay those costs. EPA stated it anticipates that the rule does not impose incremental administrative burdens on states from issuing, reviewing, and overseeing compliance with discharge requirements. EPA further stated it has identified 148 steam electric power plants owned by 63 state or local government entities, and projects that 15 government-owned plants would incur compliance costs. Additionally, EPA estimated the maximum compliance cost in any one year to governments (excluding the federal government) for this final rule ranges from \$155 million and \$220 million, with annualized costs ranging between \$40 million and \$67 million. In the rule's federalism summary impact statement, EPA explained it consulted with state and local officials early in the process of developing the rule to permit meaningful and timely input. According to EPA, these consultations included a January 27, 2022, meeting attended by representatives from 15 state and local government organizations and outreach with several intergovernmental associations. EPA stated that it received five sets of unique written comments after the meeting and considered them. EPA further stated it received comments from state and local officials that it considered in developing the rule.