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March 11, 2020

The Honorable John Barrasso
Chairman
The Honorable Thomas R. Carper
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Greg Walden
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Environmental Protection Agency: Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations*

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 “Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations” (RIN: 2060-AT67). We received the rule on June 25, 2019.¹ The House of Representatives and the Senate received the rule on June 25, 2019. 165 Cong. Rec. H5254 (daily ed. June 27, 2019); 165 Cong Rec. S4626 (daily ed. June 27, 2019). It was published in the *Federal Register* as a final rule on July 8, 2019. 84 Fed. Reg. 32520. The effective date of the rule is September 6, 2019.

The final rule has three parts. First, it repeals the Clean Power Plan (CPP). EPA stated it is repealing the CPP because it determined that the CPP exceeded the EPA's statutory authority under the Clean Air Act (CAA). Second, the rule contains provisions called the Affordable Clean Energy rule (ACE), consisting of emission guidelines for greenhouse gas (GHG) emissions from existing electric utility generating units (EGUs) under section 111(d) of the CAA. 42 U.S.C. § 7411(d). According to EPA, ACE will inform states on the development, submittal, and implementation of state plans to establish performance standards for GHG emissions from certain fossil fuel-fired EGUs. As part of ACE, EPA determined that heat rate improvement is

¹ The Congressional Review Act requires GAO to provide our major rule reports to the committees of jurisdiction by the end of 15 days after the submission or publication date. 5 U.S.C. § 801(a)(2)(A). In conjunction with our practice of conducting outreach to agencies when we believe a rule has not been submitted, we discovered that the rule was actually received internally on June 25, 2019, but was misclassified as a nonmajor rule in our database. Consequently, our report should have been issued by the end of 15 days after the July 8, 2019, publication date.

the best system of emission reduction for reducing GHG—specifically carbon dioxide—emissions from existing coal-fired EGUs. Third, the rule contains provisions which constitute new regulations for the EPA and state implementation of ACE and any future emission guidelines issued under section 111(d) of CAA.

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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Director of the Regulatory Management Division
Environmental Protection Agency

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
“REPEAL OF THE CLEAN POWER PLAN; EMISSION GUIDELINES
FOR GREENHOUSE GAS EMISSIONS FROM EXISTING
ELECTRIC UTILITY GENERATING UNITS; REVISIONS TO
EMISSION GUIDELINES IMPLEMENTING REGULATIONS”
(RIN: 2060-AT67)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) evaluated the potential regulatory impacts of an illustrative policy scenario using the present value (PV) of costs, benefits, and net benefits, calculated for the timeframe of 2023-2037 from the perspective of 2016, using both a 3 percent and 7 percent end-of-period discount rate. According to EPA, this illustrative policy scenario represents the Affordable Clean Energy rule (ACE), which models heat rate improvement at coal-fired electric utility generating units (EGUs) and represents potential outcomes of state determinations of standards of performance, and compliance with those standards by affected coal-fired EGUs. EPA compared the illustrative policy scenario against a single baseline; EPA stated it believes that a future without the Clean Power Plan (CPP) represents a reasonable single baseline against which to assess the potential impacts of the ACE rule. EPA estimated the PV of the net benefits of this final rule to be \$3 billion to \$8.8 billion at a 3 percent discount rate and \$1.1 billion to \$4.1 billion at a 7 percent discount rate.

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

EPA certified that this final rule will 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 determined that this final rule does not contain a federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate or the private sector in any one year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On October 16, 2017, EPA published a proposed rule. 82 Fed. Reg. 48035. EPA held public hearings on November 28 and 29, 2017, in Charleston, West Virginia, and then extended the public comment period until January 16, 2018. 82 Fed. Reg. 51787 (Nov. 8, 2017). In response to requests for additional opportunities for oral testimony, EPA held three listening sessions in Kansas City, Missouri; San Francisco, California; and Gillette, Wyoming. EPA also reopened the public comment period until April 26, 2018. 83 Fed. Reg. 4620 (Feb. 1, 2018). EPA

received more than 1.5 million public comments on the repeal of CPP and 500,000 public comments on the proposals for ACE and its new implementing regulations. EPA responded to comments in the final rule.

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

EPA determined this rule contains an information collection requirement (ICR) under the Act. The ICR was assigned EPA ICR number 2503.04 and has been submitted to the Office of Management and Budget (OMB) for review. EPA estimates the ICR will have a total annual burden of 192,640 hours with a total annual cost of \$21,500.

Statutory authorization for the rule

EPA promulgated this final rule under the authority of sections 111, 301, and 307(d) of the Clean Air Act. 42 U.S.C. §§ 7411, 7601, 7607(d).

Executive Order No. 12,866 (Regulatory Planning and Review)

EPA determined that this final rule is an economically significant action under the Order and submitted it to OMB for review.

Executive Order No. 13,132 (Federalism)

EPA concluded that this final rule may have federalism implications because it might impose substantial direct compliance costs on state or local governments, and the federal government will not provide the funds necessary to pay those costs. EPA stated the development of state plans will entail many hours of staff time to develop and coordinate programs for compliance with the rule, as well as time to work with state legislatures as appropriate, and develop a plan submittal. EPA further noted that it understands the burden that these actions will have on states and that it is committed to providing aid and guidance to states through the plan development process. EPA stated that it will be available at the states initiative to provide clarity for developing plans, including standard of performance setting and compliance initiatives.