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November 10, 2016

The Honorable James M. Inhofe
Chairman
The Honorable Barbara Boxer
Ranking Member
Committee on Environment and Public Works
United States Senate

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

Subject: *Environmental Protection Agency: Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS*

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 "Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS" (RIN: 2060-AS05). We received the rule on September 30, 2016. It was published in the *Federal Register* as a final rule on October 26, 2016. 81 Fed. Reg. 74,504.

The final rule is the Cross-State Air Pollution Rule Update (CSAPR Update) to address interstate transport of ozone pollution with respect to the 2008 ozone National Ambient Air Quality Standards (NAAQS). EPA published the original Cross-State Air Pollution Rule (original CSAPR) on August 8, 2011, to address interstate transport of ozone pollution under the 1997 ozone NAAQS and interstate transport of fine particulate matter (PM_{2.5}) pollution under the 1997 and 2006 PM_{2.5} NAAQS. According to EPA, this final rule will benefit human health and welfare by reducing ground-level ozone pollution. In particular, it will reduce ozone season emissions of oxides of nitrogen (NO_x) in 22 eastern states that can be transported downwind as NO_x or, after transformation in the atmosphere, as ozone, and can negatively affect air quality and public health in downwind areas. For these 22 eastern states, EPA is issuing Federal Implementation Plans (FIPs) that generally provide updated CSAPR NO_x ozone season emission budgets for the electric generating units (EGUs) within these states, and that implement these budgets via modifications to the CSAPR NO_x ozone season allowance trading program that was established under the original CSAPR. EPA is finalizing these new or revised FIP requirements only for certain states that have failed to submit an approvable State Implementation Plan (SIP) addressing interstate emission transport for the 2008 ozone NAAQS. The FIPs require affected EGUs in each covered state to reduce emissions to comply with program requirements beginning with the 2017 ozone season (May 1 through September 30). The final rule partially addresses the EPA's obligation under the Clean Air Act to promulgate FIPs to address interstate

emission transport for the 2008 ozone NAAQS. According to EPA, in conjunction with other federal and state actions to reduce ozone pollution, these requirements will assist downwind states in the eastern United States with attaining and maintaining the 2008 ozone NAAQS. EPA explained that the CSAPR Update also is intended to address the July 28, 2015, remand by the United States Court of Appeals for the District of Columbia Circuit of certain states' original CSAPR phase 2 ozone season NO_x emission budgets. In addition, the rule updates the status of certain states' outstanding interstate ozone transport obligations with respect to the 1997 ozone NAAQS, for which the original CSAPR provided a partial remedy.

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. Our review of the procedural steps taken indicates that EPA complied with the applicable requirements.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Nicole Owens
Director, 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
“CROSS-STATE AIR POLLUTION RULE UPDATE
FOR THE 2008 OZONE NAAQS”
(RIN: 2060-AS05)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) prepared an analysis of the potential costs and benefits associated with the final rule. EPA states that the rule will achieve near-term emission reductions from the power sector, lowering ozone season emissions of oxides of nitrogen (NO_x) in 2017 by 61,000 tons, compared to 2017 projections without the rule. EPA states that estimates here are subject to uncertainties discussed further in the Regulatory Impact Analysis (RIA) in the docket. The estimated net benefits of the rule at 3 percent and 7 percent discount rates are \$460 million to \$810 million and \$450 million to \$790 million (in 2011 dollars), respectively. The non-monetized benefits include reduced ecosystem impacts and improved visibility. EPA's estimate of the costs and quantified benefits were summarized in a table included in the final rule.

