



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

B-336087

March 15, 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: Request from States for Removal of Gasoline Volatility Waiver*

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 "Request from States for Removal of Gasoline Volatility Waiver" (RIN: 2060-AV73). We received the rule on February 27, 2024. It was published in the *Federal Register* as a final rule on February 29, 2024. 89 Fed. Reg. 14760. The effective date is April 29, 2024.

According to EPA, the final rule removes the 1-pound per square inch (psi) waiver in certain states that petitioned EPA to do so effective April 28, 2025. EPA stated the final rule also finalizes regulatory amendments to implement the removal of the 1-psi waiver for E10 in the petitioning states, as well as a regulatory process by which a state may request to reinstate the 1-psi waiver. Finally, consistent with a decision issued by the United States Court of Appeals for the D.C. Circuit on July 2, 2021, EPA stated the final rule removes regulations that extended the 1-psi waiver to gasoline-ethanol blends between 10 and 15 percent ethanol (E15).

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".

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
“REQUEST FROM STATES FOR REMOVAL OF GASOLINE VOLATILITY WAIVER”
(RIN: 2060-AV73)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) estimated the final rule would cost \$690 million a year. EPA provided a range of estimates but stated the medium estimate of \$690 million was the most likely.

EPA stated quantifying and monetizing air pollution-related health benefits related to these reductions was not possible, and even if it had carried out such an analysis, it believes that the results would not indicate meaningful benefits.

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

EPA certified the final rule would 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 stated the final rule does not contain an unfunded mandate of \$100 million or more as described in the Act and does not 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 address the Act in the final 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 March 6, 2023, EPA published a proposed rule. 88 Fed. Reg. 13758. EPA held a public hearing on March 21, 2023. EPA received comments on the proposed rule and addressed them in the final rule.

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

EPA stated the final rule does not impose information collection requirements subject to PRA.

Statutory authorization for the rule

EPA promulgated the final rule pursuant to sections 7414, 7521, 7522–7525, 7541, 7542, 7543, 7545, 7547, 7550, and 7601 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

EPA determined the final rule was a significant regulatory action and stated it had been reviewed by OMB.

Executive Order No. 13132 (Federalism)

EPA determined the final rule 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.