



THE COMMITTEE ON ENERGY AND COMMERCE

INTERNAL MEMORANDUM

June 26, 2012

TO: Members, Subcommittee on Energy and Power

FROM: Committee Staff

RE: Hearing on “The American Energy Initiative”

On Friday, June 29, 2012, at 9:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Energy and Power will hold the twenty-second day of its hearing on “The American Energy Initiative.” This day of the hearing will focus on EPA greenhouse gas regulations and receiving testimony from the Environmental Protection Agency (EPA). On June 19, 2012, the Subcommittee held a [hearing](#) on this topic and received testimony from State regulator, private sector, and other non-governmental witnesses.

I. WITNESS

The Honorable Gina McCarthy
Assistant Administrator for Air and Radiation
U.S. Environmental Protection Agency

II. BACKGROUND

Since January 2009, EPA has moved forward on an accelerated schedule to issue new greenhouse gas (GHG) regulations under the Clean Air Act, as well as to establish a greenhouse gas (GHG) mandatory reporting program.¹ EPA’s current regulations are summarized below.

A. **Endangerment Finding**

In April 2009, EPA proposed an “Endangerment Finding” under Clean Air Act section 202(a) relating to motor vehicle emission and fuel standards. The [Endangerment Finding](#), finalized in December 2009, concluded that the atmospheric concentrations of the combination of carbon dioxide and five other greenhouse gases endanger public health and welfare, and emissions of those greenhouse gases from motor vehicles are contributing to such concentrations and hence endangering public welfare.

¹ For additional background information, see [February 8, 2011 Memorandum](#); *see also generally* [EPA Climate Change Regulatory Initiatives, Transportation and Climate Regulations and Standards](#), and [CAA Permitting for GHGs](#); *see also* [GHG Reporting Rulemaking Notices](#) and [CBI Rulemaking Actions](#).

B. Mobile Source Regulations

In September 2009, EPA and the Department of Transportation (DOT) jointly proposed regulations setting GHG standards for passenger cars and trucks for Model Year 2012-2016 vehicles. These standards were finalized in the [Tailpipe Rule](#) issued in May 2010 and were estimated by the agencies to impose compliance costs of \$52 billion (or an average of \$331 per vehicle in 2012 to \$948 per vehicle in 2016). The agencies in November 2010 also proposed GHG emissions standards, finalized in September 2011, for medium and heavy duty vehicles for Model Year 2014-2018 vehicles, estimated to cost approximately \$8 billion. In December 2011, the agencies also proposed standards for Model Year 2017-2025 vehicles, estimated to cost \$138 billion or more (or an average of \$2,000 per vehicle in 2025). Links to these final and proposed regulations are included in the attached Appendix. EPA also is considering requests to regulate GHG emissions from aircraft and other mobile sources.

C. Stationary Source Regulations

In other rulemakings proposed by EPA in 2009 and finalized in 2010, including a [Timing Rule](#) and [Tailoring Rule](#), EPA concluded that regulating GHG emissions from vehicles automatically triggered GHG permitting requirements for stationary sources under the Clean Air Act's Prevention of Significant Deterioration (PSD) and title V permitting programs. EPA concluded that under a literal reading of the Clean Air Act, tens of thousands of sources would need PSD preconstruction permits annually and to install "Best Available Control Technology" (determined on a case-by-case basis), and that over 6 million sources would need to obtain title V operating permits. To avoid this outcome, EPA issued its [Tailoring Rule](#), directing that GHG permitting be phased in, starting initially with the largest industrial sources by raising the statutory threshold permitting levels from 100 and 250 tons per year (tpy) to 100,000 tpy of carbon dioxide (CO₂) equivalent or more. Pursuant to the Tailoring Rule and a complex set of PSD and title V related permitting regulations finalized in December 2010, EPA and State permitting authorities began GHG permitting in January 2011, and expanded the sources covered in July 2011.² EPA has recently [proposed](#) not to change the current permitting thresholds in 2013. EPA is scheduled to consider lowering the thresholds to require permitting by additional, smaller sources in future years.³

Separately from GHG regulation under the PSD and title V programs, in December 2010, EPA also announced that it had committed, pursuant to two [settlement agreements](#), to issue regulations addressing GHG emissions standards for fossil fuel fired power plants and petroleum refineries under the Clean Air Act New Source Performance Standards (NSPS) program. In March 2012, EPA [proposed](#) GHG NSPS standards for new power plants which require the installation of carbon capture and storage (CCS) technology for coal fired power plants. EPA has not yet announced its schedule for finalizing that proposed rule or for proposing standards for existing power plants, and has not announced its current schedule for issuance of NSPS standards for refineries. Links to the proposed power plant NSPS rule, as well as the PSD and title V related regulations referenced above, are included in the attached Appendix.

