EPA Proposes to Eliminate Power Sector Greenhouse Gas Emissions Regulations

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On June 11, 2025, EPA Administrator Zeldin proposed to repeal the Biden administration's Carbon Pollution Standards, which establish greenhouse gas (GHG) standards for power plants under section 111 of the Clean Air Act (CAA).[1] The proposed repeal finds that the emissions from fossil-fuel fired plants "do not contribute significantly to dangerous air pollution" within the meaning of Clean Air Act section 111 despite the fact that fossil fuel-fired power plants are the largest stationary source of GHG pollution in the US.[2] If EPA finalizes this portion of the proposal, and courts uphold it, the rule would eliminate GHG emission standards for the power sector and preclude GHG regulations of other stationary sources, with fewer emissions, under the Clean Air Act.

As an alternative to this significant contribution finding, the proposal would also eliminate most of the emission standards for power plants finalized by the Biden administration, arguing that the bases for the standards (i.e., carbon capture and sequestration and co-firing with natural gas) are not "adequately demonstrated" as required by the Clean Air Act.

In this legal analysis, we briefly summarize the proposal's primary and alternative approaches and explore how EPA's legal arguments depart from the agency's past legal interpretations of section 111 — even those made by the first Trump administration. We highlight inconsistent arguments within the proposal and discuss the potential legal risks if EPA were to finalize a rule consistent with the proposal, including the agency's failure to evaluate alternatives to fully rescinding the standards and reliance on policy justifications rather than the statutory criteria. We also explain how the arguments asserted by the proposal are similar to justifications rejected by the Supreme Court in *Massachusetts v. EPA*.[3]

Primary Proposal: Significant Contribution

EPA's primary proposal includes two parts. First, EPA argues that it must make a pollutant-specific assessment of significant contribution. Second, EPA proposes to flip the order of its usual Clean Air Act section 111 approach so that the agency prejudges the regulatory

[1] Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units, 90 Fed. Reg. 25752 (June 17, 2025), https://www.federalregister.gov/documents/2025/06/17/2025-10991/repeal-of-greenhouse-gas-emissions-standards-for-fossil-fuel-fired-electric-generating-units.
[2] EPA, Sources of Greenhouse Gas Emissions, https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions.
[3] 549 U.S. 497 (2007).

solutions before examining the significance of power plants' emissions. Traditionally, and consistent with the statutory text of section 111, EPA first decides *whether* a source contributes significantly to air pollution that may reasonably be anticipated to endanger public health or welfare, and then decides *how* to regulate based on its analysis of the "best system of emissions reduction" (BSER) consistent with the additional statutory factors. However, EPA is now proposing to take the reverse approach. EPA proposes to determine that because regulating GHG emissions from power plants would not have a significant effect on air pollution and related public health or welfare, it need not regulate. EPA's circular rationale is that GHGs from power plants do not constitute a significant contribution to GHG emissions because any regulation would not have an "influence or effect on the targeted air pollution."[4] As discussed below, this reasoning is unsupported by the statutory text and is a radical departure from EPA's past regulation, even the first Trump administration's Affordable Clean Energy rule.

Emissions-Specific rather than Source-Specific Determination

When EPA first promulgated GHG standards for fossil fuel-fired power plants in 2015, it regulated all fossil fuel-fired power plants as a single category. Though the agency argued it did not need to make a new finding that this source category contributes to GHG emissions since both coal- and gas-fired plants had been listed under section 111 since the 1970s,[5] it did make an alternative finding that the source category significantly contributes to GHG emissions.[6]

Now, as a first step in its significance reasoning, EPA argues that it must make a separate, *emissions-specific* significant contribution finding for GHGs from power plants, explaining that section 111 "is best read to require, or at least authorize the EPA to require, an Administrator's determination that an air pollutant emitted by a source category causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare as a predicate to establishing emission standards for that pollutant."[7]

EPA is also considering how it can lock in this new approach as the "best reading" of the statute. EPA requests comment on whether the Supreme Court's *Loper Bright v. Raimondo* decision should "inform EPA's approach to interpreting CAA section 111 and selecting which

