



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[EPA-HQ-OAR-2023-0072; FRL-12547-01-OAR]

## **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; Final Action**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final action denying or partially denying petitions for reconsideration.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is providing notice that it has responded to two petitions for reconsideration of the final action titled, “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”, published in the **Federal Register** on May 9, 2024. The Administrator has denied or partially denied the requests for reconsideration in separate letters to the petitioners. The basis for the EPA’s action is set out fully in the accompanying decision document, available in the rulemaking docket. At this time, the EPA is not addressing other grounds for reconsideration that have been raised by these or other petitioners.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Lisa Thompson (she/her), Sector Policies and Programs Division (D243-02), Office of Air Quality Planning and Standards, U.S.

Environmental Protection Agency, 109 T.W. Alexander Drive, P.O. Box 12055, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5158; and email address: [thompson.lisa@epa.gov](mailto:thompson.lisa@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Where can I get a copy of this document and other related information?**

A copy of this **Federal Register** notice, the petitions for reconsideration, the letters denying the petitions and the accompanying decision document describing the full basis for the partial denial of these petitions are available in the docket the EPA established under Docket ID No. EPA-HQ-OAR-2023-0072. In addition, an electronic copy of this final action will be available on the internet at <https://www.epa.gov/stationary-sources-air-pollution/greenhouse-gas-standards-and-guidelines-fossil-fuel-fired-power>.

### **II. Judicial Review**

This final action may be challenged in the United States Court of Appeals for the District of Columbia Circuit. Pursuant to CAA section 307(b)(1), petitions for judicial review of this action must be filed in that court within 60 days after the date notice of this final action is published in the **Federal Register**.

Section 307(b)(1) of the Clean Air Act (CAA) governs judicial review of final actions by the EPA. This section provides, in part, that “a petition for review of action of the Administrator in promulgating . . . any standard of performance or requirement under section [111] of [the CAA],” or “any other nationally applicable regulations promulgated, or final action taken, by the Administrator under [the CAA] may be filed only in the United States Court of Appeals for the District of Columbia.” This final action is “nationally applicable” within the meaning of CAA section 307(b)(1) because it denies or partially denies petitions to reconsider the “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,” which is a nationally applicable final action promulgating standards of performance and requirements under section 111 of the CAA. 89 FR 39798 (May 9, 2024) (“Carbon Pollution Standards”). This final action is nationally applicable because the result of this denial or partial

denial of the petitions identified herein is that the Carbon Pollution Standards remain in place and undisturbed, and because any judicial order disturbing the EPA’s reasoning herein would affect regulated entities throughout the nation.

Thus, any petitions for review of this final action denying or partially denying petitioners’ requests for reconsideration must be filed in the United States Court of Appeals for the District of Columbia Circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

### **III. Description of Action**

On May 9, 2024, pursuant to CAA section 111 of the CAA, the EPA published a final action titled “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.” 89 FR 39798 (May 9, 2024). Following publication of this final action, the Administrator received petitions for reconsideration of certain aspects of the Carbon Pollution Standards pursuant to the Administrative Procedure Act and Clean Air Act.<sup>1</sup>

The EPA carefully reviewed and evaluated each of these issues raised in the petitions for reconsideration based on the CAA section 307(d)(7)(B) criteria for reconsideration, as well as under section 553(e) of the Administrative Procedure Act (APA). For the reasons explained below, the EPA is denying, in part or whole, two petitions for reconsideration; specifically, the objections raised regarding EPA’s treatment of grid reliability, financing assertions related to new baseload natural gas-fired electric generation units (EGUs), and the inclusion of an

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<sup>1</sup> One petitioner (Mountain State Energy Holdings, LLC) cited both the APA and CAA as bases for reconsideration and rulemaking; the second petitioner (Edison Electric Institute) did not cite any specific authority for its request for reconsideration.

enforceable backstop emissions rate in conjunction with mass-based compliance flexibilities for existing coal-fired steam-generating EGUs.

We discuss each of the petitions we are denying or partially denying and the basis for those denials in the accompanying decision document titled “The EPA’s Basis for Denying, in Part or Whole, Petitions for Reconsideration of the 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,” available in the rulemaking docket. At this time, the EPA is not addressing other grounds for reconsideration that have been raised by these or other petitioners.

**Jane Nishida,**

*Acting Administrator.*

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