² See Tailoring Rule [Fact Sheet](#); [Permitting Timeline \(2011-2016\)](#); [Guidance and Technical Information](#).

³ See [Fact Sheet](#); [Permitting Timeline \(2011-2016\)](#); [Guidance and Technical Information](#).

D. Greenhouse Gas Reporting Regulations

In March 2009, EPA also moved forward with regulations to establish a [Greenhouse Gas Reporting Program](#) pursuant to the FY 2008 Consolidated Appropriations Act (H.R. 2764; Public Law 110-162) requiring annual reporting of greenhouse gas data and other information from large sources and suppliers in the United States. EPA finalized its mandatory reporting rule in October 2009 and subsequently has issued additional rulemakings revising the rule and expanding the source categories covered by the reporting requirements. In general, the current threshold for triggering reporting requirements for most sources is 25,000 metric tons or more of CO₂ equivalent, and EPA's [online training presentation](#) projects over 7,000 facilities will be reporting in 2012. Links to EPA's GHG reporting regulations and related information are included in the attached Appendix.

III. LITIGATION

EPA's Endangerment Finding, Tailpipe Rule, Timing Rule, and Tailoring Rule were challenged and consolidated in litigation pending before the U.S. Court of Appeals for the District of Columbia. The Court issued a [ruling](#) on June 26, 2012, finding the Endangerment Finding and Tailpipe Rule were not arbitrary and capricious, and upholding EPA's interpretation of certain governing Clean Air Act provisions. The court dismissed all petitions for review of the Timing and Tailoring Rules on standing grounds, and did not reach the merits on the challenges to those two rules. Appeals are expected.

IV. ISSUES

The following issues are expected to be examined at the hearing:

- EPA's current, pending and potential future GHG regulations;
- Regulatory burdens associated with implementation of GHG regulations;
- Potential impacts on new construction and facility expansions;
- Potential impacts on energy costs, and energy-intensive and trade exposed industries;
- The status of development of CCS technologies; and,
- Potential impacts of GHG regulations on jobs, the economy, and consumers.

V. STAFF CONTACT

If you have any questions regarding the hearing, please contact Committee staff Mary Neumayr at (202) 225-2927.

APPENDIX

GHG-Endangerment Finding

“*Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act,*” 74 Fed. Reg. 66496 (December 15, 2009); [Final Endangerment Finding](#)

GHG-Mobile Source Regulations

“*Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standard,*” 75 Fed. Reg. 25324 (May 7, 2010); [Final Rule](#)

“*Greenhouse Gas Emissions Standards and Fuel Efficiency Standards: Medium- and Heavy-Duty Engines and Vehicle,*” 76 Fed. Reg. 57106 (Sept. 15, 2011); [Final Rule](#)

“*2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Fuel Economy Standards,*” 76 Fed. Reg. 74854 (Dec. 1, 2011); [Proposed Rule](#)

GHG-Stationary Source Regulations

“*Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs,*” 75 Fed. Reg. 17004 (April 2, 2010); [Final Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by CAA Permitting Programs](#)

“*Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule,*” 75 Fed. Reg. 31514 (June 3, 2010); [Final Rule](#)

“*Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call,*” 75 FR 77698 (December 13, 2010); [Final Rule](#)

“*Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases,*” 75 Fed. Reg. 81874 (December 29, 2010); [Final Rule](#)

“*Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions; Federal Implementation Plan,*” 75 Fed. Reg. 82246 (Dec. 30, 2010); [Final Rule](#)

“*Determinations Concerning Need for Error Correction, Partial Approval and Partial Disapproval, and Federal Implementation Regarding Texas Prevention of Significant Deterioration Program,*” 75 Fed. Reg. 82430 (Dec. 30, 2010); [Interim Final Rule](#)

“*Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting –Sources in State Implementation Plans,*” 75 Fed. Reg. 82336 (Dec. 30, 2010); [Final Rule](#)

“*Action To Ensure Authority To Implement Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule,*” 75 Fed. Reg. 82254 (Dec. 30, 2010); [Final Rule](#)

“Determinations Concerning Need for Error Correction, Partial Approval and Partial Disapproval, and Federal Implementation Plan Regarding Texas’s Prevention of Significant Deterioration Program,” 76 Fed. Reg. 25178 (May 3, 2011); [Final Rule](#)

“Deferral for CO2 Emissions from Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs,” 76 Fed. Reg. 43490 (July 20, 2011); [Final Rule](#)

“Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3, GHG Plantwide Applicability Limitations and GHG Synthetic Minor Limitations,” 77 Fed. Reg. 14226 (March 8, 2012): [Proposed Rule](#)

“Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units,” 77 Fed. Reg. 22392 (*“Proposed Carbon Pollution Standard for Future Power Plants”*) (April 13, 2012); [Proposed Rule](#)