[4] 90 Fed. Reg. 25752, 25755 (June 17, 2025).
[5] 36 Fed. Reg. 5931, 5931 (Mar. 31, 1971); 42 Fed. Reg. 53657, 53657 (Oct. 3, 1977).
[6] "[F]ossil fuel-fired EGUs are very large emitters of CO_2. All told, these fossil fuel-fired EGUs emit almost one-third of all U.S. GHG emissions, and are responsible for almost three times as much as the emissions from the next ten stationary source categories combined. The CO_2 emissions from even a single new coalfired power plant may amount to millions of tons each year, and the CO_2 emissions from even a single NGCC unit may amount to one million or more tons per year. It is not necessary in this rulemaking for the EPA to decide whether it must identify a specific threshold for the amount of emissions from a source category that constitutes a significant contribution; under any reasonable threshold or definition, the emissions from combustion turbines and steam generators are a significant contribution." 80 FR 64530 (October 23, 2015).
[7] 90 Fed. Reg. at 25755, 25762.

interpretation better reflects the best reading of the statute."[8] The agency also asks for comments on whether its proposal requiring a pollutant-specific significant contribution finding is "necessary to avoid implicating the major questions doctrine as articulated by the Supreme Court in *West Virginia*," specifically whether the proposed interpretation is "necessary to prevent the Agency from improperly expanding its regulatory authority by determining that emissions of *de minimis* amounts of air pollutants, or non-harmful substances that may nevertheless be defined as air pollutants, should be regulated under CAA section 111."[9]

The distinction between pollutant-specific and source-specific significant contribution findings for power plants likely does not have a meaningful difference practically. As explored below, power plant emissions are significant under either approach. The difference is largely legal: regulating a new pollutant for a source category already listed under 111 may be relatively less burdensome than conducting a new endangerment analysis for every pollutant and source category. In addition, for every rulemaking EPA has always articulated a rational basis as well as a cause-or-contribute finding in the alternative to ensure there is a sound justification for regulating a new pollutant for an already-listed source category.[10]

Significance Determination

EPA proposes to find that GHGs from fossil fuel-fired plants "do not contribute significantly to dangerous air pollution as required for the promulgation of new and existing source standards."[11] To reach this conclusion, EPA does not follow its past practice of determining

[8] 90 Fed. Reg. at 25764–65.
[9] *Id.* at 25765.
[10] For example, EPA explained in the 2015 power sector rule: "[t]he EPA's rational basis for regulating CO_2 under CAA section 111 is based primarily on the analysis and conclusions in the EPA's 2009 Endangerment Finding and 2010 denial of petitions to reconsider that Finding, coupled with the subsequent assessments from the IPCC and NRC that describe scientific developments since those EPA actions." In addition, "if the EPA were required to make a cause-or-contribute-significantly finding for CO_2 emissions from the fossil fuel-fired EGUs as a prerequisite to regulating such emissions under CAA section 111, the same facts that support our rational basis determination would support such a finding." 80 Fed. Reg. 64510 (Oct. 23, 2015). In its 2016 oil and gas rule, EPA explained: "[i]n this rulemaking, the EPA has a rational basis for concluding that GHGs from the oil and natural gas source category, which is a large category of sources of GHG emissions, merit regulation under CAA section 111. In making this determination, the EPA focuses on methane emissions from this category. The information summarized here and discussed in other sections of this preamble provides the rational basis for the GHG standards, expressed as limitations on methane, established in this action." In that rulemaking, EPA also explained that "some commenters have argued that the EPA is required to make a new endangerment finding before it may set limitations for methane from the oil and natural gas source category. We disagree, for the reasons discussed above. Moreover, even if CAA section 111 required the EPA to make an endangerment finding as a prerequisite for this rulemaking, then, the information and conclusions described above in [...] this preamble should be considered to constitute the requisite finding (which includes a finding of endangerment as well as a cause-or-contribute significantly finding). The same facts that support our rational basis determination would support such a finding." 81 Fed. Reg. 35824 (June 3, 2016).
[11] 90 Fed. Reg. at 25755.

that sources contribute significantly based on the amount of emissions they emit. Rather, EPA works backwards, hinging the significance determination on the agency's projection about the rule's impact: "under the interpretation of 'contributes significantly' proposed here, significance would be determined not with regard to a quantitative threshold, but rather based on the impact of the resulting regulation."[12]

