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B-333308

June 10, 2021

The Honorable Thomas R. Carper
Chairman
The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Cathy McMorris Rodgers
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Environmental Protection Agency: Revised 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 “Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS” (RIN: 2060-AU84). We received the rule on March 18, 2021. It was published in the *Federal Register* as a final rule on April 30, 2021. 86 Fed. Reg. 23054. The effective date is June 29, 2021.¹

According to EPA, it issued this final rule to address interstate transport of ozone pollution under the “good neighbor provision” of the Clean Air Act (CAA). See *generally* Act of July 14, 1955, ch. 360, 69 Stat. 322. EPA stated that this final action is taken in response to the United States Court of Appeals for the District of Columbia Circuit’s (D.C. Circuit) remand of the Cross-State Air Pollution Rule (CSAPR) Update in *Wisconsin v. EPA*, 938 F.3d 303, 318–320 (D.C. Cir. 2019) (per curiam). EPA also stated that the CSAPR Update finalized Federal Implementation Plans (FIPs) for 22 states to address their good neighbor obligations for the 2008 ozone National Ambient Air Quality Standards (NAAQS). EPA noted that the D.C. Circuit found that the CSAPR Update, which was published on October 26, 2016, as a partial remedy to address upwind states’ obligations prior to the 2018 Moderate area attainment date under the 2008

¹ The *Congressional Record* reflects that the House received this final rule on March 26, 2021, but does not yet reflect the date the Senate received this final rule. 167 Cong. Rec. H1733 (daily ed. April 13, 2021). However, EPA provided proof of delivery to a Senate mail screening site in Hyattsville, Maryland, on March 18, 2021. Email from the Regulatory Management Division, Office of Policy, Office of the Administrator, EPA, to Staff Attorney, GAO, Subject: *RE: Electronic Delivery of Congressional Review Act (CRA) Final Rules submitted to GAO by USEPA – one (1) major and six (6) non-major final rules 03-18-2021* (June 9, 2021).

ozone NAAQS, was unlawful to the extent it allowed those states to continue their significant contributions to downwind ozone problems beyond the statutory dates by which downwind states must demonstrate their attainment of the air quality standards. See *generally* 81 Fed. Reg. 74504 (Oct. 26, 2016). EPA also noted that, on the same grounds, the D.C. Circuit also vacated the CSAPR Close-Out in *New York v. EPA*, 781 Fed. App'x 4, 7 (D.C. Cir. 2019). See *generally* 83 Fed. Reg. 65878 (Dec. 21, 2018). EPA asserts that this final rule resolves outstanding interstate ozone transport obligations with respect to the 2008 ozone NAAQS for 21 states.

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 black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

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
“REVISED CROSS-STATE AIR POLLUTION RULE UPDATE
FOR THE 2008 OZONE NAAQS”
(RIN: 2060-AU84)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) prepared a cost-benefit analysis for this final rule. According to EPA the present value (PV) of the health benefits of this final rule, discounted at a 3 percent discount rate, is estimated to be about \$4,800 million and \$37,000 million, with an Equivalent Annualized Value (EAV) of about \$320 million and \$2,500 million. EPA asserts that, at a 7 percent discount rate, the PV of the health benefits is estimated to be \$3,200 million and \$25,000 million, with an EAV of about \$300 million and \$2,400 million. EPA stated that the two health benefits estimates for each discount rate reflect alternative ozone and parts per million 2.5 mortality risk estimates. According to EPA, the PV of the climate benefits of this final rule, discounted at a 3 percent rate, is estimated to be about \$4,400 million, with an EAV of about \$290 million. EPA also stated that the PV of the compliance costs, discounted at a 3 percent rate, is estimated to be about \$370 million, with an EAV of about \$25 million. EPA stated further that, at a 7 percent discount rate, the PV of the compliance costs is estimated to be about \$260 million, with an EAV of about \$25 million.

(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 under RFA.

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

EPA stated that this final rule does not contain an unfunded mandate of \$100 million or more, as described in the Act and will not significantly or uniquely affect small governments.

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

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

EPA issued the proposed rule associated with this final rule on October 30, 2020. *Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS*, 85 Fed. Reg. 68964 (proposal). EPA stated that it received 85 written comment submissions during the public comment period. EPA stated further that it held a public hearing on the proposal on November 12, 2020. EPA stated that it has addressed all significant issues raised in timely public comments. EPA also notes that it created a separate document to augment the responses to comments that appear in this final rule and to address comments not discussed in the final rule.

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

EPA stated that this final rule will not impose any new information collection burden under PRA. EPA stated further that the Office of Management and Budget (OMB) has previously approved the information collection activities contained in the existing regulations and has assigned OMB Control Number 2060-0667.

Statutory authorization for the rule

EPA promulgated this final rule pursuant to section 101 of title 23; and sections 7401–7671q of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

EPA stated that this final rule is economically significant, and it was submitted to OMB for review.

Executive Order No. 13132 (Federalism)

EPA determined that this final rule does not have federalism implications. EPA stated further that this final rule 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.