GHG-Reporting Regulations

“Mandatory Reporting of Greenhouse Gases; Final Rule,” 74 Fed. Reg. 56260 (Oct. 30, 2009); [Final Rule](#)

“Mandatory Reporting of Greenhouse Gases From Magnesium Production, Underground Coal Mines, Industrial Wastewater Treatment, and Industrial Waste Landfills; Final Rule,” 75 Fed. Reg. 39736 (July 12, 2010); [Final Rule](#)

“Mandatory Reporting of Greenhouse Gases,” 75 Fed. Reg. 57669 (Sept. 22, 2010); [Final Rule](#)

“Mandatory Reporting of Greenhouse Gases,” 75 Fed. Reg. 66434 (Oct. 28, 2010); [Final Rule](#)

“Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems,” 75 Fed. Reg. 74458 (Nov. 30, 2010); [Final Rule](#)

“Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs,” 75 Fed. Reg. 74774 (Dec. 1, 2010); [Final Rule](#)

“Mandatory Reporting of Greenhouse Gases: Injection and Geologic Sequestration of Carbon Dioxide,” 75 Fed. Reg. 75060 (Dec. 1, 2010); [Final Rule](#)

“Mandatory Reporting of Greenhouse Gases,” 75 Fed. Reg. 79092 (Dec. 17, 2010) [Final Rule](#)

“Interim Final Regulation Deferring the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule,” 75 Fed. Reg. 81338 (Dec. 27, 2010); [Interim Final Rule](#)

“Final Regulation Extending the Reporting Deadline for Year 2010 Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule,” 76 Fed. Reg. 14812 (March 18, 2011); [Final Rule](#)

“Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems,” 76 Fed. Reg. 22825 (April 25, 2011); [Final Rule](#)

“Confidentiality Determinations for Data Required Under the Mandatory Greenhouse Gas Reporting Rule and Amendments to Special Rules Governing Certain Information Obtained Under the Clean Air Act,” 76 Fed. Reg. 30782 (May 26, 2011); [Final Rule](#)

“Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs: Extension of Best Available Monitoring Provisions for Electronics Manufacturing,” 76 Fed. Reg. 36339 (June 22, 2011); [Final Rule](#)

“Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule,” 76 Fed. Reg. 53057 (Aug. 25, 2011); [Final Rule](#)

“Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems: Revisions to Best Available Monitoring Method Provisions,” 76 Fed. Reg. 59533 (Sept. 27, 2011); [Final Rule](#)

“Mandatory Reporting of Greenhouse Gases: Changes to Provisions for Electronics Manufacturing To Provide Flexibility,” 76 Fed. Reg. 59542 (Sept. 27, 2011); [Final Rule](#)

“Special Rules Governing Certain Information Obtained Under the Clean Air Act: Technical Correction,” 76 Fed. Reg. 64010 (Oct. 17, 2011); [Direct Final Rule](#)

“Mandatory Reporting of Greenhouse Gases,” 76 Fed. Reg. 73886 (Nov. 29, 2011); [Final Rule](#)

“Mandatory Reporting of Greenhouse Gases: Technical Revisions to the Petroleum and Natural Gas Systems Category of the Greenhouse Gas Reporting Rule,” 76 Fed. Reg. 80554 (Dec. 23, 2011); [Final Rule](#)

“Mandatory Reporting of Greenhouse Gases, Technical Corrections, Clarifying and Other Amendments,” 76 Fed. Reg. 73886 (Nov. 29, 2011); [Final Rule](#)

“Proposed Confidentiality Determinations for Data Elements Under the Mandatory Reporting of Greenhouse Gases Rule,” 77 Fed. Reg. 1434 (Jan. 10, 2012); [Proposed Rule](#)

“Greenhouse Gas Reporting Program: Electronics Manufacturing: Revisions to Heat Transfer Fluid Provisions,” 77 Fed. Reg. 10373 (Feb. 22, 2012); [Final Rule](#)

“Mandatory Reporting of Greenhouse Gases Rule: Confidentiality Determinations and Best Available Monitoring Methods Provisions,” 77 Fed. Reg. 10434 (Feb. 22, 2012); [Proposed Rule](#)

“Proposed Confidentiality Determinations for the Petroleum and Natural Gas Systems Source Category, and Amendments to Table A-7, of the Greenhouse Gas Reporting Rule,” 77 Fed. Reg. 11039 (Feb. 24, 2012); [Proposed Rule](#)

“Proposed 2012 Technical Corrections, Clarifying and Other Amendments to the Greenhouse Gas Reporting Rule, and Proposed Confidentiality Determinations for Certain Data Elements of the Fluorinated Gas Source Category,” 77 Fed. Reg. 29935 (May 21, 2012); [Proposed Rule](#)

See also: Links to Frequently Asked Questions Relating to Mandatory Reporting: [FAQ Table](#)