EPA reasons that Congress's use of "significantly" provides the agency the discretion to consider the impact of the administration's polices concerning the source category's contribution to the air pollution: "[t]he EPA now proposes to adopt a statutory interpretation that is centered on the impacts and effects of statutory policy considerations in determining whether a source category's contribution is significant, rather than a purely quantitative measure of significance resting on the absolute volume of emissions from a source category."[13]

Flipping Clean Air Act Structure

By reconfiguring the analysis, EPA works backward and contrary to the steps laid out in the statute. Rather than first asking whether a source category or its emissions contribute significantly to air pollution that may reasonably be anticipated to endanger public health and welfare as the statute directs, EPA proposes to first ask whether a regulation would contribute significantly to solving an emissions problem. Flipping the order this way makes a material difference, allowing the agency to conclude that, regardless of the volume of emissions a source category produces — even if it is the largest emitting source category in the US economy — it may nevertheless be deemed not to be significant because of a separate (and contestable) assessment of the nature of the pollution problem being addressed, which cannot be ameliorated unless many other sources also abate their contributions.

Such an approach seems backwards and in tension with the statute's design. Congress structured section 111 of the Clean Air Act to require EPA to first identify source categories that "cause[…], or contribute[…] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare" and then as a subsequent step determine how to regulate new and existing sources of those emissions.[14] Determining which sources to regulate is based on the administrator's assessment of risk to public health and welfare[15]

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[12] *Id*. at 25765.
[13]. *Id.* at 25767.
[14] 42 U.S.C. § 7411(b).
[15] See, e.g., *Massachusetts v. EPA*, 549 U.S. 497, 533 (2007) ("As a reminder, before the EPA can regulate a category of stationary sources like electricity-generating power plants under Section 7411, the EPA Administrator must first find that the source category "in his judgment . . . causes, or contributes, significantly to, air pollution which may reasonably be anticipated to endanger the public health or welfare." 42 U.S.C. § 7411(b)(1)(A). A formal pronouncement meeting those criteria is known as an "endangerment finding." New Source Rule, 80 Fed. Reg. at 64,529. And once it is made, the EPA is not just empowered, but obligated, to

rather than drawing conclusions based on what the agency calls "statutory policy" and conjecture about the impact of hypothetical regulations. The part of the statute that directs EPA to identify categories of sources that contribute significantly to air pollution says nothing about the regulation's projected impact on the total amount of pollution, which may be contingent on several factors beyond the agency's control.[16] Rather, following a finding of significant contribution, section 111 requires the agency to determine how to regulate based on the agency's identification of the "degree of emission limitation" achievable by the "best system of emission reduction . . . adequately demonstrated" considering cost, non-air quality health and environmental impacts, and energy requirements.[17]

The implication of EPA's proposed approach is that the agency should not take this second statutory step because it has already concluded, without a robust regulatory process, that regulating power plant emissions will not have a sufficiently beneficial impact. The result is that even very large emitters of harmful pollution can be deemed not to significantly contribute to air pollution problem that poses an endangerment. This reverse analysis is both counter-intuitive and illogical.

EPA ties this new approach to its interpretation of the Good Neighbor Provision under a different section of the Clean Air Act — section 110(a)(2)(d). Under that program, EPA identifies which upwind states "contribute significantly" to pollution in downwind states by considering both the amount of pollution emitted and the cost-effectiveness of controls. States that produce over a *de minimis* threshold of pollution must bear some share of the reduction burden, based on a calculation of the per ton cost of reductions. EPA defended this approach as necessary because precise state-by-state attribution of volumetric shares could not accurately be done.

But Section 111 works differently. It requires EPA to set standards to control pollution for stationary source categories that significantly contribute to air pollution that "may reasonably be anticipated to endanger public health or welfare." EPA has long interpreted this first statutory step as a threshold inquiry into the amount of dangerous pollution the source category emits, which makes that category eligible for regulation. EPA determines the stringency of the standard as a second step, taking cost among other considerations into account. In both Democratic and Republican administrations, EPA has consistently

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regulate."); *Am. Lung Ass'n v. EPA*, 985 F.3d 914, 971–72 (D.C. Cir. 2021) ("After the Administrator makes an endangerment finding, the source category is added to the EPA's Section 7411 list, 42 U.S.C. § 7411(b)(1)(A), and the Administrator must promulgate emissions standards (called "standards of performance") for *new* sources in the category, *id*. § 7411(b)(1)(B). As relevant here, unless those dangerous emissions are regulated under another relevant provision of the Clean Air Act, the Administrator must also set an achievable emission guideline based on the "best system of emission reduction" and provide a process for States to submit a plan setting out standards of performance for *existing* stationary sources in that same category. *Id.* § 7411(d)(1)(A)(ii).").