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

EPA certified that this action will not have a significant economic impact on a substantial number of small entities. The small entities subject to the requirements of this action are small businesses, small organizations, and small governmental jurisdictions. EPA has lessened the impacts for small entities by excluding all units 25 megawatt electrical (MWe) or less. This exclusion, in addition to the exemptions for cogeneration units and solid waste incineration units, eliminates the burden of higher costs for a substantial number of small entities located in the 22 states for which the EPA is finalizing Federal Implementation Plans (FIPs). Within these states, EPA identified a total of 365 potentially affected electric generating units (EGUs) (i.e., greater than 25 MWe) warranting examination. Of these, EPA identified 30 potentially affected EGUs that are owned by 11 entities that met the Small Business Administration's criteria for identifying small entities. EPA estimated the annualized net compliance cost to these 11 small entities to be approximately \$23.9 million in 2017. Of the 11 small entities considered in this analysis, 1 entity may experience compliance costs greater than 1 or 3 percent of generation revenues in 2017. EPA notes that this entity is located in a cost of service market, where the agency typically expects that entities should be able to recover all of their costs of complying with the final rule. EPA concluded that there is no significant economic impact on a substantial number of small entities for the final rule.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

According to EPA, the final rule does not contain an unfunded mandate of \$100 million or more and does not significantly or uniquely affect small governments. EPA determined that this 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. According to EPA's analysis, the total net economic impact on government owned entities (state- and municipality-owned utilities and subdivisions) is expected to be \$20.5 million in 2017. EPA notes that it expects the rule to potentially have an impact on 11 municipality-owned entities and 1 state-owned entity. EPA's analysis does not examine potential indirect economic impacts associated with the rule, such as employment effects in industries providing fuel and pollution control equipment, or the potential effects of electricity price increases on government entities.

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

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

On December 3, 2015, EPA published a proposed rule (the Cross-State Air Pollution Rule Update (CSAPR Update)) in the *Federal Register*. 80 Fed. Reg. 75,705. EPA states that it also provided an opportunity to comment on the air quality modeling platform and air quality modeling results that were used for the proposed CSAPR Update, through an August 4, 2015, Notice of Data Availability (NODA) requesting comment on these data. 80 Fed. Reg. 46,271. EPA received 213 comments and states that it included certain significant comments and responses to comments as they pertain to the topic covered in each section of the final rule.

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

According to EPA, the information collection activities in this rule have been submitted for approval to the Office of Management and Budget (OMB) under PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2391.05. The information generated by information collection activities under CSAPR is used by EPA to ensure that affected facilities comply with the emission limits and other requirements. Records and reports are necessary to enable the EPA or states to identify affected facilities that may not be in compliance with the requirements. EPA states that the recordkeeping requirements require only the specific information needed to determine compliance. EPA states that all of the EGUs that are subject to changed information collection requirements under this rule are already subject to information collection requirements under CSAPR. EPA also states that the rule changes the universe of sources subject to certain information collection requirements under CSAPR, but does not change the substance of any CSAPR information collection requirements. The burden and costs associated with the changes in the reporting universe are estimated as reductions from the burden and costs under the existing CSAPR ICR. EPA states that the entities potentially affected by this action are EGUs in the states of Florida, Kansas, North Carolina, and South Carolina that meet the applicability criteria for the CSAPR NO_x ozone season Group 1 and Group 2 trading programs in 40 C.F.R. §§ 97.504 and 97.804. EPA estimated the number of respondents as 138 sources in Florida, Kansas, North Carolina, and South Carolina with one or more EGUs. EPA estimated that the total estimated burden would be a reduction of 12,879 hours (per year), and that the total estimated cost would be in the form of a reduction of \$1,347,291 (per year), which includes a reduction of \$409,786 in operation and maintenance costs. EPA states that when OMB approves this ICR, EPA will announce that approval in the *Federal Register* and publish a technical amendment to display the OMB control number for the approved information collection activities contained in the final rule.

Statutory authorization for the rule

The final rule was promulgated under the Clean Air Act (CAA) as amended (42 U.S.C. § 7401 et seq.). Specifically, sections 110 and 301 of CAA provide the primary statutory underpinnings for this rule. The most relevant portions of section 110 are subsections 110(a)(1), 110(a)(2), and 110(a)(2)(D)(i)(I), and 110(c)(1).

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

EPA concluded that the final rule was an economically significant regulatory action, and the final rule was submitted to OMB for review. Any changes made in response to OMB recommendations have been documented in the docket.

Executive Order No. 13,132 (Federalism)

EPA concluded that the final rule does not have federalism implications. It 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.