

The EPA Administrator, Michael S. Regan, signed the following notice on 11/15/2023, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's govinfo website (<https://www.govinfo.gov/app/collection/fr>) and on Regulations.gov (<https://www.regulations.gov>) in Docket No. EPA-HQ-OAR-2023-0072. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2023-0072; FRL-8536-04-OAR]

RIN 2060-AV09

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

AGENCY: Environmental Protection Agency (EPA)

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of and soliciting comment on an Initial Regulatory Flexibility Analysis (IRFA) following the completion of a Small Business Advocacy Review (SBAR) Panel for the proposed New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units. The EPA is seeking public comment on the regulatory flexibilities considered in the IRFA. In addition, the EPA is soliciting comment on whether to include mechanisms to address potential reliability issues raised by small business and other commenters with respect to both proposed New Source Performance Standards and the proposed Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units.

DATES: *Comments.* Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OAR-2023-0072, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov> (our preferred method). Follow the online instructions for submitting comments.
- Email: a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2023-0072 in the subject line of the message.
- Fax: (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2023-0072.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2023-0072, Mail Code 28221T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand/Courier Delivery: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Mr. Christian Fellner, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4003; and email address:

fellner.christian@epa.gov or Ms. Lisa Thompson, Sector Policies and Programs Division

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(D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–9775; and email address: *thompson.lisa@epa.gov*.

SUPPLEMENTARY INFORMATION:

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2023-0072. All documents in the docket are listed in the Regulations.gov index. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy.

Written Comments. Direct your comments to Docket ID No. EPA-HQ-OAR-2023-0072 at <https://www.regulations.gov> (our preferred method), or the other methods identified in the ADDRESSES section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA’s docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed in the *Submitting CBI* section of this document.

Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission

methods; the full EPA public comment policy; information about CBI or multimedia submissions; and general guidance on making effective comments.

The <https://www.regulations.gov> website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and should be free of any defects or viruses.

Submitting CBI. Do not submit information containing CBI to the EPA through <https://www.regulations.gov>. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Written Comments* section of this document. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will

be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.*, Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address *oaqpscbi@epa.gov* and, as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2023-0072. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

I. Background

On May 23, 2023, the Environmental Protection Agency (EPA) proposed revised new source performance standards (NSPS) under Clean Air Act (CAA) section 111(b) for greenhouse gas (GHG) emissions from new and reconstructed fossil fuel-fired stationary combustion turbine electric generating units (EGUs) and from fossil fuel-fired steam generating units that undertake a large modification.¹ As part of that proposal, the EPA certified that the proposed NSPS did not have significant impact on a substantial number of small entities under the Regulatory Flexibility

¹ See 88 FR 33240 (May 23, 2023).

Act (RFA).² However, the EPA solicited comment on a number of more stringent policy options that, if finalized, may increase the impact on small businesses. Therefore, the EPA convened a Small Business Advocacy Review (SBAR) Panel for the proposed rule and has prepared an Initial Regulatory Flexibility Analysis (IRFA) under the RFA, 5 U.S.C. 601 *et seq.*, and evaluated the economic impact of the proposed NSPS on small entities, as well as any significant alternatives to the proposed rule that may minimize economic impacts on small entities while accomplishing the Agency's objectives. The complete IRFA is available for review in the rulemaking docket (EPA-HQ-OAR-2023-0072).

As required by section 604 of the RFA, the EPA will prepare a final regulatory flexibility analysis (FRFA) for this action as part of the final rule. The FRFA will address the issues raised by public comments on the IRFA.