[16] 42 U.S.C. § 7411(b)(1)(A).

[17] 42 U.S.C. § 7411(a)(1).

concluded that emissions from the power sector — historically the largest stationary source of greenhouse gas emissions in the U.S. economy — meet the threshold test for significant contribution.[18]

Even the first Trump administration finalized a rule in which EPA determined that "GHG emissions from EGUs contribute significantly to dangerous air pollution."[19] That direct final rule, issued in January 2021, adopted a significance threshold of three percent of US GHG emissions for a pollutant-specific determination. Although the D.C. Circuit vacated the rule on procedural grounds, the first Trump administration concluded power plants emissions exceeded its significance threshold, recognizing the magnitude of US power plants emissions.

Despite EPA's assertions in the proposal that power sector emissions do not contribute significantly to an endangerment, US power sector GHG emissions are still the largest stationary source of domestic GHG emissions, producing a quarter of US emissions in 2022.[20] This new rule by the second Trump administration does not explain what has changed to justify its departure from the longstanding section 111 approach and previous conclusion that the largest stationary source of GHG emissions in the US contributes significantly to air pollution that "may reasonably be anticipated to endanger public health or welfare."

Policy Justifications

EPA offers three non-statutory reasons for its conclusion that regulations would have no effect on GHG emissions and related health and welfare impacts: "GHG emissions from those sources are a small and decreasing part of global emissions; cost-effective control measures are not reasonably available; and because this Administration's priority is to promote the public health or welfare through energy dominance and independence secured by using fossil fuels to generate power."[21]

Reason 1: Global Emissions

To justify its reasoning related to global emissions, EPA argues that "only extraordinary emissions reductions on a global scale would have any impact on the potential endangerment of public health and welfare in this context."[22] The agency argues that the "attenuated nature of the causal chain between the volume of GHG emissions from the EGU source category and potential danger to public health and welfare arising from anthropogenic climate change" makes it impossible to implement effective domestic

[18] See e.g., 80 Fed. Reg. 64510, 64530 (Oct. 23, 2015).
[19] 86 Fed. Reg. 2542 (Jan. 13, 2021).
[20] EPA, Sources of Greenhouse Gas Emissions, https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions.
[21] 90 Fed. Reg. at 25755.
[22] *Id.* at 25766.

regulations.[23] The agency also points to increasing emissions in other countries as a reason not to regulate domestic emissions.[24] In addition, EPA eliminated the consideration of costs associated with CO_2 emissions from the Regulatory Impact Analysis (RIA).[25] Based on these considerations, EPA proposes to find no significant contribution and repeal the existing regulations.[26]

The proposal does not directly wrestle with the practical implications of its reasoning or with the D.C. Circuit's decision in *American Lung Association v. EPA*, in which the court recognized that power plants are "significant contributor[s] to air pollution by any measure."[27] EPA argues that since that decision, US power plants' "share of global emissions has declined."[28] However, the US power sector remains one of the largest contributors of GHGs. It is not clear that the appropriate denominator for purposes of the significance analysis should be global emissions, but even if it is, three percent of global GHG emissions is still, on a relative basis, significant.[29]

Moreover, under *Massachusetts v. EPA*, the Supreme Court recognized that "[a]gencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop."[30] The Court explained that "it [is not] dispositive that developing countries such as China and India are poised to increase greenhouse gas emissions substantially over the next century: A reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere."[31] EPA's proposal does not address this tension between Supreme Court caselaw and EPA's reasoning.

