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B-332109

April 27, 2020

The Honorable John Barrasso
Chairman
The Honorable Thomas 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: National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Subcategory of Certain Existing Electric Utility Steam Generating Units Firing Eastern Bituminous Coal Refuse for Emissions of Acid Gas Hazardous Air Pollutants*

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 “National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Subcategory of Certain Existing Electric Utility Steam Generating Units Firing Eastern Bituminous Coal Refuse for Emissions of Acid Gas Hazardous Air Pollutants” (RIN: 2060-AU48). We received the rule on April 13, 2020. It was published in the *Federal Register* as a final rule on April 15, 2020. 85 Fed. Reg. 20838. The effective date of the rule is April 15, 2020.

According to EPA, the final rule establishes a subcategory of certain existing electric utility steam generating units (EGUs) firing eastern bituminous coal refuse (EBCR) for acid gas hazardous air pollutant (HAP) emissions. EPA determined that there is a need for such a subcategory under the National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-Fired EGUs, commonly known as the Mercury and Air Toxics Standards (MATS), and EPA stated the final rule establishes acid gas HAP emission standards applicable only to the new subcategory.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. § 808(2). EPA determined it had good cause to waive the 60-day delay because, according to EPA, the owners or operators of affected MATS sources do

not need time to adjust to this final action. According to EPA, the final rule establishes a subcategory of certain existing EGUs firing EBCR and acid gas HAP emission standards applicable only to the new subcategory. EPA stated sources in the new subcategory will be subject to a sulfur dioxide emissions limit that, on average, the currently operating six EBCR-fired EGUs have demonstrated an ability to achieve but, otherwise, will not be subject to any new regulatory requirements. EPA also stated the 60-day delay in effective date would be impractical because without this final rule the EGUs would be subject to the 2012 HAP emission standards which they currently could not meet. EPA explained that according to the EGUs, if subject to the 2012 acid gas HAP emission standards, they would no longer be in a position to continue operating their EBCR-fired EGUs and, thus, provide the environmental benefits associated with removal of coal refuse piles and reclamation and remediation of mining-affected lands.

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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in cursive script that reads "Shirley A. Jones". The signature is written in black ink and is positioned above the typed name and title.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Mary Manibusan
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
“NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS:
COAL- AND OIL-FIRED ELECTRIC UTILITY STEAM GENERATING UNITS—
SUBCATEGORY OF CERTAIN EXISTING ELECTRIC UTILITY STEAM GENERATING
UNITS FIRING EASTERN BITUMINOUS COAL REFUSE FOR EMISSIONS OF
ACID GAS HAZARDOUS AIR POLLUTANTS”
(RIN: 2060-AU48)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) estimated the benefits and costs of the final rule for the new subcategory generally and when focusing on targeted acid gas hazardous air pollutant. For the subcategory generally, EPA estimated the final rule would lead to \$33 million of social benefit at the 3 percent discount rate and \$41 million at the 7 percent discount rate due to reduced compliance costs. EPA also estimated the final rule would lead to a social cost from \$230 to \$530 million at the 3 percent discount rate and from \$210 to \$480 million at the 7 percent discount rate due to forgone ancillary co-benefits. EPA also determined there would be an uncalculated social cost due to forgone targeted benefits. According to EPA, there would be a net social benefit from –\$200 to –\$490 million reduced by the cost of the forgone targeted benefits at the 3 percent discount rate and –\$170 to –\$440 million reduced by the cost of the forgone targeted benefits at the 7 percent discount rate

For the targeted acid gas hazardous air pollutant, EPA estimated the final rule would lead to a social benefit of \$33 million at the 3 percent discount rate and \$41 million at the 7 percent discount rate due to reduced compliance costs. EPA again determined there would be an uncalculated social cost due to forgone targeted benefits. EPA estimated there would be a net social benefit of \$33 million reduced by the cost of the forgone targeted benefits at the 3 percent discount rate and \$41 million reduced by the cost of the forgone targeted benefits at the 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 the 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 the final rule does not contain an unfunded mandate of \$100 million or more, does not significantly or uniquely affect small governments, and imposes no enforceable duty on any state, local or tribal government or the private sector.

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

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

On February 7, 2019, EPA published a proposed rule. 84 Fed. Reg. 2670. EPA received comments and addressed them in the final rule. Although EPA did not specifically mention a good cause waiver under the Administrative Procedure Act, the agency waived the delay in effective date requirement under the Congressional Review Act for good cause. EPA determined it had good cause because, according to EPA, the owners or operators of affected Mercury and Air Toxics Standards sources do not need time to adjust to this final action. According to EPA, the final rule establishes a subcategory of certain existing electric utility steam generating units (EGUs) firing eastern bituminous coal refuse (EBCR) and acid gas hazardous air pollution emission standards applicable only to the new subcategory. EPA stated sources in the new subcategory will be subject to a sulfur dioxide emissions limit that, on average, the currently operating six EBCR-fired EGUs have demonstrated an ability to achieve but, otherwise, will not be subject to any new regulatory requirements. EPA also stated the 60-day delay in effective date would be impractical because without this final rule the EGUs would be subject to the 2012 HAP emission standards which they currently could not meet. EPA explained that according to the EGUs, if subject to the 2012 acid gas HAP emission standards, they would no longer be in a position to continue operating their EBCR-fired EGUs and, thus, provide the environmental benefits associated with removal of coal refuse piles and reclamation and remediation of mining-affected lands.

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

EPA determined that this final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

EPA promulgated the rule pursuant to sections 7401 *et seq.* of title 42, United States Code.

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

EPA stated the final rule was economically significant and was submitted to the Office of Management and Budget for review

Executive Order No. 13,132 (Federalism)

EPA stated the final rule does not have federalism implications and 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.