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October 26, 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: Steam Electric Reconsideration Rule*

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 "Steam Electric Reconsideration Rule" (RIN: 2040-AF77). We received the rule on September 4, 2020. It was published in the *Federal Register* as a final rule on October 13, 2020. 85 Fed. Reg. 64650. The rule has an effective date of December 14, 2020.

According to EPA, the final rule revises the technology-based effluent limitations guidelines and standards for the steam electric power generating point source category applicable to flue gas desulfurization (FGD) wastewater and bottom ash transport water. EPA states participation in the voluntary incentive program would contribute to the reduction in pollutant discharges by these steam electric power plants in FGD wastewater by approximately 26.7 million pounds per year.

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.

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
“STEAM ELECTRIC RECONSIDERATION RULE”
(RIN: 2040-AF77)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) estimates that the final rule will save \$127 million per year in social costs and result in between \$-1.7 million and \$43 million in benefits, using a 3 percent discount rate, and will save \$153 million per year in social costs and between \$6.5 million and \$46 million in benefits, using a 7 percent discount rate. EPA also stated the final rule would lead to non-monetized benefits such as changes in bladder cancer incidence and other human health effects associated with changes in drinking water disinfection byproduct levels; changes in ecosystem, visibility, and human health effects due to direct exposure to nitrogen oxides, hazardous air pollutants, and sulfur dioxide air emissions; changes in certain non-cancer human health risks (for example, effects of cadmium on kidney functions and bone density); impacts of pollutant discharge changes on threatened and endangered species; and ash marketability changes. According to EPA, the Benefit and Cost Analysis report discusses changes in these effects qualitatively and indicates their potential magnitude where possible.

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

EPA certified the final rule would 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 is not subject to the Act because the expenditures in any one year are less than the \$160 million threshold.

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

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

On November 22, 2019, EPA published a proposed rule. 84 Fed. Reg. 64620. EPA received more than 7,400 public comment submissions from private citizens, industry members, technology vendors, government entities, environmental groups, and trade associations. EPA also hosted an online public hearing on December 19, 2019 (during the public comment period). The hearing had 110 attendees, 32 of whom spoke about the proposed rule. EPA responded to the comments in the final rule.

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

EPA determined the final rule modifies existing information collection requirements (ICRs) previously approved by the Office of Management and Budget (OMB). The ICRs are associated

with OMB Control Number 2040-0004. EPA estimated the final rule would lead to no net change in the cost burden of the ICR, so EPA did not submit the changes to OMB for review under the Act.

Statutory authorization for the rule

EPA promulgated the final rule pursuant to sections 1251, 1311, 1314, 1316, 1317, 1318, and 1361 of title 33, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

EPA stated the final rule was economically significant and submitted the rule to OMB for review.

Executive Order No. 13132 (Federalism)

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