Reason 2: Control Measures

EPA states in the proposal that there are no viable regulatory options: "[b]ecause it is likely that the Agency may be unable to develop a BSER that would result in any meaningful, cost-reasonable GHG emission reductions, the contribution of this source category to GHG air pollution is not significant."[32] EPA argues that each of the prior BSERs under previous rulemakings (i.e., the Clean Power Plan, Affordable Clean Energy Rule, and Carbon Pollution Standards) were not adequately demonstrated, had unreasonable costs, or were unlikely to

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[23] *Id.* at 25767.
[24] 90 Fed. Reg. at 25768.
[25] EPA, Regulatory Impact Analysis for the Proposed Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units (2025), 1-5.
[26] 90 Fed. Reg. at 25768.
[27] *Am. Lung Ass'n v. EPA*, 985 F.3d 914, 977 (D.C. Cir. 2021).
[28] 90 Fed. Reg. at 25768 n. 124.
[29] *Sw. Elec. Power Co. v. EPA*, 920 F.3d 999, 1032-33 (5th Cir. 2019) (a "very small portion" of a "gargantuan source of [harmful] pollution" may nevertheless "constitute[ ] a gargantuan source of [harmful] pollution on its own terms"); *see also* Institute for Policy Integrity, *The Scale of Significance: Power Sector* (2025), https://policyintegrity.org/files/publications/Power_Sector_GHG_Contribution_Issue_Brief_vF.pdf.
[30] *Massachusetts v. EPA*, 549 U.S. 497, 499 (2007).
[31] *Id.* at 525-526.
[32] 90 Fed. Reg. at 25766.

have a significant impact on emission reductions. The contention that it is "likely" that the agency "may be unable to develop a BSER"[33] is confusing conjecture and the conclusion that power plants, as a result, do not contribute significantly to GHG pollution is conclusory. The proposal provides scant evidence for this new basis of its significance conclusion.

Reason 3: Administration's Energy Policy Priorities

Citing the administration's related executive orders, EPA argues that it must prioritize the "national interest in affordable, reliable electricity"[34] and shifts its analysis from the public health mandate of the Clean Air Act to a broader economic welfare argument. EPA states that its significance analysis "is informed by this Administration's national policy that energy production is essential to the public welfare. This entails continued and increasing reliance on fossil fuels to meet increasing demands for electricity generation, including to power artificial intelligence (AI) and related technologies with critical implications for national security and economic growth."[35] EPA argues that welfare includes "effects on economic values and on personal comfort and well-being."[36]

The proposal does not link the administration's energy policy priorities to a relevant statutory factor. And even if they are valid considerations, the analysis is skewed and incomplete. The proposal does not discuss the welfare-related public health and environmental impacts of increased greenhouse gas emissions and other pollutants that will result from greater reliance on fossil fuel-fired power plants due to the repeal of all GHG standards, which by EPA's own reporting in the RIA will cost billions of dollars in public health harms.

Implications of Primary Proposal

If EPA finalizes this primary proposal in a similar form, the legal and practical implications for GHG regulations will be seismic. The agency is proposing to find that the largest stationary source of emissions does not significantly contribute to GHG pollution. Under this reasoning, no stationary source would be regulated for GHGs under the Clean Air Act.

If the agency's final rule adopts this approach, it will face certain legal challenge. By proposing to switch the order of operations directed by the Clean Air Act and predicate the decision not to regulate on an imagined and contestable regulatory outcome, the Trump administration has arguably substituted its own policy preferences for the requirements of the statute. The reasoning prioritizes energy dominance and independence over public health and welfare, contrary to the stated purpose and design of the Clean Air Act. While executive orders can help set the policy direction of a presidential administration, which agencies may work to implement, they are not a replacement for the substantive laws that

[33] *Id.* at 25766.
[34] *Id.* at 25754.
[35] *Id.* at 25766.
[36] *Id.* at 25766.

govern agency actions. The administration's policy priorities do not relieve EPA of the obligation to follow the statutory directives from Congress to the agency.

The proposal also fails to consider the legal risk of asserting policy arguments for not regulating power plants' GHG emissions similar to those already rejected by the Supreme Court in *Massachusetts v. EPA*.