II. Request for Public Comments

The EPA welcomes public comment on all aspects of the IRFA as well as alternatives identified in the IRFA for public comment. The EPA is soliciting comment on the small entity impacts of the proposed NSPS and any regulatory alternatives to the proposed NSPS “which accomplish the stated objectives of the applicable statutes, and which minimize any significant impact of the proposed rule on small entities.” The EPA is also soliciting comment on the impacts of the regulatory alternatives described in the proposed NSPS notice and, if they were to be adopted, appropriate regulatory flexibilities. The EPA solicited comment on multiple alternatives that could increase the costs to small entities and the EPA determination that the proposed amendments would not have a significant economic impact on a substantial number of small entities. For the low load subcategory, these solicitations included reducing the low load

² See 88 FR 33418 (May 23, 2023).

electric sales threshold to 15 percent (88 FR 33321), a second BSER component based on co-firing low-GHG hydrogen (88 FR 33286), and a BSER based on the use of high efficiency simple cycle combustion turbines that would include an initial performance test (88 FR 33285). For the intermediate load subcategory, the Agency solicited comment on an earlier timing of the second component of the BSER and reducing the upper intermediate load electric sales threshold to a range of 29 to 35 percent for simple cycle turbines and to a range of 40 to 49 percent for combined cycle, depending on the design efficiency of the combustion turbine (88 FR 33319). The EPA also solicited comment on a BSER based on higher percentages of low-GHG hydrogen co-firing and subcategorizing intermediate load simple cycle and combined cycle turbines and establishing a BSER based on co-firing low-GHG hydrogen for both subcategories (88 FR 33332). This could have the impact of reducing the ability of owners/operators of new intermediate load combustion turbines to use efficient generation as a compliance alternative because combined cycle turbines could not be used as a compliance alternative to co-firing low-GHG hydrogen in a simple cycle combustion turbine. (The EPA notes that the scope of the IRFA is limited to the NSPS and does not include the proposed Emission Guidelines, so this request for comments does not include impacts on small existing sources.) In addition, the EPA is soliciting comment on measures to mitigate reliability concerns raised by small businesses, which were similar to concerns raised by some commenters on the proposed rules. Because mechanisms to address reliability concerns are relevant to many entities in the electricity sector, we are more broadly soliciting comment on reliability issues. The EPA requests that commenters identify which small entity they are representing, how the specific requirements could impact the small entity, and how the suggested approach would reduce burden to the small entity.

A. Subcategorization

During the SBAR Panel outreach, small entity representatives (SERs) expressed concerns that control requirements on rural electric cooperatives may present an additional hardship on economically disadvantaged communities and on small entities. SERs stated that the EPA should further evaluate potential increased energy costs, transmission upgrade costs, and infrastructure encroachment which may directly affect the disproportionately impacted communities.

Additionally, SERs stated that neither hydrogen co-firing nor carbon capture and storage (CCS) can be BSER because neither technology is commercially available or viable in very rural areas.

The EPA is soliciting comment on potential exclusions or subcategories that may address the concerns of small entities. Such exclusions or subcategories, if available, must be based on the class, type, or size of the sources and be consistent with the Clean Air Act. Additionally, consistent with the SBAR panel report, the EPA solicits comment on whether “rural electric cooperatives and small utility distribution systems (serving 50,000 customers or less) can expect to have access to hydrogen or CCS infrastructure, and if a subcategory for these units is appropriate.”

B. Reliability Mechanisms

During the SBAR Panel outreach, SERs raised concerns regarding potential reliability impacts of the proposed rules, and many of those concerns were similarly raised by commenters on the May 2023 proposal. Commenters requested additional pathways to enable EGUs to operate notwithstanding compliance schedules, based on a showing of reliability need by the relevant balancing authority, Regional Transmission Organizations (RTO), or Independent System Operator (ISO). Commenters also suggested the EPA provide flexibilities for situations outside the control of affected sources (e.g., delay in the issuance of a relevant permit needed to

meet the standards of performance, infrastructure delays, or supply chain disruptions) that could lead to adverse impacts on grid reliability. The EPA recognizes that it is difficult to separate SERs' reliability comments from broader considerations of reliability in the context of this rulemaking. Therefore, the EPA will consider all comments we receive on this issue whether or not they are small business focused. The EPA is soliciting detailed comment on whether the Agency should include a specific mechanism or mechanisms to address grid reliability needs that may arise during implementation of its final rules, specifically:

- Tools and mechanisms already available to balancing authorities, RTOs, ISOs, and other reliability authorities to address reliability challenges;
- Circumstances and conditions that should be accounted for in a mechanism or mechanisms to address reliability concerns, including (i) concerns driven by events, such as extreme weather, unexpected generator outages, and unanticipated transmission line disruption; and (ii) concerns driven by supply chain or construction delays or disruptions for new generation, transmission lines, or other infrastructure as well as delays in permit issuance for controls required to meet the standards of performance;
- The technical form and structure of such a mechanism or mechanisms, such as an extension of the compliance date or a temporary, alternative standard of performance, and supporting details describing whether such a mechanism or mechanisms should be automated to enable extensions;
- Detailed descriptions of other reliability mechanisms or ways to address commenters' reliability concerns, including phase-in considerations for small entities;

- What information would be ample and appropriate, but not overly burdensome, to substantiate the need for and use of such a mechanism or mechanisms, including any appropriate documentation from balancing authorities, RTOs, or ISOs (the EPA specifically solicits comment on approaches that would minimize potential documentation burden); and
- Lessons learned from the architecture of any previously proposed or finalized reliability mechanisms and the use of the mechanism in practice.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is a “significant regulatory action” as defined in Executive Order 12866, as amended by Executive Order 14094. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. For 40 CFR part 60, Subpart TTTT, OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060-0685. For 40 CFR part 60, Subpart TTTTa, the Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2771.01. For 40 CFR Part 60, Subpart UUUUb, the ICR document that the EPA prepared has been assigned EPA ICR number 2770.01.

C. Regulatory Flexibility Act (RFA)

Pursuant to section 603 of the RFA, the EPA prepared an Initial Regulatory Flexibility Analysis (IRFA) that examines the impact of the proposed rule on small entities along with regulatory alternatives that could minimize that impact. The complete IRFA is available for review in the docket and is summarized here.

The IRFA describes the reason why the proposed rule is being considered and describes the objectives and legal basis of the proposed rule, as well as discusses related rules affecting the power sector. The IRFA describes the EPA's examination of small entity effects prior to proposing a regulatory option and provides information about steps taken to minimize significant impacts on small entities while achieving the objectives of the rule.

The EPA also summarized the potential regulatory cost impacts of the proposed rule and alternatives in Section 5.3 of the RIA.³ The analysis in the IRFA drew upon some of the same analyses and assumptions as the analyses presented in the RIA.

We estimated cost-to-sales ratios (CSR) for each small entity to summarize the impacts of the proposed new source rule on small entities that build new natural gas combined cycle (NGCC) and natural gas combustion turbines (NGCT) units over the forecast period. For NGCT additions, we find that average compliance costs are expected to be negative. For NGCC additions, 8 small entities are potentially affected based on historical build patterns and projected economic additions. Of these 8 small entities, none are projected to have cost-to-sales ratios greater than 1 percent. The analysis above is subject to a number of caveats and limitations. These are discussed in detail in Section 5 of the IRFA.

³ See Docket ID No. EPA-HQ-OAR-2023-0072-0007.

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As required by section 609(b) of the RFA, the EPA also convened an SBAR Panel to obtain advice and recommendations from small entity representatives that potentially would be subject to the rule's requirements. The SBAR Panel evaluated the assembled materials and small-entity comments on issues related to elements of an IRFA. A copy of the full SBAR Panel Report is available in the rulemaking docket (EPA-HQ-OAR-2023-0072).

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It 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.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks Populations and Low-Income Populations

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order.

Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA's Policy on Children's Health also does not apply.

H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution or use of energy because this action only solicits comments on regulatory alternatives for small businesses.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

The EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on communities with environmental justice concerns because this action only solicits comments on regulatory alternatives for small businesses.

Michael S. Regan,

Administrator.