Alternative Proposal

As an alternative to its primary proposal, EPA proposes to repeal the 2024 Carbon Pollution Standards because the standards based on carbon capture and sequestration or storage (CCS) and natural gas co-firing are not adequately demonstrated. EPA states that it would adopt this alternative proposal if it does not finalize the primary proposal, in which case it may revisit the primary proposal in a future rulemaking.[37]

Specifically, EPA proposes to repeal the following BSER determinations and emission standards:

- For long-term and medium-term existing coal-fired power plants, EPA proposes that CCS and co-firing should not be considered BSER, on the basis that "90 percent CCS has not been adequately demonstrated and its costs are not reasonable,"[38] and gas co-firing in a steam generating unit is an inefficient use of natural gas and constitutes "impermissible generation shifting" under *West Virginia v. EPA*.[39]
- For new gas-fired power plants, EPA proposes that CCS should not be considered BSER on the basis that it is "neither adequately demonstrated nor cost-reasonable for new base load combustion turbines."[40]
- For existing oil or gas steam generating units, EPA proposes that implementation would be an inefficient use of state resources as they "comprise a relatively small part of the source category and would result in few or no emission reductions under the existing emission guidelines."[41]

EPA explains that it is not reopening the Biden rule efficiency standards for new and modified coal-fired power plants or the efficiency standard for new gas-fired power plants, but that it may revisit these requirements.[42]

[37] *Id.* at 25768.
[38] *Id.* at 25755.
[39] *Id.* at 25756.
[40] *Id.*
[41] *Id.*
[42] *Id.* at 25768.

Rejecting Carbon Capture and Storage BSER

EPA proposes to find that a standard based on 90 percent CCS is not BSER for coal-fired plants and new gas plants because it is not adequately demonstrated or cost-reasonable, and the emission limits are not achievable.

EPA emphasizes that the statute requires the agency to review BSER every eight years and asserts that even if EPA has the discretion to predict technology advancements, the 2024 Carbon Pollution Standards' finding that CCS is adequately demonstrated stretched this authority. EPA cites arguments raised by petitioners challenging the Carbon Pollution Standards stating that the capture rate at Boundary Dam and Petra Nova (two plants where CCS technology is deployed) varied. For example, EPA states that between 2015 and 2022, the capture rate for unit 3 at Boundary Dam ranged from 59 to 94 percent.[43] For Petra Nova, EPA states that while the facility achieved a capture rate of 92.4 percent, the outages during the year resulted in a rate less than 90 percent.[44]

EPA also argues that the capture, pipeline, and sequestration infrastructure to implement CCS would not be achievable by the 2032 compliance date.[45]

Additionally, EPA proposes to find that the costs for CCS under the Carbon Pollution Standards "were determined assuming a best-case scenario" and accounted for the Inflation Reduction Act 45Q tax credit.[46] EPA now states that "these assumptions are no longer reasonable because the EPA believes that coal-fired steam generating units are now more likely to operate longer than they will be able to claim the tax credit."[47] The proposal cites the briefs filed by petitioners challenging the Carbon Pollution Standards to argue that "the tax credit shifts the cost of CCS to taxpayers and that the EPA failed to account for these costs."[48] EPA now proposes that EPA "should not be considering tax credits when determining the cost of control."[49]

While EPA relies on arguments about the cost of regulation to industry and taxpayers, it notably fails to evaluate the public health implications of repealing the standards. There is no explanation for why compliance costs are a relevant consideration while public health implications of higher emissions are not.

Rejecting Natural Gas Co-Firing BSER

EPA proposes to determine that 40 percent natural gas co-firing is not BSER for existing medium-term coal-fired power plants. EPA argues such use of natural gas is inefficient

[43] *Id.* at 25770.
[44] *Id.* at 25771.
[45] *Id.* at 25773.
[46] *Id.* at 25772.
[47] *Id.*
[48] *Id.*
[49] *Id.*

because it reduces boiler efficiency. The proposal states that coal-fired power plants are "delaying or canceling their scheduled retirements in light of increasing electricity demand,"[50] and the US Energy Information Administration (EIA) is projecting that demand for natural gas will increase in the near and long term.[51] On this stated basis EPA concludes that it is unreasonable to determine that relying on natural gas to implement a co-firing standard would not have "significant adverse impacts on the energy system."[52] EPA also proposes to find that the co-firing standard "constitutes generation shifting and is therefore beyond the EPA's authority to require under CAA section 111," citing *West Virginia v. EPA*.[53] Finally, EPA argues that the standard is not achievable because it is "unlikely that the pipeline infrastructure necessary" can be deployed by January 1, 2030.[54]

Implications of Alternative Proposal

If this alternative is the basis for the final rule, it will be vulnerable to legal challenges. First, the proposal does not cite or evaluate any analyses to justify the complete repeal of the BSERs. Under the Administrative Procedure Act, courts require agencies to examine relevant data and articulate a reasonable explanation for its actions.[55] Moreover, where an agency is changing regulatory direction, it must provide a reasoned explanation "for disregarding facts and circumstances that underlay or were engendered by the prior policy."[56] A failure to disclose the reasons underlying a proposal may run afoul of the requirement that agencies make sufficient information public to give stakeholders a meaningful opportunity to comment on the facts and analysis underlying the proposed decision and provide their own information.[57]

EPA also fails to consider an alternative, or even less stringent standards, compared to the proposed full rescission of the standards. For example, while the proposal articulates reasons why the standards based on a 90 percent carbon capture rate were not justified, the proposal explains that other lower capture rates have been demonstrated. However, EPA does not explain why a less stringent capture rate is not feasible. Nor does EPA consider whether a longer compliance period would enable the construction of the necessary infrastructure. Similarly, the proposal does not explore whether section 111's "remaining useful life" consideration would give states the authority to provide a less stringent standard

[50] *Id.* at 25774.
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co*., 463 U.S. 29, 43 (1983) (holding that agencies must "examine the relevant data and articulate a satisfactory explanation for its actions" and that an agency decision will be arbitrary and capricious where it fails to consider an important aspect of the problem).
[56] *FCC v. Fox Television Stations, Inc.,* 556 U.S. 502, 516 (2009).
[57] *See Prometheus Radio Project v. Fed. Commc'ns Comm'n*, 652 F.3d 431, 449 (3d Cir. 2011).

for units where the sequestration infrastructure may not be feasible in the timeframe required.

If EPA were to finalize this proposal is substantially the same form, challengers would likely argue that the agency's approach "failed to consider important aspects of the problem" by considering a too-limited set of alternatives.[58] The Supreme Court has repeatedly made clear that an all-or-nothing approach does not constitute a reasonable analysis of alternatives: even where an agency determines that one aspect of an approach is unworkable, it may not abandon its efforts without considering other, intermediate approaches.[59] EPA's failure to consider a capture rate below 90 percent is likely a failure to "consider the 'alternative[s]' that are 'within the ambit of the existing [policy].'"[60]

Costs and Benefits

The proposed repeal includes a Regulatory Impact Analysis, but it relies on the analysis of the Biden-era EPA's 2024 rule and simply flips the costs and benefits of the 2024 rule while also ignoring the implications of reducing CO_2 without any explanation of why it is unable to quantify or consider the public health and environmental benefits.[61] The RIA only includes the emission reductions of $PM_{2.5}$ and ozone. Although EPA commits to conducting additional analyses in the future, it is striking that in an administration focused on cutting costs and increasing energy affordability, it includes little to no updated analysis of the costs and benefits even though it states that there have been significant market and regulatory changes.

Despite ignoring the significant benefit of reducing CO_2 emissions from power plants, EPA estimates net *disbenefits* of the proposed rule from 2026 to 2047 to be $ −110 billion at a three percent discount rate, or roughly $ −6.8 billion per year.[62]

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[58] *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 25 (2020) (cleaned up); *State Farm*, 463 U.S. at 42.
[59] *State Farm*, 463 U.S. at 51 (where NHTSA rescinded an air-bags or automatic seatbelts requirement after determining that automatic seatbelts did not provide sufficient protection, the recission was invalid because the agency had not considered an airbags-only approach); *Regents of the Univ. of Cal.*, 591 U.S. at 29 (holding that even if DHS concluded it could not continue one aspect of its prior DACA policy, it could not fully rescind the policy without considering more limited options).
[60] *Regents of the Univ. of Cal.*, 591 U.S. at 30 (quoting *State Farm*, 463 U.S. at 51).
[61] As EPA explains in the RIA, "we rely on the 2024 RIA policy case analysis as the baseline for this action. Similarly, there may be other regulatory changes before the promulgation of this proposed action, and these too are not accounted for in the baseline for this action. These facts introduce important uncertainties in the analysis within this RIA." EPA, *Regulatory Impact Analysis for the Proposed Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units* (June 2025), 2-3.
[62] *Id*. at Table 6-2.

Next Steps

We will be watching to see how EPA addresses the legal and analytical shortcomings of the proposal and responds to public comments in the final rule. Comments are due by August 7, 2025. Follow EELP's Regulatory Tracker for updates.